Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications.

On December 12, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; 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 December 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch on December 15, 2015 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence.

On December 30, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the security deposit.

The Agent for the Tenant stated that on December 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents/photographs the Tenant submitted to the Residential Tenancy Branch on December 30, 2014 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of this evidence and it was accepted as evidence.

On January 13, 2015 the Landlord submitted 16 pages of evidence and 13 photographs to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that this evidence was served to the Tenant by registered mail on January 13, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 19, 2015 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were served to the Tenant by regular mail sometime in January of 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 16, 2015 the Tenant submitted 7 pages of evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Agent for the Tenant stated that these documents were served to the Landlord by registered mail on February 16, 2015. The Landlord stated that she received 5 of these pages and those documents were accepted as evidence for these proceedings.

The Landlord stated that she did not receive a letter from the veterinarian in the documents that were served on February 16, 2015, although she did receive this document with the evidence that was mailed on December 30, 2015. I therefore find that this document can be considered when making my determination.

The Landlord stated that she did not receive an invoice from a veterinarian in the documents served on February 16, 2015, although she did locate this document in her mail box on July 07, 2015. The Agent for the Tenant stated that she placed this document in the Landlord's mail box on July 06, 2015 as she was concerned the Landlord did not receive it in the package that was mailed in February.

The Landlord declined the opportunity to request an adjournment for time to consider the invoice she received on July 07, 2015, as she did not require additional time to consider that document. As the Landlord has received the invoice and she did not require more time to consider that evidence, the invoice was accepted as evidence for these proceedings.

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

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit?
Is the Landlord entitled to retain all or part of the security deposit?
Is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on June 30, 2014;
- the parties signed a fixed term agreement, the fixed term of which ended on June 30, 2015;

- the Tenant agreed to pay rent of $850.00 by the first day of each month;
- the Tenant paid a security deposit of $412.50 and a pet damage deposit of $412.50;
- there were two other rental units in the residential complex;
- a condition inspection report was completed on June 30, 2014, which the Tenant signed to acknowledge that he agreed with the content of the report; and
- a condition inspection report was completed on November 29, 2014, which the Agent for the Tenant signed to declare that she did not agree with the content of the report.

The Landlord stated that the Tenant vacated the rental unit on November 27, 2014 and the Agent for the Tenant stated that the unit was vacated on November 26, 2014. The Landlord and the Tenant agree that the Tenant provided the Landlord with a letter, dated November 26, 2014, in which the Tenant informed the Landlord he was vacating the rental unit immediately. A copy of the letter was submitted in evidence.

The Landlord is seeking compensation for unpaid rent/lost revenue for December of 2014, in the amount of $850.00. She withdrew her claims for rent for January and February of 2015, as she has been able to rent the unit to a third party. The parties agree that the Tenant did not pay rent for December of 2014.

The Landlord is seeking liquidated damages, in the amount of $500.00, because the Tenant ended the tenancy prior to the end of the fixed term. The parties agree that there is a clause in their tenancy agreement that requires the Tenant to pay $500.00 for costs associated to re-renting the unit if he ends the tenancy prior to the end of the fixed term.

The Landlord is seeking compensation, in the amount of $25.00, as the Tenant did not pay rent when it was due on November 01, 2014. The parties agree that there is a clause in their tenancy agreement that requires the Tenant to pay a fee of $25.00 whenever he is late paying rent. The parties agree that rent for November was not paid when it was due on November 01, 2014.

The Landlord is seeking compensation, in the amount of $120.00, for repairing a fence post. The parties agree the Agent for the Tenant backed into the pole on November 02, 2014. The Landlord submitted an email from a fencing contractor, who estimates the repair will cost $115.00 plus 5% GST.

The Agent for the Tenant stated that sometime after the rental unit had been vacated the Tenant offered to repair the pole himself but the Landlord told him that it had already been repaired. The Landlord stated the pole has not yet been repaired and she did not tell the Tenant it had been repaired.

The Landlord is seeking compensation, in the amount of $160.00, for cleaning the rental unit. She stated that she and her daughter spent a total of 8.5 hours cleaning the unit after it was vacated by the Tenant.

The Landlord stated that the rental unit was clean at the start of the tenancy and that it required cleaning at the end of the tenancy. The Landlord submitted photographs of the rental unit that were taken after the rental unit had been vacated.

The Agent for the Tenant stated that:

- the photographs fairly represent the condition of the rental unit when the unit was vacated;
- much of the "dirt" seen in the photographs is mould;
- the dirt under the stove elements was present at the start of the tenancy; and
- the Tenant forgot to clean the dryer.

The Landlord is seeking compensation, in the amount of $62.76, for repairing a stain on the floor in the bedroom.

The Landlord stated that:

- the floor was damaged by wet dogs;
- the floor was not damaged at the start of the tenancy; and
- that the floor needed to be re-stained as a result of that damage.

The Tenant stated that

- the condition of the floor in the bedroom was the same at the start of the tenancy as it was at the end of the tenancy;
- the floor is damaged because water seeps onto the floor from the shower of a neighboring suite;
- this damage was not noted on the condition inspection report because there were too many deficiencies with the unit to note them all on the condition inspection report; and
- when he signed the condition inspection report he did not note the true condition of the rental unit as he understood he was renting it "as is".

The Landlord is seeking compensation, in the amount of $29.97, for replacing the drapes that the Landlord contends were damaged during the tenancy. The Landlord submitted a photograph of the drapes which she contends demonstrates that the drapes are damaged.

The Agent for the Tenant stated that the drapes were not damaged during the tenancy and they were in the same condition at the start of the tenancy as they were at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $7.97, for replacing a set of mini-blinds that the Landlord contends were damaged during the tenancy. The

Landlord submitted a photograph of the blinds, which are clearly damaged. The Landlord submitted a receipt to show she incurred this expense.

The Agent for the Tenant stated that she cannot recall if the blinds were damaged at the start of the tenancy and it is possible that they were damaged during the tenancy.

The Landlord is seeking compensation, in the amount of $15.47, for replacing a mirror that was broken during the tenancy. The Landlord submitted a photograph of the mirror that was broken off the extendable hanger. The Landlord submitted a receipt to show she incurred this expense.

The Agent for the Tenant stated that the mirror was broken during the tenancy but only because it was mounted in a small bathroom, with limited room to move.

The Landlord is seeking compensation, in the amount of $8.47, for replacing the battery in the smoke alarm that burned out during the tenancy. The Landlord submitted a receipt to show she incurred this expense.

The Agent for the Tenant stated that the Tenant did not check to see if the battery was working at the end of the tenancy and it is possible that it burned out during the tenancy.

The Landlord has claimed $140.00 for “repairs” however she does not specify what this claim relates to in her Application for Dispute Resolution. At the hearing she explained that the claim relates to repairs she did to correct the aforementioned claims as well as damage for which she has not sought compensation. The Agent for the Tenant stated that she did not understand what the Landlord has repaired, for which she was seeking compensation of $140.00.

The Landlord and the Tenant agree that the Tenant agreed to pay 25% of the water bill, as per the written tenancy agreement. The Landlord is seeking $134.59 for a utility bill for the period between July 12, 2014 and November 12, 2014. The Landlord stated the claim of $134.59 is 25% of the bill after the cost of the garbage cans was deducted from the bill.

The Agent for the Tenant stated that on July 16, 2014 the Tenant paid $23.34 for a utility bill, which she believes was an advance payment of this bill. She acknowledged that this bill was not presented to the Tenant prior to the payment being made. The Tenant submitted no evidence of this payment. The Landlord stated that the Tenant did not make a payment of $23.34 in July of 2014; that she received $11.20 for a previous utility bill; and that no portion of the bill for the period between July 12, 2014 and November 12, 2014 has been paid.

The Agent for the Tenant argued that this utility bill includes sewer charges and a charge for garbage cans, which the Tenant was not obligated to pay. The Landlord argued that sewage disposal was not included with the tenancy and that the Tenant was

obligated to pay 25% of those costs as well. The Landlord agreed that the Tenant is not obligated to pay the charge for the garbage cans.

The Landlord is claiming compensation, in the amount of $30.00, for an “estimated” utility bill for the period between November 12, 2014 and November 30, 2014. The Landlord stated that she based this estimate on previous utility bills, although those bills were not submitted in evidence.

The Landlord and the Tenant agree that the Tenant agreed to pay 25% of the hydro bill, as per the written tenancy agreement. The Landlord is seeking $97.40 for a hydro bill for the period between August 26, 2014 and October 24, 2014, which is 25% of the bill. The Agent for the Tenant agrees that the Tenant owes this amount.

The Landlord is claiming compensation, in the amount of $150.00, for “estimated” hydro costs for the period between October 24, 2014 and November 30, 2014. The Landlord stated that she based this estimate on the consumption data report at page 66 of her evidence.

The Agent for the Tenant argued that the Tenant should pay a pro-rated portion of the hydro bill at page 65 of the Landlord’s evidence and the Landlord stated that she would be satisfied with that resolution. This hydro bill is for the period between October 25, 2014 and December 23, 2014 and is in the amount of $437.54.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because there was mould in the rental unit. The Tenant contends that there was mould on the bedroom window sills and walls, on the bathroom window sill, walls, and floor, and on the washroom. The Tenant contends that most of the mould had been painted over at the start of the tenancy and appeared a few months after the tenancy began. The photographs submitted in evidence show a substance that appears to be mould in several locations.

The Tenant stated that the presence of mould was not reported to the Landlord until November 26, 2014, when he informed the Landlord he was moving. This report was provided in a letter dated October 01, 2014, although in the letter the Tenant indicates that the incident is being reported on November 26, 2014.

The Landlord stated that mould was not reported until November 26, 2014. She stated that after receiving the report the unit was inspected and some mould was found in the bedroom and the bathroom.

The Landlord submitted an inspection report from a company that contends it is a mould expert, dated November 07, 2014. This report indicates one room was inspected and was determined to be “normal when compared to the outdoor environment”. This report does not specify which room in the residential complex was inspected.

The Tenant is seeking compensation of $325.00 for the cost of treating his dogs, which he contends reacted to the mould in the rental unit. The Tenant submitted a letter from a veterinarian, in which the veterinarian declared, in part, that:

- he examined the Tenant's dogs on December 15, 2014;
- both dogs had "contact allergies of the skin";
- both dogs had been doing well until they moved into a home with a "severe mold problem";
- the allergic skin disease "could be consistent with a contact allergy of which mold is a common cause on the west coast"; and
- the dogs should be moved to a new home to prevent reoccurrence.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord did not adequately repair the floor in the rental unit.

The Tenant contends that:

- when this tenancy began the floor tiles were buckled;
- at the start of the tenancy the Landlord promised to repair the tiles;
- the Landlord initiated repairs to the tiles in August of 2014;
- the repairs to the floor were inadequate, as the gaps in the tiles were filled with "filler"; and
- the tiles were a tripping hazard because they were uneven.

The Landlord stated that:

- when this tenancy began the floor tiles were buckled;
- the Landlord promised to repair the tiles;
- the Landlord repaired the tiles on August 08, 2014;
- the tiles was repaired by lifting and re-gluing the loose tiles;
- the tiles were adequately repaired on August 08, 2014; and
- the tiles were level and did not constitute a tripping hazard.
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The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord did not adequately repair the kitchen sink.

The Tenant contends that:

- the sink was leaking at the start of the tenancy;
- at the start of the tenancy the Landlord promised to repair the leak;
- the Landlord repaired the sink with "toxic glue"; and
- the sink still leaked after the repairs were made.

The Landlord stated that:

- the sink was not leaking at the start of the tenancy;
- at the start of the tenancy the Landlord promised to repair the leaking kitchen faucet and the crack in the sink, even though the crack was not leaking;
- the leaking kitchen faucet was repaired on August 09, 2014; and

- the crack in the sink was fixed with epoxy for the purposes of ensuring the crack did not get larger.

The Tenant submitted a photograph of the repair to the sink (#12). The Landlord stated that the sink in the photograph is unsightly simply because the Tenant had not cleaned the sink properly. The Landlord submitted a photograph of the repair (Page 50, photograph 3) which she contends represents the repair after the sink had been cleaned at the end of the tenancy.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord did not adequately repair a bedroom window.

The Tenant contends that:

- there was a gap around the bedroom window;
- the Landlord promised to repair this gap;
- the Landlord attempted to repair the gap by screwing it shut;
- there was still a gap around the window at the end of the tenancy;
- the Landlord made several attempts to replace the weather stripping but they were unable to find a mutually agreeable time to complete the repairs; and
- eventually the Tenant told the Landlord not to replace the weather stripping, as he was concerned the repair would be inadequate and he was planning on vacating the unit.

The Landlord stated that:

- there was never a gap around the bedroom window;
- she did not promise to repair a gap around the window;
- sometime after the tenancy began she promised to install weather stripping around the bedroom window;
- the Landlord made several attempts to replace the weather stripping but they were unable to find a mutually agreeable time to complete the repairs;
- the weather stripping was not installed as the Tenant asked the Landlord not to enter the rental unit to make the repair.

At the hearing the Agent for the Tenant stated that photograph #70 depicts the gap around the window. I was unable to locate this photograph during the hearing. I located photograph #70 after the hearing, which appears to be a photograph of an outside storage area.

At the hearing the Agent for the Tenant stated that photograph #5 on page 53 of the Landlord's evidence shows the gap around the window. I am unable to see a gap around this window. I have viewed all of the photographs submitted in evidence and am unable to see a significant gap around any window, although there appears to be a small gap in photograph 79.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord "harassed" him by repeatedly knocking on his door and posting documents on his door. The Tenant was unable to articulate what inappropriate documents were posted on his door or when the Landlord knocked on his door for an inappropriate reason.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the party storing property in a garage on the residential property disturbed him and his dogs when they accessed the garage.

The Tenant contends that:

- the Landlord's son store business tools and materials in a garage on the residential property;
- a third party accessed the garage on a daily basis;
- his dogs were disturbed by people accessing the garage;
- people accessing the garage temporarily occupied parking spaces designated for visitors of the residential complex, which prevented his visitors from parking in that space;
- he told the Landlord's son that people accessing the garage were disturbing him and his dogs; and
- he never told the Landlord that people accessing the garage were disturbing him and his dogs.

The Landlord stated that:

- her son does not live in the city so he rarely accessed the garage;
- a third party does store tools/materials in the garage on the residential property;
- the third party typically accesses the garage once or twice a week;
- there are two visitor parking spaces so someone accessing the garage should not have unduly disturbed the Tenant; and
- she was never informed that the third party was disturbing the Tenant or his dogs until she received an email from the Agent for the Tenant on November 03, 2014.

The Tenant is seeking compensation for the cost of developing photographs used in these proceedings and for sending evidence to the Landlord.

The Tenant is seeking compensation for moving costs arising from deficiencies with the rental unit.

Analysis

When making a claim for damages or loss under a tenancy agreement or the *Residential Tenancy Act (Act),* the party making the claim has 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.

On the basis of the undisputed evidence, I find that the Tenant entered into a fixed term tenancy agreement with the Landlord that required the Tenant to pay monthly rent of $850.00 by the first day of each month, the fixed term of which ended on June 30, 2015.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy in November of 2014, which is earlier than the end date specified in the tenancy agreement. I therefore find, pursuant to section 67 of the *Act*, that the Tenant must compensate the Landlord for the lost revenue the Landlord experienced during the month of December of 2014, in the amount of $850.00.

In adjudicating this matter I considered section 45(3) of the *Act*, which stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. I find that the Tenant has failed to establish that the deficiencies with the rental unit were a breach of a material term of the rental unit and I therefore find that the Tenant did not have the right to end this tenancy in accordance with section 45(3) of the *Act.*

Although I accept there were some deficiencies with the rental unit they were not, in my view, sufficient grounds to end the tenancy. Rather, the Tenant should have filed an Application for Dispute Resolution seeking an order for repairs or seeking a rent reduction. As the Tenant had an alternative means of resolving his concerns with the rental unit, I dismiss his application to recover moving costs arising from his decision to vacate the rental unit.

On the basis of the undisputed evidence, I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenant, which requires the Tenant to pay $500.00 to the Landlord if he prematurely ends this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that $500.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. On this basis, I find that the Landlord is entitled to collect liquidated damages of $500.00.

As the Tenant did not pay his rent when it was due on November 01, 2014 and the tenancy agreement requires the Tenant to pay a fee of $25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of $25.00 for the month of November of 2014.

Section 37(2) of the *Act* requires tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not repair the damaged fence pole prior to vacating the rental unit. I therefore find that the Landlord is entitled to her claim of $120.00 for repairing the fence.

In determining this matter I have placed no weight on the Tenant's submission that the Landlord repaired the pole before the Tenant had the opportunity to do so, in part because there is no evidence to corroborate the Tenant's testimony the pole has been repaired. Even if the Landlord had repaired the pole after the rental unit was vacated in November of 2014, I find it would have been reasonable for her to do so, as the unit had been vacated.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report that was completed at the start of this tenancy does not indicate that the rental unit required cleaning and the Tenant has not submitted evidence that corroborates the Agent for the Tenant's testimony that it did require cleaning, I find that the rental unit did not require cleaning at the start of the tenancy.

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. On the basis of the photographs submitted in evidence, I find that the dryer and the stove required cleaning at the end of the tenancy. I find that it would have taken approximately 3 hours to clean these appliances and that the Landlord is entitled to $60.00 in compensation for that time.

On the basis of the other photographs submitted in evidence, I find that the remainder of the rental unit was left in reasonably clean condition, given the age and the general condition of this rental unit. I therefore dismiss the remainder of the Landlord's claim for cleaning the rental unit.

On the basis of all of the photographs submitted in evidence, I find that this rental unit is aged and is not in a good state of repair. I find the photographs clearly indicate that the rental unit has been deteriorating over a long period of time and that many of the deficiencies in the photographs had to have been present prior to the start of this six month tenancy.

On the basis of the photographs submitted I cannot conclude that the condition inspection report that was completed at the start of the tenancy accurately reflected the

condition of the rental unit at that time. This report shows that the rental unit is in "satisfactory" condition, which is clearly in contrast with the photographs before me. I therefore will not be placing any weight on that report for the purposes of determining whether the rental unit has been damaged during the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the floor in the bedroom was damaged during this tenancy. I find there is insufficient evidence to corroborate the Landlord's claim that it was not damaged at the start of the tenancy or to refute the Tenant's submission that it was damaged at the start of the tenancy. I therefore dismiss the Landlord's claim for compensation for repairing the floor.

In determining whether the floor was damaged during the tenancy I was influenced, in part, by the photograph of the floor (page 50, photograph 2). This floor does not appear to have been maintained for a lengthy period of time and is consistent with the generally poor condition of the rental unit. The damage in the photograph does not appear to be recent damage and I find it unlikely the majority of the damage occurred during the six month of the tenancy.

I find that the Landlord submitted insufficient evidence to show that the drapes were damaged during the tenancy and I therefore dismiss the claim for replacing the drapes. In reaching this conclusion I was heavily influenced by the photograph of the drapes (page 50, photograph 4), in which the drapes do not appear to be damaged.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the mini-blinds were damaged during the tenancy and that the Tenant failed to comply with section 32 of the *Act* when he failed to repair the blinds. I therefore find that the Landlord is entitled to the $7.97 she paid to repair the blinds.

On the basis of the undisputed evidence, I find that an extendable mirror was damaged during the tenancy and that the Tenant failed to comply with section 32 of the *Act* when he failed to repair the mirror. I therefore find that the Landlord is entitled to the $15.47 she paid to replace the mirror.

In adjudicating the claim for the mirror I placed little weight on the Tenant's submission that the mirror was broken because it was located in a small bathroom with limited space. Given that this was an extendable/retractable mirror I find that, with reasonable care, the mirror could be used without damaging it.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 32 of the *Act* when he failed to replace the battery for the smoke alarm that stopped working during the tenancy. I therefore find that the Landlord is entitled to the $8.47 she paid to replace the battery.

I refuse to consider the Landlord's claim of $140.00 for "repairs", pursuant to section 59(5)(a) of the *Act,* because the Landlord did not provide sufficient details of this claim, as is required by section 59(2)(b) of the *Act*. In the absence of clear details regarding

the nature of the “repairs”, I find that proceeding with the Landlord’s claim for $140.00 would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claim.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay 25% of the water bill. On the basis of the tenancy agreement submitted in evidence, I find that sewage disposal was not included in the tenancy agreement and that the Tenant was, therefore, responsible for those costs. Although it is not specified in the agreement, I accept the Landlord’s testimony that the Tenant is only required to pay for 25% of sewage disposal expenses, as that is consistent with the percentage of other bills he is required to pay. I therefore find that the Tenant was obligated to pay 25% of the utility bill of $561.69, less the costs of the garbage containers, which equates to $134.59.

I find that the Tenant has submitted insufficient evidence to show that $23.34 was paid for this bill in July of 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Tenant’s testimony that it was paid or that refutes the Landlord’s testimony that it was not paid. I was also influenced by the fact this bill was not issued until November 18, 2014 and I find it highly unlikely that the Landlord would have collected such a specific amount for a bill that had not been issued. As the Tenant has failed to establish that any portion of this bill has been paid, I find that he must pay $134.59 to the Landlord.

I find that the Landlord has submitted insufficient evidence to support her estimate that the Tenant’s portion of the utility bill for the period between November 12, 2014 and November 30, 2014 is $30.00 and I therefore dismiss this portion of the Landlord’s claim. She appears to have based this estimate on the utility bill for the period between July 12, 2014 and November 12, 2014, although I am not convinced her calculations using that bill are incorrect.

I find that estimating water consumption for the month of November should be based on a bill from a similar billing period. Water consumption is generally higher during the summer months and I therefore find that estimating water costs for November on the basis of a bill from July, August, September, and October is not reliable.

As the Tenant agreed that he owes $97.40 for his portion of the hydro bill for the period between August 26, 2014 and October 24, 2014, I find that he must pay this amount to the Landlord.

As the parties agreed that the Tenant should pay a pro-rated portion of the hydro bill at for the period between October 25, 2014 and December 23, 2014, I find that the Tenant must pay $67.98 for hydro costs during the latter portion of the tenancy.

On the basis of the testimony of the Agent for the Tenant, who stated that the rental unit was vacated on November 26, 2014 and in the absence of evidence that corroborates the Landlord’s testimony the rental unit was vacated on November 27, 2014, I find that the Tenant must pay pro-rated hydro costs for the period between October 24, 2014,

which is the date of the last bill, and November 26, 2014 (33 days). The pro-rated portion of the bill for the 53 day billing period is $8.26 per day, the Tenant's portion of which is $2.06 per day. The Tenant's portion of this bill for 33 days is $67.98.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In some respects the covenant of quiet enjoyment is similar to the requirement that landlords ensure rental units are suitable for occupation which requires that landlords keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because a gradual deterioration of the rental unit reduces the comfort of the unit.

In some circumstances a failure to remedy a problem with mould in a rental unit could constitute a breach of the covenant of quiet enjoyment. In these circumstances however, I find that the Tenant has failed to establish that the presence of mould was a breach of his right to the quiet enjoyment of the rental unit and he is not, therefore, entitled to compensation as a result of the mould.

In determining that the mould did not breach the covenant of quiet enjoyment I was influenced by:

- the photographs submitted in evidence, which do not show an extensive amount of mould;
- the absence of any medical or scientific evidence that shows the mould present in the rental unit was a health hazard; and
- the undisputed evidence that the mould was not reported to the Landlord until shortly before the Tenant vacated the rental unit, which prevented the Landlord from rectifying the problem in a timely manner.

I find that the Tenant has submitted insufficient evidence to establish that his dogs developed an allergic reaction as a result of mould in the rental unit. I therefore dismiss his claim to recover veterinarian costs.

In adjudicating the claim for veterinarian costs, I placed limited weight on the letter from the veterinarian who examined the Tenant's dogs on December 15, 2014. In the absence of evidence to suggest that the veterinarian visited the dogs in the rental unit, I find it reasonable to conclude that his conclusions were based, at least in part, on the

Tenant informing him that there was a “severe mold problem” in the rental unit. As the Tenant has failed to establish there was a severe mould problem in the rental unit, I find that the veterinarian’s conclusions may have been based on erroneous information and may have been different if he had seen the photographs of the amount of mould in the rental unit.

Although I accept the veterinarian’s evidence that the allergic skin disease “could be consistent with a contact allergy of which mold is a common cause on the west coast”, I find there is insufficient evidence to conclude that mould is the only cause of the skin disease. In the absence of evidence from the veterinarian to rule out other potential sources of the skin disease, I find that I cannot conclude that the skin disease was directly related to the presence of mould in the rental unit.

On the basis of the undisputed evidence, I find that at the start of the tenancy the Landlord promised to repair the floor tiles in the rental unit, which had lifted and buckled. Although I accept that the Landlord attempted to repair the tiles, I find that the repairs were inadequate.

In determining that the repairs to the floor were inadequate, I was heavily influenced by the photographs submitted in evidence by the Tenant. These photographs demonstrate that the repairs are, in my view, well below industry standard and would not be considered adequate by most people. The gaps between the tiles have been filled with a filler that is a different colour than the rest of the floor, which makes it aesthetically unpleasing and the tiles appear uneven in many places, which constituted a tripping hazard. The one photograph of the floor submitted in evidence by the Landlord also demonstrates that some tiles are uneven.

Section 65(1)(f) of the *Act* authorizes me to reduce rent in an amount that is equivalent to reduction in the value of a tenancy. I find that the Landlord’s failure to adequately repair the floor tile, as promised at the start of the tenancy, reduced the value of this tenancy by $50.00 per month. The reduced value of the tenancy is a subjective award that is based, primarily, on the reduced aesthetic value of the rental unit. I therefore find that the Tenant is entitled to compensation of $300.00 for five months he occupied the rental unit.

In determining the amount of compensation due for the condition of the floor I was influenced, to some degree, by my conclusion that this rental unit was not in particularly good condition at the start of the tenancy. Rental units that are not in particularly good condition are often rented by individuals who opt to live in the unit because the condition of the rental unit is typically reflected in lower rents. Had the general condition of this rental unit been greater, I would have awarded greater compensation for the substandard condition of the floor.

I find that the Tenant submitted insufficient evidence to establish that the leaking kitchen sink had not been adequately repaired. In reaching this conclusion I was influenced, in part, by the absence of evidence that corroborates the Tenant’s submission that the

sink continued to leak after it was repaired in August of 2014 or that refutes the Landlord's testimony that the sink did not continue to leak after the faucet was repaired in August of 2014.

In adjudicating the claim for the sink I was also influenced by the photograph of the repair submitted in evidence by the Landlord. In my view, this photograph demonstrates that the sink was repaired in a reasonable manner. I have placed limited weight on the photograph of the sink submitted in evidence by the Tenant. Given that the sink in that photograph is dirty and the substance in that photograph does not appear in the Landlord's photograph, I find it entirely possible that the substance that appears in the Tenant's photograph is simply dirt.

In adjudicating the claim for the sink I was also influenced by the absence of any evidence to corroborate the Tenant's submission that the substance used to repair the sink was toxic.

As the Tenant has failed to establish that the repair to the sink was inadequate or that the leak was not repaired in a timely manner, I find that he is not entitled to any compensation for the repair to the sink.

I find that the Tenant submitted insufficient evidence to establish that there was a significant gap around any window in the rental unit. In reaching this conclusion I was influenced by the absence of evidence, such as a photograph, that corroborates the Tenant's submission that there was a significant gap or that refutes the Landlord's testimony that there was no gap. As the Tenant has failed to establish that there was a significant gap around a window, I find that he is not entitled to any compensation relating to that claim.

As the Tenant was unable to give any evidence of a time when the Landlord posted something inappropriate on his door or when she knocked on his door for an inappropriate reason, I find he is not entitled to compensation arising out of interactions of this nature.

On the basis of the undisputed evidence I find that the rental unit was located on residential property with two other rental units. I therefore find that the Tenant should have had no reasonable expectation of sole use of the parking spaces designated for visitors and he should have had no reasonable expectation that he, or his dogs, would not be disturbed by other people accessing the residential property. I therefore find that the Tenant is not entitled to compensation for any disturbances arising from people accessing the garage on the residential property. In determining that he is not entitled to compensation I was influenced, in part, by the absence of evidence that shows the third party accessing the garage was being unreasonably noisy or disruptive.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation

for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim to recover mailing costs and the cost of developing photographs submitted in evidence.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,936.88, which is comprised of $850.00 in lost revenue, $500.00 in liquidated damages, a late fee of $25.00, $211.91 for cleaning and repairs, $299.97 for utilities, and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit/pet damage deposit of $825.00 in partial satisfaction of this monetary claim.

The Tenant has established a monetary claim of $300.00 in compensation for loss of quiet enjoyment of the rental unit.

After offsetting the two claims I find the Tenant owes the Landlord $811.88 and I grant the Landlord a monetary Order for $811.88. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 20, 2015

Residential Tenancy Branch