Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, CNR, LAT, RR, OPR, OPL, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent and for landlord's use of the property pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants identified both of the landlords identified above in their application for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued on September 27, 2015, pursuant to section 47;
- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the hearing, the parties agreed that a second 1 Month Notice issued on October 18, 2015, was not included as part of either of their applications for dispute resolution. This 1 Month Notice was served after the last amended application for dispute resolution was submitted to the Residential Tenancy Branch (the RTB). Both parties confirmed that they understood that this hearing would be considering all four notices to end tenancy issued by the landlord, including the 1 Month Notice of October 18, 2015. The landlord's agent, his son (the landlord's son) confirmed that the landlords were seeking an end to this tenancy on the basis of all four notices to end tenancy outlined above, and made an oral request for the issuance of an Order of Possession on the basis of any of these notices. The tenant's advocate also confirmed that the tenants were expecting to have all four notices to end tenancy considered at this hearing. As both parties were in agreement that all four notices to end tenancy could be considered at this hearing, I see no prejudice to either party in considering all four notices to end tenancy, including the 1 Month Notice of October 18, 2015.

At the hearing, the landlord's son, confirmed that the landlord had accepted full payments of $980.00 from the tenants for October and November 2015, for "use and occupancy only." As such, the landlord's application for a monetary award of $2,950.00 was reduced to $950.00.

At the hearing, the tenants and their advocate confirmed that the tenants received each of the four notices to end tenancy that formed part of this hearing. The tenants also confirmed that they were handed a copy of the landlord's dispute resolution hearing package and written and digital evidence package. The landlord's son confirmed that the landlord received a copy of the tenants' original dispute resolution hearing package sent by the tenants by registered mail, amended dispute resolution hearing package, including the application to cancel one of the notices to end tenancy, and the tenants' written and digital evidence package. I find that each of these documents were duly served to one another in accordance with the provisions of section 88 and 89 of the *Act*. Neither party raised any concerns about the service of these documents.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or for landlord's use of the property? Should either of the landlord's 1 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Are the tenants entitled to a monetary award for a reduction in the value of their tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, receipts, photographs, text messages, e-mails, and a great deal of digital evidence including audio recordings of conversations between the parties, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

On April 30, 2015, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) for a two-bedroom basement suite. The landlords live upstairs. This Agreement covers the period from April 20, 2015, to February 29, 2016. According to the terms of the Agreement entered into written evidence by the parties, monthly rent of $1,000.00 was payable in advance on the first of each month. The landlords continue to hold the tenants' $500.00 security deposit paid on or about March 30, 2015.

A 1 Month Notice of June 18, 2015, was considered by Arbitrator AM at an August 19, 2015 teleconference hearing. In her August 25, 2015 decision, Arbitrator AM allowed the tenants' application to cancel that 1 Month Notice issued for the following reasons:

> *…Tenant has allowed an unreasonable number of occupants in the unit/site*
>
> *Tenant or a person permitted on the property by the tenant has:*
> - *significantly interfered with or unreasonably disturbed another occupant or the landlord;…*

In her decision, Arbitrator AM made a final and binding decision on this matter on the basis of the facts before her and as they existed at the time of the landlords' issuance of the 1 Month Notice of June 18, 2015. Her decision found that the agent who appeared on the tenant's behalf in the current hearing was a guest of the tenants and visits them. She also concluded that one additional person in this rental unit did not constitute an "unreasonable" number of occupants. She reached the following conclusions in dismissing the landlord's application for an Order of Possession on the basis of the tenant allegedly having significantly interfered with or unreasonably disturbed another occupant or the landlord:

> *…I find that the landlords did not provide sufficient documentary or testimonial evidence to show that the tenants or other occupants permitted on the property by the tenants significantly interfered with or unreasonably disturbed another*

> *occupant or the landlord. No witnesses were produced by the landlords at this hearing, to substantiate the landlords' claims.*
>
> *…I find that the landlords did not provide sufficient documentary or testimonial evidence to show that the tenants' audio recordings between the parties have affected the male landlord's health, such that it is a "significant" interference or an "unreasonable" disturbance.*

She concluded her findings as follows:

> *…I…find that the landlords have failed to prove that the tenants or people permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords, as per section 47(1)(d)(i) of the Act…*

Shortly after Arbitrator AM cancelled the 1 Month Notice of June 18, 2015, the landlord(s) commenced issuing a series of notices to end tenancy.

On August 28, 2015, the landlords issued a 2 Month Notice, seeking an end to this tenancy by October 31, 2015. On September 3, 2015, they issued a 10 Day Notice, alleging that there was $950.00 in unpaid rent owing from September 2015. The effective date on this Notice was September 13, 2015. They issued another 1 Month Notice on September 27, 2015, seeking an end to this tenancy by October 31, 2015. After both parties submitted their applications for dispute resolution and, in the case of the tenants, their amended applications for dispute resolution, the landlords issued another 1 Month Notice on October 18, 2015, identifying an effective date of November 30, 2015. The tenants requested cancellation of these notices to end tenancy; the landlords sought an Order of Possession on the basis of all of these notices.

Although the tenants did not identify a specific amount of rent reduction they were seeking, they did apply for a reduction in the amount of their monthly rent to reflect their loss in value of their tenancy due to facilities that they were anticipating receiving when they rented the premises and for a loss in their quiet enjoyment of the rental unit as a result of the landlords' actions. The tenants also applied for an order allowing them to place new locks on the rental unit so as to prevent the landlords from illegal entry to their rental premises. On this point, the parties agreed that the tenants removed the landlords' locks to the rental unit on September 9, 2015, and the landlords' removed the tenants' new locks on October 8, 2015.

Both parties maintained that the other's actions have caused them great stress and disturbance.

Both parties included Monetary Order Worksheets within their written evidence packages, which outlined a number of additional expenses incurred relating to items not identified in their applications for dispute resolution. Since none of these items were included in their original or amended applications for dispute resolution, the Respondents' rights to know the case against them and to have an opportunity to respond accordingly would be breached if these new items were considered as part of the current hearing of their applications for dispute resolution. Consequently, I have not considered additional items that were not identified in either their original or amended applications for dispute resolution.

Analysis

I will first address those portions of these applications related to the notices to end tenancy. I note that the burden of proof with respect to ending a tenancy rests with the landlord(s), the party seeking the Order of Possession. Next, I will outline my findings regarding the remainder of the tenants' issues identified in their application. Finally, I will consider the landlord's monetary claim.

Analysis – 2 Month Notice

Three days after Arbitrator AM cancelled the landlord's 1 Month Notice of June 18, 2015, the landlord gave the tenants the 2 Month Notice citing the following two reasons for seeking an end to this tenancy for landlord's use of the property:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*
- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit…*

The landlords entered into written evidence an October 21, 2015 letter from the occupational therapist who had been working with the landlord's son, their agent at this hearing, since May 2015. In this letter, the therapist stated that the landlord's son "struggles with every day activities of daily living and needs a supported environment to function effectively."

At the hearing, I asked the landlord's son who was the close family member intending to move into the rental unit, to clarify the two reasons identified in the 2 Month Notice. Although the landlord's 2 Month Notice required the tenants' basement suite so that the landlord and his family could support their son in this living arrangement, there is also considerable written evidence from the landlord and the tenants to confirm that simultaneously the home was being listed for sale. The landlord's son said that there was an oral offer to purchase the property which had fallen through, prompting the landlord to list the property for sale. He provided no details of this alleged offer and certainly produced nothing to confirm that all conditions of sale had been satisfied and the purchaser had made a written request to have the basement suite vacated so that a close family member could occupy it. The tenant's advocate observed that the landlord's own written evidence and the frequent disputes regarding open houses and the showings of the rental unit to prospective purchasers demonstrated that the 2 Month Notice was issued in bad faith.

Given the landlord's own written evidence and the remainder of the evidence before me, I have no hesitation whatsoever in concluding that the 2 Month Notice was issued in bad faith and did not represent a valid reason to end this tenancy. The landlord's simultaneous claim that he needed the tenants' rental unit for drastically different purposes cited in the 2 Month Notice has no credibility. I allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice is of no continuing force or effect.

Analysis -10 Day Notice

At the hearing, I heard conflicting evidence with respect to whether the tenants gave the landlord or one of his family members acting on his behalf a $950.00 cheque for rent owing as of September 2015. The $50.00 reduction in rent from the original monthly amount cited in the Agreement resulted from the tenants' successful recovery of their filing fee from the landlord in their earlier application for dispute resolution in which the 1 Month Notice of June 2015 was cancelled.

Both tenants and their advocate testified that the tenants gave one of the landlord's family members a cheque for $950.00. The tenants entered into written evidence a copy of that cheque, and also submitted considerable digital evidence in which they had recorded the tenants' attempts to pay their September 2015 rent to the landlord's son a few days before their rent was due. Given the state of the landlord/tenant relationship by that time, the tenants asked for a receipt for their payment of the cheque and for a key to the landlord's garage, which the landlords had demanded be returned to them to assist them in their attempted sale of the property. On each of these occasions, the landlord's son told them to come back later when he would have a receipt available for them. The audio recording of these conversations revealed the landlord's son

repeatedly questioning the tenants as to why they needed a receipt for the key and their cheque. One of the tenants maintained that they became frustrated on their third attempt to pay their September 2015 rent and gave the cheque to one of the landlord's family members, which apparently fell to the ground in front of her. The written evidence from the parties outlines an alleged physical incident, which ensued, whereby the landlord(s) maintain that the landlord's wife was kicked by one of the tenants. This was denied by the tenants and their advocate.

The landlord's son did not deny the authenticity of the audio recordings or that the tenant(s) had offered to provide their September 2015 rent payment a number of times before it was due. He testified that the tenants kept returning earlier than he had requested, as he needed time to print out a proper receipt for their payment and the key. He said that he never did see an actual cheque from the tenants for September's rent, and denied that the tenants ever provided any rent for September 2015.

When two vastly different accounts of what transpired during a tenancy occur, arbitrators often rely on any physical evidence. In this case, the physical evidence and even the audio recording of some of the events do not definitively resolve whether the tenants actually gave a September 2015 rent cheque to one of the landlord's family members. For example, the landlord's son noted that the tenants had failed to provide any evidence from their bank to show that funds for their September 2015 were taken out of the bank to demonstrate their payment of rent for that month. The tenants' advocate correctly noted that if the landlords had received but failed to cash their September rent cheque, no funds would have been withdrawn from either of the tenants' bank accounts. The landlord's son noted that the tenants did not pay their September 2015 rent after receiving the landlord's 10 Day Notice, but instead applied to cancel that Notice. If the tenants had actually given one of the landlord's family members a cheque for their September 2015 rent, as they maintain, there would have been no reason for them to cancel the original rent cheque and reissue a second one.

At the hearing, the tenants' advocate and both tenants gave sworn testimony that the tenants did give their September 2015 cheque to one of the landlord's family members prior to the date when their rent for that month was due. The associated physical evidence, although inconclusive as to whether the cheque was actually given to the landlord or the landlord's family, does reveal repeated and undisputed attempts by the tenant(s) to pay their September 2015 rent to the landlord's son. By contrast, the only sworn testimony provided by the landlord on this point was the sworn testimony from his son at this hearing. Although the landlord was present at the hearing, he did not provide any substantive testimony, nor did his agent ask him to do so. Other members

of the landlord's family were also present for some of the interactions in the tenants' audio recordings; they did not participate in this hearing.

Under these circumstances and based on a balance of probabilities, I find the tenants' evidence and sworn testimony more convincing than that of the landlord's son. The undisputed audio recording revealed that the landlord's son repeatedly refused to accept the tenants' offer to give him a cheque for the September 2015 rent a few days before that rent was due. While a cancelled cheque itself would act as a receipt and rent receipts are only required for cash payments, the tenants were understandably concerned that the landlord's son would claim he did not receive the cheque and, more importantly at that time, the tenant's key to access the garage. Subsequent events appear to have confirmed the tenants' reluctance to provide anything to the landlord's son or one of the landlord's other family members without obtaining a receipt. The landlord's repeated attempts to end this tenancy by issuing repeated notices to end tenancy adds further support to the account provided by the tenant's advocate and the tenants. The sworn testimony of the tenants and their advocate was consistent and clear, and was supported to the extent possible through the audio recordings they submitted, as well as a copy of the September 2015 rent cheque they claim to have provided to one of the landlord's family members. By contrast, I found the sworn testimony of the landlord's son was not as clear and consistent, although he did maintain throughout that the tenants did not pay their September 2015 rent.

For the reasons outlined above, I find that the landlord has not established to the extent required that the tenants failed to pay their September 2015 rent. As such, I allow the tenants' application to cancel the landlord's 10 Day Notice. The 10 Day Notice is of no continuing force or effect.

Analysis – 1 Month Notice of September 27, 2015

In accordance with section 47(1) of the *Act*, the landlord issued a 1 Month Notice on September 27, 2015. He identified the following reasons for ending this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:…

- *jeopardize a lawful right or interest of another occupant or the landlord….*

I find that much of the landlord's application to end this tenancy for significant interference with or unreasonable disturbance by the tenants and the tenants' advocate amounted to a repeat of some of the same allegations made unsuccessfully in the hearing conducted in August 2015. While additional incidents have occurred, it is not at all clear who was at fault for any of these situations. I attach little weight to the landlord's allegations that the calling of police to the rental unit constituted a significant interference with or unreasonable disturbance of the landlord and his family. Tenants are not prevented from contacting the police if they believe that there is a need to do so. I find little merit in the position taken by the landlord that the very calling of police by the tenants constitutes a significant interference with or unreasonable disturbance enabling the landlord to end this tenancy for cause.

I find that the landlord presented insufficient evidence to demonstrate that there is any illegal activity occurring at this rental unit. Although the landlord's agent said that his family was concerned about the tenants being involved in prostitution during the August 2015 hearing and raised concerns at the current hearing that part of the rental unit was being used to grow marijuana, his sworn testimony was the only evidence submitted to support this allegation. I see little evidence to support the landlord's assertion that by September 27, 2015, the tenant had put the landlord's property at significant risk or had seriously jeopardized the landlord's health or safety. I dismiss the landlord's 1 Month Notice of September 27, 2015, as I find that the landlord has not met the burden of proof required to end a tenancy for the reasons cited above.

Analysis – 1 Month Notice of October 18, 2015

The landlord issued another 1 Month Notice on October 18, 2015, citing the following reasons for ending this tenancy for cause:

Tenant has allowed an unreasonable number of occupants in the unit/site…

Tenant has engaged in illegal activity that has, or is likely to:…

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;…*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. …

Tenant has assigned or sublet the rental unit/site without landlord's written consent…

In general terms, I find that the landlord's issuance of these additional reasons to end this tenancy reinforced the impression that the landlord was taking all measures possible to end this tenancy for any number of reasons, in case previous reasons cited proved insufficient.

Arbitrator AM issued a final and binding decision regarding that portion of the landlord's earlier attempt to end this tenancy due to there being an unreasonable number of occupants in the rental unit. A landlord can issue a new 1 Month Notice claiming a similar reason for ending the tenancy as was identified in an earlier hearing. However, the new Notice would need to identify additional evidence warranting an end to the tenancy based on what had transpired between the issuance of the 1 Month Notices of June 2015 and October 18, 2015. I find that the landlord provided little more evidence than was presented in August 2015, with respect to the claim that there were an unreasonable number of occupants in the rental unit. In addition to what was presented to Arbitrator AM, the landlord submitted written evidence, confirmed by sworn testimony of Witness FH, with respect to the landlord's claim that there were an unreasonable number of occupants living in the rental unit. At the hearing, Witness FH's main testimony offered as evidence that three people were living in the rental unit was his observation that a white Volkswagen was parked in front of his house overnight. One of the tenants confirmed that she owns a white Volkswagen and did not deny the witness' allegation that she parks her car in front of his house. The tenants' advocate denied owning a white Volkswagen. He said that he resides in another community, and does not reside with the tenants. The landlord's son and the landlord's witness provided little in writing or oral testimony that convinced me that an unreasonable number of occupants were residing in the rental unit. I dismiss this portion of the landlord's 1 Month Notice, as little has changed in this regard since Arbitrator dismissed the landlord's previous attempt to end this tenancy for this same reason.

I also dismiss the associated claim that this tenancy should be ended for an alleged illegal sub-letting of the rental unit without the landlord's written consent. There is insufficient evidence to indicate that there has been any sub-letting of the rental unit.

For reasons similar to those outlined above, I find that the landlord presented insufficient evidence to demonstrate that there is any illegal activity occurring at this rental unit.

While the landlord's son was not entirely clear on the point, it would seem that the landlord's claim that there had been a breach of a material term of the tenancy Agreement relied on the discovery of a plastic bag covering the smoke alarm in the rental unit. The landlord or the landlord's son noticed this when they conducted an inspection of the rental unit and issued a written notice to remove this plastic bag as it presented a serious fire safety issue. One of the tenants and their advocate testified that they removed the plastic bag immediately after receiving the landlord's written notice to do so. The landlord's son said that he was uncertain as to whether the plastic bag had been removed from the smoke alarm. He said his family has not entered the rental unit since they issued the written request to remove the bag. I find that the landlord has produced no evidence to indicate that the tenants have failed to comply with the landlord's written request to remove the plastic bag from the smoke alarm. As such, the landlord is not entitled to end this tenancy for the failure to correct what the landlord maintained was a breach of a material term of the Agreement.

The landlord's 1 Month Notices also relied at least partially on the tenants' decision to change the lock on their door on or about September 9, 2015. As I noted at the hearing, the *Act* requires a tenant who wishes to change the locks to prevent the landlord's unauthorized access to the rental unit to obtain an order from an Arbitrator appointed under the *Act* to do so. Although the tenants have included a request to be given permission to change the locks in their original September 8, 2015 application for dispute resolution, there is undisputed written evidence and sworn testimony that they changed the locks without waiting for authorization to do so. I also note that the landlord proceeded to change these locks back again on October 8, 2015. The tenants' action in changing the locks, on its own could have been sufficient to end their tenancy for cause and could have constituted a breach of a material term of the Agreement if I were convinced that the action was unwarranted and if the tenants' actions had compromised the landlord's interests.

In considering whether the tenants' actions were warranted, I must take into consideration the series of circumstances that led to the tenants' decision to change their locks. In this case, the tenants' actions need to be taken into the context of a tenancy where the landlord and his family made repeated arbitrary decisions affecting this tenancy. From the outset of this tenancy, the landlord attempted to impose restrictions on the tenants' rights to use the premises. Many of the landlords' restrictions and requirements contravened the *Act*. For example, the landlords included in the Agreement a provision not permitted under the *Act* whereby the tenants were not allowed to have guests visit them after 8 pm. A few days after Arbitrator AM rejected the landlords' previous attempt to end this tenancy on the basis of the 1 Month Notice of June 2015, the landlords sent the tenants a "Notice Terminating or Restricting a Service

or Facility." In this Notice, the landlords advised the tenants that as of September 27, 2015, they would no longer be allowed to use the laundry facilities that formed part of their original Agreement. While the *Act* allows a landlord to terminate a facility included in the original Agreement, I find that the amount allowed by the landlords, $20.00 per month, was a reduction that bears no relationship to the true loss in value of this part of the Agreement. The tenants' advocate maintained that the tenants did not agree to the landlords' calculation of this loss in value of their tenancy, and noted that they were immediately prevented from using the landlords' laundry machine. Although it did not lead to any substantive loss to the tenants, the landlords also asked the tenants to return the garage key, which had been used by the tenants to place garbage and recycled material in the appropriate containers in the garage. I also heard disputed testimony and considered written evidence regarding the tenants' claim that the landlords also withdrew the internet that was included as a service provided by the landlords to the tenants in the Agreement.

In late August 2015, after the tenants returned from a trip out of town, they maintained that they discovered their rental unit door open and documents clearly created by the landlord(s) taped to a number of doors and walls. They also maintained that there was evidence that some of the tenants' belongings had been accessed and moved by either the landlord or those allowed into the rental unit by the landlord. While the landlord's son denied that the landlord or his family had entered the rental unit and placed these documents on the interior walls and doors of the rental unit, I find the tenants' evidence far more compelling and credible on this issue. The tenants and their advocate called the police to check as to whether there had been a break and enter into the rental unit, a reasonable measure given what had transpired.

The tenants' concerns about allowing unauthorized access to their rental unit was also fuelled by the unreasonable requirements the landlord imposed on them for making their rental unit available for open houses by realtors and for real estate showings. On August 25, 2015, the landlord gave the tenants a written notice that their listing of the property on the real estate market required them to have access to the rental unit on Thursday, August 27 for a one hour period, "and every Wednesday from September 2, 2015 (from) 9:30 AM – 12:30 AM until further notice." It is apparent that the landlords intended this to be a weekly requirement for a three-hour series of realtor open houses each week until the property was sold. While the landlords' realtor did not proceed to hold open houses every week, the landlords' written request to make the premises available for recurring open houses affected the tenants' right to quiet enjoyment and privacy. Of even more concern was the landlords' subsequent September 3 written notice requiring the tenants to make their rental unit available for showings of their rental unit for a one-month period "every Monday, Wednesday, Thursday, Saturday

and Sunday (from) 8:00 AM – 9:00 PM." This constituted an even more serious infringement upon the tenants' right to privacy and quiet enjoyment of their rental unit. A later monthly inspection request from the landlord noted that the landlords might enter the rental unit once per month from 10 am until 3 pm.

Given the above actions, all of which I find unreasonable infringements upon the tenants' rights to privacy and quiet enjoyment of the premises as established pursuant to section 28 of the *Act*, I find that the tenants had sufficient reason to be concerned about the landlords use of their keys to access the tenants' rental unit in ways that were not allowed under the *Act*. Had the tenants' decision to change locks prevented access to the rental unit by the landlords' real estate agent, I might still have agreed that the tenants' actions were irresponsible and harmful to the landlords' interests in attempting to sell this property. However, the tenants submitted undisputed sworn testimony and written evidence that they nevertheless provided the landlord's real estate agent with a key to their rental unit on the understanding that the realtor would not copy it or provide it to the landlord or his family. This arrangement was apparently successful in that the realtor was able to show the premises to prospective purchasers. I also heard disputed and conflicting evidence as to who was responsible for a lack of power in parts of this rental unit and for excessive heat that was turned on when prospective purchasers arrived to view the rental unit.

Based on the evidence before me, I find that the landlord's actions leading up to the tenants' decision to change their locks and bar access to the rental unit to the landlord and his family contravened the *Act* to such an extent that the tenants were justified in taking the exceptional step of changing their locks and providing a copy of the key to the landlord's real estate agent. I also note that by the time the landlords issued their third 1 Month Notice of October 18, 2015, the landlords had already changed the locks again on or about October 8, 2015. Under these circumstances, I find that the tenants' actions in changing these locks did not constitute a breach of a material term of the Agreement, nor did they unduly prejudice any rights or place the landlords' property at significant risk. For these reasons and based on a balance of probabilities, I allow the tenants' application to cancel the landlord's 1 Month Notice of October 18, 2015, which is of no continuing force or effect.

In general, I find that the actions and testimony of the landlord's family are consistent with a landlord who was attempting to achieve an end to this tenancy by whatever means possible, with little regard to whether such measures were permitted under the *Act*. I strongly encourage both parties to further explore whether there is some way whereby this tenancy could be ended by way of a mutually beneficial agreement prior to the scheduled February 29, 2016 end to this fixed term tenancy.

Analysis- Remainder of Tenants' Application

I should first note that neither the tenants nor the landlords acted appropriately in their actions related to the rekeying of the locks to this rental unit. At this stage and as this tenancy is scheduled to end by February 29, 2016, I order the parties to leave the existing locks in place, as both parties have keys to these locks. I order the landlord to limit their access to the rental unit to reasonable times when at least one of the tenants agrees to be present for the purposes of inspections, subject to the emergency provisions of the *Act*. I order the landlords to send the tenants 24 hours written notice of any monthly inspection, to be conducted at a specific time agreed upon by the parties. I

I order the landlords to make suitable arrangements with the landlords' real estate agent to gain access to the rental unit for the purposes of showing the rental unit to prospective purchasers. The tenants are to be given advance notice of such showings and these times are not to enable open-ended demands for showings of the nature that were sent by the landlords in the past. For their part, the tenants are expected to make the rental unit suitable for showing to prospective purchasers, including ensuring that everything in their power is done to accommodate a showing of the rental unit with hydro, heat and light provided at a reasonable level for such a showing.

Paragraph 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past or future rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement:"

> ***65*** *(1) … if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*
>
> > *(c) that any money paid by a tenant to a landlord must be*
> >
> > *(i) repaid to the tenant,*
> >
> > *(ii) deducted from rent, or*
> >
> > *(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;*
> >
> > *(d) that any money owing by a tenant or a landlord to the other must be paid;…*
> >
> > *(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;…*

In this case, I find that that landlord has reduced the value of this tenancy Agreement in a number of ways. I find that the landlord's removal of the free laundry facility that was to have been included in the Agreement warrants a significantly greater reduction in the value of this tenancy than the $20.00 per month allowed by the landlords. One of the tenants said that she typically only spends one hour to take their laundry to that facility. In addition to the cost of using the laundry, I find that the tenants are entitled to a reduction of one hour of their time four times per month in order to take their laundry to the nearest laundromat and use the facilities there. Based on an hourly rate of $15.00, I allow the tenants a retroactive rent reduction of $80.00 per month ($5.00 per week in laundry costs + 4 weeks @ $15.00 per hour = $80.00), instead of the $20.00 allowed by the landlords for this reduction in the value of their tenancy. This reduction in monthly rent takes effect as of September 1, 2015 and is ongoing while this tenancy continues.

I have also considered whether the tenants are entitled to a monetary award for their loss of use of the garage and for the landlord's alleged withdrawal of their internet service, both of which were to have been including their monthly rental payment.

With respect to the use of the garage, one of the tenants advised that their only use of the garage was to place their garbage and recycling in an enclosed area. Under these circumstances, I issue no reduction in rent for this item.

I heard conflicting evidence from the parties with respect to the tenants' request to obtain a rent reduction for the landlords' failure to provide them with functional internet service. The tenants' advocate said that the tenants complained about the irregularity of the internet service a number of times, and finally had to obtain monthly service at a cost of $39.20 per month from an internet provider themselves. The landlord's son said that the landlords' wifi service was irregular at times, and the landlords were never formally advised that the tenants were requiring some type of enhanced service. He maintained that the tenants viewed the problems between the landlords and tenants as an opportunity to obtain more reliable wifi service directly to their rental unit. While I have given the tenants' claim in this regard careful consideration and recognize that internet was included in their Agreement, I see little evidence to demonstrate that the type of wifi internet service the tenants obtained became the responsibility of the landlords to provide as part of this Agreement. The tenants did not advise the landlords that they were planning to install this service and did not give the landlords a proper opportunity to provide the tenants with internet service as prescribed in their Agreement. As I find that the tenants have not adequately demonstrated that they gave the landlord a proper opportunity to provide them with an adequate internet service, I dismiss this portion of the tenants' application without leave to reapply.

Section 28 of the *Act* entitles a tenant to quiet enjoyment of the rental premises, which includes, but is not limited 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];…*

If a claim is made by a tenant for loss of quiet enjoyment, the Arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

As a result of the landlords' repeated instances of reducing the tenants' rights to quiet enjoyment of the premises pursuant to section 28 of the *Act* and in accordance with section 65, I find that the tenants are entitled to the following monetary awards:

Item	**Amount**
Loss of Quiet Enjoyment Relating to Showings for Open Houses	$100.00
Loss of Quiet Enjoyment Relating to Real Estate Showings	200.00
Loss of Quiet Enjoyment Relating to Landlords' Unauthorized Accessing Rental Unit	100.00
Total of Above Items	**$400.00**

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc., are considered "non-pecuniary" losses.) Aggravated damages

are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless and indifferent behaviour. They are measured by the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

I am satisfied that the tenants have suffered a great deal of disruption during this tenancy since the landlords' previous attempt to end this tenancy on the basis of the initial 1 Month Notice proved unsuccessful in late August 2015. Since that time, the landlords have issued four notices to end tenancy, the effect of which has been to harass and intimidate the tenants. Some of these notices were of such little validity that the landlords' motivations caused grief and stress for the tenants. Under these circumstances, I find that the tenants are entitled to a somewhat nominal award of $100.00 each for aggravated damages, totaling $200.00. In coming to this determination, I remind the landlords that future Arbitrators considering applications regarding may not limit themselves to the issuance of nominal awards.

As the tenants have been for the most part successful in their application, I allow them to recover their filing fee from the landlords.

Analysis –Landlord's Application for a Monetary Award

Both parties agreed that the landlords have not cashed any cheque from the tenants for September 2015 rent. In the event that the landlords do in fact have this cheque, I order them to destroy it.

In accordance with the provisions of sections 38 and 72 of the *Act*, I order the landlords to retain $100.00 from the tenants' security deposit in order to implement the landlords' entitlement to rent for September 2015, less the amounts awarded in the tenants' favour in this decision. The revised value of the tenant's security deposit currently held by the landlords is hereby reduced from $500.00 to $400.00. I have selected this method of reimbursing the landlords as a means of avoiding a recurrence of the problems that have arisen around the provision of cheques to the landlord or his family members.

I dismiss the remainder of the landlord's application for a monetary award, including their application to recover their filing fee.

Conclusion

I allow the tenants' application to cancel all of the landlords' four notices to end tenancy without leave to reapply. These Notices to End Tenancy are of no continuing force or effect. This tenancy continues until February 29, 2016, or until ended in accordance with the *Act.*

I order the landlords to destroy any September 2015 rent cheque they may have in their care or possession.

I order the landlords to retain $100.00 from the tenants' security deposit, calculated on the basis of the following breakdown of monetary awards:

Item	**Amount**
Replacement of September 2015 Rent Cheque	$920.00
Reduction in Value of Tenancy for Loss of Laundry Facilities October – November 2015 - 2 x ($80.00 - $20.00 = $60.00) = $120.00	-120.00
Loss of Quiet Enjoyment Relating to Showings for Open Houses	-100.00
Loss of Quiet Enjoyment Relating to Real Estate Showings	-200.00
Loss of Quiet Enjoyment Relating to Landlords' Unauthorized Accessing Rental Unit	-100.00
Aggravated Damages (2 x $100.00 = $200)	-200.00
Less Tenants' Filing Fee from August 2015 Hearing	-50.00
Less Tenants' Filing Fee from the Current Application	-50.00
Amount of Monetary Award Deducted from Tenants' Security Deposit	**$100.00**

This award reduces the value of the security deposit currently held by the landlords from $500.00 to $400.00.

I order that the correct monthly rent for this tenancy as of December 1, 2015 is set at $920.00, until changed in accordance with the *Act*.

I order the parties to leave the existing locks in place, as both parties have keys to these locks. I order the landlords to abide by the terms of the *Act* with respect to monthly inspections of the rental unit and as per the details outlined in this decision. I order the tenants to allow the landlords or their agents access to the premises in accordance with the details outlined in this decision.

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: November 13, 2015

Residential Tenancy Branch