Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 17, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents.

On May 22, 2015 the Landlords submitted 30 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants on May 17, 2015 with the Application for Dispute Resolution. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 05, 2015 the Tenants submitted 23 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlords on October 02, 2015 by registered mail. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 08, 2015 the Landlords submitted 3 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via fax, on October 07, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

During the hearing the Landlord referred to photographs of the carpet in the rental unit, which I did not have in my possession. The Landlord was advised that I only had two photographs that were submitted in evidence by the Landlord, both of which were of the oven.

The Landlord stated that she "thought" she submitted six photographs with the evidence package submitted on May 22, 2015, two of which were the photographs in my evidence package. The male Tenant stated that he only has the two photographs of the oven in the evidence that was served to the Tenants by the Landlords.

During the hearing the Landlord stated that she submitted a copy of the tenancy agreement with the evidence package submitted on May 22, 2015. I did not have a copy of the tenancy agreement in the evidence package submitted by the Landlords. The male Tenant stated that a copy of the tenancy agreement was not included in the evidence that was served to the Tenants by the Landlords.

Although I have no reason to conclude that the Landlord was attempting to mislead these proceedings when she stated that the tenancy agreement and six photographs were submitted in evidence by the Landlords, I find, on the balance of probabilities, that she is mistaken.

In determining that the tenancy agreement and six photographs were not submitted in evidence on May 22, 2015 I was influenced, in part, by the Residential Tenancy Branch cover sheet for that evidence, which indicates there are a total of 31 pages in the evidence package. I note there are 30 pages in the evidence package plus a cover page, for a total of 31 pages and I therefore find it reasonable to conclude that I have all of the pages that were submitted on that date.

In determining that the tenancy agreement and six photographs were not submitted in evidence on May 22, 2015 I was influenced, in part, by the testimony of the male Tenant who stated that the Tenants were only served with two photographs and they were not served with the tenancy agreement. This testimony, in conjunction with the fact that the tenancy agreement and the "missing four photographs" were not available in my evidence package causes me to conclude that the Landlord failed to serve those documents. To conclude otherwise would require me to conclude that the documents were misplaced by the Residential Tenancy Branch and the Tenants, which I find highly unlikely.

In determining that the tenancy agreement and six photographs were not submitted in evidence on May 22, 2015 I was influenced, in part, by the testimony of the Landlord, who declared that she "thought" she submitted six photographs. I found her testimony in this regard to be forthright and, given her uncertainty and the passage of time, I find it entirely possible that the tenancy agreement and the "missing four photographs" were not submitted in evidence.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?
Are the Landlords entitled to retain all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began in 2012;
- the parties entered into a written tenancy agreement;
- the Tenants agreed to pay monthly rent of $5,100.00 by the first day of each month;
- the Tenants paid a security deposit of $2,550.00 and a pet damage deposit of $2,550.00;
- a condition inspection report was completed on August 11, 2012, a copy of which was submitted in evidence;
- the tenancy ended on March 31, 2015;
- the rental unit was jointly inspected on March 30, 2015, at which time the Tenants were advised the rental unit was not in satisfactory condition;
- the rental unit was jointly inspected again on March 31, 2015, at which time an agent acting on behalf of the Landlords identified several deficiencies with the rental unit;
- the male Tenant did not agree that there were deficiencies with the rental unit when the unit was inspected on March 31, 2015;
- the male Tenant left the rental unit on March 31, 2015 without signing the condition inspection report because he did not believe the report accurately reflected the condition of the rental unit; and
- the Tenants provided the Landlords with a forwarding address, via text message, on April 05, 2015.

A copy of the condition inspection report that was completed on March 31, 2015 was submitted in evidence. This report is signed by an agent for the Landlords but it is not signed by the Tenant.

The Landlords are seeking compensation, in the amount of $315.00, for cleaning the carpets at the end of the tenancy. The Agent for the Landlords stated that the carpets were dirty, in part because they had two dogs. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that the carpets were cleaned on March 28, 2015 with a personal industrial cleaner owned by the Tenants and their dogs were not allowed in carpeted areas. He stated that there had been several “open houses” prior to the start of the tenancy and the carpets were not, therefore, clean at the start of the tenancy.
The Landlords are seeking compensation, in the amount of $606.37, for cleaning the rental unit at the end of the tenancy. The Agent for the Landlords stated that the rental

unit was not left in clean condition and it took four people approximately eight hours to clean the unit. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that the rental unit was cleaned prior to an initial inspection on March 30, 2015; that the agent inspecting the rental unit on that date had unreasonably high expectations regarding cleanliness; that they cleaned the rental unit again after the inspection on March 30, 2015; that the agent inspecting the rental unit on March 31, 2015 was still not satisfied with the cleanliness of the rental unit; and that he believes the rental unit was left in reasonably clean condition.

The Landlords are seeking compensation, in the amount of $359.10, for cleaning the windows in the rental unit. The Agent for the Landlords stated that the windows were dirty at the end of the tenancy and both the inside and the outside of the windows needed to be cleaned. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that the interior windows were cleaned on March 29, 2015 or March 30, 2015; all of the exterior windows had been cleaned in the summer of 2014; and some of the exterior windows were cleaned at the end of the tenancy.

The Landlords are seeking compensation, in the amount of $579.17, for painting the rental unit. The Agent for the Landlords stated that the Tenants had “touched up” several areas on the wall and that the repairs were obvious; that there were several nicks, scratches, and “small chunks” in the walls; and there were some nail holes in the walls. The Agent for the Landlords acknowledged that the condition inspection report completed at the start of the tenancy indicated some damage to the walls, which he speculates were the result of the unit being “staged” for viewing purposes prior to this tenancy. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that the walls were scratched at the start of the tenancy; that they hired a “handyman” to repair and “touch up” some areas of the wall that had been damaged during the tenancy; and that the walls were adequately repaired at the end of the tenancy. The Tenants submitted a letter from the “handyman” who repaired the walls, in which the author declared that the “walls were restored to satisfaction”.

The Landlords are seeking compensation, in the amount of $12.59, for repairing a door sweep. The Agent for the Landlords stated that the rubber on the door sweep was “chunked out” in places and the plastic piece where it attaches to the door was also “chunked out”. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that he did not notice the damaged door sweep. He stated that the door to the rental unit was difficult to open and the Landlords arranged to have the door sanded to remedy that problem. He speculates that the door sweep was damaged

during this repair. The female Tenant stated that she noticed the damaged door sweep after this repair.

The Agent for the Landlords stated that he does not recall the door being sanded but even if it had been sanded the door sweep would have been removed during this repair and could not, therefore, been damaged during that repair.

The Landlords are seeking compensation, in the amount of $73.49, for removing a treadmill from the rental unit. The Landlords submitted documentary evidence to establish this expense was incurred.

The male Tenant stated that the Agent for the Landlords told him he could leave the treadmill in the rental unit. The Agent for the Landlords stated that the male Tenant asked him if he could leave the treadmill; he told the Tenant he should take the treadmill with him; the Tenant reiterated that he wanted to leave the treadmill; he did not insist that it be removed; and he did not agree that it could be left.

The Landlords are seeking compensation, in the amount of $279.59, for replacing several light bulbs in the rental unit. The Agent for the Landlords stated that he replaced approximately 12 light bulbs at the end of the tenancy. The Landlords submitted a receipt for light bulbs, in the amount of $79.59. The Landlord stated that some of those bulbs were returned and the Landlords received a refund of $19.98.

The Agent for the Landlords stated that approximately five light bulbs were too high for him to replace and the Landlords hired an electrician to replace those bulbs. The Landlords submitted an invoice from an electrician, in the amount of $200.00. The Agent for the Landlords was unable to explain why the invoice was for “electrical repair and bulb change”, as he believes the entire invoice was for changing light bulbs.

The male Tenant stated that approximately five “high” light bulbs had burned out and were not replaced at the end of the tenancy. He stated that he was not aware of any other burned out bulbs however he acknowledged it was possible because the lights in the rental unit burned out frequently and they eventually tired of replacing them.

The male Tenant stated that he believes there was a problem with the wiring in the rental unit as light bulbs would burn out within days of being replaced. The Tenants submitted no evidence to support this submission. In an email to the Landlords, dated April 21, 2015, the male Tenant acknowledged that some of the higher light bulbs needed replacing and that he would “accept” the electrical services and bulb charges.

The Landlords are seeking compensation, in the amount of $275.63, for power washing an exterior deck, stairs, and patio. The Agent for the Landlords stated that these exterior areas required additional cleaning. The male Tenant stated that the stairs and patio had been cleaned but he acknowledged a lower deck required additional cleaning. In an email to the Landlords, dated April 21, 2015, the male Tenant declared that he

would “accept” the power washing charge for the landing, although he indicates he believes it is excessive.

The Landlords are seeking compensation, in the amount of $315.00, for yard maintenance and for removing a punching bag stand that was left in the yard. The Landlords submitted documentary evidence to establish this expense was incurred.

In support of the claim for yard maintenance the Agent for the Landlords stated:

- the Tenants were responsible for maintaining the yard during the tenancy;
- the gardens needed weeding and blackberry bushes that had grown into the yard had to be cut back;
- the lawn needed to be re-seeded in several areas;
- the lawn needed to be cut; and
- a punching bag stand had to be removed from the yard.

In response to the claim for yard maintenance the male Tenant stated:

- a punching bag stand was left in the yard;
- the gardens did not require weeding;
- the lawn had been cut three days prior to the end of the tenancy;
- the lawn was not in good condition and needed to be re-seeded in places; and
- the drainage in the yard was poor, which is the primary reason the lawn was in poor condition.

In an email to the Landlords, dated April 21, 2015, the male Tenant informed the Landlords that he would agree to “some charge for the weeding”, to the seeding, and for the cost of removing the punching bag stand.

The Tenants submitted photographs of a lawn with damage that is consistent with damage caused by standing water. The male Tenant stated that these are photographs of the back yard on the residential property. The Agent for the Landlords stated that he cannot tell if the photographs are of the back yard but he did not dispute the Tenants’ submission that there was standing water in the backyard at times.

The Landlords are seeking compensation, in the amount of $47.25, for replacing a remote garage door opener that was not returned at the end of the tenancy. The Landlords submitted documentary evidence to establish this expense was incurred. The male Tenant stated that the opener was stolen during the tenancy and he agreed that the Landlords were entitled to compensation for replacing the opener.

The Landlords are seeking compensation, in the amount of $143.56, for rekeying the rental unit. The Agent for the Landlords stated that the Tenants were provided with two keys at the start of the tenancy and only one key was returned, so the Landlords re-keyed the locks to the rental unit for security purposes.

When I advised the Agent for the Landlords that the condition inspection report that was completed at the start of the tenancy indicated only one key had been provided, the Landlord stated that a second key was provided “a month or two later”.

The male Tenant stated that they were given one key at the start of the tenancy; that they were never given a second key; that they made copies of the key they were given; and they discarded the keys they had copied at the end of the tenancy.

The Landlords are seeking compensation, in the amount of $3,080.00 for repairing the refrigerator door and the oven. The Landlord stated that there was a dent on the exterior side of the refrigerator door at the end of the tenancy, which was not present at the start of the tenancy. The Agent for the Landlords stated that the interior of the oven door was chipped and scratched and the base of the oven was damaged.

The Landlords submitted two photographs of the interior of the oven, which they contend reflects the condition of the oven at the end of the tenancy. The Agent for the Landlords stated that one of the photographs show scratches at the base of the oven and the other shows an area where paint has been scratched off.

The male Tenant stated that the fridge door was not damaged at the end of the tenancy. The female Tenant stated that she did not see the damage to the interior of the oven door, although she acknowledged that one of the photographs submitted by the Landlords depicts a grease stain that occurred during the tenancy.

The Landlords and the Tenants agree that the Tenants gave the Landlords written permission to deduct $2,550.00 from the pet damage/security deposits in payment of an “early termination fee”. The Landlords submitted a copy of the written authorization, which is dated March 31, 2015.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act*), the party making the claim bears the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlords have submitted insufficient evidence to establish that the rental unit, windows, and the carpets needed cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlords’ submission that cleaning was required or that refutes the Tenants’ submission that cleaning was not required.

Section 37(2)(a) of the *Act* requires tenants to leave a rental unit reasonably clean, and undamaged, except for reasonable wear and tear, at the end of the tenancy.

Claims for cleaning are based on personal cleaning standards, which vary widely given their subjective nature. When two parties disagree on whether a rental unit has been left in reasonably clean condition, the person making the claim must provide some independent evidence, such as photographs, that allow an unbiased party to determine whether the rental unit has been left in reasonably clean condition. In the absence of such evidence, I am unable to conclude that the rental unit was not left in reasonably clean condition and I dismiss the claims for cleaning the carpet, cleaning the windows, and for general cleaning of the rental unit.

In determining the claim for cleaning the windows I was guided by Residential Tenancy Branch Policy Guideline #1, with which I concur. This guideline stipulates that the landlord is responsible for cleaning the outside of the windows, at reasonable intervals. I therefore find that the Tenants were not required to clean the exterior windows at the end of the tenancy.

I find that the Landlords have submitted insufficient evidence to establish that the walls in the rental unit were damaged at the end of the tenancy, except for reasonable wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlords' submission that the walls were damaged and the repairs the Tenants had made were inadequate or that refutes the Tenants' submission that walls were left in good condition.

Determining whether walls in a rental unit have been damaged is also subjective, as some scratches and holes from hanging art are normal and are typically considered "reasonable wear and tear". In the absence of photographs or other evidence that allows me to make an independent assessment of the condition of the walls in the rental unit, I am unable to conclude that the walls were damaged beyond "reasonable wear and tear" or that the repairs made by the Tenants were inadequate. I therefore dismiss the claim for repairing the walls.

On the basis of the testimony of both Tenants, I find that the door to the rental unit was sanded by a third party during the tenancy. In reaching this conclusion I was influenced by the fact the Landlord did not refute this testimony, although the Agent for the Landlords did not recall that repair.

Given that the door had been repaired during the tenancy, I find it possible that the door sweep was damaged during the repair. Although I accept the Agent for the Landlords submission that the door sweep was likely removed to facilitate the repair, I find it entirely possible that the sweep was damaged during the removal/replacement phase. As the Landlords have failed to establish that the Tenants damaged the door sweep, I dismiss the claim for repairing the door sweep.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to remove the treadmill from the rental unit. When a tenant leaves personal items in a rental unit at the end of a tenancy the tenant has the burden of proving the landlord gave the tenant permission to leave the property.

I find that the Tenants submitted insufficient evidence to establish that the Agent for the Landlords told the Tenant the treadmill could be left in the rental unit. Although I accept that the Agent for the Landlords did not insist that the treadmill be removed, I cannot conclude that he gave explicit consent to leave the treadmill. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the male Tenant`s testimony that he had explicit consent or to refute the Agent for the Landlords` testimony that he did not give consent. On the basis of the testimony provided, I find it most likely that the Agent for the Landlords did not give explicit consent; that he did not insist the treadmill be moved in an effort to avoid conflict; and that the male Tenant interpreted the silence to be consent.

In the absence of evidence to establish that the Landlords gave the Tenants permission to leave the treadmill in the rental unit, I find that the Tenants must pay for the cost of removing the treadmill, which was $73.49.

On the basis of the email submitted in evidence, dated April 21, 2015, I find that the male Tenant gave the Landlords written authority to deduct the cost of the “electrical services and bulb charges” from the Tenants security deposit. This represents a deduction of $199.61. ($200.00 for the electrical services bill and $79.59 for the light bulbs, less the refund of $19.98)

On the basis of the email submitted in evidence, dated April 21, 2015, I find that the male Tenant gave the Landlords written authority to deduct the cost of the power washing from the Tenants security deposit. As the male Tenant refers to the Cleaning Services when he discusses the cost of power washing, I interpret the email to mean that he is authorizing the Landlords to deduct the cost of that bill, which was $275.63, from his security deposit.

Section 38(4)(a) of the *Act* authorizes landlords to keep an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing that the landlord may retain that amount**.** As the male Tenant gave the Landlords written authority to retain $199.61 from the security deposit for replacing light bulbs and $275.63 from the security deposit for power washing, I find that the Landlords have the right to retain those amounts pursuant to section 38(4)(a) of the *Act.*

Residential Tenancy Branch Policy Guideline #1, with which I concur, stipulates, in part, that:

- a tenant responsible for routine yard maintenance, which includes cutting grass and clearing snow;

- a tenant who lives in a single-family dwelling is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds; and
- the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I find that the Landlords submitted insufficient evidence to establish that the Tenants did not complete a reasonable amount of weeding the gardens during the tenancy or that the lawn needed cutting. This conclusion I was heavily influenced by the absence of photographs or other independent evidence that supports the Landlords' claim that the yard required weeding/mowing or that refutes the Tenants' submission that the yard did not require weeding/mowing. I therefore dismiss the Landlords' claim for weeding the garden.

Although the Tenants declared, in an email, that they would be willing to "some charge" for weeding, they did not specify an amount that they would be willing to pay. I therefore cannot conclude that the Landlords had permission to deduct a specific amount for weeding from the security deposit, pursuant to section 38(4) of the *Act*.

In determining that I am unable to grant compensation for weeding I was influenced, to some degree, by the fact that this tenancy ended on March 31, 2015. This is a period when gardens are not typically weeded and I find that it would not be unreasonable for tenants to leave the gardens in a state where some weeding was required.

I find trimming blackberry bushes is a major project that exceeds normal expectations of weeding flower beds. I therefore find that even if the yard was overgrown with blackberry bushes, the Tenants were not obligated to remove them. I therefore dismiss the Landlords' claim for removing the blackberry bushes.

On the basis of the undisputed evidence, I find that the lawn needed re-seeding in some areas at the end of the tenancy. I find that the Landlords submitted insufficient evidence to establish that the lawn needed re-seeding because of the actions or neglect of the Tenants.

On the basis of the photographs submitted in evidence by the Tenants, the testimony of the male Tenant, and the absence of evidence to the contrary, I find that there was, on occasion, standing water in the back yard. I find it reasonable to conclude that the lawn needed re-seeding as a result of the standing water.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to remove the punching bag stand from the yard and that the Landlords are entitled to compensation for the costs of removing the item.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage whenever compensation is sought. The invoice for yard maintenance and for removing the punching bag stand is

not itemized, so it is not clear how much the Landlords were charged for removing the stand. I am therefore unable to grant compensation for the actual cost of removing the item however I award nominal damages of $20.00.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to return the remote garage door opener at the end of the tenancy. I therefore find that the Tenants must compensate the Landlords for the cost of replacing the opener, in the amount of $47.25.

Section 37(2)(b) of the *Act* requires tenants to give all the keys or other means of access the rental unit that are in their possession or control of the tenant to the landlord at the end of the tenancy. On the basis of the testimony of the male Tenant and in the absent of evidence to the contrary, I find that the Tenants did comply with section 37(2)(b) of the *Act,* as they returned the only key they possessed after discarding their other copies.

I find that the Landlords submitted insufficient evidence to establish that the Tenants were given a second key after this tenancy began. In reaching this conclusion I was influenced by:

- the absence of evidence that corroborates the Landlord`s testimony that a second key was ever provided
- the absence of evidence that refutes the Tenants' submission a second key was never provided;
- the condition inspection report that was completed at the start of the tenancy, which indicates only one key was provided;
- my experience that it is highly unusual for a landlord to provide a second key a month after the tenancy began, unless the key has been lost or another occupant moves into the rental unit; and
- the Landlord did not appear to recall that the second key had been provided "a month or two later" until it was pointed out that two keys were not provided at the start of the tenancy.

As the Landlords failed to establish that the Tenants were given more than one key or that they retain possession of any keys at the end of the tenancy, I dismiss the Landlords' claim for re-keying the locks.

I find that the Landlords submitted insufficient evidence to establish that the refrigerator door was damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of photographs or other independent evidence that supports the Landlords' claim that the door was damaged or that refutes the Tenants' submission that the door was not damaged. I therefore dismiss the Landlords' claim for repairing the refrigerator door.

I find that the Landlords submitted insufficient evidence to establish that the base of the oven was damaged during the tenancy. I find that the single photograph of the base of the oven that was submitted in evidence is not of sufficient quality to determine if the

Agent for the Landlords` testimony that the base of the oven was severely scratched is correct or the female Tenant`s testimony that there is a grease stain at the base of the oven. Although I cannot be certain, the photograph of the base of the oven appears to more consistent with a grease stain than scratching. As the Landlords have failed to establish that the base of the oven is damaged, I dismiss the Landlords' claim for repairing the base of the oven.

On the basis of the other photograph submitted in evidence by the Landlords, I accept that the interior of the oven door was scratched during the tenancy. Although the female Tenant does not recall this damage, I find that the photograph clearly depicts a scratch. Given the location and the nature of the scratch, I find it entirely possible that the female Tenant simply did not notice the damage.

On the basis of the photograph submitted in evidence and in the absence of evidence to the contrary, I find that the damage to the interior of the oven door was largely cosmetic and that it does not impact the functionality of the stove. In my view the damage to the oven door is minor and is the type of damage that can occur during normal use of an oven and should be considered reasonable wear and tear. As section 37(2)(a) of the *Act* does not require tenants to repair damage that is reasonable wear and tear, I dismiss the Landlords' claim for repairing the oven door.

In adjudicating all of these claims I found the condition inspection report that was completed at the end of the tenancy by an agent for the Landlord is of limited evidentiary value. The Landlords and the Tenants agree that when this report was completed the male Tenant strongly objected to the content of the report and I cannot, therefore, rely on the report to determine the condition of the rental unit at the end of the tenancy.

As the Landlords have not made a claim for an "early termination fee", I have not considered whether one is due. As the Landlords did have written authority to retain $2,550.00 from the security/pet damage deposits for this fee, it is only noted here for the purpose of acknowledging that the Landlords have the right to retain that amount pursuant to section 38(4)(a) of the *Act.*

I find that the Landlords' Application for Dispute Resolution has some merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

As the Landlords had written authority to retain $2,550.00 from the security/pet damage deposits for the "early termination fee"; $199.61 from the security/pet damage deposits for replacing light bulbs; and $275.63 from the security/pet damage deposit for power washing, I find that the Landlords have the right to retain $3,025.24 from those deposits pursuant to section 38(4)(a) of the *Act.* I therefore conclude that the Landlords' application to retain all or part of those deposits relates to the remaining $2,074.76.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the portion of the security deposit/pet damage deposit they do not have written authority to keep and they did not file an Application for Dispute Resolution until May 12, 2015, which is more than 15 days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act,* I find that the Landlords must pay the Tenants double the security/pet damage deposit that remained after the authorized deductions, which is $4,149.52 ($2,074.76 X 2).

Conclusion

The Landlords have established a monetary claim, in the amount of $240.74, which is comprised of $73.49 for removing the treadmill; $47.25 for replacing a garage door opener; $20.00 for nominal damages; and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenants have established a monetary claim of $4,149.52, which is comprised of double the security/pet damage deposit that remained after the authorized deductions.

After offsetting the two amounts, I find that the Landlords owe the Tenants $3,908.78. Based on these determinations I grant the Tenants a monetary Order for $3,908.78. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 22, 2015

Residential Tenancy Branch