# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MND, MNDC, MNSD, FF**

Introduction

This was a cross-application hearing.

Both parties were present at each of four hearings. At the last three hearings I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss and damage to the rental property, to retain the security and pet deposits and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting return of double the security and pet deposits and to recover the filing fee cost from the landlord.

Preliminary Matters

An initial hearing was held on September 19, 2014. Both parties attended that hearing. The September 19, 2014 hearing was heard by a different arbitrator. That hearing was adjourned as more time was needed. An interim decision was not issued. The subsequent hearing was scheduled to be heard by me on November 12, 2014; not the original arbitrator.

At the start of the hearing held on November 12, 2014 the parties both confirmed that at the initial hearing the female tenant agreed to be added as a respondent to the landlord's application. Therefore, based on the mutual agreement of the parties I have amended the landlord's application to include the female tenant as a respondent.

At the initial hearing the parties had also agreed that there is no current purchase agreement for the rental property.

The parties said that the first arbitrator had decided to dismiss the tenants claim requesting return of double the deposits. The parties were informed that, in the absence of a written interim decision, after considering all submissions, I would make any determinations required in relation to the value of the security and pet deposits and the tenant's claim for return of double the deposits.

Each subsequent adjournment was the result of a need for more time; no interim decisions were necessary.

The tenants confirmed they were able to view the digital evidence served by the landlord in the form of four CD's. The landlord had the tenants' audio discs but did not choose to listen to them. The parties were told I would be considering the digital evidence.

Each party submitted multiple coloured photographs and considerable written submissions. All relevant evidence has been considered.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $10,977.21 for damage to the rental unit and property?

Is the landlord entitled to compensation in the sum of $1,500.00 for loss of rent income?

May the landlord retain the deposits or are the tenants entitled to return of double the security and pet deposits paid in the sum of $1,100.00 each?

Background and Evidence

The tenancy commenced on July 1, 2010. Rent was due on the first day of each month. An addendum was included which set out specific rules for the tenancy. Security and pet deposits in the sum of $1,100.00 each were paid. For the last year of the tenancy rent was $1,800.00 per month. The home had a basement suite.

The home was built in the 1970's.

A move-in condition inspection report was given to the tenants to complete themselves. It was completed for the whole house on June 26, 2010. The landlord did not participate in the move-in condition inspection. The move-in condition inspection report completed by the tenants indicated the entry required some tiles, a kitchen cabinet door was missing, a screen was missing from the kitchen; missing trim in a bedroom and the doorbell was not working.

In June 2010 the landlord had occupants living in the lower suite of the home, so the tenants did not spend much time in the basement when completing the move-in condition inspection report. Those occupants vacated on July 31, 2010. The tenants said the landlord completed a move-out condition inspection with the occupants. The landlord stated that all of the security deposit was returned to those occupants.

The basement suite was then rented out, by the tenants, to new occupants who moved in on August 15, 2010. The new occupants vacated in August 2012. The landlord (property owner) had the right to approve of any occupants before the tenants could rent to them. The tenants signed a tenancy agreement, as landlord, to the new occupants of the lower suite and accepted a security deposit. The landlord held the security deposit as she was afraid the occupants might cause damage. At the request of the landlord, the tenants completed an August 15, 2010 move-in condition inspection report with the new occupants of the lower suite. That report recorded spots on the kitchen floor, lots of spots on the living room carpet, spot on the dining

room carpet, scratch on the wall in stair well, tile in the bathroom ceiling is bad, and a hole in master bedroom wall.

The occupants of the lower unit vacated the home on August 1, 2012. The owner of the home (the tenants' landlord) completed a move-out inspection report with the occupants. A copy of that report was not supplied as evidence. On November 27, 2012 a hearing was held as the occupants had claimed return of double their deposits. The property owner (the tenants' landlord) and the tenants attended that hearing, in response to the claim. A copy of the decision supplied by the tenants references a claim by the landlord that the occupants had ruined the carpet and it had to be replaced.

The parties agreed that for some time at the start of the tenancy there was a plan for the tenants to purchase the home. A payment was made to the landlord as a form of security and the tenants carried out repairs for the landlord; both at her place of residence and in the rental unit. The tenants eventually realized they could not afford to purchase the home and the tenancy continued in accordance with the tenancy agreement.

The tenants submitted that a number of items were repaired during the tenancy such as removing carpet from the main living room floor, hall and three bedrooms and installing laminate. The tenants completed this work and paid the costs, as they hoped to purchase the home. Photos of this work in progress were supplied. The tenants painted the living room, hallways and bedrooms. The tenants designed a fireplace screen and built an entry closet. The landlord approved of this work; although one email said the bedrooms should be painted back to a neutral colour if the purchase of the home did not proceed.

The tenants gave notice in March 2014 and vacated the unit on April 30, 2014. There was no dispute regarding the notice given.

A move-out condition inspection report was completed. The male tenant signed the report, disagreeing with the content of the report. The tenants' written forwarding address was given to the landlord on April 30, 2014. The landlord applied claiming against the deposits on May 13, 2014. Neither the pet or security deposit has been returned. The landlord's claim did not reference any specific damage that may have been caused by a pet.

The inspection report completed at the end of the tenancy listed deficiencies, including:

- The front step was chipped, the screen door was removed;
- Front yard overgrown with grass and weeds;
- Backsplash broken;
- Fridge shelf is broken;
- Kitchen cabinet in rough shape;
- Filthy under sink;
- Fireplace missing baseboard;
- Breezeway floor is painted, bad shape;
- Holes in lino;
- Carpets need replacing;
- Turquoise paint needs to be covered, as agreed;
- Bedroom not repainted back to neutral colour as agreed;
- Trim needs to be painted back to original colours; and

- Backyard overgrown. Bar stools missing, board on overhang missing.

The landlord submitted four CD's of evidence, which the tenants confirmed they were able to view. The CD's contained photographs taken at the end of the tenancy and a video of what appeared to be a detailed inspection completed at the end of the tenancy by the landlord. The tenants had a witness present during the move-out inspection. The tenants supplied an audio recording of the inspection.

The landlord has made the following claim:

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|---|---|
| Cleaning 12 hours X $30.00 | $360.00 |
| Patio concrete blocks $30.00 plus labour | 70.00 |
| Fence repair | 20.00 |
| Clean yard, cut lawn, weed 13 hours X $30.00; equipment costs $25.00 | 415.00 |
| Outdoor furniture, 3 chairs ($150.00) and 2 bar stools ($50.00 | 200.00 |
| Garage door | 1,025.00 |
| Remove paint overspray on concrete floor $677.62 materials; $375.00 labour | 1,052.00 |
| Replace fridge due to melted shelf | 500.00 |
| Basement and stairs carpet material | 1,540.00 |
| Lilac bushes | 400.00 |
| Bathroom repair due to damaged floor – labour 32 hours X $35.00 | 1,814.00 |
| Paint and labour | 875.83 |
| Plumbing | 784.14 |
| Washing machine and dryer repair and damage to surface of machines | 350.00 |
| Kitchen doors and backsplash | 275.00 |
| Baseboards, moulding, front steps | 200.00 |
| Loss of rental income | 1,500.00 |
| Repair fireplace mantle | 50.00 |
| Downstairs kitchen floor wear | 300.00 |
| TOTAL | $11,730.97 |

A claim for 12 hours of cleaning at $30.00 has been made, reducing the original claim submitted. During the move-out inspection the home looked clean but when inspected later the landlord found that the light fixtures, kitchen drawers, cupboards, downstairs floor, bathroom and storage, baseboards, windows and outlets needed cleaning. Throughout the video the landlord commented that the home was clean. A copy of the cheque issued to the cleaner for all work completed, was supplied as evidence.

The landlord has claimed the cost of two patio blocks that were broken. The landlord has estimated the cost of the blocks at $30.00 and labour $40.00. The age of the blocks was not known.

The landlord provided photographs showing fence boards missing in the back yard. There was no evidence that the tenants took the boards; the landlord suspects the children are responsible.

Photos the landlord submits were taken at the end of the tenancy showed the growth of weeds around the patio blocks in the back yard, along a landscape tie by the driveway and grass that needed cutting. The landlord had to clean up cigarette butts, glass, and plastic, cut the lawn, weed the patio and yard. Some boards are placed up against a fence. The landlord charged 13 hours at $30.00 per hour plus $25.00 for equipment use. Outside of a written record issued by the landlord no independent estimate or invoice was supplied.

The landlord provided photographs showing patio furniture that was left at the end of the tenancy. The landlord alleged that three outdoor chairs and two bar stools that had belonged to the landlord were taken. The chairs left at the unit were not the originals that had been on the property. The landlord valued the chairs at $150.00 and the stools at $50.00.

The landlord claimed the cost of a new garage door opener in the sum of $295.00, a new garage door costing $1,025.00 and $450.00 labour to dispose of the old door. During the hearing the landlord withdrew all but the claim for the door. The door has marks, holes and dents, shown on the video. The landlord estimated the door was 10 years old and estimated replacement cost was obtained from a hardware outlet.

The landlord said the tenants appear to have used spray paint in the breezeway area and that the paint has over-sprayed onto the floor. The floor had been freshly painted prior to July 2010 when the tenancy began. The male tenant admitted to the landlord in an email that he had accidentally spilled paint on the floor in the garage and that they would paint it before they moved. The landlord looked up costs at a hardware store and determined that paint would cost $97.98, an additional four containers of garage floor paint ($399.96) and supplies would be required. Due to the preparation required labour is estimated at $375.00 and materials at $677.62. Photographs of the area were supplied; some appear to have been taken prior to the tenant's vacating, as belongings can be seen.

The fridge in the lower unit suite was at least 7 years old. The landlord purchased it as a used unit. A hot pot or other item was placed on a shelf, melting the shelf. As a new shelf would be difficult to find the landlord has claimed the cost of a new fridge. The landlord confirmed that the fridge was in working order. The landlord submitted fridge purchase examples taken from a web site and a second hand listing in the sum of $350.00. The landlord said she is not expecting a new fridge and recognises the value had decreased.

After the tenants rented out the suite in the lower portion of the home the living room carpet in the lower suite was left ruined, with a large hole. No cause of this damage was identified and a copy of the move-out inspection report completed by the landlord with those occupants was not before me. During the move-out inspection with the tenants the landlord confirmed she bought the laminate to replace the carpet and that the tenant provided the labour to install the laminate. The landlord denied that she requested this work be completed; the tenant insists that the work was completed at the request of the landlord. While completing this work just prior to the tenants vacating the tenant cut off part of his finger.

The landlord said she replaced the carpet with laminate as it was a cheaper option. The carpet going down the stairs to the lower unit was removed by the landlord as she thought it was

dangerous. The stairway carpet was not replaced as the tenant injured himself and could no longer work. The landlord supplied several pictures of rolled carpeting that had been removed from the unit. The carpet appeared dirty and stained. The landlord supplied a copy of an invoice in the sum of $1,289.09 for flooring purchased on April 9, 2014. The landlord estimated the carpet was eight years old. The landlord submitted an August 2012 quote from a flooring company for new carpet in the sum of $2,663.02. This was for removal of the old carpet and installation on the floor and stairs.

The landlord said the laminate in the lower level of the home is starting to buckle so the floor will need to be replaced again. The landlord supplied an email from a person identified as a contractor. This person states that there is an issue with the floor bubbling up.

The tenants removed some mature lilacs from the yard and did not have permission to do anything but prune. The landlord called a nursery and was told the cost to replace the two shrubs was approximately $100.00 each.

The landlord submitted that the upper level bathroom requires almost a complete gutting. There were marks on the lino and an area next to the bathtub had rotted. The taps on the tub were loose. The tenants would have known the loose taps would allow water to move behind the fixtures, causing possible rot and mold. The landlord believes the tenants let water run over the tub onto the floor. The landlord supplied photographs of the area of the floor that was affected. There appears to have been a source of moisture along the bottom edge of the bathtub. The floor was discussed during the inspection completed at the end of the tenancy. The landlord said the tenant did not inform her of the problem with the floor so that a repair could be arranged. This resulted in excessive damage. The tenant responded that the landlord was aware of the repairs he had made via an adjoining closet and that she had known there was a problem.

The landlord supplied a May 16, 2014 estimate for bathroom repair: $1,540.00 labour; $621.00 materials, plus tax. No further detailed breakdown of the estimate was given. The landlord supplied receipts for bathtub acrylic and vinyl sheeting for the tub; totalling $95.13 and invoices for gypsum and adhesive. The repairs have been partly completed as the flooring was replaced.

A July 14, 2014 estimate was supplied setting out costs of $1,150.00 for a tub surround, walls, floor and mildew control, including replacement of a baseboard and transition plate. The landlord has claimed 32 hours at $35.00 per hour.

The landlord has claimed the cost of repainting various rooms in the house, touching up baseboards and painting baseboards to a neutral colour. The tenants were not to make any changes without permission and in a December 2010 email they had been told rooms must be painted back to neutral colours. The landlord has claimed the cost of painting three bedrooms, the side entrance and stairwell. In March 2013 the tenants responded that they would assume the cost of material and time for flooring and that the hallway and bedroom would be painted. The landlord replied that she was fine if the tenants wanted to do the floors. There was no indication that this was for anything but the upper level floors. The landlord submitted a number of receipts for paint purchased before and after the tenancy ended.

On two occasions the sewer pump had to be repaired; both times it was the result of the tenant's child flushing something down the toilet. In February 2014 a plumber attended the home to install a new, customer supplied pump in the basement. The invoice supplied as

evidence stated the pump was clogged with a cloth, sanitary product and plastic. The landlord was charged $198.45. Photographs of the items located in the pump were supplied as evidence. The landlord purchased a new sewage pump and a receipt in the sum of $285.69 was submitted as evidence. The landlord was told that the cast iron sewage pumps would last forever and that the actions of the tenants resulted in the need for a new pump.

During the tenancy the landlord purchased a new washer and dryer. The landlord said the tops of the machines are now in terrible condition, as there is no shine left on the surface of the machines. On two occasions the landlord had to purchase new seals as the result of sharp objects running through the washing machine. The cost of parts was $300.00; no verification of this cost was supplied. As the machines are now aged looking the landlord has claimed the loss of value in the sum of $50.00.

The landlord said the tenants damaged and chipped the kitchen backsplash and that it needs to be replaced. A front of a kitchen drawer was broken and may require a finishing carpenter. The landlord believes there were newly installed in 2006. The landlord supplied a video and photographs of the kitchen, taken during the move-out inspection. The landlord purchased some vinyl backsplash and caulking and a March 6, 2014 receipt was submitted. There were also cracks that needed to be caulked. The landlord obtained an estimate for labour to repair the kitchen doors and backsplash. The landlord said that a handle on a cabinet was broken.

At the start of the tenancy the living room fireplace had a piece of plywood over the opening, with insulation, to prevent drafts. The tenants removed that plywood and insulation and failed to replace it. There was also baseboard missing from around the base of the fireplace. The landlord estimates it would cost $50.00 to replace the plywood.

There was a board missing from the exterior of the home along the fascia. The landlord does not know where the board is and has claimed the cost of replacement.

The landlord had to replace the kitchen lino in the lower level of the home. It was the same as that installed in the upper laundry room which was in much better condition. The lower level was stained and had holes and paint marks. The landlord thinks that flooring was 10 years old and has requested 50% of the $300.00 estimated to compensation for the damage.

The front step was chipped although a claim was not set out.

The landlord testified that she was not able to rent the unit effective May 1, 2014 as a result of the damage to the bathroom. The landlord hired a carpenter who the landlord described as a freeloader who did not complete the work required to the upper bathroom. The repairs have yet to be fully completed.

After the tenants vacated the landlord rented rooms out in the lower level of the home. The landlord has claimed the difference in the sum received for the lower level of the home in May 2014, a loss of $1,500.00 for the upper level. The landlord said she was not able to show the home and that she was accused of trespassing on the property and that the yard was messy; deterring interest in the home. Some prospective renters drove by the home but did not want to view it; some were not suitable renters as they lacked rental history or references or had drug problems. The landlord estimated the likely loss of income.

The tenants responded to each portion of the claim. The tenants referenced a document they had created in 2012 and given to the landlord; which was included in the landlord's evidence. The tenants could not locate their copy. This document set out all of the work the tenants had completed to the home; it was two pages in length, but only the first page was supplied by the landlord.

At the start of the move-out inspection the tenants asked that people remove their shoes as the floors had just been washed. The tenants said they cleaned the whole house. The tenants provided photographs of the home, taken just prior to moving out. The tenants said that their photographs show that the landlord's pictures were taken earlier in the tenancy, as the leaves on the trees were not as fully out in the landlord's pictures and they are in the tenants.

The tenants said that they did not intentionally break the two patio blocks. The tenants pointed to a photograph of extra blocks alongside the building. They said the landlord could use those as replacements.

The tenants supplied photographs taken of the rental unit at the time they vacated. Photograph #54 shows someone with a loaded truck, waiting outside of the home to move in belongings. The patio can be seen, with three lawn chairs and a table. The trees in the background show considerable leaf. The tenants said they cut the lawn the Sunday before they moved out. The area next to the garage the landlord said was weedy was graveled, not lawn. Over the four years in the home the tenants seeded areas of the lawn and improved the yard. The patio blocks did not have landscape cloth under them, so grass constantly grew up between the blocks. At the end of the tenancy the tenants cleaned the yard and removed any refuse to the dump. A photo of a truck loaded for the dump, was submitted. The tenants did not leave any items in the yard. Photographs supplied of the same areas where pictures were taken by the landlord, show all wood and debris removed from the yard with only the garbage containers remaining.

The tenants said that the chairs left on the property by the landlord at the start of the tenancy were broken. The tenants provided a photograph of the landlord's chairs, taken during the tenancy. They appear to be older style, with vinyl strap seats. The tenants had purchased a set of three chairs and a table; they offered this to the landlord for sale, but in the end left them for the landlord's use. They were in better condition than the set the landlord had at the start of the tenancy. The tenants do not recall any bar stools; although they had several that belonged to them.

The tenants testified that at first the landlord said they had broken the garage door opener and a claim was made for that cost, but once the tenants obtained proof from the previous tenant that the door had been broken at the start of the tenancy, the landlord withdrew that portion of the claim. The garage door was old and scratched before the tenancy started. It was likely installed as part of an addition completed over 10 years ago.

In April 2014 the landlord sent an email to the tenants acknowledging the tenants said they would paint the garage floor; she asked if that would be with cement floor paint and if the male tenant would do it himself. An email sent to the landlord by the tenants recognized the over-spray caused to the garage floor and that there was left-over paint in the garage. The landlord said she had not hired the male tenant to do this, or supplied the tools, so he should keep that in mind. The tenants did not dispute that some over-spray had occurred on the concrete garage floor.

The tenants provided a photograph taken of the inside of the fridge showing a shelf that had been broken at the start of the tenancy. The tenants said they believe the landlord is attempting to obtain a replacement fridge when the fridge was already older, second hand and damaged. The fridge continued to work well, even though some damage occurred to an interior shelf.

There was no dispute the landlord had purchased the laminate flooring in 2014 and that the male tenant agreed to install it in the lower level living area. During the move–out inspection the tenant mentions that the lower level carpet was old and that the landlord had removed the carpet from the stairs; the carpet was a hazard as it was lifting. The tenants said that they had to remove the carpet as the landlord did not give them any other choice. They had cleaned the carpet in the two bedroom areas and should not have had anything to do with replacing the floors. While installing the laminate that had been purchased by the landlord the tenant cut off part of his finger, this occurred just prior to vacating the home. The tenant said he was trying to help the landlord replace old carpet which has resulted in him losing income due to the injury. The tenant said it was the previous occupants of the lower level who caused some damage to the carpets. The tenant supplied photographs of the basement demonstrating renovations he completed and the bedroom carpeting could be seen in these.

The tenants agreed they cut the lilacs at the same time as some dead cedars were removed. The landlord never asked the tenants about the lilacs and they assumed she was fine with the trimming. The lilacs have grown back since they were cut. The 2012 list of work completed by the tenants reported that they had cut the lilacs, not dug them out.

The tenants said that the upper level bathroom did have moisture problems because there was no fan in the room to allow proper moisture removal. The tenants had opened the wall in a bedroom so they could access the plumbing. Photographs of this work were submitted and the closet access point could also be seen in the landlord's video. The tenant said he repaired this problem at the start of the tenancy. He caulked the tub several times. The tenant said the landlord had previously agreed that the whole bathroom needed a renovation. The tenants discovered that the lower bathroom was vented into the flooring of the upper bathroom and no exterior venting was in place, so the moisture was accumulating under the floor. The tenants knew the bathroom had problems and that the lino was stained but did not realize just how bad it was. The tenants believe any leak could have been pre-existing or a combination of a small leak and the absence of exterior venting from the lower level bathroom. A photo of the bathtub showed what appeared to be an aged tub with the finish worn off. A photo of the lino shows older flooring.

An April 24, 2014 email from the landlord states that the landlord will have a painter quote on the painting required. The tenants did not want anyone at the home as the tenant was recovering from the loss of his finger; he was in shock and they had family coming to help pack.

During the tenancy the tenants obtained permission to complete some painting in the home. Evidence was supplied indicating the tenants had repainted portions of the home including the living room and kitchen, at the end of the tenancy.

The tenants submitted that there were more than two episodes of problems with the septic pump. The tenants submit replacement of the pump had been recommended on many occasions. The tenants do not believe the pump was properly repaired the first time the plumber came to the home and that he apparently inspected the pump but did not complete any

repairs. The tenant supplied a statement from a friend who states the sewage pump had flooded on four occasions during the tenancy.

The tenants said that outside of normal wear and tear, the washing machine and dryer looked fine at the end of the tenancy.

The tenants stated that there was always a kitchen door missing in the upper level of the home. The tiles were original to the home and the tenants did nothing to the tiles or backsplash. The tenants said the receipt submitted by the landlord was issued before the tenants vacated the house.

The tenants made a screen for the fireplace and took that when they vacated. The plywood for the fireplace is in the garage. The tenants pointed to a photograph taken during the tenancy that showed the fireplace never had baseboard around the base; it is bricked.

The tenants said the lino in the lower level of the home had more traffic than the laundry room and that it was original to the house or from the 1980's.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took reasonable measures to mitigate their loss. Verification of loss would include submission of professional estimates of expected costs or other reasonable submissions that demonstrate costs were established through an independent party.

Section 23 of the Act requires a landlord to complete the move-in inspection report together with the tenant. When the landlord failed to attend the unit for the move-in inspection I find that she breached the legislation and extinguished the right to claim against the deposits for damage to the rental unit. The landlord has a claim for loss of rent revenue although there was no evidence of a claim related to damage caused by a pet.

I considered the video of the move-out inspection report completed by the landlord against the record of the state of the unit at the start of the tenancy which was completed by the tenant. There was a stark difference in the process used to establish the state of the home at the start versus how the home was assessed at the end. The landlord did not take any steps to complete a detailed inspection of the rental unit at the start yet at the end she made a very thorough inspection. For example, the landlord checked the soap dispenser in the washing machine, a detail that was not set out in the move-in inspection completed by the tenants. In the absence of a move-in condition inspection report completed by the landlord at the start of the tenancy, in the same manner and detail as that completed at the end of the tenancy, I placed limited weight on the move-out condition inspection video meant to establish the claim for damage to the unit. Reliance on a very detailed move-out inspection, in the absence of an equal inspection completed in accordance with the legislation at the start of the tenancy would breach the standard of fairness expected by the dispute resolution process.

I have taken into account the testimony of both parties and made decisions on each portion of the claim by considering verification of expenditures where they existed, the testimony of the

parties and on the balance of probabilities. I have also considered the relationship of the parties at the start of the tenancy and the intention of the parties to transfer ownership. It is apparent that the tenants completed repairs and made improvements to the property; no doubt in the hope they would someday own the home. The first page of the list of improvements, completed by the tenants, contained in the landlord's evidence sets out many repairs that had been completed by the tenants during the tenancy.

I have also considered Section 37 of the Act, which requires a tenant to leave the rental unit reasonably clean and free from damage, outside of normal wear and tear. Residential Tenancy Branch (RTB) policy suggests that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. I find this to be a reasonable stance.

RTB policy (#40) suggests that in a claim for damage to the unit caused by a tenant the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. I have taken the useful life of items claimed into account. At best the landlord was able to estimate the age of items claimed, all of which was in dispute. No evidence confirming the age of any fixtures was supplied.

From the evidence before me, I find that the unit was found to be reasonably clean at the time the move-out inspection report was completed. The failure to clean out a drawer or under one sink fails to support a claim in the sum of $360.00. A picture of a bucket of dirty water does not prove, on the balance of probabilities, that the unit was not reasonably clean. Therefore, I find on the balance of probabilities that the unit was left reasonably clean and that the claim for cleaning is dismissed.

In the absence of evidence that the tenants caused the patio blocks to break as a result of negligence I find that the claim for patio blocks is dismissed. The age of the blocks was not provided. Further, it is apparent that replacement blocks were available to the landlord.

RTB policy (#1) suggests a landlord is responsible for maintaining any fence that was not the property of the tenant. There was no evidence before me that the tenant removed any boards from the fence and it is just as likely that this was the result of someone on a neighbouring property. Therefore, I find that the claim for fence repair is dismissed.

I find that the photograph taken by the tenants at the end of the tenancy demonstrates that the lawn was sufficiently cut, just prior to the vacancy date. The tenants' photographs differed from those taken by the landlord and I have accepted that the landlord's pictures pre-dated the end of tenancy, even if by a matter of days, from when the tenants' pictures were taken. I compared the photo of the area where the garbage cans were placed; the tenants' photo showed only the cans while the landlord's showed wood and other items that appear to have been removed by the end of the tenancy. A tenant is not required to leave the property in a pristine state; only in a reasonable state and I find that the tenants met that burden. Based on the requirement of the Act, I find that the state of lawn and yard was sufficient, with the exception of the patio area. The

patio was in need of weeding. There was no evidence before me to support a claim in the sum of $450.00. Therefore; I find that the landlord is entitled to nominal compensation in the sum of $25.00 for weeding. The balance of the claim for yard and lawn costs is dismissed.

No inventory of patio furniture or bar stools was included as a term of the tenancy agreement or the addendum. Therefore, as furniture was not set out as a term of the tenancy I decline jurisdiction for this portion of the claim.

The landlord estimated the age of the garage door to be approximately 10 years. There was no evidence before me that the door was not original to the home, which was built in the 1970's; however, even if the door was 10 years old RTB policy suggests a useful life of 10 years. Therefore, I find that, despite some dents to the door, that the door has reached the end of its useful life and replacement cost would fall to the landlord. Further, in the absence of a properly completed move-in condition inspection report, there was no evidence the door was not damaged at the start of the tenancy.

I have considered the claim for re-painting of the garage floor and the fact the floor had been painted at the start of the tenancy. RTB policy suggests exterior paint has a useful life of eight years and interior paint four years. As the garage is not exterior to the home I find the expected life of that floor paint to be four years. The tenancy commenced in July 2010 and ended in April 2014; a period just two months short of four years.

Therefore, as the landlord had not painted the home within the four year period of the tenancy I find that the tenants are not responsible for repainting any area of the home and that all claims for paint are dismissed. I find that the last two months of the four year period is negligible and fails to support a claim against the tenants. Even though there was over-spray on the garage floor, the floor would have been due, according to what I find is reasonable policy, for a fresh coat of paint at the end of the tenancy. The tenants did in fact leave the kitchen, living and other areas of the home freshly painted at the end of the tenancy. Any painting completed by the tenants during the tenancy does not relieve the landlord of the requirements of policy or support a claim for further painting.

There was no dispute that the fridge in the lower level of the home was in working order. The landlord did not dispute the submission that the inside of the fridge was damaged at the start of the tenancy. While the tenants agreed that some additional damage occurred to the inside of the fridge during the tenancy, I find that the landlord has failed to prove that the fridge was rendered unusable to the point where it required replacement. The fridge is at least half-way to the end of a suggested useful life of 15 years and continues to function and be useable. Given the damage to the interior door that is acknowledged by the tenants I find the landlord is entitled to nominal compensation in the sum of $10.00 and that the balance of the claim is dismissed.

RTB policy suggests that carpet in a rental unit has a useful life of 10 years. The landlord estimated the carpets in the lower level were eight years old; no evidence of the age of the carpet was provided. The tenants said the carpeting was old. The landlord has the burden of proving the age of the carpets; there was no evidence before me to prove that the carpets were not older than eight years, as suggested by the tenants. Therefore, I find that the approximate age of the carpets estimated by the landlord against the tenant's testimony that the carpeting was old, leaves me to find that the landlord has failed to prove, on the balance of probabilities, that the carpeting had any remaining useful life. Further, if the carpets posed any hazard due to

lifting on the stairs, it is the responsibility of the landlord to maintain, not the tenants. Therefore, I find that the claim for carpet is dismissed.

If the laminate in the lower level of the home is buckling there was no evidence before me that the tenants are somehow responsible for this. The contractor estimate indicates the flooring is "bubbling", leading me to conclude it is just as likely that there may be a problem with moisture. The tenants said they cut the lilacs back and they had permission to prune and no limits or instructions were provided setting out the degree of pruning that could take place. The 2012 list given to the landlord recorded the fact that the lilacs had been cut. RTB policy (#1) suggests that generally a landlord is responsible for pruning. However, the landlord gave this responsibility to the tenants, who chose to essentially cut the lilacs back to the ground. The lilacs may not be in the same state as mature lilacs, but the absence of limits on pruning resulted in the severe cutting, not removal, that has occurred. Therefore, I find that the claim for replacement of the lilacs is dismissed.

There was evidence before me that the upper level bathroom likely had original fixtures. The photos of the bathtub and flooring showed fixtures that appear aged. Lino flooring has a useful life of 10 years and a bathtub twenty years. There was no evidence that the floors or tub had been replaced in the bathroom in the last 10 years and 20 years; respectively. The photo of the bathtub showed what appeared to be the original tub; which would place it in the range of over 30 years in age.

There was no evidence before me that the tenants were negligent in any way; rather it appears that the landlord failed to carry out maintenance, such as regular caulking. During this tenancy the male tenant made improvements to the property and carried out maintenance, in the hope they could purchase the home. This did not relieve the landlord of the any responsibility to maintain the home. The tenants took the initiative to complete repairs and did not report every detail of the home to the landlord. Although in relation to the bathroom, I find that the landlord was aware plumbing repairs had been made. The landlord did not appear to have been surprised to see the access point that had been cut in the wall of the neighbouring room closet, used to reach the bathroom plumbing. This work was also outlined in the one page list of repairs completed by the tenants, supplied by the landlord as evidence. The tenants pointed out in this 2012 document they had fixed many water problems, including the upstairs bathroom that was leaking into the lower bathroom.

The tenants did not realize that the older bathroom flooring was marked as the result of moisture, but did take steps to address leaks they were aware of which would have provided the landlord with information that might have raised her level of concern, given the age of the home. In relation to the leak I find, on the balance of probabilities, that the actions of the tenants, such as repairs and caulking, might have avoided further, serious damage to the home. In the absence of evidence that the leak was anything more than the result of the age of the fixtures and, given the landlord was previously made aware of water leaks, I find that the claim for bathroom repair is dismissed.

There can be no other explanation for the items found in the sewage pump than that they originated from the tenants. It is reasonable to expect repair would be required to remove a cloth, plastic and sanitary items and that to place these down the toilet would form negligence on the part of the tenants. Therefore I find that the landlord is entitled to the cost of pump removal to allow the pump to be cleaned, in the sum claimed and verified by an invoice.

In relation to the replacement of the pump; there was no evidence before me that the item caught in the pump caused the pump to fail. The landlord submitted the pump should last forever, but it is reasonable to expect the pump would have a useful life. RTB policy suggests that sanitary systems have a useful life of 25 years; the longest useful life of any building element contained in policy. It is likely the pump was at the very least 25 years old as no evidence of a pump purchased in the last 25 years was supplied. There was no evidence before me of any other verifiable plumbing cost. Therefore, as there was no evidence before me that the pump was not original to the home, I find that the replacement cost of the pump and the balance of this claim are dismissed.

In the absence of verification of the sum claimed for washing machine repair I find that portion of the claim is dismissed. There was no evidence before me to support a claim for the loss of finish on the machines and from the evidence before me the machines appeared to be in good condition. Therefore, I find that the balance of the claim in the sum of $50.00 is dismissed.

There was no evidence before me that the tenants caused any damage to the kitchen doors and backsplash. If a cabinet handle was broken I find it is just as likely the result of normal wear and tear to cabinets that are at least nine years old. There was also no evidence before me that the tiles were not original to the home and, therefore, beyond the useful life of most building elements. Therefore, I find that this portion of the claim is dismissed.

The plywood for the fireplace remains at the home. There was no evidence that baseboard had been placed around the fireplace at the start of the tenancy. The board missing from the exterior of the home is matter of maintenance and the responsibility of the landlord. Therefore the claim for these items is dismissed.

From the evidence before me the lino in the lower level of the home appears to be well beyond the useful life of 10 years. No evidence to the contrary was supplied by the landlord. Therefore I find that the claim for kitchen lino is dismissed.

I find that the tenants gave notice to end the month-to-month tenancy, in accordance with section 45 of the Act. From the evidence before me the landlord did not advertise the home as one unit; as the tenant's had rented it, but decided to rent out rooms in the lower suite as she claims the upper bathroom was unusable. I have dismissed the claim for bathroom repair and, from the evidence before me I find that the bathroom had not been rendered unusable at the end of the tenancy. The landlord was at liberty to arrange timely repairs, in an attempt to mitigate any loss of use by new tenants, but those repairs would have been due to the need for maintenance of the home; not the negligence of the tenants. Further, if the landlord had rented out the whole house, as she had to the tenants, there would have been a functioning bathroom for use in the lower level while any repairs or renovation occurred.

I also considered the submissions that at least four or five people viewed the home and the fact that the landlord rejected some tenants. This demonstrates, on the balance of probabilities, that people were interested in renting the home. The tenants were not responsible for the decisions the landlord made, to reject possible new renters. Further, there was no evidence before me that the landlord had issued notice of entry for showings, as required by the Act, and that access was then denied by the tenants. In the absence of mutual agreement for entry or proper notice of entry given, a tenant is not required to permit access to a rental property. Therefore, I find that the landlord has failed to prove that the delay in obtaining new occupants was the fault of the tenants and that this portion of the claim is dismissed.

Therefore, the landlord is entitled to compensation in the sum of $25.00 for patio weeding, $10.00 for damage to the fridge and $198.45 in plumbing costs. Jurisdiction is declined for the claim for patio furniture. The balance of the claim is dismissed.

The landlord may deduct a total of $233.45 from the security deposit; leaving a total of $816.55.

Section 38(1) of the Act provides:

> *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> > *(a) the date the tenancy ends, and*
> > *(b) the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*
>
> > *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> > *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

In relation to the pet deposit, section 38(1) of the Act allows a landlord to hold the pet deposit if there is a claim made in relation to damage caused by a pet. In this case the landlord did submit an application, against the deposits, within the required time-frame, but did not set out a claim against the pet deposit for damage caused by a pet. Policy (#31) suggests the landlord may apply to keep the pet deposit but only to pay for damage caused by a pet. The details of the claim served to the tenants was absent any reference to damage caused by a pet and was presented as the result of actions of the tenants.

Therefore, I find that the landlord did not possess the right to retain the pet deposit and that it should have been returned, pursuant to section 38(1) of the Act, within 15 days of the date the tenants provided their written forwarding address.

Section 38(6) of the Act provides:

> *(6) If a landlord does not comply with subsection (1), the landlord*
>
> > *(a) may not make a claim against the security deposit or any pet damage deposit, and*
> >
> > *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, as the landlord did not set out a claim for damage caused by a pet and did not return the pet deposit within 15 days of receiving the tenants forwarding address I find that the landlord is holding a pet deposit in the sum of $2,200.00. Even though the total claim made exceeded the value of both deposits that had been held in trust, the Act requires return of the pet deposit within 15 days, when there is no claim for damage caused by a pet.

Therefore, I find that the tenants are entitled to return of the balance of the security deposit $816.55 plus double the pet deposit; $2,200.00.

Based on these determinations I grant the tenants a monetary Order in the sum of $3,016.55**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

As each claim has merit, the filing fee costs are set off against the other.

Conclusion

The landlord is entitled to compensation in the sum of $283.45. The balance of the claim is dismissed, with the exception of the patio furniture. Jurisdiction is declined in relation to the furniture claim.

The landlord may retain $233.45 from the security deposit.

The pet deposit is doubled as a claim for damage caused by a pet was not made.

The tenants are entitled to return of $3,015.55 in deposits.

Filing fee costs are set off against each other.

This decision is final and binding and 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: April 08, 2015

Residential Tenancy Branch