Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

These hearings were convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although she cannot recall the date of service. The Landlord acknowledged receiving these documents shortly after September 25, 2014.

The Tenant submitted numerous documents to the Residential Tenancy Branch when the Application for Dispute Resolution was filed on September 25, 2014. At the hearing on April 30, 2015 the female Tenant stated that these documents were not served to the Landlord with the Application for Dispute Resolution.

On April 13, 2014 the Tenant submitted nine pages of evidence and 18 photographs to the Residential Tenancy Branch. At the hearing on April 30, 2015 the female Tenant stated that on April 13, 2015 all of this evidence and all of the documents submitted to the Residential Tenancy Branch on September 25, 2014 were served to the Landlord by registered mail.

At the hearing on April 30, 2015 the Landlord acknowledged receiving a large amount of evidence in April of 2015. The number of documents and photographs the Landlord acknowledged receiving is different from the number of documents and photographs submitted to the Residential Tenancy Branch by the Tenant.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure stipulates, in part, that to ensure a fair, efficient and effective process, an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each Respondent and submitted to the Residential Tenancy Branch. As there appears to be differing numbers of documents/photographs in the

evidence packages submitted to the Residential Tenancy Branch and the evidence package served to the Landlord, I find that the Tenant failed to comply with rule 3.7.

In an attempt to conduct these proceedings in a fair and efficient manner, I adjourned the hearing on April 30, 2015 and directed the Tenant to submit another evidence package to the Residential Tenancy Branch which contains only documents or photographs that have been previously submitted to the Residential Tenancy Branch. The Tenant was directed to number each document and photograph in a sequential manner.

At the hearing on April 30, 2015 and in my interim decision of May 02, 2015 the Tenant was directed to submit this evidence package to the Residential Tenancy Branch by May 08, 2015 and to serve an identical copy of this package to the Landlord no later than May 08, 2015. The Tenant was advised that only the documents/photographs submitted in this new evidence package will be considered at the hearing.

On May 19, 2015 the Tenant submitted 60 pages of evidence and 17 photographs to the Residential Tenancy Branch. At the hearing on June 25, 2015 the female Tenant stated that this evidence was sent to the Landlord, via registered mail, on May 15, 2015. The male Tenant acknowledged receiving this evidence on May 21, 2015, but noted that the package was not served by May 08, 2015 as required by my interim decision of May 02, 2015. The female Tenant stated that she was unable to prepare the documents by May 08, 2015 due to difficulties accessing a photocopier.

As the Landlord acknowledged receipt of the evidence package that was mailed on May 15, 2015, I accepted the package as evidence for these proceedings. Although the evidence was not served in accordance with the timelines given to the Tenant in my interim decision of May 02, 2015, I find that the Tenant provided a reasonable explanation for the delay; that the Landlord has had adequate time to consider the documents; and that the Landlord has not been unduly disadvantaged by the delay.

The Landlord submitted a binder of evidence containing 117 pages to the Residential Tenancy Branch on April 23, 2015. At the hearing on April 30, 2015 the male Landlord stated this package was served to the Tenant, by registered mail, on April 17, 2015. The Landlord submitted Canada Post documentation that corroborates this testimony. The female Tenant stated that this package has not been received. At the hearing on April 30, 2015 and in my interim decision of May 02, 2015, the Landlord was given the opportunity to re-serve this package to the Tenant, by registered mail, by May 08, 2015.

At the hearing on June 25, 2015 the female Landlord stated that duplicates of the documents submitted to the Residential Tenancy Branch on April 23, 2015 were sent to the Tenant, via registered mail, on May 08, 2015. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On May 28, 2015 the Landlord submitted ten pages of evidence to the Residential Tenancy Branch. The male Landlord stated that six pages of this evidence were not

served to the Tenant. As these pages were not served to the Tenant, they were not accepted as evidence for these proceedings.

The male Landlord stated that three pages of the evidence submitted to the Residential Tenancy Branch on May 28, 2015, marked 6-32, 6-33, 6-34, and 6-35, were served to the Tenant by registered mail on May 08, 2015. He stated that this evidence was not previously submitted to the Residential Tenancy Branch.

At the hearing on April 30, 2015 and in my interim decision of May 02, 2015, the Landlord was directed to re-serve the same evidence package that the Landlord alleges was submitted to the Residential Tenancy Branch on April 23, 2015. The Landlord was not given authorization to submit additional evidence. I therefore refuse to accept any of the documents that were submitted to the Residential Tenancy Branch on May 28, 2015.

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

Preliminary Matter #1

The Landlord argued that the Tenant's claim for the return of the security deposit was considered at a previous dispute resolution proceeding and cannot, therefore, be considered at these proceedings.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding on May 01, 2014, although the Tenant was not represented at that hearing. The parties agree that the Arbitrator conducting the hearing authorized the Landlord to keep the security deposit paid by the Tenant.

As the issue of the security deposit was considered on May 01, 2014 and a decision was rendered regarding the disposition of the deposit, I find that the principle of res judicata applies. As that matter has already been decided, I am unable to reconsider the disposition of the security deposit. The Tenant's application to recover the deposit is dismissed.

The Landlord argued that the Tenant's claim for a monetary Order was also considered at the dispute resolution proceeding and cannot, therefore, be considered at these proceedings. I disagree.

The hearing on May 01, 2014 was convened to consider the Landlord's application for unpaid rent. Although the Arbitrator did consider whether the Tenant had the right to end the tenancy without proper notice because the Landlord failed to comply with a material term of the tenancy, the Arbitrator did not consider whether the Tenant was entitled to compensation for deficiencies with the rental unit. As the Tenant's claim for

compensation for deficiencies with the rental unit has not been previously determined, I find it appropriate to consider that claim at these proceedings.

Preliminary Matter #2

The Tenant applied to have these proceedings heard at an "in person" hearing rather than via teleconference. She based this request on her belief that the issues in dispute are very complicated and will be better understood if they can be explained in person, where the parties can rely on non-verbal communication, as well as verbal, communication.

The application for an "in person" hearing was denied, in part, because the issues in dispute at these proceedings do not appear to be overly complicated and are typical of issues that are commonly considered via teleconference.

The application for an "in person" hearing was denied, in part, because parties are able to communicate effectively during a teleconference, providing parties do no interrupt each other and only speak when it is their turn to do so. The parties were reminded on several occasions to wait for my direction before speaking and, for the most part, the parties complied with this direction throughout the hearings.

Issue(s) to be Decided

Is the Tenant entitled to compensation for living with deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant moved into the rental unit in December of 2010;
- the monthly rent at the end of the tenancy was $1,100.00;
- the Tenant vacated the rental unit in January of 2014; and
- a condition inspection report was completed on November 29, 2010 and was signed by both parties, a copy of which was submitted in evidence.

The Tenant submitted a second condition inspection report which she completed at the end of the tenancy in the absence of the Landlord. This report is not signed by the Landlord.

The Tenant is seeking compensation for living with mould in the rental unit. The Tenant submitted photographs of the mould in the bathroom and on a ceiling above a patio.

The female Tenant stated that:

- there was mould growing around the bathtub at the start of the tenancy;

- the Landlord was aware of the mould at the start of the tenancy and he agreed to remove it;
- the Tenant reminded the Landlord of the problem with mould once per month for the duration of the tenancy;
- on January 05, 2012 the Landlord agreed, in writing, to pay for replacing the drywall in the bathroom, providing the Tenant got three estimates and approval from the Landlord prior to proceeding with the repair;
- the Landlord told them they could only obtain repair estimates from a popular internet site;
- they were unable to find a contractor who was willing to remove the mould;
- there was mould growing in the ceiling above a patio;
- there was mould growing on the wall in one of the bedrooms;
- in December of 2013 the female Tenant developed a chronic lung infection which she attributes to the mould in the rental unit;
- the female Tenant's lung infection cleared up about six months after the end of the tenancy; and
- during the last six months of the tenancy the Tenant's son also developed a lung infection.

The male Landlord stated that:

- mould was not growing around the bathtub at the start of the tenancy;
- the Landlord did not agree to remediate the mould at the start of the tenancy because no mould was present;
- the Tenant first reported the problem to the Landlord "about" October of 2011;
- on January 05, 2012 the Landlord agreed, in writing, to pay for replacing the drywall in the bathroom, providing the Tenant got three estimates and approval from the Landlord prior to proceeding with the repair; and
- the repairs were not completed during the tenancy because the Tenant did not provide estimates for the repairs;
- he made no attempt to repair the problem;
- the Landlord did tell the Tenant to find estimates on a popular internet site but did not restrict them to that source;
- the mould in the bathroom would have been greatly reduced if the bathroom had been cleaned on a regular basis; and
- the Tenant never reported the mould in the bedroom or the ceiling of the patio until this Application for Dispute Resolution was filed.

The Landlord submitted a copy of the condition inspection report which was completed on November 29, 2010 and was signed by both parties. This report does not indicate there is mould in the bathroom.

The Tenant submitted no evidence to establish that the type of mould in the bathroom was a health hazard. The Tenant submitted no evidence to establish that the lung infection of any occupant was caused by the mould in the unit.

The Tenant is seeking compensation for living with a deficiency with the driveway.

The female Tenant stated that:

- the Landlord agreed to have gravel delivered to the residential property;
- the Tenant agreed to spread the gravel on the driveway;
- sand was delivered instead of gravel;
- eleven tons of sand was delivered, which is significantly more than the two tons the Tenant anticipated;
- the sand was delivered in the middle of the driveway and a significant amount had to be moved before the driveway could be used;
- the Tenant hired a third party to move some of the sand and the Landlord reimbursed the cost of his wages;
- the Tenant spent an additional 16 hours spreading the sand; and
- not all of the sand had been spread by the end of the tenancy.

The male Landlord stated that:

- he agreed to deliver gravel and the Tenant agreed to spread it over the driveway; and
- he ordered the amount and the type of gravel recommended by the supplier.

The Tenant is seeking compensation for living with rodents in the rental unit.

The female Tenant stated that:

- a problem with rats and mice was first reported to the Landlord on December 30, 2010;
- as a result of the rodents she had to clean feces from various areas in the rental unit, including the kitchen cupboards, the laundry room floor, and the washer/dryer;
- there was a very bad odor in the rental unit which the Tenant believed was the result of dead rodents in the walls;
- she informed the Landlord there was a bad smell in the dryer and he removed a dead rodent from the dryer vent;
- they could hear rodents running in the walls;
- shortly after the problem was reported the Landlord hired a pest control company;
- the problem was frequently reported to the Landlord, via email;
- the representative of the pest control company told her that the Landlord was refusing to block holes that provide rodents with access to the rental unit; and
- after approximately six months the Tenant eventually stopped reporting the problem because the Landlord was not willing to block access points.

The male Landlord stated that:

- a problem with rats and mice was first reported on December 31, 2010;

- the Tenant did tell him rodent feces had to be cleaned from various areas of the rental unit;
- there was a bad odor in the rental unit;
- the Tenant informed him of a bad smell in the dryer and he removed a dead rodent from the dryer vent;
- he did not inspect inside the walls;
- shortly after the problem was reported he entered into a six month contract with a pest control company;
- the pest control company responded every time he received another report from the Tenant;
- the problem was last reported in June of 2011, so he assumed the problem was resolved;
- he does not recall the pest control company telling him he should block holes that provide rodents with access to the rental unit; and
- he did not compensate the Tenant for cleaning the rental unit as a result of the rodents or for blocking access holes.

The Tenant is seeking compensation for living with raccoons in the attic of the rental unit.

The Tenant stated that:

- the problem with raccoons was reported to the Landlord in the spring of 2011;
- the Landlord contacted a pest control company shortly after receiving the report;
- the pest control company trapped the mother raccoon but not her babies;
- the Tenant asked the pest control company to release the mother as the Tenant was concerned for the welfare of the baby raccoons;
- the pest control company did not return after the mother was released from captivity;
- the Landlord never sealed the access points to the attic so the raccoons returned;
- the Landlord did not ask the Tenant to contact the pest control company to make arrangements to have the access points sealed;
- the Landlord did ask the Tenant to seal the access points on his behalf; and
- the Tenant did not seal the access points as they did not have the skills to do so and it was unsafe to climb on the roof.

The male Landlord stated that:

- the problem with raccoons was reported to the Landlord on October 01, 2013;
- he contacted a pest control company shortly after receiving the report;
- the pest control company trapped the mother of the raccoons but released the mother, at the request of the Tenant;
- he asked the pest control company to continue with the effort the remove the raccoons;

- he asked the Tenant to contact the pest control company to make arrangements to have any access points blocked, as one of the Tenants worked nights and it was easier for the Tenant to coordinate timing of the repairs;
- the raccoons eventually left on their own accord; and
- he was never advised that the raccoons returned to the attic.

In an email, dated May 15, 2012, submitted in evidence by the Landlord, the Tenant informs the Landlord there are raccoons in the attic. I was unable to locate an email in the documents accepted as evidence that indicates the Landlord was advised the raccoons had returned to the attic.

The Landlord submitted a series of emails regarding the raccoons, including:

- an email dated May 22, 2012, in which the Tenant informs the Landlord the raccoons are gone and that the access points need to be sealed;
- a response to the email of May 22, 2012 in which the Landlord declared that he understood the access points would be blocked by the pest control company once the raccoons moved out of the attic;
- an email dated May 28, 2012, in which the Tenant informs the Landlord the Tenant will contact the pest control company to have the access points sealed; and
- an email dated May 29, 2012, in which the Landlord asks the Tenant to advise him when the situation with the raccoons “is all done”, at which time he will pay the pest control company for their services.

After the aforementioned series of emails were raised by the Landlord at the hearing the Tenant stated that she forgot about the request to make arrangements to have the access points sealed; that the Tenant did contact the pest control company to make arrangements to have the access points sealed; and that the pest control company told her that the Landlord refused to pay to have the access points sealed.

The Tenant is seeking compensation for living with termites in the rental unit.

The Landlord and the Tenant agree that:

- in September of 2013 the Tenant reported that termites were entering the rental unit through a space in the floor;
- shortly after the termites were reported the rental unit was treated by a pest control company; and
- no further reports of termites were made after the rental unit was treated by the pest control company.

The Landlord and the Tenant agree that during this tenancy the Tenants made many repairs to the rental unit. In the Landlord’s response to the email dated December 30, 2010, the Landlord indicates that he had previously authorized the Tenant to block access points for rodents. In an email to the Landlord, dated January 13, 2011, the Tenant informed the Landlord that they “used spray foam to fill in all the holes”.

The Tenant is seeking compensation because the unit was in a general state of disrepair, which permitted debris from the attic to fall into the rental unit and resulted in excessive heating costs. The female Tenant stated that the problem was reported to the Landlord, verbally, on several occasions; that it was first reported, verbally, approximately one year after the start of the tenancy; and that it was first reported, in writing, on January 02, 2014. The male Landlord stated that the problem was first reported in September or October of 2013.

The Tenant stated that photograph 59 depicts an area where the floor is separating from the wall. The Landlord contends that this space was filled with spray foam, which the Tenant denies.

The Tenant stated that photograph 61 depicts an area where the ceiling is separating from the wall. The parties agree that the damage was not repaired prior to the end of the tenancy.

The Tenant stated that photograph 62 depicts an area where the door frame and the wall are separating. The parties agree that the damage was not repaired prior to the end of the tenancy.

The Tenant stated that photograph 63 depicts an area where the ceiling is separating from the wall. The parties agree that the damage was not repaired prior to the end of the tenancy.

The Tenant stated that photograph 66 shows a transition board that came loose during the tenancy. The parties agree that the damage was not repaired prior to the end of the tenancy.

The Tenant stated that photograph 67 depicts a hole in the laundry room; that the Tenant filled the hole; but that rodents chewed through the repair. The Landlord stated that he understood the Tenant had repaired the hole and that he was not informed that the problem persisted.

The Tenant is seeking compensation because the doors to the rental unit were insecure.

The Tenant stated that:

- the glass in the door leading into the laundry room was broken and the window was covered with plywood;
- the laundry room door did not have a door handle;
- the laundry room door was secured with a dead bolt lock that bolted into “rotting” plywood;
- this was the condition of the door at the start of the tenancy;
- the door leading from the back yard into the bedroom did not close properly and

could have easily been forced open;
- the Landlord told the Tenant the glass in the laundry room door would be replaced and both doors would be secured;
- the laundry room door was repaired in October or November of 2012; and
- the bedroom door was repaired in September of 2013.

The male Landlord stated that:
- the glass in the door leading into the laundry room was broken and the window was covered with plywood;
- he did not tell the Tenant the plywood in the door would be replaced with glass;
- the laundry room door was secured with a dead bolt lock;
- that the wood the laundry room door lock bolted into was not “rotting”;
- this was the condition of the laundry room door at the start of the tenancy;
- during the tenancy the door leading into the bedroom developed a gap;
- in his opinion neither door presented a security risk;
- and he did not promise to secure either door.

The Tenant is seeking compensation for moving garbage from the yard, which they did not notice at the start of the tenancy because it was covered in snow.

The Tenant stated that:
- the Tenant spent approximately 40 hours moving garbage from the rear of the rental unit to the driveway of the rental unit;
- the Tenant was not compensated for this labour; and
- the Landlord paid to have the garbage removed from the driveway of the rental unit.

The male Landlord stated that:
- shortly after the start of the tenancy the Tenant informed him there was garbage in the yard;
- he told the Tenant he would pay to have the garbage removed;
- the Tenant told them they would move it to the front of the rental unit; and
- he did not compensate the Tenant for their time.

The Tenant submitted an email, dated January 13, 2011, in which the Tenant details some of the repairs/renovations they have completed. The Tenant submitted an email which appears to be a response to this email, although it is not dated, in which the Landlord declares “I also told you that I would pay for the garbage removal for the garbage in the yard”. The Tenant submitted an email, dated April 21, 2011, in which the Tenant informs the Landlord they have finished moving the garbage from the back yard to the driveway.

Analysis

There is a general legal principle that places the burden of proving a claim on the person who is seeking compensation. As the Tenant is the Applicant in this matter, the Tenant bears the burden of proving the Tenant is entitled to compensation for deficiencies with the rental unit.

Section 32(1) of the *Act* requires a landlord 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. In the absence of evidence to show that the presence of mould does not comply with health, safety, or housing standards or that it renders the unit unsuitable for occupation, I am unable to conclude that the Landlord failed to comply with section 32(1) of the *Act* when the Landlord failed to remediate the mould in the bathroom.

Section 28 of the *Act* entitles a tenant to the quiet enjoyment of the rental unit. In my view, a landlord breaches a tenant's right to the quiet enjoyment of the rental unit if the landlord allows the property to fall into a significant state of disrepair and the state of that rental unit reduces the ability to live comfortably in the rental unit. On the basis of the photographs of the bathtub, I find that the presence of mould in the bathroom was significant and that the Landlord breached section 28 of the *Act* when the Landlord did not remediate the mould in a timely manner.

In determining this matter I do not accept the Landlord's submission that the mould in the bathroom would have been greatly reduced if the bathroom had been cleaned on a regular basis. The mould depicted in the photographs of the bathroom is typical of mould that accumulates as a result of moisture and is not solely associated to hygiene. As Tenants are not obligated to repair damage arising from normal wear and tear, I cannot conclude that the Tenant was obligated to remediate the mould.

I find that the Tenant has submitted insufficient evidence to establish that there was mould in the bathroom at the start of the tenancy and/or that the Landlord agreed to remediate that problem at the start of the tenancy. In reaching this conclusion I was heavily influenced by condition inspection report that was completed on November 29, 2010**,** which corroborates the male Landlord's testimony that the mould was not present at the start of the tenancy.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed 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 submitted in evidence does not indicate there was mould in the bathroom at the start of the tenancy and the Tenant has not submitted evidence that convinces me the mould was present at the start of the tenancy, I must conclude that it was not present at the start of the tenancy.

As the Landlord acknowledges being advised of the mould problem “about” October of 2011, I find that the Landlord became obligated to address the problem at that time. I find that in January of 2012 the Landlord took reasonable steps to address the mould problem by reaching an agreement with the Tenant, in which the Tenant agreed to find someone to remediate the problem.

On the basis of the undisputed evidence, I find that the Tenant did not find anyone to remediate the mould in the bathroom. Once the Landlord became aware that the Tenant was not going to take action to remediate the mould, I find that the onus to complete the repairs shifted back to the Landlord. After waiting a reasonable time, I find that the Landlord should have taken appropriate steps to remediate the mould. In my view, after waiting six months for the Tenant to take action, it would have been reasonable for the Landlord to assume responsibility for the repairs.

As the Landlord did not assume responsibility for the repairs by June of 2012, I find that the Tenant is entitled to compensation for living with this deficiency for the remainder of the tenancy, which was approximately 18 months. Granting compensation for loss of quiet enjoyment is highly subjective, however on the basis of the photographs submitted in evidence I find that the mould in the bathroom reduced the cosmetic value of this tenancy by $20.00 per month. I therefore find that the Tenant is entitled to compensation for mould in the bathroom, in the amount of $360.00. In determining the amount of monthly compensation due I was influenced, in large part, by my conclusion that the impact of the mould was largely cosmetic and it did not prevent the Tenant from using the bathroom.

The compensation awarded for the presence of mould is not based on the Tenant’s submission that the lung infections experienced by the female Tenant and her son were caused by the mould. In the absence of medical or scientific evidence that supports this submission, I find there is simply insufficient evidence to establish a correlation between the mould and the medical conditions.

In determining that the Tenant is not entitled to compensation for mould for the period between October of 2011 and June of 2012, I was influenced by the undisputed evidence that the delay in remediating the mould was due, in large part, by the Tenant’s failure to comply with their agreement to obtain repair estimates. I find that they did not fully mitigate their loss of quiet enjoyment, as is required by section 7(2) of the *Act.*

On the basis of the undisputed evidence, I find that the Tenant agreed to spread gravel on the driveway on behalf of the Landlord. In the event that the Tenant did not wish to comply with the agreement, either because the wrong material was delivered or because of the amount that was delivered, the Tenant had the option of simply refusing to spread the material.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if a tenant suffers a loss as a result of the landlord breaching the *Act*. Even if I accepted the

Tenant's submission that the driveway to the residential complex was blocked by the delivery of the material, I would find that there was insufficient evidence to establish that the Tenant is entitled to compensation as a result of the delivery. I therefore find that the Tenant is not entitled to compensation for time spent spreading the material.

In determining that there was insufficient evidence to establish that compensation for spreading the material is due I was influenced, in part, by the undisputed evidence that the Landlord has already compensated the Tenant for money that was paid to a third party to move some of the material. This confirms that the Landlord has assumed at least some responsibility for moving the material.

In determining that there was insufficient evidence to establish that compensation for spreading the material is due I was influenced, in large part, by the absence of photographs or other evidence that establishes the material prevented the Tenant from accessing the residential property. Had the Tenant provided photographs that establish they were unable to access the residential property after the third party spent six hours moving material, I may have concluded that the Landlord breached section 30 of the *Act.* Without evidence that enables me to make an independent assessment of the impact of the delivery, however, I simply have insufficient evidence to reach this conclusion.

On the basis of the undisputed evidence, I find that there was a problem with rodents in the rental unit, which was brought to the Landlord's attention in December of 2010. I find that the Landlord acted in a timely and reasonable manner upon receiving those reports by hiring a pest control company and authorizing the Tenant to block access points on his behalf.

In spite of the efforts of the Landlord, I find that the presence of rodents interfered with the Tenant's quiet enjoyment of the rental unit. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant had to clean rodent feces; that there was a bad odor in the rental unit; and there was a dead rodent in their dryer. I find the odor in the unit and the dead rodent in the dryer exceeds what can be typically experienced with rodents and would be significantly disturbing to an occupant.

Granting compensation for loss of quiet enjoyment is highly subject but I find it reasonable to conclude that the presence of rodents in these circumstances reduced the value of this tenancy by $30.00 per month. I therefore find that the Tenant is entitled to compensation for the rodents for the period between January and June of 2011, in the amount of $180.00.

I find that the Tenant is not entitled to compensation for the presence of rodents after June of 2011, as the Tenant did not mitigate the Tenant's loss as is required by section 7(2) of the *Act.* I find that the Tenant's failure to inform the Landlord of a continuing problem with rodents after June of 2011 significantly contributed to the continued presence of the rodents. I find it reasonable for the Landlord to conclude that the pest control company had resolved the rodent problem once the Tenant stopped reporting

the problem to the Landlord.

I find that the Landlord's failure to block access points does not negate the Tenant's obligation to mitigate the loss. In the event the Tenant did not believe the Landlord was responding appropriately to the rodents, the Tenant had the option of filing an Application for Dispute Resolution seeking an Order requiring the Landlord to remedy the situation.

On the basis of the undisputed evidence, I find that the Tenant informed the Landlord there were raccoons living in the attic. Although the Landlord contends the raccoons were reported on October 01, 2013 and the Tenant contends they were reported in the spring of 2011 I find, on the basis of the email dated May 15, 2012, that they were reported on May 15, 2012.

On the basis of the undisputed evidence, I find that the Landlord acted in a reasonable and timely manner in response to the report of raccoons in the attic. I find that the Tenant directly interfered with the Landlord's attempt to remove the raccoons from the attic when the Tenant asked the pest control company to release the raccoon that was trapped. As the Landlord responded appropriately to the report of raccoons in the attic, I find that the Tenant is not entitled to compensation related to the raccoons.

In determining that the Tenant is not entitled to compensation for the raccoons, I placed no weight on the Tenant's submission that the raccoons returned because the Landlord did not block their access point. On the basis of the emails exchanged between the parties in May of 2012, I find that the Landlord authorized the Tenant to make arrangements to have the pest control company seal the access points.

Although I have no evidence that the access points were ever sealed, I find this was most likely due to the Tenant not contacting the pest control company rather than the Landlord refusing to pay the cost of that repair, as the Tenant alleges. In reaching this conclusion I was influenced, in part, by the emails of May 22, 2012, May 28, 2012, and May 29, 2012 in which the Tenant agrees to contact the pest control company and the Landlord advises the Tenant he will pay the pest control once the repairs are complete. In reaching this conclusion I was further influenced by the absence of any evidence that corroborates the Tenant's claim that the Landlord subsequently refused to pay to have the access points sealed.

In determining that the Tenant is not entitled to compensation for issues with raccoons I was also influenced by the absence of evidence, such as an email or the Landlord's acknowledgement that he was advised the raccoons had returned, which indicates the Landlord was informed that the raccoons had returned. Given the Landlord's timely response to the first report of the raccoons, I find it highly likely that the Landlord would have responded appropriately to a second report, including blocking access points that had not been blocked after the first report or access points that had been newly created.

On the basis of the undisputed evidence, I find that the Tenant informed the Landlord

there were termites in the rental unit and that the Landlord acted in a reasonable and timely manner in response to the report of the termites. As the Landlord responded appropriately to the report of termites, I find that the Tenant is not entitled to compensation related to the termites.

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.

I find that the Tenant has submitted insufficient evidence to establish that the holes/spaces in the walls/floors of the rental unit do not comply with section 32(1) of the *Act*, as the Tenant has not established that the spaces makes the rental unit unsuitable for occupation or that the condition of the walls do not comply with health, safety and housing standards required by law. While the holes/spaces may have, to some degree, contributed to the rodent infestation, the Tenant has already been compensated for that issue and additional compensation is not warranted.

Apart from the problem with rodents I cannot conclude that these problems with the rental unit significantly impacted the quiet enjoyment of the rental unit and I therefore cannot conclude that the Tenant is entitled to compensation for the holes/spaces. In determining that the Tenant is not entitled to compensation for loss of quiet enjoyment as a result of the holes/spaces, I was heavily influenced by the absence of evidence, such as photographs, that establish the amount of bird or animal feces entered into the rental unit as a result of these cracks. In the absence of evidence that allows me to make an independent assessment of the impact of the cracks, I cannot conclude that compensation is warranted.

I find that the Tenant has submitted insufficient evidence to establish that the door leading into the laundry room or the exterior door leading into the bedroom posed a security risk. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborate the Tenant's testimony that the doors could not be properly secured or that refutes the Landlord's testimony the doors did not pose a security risk.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord promised to replace the plywood in the door leading into the laundry room with glass or to repair either exterior door. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed at the start of the tenancy and was signed by both parties, in which there is no reference to a need, or a promise, to repair a door. I find that report corroborates the Landlord's testimony that he never promised to repair either door.

As the Tenant has failed to establish that either exterior door could not be properly secured or that the Landlord promised to repair either door, I dismiss the Tenant's claim for compensation for any alleged deficiencies with the doors.

On the basis of the undisputed evidence, I find that there was garbage in the yard of the rental unit at the start of the tenancy; that the Tenant moved the garbage from the back yard to the driveway; that the Landlord informed the Tenant he would pay to have the garbage removed; and that the Landlord paid for the cost of removing the garbage from the driveway.

In the absence of evidence to show that the Landlord directed the Tenant to move the garbage from the yard to the driveway, I find that the Tenant is not entitled to compensation for moving the garbage. In the event the Tenant did not wish to move the garbage to the driveway the Tenant could simply have left the garbage in place and the Landlord would have had to pay the additional cost of collecting it from the yard. The Tenant cannot expect compensation for labour they were not required to do.

I note that I have placed no weight on the condition inspection report that the Tenant completed at the end of the tenancy. As the Landlord did not participate in the making of this report and the Landlord did not sign the report to indicate he agrees with the content of the report, I find that it has little evidentiary value.

I find that the Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of $640.00, which is comprised of $540.00 in compensation for deficiencies with the rental unit and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: November 26, 2015

Residential Tenancy Branch