



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security and pet deposit?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security and pet deposits?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on December 19, 2014 for a fixed term tenancy that was not due to end until January 31, 2016. The tenant vacated the rental unit on July 30, 2015. Rent for this unit was \$1,425.00 per month due on the 1st of each month. The tenant paid a security deposit of \$712.50 and a pet deposit of \$712.50 at the start of the tenancy.

The landlords testified that they gave the tenant at least three opportunities to do a move in inspection with the landlords but the tenant declined to do it. A blank inspection report was left for the tenant and the landlords followed up three times after the tenant moved in to do the inspection, messages were left for the tenant but the tenant failed to respond. Due to this the landlords were unable to do the move in condition inspection.

The tenant testified that the landlords did give the tenant a time to meet to do the inspection but the tenant needed a different time and could not reach the landlords. The tenant then attempted to get the landlords to do the move in inspection but was unable to reach them. When the tenant moved into the unit the landlords were still painting and fixing things in the unit and it was not possible to do the inspection on that day. The landlords did not bring the inspection report and it was the tenant who brought a copy of the inspection report with her. The tenant testified that she tried several times to ask the landlords to do a move in inspection but they always had an excuse not to attend.

The landlords testified that on December 17, 2014 they sent a message to the tenant to say come later to do the inspection. On December 18, 2014 the landlord MA was at the unit to hand over the keys to the tenant and an inspection could have been done then but the tenant declined.

The landlord's application

The landlords testified that the tenant caused the following damage to the rental unit which was not repaired at the end of the tenancy:

- Two weeks after the tenant moved in the landlords had the garburator replaced. The tenant confirmed that the garburator and sink were then working fine. At the end of the tenancy the landlords found there was broken glass in the garburator and this had to be replaced. The tenant did not inform the landlords that it was not working again during the tenancy. The landlords seek to recover \$344.96 including tax.
- The tenants left both bathtubs and a sink blocked. The landlords called in a plumber who removed hair and plastic from the pipes. The landlords seek to recover \$244.91.
- The tenant had access to a storage locker. After the tenant vacated she failed to remove her lock from the storage locker and the landlords had to have this cut off. The landlords seek to recover \$126.00 for the cost of this work.
- The mirror in the bedroom was left cracked and had to be replaced. The mirror was five to six years old. The landlords seek to recover \$218.20 for a replacement mirror.
- The tenant did not replace all the burnt out light bulbs. All bulbs were working when the tenant moved into the unit. Four bulbs had to be replaced and the landlords seek to recover \$80.00 for this work.
- When the tenant vacated the rental unit the landlords found the unit had not been left reasonably clean. The landlords engaged the services of two cleaners who spent three hours cleaning the unit. The tenant had also failed to clean the carpets and these were left stained. The cleaners also did the carpet cleaning. The landlords seek to recover \$150.00 for general cleaning and \$100.00 for carpet cleaning.

The landlords have provided invoices and photographic evidence for the items claimed. The landlords have also provided email correspondence and text message between the parties.

The landlords testified that at the start of the tenancy the tenant was required to pay a move in fee to the Strata of \$200.00. The tenant was fully aware of this fee as she sent a text message to the landlords confirming that the manager needs \$200.00 for move in. In April, 2015 the landlords received a bylaw infraction letter from the Strata because the tenant had not paid the move in fee. The Strata was going to fine the landlords a further fee if the amount of \$200.00 was not paid so the landlords paid it and seek to recover this from the tenant.

When the tenant vacated the rental unit she informed the landlords that she would move out on August 01, 2015. The landlords were required to inform Strata of this date; however, the tenant moved out earlier on July 30 without informing the landlords or the Strata. The landlords have been charged a fee of \$200.00 for this unscheduled move out. If the tenant had moved out as scheduled on August 01, 2015 or informed the landlords or the Strata there would have been no extra fee charged. The landlords seek to recover this amount from the tenant.

The landlords seek an Order to retain the security and pet despots in partial satisfaction of their claim. The landlords testified that as the tenant did not want to do the move in inspection she has extinguished her right to recover the security or pet deposit. The landlords also seek to recover the filing fee of \$50.00.

The tenant disputed the landlords' claim. The tenant testified to the following:

- The landlords had replaced the garburator at the start of the tenancy. This only worked for a while and the tenant informed the landlords that it had stopped working again. The tenant sent a text message to the landlords informing them she would get a plumber in to look at the issue but the landlords said they would get their own maintenance man to come in. The tenant put her hand into the garburator and felt around but there was no glass in it. She also got her neighbour to come and look at it and he could not find anything in it. The landlords failed to come and look at it or to send their maintenance man round. The pipes that the garburator was hooked up to were full of food debris and small toys from previous tenants.
- The sinks and toilet were constantly blocked. The landlords' maintenance man did come and look at these. The tenant continually poured Drano in to try to unblock the sinks and if the dishwasher was turned on it leaked food and debris back onto the dishes. The

dishwasher also leaked as shown in the tenant's photographs. The tenant informed the landlords that the pipes were blocked but they failed to do anything.

- When the tenant moved into the building she started to put things in her storage locker but the security guard informed the tenant that there had been a break in in some lockers and not to store stuff in them. The tenant testified that she decided to then store everything in the den in the unit and never put a lock on the storage locker. The tenant informed the landlords she was not using the storage locker and the reason why.
- When they looked at the unit on December 18, 2014 the tenant pointed out the broken mirror to the landlord. The landlord informed the tenant that the previous tenant had broken the mirror and that it would be replaced.
- The landlords' maintenance man came to look at bulbs as one of the three track lights was hanging by its cord. The maintenance man took two bulbs out to get the correct ones to replace them with and repaired the hanging light. He came back and replaced the two burnt out lights but within a few days they burnt out again. The tenant showed this to the maintenance man next time he came and he said he would do them later when he came to do the stove light. The maintenance man never came to replace them and this must have been a faulty light fixture.
- The tenant cleaned the unit for two days with two girlfriends and Citrus O Carpet Cleaners came and cleaned the carpets on July 25. The windows were washed inside and out and one of the friends cleaned the stove using the self-cleaner, the cabinets, the floors and the bathrooms. The sink had been left clean and the floors were vacuumed and washed. The previous tenant had scratched the floor and this was pointed out to the tenant at the start of the tenancy. When the tenant moved into the unit she had to clean the fridge and other areas of the unit which had been left in a disgusting condition by the previous tenant. The landlords had cleaned it at the start of the tenancy but it was still filthy and they had to come again to clean but only removed some bottles.
- At the start of the tenancy the tenant told the landlords to charge her \$200.00 more on the rent to cover the move in fee or to come and get this fee from the tenant. The tenant

tried to get hold of the manager but could not find him. The tenant does not dispute that she did not pay the move in fee.

- At the end of the tenancy the landlords asked the tenant if she could move out sooner so the new tenant could move in. The tenant was able to move out two days sooner and tried to telephone the landlords to let them know. The tenant left a message on the landlord's answering machine and emailed them. Previously the landlord NA had said some emails go to her junk mail so maybe the landlords did not get that message. The tenant disputed the landlord's claim for an unauthorised move out fee.

The landlords argued that had they known that the tenant was moving out sooner they would have been pleased. There were no messages left on an answer machine, cell phones and no email was received. The only time an email from the tenant went to the landlord's junk mail was when the tenant changed her email address. The only message left on the landlord's answering machine was about the tenant requesting a meeting after she had moved out to return the keys. The landlords testified that they have two phones with answering machines, two cell phones, email and text messaging.

The landlords asked the tenant if the tenant originally had her belongings in the storage locker and then a few months later brought her belongings up to the unit. The tenant responded that this is untrue; her daughter started to put some things into the storage locker when they were moving in and the security man advised them not to do so because of a break in. The tenant testified that she had a lock for the storage locker that was never put on and the tenant still has that lock.

The landlords testified that she had an email from the tenant sometime in July saying she was moving her belongings out of the storage locker into her unit because of a break in in the storage lockers. The landlords referred to the Notice from the Strata dated July 05, 2015 provided in evidence, advising owners that the storage lockers had been broken into. This is the only Notice the landlords received from the Strata regarding a break in in the storage locker area and there had not been a break in when the tenant moved in in December, 2014.

The tenant's application

The tenant testified that she never received the two extra visitor parking passes. The landlord informed the tenant they would be getting new ones soon but the tenant never received these. Her visitors were unable to park at the building or they would have been towed without a parking pass. The tenant seeks to recover \$375.00 for the loss of use of visitors parking for the 7.5 month tenancy.

The tenant agreed that the garburator was repaired but states that this only worked for two days. The tenant tried to contact the landlords but could not get hold of them. The tenant seeks to recover \$20.00 per month for the 7.5 months of her tenancy for the loss of the use of the garburator to a total amount of \$150.00.

The tenant testified that she could not use the dryer. The vent hose was not connected and the inside was full of lint. The landlords' maintenance man tried to fix it, said he would come back, but failed to do so. This vent was later cleaned and fixed when the Strata did the vent clearing for the building on June 30, 2015. The tenant testified that she had notified the landlords by text message and had verbally informed them. The landlord MA even came to the unit with her maintenance man and took pictures. The tenant seeks to recover \$40.00 per month for 6.5 months to a total of \$260.00 for the loss of use of the dryer.

The tenant testified that the washer leaked and ripped the tenant's clothes when she did small amounts of laundry. The tenant had to do her and her daughter's laundry at the laundromat. The landlords were notified of this issue but failed to repair it. The tenant seeks to recover \$40.00 per month for the 7.5 months to a total amount of \$300.00 she was without the use of her washer.

The tenant testified that she had no stove lights and no vent filter above the stove. Grease would drip down onto food cooking. The cooker vented into a cupboard and filled this with grease which the tenant had to keep cleaning. The tenant seeks to recover \$30.00 a month for 7.5 months of no lights or vent screen to a total amount of \$225.00.

The tenant testified that she let the landlords know there were rats outside on the balcony. The tenant had to clean rat feces away daily. This was unhealthy and the landlords failed to do

anything about it. The tenant seeks \$100.00 per month for 7.5 months in dealing with this problem to an amount of \$750.00.

The tenant testified that there was a broken light fixture dangling down from the kitchen ceiling. The tenant seeks to recover \$10.00 per month for the 7.5 months this was damaged to an amount of \$75.00.

The tenant testified that there was a broken bedroom window latch. This window had two latches and the top latch would not close or lock. The tenant's daughter had to go outside on a ledge to push the window closed so the tenant could latch it. This prevented the tenant from using the window. The tenant informed the landlords and her maintenance man. They both said they would fix it but failed to do so. The tenant seeks to recover \$100.00 per month for 7.5 months to an amount of \$750.00.

The tenants in another unit above smoked on their balcony and threw their butts down onto the tenant's balcony. This is a non-smoking building. On one occasion the tenant called up and asked them if they were smoking but they ran inside laughing. The landlords told the tenant that this is a non-smoking building and the tenant informed the landlords in January or February about this issue but the landlords did nothing about it. The tenant seeks to recover \$100.00 per month for 7.5 months to an amount of \$750.00.

The tenant testified that the landlords never provided the tenant with a copy of the Strata bylaws or the K form to sign. All the landlords did was informing the tenant to keep her balcony looking nice. The tenant was therefore unaware of the bylaws for the building. The tenant could not open the link sent by the landlords via email and asked the Strata and was told a tenant cannot access the bylaws; they must come from the landlord. The tenant could not get hold of the landlords as they never answered their phone.

The tenant testified that she used professional movers to vacate the rental unit and would not have incurred this cost if the landlords had done the repairs required in the unit. The tenant testified that she would have never moved into this unit had she known the level of repairs required. The tenant seeks to recover the moving costs including the movers, travel and gas for 5.5 hours at \$125.00 an hour to an amount of \$780.00

The tenant testified that she had to pay \$246.00 to have the Hydro set up for her unit. With the other unit she had been interested in the Hydro was included in the rent and had she taken that unit she would not have incurred this cost.

The tenant testified that as she never used the storage locker she seeks to recover \$450.00 from the landlord for the loss of this facility.

The tenant testified that of the two fobs provided only one fob worked. The tenant's daughter also resided in the unit and was unable to access the amenities in the building without a working fob or had to borrow the tenant's fob. As this never worked and was not replaced by the landlords the tenant seeks to recover \$100.00 per month for 7.5 months to an amount of \$750.00.

The tenant testified that the bathroom sinks, shower and toilets were constantly clogged. The tenant had to pull hair out of the drains which did not belong to her or her daughter. Drano had to be poured down to try to clear the blockages. The landlords were informed and failed to remedy this issue. The tenant seeks to recover \$50.00 for this inconvenience.

The tenant testified that she had three professional cleaners in to clean the unit at the start of the tenancy. The tenant later testified that she and two friends cleaned the unit but she considers that they are all professionals. The tenant testified that she paid her friends \$80.00 each but does not have a receipt for this work. The tenant seeks to recover \$160.00.

The tenant testified that the kitchen sink was clogged from the garburator from December 19, 2014. Food items constantly clogged the sink. The landlords were notified verbally and the tenant informed their maintenance man. This was never fixed and the tenant seeks to recover \$60.00 an hour for 7.5 months to an amount of \$450.00.

The tenant testified that she had claimed to recover the move in fee of \$200.00 and the unauthorised move out fee of \$200.00 but later agreed that as she has not paid these fees that she withdraws these sections of her claim.

The tenant seeks to recover all rent paid from the start of the tenancy to an amount of \$10,687.50. the tenant testified that the landlord breached the tenancy agreement by misleading the tenant, making the tenant feel that the broken things were her fault, the maintenance man was either late or changed the days he was due to come and the landlord never dealt with the repairs needed. Due to this the tenant could no longer handle living in the unit and so ended the tenancy. The tenant testified that she sent the landlords letters or emails about repairs on January 22, February 03, April 13, May 26, June 02 and June 11, 2015. The landlords did little to make the repairs requested by June 10, 2015.

The tenant seeks an Order to recover the security and pet deposit and testified that because the landlords did not do the move in condition inspection of the unit that they are not entitled to claim against the deposits.

The tenant also seeks to recover her filing fee of \$100.00.

The landlords disputed the tenant's claims and testified that the tenant received two residence parking passes. The visitors parking passes were available to her to collect from anyone on the Strata. If the tenant had difficulty obtaining these, any member of the Strata would have informed her that she has to pay her move in fee first. The tenant did not pay that fee and did not attempt to pick up her visitor's parking passes. At first the tenant had said she did not need a visitor's parking pass because they had two residence passes and her daughter did not have a car at the time. When the tenant called to say she now needed two visitor's parking passes the landlord called the Strata and they said all she has to do is go and pick them up. A message was left for the tenant concerning this.

The landlords testified that the only letters they received from the tenant concerning repairs was one on January 22, 2015 and one dated June 02, 2015, which was not received until the middle of June, after the tenant had given Notice. None of the other letters were provided to the landlord either by post or by email. All the text messages and emails concerning repairs are from the landlord to the tenant and the tenant hardly ever responded as shown in the landlord's evidence. Eventually, the landlords served the tenant with a Notice of Entry so they could go into the unit to see any repairs required. The tenant did not notify the landlords that the garburator was not working again until the June 02 letter.

The landlords testified that all the repairs indicated in the tenant's January 22 letter were addressed by the landlords. The landlords testified that the matter of the blocked vents was not brought to their attention. An Air Vac Company is sent into the building by the Strata and if they had encountered any issues they would have alerted the owners. They did not come in until the summer of 2015 and did not alert the landlords to any issues with the dryer vent.

The tenant did notify the landlords about some repairs on January 22. The sink issue was repaired in April and May, 2015. The smoke detector was repaired on February 18, the cupboard door was repaired on May 03, the dangling light was repaired on February 18, and the tenant was sent an email with a link to the Strata bylaws on January 26. The landlord testified that the tenant did sign a K form for the Strata and this was forwarded onto the Strata. The landlord referred to a copy of this form signed by the tenant in evidence. All repairs mentioned in the January 22 letter were addressed. Some repairs took longer because the tenant was either not at home for the repairman or did not respond to the repairman or the landlords' request to come and do the repairs.

The landlords testified that the letter received in June, 2015 was a much longer list of repairs which the landlords had no previous knowledge of including the window and the rat feces. Regarding the tenants who lived above this tenant smoking on their balcony; the landlords referred to an email sent to the tenant asking her to detail the incidence so the landlords could take this information to the Strata to deal with. The tenant did not respond to that email. The landlords referred to their email showing they sent the tenant the Strata bylaws. If the tenant could not access these the landlords were not informed until June. The landlords had not been made aware prior to June of the washer leaking, the dryer being a fire hazard, the dishwasher and the stove vents. The sinks the tenant complained were backing up had already been fixed. If that did not resolve the issue the tenant did not inform the landlords again until June.

The landlords testified that there were no financial problems to prevent them making any repairs to the unit. They were proactive in making any of the repairs they had been informed of, as this unit is an important asset to the landlords. The landlords testified that the tenant mentioned that she had spoken personally with the landlords. There was not a lot of opportunity to speak to the tenant. The landlord MA went once to give the tenant the keys and once with the maintenance man. The maintenance man said he had difficulty getting hold of the tenant.

The landlords testified that the tenant stated this is a non-smoking building. Owners can actually smoke in their own units but not on balconies or in common areas. The tenant did not provide the requested information to take this forward with the Strata. With regard to the tenant's complaints about the broken fob; the tenant could have taken that fob to any of the caretakers of the building and they would have replaced the battery or the fob if it was not working.

The landlords testified that when the tenant moved into the unit she did a quick assessment and was unhappy with the cleanliness of the unit. The landlords engaged cleaners to clean the unit and if the tenant was still unhappy she should have contacted the landlords so they could have sent the cleaners back into the unit.

The landlords testified they are unsure about issues concerning the dryer venting as this was connected when they came into the unit. The landlords disputed the tenant's claim for professional movers. It was the tenant's choice to vacate the rental unit. The landlords were diligent about staying in touch with the tenant and it was the tenant who gave no response. The tenant was given the opportunity to move out early if she was unhappy with the unit.

The landlords testified that hydro is not included in the rent and the setup of a hydro account is the tenant's responsibility. The tenant had asked the landlord by text message for the cable/internet, hydro and gas addresses so she was aware she was responsible for these utilities.

The landlords testified that the lockers were not broken into until July, 2015 towards the end of the tenancy. Some realtors lock boxes containing fobs were broken into and the thief's were then able to access the storage area of the building. This did not happen when the tenant was moving into the unit and the tenant did have access to and used her storage locker.

The landlords disputed the tenant's claim to recover the rent paid throughout her tenancy. The landlords testified they acted responsibly and diligently to repair items and to be in communication with the tenant. The landlords referred to the content of their emails which were always polite and caring towards the tenant. They dispute misleading the tenant about any

aspects of her tenancy. Had the tenant continued her tenancy any other items listed in the June repair letter would have been investigated and repaired if required.

The tenant asked the landlords why the landlords are saying the tenant did not send any other letters. The May 26 letter was sent by mail. The landlords responded that originally the tenant said these letters were sent by email when clearly they are not emails but rather typed letters. Now the tenant is saying she sent some by mail. Only the June 11 letter was left on the table but the landlord did not see that and was not notified it was there with the final rent cheque. It was later when the landlords asked for the final rent cheque that the tenant said it was left on the table with a letter. The landlords testified that they never received the April 13 or May 26 letters either. On April 13 the landlord was at the unit with the tenant and was not alerted to the letter.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

The landlord's application

With regard to the landlord's application to recover the move in fee of \$200.00; I am satisfied from the evidence before me that the tenant was aware this fee must be paid when she moved into the unit. The tenant does not now dispute this section of the landlords' claim. I therefore allow the landlords' claim for **\$200.00**.

With regard to the landlords' claim to recover the fee for the tenant's unscheduled move out; generally in a Strata building any parties moving in or out of the building must notify the Strata so arrangements can be made so other occupants in the building suffer minimal disruption. In this matter I am satisfied that the tenant had given notice to vacate the unit on August 01, 2015 and as such the landlord notified the Strata. The tenant then vacated two days earlier and the Strata treated this as an unauthorized move and charged the landlords a fee of \$200.00. As the tenant did not notify either the landlords or a member of the Strata Council that she was vacating sooner than planned the tenant is responsible to pay any fees incurred. I therefore allow the landlords' claim for **\$200.00**.

I have reviewed both parties testimony concerning the storage locker; when one party provides evidence that contradicts the evidence of the other party then the person making the claim has the burden of proof and must provide corroborating evidence to meet the burden of proof. The tenant testified that she never used the storage locker because she had been warned about a break in; the landlord has provided documentary evidence from the Strata showing the break in did not occur until later in the tenancy around the end of June or early July. I am satisfied therefore that the landlord has met the burden of proof that the break in occurred towards the end of the tenancy and there is insufficient corroborating evidence from the tenant to show she did not use the storage locker. Therefore, on a balance of probabilities I find the landlord has established a claim to recover the costs incurred to remove the lock from the storage locker of **\$126.00.**

With regard to the landlord's claim to replace the mirror; the landlords testified that this was cracked by the tenant; the tenant testified that it was cracked by the previous tenant. Again the landlords have the burden of proof to show the tenant was responsible for this crack. The landlords did not complete the move in condition inspection report to establish the condition of the mirror at the start of the tenancy. Without further corroborating evidence from the landlords to show this crack occurred during the tenancy it is one person's word against that of the other and the burden of proof has not been met. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for the garburator, the parties agreed that the garburator was replaced during the tenancy; the landlords testified that they were not informed any time later that the new garburator had stopped working. The landlords had a maintenance man look at the garburator and claimed he found glass in the garburator. The maintenance man's invoice reflects this. As this was a new garburator installed during the tenancy then the tenant is responsible for any repairs or replacements if it is found to be misused. Putting glass in a garburator either accidentally or on purpose would be negligent of the tenant and therefore the replacement costs for this can be claimed by the landlords. I therefore allow the landlords' claim to recover the cost for the new garburator of \$308.00 plus tax to an amount of **\$344.96.**

With regard to the landlord's claim to replace halogen bulbs; the tenant testified that there was a faulty light fixture which caused the bulbs to blow just days after they were replaced by the

landlords' maintenance man. There is insufficient evidence before me from the tenant that this occurred or that the landlords were provided with information about the bulbs blowing. Consequently, I will allow the landlords' claim to recover the cost of bulbs of **\$80.00**.

With regard to the landlords' claim for the plumber, the landlords testified that the pipes were blocked in the bathrooms and the plumber found blond hair and plastic clogging the pipes. The tenant testified that the pipes were always clogged and referred to her email to the landlords dated January 22, 2015 concerning repairs, one of which was the clogged kitchen sink. The landlords testified that the tenant never mentioned the bathroom sinks, or toilet being blocked during the tenancy and this was not mentioned in the January 22 email concerning repairs. I have considered the evidence before me and find there is no mention of blocked pipes in the bathrooms or the toilet in the January 22 email or the June 02 letter sent to the landlords. There is insufficient evidence that the tenant sent any other letters concerning repairs to the landlord. As I am unable to determine that the bathroom pipes or toilet were blocked during the tenancy I find on a balance of probabilities that these blockages of hair and plastic occurred during the tenancy. As such I allow the landlord the cost to unblock these pipes of **\$244.91**.

With regard to the landlords' claim for cleaning and carpet cleaning; under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlords might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlords are not entitled to charge the former tenant for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required. Furthermore, I am not satisfied from the evidence presented that the tenant left the carpets stained or dirty. The photographic evidence provided from the landlords show only a few small marks on the carpet and no staining. Consequently, this section of the landlords' claim is dismissed.

As the landlords' claim has some merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant.

With regard to the matter of the security and pet deposit; both parties argue that the other party has extinguished their right to file a claim for the security and pet deposit. The landlords testified

that the tenant did not want to do the move in inspection. The tenant argued that the landlords were not available or prepared to do a move in inspection report and it was the tenant who provided the report. I direct the parties to s. 23 of the *Act* which states:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I therefore find that even if the tenant did not attend a move in inspection after being given opportunity to do so, then the landlords should have still completed an inspection report and provided a copy to the tenant. In failing to do so s. 24(2)(c) of the *Act* states the landlords' right to file a claim against the security deposit is extinguished.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to

give effect to the rights and obligations of the parties. Consequently, I order the landlords to keep **\$1,245.87** from the tenant's security and pet deposit to compensate the landlords for the damages.

The tenant's application

With regard to the tenant's application to recover the security and pet deposit; as the landlords have been ordered to retain part of the security and pet deposit; I Order that the balance of **\$179.13** is returned to the tenant pursuant to s. 38(6)(b) of the *Act*.

With regard to the tenant's application for money owed or compensation for damage or loss; under s. 32 of the *Act*

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant is required to notify the landlord of any repairs required in the unit so the landlord may act in a timely manner to make any repairs to the unit. The tenant testified that she sent the landlords letters or emails concerning the many repairs required in the unit. The landlords agreed they received the first email dated January 22 listing a number of repairs such as a blocked kitchen sink, the garburator not working, a smoke detector malfunctioning, a cupboard door required fixing or replacement, the dryer vent not venting properly even after several toys were removed from it, the washer is now working after toys were removed from it, the light in the kitchen is dangling, the microwave needs new lights and the stove vent needs screens, two visitor passes are required, and the tenant requested a copy of the Strata bylaws. The tenant requested that these items are addressed by January 30, 2015.

The landlords have provided sufficient evidence to show these items on this list were addressed. The blocked sink was dealt with, the garburator was replaced, the smoke detector was fixed, the cupboard door was repaired, the light in the kitchen ceiling was repaired, the

tenant was notified that she could pick up visitor parking passes from anyone on the Strata, and the Strata bylaws were emailed to the tenant.

The landlord has provided evidence that the tenant did not respond to the landlord's communication concerning the microwave light, the vent or the dryer vent, and no communication was received beyond that letter concerning the tenant not picking up the visitor passes or being unable to access the Strata bylaws. I am satisfied that the landlord made attempts to do the repairs as requested; however, the tenant did not always respond to emails or text messages and the landlords' maintenance man has written that he also had difficulty reaching the tenant to arrange to get in the unit to do repairs.

The tenant testified that further letters were sent to the landlords in February, April and May; the tenant has the burden of proof to show how these letters were sent and has insufficient evidence to corroborate that these letters were sent to the landlords. The landlords agreed they did receive the letter dated June 02; however, this was not received until June 10 after the tenant had given the landlords her notice to end the tenancy.

While I accept that the tenant has a right to ask the landlords to make any repairs necessary to the rental unit that are not caused by the tenant, the tenant must do so in writing and must be prepared to allow entry to her unit for the landlords or any maintenance person appointed by the landlords so the landlords can meet their obligations for repairs. The tenant has insufficient evidence to meet the burden of proof in this matter, that the landlords were informed about all the repairs or that the tenant cooperated with the landlords' maintenance man. I must find therefore that the tenant's claim for compensation due to repairs not being completed must be dismissed.

With regard to the tenant's claim for compensation because she did not receive the visitor's parking passes. The tenant should have notified the landlords sooner that these were not collected from the Strata and that the tenant required the landlords to deal with this matter. There is insufficient evidence before me that the landlords were made aware after the January 22 letter that the tenant had still not received these parking passes until June 02. The tenant cannot now claim compensation from the landlords if the landlord was not made aware of this issue during the tenancy. Further to this I find the tenant claimed she did not sign a K form for

the Strata, yet the landlord has provided a signed K form in documentary evidence. There is also sufficient evidence that the tenant was sent an email attachment with the Strata bylaws. If the tenant could not open this attachment she should have informed the landlords immediately and not wait until June 02. The tenant's claim for compensation relating to these issues is therefore dismissed.

I am satisfied that the tenant did complain to the landlords about the tenants above her unit smoking and throwing cigarette butts on her balcony. The landlords have provided evidence that they responded to this by email and asked the tenant to provide details in writing so the landlords could show this to the Strata to deal with. There is insufficient evidence from the tenant that she responded to the landlords and did not provide details so the landlords could have moved forward with her complaint with the Strata. This section of the tenant's claim for compensation is therefore dismissed.

With regard to the tenant's claim to recover costs for professional movers; as it was the tenant's choice to vacate the rental unit then the tenant must bear any costs associated with her move. This section of the tenant's claim is dismissed.

With regard to the tenant's claim for costs incurred to set up her Hydro account. Hydro is not included in the tenant's rent. Therefore, any arrangements made between the tenant and the hydro company are between them and do not concern the landlords. If the hydro company requested an amount from the tenant to set up an account in her name then this is not the responsibility of the landlords and cannot be claimed back from the landlords. This section of the tenant's claim is dismissed.

With regard to the tenant's claim to recover \$450.00 for loss of the use of her storage locker; As I found the break in at the storage lockers occurred towards the end of the tenancy then I am not satisfied that the tenant did not have the use of her storage locker during the tenancy. If the tenant chooses not to use this facility then it is the tenant's choice and no compensation can be awarded for the loss of this facility. The tenant's claim for compensation is therefore dismissed.

With regard to the tenant's claim for compensation for a broken fob; there is no mention of the fob being broken in the tenant's January 22 email or the letter sent on June 02. If the tenant has

not put this complaint in writing to the landlords then there is insufficient evidence to show that the landlords were aware of this issue so the landlords could direct the tenant to the appropriate person to remedy this issue. This section of the tenant's claim is therefore dismissed.

The tenant seeks to recover \$160.00 for professional cleaners to clean the unit at the start of the tenancy. Had the tenant been unhappy with the condition of the rental unit at the start of the tenancy the tenant should have put it in writing to the landlords so the landlords would have the opportunity to send their cleaners back into the unit to do the work again. Further to this the tenant has provided insufficient evidence to show she paid her two friends \$80.00 each to help her clean the unit. The tenant has not met the burden of proof in this matter and her claim for cleaning is dismissed.

With regard to the tenant's claim to recover the move in and move out fee; as these fees were never paid by the tenant the tenant has no right to file a claim to recover these fees. The tenant later withdrew these sections of her claim.

With regard to the tenant's claim to recover all the rent paid during the course of the tenancy. The tenant testified that the landlords breached the contract with the tenant, the landlords mislead the tenant, made the tenant feel that the broken things were her fault, the maintenance man was either late or changed the days he was due to come and the landlords never dealt with the repairs needed. In this matter the tenant has the burden of proof to show the landlords breached the contract, or any other issues were not dealt with by the landlords once they had been informed. The tenant has insufficient evidence to show that the landlords did not act in a responsible way to meet their obligations under the *Act*. A landlord cannot be expected to make repairs to a rental unit if they are not informed of the repairs by the tenant. The repairs that the tenant did inform the landlords of were completed by the landlord's maintenance man and these were delayed by the tenant's lack of response to access to her unit. I find the tenant has not met the burden of proof in this matter and her claim for compensation is therefore dismissed.

As the tenant's application has little merit I find the tenant is not entitled to recover her filing fee from the landlords.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords' monetary award of **\$1,245.87** has been offset against the security and pet deposit.

The reminder of the landlords' application is dismissed without leave to reapply.

The tenant is entitled to recover the balance of the security or pet deposit. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$179.13**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The reminder of the tenant's application is dismissed without leave to reapply.

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 18, 2015

Residential Tenancy Branch

