Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNDC OLC ERP RP FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 22, 2015. The Tenant filed seeking to dispute an additional rent increase and to obtain the following orders: a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; order the Landlord to comply with the *Act,* Regulation, or tenancy agreement; orders to have the Landlord make emergency repairs for health and safety reasons; order the Landlord to make repairs to the unit, site or property; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by two Landlords, the Tenant, and the Tenant's father who assisted the Tenant during the hearing. The Tenant named only the male Landlord as the respondent to this dispute; however, both owners (Landlords) appeared at the hearing and each were given an opportunity to submit evidence. That being said, the majority of the Landlords' evidence was presented by the male Landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence. That being said, the Landlord did state that he would have liked to have received the Tenant's evidence in one package instead of three separate packages.

During the hearing each party was given the opportunity to present their evidence and respond to the other's evidence and testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a rent increase been imposed in accordance with the *Act?*
2. If so, is the Tenant entitled to dispute such a rent increase?
3. Has the Tenant proven that emergency repairs are required?
4. Should the Landlords be ordered to repair the unit, site, or property?
5. Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on August 15, 2014. Rent was initially $1,200.00 per month payable on the first of each month and was subsequently increased to $1,230.00 per month effective September 1, 2015. On September 15, 2014 the Tenant paid $600.00 as the security deposit plus $400.00 as a pet deposit.

A copy of the tenancy agreement and addendum were submitted into evidence by the Landlord. The addendum listed three items which are summarized as follows: (1) no smoking indoors; (2) use of live Christmas trees not permitted; and (3) the Tenant will split the water utility bill evenly with the other side of the duplex.

The rental unit was described as being half of a duplex consisting of two levels, the main floor and basement. The basement is below ground in the front and is a walk out or at ground level in the back yard. The Landlords own and rent out both sides of the duplex. The duplex was built in 1975 and the Landlords have owned it since 1986. The basement consisted of 1 bathroom, a small kitchen area/wet bar with no range; 2 bedrooms; and a family room.

On either May 30, 2015 or May 31, 2015 the Tenant was served a Notice of Rent Increase advising him that his rent would increase from $1,200.00 to $1,230.00 effective September 1, 2015. The Tenant submitted that he was disputing the rent increase due to changes in his use of the rental property, loss of quiet enjoyment, and an increase in hydro costs.

The Tenant submitted a monetary claim of $4,995.00. In his written submission the Tenant submitted a breakdown of the value he attributed to each area of the rental unit/property based on his monthly rent of $1,200.00. The Tenant split his rent as follows: $500.00 for the upstairs; $500.00 for the downstairs; $125.00 for use of the full yard; $25.00 for storage; plus $50.00 per month for the deck.

The Tenant submitted a spreadsheet listing each amount claimed. During the hearing the Tenant submitted evidence to support his monetary claim which included, in part, the following.

The Tenant submitted that when he entered into the tenancy agreement he was told it came with a shared full back yard. Then as of April 3, 2015 he was told that he no

longer had access to the full back yard and was restricted to the yard that was located directly in front of and behind his side of the duplex. The Tenant claimed $875.00 for loss of use of the full yard starting from April 1, 2015.

The Tenant testified that his side of the back yard had a storage shed which was approximately 12’ x 12’. The storage shed was to be shared with the tenants of both sides of the duplex. The Tenant argued that the addendum submitted by the Landlords had been altered as he remembered the original addendum listing the storage shed. The Tenant now claims $125.00 for loss of storage as of June 1, 2015.

The Tenant submitted that the storage shed took up a lot of the space on his side of the yard which is why he was told he could have use of the full back yard. The storage shed was removed over a period of 2 to 3 months and he lost full use of the storage shed as of June 1, 2015.

The Tenant stated that when he first moved into the rental unit there was a covered area on the deck where he used to smoke. The Landlord began to do repairs on the deck and removed the covered area in September 2014. The Tenant submitted that he was prevented from using the deck when it was completely removed for one month in 2015. The Tenant claimed $250.00 for loss of use of the deck beginning June 1, 2015.

The Tenant stated that a flood occurred in the basement on August 17, 2015. He submitted that once he filed his application for Dispute Resolution the Landlords completed the required emergency repairs so he withdrew his request for emergency repairs. The Tenant claimed $1,125.00 for loss of use of the entire downstairs as of August 17, 2015.

The Tenant asserted that after the flood he lost the use of the full basement. On August 19, 2015, he was told asbestos had been found during the flood remediation/restoration and he was asked to stay out of the basement. The Tenant testified that he had not yet been told he could start using the basement again.

The Tenant stated that he discussed the problems relating to the dryer with the Landlord in late August and as of this hearing the dryer was still not working properly. The Tenant confirmed that he had not previously discussed the washer problems with the Landlords. The Tenant now claims $120.00 ($10.00 per month x 12 months) for the washer and dryer not working.

The Tenant asserted that when he first looked at the rental unit there was a fridge in the basement. Then when he took possession of the unit he noticed the fridge had been removed. He now seeks compensation for loss of use of that fridge. The Tenant sought $200.00 for lack of a fridge in the downstairs wet bar/kitchen area.

The Tenant stated that when the Landlord removed the covered area of the deck he lost the covered area where he “could” smoke. He said he began to stand under the deck to smoke and chose to buy materials to waterproof the deck so he could stand under it to

stay dry when he smoked. The Tenant submitted that the Landlord told him he could water proof the deck and at no time did the Landlord tell him he would pay for the materials. The Tenant claimed $300.00 for reimbursement of deck materials and paint used to waterproof the deck.

The Tenant submitted that he has had to pay additional hydro costs as the result of the Landlords' repairs and maintenance as well as the increased costs resulting from the fans and dehumidifiers which were used after the flood. The Tenant claims $100.00 for the cost of hydro used during the removal of the shed, deck repairs, deck construction, and remediation and repairs in the basement.

The Tenant argued that stucco dust blew inside the house through an area where there used to be a divider between the two sides of the duplex. The Tenant sought $100.00 (4 hours x $25.00 per hour) for labor to clean the interior of the rental unit after the exterior had repairs to the stucco completed without prior notice.

The Tenant asserted that he should be compensated for the loss of quiet enjoyment for times when the Landlord and contractors came to the rental unit to do work without prior notice. The Tenant stated that each time he tried to discuss issues with the Landlord he was told if he did not like it he could move out. He said the Landlord also threatened to evict him to let the Landlord's son move in. As a result the Tenant said he was seeking aggravated damages. The Tenant submitted that he has not yet incurred the cost of moving. The Tenant sought $1,800.00 for loss of quiet enjoyment, aggravated damages, and moving expenses.

The Tenant submitted that in addition to the monetary claim he was seeking an order for repairs for the following items: (1) re-install baseboards in the downstairs bedroom and hallway which were removed during flood remediation/repairs; (2) repair the hole in the wall properly which is in the downstairs wet bar / kitchen area that has been taped and painted over; (3) repair upper kitchen sink taps which are loose; (4) upper front door and basement back door have gaps in them which require weather stripping and/or repairs; (5) the washer stops intermittently; (6) the dryer is not drying the clothes properly as they are still wet at the end of cycle; (7) the hand rail located above the stairs going into the basement is loose at one end; and (8) the entire rental unit was not painted as promised and the paint is thin in several areas.

In regards to the items listed above, the Tenant confirmed that he had not previously discussed these repair requests with the Landlords, except for the dryer not working properly. The Tenant confirmed that he had not served the Landlord with his repair requests in writing prior to filing his application for Dispute Resolution.

The Tenant submitted and presented documentary evidence during the hearing which included, among other things, copies of: hydro bills dated July 20, 2015 and September 18, 2015; emails between the Tenant and Landlord; a Notice of Rent Increase dated May 30, 2015; and a spreadsheet listing the monetary items being claimed.

The Landlords argued that the Tenant did not inform them of his list of repair requests prior to this dispute, excluding the dryer. The Landlords stated that the Tenant had told them about his concerns with the dryer and on September 21, 2015 the Landlord put his hand near the dryer exhaust and felt that the air was hot so he decided not to call a repair person because he assumed the dryer was working fine.

The Landlords disputed all monetary amounts claimed by the Tenant. The Landlords testified that when the Tenant first moved into the rental unit there was no fence in the back yard dividing the two sides of the duplex. They argued there was never any discussion or agreement about the use of the back yard and back patio because the Tenant's fried had been occupying the other side of the duplex when the Tenant first moved in.

The Landlords testified that on April 1, 2015 a new tenant moved into the other side of the duplex. Shortly afterwards the Tenant wanted to have a party on the patio located on the other side of the duplex and the new tenant complained to the Landlords. As a result the Landlords emailed the Tenant on April 3, 2015 and told him that he could not use the yard or the patio that was directly behind the other side of the duplex.

The Landlords argued that the tenancy agreement does not mention use of the full back yard. They asserted that the Tenant had not submitted evidence that his tenancy included use of the full back yard or the patio located directly behind the other side of the duplex. They confirmed that as of the start of the Tenant's tenancy there had not been a fence or divider separating the back yard between the two sides of the duplex.

The Tenant had submitted photographs of an orange fence which had been erected dividing the back yard. The Landlords stated that they had knowledge that the other tenants had put up a "mickey mouse" fence and argued that the other tenants put up that fence so their dog would not bite the Tenant's daughter. The Landlord submitted that he could not say if that fence was still standing.

The Landlord testified that the storage shed was 14' x 20' and was old, broken and dilapidated. On April 1, 2015 the Landlord decided to take the shed down. The shed materials, excluding the concrete foundation, were removed between June 24, 2015 and July 23, 2015. The Landlords argued that when they told the Tenant in April 2015 that the shed would be removed the Tenant did not request alternate storage and he did not request a rent reduction.

The Landlord testified that as of August 1, 2014 he began to make changes to the deck by removing the covered section and replacing 12 boards. The Landlord argued that at the time the Tenant entered into the tenancy agreement he was told that the covered section was coming down and it was down before the Tenant took possession on August 14, 2015. The entire deck was removed in June 2015 and has since been replaced.

The Landlords confirmed that on August 19, 2015 the Tenant was told to stay away from the basement while the contractors tested for the presence of asbestos. On August 21, 2015 the test came back positive for asbestos. The Landlords asserted that based on their records the basement was cleared of the asbestos as of August 28, 2015. They also had records which indicated the completion of the basement repairs were scheduled to be done on November 17, 2015. They have not checked to determine if they were completed.

The Landlords argued that they believed the contractors would have told the Tenant that he could use the basement once the asbestos had been removed. The Landlords testified that they had not told the Tenant he could resume use of the basement and they did not know how the Tenant would have known he could have used the basement prior to the November 25, 2015 hearing unless the contractor told him. Upon further clarification the Landlords submitted that the Tenant was allowed to start using the basement as of the hearing date, November 25, 2015.

The Landlords testified that they have never been told the washer was not working properly. They were however told that the dryer was not drying fully, as stated above. They asserted the Tenant is still using both the washer and dryer.

The Landlords asserted that they told the Tenant they would not be responsible to maintain a second fridge so it was removed prior to the start of the tenancy.

The Landlords stated that they did not agree to provide a covered smoking area for the Tenant. They also did not agree to pay the Tenant for materials he chose to use on the old deck.

The Landlords confirmed that they used the Tenant's hydro when working on the deck. The Landlords argued that they had obtained the Tenant's permission to plug into his power outlets while working on the deck and at no time did the Tenant request payment.

The Landlords confirmed the remediation / renovation companies had used the hydro to run the fans and dehumidifiers after the flood. They asserted that they were of the opinion that the renovation company would reimburse the Tenant for hydro use.

The Landlords submitted that the Tenant had been informed prior to the stucco work being performed. Therefore, the Tenant ought to have left his windows closed while he was out and there would not have been so much dust inside.

The Landlords argued that if the Tenant's claim for loss of quiet enjoyment / aggravated damages / and moving expenses was approved it would set a precedence for any other tenant to charge the Landlords money.

The Landlords denied abusing or harassing the Tenant or his daughter. They argued that they had a lock box installed on the basement door so the contractors could come and go as they pleased to do their work after the flood; without disturbing the Tenant.

The Tenant rebutted the Landlords' submissions that he had not previously requested a rent reduction. The Tenant pointed to the April 22, 2015 email that was sent at 12:57 p.m. and which stated, in part, as follows:

> *I have been reviewing past tenancy act dispute sand feel I've obtained enough evidence to show that this was rented to me with a shared backyard and that it was used this way until Apr/2015. With your decision to change this, it's time we discuss a retro-active (to Apr/2015) rent reduction in lieu of what has been taken away from our household.*
>
> [Reproduced as written in paragraph 2]

In addition to the above, the Tenant pointed to a string of emails dated between June 1, 2015 and June 4, 2015 which support his submissions that he had removed his possessions from the storage unit at the beginning of June 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Sections 41, 42, and 43 of the *Act* stipulate the provisions for the timing, notice, and amount of a rent increase. Section 43(2) of the *Act* stipulates, in part, that a tenant may not make an application for dispute resolution to dispute a rent increase that complies with the *Act*. The 2015 allowable rent increase amount is 2.5%.

The undeniable evidence was the Tenant was served the required 3 month Notice of Rent Increase on the applicable form on May 30th or May 31, 2015. The Notice of Rent Increase indicates the Tenant's rent would increase from $1,200.00 to $1,230.00 (a 2.5% increase) effective September 1, 2015.

Based on the above, I find the Tenant was served proper notice of a rent increase which complied with sections 41, 42, and 43 of the *Act.* Therefore, the Tenant is not entitled to dispute the rent increase and his application is dismissed, without leave to reapply, pursuant to section 43(2) of the *Act.* The rent increase remains in full force and effect.

Section 32 of the *Act* requires a landlord to 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.

Residential Policy Guideline 1 stipulates that the landlord is responsible for repairs to appliances provided under the tenancy agreement.

62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The undisputed evidence was the Tenant had not notified the Landlords of all of his repair requests except for previous requests to repair the dryer. It is unconscionable to expect the Landlords to know of every required repair or maintenance item without the Tenant informing them, as the Landlords do not reside in the rental unit. Therefore, the Tenant's request for an Order for repairs for everything except for the dryer is dismissed without leave to reapply.

The undisputed evidence was the Tenant had informed the Landlord of problems with the dryer. The Landlord submitted that he checked the dryer and determined it was working fine because the exhaust air was hot. The Tenant claimed for 10 months of compensation for problems with the washer and dryer; however, there was no evidence of the exact date when the dryer began to cause the Tenant some concerns. The Tenant has continued to use the washer and dryer during this time.

After consideration of the foregoing, and in consideration that the Tenant has continued to use the dryer, I find that the Tenant submitted insufficient evidence to prove the dryer is in disrepair or in need of repairs. I further find that the Tenant has failed to mitigate any losses incurred in breach of section 7(2) of the *Act*. If the dryer was not working properly the Tenant ought to have sought a remedy through dispute resolution sooner instead of letting this mount for ten months before seeking a resolution. Accordingly, the claim for compensation and a repair order for the dryer are dismissed, without leave to reapply, pursuant to section 62 of the *Act.*

The undisputed evidence was the Landlords started to demolish or remove the exterior shed beginning in June 2015. The evidence further confirmed that the Tenant lost use of that shed starting the beginning of June 2015.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days' notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Section 1 of the *Act* defines what a service or facility is and section 1(g) of the *Act* provides that storage facilities are a service or facility. Section 1(a) states appliances are a service or facility. Use of a full back yard is not a service or facility provided for in the *Act.*

Upon review of the tenancy agreement evidence I note that section 3 (page 2) of the tenancy agreement does not indicate that storage, a second fridge in the basement, or use of a full backyard were included in the rent. Section 17 (page 6) of the tenancy agreement indicates that there was a one page addendum attached to the tenancy agreement which included 3 additional terms. The addendum does not list storage, a basement fridge, or use of the full back yard as being provided in the tenancy.

After considering that the Tenant did not seek a remedy through dispute resolution until almost four months after the storage was removed, seventeen months after noticing there was no basement fridge, and after almost six months after full use of the yard was denied, I conclude that storage, a basement fridge, and use of the full back yard were not essential to the Tenant's tenancy. I also conclude that the provisions of storage, a basement fridge, and use of the full back yard were not material terms of the tenancy agreement.

Based on the above, and in the presence of the Landlords' disputed testimony, I find the Tenant submitted insufficient evidence to prove his claims for monetary compensation for the lack of a basement fridge of $200.00 and loss of use of the full back yard of $875.00. Accordingly, these claims are dismissed, without leave to reapply, pursuant to section 62 of the *Act.*

There was undeniable evidence that the Tenant had been given use of the exterior shed as part of his tenancy. There was also evidence that the Tenant's use of the storage shed ceased at the beginning of June 2015 and the shed was subsequently removed and not replaced. The Tenant attributed $25.00 per month towards use of the storage shed which I find to be a reasonable amount when I consider that offsite public storage can range anywhere $100.00 and up per month. Therefore, I grant the Tenant's claim

for loss of storage for the period of June 2015 to December 2015 in the amount of **$175.00** (7 months x $25.00), pursuant to section 67 of the *Act*.

I further order that the Tenant's rent is to be reduced by $25.00 per month starting January 1, 2016 until such time as access to exterior storage of equal value is returned to the Tenant. Therefore, as of January 1, 2016 the Tenant's rent will be $1,205.00 per month ($1,230.00 - $25.00), pursuant to section 62 and 67 of the *Act.*

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 many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord 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 the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. That being said a tenant may be entitled to reimbursement for loss of use of a portion of the property or loss of quiet enjoyment even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Flood remediation projects and exterior building and deck repairs often involve the removal of materials which can create loud construction noise, dust, debris, loss of use of space, and in some cases loss of privacy due to workers conducting their jobs at or near windows and doors.

The undisputed evidence was the Landlord removed the storage shed between June 24, 2015 and July 23, 2015; did work on the deck in September 2014 and for a few days between July 2015 and September 15, 2015; removed the shed concreted slab in September 2015; and excavated the back yard in September 2015 leaving the yard unusable until the grass grows back. Based on the foregoing, I find it undeniable that the Tenant has suffered a loss of quiet enjoyment resulting in a loss in the value of the tenancy during the aforementioned repairs.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Notwithstanding the Landlord's submissions that precedence will be set if the Tenant is awarded compensation, I find the Tenant is entitled to loss of quiet enjoyment during periods of: the removal of the shed and concrete slab; the excavating of the yard; the work on the deck; the exterior stucco work; and including any and all labour to clean up. In absence of evidence to prove the Tenant's schedule, such as a work schedule or when he was away from the property, and in absence of the exact dates all work was performed, I find the Tenant submitted insufficient evidence to be awarded the amounts claimed for the aforementioned. That being said, I find the Tenant is entitled to nominal damages in the amount of **$105.00** which is comprised of $15.00 for the seven months during which the bulk of work was performed, pursuant to section 67 of the *Act*.

When a landlord and tenant enter into a tenancy agreement they have a business relationship with each other. It is not up to a tenant to monitor and/or chase after contractors hired to conduct repairs in order to find out when they can begin to re-use sections of the rental property. It is the Landlord's responsibility to communicate directly with contractors regarding status of any work on the rental property and it is the Landlord's responsibility to keep the Tenant informed.

Based on the above, I accept the evidence that the Landlords had not previously provided the Tenant with clear communication regarding when the Tenant was able to begin using the basement. As a result the Tenant lost the use of the full basement from August 17, 2015 to November 25, 2015 which devalued the tenancy. I find the Tenant's attribution of $500.00 out of the $1,200.00 monthly rent for use of the basement to be reasonable as he rented the full duplex which had a completed basement. Accordingly, I grant the Tenant's request for compensation in the amount of **$1,631.52** (3 x $500.00/month Aug 17 to Nov 17, 2015 + $16.44/daily x 8 days Nov 18 -25, 2015), pursuant to section 67 of the *Act.*

Policy Guideline # 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Although there was email evidence that the Landlord had requested the Tenant serve him with his notice to move out I conclude that such a request does not meet the test to be awarded aggravated damages. In the presence of the Landlord's disputed testimony and the Tenant's submissions that he has not incurred moving costs, I find the Tenant submitted insufficient evidence to support his claim for aggravated damages and moving costs. Accordingly, those claims are dismissed, without leave to reapply, pursuant to section 62 of the *Act.*

As indicated above, the business relationship lies between the Landlords and Tenant and not the Tenant and contractors brought on site by the Landlord. Accordingly, the burden to refund the Tenant for the cost of hydro that was used during the remediation in the basement and during construction on other areas of the property lies with the Landlords. I find the Tenant's claim of $100.00 for additional hydro costs to be reasonable given the circumstances presented to me during the hearing and supported by the documentary evidence. Accordingly, I grant the Tenant's claim for increased hydro costs in the amount of **$100.00**, pursuant to section 67 of the *Act.*

The Tenant confirmed that he took it upon himself to purchase materials to attempt to waterproof the deck, without prior approval or agreement for reimbursement from the Landlords. There was no evidence before me to prove the Tenant was entitled to a waterproof smoking area as part of his tenancy agreement. Accordingly, I find there was insufficient evidence to prove the claim for deck materials and paint of $300.00 and the claim is dismissed, without leave to reapply, pursuant to section 62 of the *Act.*

There was no evidence before me that would suggest the Landlord was not complying with any other section of the *Act,* regulation or tenancy agreement. Therefore, there is no need to issue Orders in that respect.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenant was partially successful with his application and was awarded monetary compensation totaling **$2,061.52** ($1,631.52 + $105.00 + $175.00 + $100.00 + $50.00). The Tenant was also granted an order to reduce his rent to $1,205.00 per month starting as of January 1, 2016.

Section 72(2)(a) of the *Act* stipulates, in part, that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount

under subsection (1), the amount may be deducted, in the case of payment from a landlord to a tenant, from any rent due to the landlord.

The Tenant may choose to collect the monetary award by deducting money from his future rent payments in amounts no greater than $600.00 per month until such time as the award is fully paid, pursuant to section 72(2)(a) of the *Act*.

For clarity, the Tenant may reduce his January 2016 rent by $600.00; reduce his February 2016 rent by $600.00; reduce his March 2016 rent by $600.00; and reduce his April 2016 rent by $261.52 as full satisfaction of the monetary award ($600.00 + $600.00 + $600.00 + $261.52 = $2,061.52).

If this tenancy ends prior to payment or full satisfaction of the monetary award, the Tenant may serve the Landlord with the enclosed Monetary Order and collect on any balance owed. In the event that the Landlord does not comply with this Order it may be filed with the 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: December 07, 2015

Residential Tenancy Branch