



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNR, MNDC, OLC, RP, LRE, O, FF

For the landlord – MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The hearing was adjourned to provide more time for the parties to give evidence for their respective claims and was reconvened on this date.

The tenants applied for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; For an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; other issues; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided a considerable amount of documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties also provided evidence that was served late. As both parties have now had time

to view and consider the late evidence due to the adjournment of the proceeding I will now allow the late evidence it to be accepted and the parties have been informed of this in the interim decision. 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.

Preliminary Issues

The parties confirmed that the tenants have vacated the rental unit. Consequently, the tenants have withdrawn from their application their request for a Monetary Order for the cost of emergency repairs as no money was paid for emergency repairs; their application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and for an Order for to suspend or set conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 01, 2007 for a fixed term of a year. The tenancy then continued on a month to month basis. Rent for this unit was \$1,150.00, plus a share of extra utilities, per month. The tenants paid a security deposit of \$575.00 on February 13, 2007. No move in or move out inspection reports were

completed and the tenancy ended on January 31, 2015. The tenants provided a forwarding address in writing on January 31, 2015.

The tenants' application

The tenants testified that on July 18, 2012 the landlord informed the tenants that a renovation of the property was taking place. The landlord resided upstairs and the tenant's unit was in the basement. The landlord also informed the tenants that the bedrooms would not be affected by the renovation. The tenants made arrangements to stay at their daughters for two weeks in October, 2012 while renovations took place in their unit. On September 24, 2012 the landlord asked the tenants to wrap up any valuables and to put them in the storage room. On October 03, 2012 the landlord informed the tenants that they could not use the storage room and to put their valuables in a tent. On October 06, 2012 the tenants left the unit and when they returned later that day they found all their belongings had been stacked up in the master bedroom and nothing was covered to prevent dust and debris.

The tenants testified that the landlord did give them a rent free month for October, 2012 and the tenants returned to the unit on October 24, 2012. There was no mention that the tenants had to remain out of the unit for the entire month of October. The landlord's belongings were put in a storage container but the same storage was not offered to the tenants. The landlord did not offer to put the tenants into alternative accommodation during the renovations. The landlord did not give the tenants a Two Month Notice for landlord's use of the property because the renovations made the unit unfit for occupation.

The tenants testified that they could not enjoy their unit or use all areas of the unit due to the continued renovations from October 03, 2012 to the end of February, 2014. The landlord's contractors continually entered the tenants' unit without prior notice sometimes two and three times a day. The tenants testified that they lost sole occupancy of the unit and their tenancy was devalued due to the mess caused by the

renovations, the presence of contractors without notice and the renovations themselves which prevented the tenants enjoying the space they paid rent for.

The tenants testified that they had to thoroughly clean the unit and all their belongings from the drywall dust, the debris left by contractors and the sawdust. The tenants wrote to the landlord and informed the landlord that they were devastated that their belongings were stacked up in such a way and not covered to prevent dust and damage even though they were assured their belongings would be covered.

The tenants spent many months cleaning the unit and their belongings and seek to recover the amount of \$644.00 for cleaning products, for some sinus relief due to the dust, for replacement light bulbs, for a damaged Brita water filter, for a large amount of laundry detergent used to wash all their clothing covered in dust and for the cost to replace some work clothes they needed but which they could not access due to the way their belongings were stacked up and the closets were blocked off. Other belongings were damaged such as the vacuum which could not deal with the drywall dust and the printer cartridge which was covered in dust. As part of this claim the tenant also seek to recover the costs for transport to and from work on the bus as their daughter's home was about 45 minutes away and for a cab fare to take the tenants and their belongings to their daughters at the beginning of October, 2012.

The tenants seek to recover their labour costs to clean the unit and their belongings. The tenants obtained some quotes from cleaning companies and averaged out these quotes to \$700.00. The tenants testified that it took months to do the work as contractors continually walked through their unit and sawdust and dust still came in from the renovations upstairs.

The tenants seek to recover the amount of \$2,553.00 for physical stress, mental anguish, grief and damage to property. The tenants were devastated at the level of damage to their personal belongings. There were given no consideration by the landlord and they could not move out due to financial considerations. The contractors piled their

tools and equipment at the tenants' entrance way which created a hazard when the tenants had to enter their unit at night. There were no lights working in this area and the tenants had to ask the landlord to put a light in. The outside area was filled with garbage and debris from the construction to both the tenants' unit and the landlord's unit upstairs.

The tenants seek a rent reduction of \$21,102.50. This is comprised of a full reduction in rent for November and December, 2012 and for January, February, March, and April, 2013 of \$6,900.00 for the months the renovations were being carried out in the tenants' unit and the renovations in the landlord's unit which affected the tenants' unit. An amount of \$4,312.50 for the months of May, June, July, August, September, 2013 for the continued construction and renovations in the rest of the house which disturbed the tenants' quiet enjoyment and the constant entry to their unit by contractors for the electrical panel, obstructions, noise and lack of privacy. An amount of \$2,300.00 for October and November, 2013 for constant and repeated entry without proper notice and for flooding and damages caused. The amount of \$7,590.00 for the months of December, 2013 through to October, 2014 as the unit was left in a state of disrepair with holes in the walls and ceiling, a disgusting carpet, broken window screens and a yard filled with construction scraps, toilets, sinks, fiberglass insulation, tires etc. When the tenants asked for repairs to be made the landlord told them to move out if they did not like it. The tenant testified that they have based their calculations on the rent reductions according to the different states of the unit over the months and how much the unit could have been rented for in its current condition at the times.

The tenants' referred to their photographic evidence showing the condition of their rental unit and the outside area. The tenants also referred to their documentary evidence of quotes and receipts.

The landlord disputed the tenants' claim. The landlord agreed that the renovations took place on the whole property and the tenants' photographs do reflect the condition of their unit and outside area. The landlord testified that the holes shown in the

photographs were dry walled and taped and the renovation in the tenants' unit was finished by April, 2015 after the tenants had vacated the rental unit. The tenants delayed some of the work as they refused entry to the landlord's contractors to finish off the drywall repairs. The landlord testified that the flooding was caused when the framer punctured a water pipe.

The landlord disputed the tenants' claim that they had to do all the cleaning in the unit. The landlord testified that prior to the tenants moving back into the unit on October 24, 2012 the landlord cleaned the bathroom and kitchen and wiped down all the surfaces and some furniture that the landlord could reach and vacuumed the carpets. The kitchen cupboards were covered in plastic so they did not get dusty and the door to the master bedroom was closed. The landlord testified that the only part of the unit not cleaned was the small bedroom as it still contained the tenants' belongings. If the tenants had not come back to the unit earlier than anticipated in October, 2012, as they were given the month rent free to find somewhere else to stay for the entire month of October, the landlord would have had time to do all the repairs and cleaning including the drywall and cleaning in the small bedroom.

The landlord testified that the tenants asked to move back in on October 24, 2012 and were warned that if they do move back early only some areas of the unit are ready for occupation. The tenants were aware the small bedroom was not ready. The landlord referred to her emails stating that rent will be adjusted for the period the tenants are out of the basement and states they support her claim that the tenants should have been out for the entire month of October when in fact they did not move out until October 06 and moved back in on October 23, 2012. The landlord disputed that the tenants used a taxi van to move belongings to their daughters and the landlord was not aware the tenants were only going to be gone for two weeks.

The landlord testified that the carpets were not steam cleaned but vacuumed as the carpets had previous staining caused by the tenants prior to renovations taking place. The landlord testified that she asked the tenants to speak to the contractors about

where their furniture should be placed. The landlord disputed the tenants' claim for \$644.00 and for \$700.00 for cleaning.

The landlord testified that it was her contractor who suggested that the tenants would be able to stay in the unit during the renovations. The landlord testified that she renewed the heating system and took down the ceilings in the tenants' unit. Extra holes had to be cut to reinforce the roof. It was the tenants who offered to vacate during October before the landlord could do anything else. The tenants were told prior to the renovations starting that they had the option to move out. The landlord agreed that she did not consider serving the tenants with a Two Month Notice to End Tenancy.

The landlord disputed the tenants' claim for a loss of quiet enjoyment. The landlord testified that over a two year period the landlord or contractors only entered the tenants' unit 31 times and on some occasions an email was sent to the tenant the night before entry took place. The landlord's written submissions show that entry took place over a two year time span. Total number of entries based on the tenants' evidence and by knocking on their door was 31 times this was comprised of a total number of entries for inspection or access to boiler room or electrical panel was 15 times; total number of entries due to maintenance issues unrelated to the renovation was four times; and total number of entries to complete work related to the renovation was 12 times.

The landlord testified that construction work cannot go on all day every day and finds the tenants request for compensation to be unrealistic. A maximum working day is eight hours representing 33 percent of a 24 hour period. The landlord referred to the work schedule provided in documentary evidence which shows the total number of working days of eight hours by contractors was 199.1 including both hard and soft days of construction with the soft days only having a minimal impact on the tenants . These days also include days in October, 2012 for which the tenants have already been compensated with not having to pay rent and utilities for October despite only being out of the unit for 18 days and for February, 2013 when they received a rent reduction of \$270.00. The landlord testified that taking into account the "soft days' which did not

impact greatly on the tenants a more realistic claim for a rent rebate for the entire period of renovations would fall somewhere between \$913.70 and \$1,691.42.

The landlord testified that no further rent rebate should be allowed as the landlord has improved the basement unit which the tenants would have benefitted from. The electric heating was changed to hotwater heating, the low beam was made higher to prevent the tenants banging their heads and a kick space heater was put in as the underfloor heating no longer worked, a closet space was also created when the landlord took back the storage space from the tenants. The landlord testified that the rent had not been raised during the tenancy.

The landlord testified that the tenants refused entry for the drywall to be completed. Dry wall sections had to be cut out in the master bedroom, two in the small bedroom, one between the boiler room and kitchen cabinet. The only drywall repair not completed when the tenants moved back in in October, 2012 was in the small bedroom. This work was completed by November 27, 2012. Extra drywall panels had to be cut out after it was found that structural supports were required and the tenants would only let the contractors put up drywall to cover the holes but refused to allow them access to mud sand and paint the drywall. The landlord referred to the tenants' email sent in May, 2013 where the tenants stated that sanding the drywall is out of the question. This shows the tenants delayed getting the work completed. The landlord testified that she did not offer the tenants a storage container. The landlord explained that she used one as she does have a lot of furniture. The tenants' furniture was able to fit in one room except the kitchen things which were left in the cabinets and covered. It was the tenants' idea to pitch a tent to store their belongings and these belongings reminded there for many months.

The landlord does not believe the tenants suffered a loss of quiet enjoyment or that this renovation work devalued their tenancy. The landlord testified that all of the building debris was cleaned up by August 18, 2014 and there had been regular bin removals up to that date. The landlord cleaned up outside after the roofers replaced the roof. The

landlord disputed the tenants' claims that the outside was a mess. The landlord testified that the tenants were given notice by email for entry to the unit as this was their normal method of communication when the landlord was living in Ontario and could not put a notice of entry on their door. The landlord referred to the many emails provided in evidence. The landlord agreed that some emails did not provide 24 hours' notice and testified that she could not always do this as she was not given notice by her contractors when they were coming to do work. The landlord testified that at least six hand written notes and some emails did provide 24 hours' notice of entry. The tenants' email sent on November 05, 2012 simply asks the landlord for a heads up when contractors will be coming into their unit. Some of the entry was also classed as an emergency repair for example when there was a flood in the tenants' unit and for some electrical work.

The landlord testified that the tenants' claim that contractors entered five times a day is grossly exaggerated when the landlord asked the contractor, the landlord was told that the carpenter accessed the tenants' unit to get at the electrical panel over a period of two to three days and two to three times a day during that period in December, 2012. After February, 2013 the landlord's unit had its own electrical panel and contractors no longer needed to access the tenants' electrical panel in their unit.

The landlord called her witness AP. The witness testified that she works for the landlord's family on other property and has been a property manager for 30 years. The witness testified that the landlord asked her to accompany the landlord to the unit on the day the tenants vacated. The male tenant thought the witness was a prospective tenant and proceeded to tell the witness that she would wake up with headaches every morning. He spoke about floods and mould and a rat problem and stated that the landlord was the worst landlord. The witness testified that she looked at the unit and could not see any mould. The carpet had some marks that did not appear to be caused from construction.

The tenants disputed the landlord's claims. The tenants testified that they have provided three emails stating what needed to be done in the small bedroom this could not be done until the tenants had emptied out the bedroom. The tenants testified that there was never any mention that they had to stay out of the unit until November 01, 2012. The landlord told the tenants not to deal with the contractors. The tenants testified that with regard to the drywall repair they were told it would be repaired on November 08, 2012; then again it would be repaired the next week. Then they were told January 29, last February, March 04, the end of March, On March 06 they were told it would be repaired on April 14, then told it would be repaired quite soon and then on the following Friday, they were told it would be repaired on April 15 and then after Wednesday. On April 18, 2013 a contractor came to do the drywall and asked the tenants when they were leaving as it was a dirty job. This was seven months after it was supposed to be repaired. On April 20, 2013 the tenants did refuse entry and the landlord decided to just put drywall over the holes instead and not to mud these sections. On April 30, 2013 the tenants were told it would be done the next morning. The landlord did not provide 24 hours' notice and due to the level of drywall dust, which would be created, the tenants refused entry as they needed to protect their belongings. A few hours' Notice by email was not sufficient for the tenants to remove their belongings.

The tenants testified that the landlord's pictures showing carpet staining shows the staining that occurred on the carpets from the first flood that occurred on December 01, 2012 and the landlord's pictures were taken on January 24, 2013. The tenants referred to their email sent to the landlord documenting their concerns about the renovation work and how this was affecting their lives. All of this could have been avoided if the landlord had acted responsibly and addressed the tenants' concerns. The landlord felt that as she was improving the unit the tenants should not complain and if they did not like it they could move out.

The parties decline to cross examine each other on their evidence.

The landlord's application

The landlord testified that the tenants have been continually late with their rent. Over the course of the tenancy there have been 84 months of late payments. The landlord testified that she did not charge late fees to the tenants at the time as the tenants were having a hard time just paying the rent. The male tenant also emailed the landlord and agreed to pay any bank fees incurred due to late payment of rent. The landlord referred to clause seven of the tenancy agreement signed by both parties. This clause states that 'late payments are subject to a charge against the security deposit as liquidated damages at a rate of \$2.00 per day, minimum of \$6.00. In addition, each returned cheque, including NSF, is subject to a service charge of \$10.00. These charges are subject to change, to reflect increases in costs, upon approval of the Rentalsman and charges are subject to one month's notice to the tenant.'

The landlord testified that she seeks to recover late fees for 84 months at a rate of \$25.00 per month to a total amount of \$2,100.00. The landlord referred to the summary listing all payments, bank slips indicating late payments, 10 Day Notices to End Tenancy for unpaid rent sent to the tenants during the tenancy, the One Month Notice to End Tenancy for cause due to late rent payments and other supporting evidence.

The tenants disputed the landlord's claims. The tenants testified that when they moved into the unit they told the landlord that they get paid on the 5th and 20th of each month and the landlord agreed the tenants could pay half the rent on each of these dates. The tenants accepted that sometimes the rent was paid later than these dates if they could not get to the bank on time or for other unforeseen reasons. When they were really late they did offer to pay any bank fees incurred by the landlord. The tenants testified that the landlord's emails show she accepted that rent could be paid on the 5th of each month. The tenants could not show which emails they referred to showing this agreement.

The landlord asked the tenants why when the male tenant had a rent cheque from his trust account did the tenants not get ahead with the rent to ensure the rent was paid the

following month on time. The tenants responded that they were financially poor at the time and the trust fund only allowed the tenant to access it for emergencies and as the tenants knew they would be evicted if they did not pay the rent they were able to get some money from the trust fund.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's and tenants' claims and my findings around it are set out below.

With regard to the tenants' application for \$644.00 for cleaning products, household items, clothing and replacement items. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

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

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

I have considered the tenants' documentary evidence concerning the items purchased. I find many of the receipts are illegible, some receipts do not have further evidence to back up the rationale as to why the tenants purchased certain items, some receipts show items purchased while the tenants were not in the unit and some receipts are for drugs that have no bearing or support in the tenants' claim or information from a medical practitioner showing why the tenants were on a drug, how long and what the cause of the ailment was. There is insufficient evidence to show the quantity of washing the tenants needed to do due to drywall dust and debris left on their clothing that would warrant such a significant amount of washing detergent to be used. The tenants have also applied to recover costs for work clothes they could not access in the unit. While I accept the unit was piled high with their belongings the tenants should have removed whatever clothing they needed prior to going to stay at their daughters and could have accessed work clothing when they returned to the unit by taking down some of the piles that blocked the closet. The tenants have insufficient evidence to show the printer cartridge was damaged and there is insufficient evidence to show any cab fares incurred. With this in mind I must limit the tenants' claim to recover some of their costs as follows:

The tenants have applied to recover the cost of their vacuum cleaner which they testified was damaged due to drywall dust. Domestic vacuums are not often built to withstand construction debris and dust and I am satisfied that the tenants' vacuum was damaged as a result of the renovation work and will allow the tenants to recover replacement costs of **\$146.71**. I am also satisfied that the tenants did have to do cleaning in the unit over the course of the renovations and that some of their clothes required washing due to the renovation dust and debris. I am therefore prepared to allow the tenants' claim for some of the laundry detergent and conditioner to an amount of **\$80.00** as the tenants would still have had to do normal loads of washing during this time period. I will also allow the tenants claim for some of the light bulbs and incidentals and award the tenants a limited amount of **\$60.00** as they would be responsible to replace any bulbs that burnt out during this time period if renovations did not take place. I will allow the tenants to recover the cost for some cleaning supplies. I award the

tenants the amount of **\$150.00** as the tenants would still have had to have purchased some cleaning products to clean the unit had renovations not taken place. I also accept the tenants had to vacate the rental unit during part of the month of October and incurred some travel costs getting to and from work. I will therefore allow the tenants' claim for fee savers card of **\$42.00**. The reminder of the tenants' claim based on the illegible and unsubstantiated receipts provided and for items such as tooth brushes, medication, toilet tissue and other miscellanies items do not met the burden of proof that these had to be purchased due to the renovations continuing in the tenants' unit. The tenants are therefore entitled to recover the amount of **\$478.71**

With regard to the tenants' claim for cleaning costs of \$700.00 based on their time and labour. The landlord argued that the tenants agreed to vacate the unit during the month of October, 2012 for renovations to take place. The tenants did not have to pay rent for October and should have remained out of the unit for the entire month. The tenants were only out of the unit for 18 days and then returned on October 24, 2012. This prevented the landlord finishing off some of the renovations in their unit and completing the cleaning before the end of October. The tenants argued that the landlord did not clean the entire unit or their belongings and additional cleaning had to be done by the tenants throughout the course of the renovations. I have considered both arguments in this matter and find the tenants' testimony more credible that there was a substantial amount of cleaning to be done in the unit. While I accept the tenants were given a rent free month and left late and returned early in October the tenants still had to do some cleaning of their personal belongings and the unit not just in October but during the remainder of the renovation period. The tenants' photographic evidence shows that many of their belongings were covered in dust from the drywall and what appears to be paint splatters and some kind of fungus. The tenants seek to recover \$700.00 for cleaning over the entire period the renovations continued. I do not find the landlord evidence credible that she had cleaned the unit sufficiently as she stated she was only able to clean areas she could get at. There was no mention of any cleaning done to the tenants' belongings which the evidence shows were left in a state that leads me to believe they were not sufficiently covered or protected from drywall dust and paint. I

therefore find in favor of the tenants' claim to recover costs associated with their labour and time to clean the unit and their belongings of **\$700.00**.

With regard to the tenants' claim for damages for physical stress, mental anguish, grief and damage to property of \$2,553.50; I accept that the tenants did suffer through a renovation project not just to their unit but also to the landlord's unit above. This work continued for a long period of time and while not all the work was concentrated in the tenants' unit the tenants still had to suffer from the noise, debris, constant coming and going into their unit often without proper notice and the access to their unit through the construction debris left outside. For renovations of this nature the landlord should have served the tenant with a Two Month Notice to End Tenancy for repairs or renovations or at the very least paid for alternative accommodation for the tenants to reside elsewhere while the majority of the renovations took place and paid to store the tenants' belongings. I am satisfied that the tenants did not have sole possession of their unit during the renovation period, the tenants were not able to access their entire unit during the same period and many of their personal belongings were either inaccessible or damaged during the renovation process. Had the landlord paid for the tenants to reside elsewhere and provided a storage container for the tenants' belongings many of these issues could have been avoided.

However, the tenants have not provided corroborating evidence to show the cost to replace any personal damaged items other than the vacuum cleaner which has been dealt with above or the cost of professional cleaning of the same items. I must therefore limit the tenants' claim due to this. It is my decision that the tenants are entitled to the amount of **\$1,500.00** for the stress and mental anguish they suffered as a result of the landlord's renovations and the amount of **\$300.00** to compensate them for any undisclosed damage to their property as shown in their photograph evidence.

With regard to the tenants' claim for rent reductions spanning the length of the renovation period. The tenants seek to recover the amount of \$21,102.50. The tenants have calculated this amount between November, 2012 and October, 2014. I have

considered both arguments in this matter. I refer the parties to s.28 of the Act which states:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants have the burden of proof to show that the renovation work in their unit and the rest of the house caused the tenants to suffer a loss of quiet enjoyment and that some services and facilities were restricted. The tenants have provided photographic evidence showing the condition of their unit during and after the renovations took place. The landlord has provided details concerning the times the work was going on and referred to soft and hard construction stating that soft construction would not adversely affect the tenants' right to quiet enjoyment. In my experience any construction on a property is noisy and intrusive, the whole site shows as being a construction site with the yard filled with construction debris resulting in limited or dangerous access to the tenants' unit, the level of work in the tenants' unit would certainly create mess, dust and the loss of parts of their unit and facilities enjoyed in the unit. The noise from the work carried out in the landlord's unit, roof and outside on framing and siding would certainly be sufficient to disrupt the tenants with the noise created by the roofers and the sound from hammers, nail guns and staple guns for the siding. It is clear the tenants' lives were significantly disrupted due to this. I further find the tenants suffered a flood in their unit as a result of the framer damaging a water pipe, while this is not directly the landlord's fault; the landlord is still responsible for any workers doing construction on the property. While I accept the tenants could have vacated the property at any time, this is not always an option for some tenants due to financial constraints.

However, I also accept that the construction workers did not work every day at the unit and accept the landlord's calculations as to the days and time they were on site. Based on this I find the construction work itself carried on over a period of 199.01 days. For part of this time the tenants had already been compensated with a rent reduction for October, 2012 of \$1,150.00 **for utilities not paid of \$120.00 in October, 2012** and for February, 2013 of \$270.00. However, even though the construction workers were only on site for 199.01 days the tenants still had to live with some construction disruption to their daily lives, the debris in the yard, the constant flow of people coming and going from their unit on 31 occasions, most without proper notice of entry; the mess and dust from construction both in and outside their unit and the continued renovations after the tenants thought their unit was completed.

With this in mind I find the tenants' claim that they suffered a loss of quiet enjoyment to be upheld although I find their calculations for a rent reduction for the period between November 2012 to April, 2013 of \$6,900.00 to be excessive; I therefore limit the tenants' claim to **\$5,500.00** as the bulk of the repairs to their unit was completed during this period, the tenants were able to return to their unit and had the use of part of the unit and the tenants had also received a rent reduction for February of \$270.00.

As for the tenants' claim for \$4,312.50 for the period between May, 2013 to September, 2013 for the period construction continued on the rest of the house. I find the tenants suffered from constant entry to their unit, obstruction to the access to their unit, continued noise and lack of privacy which devalued their tenancy further. I find the tenants are entitled to an amount of **\$2,875.00**.

As for the tenants' claim for of \$2,300.00 for the period between October and November, 2013 for continued and repeated entry without notice, for emails, notes, a further flood in their unit and damages to property. The landlord and tenants normal method of communication was by email and the landlord does have a right to communicate with the tenants as to problems within the tenancy. However, I do find the lack of proper notice of entry to be a concern. Even if the landlord provided this by email

on many occasions the notice should still have been 24 hours' notice. While the damage to the tenants' property has been addressed under a different section of their claim I do find their tenancy was devalued during this time period and I have limited the tenants' claim to **\$800.00**.

As to the tenants' claim for \$7,590.00 for the period between December, 2013 and October, 2014 for the condition the unit was left in. I find the unit was not fully repaired and the tenants were within their right to deny access without proper notice being served as they did not want any further mess or disruption while they lived in the unit. I also find the carpet was left stained and am satisfied from the tenants' evidence that this was caused by a previous flood in their unit; the tenants' evidence also shows broken window screens and the yard filled with debris. However, as the work on the tenants' unit was complete with the exception of the drywall sections I find the tenants' claim to be excessive for this time period and the impact on their tenancy was less than with earlier months. I find the tenants are entitled to a rent reduction for this period of 11 months of \$150.00 a month to an amount of **\$1,650.00**. Consequently, the tenants' claim for a rent reduction is limited to a total amount of **\$10,825.00**.

With regard to the landlord's application to recover late fees for 84 months the tenants paid their rent late. The landlord is entitled to bring a claim against the tenants for a period of two years after the tenancy has ended. The landlord has the burden of proof in this matter that rent was paid late on 84 months and that the tenancy agreement allows a late fee to be charged. The tenants agree that rent was paid late during the course of the tenancy but argued that they had a verbal agreement with the landlord to pay the rent on the 5th and 20th of each month.

The tenants testified that the landlord's email correspondence confirmed this. I have reviewed the email correspondence and find there is no reference to an agreement made for the tenants to pay rent on the 5th or 20th of each month. Rather the emails refer to demands for the tenants to pay the rent as it is continually late. Furthermore, the

landlord has served the tenants with a number of 10 Day Notices for unpaid rent and a One Month Notice to End Tenancy for repeatedly late payment of rent.

I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause included that notifies the tenants that a late fee will be charged. This fee in the tenancy agreement is above the amount allowable under the *Act* which is a maximum of \$25.00 a month; however, this does not nullify this clause and it is amended to \$25.00 per month. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$2,100.00** in late fees for 84 months.

As both parties claims have merit I find the parties must each bear the cost of filing their own applications.

I have offset the landlord's monetary award of **\$2,100.00** from the tenants' monetary award of **\$13,803.71** leaving a balance due to the tenants of **\$11,703.71**.

Conclusion

For the reasons set out above I uphold the landlord's claim to recover **\$2,100.00**. This amount has been offset against the tenants' monetary award as detailed above.

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 67 of the *Act* in the amount of **\$11,703.71**. 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.

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*.

NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON AUGUST 27, 2015, WHICH HAD AN INADVERTENT OMISSION AND OBVIOUS ERROR.

Dated: October 07, 2015

Residential Tenancy Branch

