



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenants – MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; 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 applied for a Monetary Order for the cost of emergency repairs; for a Monetary Order to recover the security deposit; 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 landlord for the cost of this application.

The hearing held on July 14, 2015 was adjourned as the landlord had not received the tenants' evidence due a mix up with the delivery of the evidence from Canada Post. The hearing was reconvened today and it was determined that the landlord had now received the tenants' evidence package. The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the

requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this was a fixed term tenancy for two years started on March 01, 2011. At the end of the fixed term the tenancy reverted to a month to month tenancy. Rent for this unit was \$1,740.00 per month due on the 1st of each month. The tenants paid a security deposit of \$812.25 on March 01, 2011. No inspection reports were completed at the start or end of the tenancy. The tenancy ended on November 30, 2014 and the tenants provided their forwarding address in writing to the landlord on that date.

The landlord's application

The landlord testified that the tenants had purchased some appliances for the unit and they were to remain the property of the tenants. When the landlord went to collect the last month's rent the male tenant said he did not have enough money to pay all the rent as he had to put a deposit down on their new unit. The tenant offered to sell the appliances to the landlord for \$700.00 and that amount would be taken off the rent. The landlord testified that he was at first hesitant to do this but finally agreed.

The landlord testified that the appliances then belonged to the landlord; however, the tenants removed them from the unit when they moved out. There was a fridge, a dishwasher and a washer/dryer which the landlord had shared the cost of and paid the tenants \$350.00. Consequently, the tenant only had to pay \$1,070.00 in rent for November, 2014. The landlord referred to text messages between the parties and states that a message sent from the male tenant admits he deducted \$700.00 but not what it was for. In an earlier text message the landlord texted the tenant about the tenant considering taking the appliances for the security deposit. The landlord seeks to recover the \$700.00 deducted from the rent for November as the tenants removed the appliances.

The landlord testified that the tenants failed to leave the carpets in the unit clean. The landlord testified that he took photographs of the carpets the day after the tenants vacated the unit on either December 03, 04 or 05. The landlord had to pay to have the carpets shampooed and seeks to recover the cost of \$150.00. The landlord has not provided a receipt for this work.

The landlord testified that the tenants did not leave the house clean at the end of the tenancy. The tenants had used part of the house for a day care. The house was not left clean including the blinds and windowsills. The tenants also left many of their belongings in the house such as a TV, a TV stand, chairs and a broken table. The landlord had to remove these items to the dump and seeks to recover \$300.00 to clean the unit and remove the tenants' belongings. The landlord has provided no receipt or invoice for this work.

The landlord testified that the tenants also left a great deal of garbage and belongings outside the unit in the shed and yard. The tenants left plastic chairs and children's toys. The landlord seeks to recover \$200.00 to remove the tenants' belongings. The landlord has not provided an invoice or receipt in evidence for this work.

The landlord seeks to recover \$800.00 to pay to a company to remove two mattresses from the shed, an amount of gravel and garbage left by the tenants, of this \$150.00 was used to have the lawn reseeded and to clear the leaves. The landlord testified that in the tenancy agreement the tenants are required to take care of the yard and cut the grass. The tenants did not do this maintenance work and left the wooden fence and shed covered with children's caulking, sand was everywhere and many plastic children's toys were strewn about the yard. The yard had not been maintained. The landlord has provided the invoice in evidence for this work.

The landlord seeks to recover the dump fees of \$34.00. The landlord has provided a receipt in evidence.

The landlord seeks an Order permitting the landlord to keep the security deposit to offset against the landlord's monetary claim. The landlord also seeks to recover the filing fee of \$50.00.

The tenants disputed the landlord's claim. The male tenant testified that they had initially spoken to the landlord about buying the appliances but the landlord was not willing to take them. The appliances cost a lot more than \$700.00 and the tenants would never have sold them to the landlord for such a small amount. The tenant testified that the \$700.00 rent reduction was for the cost of some of the repairs the tenant had made throughout the house. The tenants had previously asked the landlord to reduce the rent because of all the repairs done by the tenants.

The tenants testified that because the appliances were owned by them they took them when they moved out. The landlord had never paid his share of the \$350.00 for the washer/dryer. The tenant testified that his text message sent to the landlord and provided in evidence clearly shows that the tenant was informing the landlord that the \$700.00 deducted from the rent was just a fraction of what the tenants paid for repairs. The tenant testified that they told the landlord they were taking the \$700.00 off

November's rent for repairs as they needed this as a deposit on their new unit. The landlord had said they would talk about it but never came back to the tenants.

The tenant testified that the tenancy agreement states that the appliances that were in place were in an 'as is' condition and if they broke down the tenants would have to pay to replace them and then any new appliances would belong to the tenants.

The tenants testified that at the end of the tenancy they did not clean the carpets. The landlord had not provided clean carpets at the start of the tenancy and the tenants had already had them cleaned twice during the tenancy. The staining was already on the carpets and would not come out after cleaning. The tenant testified that they had to put a rug over the carpet to hide the staining.

The tenant testified that they left the house cleaner than when they moved in. the tenant testified that on November 30, 2014 everything was reasonable clean and the landlord walked through the house and said everything was fine. Five days later the landlord turns up with a report which he had not filled out with the tenants and he wanted the tenants to sign the report; however, the tenants refused to do so as the report was not completed in the tenants' presence and was inaccurate.

The tenants disputed the landlord's photographic evidence and testified that the photos are undated. One photograph shows snow on the ground yet the tenant testified that it had not snowed in December, 2014 and the landlord appeared to be unsure when he took the pictures. The tenants testified that they never had a key to the padlock on the shed and as it was in a bad condition they did not want to use the shed. The mattresses shown in the landlord's photographs do not belong to the tenants and the tenants did not have access to the shed to put gravel or mattresses in it. The tenants testified that they removed all their belongings from the unit and yard and anything that was in a poor condition was taken to the dump. Some of the other items shown did not belong to the tenants and were already at the unit when they moved in for example chairs, planters,

an old TV, a table, a cupboard and night stand. The tenants used some of these during their tenancy and left them at the unit as they belonged to the landlord.

The tenants testified that the children did chalk on the building and fence but this was washed off at the end of the tenancy after the landlord told the tenants about it. The tenants question if the landlord took these picture before they moved out and had cleaned up. The tenants testified that it was cold and rainy in November, 2014 and the children did not play outside. The tenants disputed that any of the toys mentioned as being left at the unit are not theirs and they don't know where they came from.

The tenants testified that the lawn was in a poor condition at the start of their tenancy. They put down top soil and seed but the lawn was covered in moss and weeds and grass would not grow. The tenants hired professionals to do some yard work but were told that everything would have to be taken off and then grass put down due to the poor condition it was in. This was too expensive for the tenants to do so they kept trying to manage the yard themselves. The tenants testified that the landlord's pictures are contradictory. The tenants did clear the leaves; they ran a day care and everything had to be clean. The landlord could have taken these pictures after the tenants had left the unit.

The tenants disputed the landlord's claims for dump fees and testify that they removed all their belongings except the play equipment which the landlord would not let them take.

The tenants' application

The tenants testified that before they moved into the house they looked at it twice and found there were things that needed attention. The landlord said he was going to take care of everything and the tenants were unable to inspect the whole house as there were still people living there. The landlord had said he would change the windows on the top level; all junk would be removed; the exterior walls would be power washed; all blinds, walls etc. would be cleaned; the interior of the house would be cleaned; the

kitchen cabinets and linoleum would be repaired; the deck steps and deck were to be repaired as they were rotten; the laminate flooring would be installed to replace the old and dirty carpet; the lower level bathroom was to be cleaned and mould removed; the fire and smoke alarms would be replaced; the security system would be repaired; the roof would be repaired and the water damage repaired; the landlord would provide a washer/dryer; and the landlord would provide a lawn mower and tools.

The tenants testified that they replaced part of the carpets with laminate but the landlord made the tenants pay half the cost. The landlord repaired the roof months after the tenants moved in. the tenants paid for electrical sockets and outlets to be repaired as wires were hanging out; they did the mould in the bathroom, repaired the toilet flushes; replaced the vanity in the bathroom which were broken and dangerous; they replaced the shower head as it was full of fungus; they replaced the sinks on both levels as they were chipped; the shower door was broken and the tenants replaced it with curtains; the ducts and vents were cleaned by professionals; the carpets were cleaned twice; the walls were repaired, painted and wall papered; the kitchen was dirty and greasy and was cleaned; the blinds in all rooms were greasy, stained and broken. The tenants did not replace them but had to clean them; the window screens were very dirty and had to be cleaned; the window sills were full of mould and fungus and had to be cleaned; the drywall panels in the basement were a fire hazard and were replaced; new drywall was installed for the water damage caused from the roof leaks; bathroom lights were broken and had to be replaced; the small bathroom had no blinds and blinds were put up for privacy; the bedrooms, the living room and the basement light fixtures were broken and new lights installed; interconnecting smoke alarms and carbon monoxide detectors were installed on all four levels as there were none in place; all doors had to be cleaned of stickers; the lower level had posters and stickers which had to be cleaned off; the furnace and laundry rooms were not finished and were a fire hazard. The tenants finished the work; There were no baseboards in the lower level with major gaps between the floor and walls and carpet and walls, tenants installed baseboards; the sensor lights in the carport and backyard were not working and new ones were bought and installed; The folding door was broken and replaced by the tenants; there was only

one set of keys for the front entrance and others had to be cut; the main entrance lock was old and broken and was replaced; the locks on the doors on the upper level had no keys and after the tenants' child got locked into a room the tenants changed the locks; the garage was left full of junk which the tenants removed; the exterior of the house had hanging wires and extension cords which had to be removed; the glass front door was damaged and would not close properly and the landlord refused to fix it; the front and back stairs were rotten wood, the tenant changed the stairs for safety reasons; the furnace stopped working for a week in the winter months; the tenants paid for the yard work to be maintained and had to purchase tools; the plants and trees were infested with bugs and had to be treated; the tenants installed a children's play yard and baby swing which they were not allowed to remove at the end of the tenancy.

The tenants testified that the level of work completed by them was more than the \$700.00 deducted from their rent for the last month. The tenants removed two fridges, a dishwasher and the washer dryer as the landlord did not pay his share towards the washer/dryer. The tenants seek to recover the cost for the repairs done to the unit of \$10,505.49; however, as the tenants kept the lawn mower, the gardening tools and the appliances they purchased, the amounts of \$405.38 for the garden equipment and \$2,111.19 for the appliances can be taken off their claim. This makes the tenants' claim \$7,988.92.

The tenants also seek to recover the costs incurred for mailing and postage and for stationary of \$93.31.

The tenants seek an Order to recover the security deposit of \$812.25 and the filing fee of \$50.00.

The landlord disputed the tenants' claims. The landlord testified that he fixed the back stairs and if there was anything else that needed to be repaired the landlord told the tenants to do it and deduct it from their rent. The tenants did this for the furnace repair. The landlord disputed that he promised to charge the windows. The landlord testified

that all his belongings were removed from the house at the beginning of the tenancy. The exterior of the house was pressure washed the previous summer, the kitchen and lino did not need any repairs, the back steps were repaired and the deck was repaired in 2012. The landlord testified that he did pay half of the laminate as agreed but all this work was not required; the tenants just wanted it done because they were running a day care and needed it done for their licence. The carpet was in a clean condition at the start of the tenancy and the landlord paid for the repair to the lower level bathroom. The smoke alarms were all working but may have needed new batteries. The security system was working and just needed to be activating with the security company.

The landlord testified that he did agree to pay his share of \$350.00 for the washer/dryer but does not recall if that was paid but even so they tenants would own the washer/dryer. The roof was repaired in 2012 and the landlord did not promise to provide a lawn mower or tools to the tenants. The landlord testified that the tenant only needed to change the sockets in order to get their licence for the day care and the tenants did not ask the landlord to change them. The mould in the bathroom was taken care of by the landlord; the toilet flushes were all working when the tenants moved in and the tenants never informed the landlord that they were not working. The tenants did not inform the landlord that the vanities were broken and the damage was minor. The shower heads were clean and the sinks only had some minor chips that were not severe enough to require the replacement of the sinks. There was nothing wrong with the shower doors; the ducts and vents were cleaned every year; the carpets were clean as if they were new carpets; the walls were in a good condition and if the tenants wanted to paint it was to enhance the home for their personal use.

The landlord testified that the kitchen was clean at the start of the tenancy as were the blinds and the blinds were all in good repair. The window screens were not dirty and should be pressure washed each year. The window sills were all left clean for the tenants; the drywall panels were not a fire hazard and the small amount of water damage in the basement had been repainted by the landlord. If the tenants put up drywall this was to protect the children in their care; however, the tenants did not ask

the landlord to do the work. The landlord disputed that the lights and fixtures were broken and testified that the small bathroom did have a blind up when the tenants moved in. The landlord disputed that the doors had stickers on them or that the lower level had posters and stickers on the walls. The landlord testified that the laundry and furnace room were partially finished; the basement did not need baseboards as the landlord had put a new carpet in; the sensor lights were working and if they had stopped working the tenants did not inform the landlord; the folding door was not broken; the tenants were given two sets of keys and the main entrance had a new lock fitted at the start of the tenancy two or three months before the tenants moved in.

The landlord disputed the tenants' claims concerning locks on doors on the upper level. The landlord testified that he had not installed locks on these doors. The landlord disputed that he left the garage full of junk and if anything was in there the tenants did not inform the landlord. The shed was fine and it had a padlock which was not closed so the tenants could have accessed it; the exterior of the house did not have loose wires or extension cords hanging; the front door was not damaged when the tenants moved in and again the tenants did not inform the landlord of any required repair; the yard was in a good condition when the tenants moved in; the gravel was put down by the tenants , this was later removed and put in the shed and bark mulch was then put down instead. The grass was not growing as the tenant had moved in in the winter months; the plants and trees were not bug infested.

The landlord testified that he had asked the tenants to take the play centre and baby swing but the tenant said he did not have a way to take it and so it was left at the house. The landlord testified that he did not agree he would provide a lawn mower. If the tenants needed one they could have asked as the landlord had a spare one.

The landlord testified under questioning that the tenants only asked the landlord to make repairs to the sundeck back stairs and these were repaired by the landlord. The tenants did not ask the landlord to repair anything else and the first time the landlord heard about the other repairs was from the information provided in the tenants' claim.

The tenants testified that when they looked at the house initially they dealt with the landlord's son and the landlord was not involved in it. The landlord's son said they had an extra lawnmower and washer dryer which they would provide. The tenant testified that he only found out last year that he had to put any requests for repairs in writing. The landlord was aware of the repairs though as the tenants had verbally spoken to the landlord. The landlord's response was that the tenants had too many repairs they wanted and the landlord should just pull the house down. The tenants referred to the addendum to the tenancy agreement in which the landlord has documented some of the repairs he would do at the start of the tenancy which the landlord now denies needed doing.

The landlord calls his witness who is the landlord's son. The witness testified that he had dealt with the tenants initially and they had informed him that they wanted to run a daycare out of the home. The witness testified that he informed the tenants that they would have to be responsible for any damages to appliances. At first the tenants did not agree to this but later called the witness back and agreed. When the tenants looked around the house they said everything looked fine. No move in report was completed when they moved in. After the tenants moved in the witness testified he received messages from the tenants about the sinks looking old and about the condition of the laundry room. They were told it may look old but it was all in working condition. The witness testified that he agreed the tenants could replace the sinks and they would split the cost with them. The witness testified that the tenants were also told that if they bought new appliances that they could keep them at the end of the tenancy.

The witness testified that they agreed to split the costs of the laminate flooring, the sinks, the washer/dryer and the laundry/furnace room repairs. The witness testified that he agreed that whatever estimate the tenants got for these things would be good. The witness testified that they agreed to pay half the cost of \$350.00 for the washer dryer, half the cost for the sinks of \$226.00 and half the cost for the laundry/furnace room of \$550.00. The witness does not recall if they ever paid these costs to the tenants.

The tenants testified that the landlord never reimbursed them for half the costs for these repairs nor was it taken from the rent as he tenants had provided postdated rent cheques six months in advance.

The tenant testified that a few months after the tenants had done all the work in the house the landlord brought a bank appraiser to the house. If the house was in such a good condition prior to the tenants doing all this work why did the landlord not have the house appraised then?

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

The landlord's application

With regard to the landlord's claim to recover \$1,050.00 for the cost of the appliances; the landlord agreed the appliances belonged to the tenants and was unsure if the tenants had been reimbursed for the landlord's share of the washer/dryer. The landlord testified that he deducted \$700.00 from the last month's rent to pay for the appliances yet the tenants still removed them from the unit. The tenants contradicted this and said the \$700.00 was a rent reduction towards the cost for the repairs the tenants had completed in the house. In this matter the landlord has the burden of proof to show that he purchase the appliances from the tenants for \$700.00. I am not satisfied that the landlord has sufficient evidence to meet the burden of proof in this matter. The text messages between the parties seen to indicate that this rent reduction was for repairs and not for the appliances. The landlord's witness also testified that the landlord did not pay for half the washer/dryer and that the agreement was that the appliances would all belong to the tenants at the end of the tenancy. I must therefore dismiss this section of the landlord's claim.

With regard to the landlord's claim carpet cleaning of \$150.00; the landlord has not provided an invoice showing the carpets had been cleaned at the start and end of the

tenancy. The tenants testified that the carpets were not provided to the tenants in a clean condition when they moved into the unit and therefore they did not clean them at the end of the tenancy. Without corroborating evidence from the landlord to show that the carpets were clean at the start of the tenancy I find the landlord has not met the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for \$300.00 to clean the house at the end of the tenancy and to remove the tenants' belongings left at the house; the landlord testified that the blinds and window sills were not left dirty and the tenants left a TV, a TV stand, chairs, and a broken table. The tenants contradicted this and testified that the addendum to the tenancy agreement clearly shows all windows and blinds are greasy, dusty and sticky at the start of the tenancy. I must therefore conclude that the landlord's testimony in this matter has little credibility. The tenants also testified that the belongings left at the home belonged to the landlord and not the tenants. As I can place little weight on the landlord's testimony I find I prefer the evidence of the tenants that these items of furniture did belong to the landlord and therefore the tenants had every right to leave these belongings in the unit. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for \$200.00 to remove garbage left outside in the garage and shed; the landlord appears to have claimed \$200.00 and a further \$800.00 to also remove items from the shed such as two mattresses and gravel and to reseed the back lawn as it had been provided in a good condition. The landlord has the burden of proof in this matter. The landlord testified that the tenants left chairs, planters and children's toys; however, the tenants disputed this and testified these items did not belong to them. The tenants also testified that they did not have access to the shed and the mattresses and gravel did not belong to the tenants. The tenants also testified that the lawn was full of moss and weeds and the grass seed they put down would not grow. I find the addendum to the tenancy agreement states the shed in the back yard is in a dilapidated condition and that most of the lawn areas in the back yard are covered in moss and weeds. The information contained in this addendum clearly contradicts the

landlord's testimony regarding the condition of the shed and the back lawn. I therefore find the landlord's testimony to have little merit and it calls the landlords credibility into question for the remainder of his testimony. As I can place little weight on the landlord's sworn testimony I am not satisfied that the tenants left garbage, children's toys, two mattresses, gravel, leaves or failed to maintain the lawn as it was not provided in a good condition as the landlord testified to. The landlord's photographic evidence does show some toys and chairs in the yard and some chalking on the walls. These photographs are undated and I have no way of knowing if these were taken before the tenants moved from the unit or after. I can therefore place little weight on these photographs as evidence. These sections of the landlord's claim are therefore dismissed.

The landlord's application to keep the security deposit is dismissed. The landlord must also bear the cost of filing his own application.

The tenants' application.

With regard to the tenants' claim for the cost of emergency repairs; the tenants have listed a great deal of repairs that they made to the house and yard; I refer the parties to s. 33 of the Act which deals with emergency repairs:

Emergency repairs

33 (1) *In this section, "**emergency repairs**" means repairs that are*

- (a) Urgent,*
- (b) Necessary for the health or safety of anyone or for the preservation or use of residential property, and*
- (c) Made for the purpose of repairing*
 - (i) Major leaks in pipes or the roof,*
 - (ii) Damaged or blocked water or sewer pipes or plumbing fixtures,*
 - (iii) The primary heating system,*

(iv) Damaged or defective locks that give access to a rental unit,

(v) The electrical systems, or

(vi) In prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) Emergency repairs are needed;

(b) The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) Claims reimbursement for those amounts from the landlord, and

(b) Gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Having looked at the list of repairs carried out by the tenants I am not satisfied that the tenants have met the standard required to make a claim for emergency repairs. The tenants have not shown that all the repairs fall under s. 33 of the Act. The tenants have not shown that they contacted the landlord and asked him to make emergency repairs; or following any attempts to contact the landlord the tenants have not shown that they have given the landlord reasonable time to make the repairs.

S 33(6) of the Act states”

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) The tenant made the repairs before one or more of the conditions in subsection (3) were met;

I further find that many of the repairs listed would fall under s 32 of the *Act* and in the matter of these repairs the tenants are required to notify the landlord in writing of the repairs required and provide the landlord a reasonable time to make the repairs. If the landlord fails to do the repairs then the tenants have the opportunity to file an application for Dispute resolution to obtain an Order for the landlord to make repairs, to reduce rent for repairs, services or facilities agreed upon but not provided or for an Order for the landlord to comply with the *Act*. In this case the tenants have made repairs to the unit without putting it in writing to the landlord. Verbal conversations are almost impossible for a third party such as myself to determine and this is why it is important to put everything in writing. A tenant is not permitted to carry out any alterations or repairs unless they fall under emergency repairs without the landlord's permission or an Order resulting from a Dispute Resolution hearing.

With this in mind; however, I find the landlord should have been aware of some repairs required as they are documented on the addendum to the tenancy agreement. This addendum indicates that the oven was not working, there are scratches on the floor and the floor lamination has gaps, there are scratches on all room doors and closet doors, the stove control knob is burnt, ,cost of the lawn area in back yard is covered in moss and no grass, all windows and blinds are greasy, dusty and sticky, the shed in back yard is dilapidated; the sundeck and steps leading to the back yard in poor condition and landlord will repair; the sink in small bathroom is damaged and corroded;, the sink in small washroom is corroded and damaged and the repair and cost will be shared 50-50 by landlord and tenant.

I therefore find that a portion of the tenants' claim for repairs must be accepted as the tenants cannot be expected to make repairs to enhance the landlord's property when the landlord was aware of the repairs and failed to carry out repairs as required under s. 32 of the *Act*. The landlord testified that he did repair the back steps and that the deck was repaired a few years prior to the tenancy. Yet the tenants' documentary evidence contradicts this. The tenants have provided an invoice showing they paid to have the back stairs repaired and the addendum to the tenancy agreement shows the sun deck is in a poor condition. I further find the addendum shows that the tenants had to do some cleaning in the unit, they paid to try to re-establish the lawn area and they paid to replace the two sinks. There is insufficient evidence to show the landlord paid for a 50 percent share of one of the sinks.

Consequently, I have limited the tenants' claim for these repairs. I find from the evidence presented that the tenants have established a claim for the following repairs as the landlord should have been aware of these repairs:

Costs for garden repairs **\$1,113.06**

Back stairs - **\$300.00**

Carpet cleaning – **\$262.50**

Laundry and furnace room including labour costs – **703.16**

Sinks –**\$232.85**

I do not find that the tenants should have to split any of these costs with the landlord as it is the landlord's obligation to ensure the rental unit is repaired not that of tenants.

I conclude that the landlord did not comply with s. 32(1) of the *Act* which states:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I accept the tenants may have wanted to enhance the appearance of the property to promote their daycare business and to comply with any licencing obligations the landlord is still obligated to ensure the unit is safe for occupation by the tenants.

Although I am not prepared to satisfy all the tenants' requests for compensation for all the repairs they had to make to the unit, I am prepared to award the tenants a nominal amount as the landlord failed to comply with s. 32(1) of the Act. I therefore find the tenants are entitled to a further Monetary award to an amount of **\$500.00**.

With regard to the tenants' application for mailing, posting and stationary; there is no provision under the *Act* for these amounts to be awarded to a party; consequently these sections of the tenants' claim are dismissed.

I find the tenants are entitled to recover the security deposit of **\$812.25** pursuant to s. 38(6)(b) of the *Act*. As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenants as follows:

Costs for garden repairs	\$1,113.06
Repair to back stairs	\$300.00
Carpet cleaning X2	\$262.50
Laundry and furnace room	\$703.16
Sinks	\$232.85
Other repairs	\$500.00
Filing fee	\$50.00
Security deposit	\$812.25
Total amount due to the tenants	\$3,973.82

Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,973.82**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the Order.

The landlord's 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: August 03, 2015

Residential Tenancy Branch

