Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, ERP,

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenant applied for:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The Details of the Dispute section of the tenant's application also identified a request for the issuance of a monetary award equivalent to two month's rent as a result of the landlord's alleged failure to use the rental premises for the purposes stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). This request for a monetary award was made pursuant to the provisions of section 51(2) of the *Act*. As the landlord was clearly aware of the tenant's intent to address this issue at this hearing, I have included this issue an integral part of the tenant's application.

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.

Preliminary Matters and Background to this Review Hearing

At the commencement of the hearing, the parties confirmed that the issue of the deposits has been addressed in a September 17, 2014 hearing and decision (the first decision) related to this tenancy that occurred after the tenancy ended. A final and binding order requiring the landlord to return both deposits in the amount of $1,850.00 was issued at that time by the Arbitrator who considered the landlord's original application. As the matter of the deposits was conclusively determined on September 17, 2014, and the parties confirmed that the landlord returned these deposits to the tenant, I advised the parties that the legal principle of *res judicata* prevented me from considering the landlord's application to retain the tenant's deposits. The landlord withdrew his application to consider the deposits, which were not properly before me.

The current applications were first considered by Arbitrator RM in a teleconference hearing on June 4, 2015, attended by the landlord and his legal counsel, but without the tenant. In his June 5, 2015 decision, Arbitrator RM issued a monetary award in the landlord's favour in the amount of $8,619.70, and dismissed the tenant's application without leave to reapply.

After the tenant received a copy of the June 5, 2015 decision and Monetary Order, the Residential Tenancy Branch (the RTB) received an Application for Review Consideration from the tenant. In her July 31, 2015 Review Consideration Decision, Arbitrator RW considered the tenant's application and determined that the tenant had submitted sufficient evidence to entitle him to a review hearing on the basis of fraud. She suspended the June 5, 2015 decision pending the outcome of the review hearing.

The review hearing was subsequently scheduled for the current review hearing pursuant to paragraph 82(2)(c) of the *Act*. Both parties were provided copies of the Review Consideration Decision and the Notice of Hearing by the RTB.

On September 11, 2015, after receiving notification of this new hearing, the landlord's counsel made a five-page written submission with many attachments calling into question the basis for the Review Consideration Decision and the tenant's subsequent actions in serving documents, including notice of this hearing to the landlord. As explained at this hearing, in a new hearing, I am unable to consider the merits or basis for Arbitrator RW's final and binding Review Consideration Decision of July 31, 2015. In a new hearing, I am only tasked to consider the issues properly outlined in the original application.

At the outset of the hearing, both parties confirmed that they had been served with one another's applications for dispute resolution and written evidence. The landlord's counsel also confirmed that the landlord had received the Review Consideration Decision, the Notice of Hearing, and the tenant's written evidence submitted as part of the tenant's Application for Review Consideration. Despite some delays in serving documents, both parties confirmed that they were prepared to respond to the claims made against them at this hearing. I am satisfied that the parties have been served with the above documents in accordance with sections 88 and 89(1) of the *Act*.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters, receipts, invoices and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. As I noted at the hearing, the photographs submitted by the tenant were of no benefit. These copies were of such poor quality that nothing of any value could be observed. The landlord's photographs were of considerably better quality; however, many were taken at such close range as to reduce the weight that could be attached to them. The principal aspects of these claims and my findings are set out below.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses or damage arising out of this tenancy? Is the tenant entitled to a monetary award for emergency repairs he conducted during the course of this tenancy? Is the tenant entitled to a monetary award pursuant to section 51(2) of the *Act* resulting from the landlord's alleged failure to use the rental unit for the purpose stated in the 2 Month Notice? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

This periodic tenancy began on February 10, 2010. Monthly rent was set at $1,850.00, payable in advance on the first of each month, plus utilities. Although the written submission of the landlord's counsel maintained that this monthly rent was subsequently increased to $1,995.00, no evidence was submitted by the landlord or his counsel to demonstrate that a validly issued Notice of Rent Increase was provided to the tenant entitling the landlord to this amount of monthly rent.

Although the tenant paid a $925.00 security deposit and a $925.00 pet damage deposit on February 10, 2010, both parties agreed that these deposits were returned to the tenant as per the September 17, 2014 decision issued of another Arbitrator.

On April 24, 2014, the landlord's property manager handed the tenant the 2 Month Notice, requiring the tenant to vacate the rental unit by June 30, 2014. The parties agreed that the tenancy ended on July 2, 2014, when the tenant surrendered vacant possession of the rental unit to the property management company hired by the landlord to manage this rental property.

The parties agreed that a joint move-in condition inspection occurred on February 2, 2010, between the tenant and a representative of the property management company hired as the landlord's agent. A joint move-out condition inspection occurred on July 2, 2014, when the tenancy ended. The tenant gave undisputed sworn testimony that the owner of the property management company hired by the landlord attended the joint move-out condition inspection and signed the joint move-out condition inspection report. As part of his Application for Review Consideration, the tenant supplied the RTB with a signed copy of the joint move-in and joint move-out condition inspection reports. At this hearing, the landlord's legal counsel noted that the date of the signature of the joint move-out condition inspection report provided by the tenant appears to have been altered from July 2, 2014 to July 3, 2014. Although that may indeed be the case, the date of the move-out inspection on the first page of the joint move-out condition inspection report clearly identified July 2, 2014 as the date of the inspection.

At the June 4, 2015 teleconference hearing, the landlord referred to his own move-out condition inspection. After that hearing and as requested by the presiding Arbitrator, the landlord supplied the RTB with a copy of that inspection report, signed by the landlord on July 2, 2014.

The tenant's application for a monetary award of $9,840.00 as outlined in the tenant's Monetary Order Worksheet included the following:

Item	**Amount**
Sewage Restoration Dec. 17, 2010	$1,080.00
Sewage Restoration March 2, 2011	1,200.00
Sewage Restoration Sept. 9, 2011	1,080.00
Sewage Restoration (2) Sept. 9, 2011	1,080.00
Sewage Restoration April 14-15, 2014	600.00
Sewage Restoration (2) April 15, 2014	600.00
Sewage Restoration (3) April 15, 2014	600.00
Improper Eviction	4,200.00
Total of Above Items (Incorrectly shown as $9,840.00 in original)	**$10,440.00**

The landlord's claim for a monetary award of $13,713.21 as set out in the Summary of the Landlord's Claims against the Tenant in the May 21, 2015 written submission of the landlord's legal counsel identified the following:

Item	**Amount**
Unpaid Rent (2 months)	$3,990.00
Unpaid Rent (July 1 and 2, 2014)	133.00
Repair of Damage to Ceiling by Contractor	945.00
Repair of Damage to Ceiling by Landlord	155.38
Removal and Disposal of Junk and Garbage ($26.00 + (17 x $50.00 per hour) + $155.38 (materials) = $ 1,031.38	1,031.38
Removal and Disposal of Industrial Waste	200.00
Replacement of Microwave	50.00
Repairs Related to Dogs (4 hours @ $50.00 per hour = $200.00)	200.00
Cleanup Related to Dogs (4 hours @ $50.00 per hour = $200.00)	200.00
Damage to Oak Flooring ($764.33 + 26 hours @ $50.00 per hour = $2,064.33)	2,064.33
Replacement of Flooring from Damage by Outdoor Dogs	3,798.00
General Cleanup (6 Hours @ $50.00 = $300.00)	300.00
Replacement of Toilet ($115.00 + (2 @ $50.00 per hour = $215.00)	215.00
Replacement of Weather Stripping on Doors	60.00
Total of Above Items	**$13,342.09**

This summary noted that the landlord would also be willing to consider authorization to retain the tenant's pet damage deposit of $925.00 in lieu of the two items relating to the dogs.

Analysis – Tenant's Application

Section 33(5) of the *Act* establishes the basis whereby a tenant may claim for the landlord's reimbursement of amounts paid out for emergency repairs. I find that the

tenant's claim does qualify as an "emergency repair" under the definition of that term provided as follows in section 33(1) of the *Act*:

> ***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,…*

However, as the landlord's counsel correctly noted in her written submission of May 21, 2015, in response to the tenant's claim for emergency repairs, section 33(3) of the *Act* establishes detailed conditions regarding a tenant's right to undertake emergency repairs and to claim compensation for these 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…*

To support this element of his claim, the tenant entered into written evidence a summary and timeline regarding his account of what transpired during each of the seven flooding incidents identified in his claim for a monetary award. He maintained that the landlord's property managers approved some of the work undertaken by the tenants. On other occasions, the property management office was either closed or their regular cleaners were ill or unavailable. Despite the tenant's conflicting sworn testimony at this hearing on this point, his written evidence appears to claim for a monetary award for his time and that of his wife in cleaning up after sewage floods in the rental unit. The only written evidence that he referred to with respect to the cleaning was a letter from a cleaner hired by the landlord's property management company in which she confirmed that the tenant and his wife worked "side by side" with her in cleaning up after two sewage emergencies from April 6 to 16, 2014. The tenant's written evidence noted that the landlord paid the cleaner's invoice submitted by the tenant for the fifth sewage flood

of April 1-15, 2014, the sixth flood, on April 15, 2014, and a seventh flood on April 15, 2014. The tenant's written claim maintained that the landlord did not reimburse the tenant or his wife for their work in helping with this cleaning.

In response to questions from the landlord's counsel, the tenant testified that many of the emergency repairs became necessary during the night when the property management company was unavailable. The tenant testified that he obtained the landlord's agent's oral authorization to undertake these emergency repairs. He had few details regarding when these calls were placed and when authorization was approved.

The landlord testified that he paid every invoice that the tenant provided to him for the flooding incidents. The tenant confirmed that the landlord had paid the invoices the tenant provided to him for the fifth and sixth floods. However, the tenant's written evidence noted that the landlord paid the invoices for the cleanup after the fifth, sixth and seventh floods. The tenant made no claim that the landlord or the landlord's agent gave him written authorization to undertake emergency repairs on the landlord's behalf or agreed to compensate him for his own time and that of his wife regarding these floods. He presented no additional receipts for cleanup work that he commissioned with the permission of the landlord or the landlord's property management company.

The landlord also gave sworn testimony that he allowed the tenant to withhold paying monthly rent for two months at the end of this tenancy on the advice of his property manager, some of which was intended to look after the tenant's claim that he had not been fully compensated for the cleanup of the rental unit following the flooding. In his written evidence, the landlord maintained that there had been an oral agreement between the tenant and the landlord, through his property managers, to allow the tenant to refrain from paying rent for the last two months of this tenancy in exchange for the tenant's agreement to not pursue any further monetary claims against the landlord. The tenant denied that there was any such oral agreement. The tenant testified that he could not remember the details of which payments had been made by the landlord for the cleanup of the rental unit following the various floods.

Based on a balance of probabilities, I find the tenant has not provided sufficient evidence that he is entitled to any form of compensation for emergency repairs stemming from flooding incidents. Although the written evidence and sworn testimony of both parties was very inconsistent on these points, I find no evidence that the landlord failed to pay any of the bills or invoices presented to him during this tenancy for cleaning related to the floods. Much of the tenant's claim appears to be for time the tenant and his wife spent cleaning the rental unit themselves. The tenant has not provided sufficient evidence to demonstrate that the landlord or his property managers gave the tenant authorization to undertake this work themselves or that there was any commitment by the landlord to compensate the tenants for their time.

In accordance with paragraph 33(6)(a) and (b) of the *Act*, I find that the tenant has made repairs before one or more of the conditions established in section 33(3) of the *Act* have been met. The tenant has not provided receipts for work approved by the landlord in accordance with section 33(5) of the *Act*. In making this determination, I find that the tenant's account of what had been undertaken, what had been invoiced, and what was actually paid and how these payments were made were so lacking in consistency that I cannot attach little weight to his claims in this regard.

I now turn to the tenant's claim for a monetary award for the landlord's failure to use the rental unit for the purposes stated in his 2 Month Notice.

Section 51 (2) of the *Act* provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

At the hearing, the tenant testified that the landlord told him that he needed to end this tenancy so that the landlord could sell this rental property. However, the landlord's 2 Month Notice entered into written evidence, which formed the basis for the end to this tenancy, identified only the following:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant...*

As I noted at the hearing, the issue as to whether or not the landlord acted in good faith to end this tenancy for landlord's use of the property is not before me. Once the tenant failed to apply to cancel the 2 Month Notice within 15 days of having been served with the 2 Month Notice, he accepted that the tenancy was to end on the basis of the reason stated in the 2 Month Notice.

The tenant testified that the landlord never obtained all necessary permits and approvals to undertake renovations and repairs in the rental unit. The landlord entered undisputed written evidence that he checked with the relevant authorities and discovered that he did not require permits or approvals for the renovations he conducted. He provided sworn oral testimony supported by written evidence that the renovations were extensive and included the following:

- Replacement of all flooring, including hardwood flooring and carpeting;
- Washing and repairing of the walls;
- Replacement of a missing wall;

- Installation of a new hot water tank;
- Replacement of kitchen sink and countertops
- Replacement of baseboards;
- Repair of ceilings.

Based on the written and photographic evidence before me and the sworn testimony of the parties, I find that the landlord clearly planned to commence significant repairs and renovations at the time he issued the 2 Month Notice. The landlord did not dispute the tenant's written evidence and sworn testimony that the landlord listed the rental property for sale shortly after he obtained vacant possession of the rental premises from the tenant. The landlord testified that his realtor suggested that he list this property before the repairs and renovations were completed as it would maximize the level of interest in the property and would enable a potential purchaser to have input into items such as colour schemes, fit and finish.

I find that the landlord's explanation for the timing of his listing of the rental property for sale was reasonable. The timing of the landlord's listing of the property for sale has little bearing on whether the landlord did in fact undertake extensive repairs of the rental unit. I find that the landlord has provided sufficient evidence to demonstrate that he did undertake significant repairs to the rental unit, the stated purpose of his issuance of the 2 Month Notice. Other than the tenant's speculation that the renovations were not extensive and should not have required him to vacate the rental unit, I find little evidence to confirm the tenant's claim that the landlord failed to use the premises for the purpose stated on the 2 Month Notice. For these reasons, I dismiss the tenant's application for the issuance of a monetary award pursuant to section 51(2) of the *Act*.

Analysis – Landlord's Application – Claim for Unpaid Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As the applicant for a monetary award for unpaid rent owing from this tenancy, the landlord bears the burden of proof to establish that rent was indeed owing and that the tenant remains under a contractual obligation to compensate the landlord for the amount of the unpaid rent.

The sworn testimony provided by both the tenant and the landlord with respect to the issue of unpaid rent was striking in the extent of the inconsistencies revealed. The parties agreed that rent equivalent to two month's payments were not paid by the tenant at the end of this tenancy. At one stage, the landlord testified that he believed that there were two or three months of unpaid rent at the end of this tenancy. He later said that

there were likely only two months of unpaid rent. The landlord said that he believed that the tenant did not pay rent that otherwise would have been due for March or April, although he was by no means certain. At one point, the tenant gave sworn testimony that his last rent payment was for April 2014. Later in the hearing, the tenant testified that he could not remember the details of which months were paid and which were not. Upon questioning, neither party presented as being at all certain as to which two months were included in the landlord's claim for unpaid rent, or whether the forgiveness of one of these payments was to have included compensation for work performed by the tenant and his wife to clean the rental unit after flooding incidents during this tenancy. Neither party provided copies of rent receipts or a tenant rent ledger.

The landlord said that he left such matters to the property management company he had hired to act on his behalf. He testified that he did what the property management company told him to do. In his sworn testimony and his written evidence, he maintained that one of the months where the tenant was not required to pay rent was to take into account the provision of the *Act* requiring the landlord to allow a free month's rent in exchange for ending a tenancy on the basis of the 2 Month Notice.

In his written evidence, the landlord maintained that there was an oral agreement with the tenant. He said that in exchange for the landlord's waiving of two month's rent, the tenant agreed to not take any further action in trying to recover funds from the landlord arising from this tenancy. The tenant testified that no such oral agreement was made with the landlord or the landlord's agent.

Confronted as I am with such confusing and inconsistent evidence, I must rely on the landlord's application for unpaid rent and written submissions. The landlord's application for a monetary award of $3,990.00 for unpaid rent did not specify which months were claimed by the landlord. However, at page 4 of the written submission of the landlord's counsel accompanying that application, the two months of unpaid rent were identified as May and June 2014. In that submission, the landlord claimed "for unpaid rent for the last two months of the tenancy."

Sections 51(1) and 51(1.1) of the *Act* establish the statutory authorization whereby a tenant issued a notice to end tenancy for landlord's use of the property pursuant to section 49 of the *Act* is entitled to forego paying rent for the last month of the tenancy. Based on the sworn testimony and written evidence before me, I find that the landlord, through his property manager, allowed the tenant to forego paying rent for June 2014, the last full month of his tenancy. For these reasons, I dismiss the landlord's claim for unpaid rent owing from June 2014, without leave to reapply.

There is written evidence and sworn testimony that the landlord, again through his property managers, gave the tenant permission to withhold paying another month's rent at the end of this tenancy. Although the terms of this arrangement are in dispute, it would appear that the landlord allowed the tenant to withhold paying rent for this second month as an apparent recognition of the time and effort the tenant had undertaken to restore the rental unit to livable condition after a series of flooding incidents. Since I have not allowed the tenant's claim for separate compensation for any of the cleaning he and his wife undertook related to these incidents, I find that the landlord and his property manager committed to reimburse the tenant for his time and the disruption involved in a series of flooding incidents through allowing the tenant to forego paying rent for another month at the end of this tenancy. In the absence of any better evidence or clear testimony from the parties, I find it reasonable that the landlord agreed to allow the tenant to withhold paying rent for the second last month of his tenancy, May 2014. For this reason, I dismiss the landlord's claim to recover unpaid rent owing from May 2014, the second of the months identified in the landlord's application.

I have also considered the landlord's claim for the recovery of a pro-rated amount, identified by the landlord as $133.00 in his application for dispute resolution, for the tenant's overholding of his tenancy until July 2, 2014. On this point, I note that there is reference to this item in the joint move-out condition inspection report prepared by the landlord's property manager and agreed to by the tenant. In this report, the tenant noted that he agreed to pay two days rent for his overholding of the rental unit beyond June 30, 2014.

The tenant did not dispute the landlord's entitlement to a payment equivalent to two day's rent for July 2014; however, he advised that this amount was in fact returned to the landlord at the end of this tenancy, through the landlord's property manager. The landlord did not dispute this claim, stating that he had left such matters to his property manager and was uncertain as to the details of the payments and allowances given to the tenant at the end of this tenancy. As the landlord bears the burden of proof and provided no evidence to contradict the tenant's claim that the pro-rated amount for July 2014 was either withheld by the landlord's property manager or returned to the landlord's property manager, I dismiss this portion of the landlord's claim without leave to reapply.

Analysis – Landlord's Application – Claim for Damage

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In their written evidence and through their sworn testimony, the parties gave very different accounts of the condition of the rental unit at the end of this tenancy.

The tenant testified that he left the rental unit in better condition than the unit was in when his tenancy began. He described the rental unit as "beyond clean" at the end of this tenancy. Although the tenant confirmed that (with one exception) the landlord's photographs were taken in the correct rental unit, he maintained that the landlord likely carried the few belongings and garbage he left behind around to the various rooms of the rental unit, taking photos in each room. He also questioned the focus and level of magnification of the photographs of holes and minor damage in parts of the rental unit.

The landlord's written evidence, photographs taken on the day he obtained vacant possession of the rental unit, and his sworn testimony maintained that the rental unit was damaged and dirty at the end of this tenancy, requiring extensive repairs and cleaning. The landlord said that he was shocked at the pet odour and condition of the rental unit at the end of this tenancy.

When disputes arise as to the condition of a rental unit at the end of a tenancy, it is helpful to compare the condition of the rental unit as indicated in the joint move-in condition inspection report signed by both parties or their representatives with the report signed at the joint move-out condition inspection.

In this case, the tenant entered into written evidence a copy of the signed February 11, 2010 joint move-in condition inspection report and the joint move-out condition inspection report signed by the tenant and the landlord's property management company on July 2, 2014 or July 3, 2014. In this report, the condition of the rental unit is similar, with some minor exceptions, between the time of the move-in and the move-out. The damage at the end of this tenancy was limited to the following comments in the joint move-out condition inspection report;

> *…Small chips and marks – Considered normal wear + tear – Tenant agrees to pay two days rent – pro-rate…*

The tenant signed a statement where he agreed to a deduction of 2 days of pro-rated rent with no deduction from the pet damage deposit.

The landlord confirmed that he was familiar with the signature of the representative of his property manager who conducted the joint move-in condition inspection. The landlord questioned the identity of the person who signed the joint move-out condition inspection report on behalf of the property management company he had hired. The tenant gave undisputed sworn testimony that the person who conducted the joint condition inspection as the landlord's representative at the time of his move from the rental unit was the president of the company hired by the landlord as his property manager for this rental unit.

For his part, the landlord explained that the condition of the rental unit as outlined in the joint move-out condition inspection report provided to him by the property management company he had hired was "so radically different than the reality of the move in/move-out report" that he decided to conduct his own move-out condition inspection and report of the condition of the rental unit. He entered a copy of this move-out report he signed into written evidence at the end of the previous hearing. This inspection was conducted solely by the landlord, without any attempt to ask the tenant or anyone else to participate in this inspection.

The landlord's report identified many aspects of the tenancy that were either dirty, damaged or missing. Many of the claims identified by the landlord relate to an assertion that dogs that the tenant claimed were "outdoor dogs" were actually allowed into the rental unit. At the hearing, the landlord claimed that the tenant was running a "puppy mill" from the rental property, which caused considerable damage to flooring and walls. The two move-out reports are so different as to raise initial questions as to whether they identify the same rental unit.
By way of explanation, the landlord's legal counsel entered into written evidence the following statement regarding the landlord's concerns about the relationship between the tenant and the property management company the landlord had hired to look after this rental unit for him:

> *…The Landlord had reason to believe that the Tenant and the management company had been colluding, so wanted to complete his own inspection report on the same day the tenant vacated the premises…*

Neither the landlord nor his legal counsel introduced anything further to support this allegation that the tenant was in some way "colluding" with the landlord's own property management managers. The landlord testified that he took photographs at the time of

his own inspection so as to create a true record of the condition of the rental unit at the end of this tenancy.

It is truly unusual for a landlord to ask that the joint move-out report conducted by the company he hired to conduct the joint move-out condition inspection be disregarded in favour of his own inspection that he undertook solely by himself. I can appreciate the frustration that an absentee landlord such as this one would experience if the representative hired to look after the landlord's interests did not attend to those duties in accordance with the terms of their contract. As I noted at the hearing, issues in dispute between the landlord and his authorized agent extend beyond my jurisdiction.

The *Act* establishes a process whereby a tenant is obligated to comply with requests made by a landlord's legally appointed representative acting in the landlord's place as the landlord's agent. Under such circumstances, I find that a joint move-out condition inspection report signed by the tenant and the landlord's legally appointed agent has far more weight than a report undertaken by a landlord by himself after the tenancy ended. Accordingly, I dismiss the landlord's application for a monetary award for specific damage to all of the items outlined in his application for dispute resolution as the signed joint move-in and move-out condition inspection reports display little damage during the course of this tenancy, but for normal wear and tear. As set out below, I have allowed a portion of the landlord's claim for the general cleanup of the rental unit and rental property, which includes an allowance for some minor repairs.

I also note that the landlord clearly intended to undertake major repairs to the rental unit when he issued the 2 Month Notice to the tenant in April 2014. Had the tenant chosen to dispute the 2 Month Notice, the landlord would have been required to demonstrate that his repair plans were so significant that he could not have allowed the tenant and his family to remain in the rental unit or even relocate temporarily while the work was undertaken. Given that the tenant did not dispute the 2 Month Notice and my finding that the landlord did undertake major repairs, I find that the landlord fully expected to be in a position whereby he would be commencing major renovations and repairs. The landlord testified that he built this house in 1999 and there had been few if any renovations or repairs to many of the items identified in the landlord's claim for a monetary award. While some of these repairs may have been unanticipated at the time he issued the 2 Month Notice, it would seem that at least some of the damage claimed by the landlord is for items that were past their date for replacement.

I also find that at least some of the photographs supplied by the landlord revealed woodwork and other features of the rental unit that looked as if they had been subject to considerable wear and tear over the years, as opposed to any visible recent damage or

lack of care. Some of the explanations provided by the landlord for the source of the damage claimed was difficult to understand and lacked any reasonable connection to the tenant's activities. For example, the landlord's claim for ceiling damage resulted from the landlord's claim that he found a single glass bottle placed in a toilet tank to lower the flow in that tank. Although he conceded that he never saw any other items in the toilet tank, the landlord speculated that other items may also have been placed in the toilet tank by the tenant, which may have caused leakage in the ceilings below. There could be many explanations as to why there was leakage in a ceiling, many of which would have nothing to do with the tenant's actions. Similarly, the landlord requested a monetary award for dumping materials which the landlord maintained may constitute industrial waste. As a general observation, I find many of the landlord's requests speculative and unsubstantiated by his evidence or any witnesses.

While I accept that the most accurate account of the condition of the rental unit at the end of this tenancy was the joint move-out condition inspection report signed by both the landlord's representative and the tenant, I also find that the landlord's photographs reveal sufficient evidence that the tenant did not leave the rental unit in reasonably clean and undamaged condition as required by paragraph 37(2)(a) of the *Act*. For this reason, I accept that the landlord was required to undertake more cleanup of the rental unit, both inside and outside, than would have been required, even for a rental property that the landlord was planning to repair so extensively that he needed the tenant to vacate the premises in order to conduct these repairs.

Arriving at a suitable monetary award for these general cleanup tasks and removal of debris is complicated by what I find to be the landlord's excessive requested hourly wage rate of $50.00 per hour and the number of hours he maintained were required to undertake these duties. The types of tasks identified in the landlord's application (e.g., cleaning dog feces from the yard; breaking up and removing a dog house; general cleaning) could likely be obtained through general labourers at an hourly rate that would be much less than the $50.00 per hour requested by the landlord. In general, I find the landlord's requests out of line with the magnitude of the task at hand, as revealed in the photographs, the landlord's best evidence of entitlement to any monetary award for these items.

Rather than the claims submitted by the landlord for cleaning and removal of debris and items left behind by the tenant, I find that the landlord is entitled to a much reduced monetary award. Given that the landlord was planning to undertake major repairs and renovations that also would have required major cleaning, I limit the landlord to a monetary award of $600.00. I arrive at this amount by finding that three full days of cleaning, minor repairs and removal of debris were likely required as a result of the

tenant's failure to leave the premises in reasonably clean and undamaged condition, beyond what would be anticipated through normal wear and tear. Three full eight hour days at a rate of $25.00 per hour results in the monetary award of $600.00. I also allow the landlord's claim for the recovery of $26.00 in dump fees, a cost that I accept the landlord incurred to remove items left behind at the end of this tenancy. As the landlord has been partially successful in his application, I allow him to recover $50.00 from his filing fee from the tenant.

Conclusion

The decision and monetary Order of June 5, 2015 is set aside and of no continuing force or effect.

I dismiss the tenant's application without leave to reapply. I issue a monetary Order in the landlord's favour in the amount of $676.00, for damage arising out of this tenancy and for the partial recovery of his filing fee.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant 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.

I dismiss the remainder of the landlord's application without leave to reapply. The landlord's application to retain the tenant's security deposit is withdrawn.

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: October 2, 2015

Residential Tenancy Branch