Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the agent) appeared on behalf of the landlord. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The agent elected to call the person who cleaned the rental unit as his witness (the witness).

The agent testified that he served the tenant with the dispute resolution package on 15 July 2014 by registered mail. The agent provided me with a Canada Post customer receipt that showed the same. The tenant did not dispute receiving the landlord's dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that he served the landlord's evidence to the tenant by registered mail on 15 November 2014. The agent provided me with a Canada Post tracking number that set out the same. The tenant did not dispute receiving the landlord's evidence. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to sections 88 and 90 of the Act.

The tenant testified that he served the landlord with the dispute resolution package on 20 November 2014 by registered mail. The tenant testified that this package contained all evidence before me. The tenant provided me with a Canada Post customer receipt that showed the same. The agent did not dispute receiving the tenant's dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was served with dispute resolution package and evidence pursuant to sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy (including, cleaning costs and liquidated damages)? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary order for damage or loss arising out of this tenancy (including, compensation in relation to a power outage, compensation in relation to the floor of the rental unit shaking, the cost of a car wash, the cost of a key extraction, compensation for being forced to leave the rental unit early, and aggravated damages)? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, photographs, video recordings, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlord's claim and the tenant's claim and my findings around each are set out below.

The tenant's occupation of the rental unit began 1 October 2009. The landlord and tenant entered into a series of five, fixed-term tenancies:

- 1 October 2009 to 30 September 2010;
- 1 October 2010 to 30 September 2011;
- 1 October 2011 to 30 September 2012;
- 1 October 2012 to 30 September 2013; and
- 1 October 2013 to 30 September 2014.

Each agreement contained a fixed-term clause that set out:

> *At the end of [the fixed-term tenancy] the tenancy is ended and the tenant must vacate the rental unit.*

Each agreement contained a liquidated damages clause that set out:

> *If the tenant ends the fixed term tenancy…before the end of the term set out in [the fixed-term clause], or any subsequent fixed term, the tenant will pay to the landlord the sum of $575.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit…*

The current tenancy agreement sets out that monthly rent of $885.00 is due on the first. The landlord continues to hold the tenant's security deposit and pet damage deposit paid 31 August 2009. The landlord collected $865.00 in total deposits.

On 1 October 2009, the tenant and agent completed a move-in condition inspection report. On 30 June 2014, the agent completed a move-out inspection report in the tenant's presence; however, the agent testified that the tenant refused to sign the move out inspection report.

On 20 May 2014, the tenant provided written notice to end the tenancy to the landlord. The tenant set an effective date for vacating the rental unit of 30 June 2014. The tenant testified that, on or before 2 May 2014, he had decided to vacate the rental unit.

The landlord requested a monetary order on the following terms:

Item	**Amount**
Blind cleaning	$25.20
Carpet cleaning	110.00
Nicotine cleaning	157.50
Liquidated damages	575.00
Total Monetary Order Sought	**$867.70**

The tenant admitted liability with respect to the blind and carpet cleaning costs.

I was provided with a receipt for cleaning services from the witness dated 5 July 2014. The receipt indicates that it was for services cleaning the rental unit in relation to nicotine deposits on all the walls of the rental unit as well as the windows. The witness testified that the receipt was issued for 10.5 hours of cleaning at his normal rate of $15.00 per hour.

The agent testified there was heavy nicotine staining on the walls within the rental unit. The agent testified that the nicotine had to be cleaned off of the walls before the rental unit could be repainted, as the presence of nicotine would prevent the proper adhesion of the new layer of paint.

The witness testified that he had initially been hired to spot clean some areas of the rental unit. The witness testified that when he began spot cleaning in the bathroom, the walls began to run with a "gooey" substance. The witness testified that at that point he could easily identify that the walls had nicotine on them. The witness testified that he himself had been a smoker for over four decades and had cleaned nicotine from both his own and client's walls. The witness testified that at the time he was cleaning the rental unit any smoke smell was obscured by incense. The witness testified that the nicotine staining in the bathroom was the heaviest.

The tenant testified that he did not agree with the assessment for cleaning nicotine off of the rental unit walls. The tenant testified that he or his guests smoked occasionally (between 10 and 15 times) in the rental unit since his initial occupation date. The tenant posits that second hand smoke entered the rental unit through his window and door, which were located next to the front entry way. The tenant also testified that at the time of the move-out condition inspection report, the agent did not identify any concerns about smoke. The tenant testified that there was no incense burning at the time of the move-out inspection.

The agent testified that the nicotine stains were not apparent at the move-out condition inspection as evidence of the damage was obscured by the beige walls and the smell of incense. The agent testified that the bathroom showed the heaviest nicotine staining and that the bathroom was located at the farthest end of the rental unit from the entry way from which the tenant suggests second-hand smoke emanated. The agent also testified that the heavy wear of the spring-loaded timer in the bathroom (which was broken by the end of the tenancy) is evidence that the tenant smoked in the bathroom and excessively used the fan to evacuate the cigarette smoke.

The agent testified that the liquidated damages represent the landlord's costs of re-renting the rental unit. The agent stated that in the course of re-renting the unit he conducted 32 showings, accepted 15 applications, and conducted 5 credit checks. The agent testified that the landlord spent $85.00 on commercial advertising on the internet. The agent testified that the landlord incurred $670.00 in costs to re-rent the unit. The agent testified that there are no month-to-month tenancies in this building.

The tenant requested a monetary order on the following terms:

Item	**Amount**
Power outage	$590.90
75% rent abatement for nine days ($193.00)	
Alternate accommodation for nine days ($225.00)	
Mileage ($72.90)	
Spoiled food ($100.00)	
Floor shaking	885.05
May rent abatement for sixteen days ($456.80)	
June rent abatement for fifteen days ($428.25)	
Car wash	13.64
Key extraction	66.15
Security deposit return	432.50
Pet damage deposit	432.50
Rent compensation for leaving apartment early	428.25
Aggravated damages	500.00
Total Monetary Order Sought	**$3,348.99**

The agent testified that from 6 May 2014 to 14 May 2014, power to the entire residential building was suspended in order to complete upgrades to the power system that had been ordered by a city inspector. The agent testified that there were 24-hour fire watches instituted at the residential building on recommendation from the fire department. The agent testified that all of the other residents of the building remained living in the building as the heat and hot water to the building are delivered by natural gas heating. The agent testified that the landlord offered all the residents of the building full compensation for their provable food spoilage.

I was provided with a letter dated 19 May 2014 from the landlord to the tenant. This letter set out that the landlord was offering to reimburse the tenant for nine days of rent in May ($257.00) for the power outage. The agent testified that this amount was provided as a credit for June's rent. The agent testified that, despite the landlord's offer, the tenant paid his rent in full for June (in the amount of $885.00) and sent a note to the landlord stating that the tenant was rejecting the landlord's offer.

The tenant testified that during the power outage he had to seek alternate accommodation as the fire alarms were not functioning. The tenant submits that he incurred costs of $225.00 for these alternate accommodations. The tenant also submits that he had to drive back and forth to the rental unit daily to check on it. The tenant claims $72.90 in mileage compensation.

I was not provided with any receipts from the tenant setting out his replacement food costs. The tenant testified that he lost salmon, wraps and condiments as a result of the power outage. The agent testified that when he went to the rental unit in response to the tenant's complaints about the floor shaking he inspected the fridge compressor and fridge. The agent testified that at that at the time of his investigation there was almost no food in the tenant's fridge.

The tenant testified that on 2 May 2014, he reported to the agent that the floor in his unit was shaking. The tenant provided me with various video recordings of liquid in cups on the floor. The tenant testified that these were to illustrate the vibrations on the floor of his apartment. The tenant testified that he was using a handheld device to record the cups. In viewing these videos, it is very hard to discern anything from the videos as the motion from the handheld camera obscures any other motion that may have been caused by the floor vibrations. The tenant testified that he believes that the shaking floor was caused by the agent's prolonged use of a ceiling fan.

The agent testified that he does not have a ceiling fan and that the only fans in his apartment are the fans in the bathroom and in the oven hood range. The agent testified that the tenant's shaking floor was not the result of his fans.

The agent testified that the tenant made a complaint regarding the shaking floor on 30 April 2014. The agent testified that he could not detect any vibrations when he went to investigate. The agent testified that he checked in all rental units adjacent to the tenant's to see if he could locate a cause. The occupant of the unit above the tenant was away at that time so the agent did not enter the rental unit.

On 4 May 2014, the agent identified a bass sound coming from the rental unit above the tenant's. When the agent called the upstairs tenant, he said that he had left a stereo on for his cat. This stereo was set to a timer that would turn the stereo on and off. The agent submitted that the cat had been pawing at the light display for the stereo and accidentally turned the bass up for the stereo. The agent testified that in a wood-frame building this type of sound carries. The tenant testified that he does not believe that the cat scenario is plausible.

The tenant testified that on 14 or 15 June 2014, he observed the agent power washing near the tenant's car. The tenant provided me with a video recording of the agent power washing the concrete beside the car. Water can be seen bouncing off of the pavement beside the car and onto it. The tenant provided me with a picture that shows mud and debris on the side of his car. The tenant provided me with a receipt for a car wash dated 14 July 2014 in the amount of $13.64. The agent testified that the tenant never complained about the incident to the agent and noted that the tenant did not wash his car until one month later.

I was provided with an invoice from a lock and safe company for $66.15 dated 2 May 2014. This invoice indicates that it was issued for a key extraction and includes charges for the trip, fuel and labour. The tenant testified that the locksmith told him that the key broke as a result of improper maintenance of the lock mechanism. The tenant did not call the locksmith as a witness.

The agent testified that he uses the same locksmith that attended at the rental unit and that he had complied with the maintenance recommended by the company. The agent testified that he lubricates the lock mechanism with dry graphite twice per year. The agent testified that the last time the tenant's lock was lubricated was March 2014. The agent testified that to this date he has not changed the lock mechanism in this unit and that it continues to function.

The tenant claims that on 2 May 2014 the agent threatened the tenant with a pair of pliers. The tenant testified that the agent held a pair of pliers approximately five millimetres from the tenant's neck. The agent denies that this incident occurred and denies that he even had pliers with him at the time. The agent testified that he had a pair of tweezers with him so that he could attempt to remove the broken key from the lock.

The tenant submitted that he was entitled to receive back one half of his June's rent as he had to leave the tenancy because of the way he was being treated.

Analysis

Landlord's Claim

As the tenant has agreed that he is responsible for the blind and carpet cleaning, I allow this portion of the landlord's claim.

I find that, on a balance of probabilities, the tenant smoked in his rental unit and that his actions caused a buildup of nicotine, or other cigarette-related compound, on the walls and windows of the rental unit.

"Tenancy" under the Act means a tenant's right to possession of a rental unit under a tenancy agreement. "Fixed term tenancy" means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. Section 60 of the Act provides the limitation period that governs proceedings under this Act. Pursuant to subsection 3(2) of the *Limitation Act* and Residential Tenancy Policy Guideline "*16. Claims in Damages*", the *Limitations Act* does not apply to this dispute. In accordance with section 60 of the Act, a party has two years from the end date of the tenancy to which the matter relates ends to file a claim or that claim ceases to exist for all purposes.

In this case, the landlord filed his application on 14 July 2014. In order to file a claim in relation to a tenancy that has ended, that tenancy must not have ended prior to 14 July 2012. In this case, the first two tenancies concluded before this date. Thus any claim arising from those tenancies is statute barred.

The landlord did not complete move-out and move-in inspection reports at the conclusion of one fixed-term tenancy and the beginning of the next. Thus, I have no ability to know when the nicotine staining occurred. In this situation, and with damage such as nicotine staining that accretes slowly, I find that the most logical outcome is to prorate the cleaning costs over the length of the tenancies. The combined tenancies lasted for a total of 57 months, 24 of which are statute barred. Therefore, the landlord is entitled to 58% of his cleaning costs for the nicotine staining. I find that the landlord has proven his costs in the amount of $91.35 in respect of this portion of his claim.

The landlord has claimed for a monetary order of $585.00 in relation to the liquidated damages clause of the tenancy agreement In this case, the landlord submits that the liquidated damages clause would accurately compensate him for his costs of re-renting the unit. The landlord has not suggested that his claim in liquated damages is to compensate him for lost rental income, that is, the landlord has not protested the adequacy of the tenant's notice pursuant to subsection 45(2).

Residential Tenancy Policy Guideline, "*4. Liquidated Damages*" states:

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In order to prove an entitlement to liquidated damages, the landlord must show that suffered damages for which recovery is permitted under the Act. To do this, the landlord could show that he was entitled to recover a fee or was entitled to damages for a loss that he actually suffered.

As mentioned, a fixed-term tenancy is a tenancy that specifies the date on which the tenancy ends. This may be understood in contrast to a periodic tenancy (as defined in section 1 of the Act), which is a tenancy that continues on "a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act".

Generally, landlords will employ a fixed term tenancy in cases where they require possession of the unit at the end of the tenancy or in cases where they wish to minimise their costs of re-rental by holding the tenants to an initial fixed term, which would then be carried over to a periodic tenancy. However, as indicated in subsection 44(3) of the Act, successive fixed-term tenancies are contemplated by the Act at a minimum for the purpose of prescribing a fixed end date to the tenancy.

In this case the landlord has entered into five fixed-term tenancy agreements in series. The tenant was presented with a standard-form, fixed-term contract by the landlord at the beginning of each successive, fixed-term tenancy. The tenant has occupied the same unit for over five years. The landlord and tenant completed the move-in inspection report in 2009 and no other report was completed over the series of five, fixed-term tenancy agreements until the move out inspection report in 2014. Similarly, the tenant's security deposit, paid 31 August 2009 was not repaid at the end of each tenancy agreement and instead carried over into the next tenancy agreement. The landlord has not incurred any re-rental costs and has effectively treated this as a continuing tenancy save for inserting new dates into a new fixed-term tenancy.

The agent provided testimony that the landlord's actual costs for renting the unit were $670.00; however, I decline to grant this portion of the landlord's claim as I conclude that this liquidated damages clause is inconsistent with the Act or Residential Tenancy Regulations (the Regulations) and accordingly not enforceable pursuant to subsection 6(3) of the Act.

Subsection 6(3) of the Act sets out:

> (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,…

In interpreting the application of this section, I am guided by Elmer Dridger in Construction of Statutes (2nd ed. 1983):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

This is known as the purposive approach to statutory interpretation.

I am further guided by the *Interpretation Act*, RSBC 1996, c 238 which provides:

> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Dridger's purposive interpretation (as adopted by the Supreme Court of Canada) and section 8 of the *Interpretation Act* is augmented by the case law regarding legislation that governs a consumer relationship, such as that created in a landlord-tenant relationship. On 4 November 2002, Bill 70 (the bill which brought the current Act into force) was introduced by the government for the bill's third reading. The government

identified that the type of provision used in section 6 is used to govern many consumer relationships and in consumer protection legislation. The Supreme Court of Canada provides direction in the interpretation of consumer protection statutes. In *Seidel v TELUS Communications Inc*, the Court held that consumer protection statutes should be interpreted generously in favour of the consumer.

The plain language of the statute requires me to consider whether the landlord's liquidated damages provision is "inconsistent with the Act". Black's Law Dictionary provides a helpful definition of "inconsistent":

> Mutually repugnant or contradictory. Contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other;…

It then remains to determine what "with the Act" means. There are two specific provisions of the Act and Regulations with which the liquidated damages clause could run afoul: section 15 of the Act and section 7 of the Regulations.

Section 15 of the Act states:

> A landlord must not charge a person anything for
>
> (a) accepting an application for a tenancy,
> (b) processing the application,
> (c) investigating the applicant's suitability as a tenant, or
> (d) accepting the person as a tenant.

While section 15 of the Act does not prohibit claiming costs of re-renting a unit from a leaving tenant, neither does it permit such a charge. The intent of this section is to protect prospective tenants from being charged fees by a prospective landlord.

I conclude that this section does not expressly permit the landlord to charge the costs of re-rental to the tenant. I find that this section should not be interpreted as an implied exclusion (*expressio unius est exclusion alterius*) as this section was introduced by legislature to deal with the specific problem of prospective tenants being charged application fees. This understanding was expressed by the government in Bill 70's second reading.

When the Act was drafted, there was no ability to bring applications to the Residential Tenancy Branch by a prospective tenant. In its third reading, the Act was amended so that the definition of "tenant" in section one included a prospective tenant. Prior to this amendment, the introduction of section 15 was the only way to protect prospective tenants under the Act as section 1 of the Act did not define "tenant" to include a

prospective tenant. Section 15 should be understood in light of its legislative history: that is, confined to the purpose of regulating the pre-tenancy relationship and not to speak to any rights of a tenant within the tenancy.

Subsection 7(1) of the Regulations lists non-refundable fees that a landlord may charge. Nowhere in section 7 of the Regulations is there a provision for the charge of a fee for the cost of re-renting a unit that a tenant is vacating. This provision does not use any language that indicates that the list is non-exhaustive; accordingly, I conclude that the provision is exhaustive of the fees that may be charged under the Act and Regulations. Accordingly, I find that the costs of re-rental are not a permissible fee under the Act or Regulations.

Further, I must consider whether the liquidated damages provision is inconsistent with the Act as a whole. This inquiry requires that I determine what the objects of the Act are, that is, what mischief does it seek to remedy?

This Act is meant to provide balance and fairness in the landlord and tenant relationship. In many consumer relationships, the vendor and purchaser can have unequal bargaining power. More often than not, the balance of power tips in favour of the vendor or, in this case, the landlord. Consumer protection laws and their ilk are meant to provide balance to the relationship by providing a “floor” to these relationships. In the Act, the balance is achieved through laws that, among other things, prevent rent increases in excess of allowable amounts, prescribes which fees are allowable and provides grounds for ending a tenancy.

I conclude that in order to be consistent with the Act as a whole—that is, not contradictory—successive fixed term tenancies must not be used in such a way that would stultify (that is, contradict) the consumer protection balance afforded within the Act. To do so would empty the Act of its protective purpose and would not be in keeping with a large, liberal and generous interpretation that secures the objects of the Act.

The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting. It is inconsistent with the Act and Regulations to suggest that the tenant would not be charged for the costs of re-rental at the conclusion of the first, second, third or fourth fixed-term tenancy, but could be charged for the costs of re-rental in the middle of his fifth fixed-term tenancy: to do so

would not represent damages, but rather a fee, which as discussed above is not permitted under the Act. Important in reaching this conclusion is the fact that the landlord failed to act at all like the tenancy was concluding by his failure to repay and then recollect the security or pet damage deposits and in his failure to conduct condition move-out and move-in condition inspection reports.

It would be inconsistent with the Act to hold in this case that the protections of the Act could be avoided by the use of series of back-to-back fixed-term tenancies. I do not have to determine in which successive fixed-term the liquidated damages section became inoperative; however, I find by the fifth successive term the section was inoperative. This decision is limited to the circumstances of these parties.

For the foregoing reasons, I find that the liquidated damages clause in this tenancy agreement is unenforceable as it is inconsistent with the Act and Regulations. Accordingly, I dismiss the landlord's claim for liquidated damages without leave to reapply.

The landlord has proven damages or loss in the amount $226.55 on the following terms:

Item	**Amount**
Blind cleaning	$25.20
Carpet cleaning	110.00
Nicotine cleaning	91.35
Total Monetary Order	**$226.55**

Tenant's Claim

I find that by offering the agreement for 100% rent abatement for the nine days of the power outage to the tenant and every other tenant in the residential building, the landlord admitted that the tenant's use of the rental unit was diminished by that amount. I award the tenant $257.00 for the diminished value of his rental unit.

To award the tenant this rent abatement as well as compensation for his alternate accommodation would, in effect, doubly compensate the tenant for his loss. Therefore, I dismiss the tenant's claim for the costs of his alternate accommodation.

The tenant seeks $100.00 for compensation for spoiled food as a result of the power outage. The tenant has not provided me with receipts or documents that enumerate the value the spoiled food items. I recognize that it is more likely than not that the tenant did suffer some spoiled food as a result of the power outage. I find that the landlord

admitted liability by paying other residents of the rental unit for their lost food items. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the tenant nominal damages of $50.00 for the spoiled food items.

I find that the landlord took adequate steps to secure the building for the duration of the power outage. Thus, there was no need for the tenant to drive to and from his alternate accommodation on a daily basis. I dismiss the tenant's claim for compensation for his mileage.

The tenant has claimed for 31 total days of rent compensation as a result of the tenant's floor shaking. I find that the landlord or his agent did not cause the shaking floor. I find that the tenant's shaking floor was, on a balance of probabilities, caused by the bass from the upstairs stereo carrying through the wood-frame building. I find that the landlord and his agent acted in a reasonable manner in his investigation of the shaking complaint. Furthermore, I find that the shaking, if any, was minimal and did not rise to such a level to interfere with the tenant's quiet enjoyment. Accordingly, the tenant is not entitled to compensation for the shaking floor. I dismiss the tenant's application for compensation for the shaking floor.

The video recording clearly shows the agent spraying water that carried dirt on to the tenant's car. I do not find it material that the tenant waited a month before washing his car. I find that the agent while acting for the landlord caused the tenant's loss and that he is entitled to the cost of washing his car. I award the tenant $13.64 for the cost of his car wash.

The tenant is entitled to the return of his security and pet damage deposits that are in excess of the damage claim proven by the landlord. I order the return of the tenant's security deposit and pet damage deposit, plus interest accrued, less the landlord's proven damages. No interest is payable over the term of the tenancies.

The tenant has claimed that he is entitled to be reimbursed for a portion of his June rent as he had to leave early because of his deteriorating relationship with the agent and the agent's use of a ceiling fan. I have determined that the tenant's shaking floor was caused by vibrations carrying through the wood-frame building from the upstairs tenant's kitten turning up the bass on the stereo, which had been left home unsupervised. That leaves the tenant's allegation of the deteriorating relationship to consider. As this claim is factually intertwined with the tenant's claim for damages in respect of the alleged plier incident, I will consider them both together. The tenant and agent agree that the agent met with the tenant to attempt to extract the key from the door on 2 May 2014. The agent denies that he held pliers to the tenant's neck and denies that he ever had pliers with him as they would have been too large to extract the key from the lock. On this issue, I prefer the evidence of the agent and find that the tenant failed to prove on a balance of probabilities that the agent held pliers to the tenant's neck. Accordingly, I dismiss the tenant's claim for reimbursement of a portion of his June rent and dismiss the tenant's claim for compensation for the alleged plier incident.

As the tenant was successful in this application, I find that the tenant is entitled to recover the $50.00 filing fee paid for this application. I decline to exercise my discretion to order that the landlord can recover his filing fee from the tenant as I find that the tenant's success in these applications outweighs that of the landlord.

The tenant is entitled to a monetary award of $702.09 on the following terms:

Item	**Amount**
Power outage	$307.00
100% rent abatement for nine days ($257.00)	
Spoiled food ($50.00)	
Car wash	13.64
Security deposit return	432.50
Pet damage deposit	432.50
Filing fee	50.00
Landlord's proven damages	-226.55
Total Monetary Order	**$702.09**

Conclusion

I issue a monetary order in the tenant's favour in the amount of $702.09 on the above terms.

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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

Dated: December 24, 2014

Residential Tenancy Branch