



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, RPP, O

For the landlord – MND, MNR, MNDC, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the landlord to return the tenants' personal property and other issues. The landlord seeks a Monetary Order for damage to the unit, site or property; A Monetary Order for unpaid rent and utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties were advised that all initial evidence has been considered as it was served upon the tenant and landlord by registered mail to the addresses provided by each party and is therefore deemed to have been received five days after posting. Canada Post tracking numbers were provided in documentary evidence.

Preliminary Issues

A previous hearing took place in January, 2014 between these parties. At that hearing the landlord successfully obtained an Order of Possession and a Monetary Order for unpaid rent. The landlord withdrew her application at that time for damage to the unit, site or property as the landlord was going to assess the damage after the tenants had vacated the unit. The Order of Possession was effective two days after service and was served upon the tenants on January 15, 2014. The landlord testified that the tenants had not vacated the unit by January 17, 2013 and the landlord enforced the Order of Possession in the Supreme Court of British Columbia and obtained a Writ of Possession from that Court. However the tenants voluntarily moved from the unit on January 24, 2014.

The hearing held on March 20, 2014 was adjourned and reconvened on May 07, 2014. That hearing was also adjourned and reconvened on June 30, 2014 due to the significant amount of documentary evidence and testimony. During the hearings the tenant TF in particular was extremely disruptive, would not listen to questions and constantly interrupted the proceedings. The parties were advised at the end of the hearing held on May 07, 2014 that interruptions, rudeness or being disrespectful of the proceedings, the other party and the Arbitrator would not be tolerated. The parties were cautioned that if this behaviour continued that the participants interrupting would be muted from the call and the decision would be based on written submissions only. The parties were advised at the hearing held on May 07, 2014 that they could send additional evidence to show that utilities were either outstanding or had been paid by the tenants. The parties were also asked to send additional evidence showing that the appliances had been returned to the property in good working order by the tenants as agreed at the hearing. The parties were advised that no further evidence would be accepted or considered; however, the parties have provided additional evidence that was not asked for and which has not been considered.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to return their personal property?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 28, 2013 for a fixed term tenancy that was not due to end until November 30, 2014. Rent for this unit was \$1,800.00 per month and was due on the 1st of each month in advance. The tenants were also responsible for their own utilities.

The tenants' application

The tenant TF testified that they needed time to move from the unit; however, they had to rent a U-Haul truck on January 26, 2014 to return to the unit to get the remainder of their belongings. The tenant testified that this truck cost the tenants \$125.00 and the tenants seek to recover this from the landlord.

The tenant testified that after moving out they had nowhere to live and had to stay in a hotel. The tenants seek to recover the cost of this hotel from the landlord of \$1,000.00. The tenants seek a further \$5,000.00 for the stress as they found the whole process extremely distressing for themselves and their children. The tenant testified that they had planned on moving out on January 19, 2014 but had to extend that to January 24,

2014 as they had to get a truck. The tenants have claimed \$10,000.00 in compensation from the landlord.

The tenants have provided no documentary evidence in the form of receipts or invoices for the U-Haul truck or hotels.

The tenant TF testified that they had to leave a lot of their personal possessions in the unit and storage shed. The tenants testified that the landlord has not allowed the tenants to return to the unit to collect their belongings. The tenants have provided a list of belongings they claim have been held by the landlord. The tenants seek an Order for the return of their personal belongings.

The landlord disputes the tenants' claim for compensation. The landlord testified that the tenants should have paid their rent on time to prevent an Order of Possession being issued. The tenants were supposed to vacate the rental unit in December, 2013 in accordance with the effective date of the 10 Day Notice to End Tenancy but failed to do so. The Order of Possession issued at the previous hearing ordered the tenants to move out two days after they were served. The landlord disputes therefore that the tenants are entitled to any compensation.

The landlord testified that the tenants abandoned a large amount of belongings in the unit as shown by the landlord's photographic evidence. The tenants were given time to remove all their belongings as they failed to move out two days after they were served the Order of Possession. The landlord testified that the tenants' belongings collectively are worth less than \$500.00; however, the landlord did store these belongings securely at the unit for the first few days and then on February 13, 2014 the landlord paid to have the tenants' belongings removed to a storage locker. This storage was put in the tenants' name; however, the landlord has prepaid for the storage until March 21, 2014. The landlord testified that she does not recall all the items described on the tenants' list of belongings but whatever was left there other than garbage has been placed in the storage locker.

The landlord agreed to call the storage company and get access for the tenants to remove their belongings on March 21, 2014.

The tenants agreed they will go to the storage locker on March 21, 2014 and remove their belongings so no further costs are incurred by the landlord or tenants.

The landlord's application

The landlord testified that the tenants have caused considerable damage to the rental unit in the short time they lived at the unit. The landlord testified that:

- The carpets in two bedrooms and the rec room were left badly stained and had pieces cut out. There was also evidence of some drug use imbedded in the carpets. The carpets were new in 2008 – Replacement costs and labour came to \$3,632.50;
- Two bi-fold doors were damaged. The tracks and bottom of the doors were left broken. These doors were 20 years old –\$160.00;
- Four interior doors were damaged chunks were taken out of the doors and one door handle was missing. These doors were 20 years old – \$500.00;
- The kitchen was damaged by the tenants. The tenants had taken apart the kitchen sink plumbing and this resulted in damage to the pipes and water damage to the cupboard, the flooring and the outside wall. The countertop had cigarette burns, one cabinet would not open and dry wall was also damaged. The kitchen cabinets were 20 years old and the counter top was 10 years old – \$8,000.00;
- The tenants damaged door frames and trim; this was oak and cannot be matched so areas will need to be replaced. The door frames and trim were approximately 6 – 10 years old –\$3,000.00;
- The walls all over the house were left damaged. The landlord has to repair the walls, prime and repaint. The unit was last re-painted in 2010 – \$2,500.00;

- The hardwood floors were left stained and with deep scratches these had to be sanded and refinished, The hardwood floors were last refinished in 2009 - \$2,500.00;
- The screen doors at the front and rear of the property were found damaged in the workshop. These doors and screen were approximately five years old – New doors and labour \$600.00;
- The wall safe was damaged when the tenants attempted to pry the door off – \$126.00;
- One patio door was damaged, the screen was ripped and the doorframe was scratched by the tenants' dog, the lock was also broken and missing. The door was new in 2009 – \$470.92
- Another patio door screen was damaged along with the locking device. As this screen section is integral to the door the whole door will need to be replaced – \$516.60;
- Eight bulbs were missing or burnt out –\$28.52;
- The ducts were left coated in something and a home inspector had to be called to inspect the house due to the damage. This inspector found coats, blankets and sheets stuffed in the vents - \$612.47.
- Along with these damages the tenants had left the unit and outside area in a disgusting condition. The landlord engaged the services of a cleaning company who sent in three cleaners to clean the unit and remove garbage. A neighbour was also engaged to help clean the property - \$630.80 for the cleaning company and \$30.00 for the neighbour.
- The tenants damaged four patio chairs. The back straps of these were broken. The landlord still has the cushions for these chairs and seeks to recover an amount of \$100.00.

The landlord testified that the house was built in either the late 70's or early 80's and was recently remodelled. The landlord has sent a list of these repairs that have already been started by the landlord's contractor.

The landlord seeks to recover some additional costs for a chain and padlock to keep the tenants' abandoned belongings safe at \$20.58. The cost of garbage bags at \$13.43 to start the cleanup of the garbage left outside which already had started to attract rats as shown in the landlord's photographic evidence.

The landlord testified that due to the large amount of items left abandoned by the tenants these were removed to a storage locker on February 13, 2014. The landlord seeks to recover the costs paid to remove these belongings of \$500.00. The storage locker was also prepaid by the landlord from February 13, 2014 to March 21, 2014. The landlord seeks to recover this cost of \$251.98.

The landlord testified that a list was provided to the tenants of items belonging to the landlord that were in the unit at the start of the tenancy. This list formed part of the addendum to the tenancy agreement this list included the appliances left at the rental unit. Included on this list was a portable dishwasher. This dishwasher was missing from the property. The tenant had informed the landlord that it was in the workshop however it was not found anywhere on the property. This dishwasher was new in 2010. The landlord seeks to recover the replacement costs of \$727.99

The landlord testified that the tenants also removed a deep freeze from the home and the landlord has provided photographic evidence of this on the back of the tenants' truck. This freezer was seven years old. The landlord seeks to recover \$671.49.

A dryer was also removed from the home by the tenants. This was four years old. The landlord seeks to recover \$671.49. A washer was also taken from the home by the tenants. This washer was two years old. The landlord seeks to recover \$727.99

A black barbeque and a blue barbeque were removed from the home. The black one was new in 2010. The blue one was new in 2009. The blue barbeque was also shown in the landlord's photographic evidence on the tenants' truck. The landlord seeks to recover \$88.14 for the black one and \$133.34 for the blue one. Two propane tanks were

also removed from the house by the tenants, these were new in 2010. The landlord seeks to recover \$82.38.

A concrete bird bath was also removed from the home and was seen in the back of the tenant's truck. The landlord testified that the birdbath was new in 2010. The landlord testified that the closest estimate the landlord could find to replace this bird bath was on e-bay for \$165.00.

The tenants had access to four blue recycling boxes. Two of these were left damaged at the property and two were used by the tenants to remove some of their belongings as shown in the landlord's photographic evidence. The landlord seeks to recover the costs of the two boxes removed from the property of \$22.58.

The landlord testified that an exercise machine was removed from the property. This is shown in the landlord's photographic evidence as being covered with the tenant's junk under the deck but is then shown as missing. The tenants dismantled this machine and removed it from the unit. The landlord seeks to recover \$250.00 for this machine. The landlord testified that it was five years old but has not been able to provide an estimate to replace it. The landlord testified that it is shown on the list of items at the property at the start of the tenancy.

The landlord testified that the tenants removed a two seater patio chair from the home. The landlord has photographic evidence showing the tenants removing this. The landlord seeks to recover \$145.63 to replace it.

The tenants removed four antique pewter eagles that were set on top of the outdoor lights. The landlord does not know the value of these but has found one on e-bay for \$20.00. The landlord therefore seeks to recover \$80.00 from the tenants.

The tenants removed the panic button from the alarm system. The landlord seeks to recover \$100.00 to replace this.

The landlord testified that the tenants were responsible for yard work at the unit. The tenants did not comply with this and the landlord has had to have yard work done in the middle of June, 2014. The cost for the yard work is \$300.00. The invoice indicates that the grass of two to two and a half feet high was cut, trees and shrubs pruned back, the pine cones and debris were cleared, the property line was trimmed and the garden waste was cleaned and removed to landfill. An invoice dated June 24, 2014 has been provided in evidence.

The landlord testified that as she lives out of Provence she had to fly into BC and rent a car to get to the property. The landlord seeks to recover the costs of the flights and the rented car of \$677.51 and \$634.99.

The landlord testified that she had to pay bailiff fees to enforce the Order of Possession of \$2,500.00. However, as the tenants vacated the unit voluntarily the bailiffs refunded the amount of \$2,221.75 to the landlord. The remaining amount of \$278.25 was kept for processing fees. The landlord seeks to recover the amount of \$278.25 from the tenants.

The landlord also seeks to recover \$80.00 for the BC Supreme Court Writ of Possession that was obtained as the tenants did not comply with the Order of Possession and a fee charged by the Ministry of Finance of \$80.00.

The landlord testified that she lost wages due to having to fly to BC for a week to obtain the Writ of Possession. The landlord testified that she earns \$365.00 per day and was off work for a week. The landlord testified that she has not sent in her wage slips showing her lost earnings as she does not want the tenants to have that information. The landlord seeks to recover \$1,511.25.

The landlord testified that she had to fly to BC to obtain these documents and had to pay a house and pet sitter \$400.00 and pay \$276.00 in motel fees in BC. The landlord seeks to recover these amounts from the tenants as the landlord states she would not have had to fly to BC if the tenants had complied with the Order of Possession.

The landlord testified that she had a report of suspicious activity at the rental unit. The landlord's associate landlord did not have keys to the unit and the tenants would not let the landlord's associate access the unit. The landlord had to have new keys cut at a cost of \$32.66.

The landlord has provided 345 photographs of the unit. The landlord seeks to recover the costs incurred to develop these photographs of \$149.66 and \$83.42. The landlord also seeks to recover the costs incurred for sending items by registered mail of \$9.59 and by USP shipment of \$265.47. The landlord also seeks to recover the cost for a USB card reader of \$14.54

The landlord testified that they could not re-rent the unit for February or March due to the extensive repairs and clean up required. The landlord seeks to recover a loss of rental income for February and March of \$3,600.00 and potential loss of rent for April of \$1,800.00 if the repairs are still not completed.

The landlord testified that the tenants were required to pay utilities at the unit and failed to do so. The landlord seeks to recover unpaid utilities from December 17, 2013 to January 23, 2014 of \$375.30 and a final statement was sent to the tenants. The landlord had to put the gas account into their name when the tenants left the unit so the unit could remain heated to prevent pipes freezing. The landlord seeks to recover this cost for gas for the period of January 27 to February 12 of \$128.61. If the tenants had not broken the terms of the lease agreement then the landlord would not have incurred this cost.

The landlord testified that the tenants owed utilities used in the home while attempts are made to repair the home and re-rent it. The landlord has estimated these costs at \$515.44 and \$600.00. At the reconvened hearing the landlord testified that these bills have since come to the landlord and they are for a lesser amount of \$111.07 for the City bills and \$155.14 for the gas account. The landlord has been requested to send copies of these bills in evidence and to the tenants. The tenant has provided a utility invoice

from the City as directed at the adjourned hearing and this shows the tenants account is now at zero. The landlord therefore withdraws her claim for utilities.

The landlord seeks additional costs for processing photographic evidence of \$57.58 and sending evidence through USB of \$59.00, used at the first hearing held in January. The landlord also seeks to recover costs for registered mail of \$26.51 for the first hearing held in January.

The tenants disputed the landlord's claims. The tenant testified that they did not leave the carpets stained or with pieces cut out of them. The carpets had not been cleaned at the start of their tenancy and the landlord got the previous tenant to do a move in condition inspection report with the tenants and the tenants did not sign this report.

The tenants disputed that they caused damage to the bi-fold doors. The tenant JP testified that he did put a hole in one of the doors and did remove the door handle and replaced it with a locking handle. This was removed when the tenants moved out and the landlords handle was not put back on. The landlord was told that the tenants had her door handle.

The tenants disputed that they did any damage to the kitchen. The pipe below the sink did not have a proper connection and the pipe broke. The tenant testified that they informed the landlord of this.

The tenants disputed that they caused any damage to the door frames and trim. If any damage was caused it was no more than normal wear and tear in a tenancy of three months. The tenant JP testified that he has done some renovation work in the past and noticed that there was some damage to the walls, trim and doors when they moved into the unit.

The tenants disputed that they caused any staining on the hardwood floor or that they scratched the hardwood floor. If there were scratches they would have been no more than normal wear and tear.

The tenants disputed that they removed and damaged the screens. The tenant testified that one screen was removed as they did not like it and it was stored in the workshop. The other screen was already damaged at the start of their tenancy and so that was also removed and stored.

The tenants disputed that they caused damage to the wall safe door. The tenants testified that they had the code to the safe so did not need to pry the door open.

The tenants disputed that they damaged the patio door. This was also existing damage at the start of the tenancy. The tenant JP testified that they had to put a baseball bat in the door to lock it as the lock was missing or damaged. The tenants disputed that their dog scratched the doorframe and testified that he is an old dog who lives outside.

The tenant TF agreed that she did stuff the vents with a blanket to sound proof her room from her teenager's room below. The tenant disputed that the vents were also stuffed with a coat and sheets.

The tenants testified that they cleaned the unit inside and out and removed the garbage from the property.

The tenants' disputed that they damaged the landlord's patio chairs. The tenant TF testified that she had a number of sets of patio furniture herself and the landlord's chairs are not on the list of items left at the unit by the landlord.

The tenants disputed the landlord's claim for a lock and chain and disputed the landlord's claim to remove their belongings into storage or for the cost of the storage unit. The tenants testified that they had emailed the landlord stating that they wanted to

come and collect their belongings and the landlord said she would get back to the tenants; however, the landlord did not let the tenants know when they could return to collect their belongings and then the landlord refused to talk to the tenants. The tenants disputed that they returned to the unit six times after they moved out to collect their belongings.

The tenants disputed that there was a dishwasher at the unit. The tenants agreed that they have the landlord's washer and dryer, freezer, a barbeque, two propane tanks and a two seater chair and testified that these items were removed in error. The tenants have requested the opportunity to return the landlord's belongings by a mutually agreed date and time. The tenant testified that the blue barbeque was given to the tenants by the previous tenant. This barbeque was all broken and the tenant thought they might be able to repair it. The tenants disputed that they removed the four pewter eagles from the property and claim they do not know what the landlord is referring to. The tenant testified that the landlord's son took the panic button when he came to the unit in December, 2013 to get the mailbox key. The tenant testified that a bunch of keys and the panic button were given at that time.

The landlord disputed the tenants' testimony. The landlord testified that she was not informed about a pipe breaking in the kitchen. The first the landlord knew about it was when the landlord's son did an inspection of the property in December, 2013 when he saw bowls under the sink. By this time the damage was already done to the cupboard and drywall.

The landlord referred to her photographic evidence showing a set of the landlord's white metal chairs mixed in with the tenants' patio furniture. The landlord also disputed the tenants' testimony concerning the collection of their belongings. The landlord testified that there had been e-mail correspondence between the parties but this had to stop as the tenant TF was swearing at the landlord. The landlord testified that no date or time was ever agreed upon for the tenants to return to the unit to collect their belongings. The tenants did return many times to collect items left at the unit and during these visits

the tenant stole the landlord's belongings so the landlord no longer wanted the tenants at the property.

The landlord testified that she had appointed the former tenant as her agent to do the move in inspection with the tenants. The tenants did not provide a forwarding address and did not return the landlord's phone calls or emails to contact them about attending a move out inspection. The inspection was completed in the tenant's absence the day after they moved out before renovations started on the property and the tenant TF did not contact the landlord until February to ask for an inspection.

The landlord referred to the documentary evidence provided which shows that a dishwasher was in place at the start of the tenancy. The landlord's documentary evidence also shows a blue barbeque and deep freezer. The landlord referred to her photographic evidence showing the pewter eagles in place at the start of the tenancy and show that these have not only been removed but the lights were also broken.

The landlord testified that the tenants did not know where the keys were when the landlord's son went to the unit in December, 2013. The tenants could not find the panic button and returned a set of keys for a property in another province and a key fob. However, the panic button was not returned and is now missing.

The landlord testified that the tenants agreed to return the landlord's dishwasher, freezer, washer, dryer and two barbeques at the end of the hearing held on May 07, 2014. The landlord testified that the tenants' moving company came on June 21, 2014 and dumped a large quantity of items at the rental property none of which belonged to the landlord. The landlord testified that there was some florescent lights, broken furniture, a broken garden umbrella, two broken vehicle seats, three boxes of jars and sealers, a broken deep freeze which was sealed and contained rotting food and maggots, a dented and broken washer and a dented and broken dryer, a broken dishwasher, three picture frames, broken garden ornaments including plastic swans, mouldy and wet comforters, a broken ladder, broken tables and many other items. The

landlord testified that the only item the landlord recognised was a broken and mouldy pool table which belonged to the tenants and which the landlord had originally put into storage for the tenants.

The landlord testified that the tenants did not return any of the landlord's belongings as agreed to and the landlord then had to have all of these dumped belongings taken to the dump. The landlord seeks to recover costs for this work of \$150.00. The landlord therefore seeks to have the replacement costs for her belongings included in her claim as originally discussed. The landlord has provided photographic evidence and detailed accounts of the items dropped off at the rental property on June 21, 2014.

The tenant testified that she did not remove a birdbath or recycling bins other than those that belonged to her. The tenant testified that the exercise machine belonged to the tenant and that this machine was purchased 15 or 20 years ago. The tenant disputes the landlord's claim for yard work and testified that the yard was not in a good condition when they took possession of the unit and as it was winter no further yard work was done before the landlord evicted the tenants.

At this point the tenant became extremely rude and disrespectful towards the landlord, and the Arbitrator. The tenant and landlord were reminded that interruptions, rudeness or being disrespectful of the proceedings will result in one or both parties being muted from the hearing. The tenant continued to be disrespectful and interrupting the proceedings, the tenant was muted from the hearing. The tenant was warned that no further evidence would be taken from the tenant and the hearing would conclude with the documentary evidence before the Arbitrator. The tenant requested that a copy of their decision be sent to the Service BC office in Penticton and the tenant exited the hearing. The hearing was then concluded by the Arbitrator.

Analysis

The tenants' application

With regard to the tenants' application for compensation of \$10,000.00; I have reviewed the evidence and testimony before me and find when tenants have been served with a 10 Day Notice to End Tenancy for unpaid rent the tenants must vacate the rental unit in accordance with that Order. The tenants failed to do so and continued to reside in the rental unit until January 24, 2014. In the meantime the landlord had the Order of Possession enforced in the Supreme Court and obtained a Writ of Possession. However, this was not enforced by the Sherriff as the tenants then moved from the unit. If the tenants incurred any costs for a moving truck or hotels then the tenants must bear that cost themselves and it is not the responsibility of the landlord. Accordingly I also find that although this may have been a stressful situation for all concerned if the tenants had paid their rent on time then the landlord would not have had to file an application to evict the tenants from the rental unit. It is therefore my decision that any stress felt by the tenants could have been avoided had they paid their rent on time. As a result the tenants are not entitled to claim compensation from the landlord for exercising her legal rights to obtain possession of the property. This section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim for an Order for the return of their personal property; I refer the parties to Part Five of the Residential Tenancy Regulations which deals with the abandonment of a rental unit. Section 25(1) (a) states that:

25 (1) The landlord must

(a) Store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

Section 25(2) states:

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) The property has a total market value of less than \$500,

(b) The cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) The storage of the property would be unsanitary or unsafe.

Section 26 deals with tenants' claim for the return of abandoned property and this section states:

26 *(1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 [disposal of personal property], the landlord may, before returning the property, require the tenant to*

(a) Reimburse the landlord for his or her reasonable costs of

(i) Removing and storing the property, and

(ii) A search required to comply with section 27 [notice of disposition], and

(b) Satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

However, at the first hearing the parties agreed that the tenants could go to the storage facility on March 21, 2014 and collect their personal belongings stored there; the landlord's claim for any costs incurred for this storage unit will be dealt with under the landlord's application.

The tenants' application for the return of their personal property is therefore dismissed.

The landlord's application

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied from the documentary evidence and sworn testimony before me that the carpets in the rec room and two bedrooms were left stained and had pieces cut out of them by the tenants. These carpets were six years old and therefore I must limit the landlord's claim to take into account the depreciation of the carpets. I direct the parties to the Residential Tenancy Policy Guidelines #40 which provides information on the useful life of building elements. This guideline states that carpets have a useful life of 10 years. I therefore reduce the landlord's claim by 60 percent and find the landlord is entitled to recover the amount of **\$1,453.00**.

I am satisfied with the landlord's evidence that the tenants damaged two bi-fold doors and tracks and four interior doors. The landlord testified that these doors were 20 years

old. As doors have a useful life of 20 years I find the landlord's claim for replacement costs must be borne by the landlord.

I am satisfied with the landlord's evidence that the tenants neglect caused damage to the cupboard under the sink. The landlord has not proven beyond the balance of probability that the tenants had taken apart the plumbing but the landlord has shown that the tenants did not inform the landlord of a water leak or problems with the plumbing which resulted in the damage to the pipes, cupboard, flooring and exterior wall. Consequently, I find that had the tenants informed the landlord of a plumbing issue the resulting damage could have been prevented. Furthermore, I am satisfied that the tenants caused damage to the countertop, a cabinet and drywall in the kitchen. However, the useful life of cabinets and counters is 25 years. As the cabinets were estimated as being 20 years old and the counter 10 years old I must limit the landlord's claim accordingly for depreciation of these items. The total bill for damages in the kitchen was \$8,000.00 however this invoice does not provide details of how much each item cost to replace or repair. I therefore limit the landlord's claim to **\$4,000.00**.

I am satisfied that the tenants caused some damage to the door frames and trim inside the house. The landlord has provided an invoice for the cost to repair these frames and trim. However, as the frames and trim were six to 10 years old I must limit the landlords claim to include deprecation. The useful life of wood framing is considered to be 15 years. I therefore deduct 75 percent from the landlord's claim of \$3,000.00. The landlord is entitled to recover **\$750.00**.

With regard to the landlord's claim for repairing, priming and repainting the walls in the unit. The useful life of interior paint is four years. The landlord testified that the unit was last repainted in 2010 therefore according to the useful life guidelines the landlord would be required to repaint the unit again in 2014. I must therefore dismiss the landlord's claim for painting of \$2,500.00 as a landlord is required to repaint a unit regularly.

I am satisfied from the evidence before me that the tenants caused deep scratches and staining on the hardwood flooring which went beyond normal wear and tear. This resulted in the landlord having to have the floors sanded and refinished. The useful life of hardwood flooring is 20 years. The landlord did not have to replace the flooring but did testify that the floors were last refinished in 2009. The landlord must expect some wear and tear on the floors when a unit has been rented out for five years. I therefore limit the landlords claim to the deep scratches and staining only to an amount of **\$1,000.00**.

I am satisfied from the evidence before me that the tenants caused damage to the screen doors. The landlord has testified that these screen doors were found in the shed and were damaged; the tenants agreed that they had removed the doors screens one because they did not like it the other because it was damaged. I find it is likely that both screens were removed by the tenants and left damaged or became damaged while in the shed. The useful life guide does not mention the useful life of a screen door. The landlord is required therefore, to provide documentary evidence from a manufacture of screen doors as to the useful life of the screen doors. I have no evidence before concerning this and therefore I must limit the landlord's claim to **\$200.00**.

I am satisfied with the evidence before me that the tenants caused damage to the safe door. The door was repaired at a cost of **\$126.00** and I uphold the landlord's claim to recover this amount from the tenants.

I am satisfied with the evidence before me that the tenants caused damage to the patio door and screen including the door frame which was scratched by the tenants' dog. This had to be replaced by the landlord at a cost of \$470.92. The useful life of an exterior door is 20 years and the landlord testified that the door was six years old. I must therefore limit the landlord's claim to 40 percent for depreciation. Consequently, the landlord is entitled to recover the amount of **\$188.36**.

I am satisfied with the evidence before me that the tenants caused damage to another patio door screen. The landlord testified that as the damaged screen is integral to the door the whole door had to be replaced at a cost of \$518.60. As this door was six years old I have limited the landlord's claim for depreciation to 40 percent. The landlord is entitled to recover **\$206.64**.

With regard to the landlord's claim for replacement light bulbs; tenants are required to replace any light bulbs that have burnt out during the tenancy. I therefore uphold the landlord's claim for replacement costs for eight light bulbs of **\$28.52**.

The landlord seeks to recover the cost for a home inspector to come and look at the house due to the level of damage caused. The landlord has provided evidence that the inspector found coats, blankets and sheets stuffed in the vents. The tenant agrees that she did stuff blankets in the vents to muffle noise from their teenagers in the basement. I find it is likely that the tenant also stuffed the vents with coats and sheets which could have potentially been a fire risk in the heating vents. I therefore find in favour of the landlord's claim to recover the cost of this inspection of **\$612.47**.

I have reviewed the photographic evidence and the invoice from the cleaners and a neighbour engaged by the landlord to clean the unit and remove garbage. I find the unit and outside area was left in an unclean and unsanitary condition contrary to s.32 of the *Act*. I therefore uphold the landlord's claim for **\$660.80**.

The landlord has sufficient evidence to show that there are four of the landlord's patio chairs mixed in with the tenant's belongings. The landlord has testified that these chairs were left broken by the tenants. The landlord still has the cushions for the chairs but the back straps are damaged. The landlord requests to recover \$100.00 but has not provided evidence as to the age of the chairs, an invoice or quote for replacement chairs or that they were damaged by the tenants. I must therefore dismiss this section of the landlord's claim.

I find the tenants did not remove their belongings from the property by the date stated on the Order of Possession. The landlord stored the tenants' belongings and had to purchase a chain and padlock to keep the tenants' belongings safe while they remained on the rental property. I therefore find in favour of the landlord's claim to recover this cost from the tenants of **\$20.58**. I further find the tenants left a large amount of garbage at the property which was attracting rats and which had to be removed by the landlord. The landlord is therefore entitled to recover the cost of the garbage bags of **\$13.43**.

The landlord removed the tenants' belongings to a storage locker on February 13, 2014. The landlord has provided sufficient evidence to show that the moving costs for these items was \$500.00 and the costs for the storage locker was prepaid by the landlord of \$251.98. As tenants are required to remove all belongings from a rental unit at the end of tenancy whether they have moved voluntarily or through an Order of Possession. If the tenants fail to do so then the landlord is entitled to recover from the tenants any costs associated with the removal of and the storage of the tenants' belongings. I therefore uphold the landlord's claim for **\$500.00** and **\$251.98**.

With regard to the landlord's claim for damage to the landlord's personal belongings; and the loss of the landlord's personal belongings; the landlord and tenants had an addendum to the tenancy agreement detailing the items left in the unit by the landlord for the tenants to use during their tenancy. This list details that two sets of house keys one mail box key, some window coverings, the portable dishwasher, a wooden kitchen cart, the washing machine, the clothes dryer, the exercise gym, the bird bath and the freezer are all missing from the property. The landlord has provided photographic evidence showing that some of these items were been removed by the tenants as they were photographed on the tenants' truck. The tenants agreed at the hearing held on May 07, 2014 to return to the landlord the four appliances removed by the tenants. At the reconvened hearing held on June 30, 2014 the landlord has provided sufficient evidence to show that the tenants did not return the four appliances but rather returned appliances that were damaged, dirty and which did not belong to the landlord along with a great deal of other items which also did not belong to the landlord. The tenant TF

continually contradicted her own testimony and that of the other tenant JP throughout the hearings regarding the appliances. I find I can place very little merit on the tenant TF's testimony due to the inconsistencies and contradictions. The items that were returned all had to be removed to the dump and the landlord seeks to recover the fee paid to remove the tenants' items removed from the rental property of \$150.00.

As the tenants did not return the landlord's appliances as agreed in good working order I must uphold the landlord's claim for the dishwasher, the freezer, the washer and the dryer. The landlord has testified that these items were not new at the start of the tenancy. The freezer was seven years old. The dryer was four years old, the washer was two years old and the dishwasher was four years old. I must take into account the depreciation of these appliances when awarding replacement costs to the landlord. I therefore find the landlord is entitled to recover the amounts of \$436.79 for the dishwasher; \$358.12 for the freezer; \$492.42 for the dryer; and \$630.92 for the washer. The total amount for the four appliances is **\$1,918.25**.

I am satisfied from the evidence before me that the tenants removed two barbeques and propane tanks from the rental property. The tenant has testified that the previous tenant gave one of these barbeques to the tenants. I have insufficient evidence from the tenants to support this claim and the previous tenant would not be entitled to give away something that belonged to the landlord. The tenants should have first checked with the landlord before removing any items from the rental property. The landlord seeks to recover \$88.14 for the black barbeque, \$133.34 for the blue barbeque and \$82.38 for the propane tanks. However, the barbeques were not new and were approximate four years old. I must therefore limit the landlord's claims to **\$44.07** and **\$66.67**. I find the propane tanks can be refilled and therefore find in favour of the landlord's claim for **\$82.38** to replace these.

I am satisfied with the evidence before me that a bird bath was in place at the start of the tenancy as documented on the list of items. Consequently I find this bird bath was removed by the tenants and the landlord is entitled to recover costs to replace it. The

landlord has testified that the bird bath was four years old; however, an item of this nature is not included on the useful life of building elements. I therefore find I must deduct an amount for depreciation of this birdbath and have limited the landlord's claim to **\$100.00**.

The landlord seeks to recover the cost to replace two of the four blue recycling bins left at the unit. The landlord testified that two bins were left broken; however, the landlord seeks to recover the cost of the two bins that the tenants were seen removing from the unit. The tenant testified that the two blue bins belonged to the tenants; however, I find it is likely, on a balance of probabilities, and considering the amount of other items belonging to the landlord that were removed by the tenants that the two blue bins belonged to the landlord. I therefore uphold the landlord's claim for **\$22.58**.

With regard to the landlord's claim that the tenants removed the landlords exercise machine. The landlord's photographic evidence and the list of items at the property at the start of the tenancy both clearly show an exercise machine at the unit. The landlords other photographs of the same area show this machine is missing. I am satisfied, on a balance of probabilities that the exercise machine belonged to the landlord and not the tenants as stated by the tenant in her testimony. The landlord testified that this exercise machine was five years old; however, the landlord has not been able to provide an estimate for its replacement costs. The landlord seeks to recover \$250.00 and I therefore limit the landlords claim to **\$200.00**.

I am satisfied with the evidence before me that the tenants removed a two seater patio chair from the property as the landlord's evidence shows the tenants removing this item. The landlord has provided some evidence as to the replacement costs of a similar chair. However I must deduct an amount for depreciation. I therefore find the landlord is entitled to recover the amount of **\$120.00**.

I am satisfied with the evidence before me that the rental property had four pewter eagles set on top of the outdoor lights. The landlord has sufficient evidence to show that

these eagles were not at the property at the end of the tenancy. I uphold the landlord's claim to recover replacement eagles. The landlord has provided evidence of the cost of a second hand eagle of \$20.00. I therefore uphold the landlord's claim for **\$80.00**.

I am satisfied with the evidence before me that the tenants failed to return the panic button for the alarm system. The landlord has provided evidence that the replacement panic button is **\$84.75**. I therefore uphold the landlord's claim to recover this amount.

With regard to the landlord's claim for yard work of \$300.00; the landlord testified at the hearing that the tenants failed to do yard work. The tenant testified that the yard was not clean at the start of the tenancy and no yard work was done in the winter prior to the tenants vacating. I have reviewed the landlord's invoice for this yard work and find it is dated June 21, 2014. The tenancy ended on January 24, 2014. I am not satisfied that the landlord attempted to mitigate any loss for the yard work as it was not completed until sometime after the middle of June, 2014. The landlord cannot therefore hold the tenants responsible for cutting grass, pruning shrubs and trees, cutting edges or clearing pine cones and debris when the tenancy ended six months prior to this work commencing. I therefore dismiss the landlord's claim for yard work.

The landlord seeks to recover costs associated with flying into the area, staying in a motel, lost wages, house sitter fees and renting a car to deal with the tenants, view the unit and time taken to obtain the Writ of Possession. When a landlord is deemed to be an absent landlord any costs incurred to deal with tenancy matters must be borne by the landlord. There is no provision under the *Act* for costs of this nature to be awarded. These sections of the landlord's claim are therefore dismissed.

With regard to the landlord's claim to recover fees incurred for the bailiffs as the tenants did not comply with the Order of Possession. It is my decision that the landlord is entitled to recover fees of **\$278.25** for the bailiffs processing fees. I further find the landlord is also entitled to recover **\$80.00** to obtain the writ of Possession from the

Supreme Court as the tenants did not comply with the Order of Possession and a further amount of **\$80.00** paid to the Ministry of Finance.

With regard to the landlord's claim for some new keys being cut as they had a report of suspicious activity at the unit and the tenants would not allow the landlord's agent to access the unit. The landlord does not have a right to enter a rental unit while the tenants remained in occupation unless the landlord has issued a 24 hour notice of entry or the tenants gave permission. It is not the fault of the tenants that the landlord's agent did not have a set of keys to access the unit if a notice of entry had been served upon the tenants. Therefore I dismiss the landlord's claim for new keys.

The landlord seeks to recover the cost of photograph processing, registered mail costs and costs for USP shipments. The landlord has provided a large amount of photographs of the unit; however, there is no provision under the *Act* for costs to be awarded for processing evidence or for the registered mail cost or USP shipment costs. These sections of the landlord's claim are therefore dismissed.

With regard to the landlord's claim to recover a loss of rent for February, March and April, 2014; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

This was a fixed term tenancy which was not due to end until November 30, 2014. The tenants failed to pay rent and the landlord obtained an Order of Possession at a hearing held in January, 2014. The landlord has provided sufficient evidence to show that the tenants removed appliances essential to re-rent the unit along with other items and

caused damage to the unit which has taken time to repair. I find therefore that the landlord is entitled to recover a loss of rent for February, March and April, 2014 of **\$5,400.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants, pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) for the following amount:

Carpets	1,453.00
Damage to kitchen	\$4,000.00
Damage to doors and trim	\$750.00
Flooring repair	\$1,000.00
Screen doors	\$200.00
Safe door	\$126.00
Patio door	\$188.36
Patio door and screen	\$206.64
Light bulbs	\$28.52
Home inspection	\$660.80
Chain and padlock	\$20.50
Garbage bags	\$13.43
Removal of tenants belongings to storage	\$500.00
Storage costs	\$251.98
Dump fees	\$150.00
Four appliances	\$1,918.25
Two barbeques and propane tanks	\$193.12
Birdbath	\$100.00
Two recycling bins	\$22.58
Exercise machine	\$200.00
Two seater chair	\$120.00
Four pewter eagles	\$80.00

Panic button	\$84.75
Bailiff fees	\$278.25
Supreme Court fees	\$80.00
Ministry of finance fees	\$80.00
Loss of rent for three months	\$5,400.00
Filing fee	\$100.00
Total amount due to the landlord	\$18,206.18

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$18,206.18. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2014

Residential Tenancy Branch

