Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, OLC, ERP, RP, PSF, LRE, AAT, LAT, AS, AR, FF, O

Introduction

This hearing was convened in response to cross applications.

On March 23, 2015 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied:

- to set aside a Notice to End Tenancy for Unpaid Rent or Utilities;
- for a monetary Order for money owed or compensation for damage or loss;
- for a monetary Order for the cost of emergency repairs;
- for the return of all or part of the security deposit;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for an Order requiring the Landlord to make emergency repairs;
- for an Order requiring the Landlord to make repairs;
- for an Order requiring the Landlord to provide services or facilities required by law;
- to suspend or set conditions on the Landlord's right to enter the rental unit;
- for an Order requiring the Landlord to provide access to the rental unit for the Tenant or guests of the Tenant;
- for authority to change the locks to the rental unit;
- for authority to assign or sublet the rental unit;
- for authority to reduce the rent for repairs, services, or facilities agreed upon but no provided; and
- to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials "M.P." stated that on March 25, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted as evidence to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 27, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for:

- an Order of Possession for Unpaid Rent or Utilities;
- a monetary Order for unpaid rent/utilities;
- a monetary Order for money owed or compensation for damage or loss;
- to retain all or part of the security deposit; and
- to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that sometime prior to March 30, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted as evidence to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 15, 2015 the Tenants submitted a binder with numerous documents and a USB device to the Residential Tenancy Branch, which the Tenants wish to rely upon as evidence. The Tenant with the

initials “M.P” stated that this evidence was left on the Landlord’s walkway on April 15, 2015. The Landlord acknowledged receipt of this evidence. This evidence was served within the timelines established by section 3.14 of the Residential Tenancy Branch Rules of Procedure and it was accepted as evidence for these proceedings.

On April 21, 2015 the Landlord submitted a binder with 64 pages of evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this evidence was personally served to the Tenants on April 21, 2015. The Tenants acknowledged receipt of this evidence. This evidence was served within the timelines established by section 3.15 of the Residential Tenancy Branch Rules of Procedure and it was accepted as evidence for these proceedings.

On April 22, 2015 the Landlord submitted a USB device to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that this device was posted to the door of the rental unit. The Tenants with the initials “M.P.” stated that this device was not received by the Tenant.

I find that it is entirely possible that the USB device was posted on the door of the rental, which is a method of service authorized by section 88 of the *Act*. I also find it possible that the USB device was not located by the Tenants, as it could have been removed from the door by a third party.

The Agent for the Landlord stated that the Landlord is prepared to proceed with the hearing without the benefit of the USB device. There was insufficient time to conclude the hearing on April 30, 2015 and I therefore determined it was reasonable that the Landlord be given an opportunity to re-serve the USB device.

At the hearing on April 30, 2015 and in my interim decision of May 01, 2015, the Landlord was advised that the Landlord may re-serve this device to the Tenants, via registered mail, no later than May 02, 2015. At the hearing on June 18, 2015, the Agent for the Landlord stated that on May 03, 2015 she went to the rental unit for the purposes of delivering the USB device. She stated that on May 03, 2015 she observed empty boxes in the unit and that the door to the unit was ajar, which caused her to conclude the unit had been abandoned.

At the hearing on June 18, 2015 the Agent for the Landlord stated that on May 23, 2015 the Landlord received a package in the mail from the Tenants, in which the Tenants provided a neighbour’s address as a return address. She stated that on June 12, 2015 the Landlord mailed the USB device to the return address, via registered mail. She stated that the Landlord delayed serving the USB device because they were waiting to receive additional evidence that the Landlord wished to serve with the USB device.

The Tenant with the initials --- stated that the Tenants received the USB device from a neighbour on June 16, 2015. She argued that it should not be accepted as evidence because it was not served by May 02, 2015, as required by my interim decision of May 01, 2015.

The Tenant with the initials ---- stated that:

- most of the Tenants’ property had been moved out of the rental unit by May 02, 2015;
- the Tenants did not advise the Landlord they were vacating the rental unit;
- the Tenants did not return the keys to the rental unit;
- the Tenants accessed the unit between May 02, 2015 and May 15, 2015; and
- when the Tenants went to the rental unit on May 21, 2015 the Tenants determined the locks had been changed.

The Tenant with the initials ----- stated that the Tenants did send mail to the Landlord in May of 2015; she is not certain of the return address the Tenants used on the package that was mailed; it is possible that the Tenants provided the neighbour’s address as a return address at that time; and the Tenants are still using the neighbour’s address as a mailing address.

I find that the Landlord failed to comply with my direction to mail the USB device to the Tenants no later than May 02, 2015. I find that the Landlord's attempt to personally deliver the USB device to the Tenants on May 03, 2015 would have, in all likelihood, served to provide the evidence to the Tenants in a timelier manner than if it had been served by registered mail. I therefore would have accepted that device as evidence had it been personally delivered on May 03, 2015.

I find that it was reasonable for the Landlord to conclude that the rental unit had been vacated on May 03, 2015 and that it was, therefore, reasonable for the Landlord to wait until they received a forwarding address for the Tenants before serving the USB device by mail. On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Landlord received a forwarding address for the Tenants on May 23, 2015.

I find that in an effort to comply with the spirit of the directions provided at the hearing on April 30, 2015 and in my interim decision of May 01, 2015, the Landlord should have mailed the USB device to the Tenants on May 23, 2015. I find that delaying service of the USB device until June 12, 2015 was unreasonable and I decline to accept this evidence pursuant to section 3.12 of the Residential Tenancy Branch Rules of Procedure.

In determining that the USB device should not be accepted as evidence, I was heavily influenced by the undisputed testimony that the Tenants did not receive the device until June 16, 2015. I find that the Landlord willfully failed to comply with my directions in regards to service of this evidence and that accepting the evidence would be unfair to the Tenants as they did not even receive the evidence until two days before the hearing on June 16, 2015.

On April 29, 2015 the Residential Tenancy Branch stamped 8 pages of evidence received from the Tenants. The Tenant with the initials ----- stated that this evidence was actually submitted to the Residential Tenancy Branch on April 24, 2015. At the hearing on April 30, 2015 the Tenant with the initials "----- stated that these documents were not submitted earlier as they were not available. She stated that these documents were placed in the Landlord's mail box on April 29, 2015. The Agent for the Landlord stated that the Landlord did check the mail box prior to the start of the hearing on April 30, 2015 and he had not located this evidence prior to the hearing on April 30, 2015.

At the hearing on June 18, 2015, the Agent for the Landlord confirmed that the Landlord had received the documents left in the Landlord's mail box on April 29, 2015. As the Landlord has had ample time to consider the documents, given that the hearing was adjourned, I accept the documents as evidence for these proceedings.

Prior to the conclusion of the hearing on April 30, 2015 and in my interim decision of May 01, 2015, both parties were permitted to submit expert evidence regarding whether or not mould is still present in the side of the porch used by the occupant of the other suite by May 21, 2015.

On May 21, 2015 the Tenants submitted 69 pages of evidence to the Residential Tenancy Branch. This evidence included a cover letter; a four page report from a company identifying itself as a mould "expert"; 21 pages of assessment protocols the Tenants contend was provided by the company conducting the assessment; 40 pages of construction industry mould "guidelines" the Tenants contend was provided by the company conducting the assessment; and a second copy of the lab report that is already in evidence. The cover letter submitted with this package is not being accepted as evidence, as it cannot in any way be construed to be "expert evidence", which was the only additional evidence the Tenants had authorization to submit after April 30, 2015. The remainder of the documents will be considered, as they appear to provide relevant information regarding mould.

The Tenant with the initials ----- stated that the package of evidence submitted to the Residential Tenancy Branch on May 21, 2015 was sent to the Landlord on May 21, 2015. The Landlord acknowledged receipt of this package. As the package was served in accordance with the timeline outlined in my interim decision of May 01, 2015, this package was accepted as evidence for these proceedings, with the exception of the cover letter previously mentioned.

On June 12, 2015 the Landlord submitted 43 pages of evidence to the Residential Tenancy Branch, 28 of which relate to a report completed by, or on behalf of, a home inspection company. The Agent for the Landlord stated that the package of evidence submitted to the Residential Tenancy Branch on June 12, 2015 was sent to the Tenants on June 12, 2015. The Tenant acknowledged receiving this package on June 16, 2015.

The 28 pages of the Landlord's evidence package which relate to a report completed by, or on behalf of, a home inspection company was accepted as evidence for these proceedings, in spite of the fact it was not served to the Tenants in accordance with the deadline established by my interim decision of May 01, 2015. The remainder of the package was not accepted as evidence, as it cannot in any way be construed to be "expert evidence", which was the only additional evidence the Landlord had authorization to submit after April 30, 2015.

The Landlord's evidence package of June 12, 2015 was accepted, in part, because the hearing on June 18, 2015 was adjourned which provided the Tenants with ample time to review the evidence and that the delay does not, therefore, unduly disadvantage the Tenants. The package was accepted, in large part, because it may be highly relevant to the issues in dispute.

The hearings on April 30, 2015, June 18, 2015, September 01, 2015, and November 10, 2015 were adjourned as there was insufficient time to conclude the hearing in the allotted time.

Both parties were represented at all hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions. At the conclusion of the hearing on January 19, 2016 both parties declined the opportunity to call witnesses.

Preliminary Matter #1

As the rental unit was vacated prior to the conclusion of these proceedings and the Tenants no longer wish to occupy the rental unit, I find that there is no longer a need to consider the application:

- for an Order of Possession;
- to set aside a Notice to End Tenancy for Unpaid Rent or Utilities;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for an Order requiring the Landlord to make emergency repairs;
- for an Order requiring the Landlord to make repairs;
- for an Order requiring the Landlord to provide services or facilities required by law;
- to suspend or set conditions on the Landlord's right to enter the rental unit;
- for an Order requiring the Landlord to provide access to the rental unit for the Tenant or guests of the Tenant;
- for authority to change the locks to the rental unit; and
- for authority to assign or sublet the rental unit.

Preliminary Matter #2

The Landlord and the Tenants were advised that, due to the large volume of evidence submitted by the parties, they must refer to documents they consider relevant during the hearing. They were advised that, due to the volume of evidence, they cannot assume I will consider all written submissions/documentary evidence unless it is specifically referred to during a hearing.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and/or utilities?

Is the Landlord entitled to keep all or part of the security deposit or should it be returned to the Tenants? Are the Tenants entitled to compensation for emergency repairs and for making repairs to the rental unit?

Background and Evidence

The Landlord and the Tenants agree that the Tenant with the initials ----- has occupied the rental unit since August 15, 2012 and that she originally occupied it under a separate tenancy agreement. The Tenant with the initials-----." stated that she moved into the rental unit on January 01, 2013.

The Landlord and the Tenants agree that the parties named in this decision signed a tenancy agreement which indicates a tenancy began on March 01, 2013. A copy of this agreement was submitted in evidence.

The Tenant with the initials "------ stated that the tenancy agreement for the tenancy that began on March 01, 2013, was actually signed in July of 2013. She stated that the signatures on the document were "back dated" to reflect the actual start date of the tenancy. The Landlord stated that the tenancy agreement was signed on March 01, 2013, which is the date beside both signatures.

The Landlord and the Tenants agree that in the most recent tenancy agreement the Tenants agreed to pay rent of $850.00 by the first day of each month; that a security deposit of $425.00 was paid; and that a pet damage deposit of $100.00 was paid.

The Landlord and the Tenants agree that they signed an addendum to the tenancy agreement on December 04, 2013, a copy of which was submitted in evidence. The parties agreed to the following items in this addendum:

- the Landlord will complete some repairs/renovations to the rental unit;
- the Landlord will "true up" the gas and hydro bill from August of 2012 and in December or January of every year thereafter;
- the Tenants will "perform the true up" upon receipt of all invoices from August 15, 2012;
- the rent for October and November of 2013 will be paid by December 04, 2013;
- the rent for December of 2013 and "succeeding months' rent" will be "withheld" until the Landlord has completed the repairs/renovations and "trued up" the gas and hydro bill;
- the Tenants will allow access at any reasonable time to address the issues outlined in the addendum; and
- the Tenants will obtain an estimate for addressing the mould in the porch and bedroom closet.

The Landlord and the Tenants agree that the Tenant with the initials ----- typed the addendum; that the Landlord was present when the addendum was created; and that a relative of the Tenants helped draft the addendum.

The Landlord stated that the Tenants and the Tenants' relative who drafted the addendum did not discuss the terms of the addendum with him prior to it being typed. He stated that the document was crafted by a relative of the Tenant and that he did not assist with the wording of the document, although he was in the room when it was written. The Landlord stated that he understood this addendum to mean that the Tenant did not have to pay rent for any period after December 01, 2013 until such time as the aforementioned repairs were completed, at which time all past rent would become due.

The Tenant with the initials ----- stated that the Landlord, the Tenants, and the relative of the Tenant discussed the terms of the addendum before it was typed. She stated that the Tenants understood the addendum to mean that the Tenant did not have to pay rent for any period after December 01, 2013; that they would resume paying rent when all the aforementioned repairs were complete; and that they did not have to pay rent for any time between December 01, 2013 and the completion of the repairs.

The Tenant submitted a written statement from a relative of the Tenants with the initials "----- dated March 22, 2015. In the written statement this individual declares that he "performed the role of mediator" and that he "carved out the Agreement which constitutes an Amendment to the Lease".

The Landlord and the Tenants agree that rent was paid for October and November of 2013 and that no rent has been paid for any period after December 01, 2013.

The Landlord and the Tenants agree that on March 18, 2015 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had a declared effective date of March 31, 2015, was personally served to the Tenant with the initials -----

The Tenant with the initials "----- stated that:

- most of the Tenants' property had been moved out of the rental unit by May 02, 2015;
- the Tenants did not advise the Landlord they were vacating the rental unit;
- the Tenants did not return the keys to the rental unit;
- the Tenants accessed the unit between May 02, 2015 and May 15, 2015; and
- when the Tenants went to the rental unit on May 21, 2015 the Tenants determined the locks had been changed.

The Agent for the Landlord stated that on May 03, 2015 she went to the rental unit for the purposes of delivering the USB device. She stated that on May 03, 2015 she observed empty boxes in the unit and that the door to the unit was ajar, which caused her to conclude the unit had been abandoned. She stated that the Landlord changed the locks to the rental unit on May 14, 2015.

In the addendum of December 04, 2013 the Landlord agreed to "install the door in the kitchen as originally reviewed in the document". The Landlord and the Tenants agreed that this repair/renovation involved:

- moving an interior door, which was being used as an exterior entrance door into the porch, to the doorway between the kitchen and the porch; and
- replacing the interior door that was used as an exterior entrance door into the porch with a proper exterior door.

The Landlord stated the door repair/renovation was completed on March 10, 2014. The Tenant with the initials "----- stated that the door repair/renovation has been completed, although she does not know when it was completed.

In the addendum of December 04, 2013 the Landlord agreed to carpet all the rooms except the kitchen, bathroom, and foyer. The Landlord and the Tenants agree that carpet has been installed in all the rooms except the kitchen, bathroom, and foyer.

The Landlord stated the carpet installation was complete on June 16, 2014. The Tenant with the initials "----- agrees the carpets were installed in the summer of 2014.

The Tenants contend the carpeting has not been completed as the Landlord has not replaced the baseboards that were removed for the purposes of installing the carpet. The Landlord stated that he does not intend to replace the baseboards as the carpet installer advised him they were not necessary.

In the addendum of December 04, 2013 the Landlord agreed to "address the mould in the porch and bedroom closet". The Landlord stated that he understood this agreement to mean that he was required to remove any mould that was accumulating in the Tenants' side of the porch. The Tenant with the initials "-----." stated that she understood this agreement to mean that the Landlord was required to remove any mould that was accumulating anywhere in the porch.

The Landlord and the Tenants agree that the residential complex has a porch, a portion of which is used by the Tenants and a portion of which is used by an occupant of a separate suite. The parties agree that

the porch is separated by a wall, a portion of which terminates at a window which is partly in the Tenants' side of the porch and partly in the other side of the porch. The parties agree that air can pass through the wall where it terminates at the window.

At the hearing on April 30, 2015 the Landlord stated that repairs to the porch were competed on February 25, 2015, at which time the Landlord believed all the mould had been removed from the Tenants' side of the porch. The Tenant with the initials "M.P." stated that the work on the porch stopped on March 22, 2015 but mould is still present in the porch.

The Agent for the Landlord stated that the contractor who completed the repairs told the Landlord that there was no mould in the other side of the porch, so the Landlord has not made any repairs on that side.

The Tenant with the initials ---- stated that the contractor who completed the repairs told the Landlord that there was mould in the other side of the porch, but the Landlord did not authorize him to repair that area.

At the hearing on April 30, 2015 the Landlord stated that he has never been on the other side of the porch and has, therefore, not seen any mould in that area. He confirmed this response on at least three occasions. At the hearing on June 18, 2015 the Agent for the Landlord stated that she went to the other side of the porch with the inspector and that there were no visible signs of mould at that time

The Landlord submitted a copy of the invoice for the repairs done to the porch but submitted no evidence from the contractor regarding whether there was mould on the other side of the porch. The invoice does not specify whether the repairs removed all the mould in the porch.

The Tenants submitted several photographs of the porch, some of which were taken before repairs were started and some of which show the porch in various stages of repair. The Tenants contend a photograph on page 33 of the Tenants' evidence shows mould growing on the wall of the other side of the porch. The Agent for the Landlord stated that she cannot see mould in the photograph.

The Tenants submitted a report from a mould and bacteria laboratory, dated April 13, 2015. The report declares that three samples were tested on April 10, 2015.

The Tenant with the initials "---- stated that the sample described as "102 half porch" is a mould sample taken by the Tenants on April 01, 2015 or April 02, 2015. She stated that this sample was taken from drywall that had been removed from the Tenants' side of the porch.

The Tenant with the initials "-----." stated that the sample described as "104 half porch" is a mould sample taken by the Tenants on April 10, 2015. She stated that this sample was taken from a pillow on the side of the porch used by the occupant of the other suite.

The Landlord submitted an inspection report from home inspection company, dated June 10, 2015. The report indicates that the rental unit was inspected on June 04, 2015 and the relevant findings are:

- some localized areas of suspect mould stains were noted;
- some mould activity was noted on the balcony room wall, on the wall above the tiles surrounding the bathtub, a portion of the wall closet of the west bedroom, and the balcony room wall;
- the square footage of the "problematic areas" was less than 50 square feet in a home of approximately 2600 square feet;
- the mould spore counts inside the unit were "elevated" when compared with outside samples;
- the indoor mould growth and elevated amount of airborne mould spores can be a health hazard to humans and household domestic animals;
- mould issue in unit should be addressed prior to reoccupation;
- professionals should be hired to properly remediate the mould; and
- the fungal activity inside the unit is not considered overly hazardous to grant an evacuation status.

The Tenants submitted an inspection report from a company identifying itself as a "mould expert"; dated May 14, 2015. The report indicates that the rental unit was inspected on May 14, 2015 and the relevant findings are:

- fungal contamination was visible in a bathroom and bedroom closet of the rental unit;
- mould contamination covers "much of the walls and bedding" in the porch used by the occupant of the other suite and it is "heavily contaminated";
- the dividing wall between the porches is "not complete" and it is "very probable" that cross contamination has occurred;
- mould growth is visible on the windows of the rental unit;
- the inspection was incomplete as the inspector was asked to leave the rental unit by a third party; and
- professional mould remediation is required in the rental unit and the porch used by the occupant of the other suite.

The Agent for the Landlord argued that the inspection report dated May 14, 2015 is less reliable than the inspection report dated June 10, 2015, because the samples used at that inspection were tested on site and not sent to a laboratory. She stated that she spoke with a representative of the company who completed this report and he advised her that the samples were not sent to the lab at the request of the Tenant.

The Tenants argued that the inspection report dated June 10, 2015 is less reliable than the inspection report dated May 14, 2015, because the company completing the report is a home inspection company and is not a qualified mould inspection company. The Tenants submitted no evidence to corroborate this claim.

The Tenants argued that the inspection report dated June 10, 2015 is less reliable than the inspection report dated May 14, 2015, because the company has not established a secure chain of custody for the samples sent to the laboratory.

The Tenants argued that the inspection report dated May 14, 2015 is more relevant than the inspection report dated June 10, 2015, because it tested the porch used by the occupant of the other suite, while the report of June 10, 2015 did not. The Agent for the Landlord stated that she was with the inspector when he visually inspected the porch used by the occupant of the other suite and that mould was not observed, although she acknowledges that samples were not taken.

The Landlord and the Tenants agree that the person completing the inspection on behalf of the Tenants on May 14, 2015 was asked to leave the residential property by an occupant of the residential complex.

At the hearing on September 01, 2015 the Landlord stated that all mould found in the rental unit during the inspection of June 04, 2015 had been remediated by August 01, 2015, including the mould found in the porch area and the bedroom closet. The Tenant with the initials "----- stated that the Tenants do not know if this is true, as they have not been in the rental unit since that date.

The Landlord and the Tenants agree that their tenancy agreement stipulates that the Tenants must pay "$80.00 for gas & electric utility and it will be adjusted every six (6) months". The parties agree that this term meant that:

- the Tenants were required to pay $80.00 per month for gas and electricity;
- every six months the gas and hydro bills would be presented to the Tenants;
- the Tenants would be responsible for paying 50% of those bills;
- the Tenants would have to pay additional money to the Landlord if 50% of those bills was more than the monthly payments made for the corresponding months; and
- the Tenants would receive a refund if 50% of those bills was less than the monthly payments made for the corresponding months.

In the addendum of December 04, 2013 the Landlord agreed to “true-up utilities from August 2012 at rate of 50% of total monthly bills for hydro and gas for meter 102 and the True-up will be done every year in the months of either December or January”.

The Landlord contends that the Tenants were provided with the hydro and gas bills for the months of August of 2012 to November of 2013 and a corresponding reconciliation report at various times during the tenancy. The Tenants agree that they were provided with a reconciliation report in December of 2013 but they contend that all of the bills associated to that report were not provided at that time.

The Landlord and the Tenants agree that the Tenants received the hydro and gas bills, the correspondence from the gas company, dated December 11, 2013, and a corresponding reconciliation report that are located in the Landlord’s evidence binder in the tab titled “outstanding rent & utilities”. The parties agree that these documents were personally served to the Tenants on April 21, 2015 as evidence for these proceedings.

Hydro and gas bills served to the Tenants on April 21, 2014 include:

- hydro bill for the period between August 10, 2012 and October 09, 2012, in the amount of $92.40;
- hydro bill for the period between October 09, 2012 and December 10, 2012, in the amount of $144.43;
- hydro bill for the period between December 10, 2012 and February 12, 2013, in the amount of $284.78;
- hydro bill for the period between February 12, 2013 and April 09, 2013, in the amount of $189.06;
- hydro bill for the period between April 09, 2013 and June 10, 2013, in the amount of $104.37;
- hydro bill for the period between June 10, 2013 and August 12, 2013, in the amount of $114.77;
- hydro bill for the period between August 12, 2013 and October 09, 2013, in the amount of $134.65;
- hydro bill for the period between October 09, 2013 and December 10, 2013, in the amount of $305.69;
- hydro bill for the period between December 10, 2013 and February 14, 2014, in the amount of $342.07;
- hydro bill for the period between February 14, 2014 and April 10, 2014, in the amount of $558.54 (includes unpaid charges from previous bill);
- hydro bill for the period between April 10, 2014 and June 10, 2014, in the amount of $153.39;
- hydro bill for the period between June 10, 2014 and August 08, 2014, in the amount of $122.89;
- hydro bill for the period between August 08, 2014 and October 09, 2014, in the amount of $129.35;
- hydro bill for the period between October 09, 2014 and December 08, 2014, in the amount of $347.38;
- hydro bill for the period between December 08, 2014 and February 10, 2015, in the amount of $422.00;
- gas bill for the period between December 10, 2013 and January 13, 2014, in the amount of $109.77;
- gas bill for the period between February 07, 2014 and March 10, 2014, in the amount of $263.41;
- gas bill for the period between July 10, 2014 and August 12, 2014, in the amount of $42.64;
- gas bill for the period between August 12, 2014 and September 10, 2014, in the amount of $81.96;
- gas bill for the period between September 10, 2014 and October 09, 2014, in the amount of $40.18;
- gas bill for the period between October 09, 2014 and November 07, 2014, in the amount of $50.57;
- gas bill for the period between November 07, 2014 and December 09, 2014, in the amount of $73.38;
- gas bill for the period between December 09, 2014 and January 09, 2015, in the amount of $73.92; and

- gas bill for the period between January 09, 2015 and February 06, 2015, in the amount of $66.01.

I was unable to locate a gas bill for the period between January 13, 2014 and February 07, 2014 in the Landlord's evidence package. The reconciliation report submitted by the Landlord indicates there was no gas bill for this period.

I was unable to locate a gas bill for the period between March 10, 2014 and July 10, 2014 in the Landlord's evidence package. The reconciliation report submitted by the Landlord indicates there was a gas charge of $263.41 for the months of March, April, and May of 2014. It is possible that this is simply an accounting error as this is the same amount charged for the period between February 07, 2014 and March 10, 2014, which is also recorded on the reconciliation report.

Correspondence from the gas company, dated December 11, 2013, which was served to the Tenant on April 21, 2015 indicates that the following gas invoices were issued:

- invoice dated December 10, 2013, in the amount of $112.04;
- invoice dated November 07, 2013, in the amount of $60.16;
- invoice dated October 09, 2013, in the amount of $38.98;
- invoice dated September 09, 2013, in the amount of $29.36;
- invoice dated August 12, 2013, in the amount of $28.28;
- invoice dated July 10, 2013, in the amount of $36.44;
- invoice dated June 10, 2013, in the amount of $54.49;
- invoice dated May 09, 2013, in the amount of $74.92;
- invoice dated April 10, 2013, in the amount of $96.26;
- invoice dated March 08, 2013, in the amount of $156.16;
- invoice dated February 07, 2013, in the amount of $91.30;
- invoice dated January 14, 2013, in the amount of $148.78;
- invoice dated December 07, 2012, in the amount of $94.00;
- invoice dated November 08, 2012, in the amount of $105.06;
- invoice dated September 07, 2012, in the amount of $39.32; and
- invoice dated August 08, 2012, in the amount of $22.87.

The correspondence from the gas company, dated December 11, 2014, indicates an invoice was not issued for October of 2012, which is reflected in the reconciliation report submitted by the Landlord.

The Agent for the Landlord stated that the Tenants paid the $80.00 monthly utility charge for the period between March 01, 2013 and October 31, 2013, for a total of $640.00. The Tenant with the initials -----." stated that the Tenants paid the $80.00 monthly utility charge for the period between January 01, 2012 and November 30, 2013 for a total of $880.00.

The Tenants are seeking to recover the cost of emergency repairs, in the amount of $160.00, for the purchasing space heaters. The Tenants contend that:

- for approximately ten days in February of 2013 the furnace was not working;
- on June of 2013 the furnace needed to be shut off due to a gas leak;
- the furnace was not functioning between June of 2013 and November of 2013;
- even when the furnace was functioning it did not provide adequate heat;
- the Landlord and the Tenants exchanged several text messages regarding the furnace, which were not submitted in evidence;
- copies of the receipt for the purchase of the space heaters was submitted in the Tenants' evidence package, although the Tenants could not locate it during the hearing;
- the Tenants first provided the Landlord with the receipt when the Landlord was served with the Tenants' evidence package; and
- the Tenants did not leave the heaters in the rental unit at the end of the tenancy.

The Landlord stated that:

- he was never provided with a receipt for the space heaters;
- he did not see a receipt for the space heaters in the Tenants' evidence package;
- on February 02, 2013 the Tenants advised him that the heater was not working;
- the furnace was repaired on February 04, 2013;
- in June of 2013 the Tenants informed him there was a gas leak;
- the gas leak was repaired "within a couple of days" of the report; and
- the Tenants never informed him that the furnace was not providing sufficient heat.

The Tenants submitted a letter, dated October 01, 2013, in which the Tenants inform the Landlord of a variety of deficiencies, including:

- that the gas leak in the furnace has not been repaired and the Tenants are "currently without heat";
- they expect a rent reduction until such time the furnace is repaired; and
- the hose to the gas stove is brittle and needs replacing.

The Tenant with the initials ----stated that the letter of October 01, 2013 was personally served to the Landlord on December 04, 2013; it was mailed to the Landlord on October 01, 2013; and it was served by email on October 01, 2013. The Landlord stated that he first received this letter when he was served with evidence for these proceedings.

The Tenants are seeking to recover the cost of emergency repairs, in the amount of $208.00, for the replacing the refrigerator. The Tenants contend that:

- the refrigerator stopped working in November of 2014;
- the problem was reported to the property manager on November 01, 2014;
- the problem was reported a second time, although the Tenants cannot recall the date of that report;
- the property manager did nothing to repair/replace the refrigerator;
- the Tenants purchased a used fridge on November 07, 2014;
- the Tenants first provided the Landlord with the receipt for the refrigerator when the Landlord was served with the Tenants' evidence package; and
- the Tenants did not make a written request for reimbursement for the cost of the refrigerator.

The Landlord stated that:

- the refrigerator was replaced with a used fridge on April 30, 2013;
- a problem with the refrigerator was never reported after April 30, 2013;
- the refrigerator that was left in the rental unit at the end of the tenancy is not the refrigerator that was provided with the tenancy;
- the refrigerator that was left in the rental unit at the end of the tenancy was dirty and did not work well;
- the Landlord first received a receipt for the refrigerator when the Landlord was served with evidence for these proceedings.

The Tenants were unable to find any written report of the need to replace/repair the refrigerator in the Tenant's evidence package.

The Tenants are seeking to recover the cost of emergency repairs, in the amount of $280.00, for the repairing the broken oven. The Tenants contend that:

- the oven stopped working, for a second time, sometime in January of 2013;
- the problem with the oven was reported to an agent for the Landlord, in person, on at least two occasions shortly after the oven stopped working;
- the Landlord did not make any effort to have the oven repaired;
- the Tenants had the oven repaired;
- the receipt for the oven repair was first provided to the Landlord sometime in July of 2013;

- the receipt of the oven repair was also provided to the Landlord in the Tenants' evidence package that was stamped by the Residential Tenancy Branch on April 29, 2015;
- the Tenants did not make a written request for reimbursement for the repair to the oven.

The Landlord stated that:

- the Tenants did not tell him the oven had stopped working in 2013;
- the Tenants had previously reported a problem with the oven, which the Landlord remedied;
- the Tenants did not provide him with a copy of a receipt for the repair prior to filing an Application for Dispute Resolution;
- he cannot find a receipt for the oven repair in the documents he was served by the Tenants, although due to the large volume of documents he acknowledges one may have been served; and
- the Tenants did not make a written request for reimbursement for the repair to the oven.

The Tenants are seeking compensation, in the amount of $1,600.00, for painting the rental unit. The Tenants contends that:

- the Landlord promised to paint the rental unit when the Tenant with the initials ----." first moved into the rental unit;
- the Landlord paid for the cost of the paint but he never painted the rental unit as promised;
- the Tenants eventually painted the rental unit themselves because the Landlord did not paint the unit; and
- it took the Tenants approximately 100 hours to paint the rental unit, which included time spent cleaning the walls in preparation for painting.

The Landlord stated that:

- the Tenants did not like the colour of the rental unit so they asked for permission to paint the rental unit;
- the Landlord gave the Tenants permission to paint the rental unit;
- the Landlord agreed to pay for the paint;
- the Landlord did pay for the paint;
- the Landlord never agreed to compensate the Tenants for the time they spent painting the rental unit; and
- he could have painted the rental unit in one day.

When asked if the Tenants had any documentation that corroborates their claim that the Landlord promised to paint the rental unit the Tenants referred to a witness statement signed by a person with the initials "----.", dated April 05, 2015. In this written statement the author declared that she was a co-tenant when the Tenant with the initials "----." occupied the rental unit and that when she viewed the rental unit prior to her tenancy her understanding was that the unit was to be painted prior to the start of their tenancy.

The Tenants are seeking compensation, in the amount of $960.00, for removing the carpet in the rental unit. The Tenant with the initials "---- stated that:

- the carpet in the rental unit was in very poor condition and needed to be replaced;
- during a meeting in February of 2013 the Landlord agreed the carpet needed to be replaced;
- the Landlord asked the Tenants to remove the carpet;
- the carpet was removed in February or March of 2013;
- the carpet was difficult to remove because it was stapled to the floor; and
- she spent approximately 140 hours removing the carpet.

The Landlord stated that:

- he did not ask the Tenants to remove the carpet on his behalf;
- sometime after August of 2012 and before January of 2013 the Tenants told him that they had removed the carpet;

- the Tenants did not ask his permission prior to removing the carpet;
- the Tenants told him that they wished to refinish the wood floor under the carpet;
- he told the Tenants he would pay for the materials to refinish the floor;
- the Tenants never refinished the floor; and
- new carpet was installed on June 16, 2014.

In support of the submission that the Landlord asked the Tenant to remove the carpet on their behalf the Tenant with the initials "----." referred to some handwritten notes located in section 1B of the evidence package the Tenants submitted on April 15, 2015. The Tenant with the initials "----." stated that she made these notes prior to meeting with the Landlord in February of 2013 to assist her with raising the issues noted during the meeting.

The Tenants are seeking compensation, in the amount of $640.00, for repairing the backsplash around the kitchen counter and installing a tile backsplash. The Tenants contend that:

- the Landlord gave the Tenants permission to repair the backsplash and install tile;
- the Landlord paid for tiling materials;
- the Landlord did not agree to pay the Tenants for time spent repairing/tiling;
- the Tenants spent 40 hours repairing the backsplash and preparing it for tiling;
- the Tenants paid a carpenter $300.00 to install the tile backsplash;
- the repairs/renovations were made in March of 2013;
- the Landlord never paid for the cost of the materials; and
- the Tenants deducted the cost of materials from the rent in July of 2013

The Landlord stated that:

- the Tenants did not ask for permission to install a tile backsplash;
- after the backsplash had been tiled the Tenants told him they were deducting the cost of the materials from the rent;
- the Tenants provided him with a receipt for the materials and deducted that amount from monthly rent;
- he does not recall when the Tenants made this deduction; and
- he did not agree to the deduction but felt he had no option other than accepting the amount of rent that was offered.

The Tenants are seeking compensation of $1,600.00 for yard work. The Tenant with the initials "----." stated that:

- when she first moved into the rental unit she was told that the agent for the Landlord living in separate suite in the residential complex was responsible for maintaining the yard;
- the yard of the residential complex was not being maintained in a manner that was consistent with the neighbourhood;
- in an effort to comply with the standards of the neighbourhood she mowed the lawn and weeded the gardens;
- she sometimes hired somebody to assist with the yard maintenance; and
- she spent approximately 400 hours working in the yard during the time she lived in the rental unit.

The Landlord stated that:

- another person living in the residential complex was responsible for maintaining the yard as a term of his tenancy;
- although that had a medical condition that may have limited his ability to maintain the yard he had someone living with him who was able to maintain the yard;
- as far as he was aware the yard was being maintained by other occupants of the residential complex;
- he has never asked the Tenants to maintain the yard; and
- he has never agreed to pay the Tenants for maintaining the yard.

The Tenants are seeking compensation of $80.00 for sanding the interior door which had been being used as an exterior entrance door into the porch and had been moved to the doorway between the kitchen and the porch.

The Tenants contend that:

- the door needed to be sanded and painted for sanitary reasons, as it had been previously used as an exterior door;
- the door was sanded by the Tenants, but was not painted; and
- the Landlord asked them to sand and paint the door.

The Landlord contends that:

- the door has not been sanded or painted; and
- the Landlord never asked the Tenant to sand or paint the door.

The Tenants are seeking compensation of $132.00 for cleaning the carpet. The Tenants contend that:

- the carpet had to be cleaned on two occasions as a result of the mould remediation that occurred in early 2015;
- a large amount of construction debris was tracked into the rental unit while the mould was being remediated;
- the Tenants spent approximately five hours cleaning the carpet;
- the Tenants submitted receipts for renting a carpet cleaner, in the amount of $51.65 and $184.07, in the Tenants' evidence package that was stamped by the Residential Tenancy Branch on April 29, 2015;
- the Tenants never asked the Landlord to pay for this cleaning;
- the Tenants never provided the Landlord with receipts for cleaning the carpet prior to serving him evidence for these proceedings; and
- on the basis of his observations of the rental unit during the remediation the Landlord should have recognized the need to have the carpet cleaned.

The Landlord stated that:

- he could not locate the receipts the Tenants reportedly submitted in their evidence package Tenants' evidence package that was stamped by the Residential Tenancy Branch on April 29, 2015;
- given the amount of documents he received it is possible that these receipts were submitted but he does not wish to take the time during the hearing to locate those receipts;
- he was not provided with receipts for this carpet cleaning prior to being served with evidence for these proceedings;
- he did visit the rental unit while the mould in the rental unit was being remediated; and
- based on his observations of the construction he did not think the carpets need cleaning as a result of the remediation.

The Tenants are seeking compensation of $700.00 because they had to use off-site laundry facilities. The Tenant with the initials "----- stated that:

- laundry facilities were provided with the rental unit;
- there are laundry facilities in the lower level of the residential complex;
- the rear stairs leading from her rental unit to the lower level were unsafe, so she could not use them to access the laundry facilities;
- the rear stairs leading from her rental unit were unsafe because the railing was rotten;
- photograph "D" at page 37 of the Tenants' evidence package demonstrates how rotten the railing was before it was repaired;
- photograph "D" at page 39 of the Tenants' laundry facilities were provided with the rental unit;
- a construction worker broke through one of the steps;
- the Tenants did not submit any photographs of the damaged/rotting steps;
- she stated doing her laundry off-site in June of 2014;

- the stairs were not repaired until February or March of 2015.

The Landlord stated that:

- laundry facilities were provided with the rental unit;
- the rear stairs leading from the rental unit to the lower level did have a rotting railing but the stairs themselves were safe;
- he believes the rear stairs leading from the rental unit to the lower level were safe to use;
- even if the Tenant did not feel safe using the rear stairs she could have accessed the laundry facilities by using her front entry and accessing the lower level from the yard;
- the stairs leading to the lower level were not unsafe; and
- none of the steps in either stairway were unsafe.

In support of the submission that stairs were unsafe the Tenant with the initials "---- referred to a transcript she made of a conversation between her and the male who repaired the stairs. I have listed to the audio recording of the conversation between the Tenant with the initials "----." and the carpenter and find that the transcript she refers to cannot be considered an exact transcript of the conversation, although it reflects the general nature of the conversation. In the audio conversation the carpenter mentions that he will repair the second set of stairs if he gets paid for repairing the first set of stairs and he describes the stairs as "freaking deadly".

The Landlord stated that he spoke with the carpenter about his comments and he was told the Tenant "put words into his mouth".

Although the Tenants do not refer to them in the hearing, I note that the Tenants submitted several electronic photographs of the stairs.

The Tenants are seeking compensation for parking fees and legal fees incurred as a result of these proceedings.

Analysis

There is a general legal principle that places the burden of proof on the person who is claiming compensation. The Landlord, therefore, bears the burden of proving he is entitled to compensation for unpaid rent and utilities and the Tenants bear the burden of proving they are entitled to recover the cost of emergency repairs and for making repairing/renovating the rental unit?

On the basis of the undisputed evidence, I find that the Tenant with the initials "S.P." and two other people entered into a tenancy agreement for this rental unit prior to the start of this tenancy.

On the basis of the tenancy agreement submitted in evidence and the testimony of both parties, I find that the parties entered into a written tenancy agreement for a tenancy that began on March 01, 2013. I find that this new agreement effectively ended the original tenancy between the Landlord, the Tenant with the initials "S.P.", and two co-tenants who are not part of these proceedings and that it created a new tenancy between the Landlord and the two Tenants that are part of these proceedings.

I find that the tenancy agreement for the period beginning on March 01, 2013 required the Tenants to pay rent of $850.00 by the first day of each month. On the basis of the undisputed evidence, I find that the Tenants paid all of the rent that was due for the period ending November 30, 2013.

On the basis of the addendum to the tenancy agreement, dated December 04, 2013, I find that the Landlord authorized the Tenant to withhold all rent payments until the repairs/renovations outlined in the addendum were completed and until the hydro and gas bills have been "trued up".

I find that the intent of the addendum is not entirely clear. This addendum could be interpreted to mean that the Tenant did not have to pay any rent for the period between December 01, 2013 and the time the repairs/renovations were completed and until the hydro and gas bills have been "trued up", as the Tenant contends. I find that it could also be interpreted to mean that the Tenant's obligation to pay rent was

suspended until the repairs/renovations were completed and the hydro and gas bills have been "trued up", at which point the past rent became due.

In determining this matter I was guided by the principle of contra proferentem, which is a standard in contract law that states an ambiguous term of a contract should be interpreted against the interests of the person who drafted the contract.

On the basis of the undisputed evidence, I find that the addendum of December 04, 2013 was typed by the Tenant with the initials "---- and that the wording of the agreement was drafted by a relative of the Tenants. Given his relationship to the Tenants, I find it reasonable to conclude that the person who drafted the addendum was acting in the best interests of the Tenants and was not a neutral party.

Even if the Landlord and the Tenants did discuss the terms of the addendum prior to it being typed, there can be little doubt that the wording of the agreement was drafted by the Tenants' relative. In reaching this conclusion I was heavily influenced by the relative's written submission, in which he declares that he "carved out the Agreement which constitutes an Amendment to the Lease".

Even if the Landlord and the Tenants did discuss the terms of the addendum prior to it being typed, I find it highly unlikely that the Landlord would have agreed to suspend payment of rent for the period between December 01, 2013 and the time the repairs/renovations were completed and until the hydro and gas bills have been "trued up**.** This interpretation of the addendum places the Landlord at such a distinct disadvantage that I simply find it illogical to conclude that the Landlord would agree to such terms.

As the addendum was typed by one of the Tenants and it was drafted by an individual who was acting in the best interests of the Tenants, I find that the addendum should be interpreted in favour of the Landlord. I therefore find that the addendum should be interpreted to mean that the Tenants' obligation to pay rent was suspended as of December 01, 2013 until the repairs/renovations were completed and the hydro and gas bills have been "trued up", at which point the past rent became due.

On the basis of the undisputed evidence, I find that the Landlord has installed the kitchen door, as he agreed to do in the addendum of December 04, 2013, and that the Tenants no longer have the right to withhold rent on the basis of this repair/renovation.

On the basis of the undisputed evidence, I find that carpet has been installed in all of the rooms except the kitchen, bathroom, and foyer. I find that the Landlord has complied with his agreement to install carpet and that the Tenants no longer have the right to withhold rent as a result of the carpet agreement.

In determining the issue of the carpets I have placed no weight on the Tenants' submission that the carpet has not been fully installed because the baseboards have not been replaced. As many carpeted homes do not have baseboards, I do not find that installing baseboards is an integral step in installing carpets. As there was no specific agreement in the addendum of December 04, 2013 to install baseboards, I cannot conclude that the Tenants have the right to withhold rent as a result of baseboards not being installed.

On the basis of the addendum of December 04, 2013, I find that the Landlord agreed to "address the mold in the porch and the bedroom closet".

In spite of the Landlord's effort to remediate the mould in the porch, I find that there was still some mould in the porch and a closet wall in the west bedroom when it was inspected on June 04, 2014. In reaching this conclusion I was heavily influenced by the home inspection report submitted in evidence by the Landlord, dated June 10, 2015. On page 2/5 of this report, which was completed on behalf of the Landlord by a home inspection company, the inspector reports that mould activity was noted on the balcony room wall in the rental unit, which is the area the parties refer to as the porch, and on a closet wall in the west bedroom.

In determining that mould was still present in the porch in June of 2014 I was also influenced by the inspection report submitted in evidence by the Tenants, dated May 14, 2015. This report indicates that the porch used by the occupant of the other suite and it is "heavily contaminated" and that it is "very

probable" that cross contamination has occurred between this side of the porch and the Tenants' side of the porch.

I find that both reports indicate the presence of mould in the rental unit. As the reports are not contradictory, I find no need to prefer one report over the other.

In the absence of evidence to show that a home inspection company is not qualified to inspect a home for mould, particularly when samples are tested by a laboratory, I can find no reason to discount the inspection report submitted by the Landlord.

I can find no reason to discount the inspection report submitted by the Landlord on the basis that a chain of custody for the laboratory samples has not been established. The report declares that the work "was conducted in accordance with generally accepted industry practices and scientific methods". In the absence of evidence to the contrary I find, on the balance of probabilities, that the samples were transported to the laboratory in accordance with industry standards.

On the basis of the testimony of the Landlord, who stated that all mould found in the rental unit during the inspection of June 04, 2015 had been remediated by August 01, 2015, including the mould found in the porch area and the bedroom closet, and in the absence of evidence to the contrary, I find that the mould in these areas has been remediated. I therefore find that the Tenants no longer have the right to withhold rent on the basis of this repair/renovation.

Regardless of whether the Landlord previously provided the Tenants with a "true-up" of utility charges from August 2012 to December of 2013, as he agreed to do in the addendum of December 04, 2013, I find that the Landlord complied with that term of the addendum on April 21, 2015 when he provided the Tenants with a reconciliation report, associated hydro and gas bills, and the correspondence from the gas company dated December 11, 2013. I therefore find that the Tenants no longer have the right to withhold rent on the basis of this repair/renovation.

As the Landlord has now complied with all of the terms in the addendum of December 04, 2013, I find that the Tenants are now obligated to pay the outstanding rent and utilities.

On the basis of the undisputed evidence, I find that the no rent was paid for the period between December 01, 2013 and April 30, 2015, although the Tenants occupied the unit during this period. I therefore find that the Tenants must now pay the rent for these 17 months, at a monthly rent of $850.00, which equates to $14,450.00.

On the basis of the testimony of the Agent for the Landlord, who stated that the locks to the rental unit were changed on May 14, 2015, and the testimony of the Tenant with the initials "S.P.", who stated that the Tenants continued to access the rental unit until the locks were changed, I find that the Tenants must pay rent, on a per diem basis, for the first 14 days of May of 2015. I calculate the per diem rent for May to be $27.42 and I therefore find that the Tenants must pay $383.88 in rent for May of 2015.

I note that the Landlord has only claimed compensation for the period between December 01, 2013 and March 31, 2015, in the amount of $13,600.00. I find that it would be reasonable for the Tenants to conclude that the Landlord is seeking all unpaid rent in the Landlord's Application for Dispute Resolution, including rent that has accrued since the Application for Dispute Resolution was filed on March 27, 2015. I therefore find it reasonable to award compensation for any unpaid rent that has accrued since the Application for Dispute Resolution was filed.

On the basis of the undisputed evidence, I find that the Landlord and the Tenants agreed that the Tenants were responsible for paying 50% of the hydro and gas charges for this residential complex during this tenancy.

As the Tenants occupied the rental unit on the basis of this tenancy agreement between March 01, 2013 and May 14, 2015, I find that the Tenants are responsible for paying 50% the following charges:

- pro-rated portion of the hydro bill for the period between February 12, 2013 and April 09, 2013, in the amount of $189.06 (The Tenants occupied the rental unit under this tenancy agreement for 40 days of this 56 day billing period, and must therefore pay their share of 40/56 of this bill. 40/56 of this bill is $135.04.);
- hydro bill for the period between April 09, 2013 and June 10, 2013, in the amount of $104.37;
- hydro bill for the period between June 10, 2013 and August 12, 2013, in the amount of $114.77;
- hydro bill for the period between August 12, 2013 and October 09, 2013, in the amount of $134.65;
- hydro bill for the period between October 09, 2013 and December 10, 2013, in the amount of $305.69;
- hydro bill for the period between December 10, 2013 and February 14, 2014, in the amount of $342.07;
- hydro bill for the period between February 14, 2014 and April 10, 2014, in the amount of $558.54 (includes unpaid charges from previous bill of $342.07, so the charges for this period are actually $216.47);
- hydro bill for the period between April 10, 2014 and June 10, 2014, in the amount of $153.39;
- hydro bill for the period between June 10, 2014 and August 08, 2014, in the amount of $122.89;
- hydro bill for the period between August 08, 2014 and October 09, 2014, in the amount of $129.35;
- hydro bill for the period between October 09, 2014 and December 08, 2014, in the amount of $347.38;
- hydro bill for the period between December 08, 2014 and February 10, 2015, in the amount of $422.00;
- gas invoice dated April 10, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $96.26;
- gas invoice dated May 09 10, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $74.92;
- gas invoice dated June 10, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $54.49;
- gas invoice dated July 10, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $36.44;
- gas invoice dated August 12, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $28.28;
- gas invoice dated September 09, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $29.36;
- gas invoice dated October 09, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $38.98;
- gas invoice dated November 07, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $60.16;
- gas invoice dated December 10, 2013 as listed on the correspondence from the gas company, dated December 11, 2013, in the amount of $112.04;
- gas bill for the period between December 10, 2013 and January 13, 2014, in the amount of $109.77;
- gas bill for the period between February 07, 2014 and March 10, 2014, in the amount of $263.41;
- gas bill for the period between July 10, 2014 and August 12, 2014, in the amount of $42.64;
- gas bill for the period between August 12, 2014 and September 10, 2014, in the amount of $81.96;
- gas bill for the period between September 10, 2014 and October 09, 2014, in the amount of $40.18;
- gas bill for the period between October 09, 2014 and November 07, 2014, in the amount of $50.57;
- gas bill for the period between November 07, 2014 and December 09, 2014, in the amount of $73.38;

- gas bill for the period between December 09, 2014 and January 09, 2015, in the amount of $73.92; and
- gas bill for the period between January 09, 2015 and February 06, 2015, in the amount of $66.01.

The total of the aforementioned charges is $3,860.84. As the Tenants are obligated to 50% of these charges, I find that the Tenants were obligated to pay $1,930.42 for these charges.

I note that gas charges for March of 2013 are not included in the aforementioned calculations. As the gas invoices listed on the correspondence from the gas company, dated December 11, 2013, do not establish the billing period, I find that I have insufficient information to determine how much the Tenants owe, if any, from the invoice dated March 08, 2015.

I dismiss the Landlord's claim for compensation for unpaid gas charges for the period between February 06, 2015 and March 31, 2015, as the Landlord has not submitted bills or other independent documentary evidence to establish the true costs of those charges.

I dismiss the Landlord's claim for compensation for unpaid hydro charges for the period between February 10, 2015 and March 31, 2015, as the Landlord has not submitted bills or other independent documentary evidence to establish the true costs of those charges.

The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid utilities from the period between March 31, 2015 and May 14, 2015, as the Landlord has not made a claim for that period.

I decline to consider the Landlord's claim for compensation for unpaid utilities for any period prior to March 01, 2013. As the rental unit was occupied under a separate tenancy agreement prior to March 01, 2013 and one of the Tenants named in this decision was not named on that tenancy agreement, I find that the Landlord's claim for compensation for unpaid utilities from the previous tenancy cannot be considered at these proceedings. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid utilities arising from the previous tenancy.

On the basis of the undisputed evidence I find that the Tenants paid the $80.00 monthly utility charge for the period between March 01, 2013 and October 31, 2013, for a total of $640.00.

I find that the Landlord's records and testimony regarding the monthly utility payments are inconsistent. I therefore favour the testimony of the Tenant with the initials "M.P.", who stated that the $80.00 payment was paid for November of 2013 over the testimony of the Agent for the Landlord, who stated the payment was not made for November. I therefore find that the Tenants paid a total of $720.00 for utilities during this tenancy.

In determining that the Landlord's testimony/records regarding the monthly utility payments are inconsistent, I was heavily influenced by the reconciliation report in the Landlord's evidence package. In the report the Landlord declares that the "Tenant paid $80.00/month for 16 months", which appears to relate to the period between August 01, 2012 and December 31, 2013, which is 17 months. As both parties agree that the Tenants did not make a utility payment in December of 2013, I find that the 16 months the Landlord refers to in the reconciliation report relates to the period between March 01, 2013 and November 30, 2013.

After deducting the $720.00 paid for utilities during this tenancy from the $1,930.42 the Tenants were obligated to pay during this tenancy, I find that the Tenants still owe the Landlord $1,210.42 for utilities.

I find the Tenants' submission that the Tenants also paid the $80.00 monthly utility charge for the period between January 01, 2012 and February 28, 2013 is not relevant to the issues in dispute at these proceedings. Those payments would apply to utility costs incurred while the rental unit was being occupied prior to March 01, 2013 under a separate tenancy agreement. The Tenants retain the right to

file another Application for Dispute Resolution seeking compensation for a utility overpayment arising from the previous tenancy.

Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and the tenant gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(6)(b) of the *Act* stipulates that a landlord is not obligated to pay amounts claimed by a tenant for emergency repairs about which the director, on application, finds that the tenant has not provided the account and receipts for the repairs as required under section 33(5) of the *Act*.

Even if I were to accept that the purchase of space heaters constituted an emergency repair, as defined by section 33(1) of the *Act*, I would dismiss the Tenants' claim for the cost of the heaters because the Tenants did not provide the Landlord with a written account of the emergency repairs and a receipt for the space heaters, as is required by section 33(5) of the *Act*. As a receipt has not been provided to the Landlord, the Tenants' claim to recover the cost of purchasing space heaters is dismissed.

My determination that the Tenants have not provided the Landlord with a receipt for the space heaters is based on:

- the undisputed evidence that a receipt was not provided prior to serving the Landlord with evidence for these proceedings;
- the Tenants' inability to locate a receipt for the space heaters in the evidence the Tenants submitted for these proceedings, although they contend one was submitted;
- the Landlord's testimony that he did not find a receipt for the space heaters in the Tenants' evidence; and
- the fact I was unable to locate a receipt in the Tenants' evidence package for space heaters.

I find that the Tenants submitted insufficient evidence to corroborate the submission that the Tenants informed the Landlord of the need to replace the refrigerator on at least two occasions prior to replacing the refrigerator and of the need to repair the oven in January of 2013, as is required by the section 33(3)(b) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that the problems were reported or that refutes the Landlord's testimony that the problems were not reported.

Even if I were to accept that the Tenants had informed the Landlord of the need to replace the refrigerator and repair the oven on at least two occasions prior to replacing them, I would dismiss the Tenants' claim for the cost of purchasing the refrigerator and repairing the oven because the Tenants did not provide the Landlord with a written account of the emergency repairs, as is required by section 33(5) of the *Act*.

Although the *Act* does not define the term "written account" I find it reasonable to conclude that it requires a tenant to inform their landlord, in writing and in a timely manner, that emergency repairs were made on a particular date and to request repayment of the emergency repairs. In my view making a claim at a dispute resolution proceeding in which the Tenants simply declare they are seeking compensation for repairing the oven and refrigerator is insufficient. To comply with the spirit of the legislation, I find that a separate written account must be provided to a landlord before the tenant seeks compensation for the cost of emergency repairs in an Application for Dispute Resolution.

As the Tenants have failed to establish the problems with the refrigerator/oven were reported on at least two occasions and a written account of the repairs was provided prior to filing an Application for Dispute Resolution, the Tenants' claims to recover the cost of replacing the refrigerator and to repair the oven are dismissed.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord promised to paint the rental unit or to compensate the Tenants for the time they spent painting the rental unit. In reaching this conclusion I was heavily influenced by the absence of independent evidence that

corroborates the Tenants' submission that the Landlord promised to paint the unit at any time prior to the start of the tenancy or that refutes the Landlord's testimony that he offered to pay for the cost of the paint but he did not agree to pay for the cost of painting the rental unit. In the absence of independent evidence to show that the Landlord promised to paint the rental unit or that he promised to compensate the Tenants for painting the rental unit, I cannot conclude that the Landlord agreed to paint the unit.

In adjudicating the claim for painting I have placed little weight on the statement dated April 05, 2015 that was written by the person with the initials "---.", who is a former co-tenant of the Tenant with the initials "---.". In my view this individual cannot be considered an unbiased third party and her evidence must be given limited weight.

I find that even if the Landlord did agree to paint the rental unit, he is not obligated to pay the Tenants for the time they spent painting the unit as there is no evidence that he agreed to pay them for their labour. In the event the Tenants believed the Landlord was obligated to paint the rental unit the options available to them was to reach an agreement with the Landlord that they be compensated for the time they spent painting the rental unit or to file an Application for Dispute Resolution seeking an Order requiring the Landlord to repaint the unit. I find that they do not have the right to simply paint the unit and then seek compensation for their labour. I therefore dismiss the Tenants' claim for compensation for the time they spent painting the unit.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord asked the Tenants to remove the carpet in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that the Landlord asked them to remove the carpet or that refutes the Landlord's testimony that he did not ask the Tenants to remove the carpet. In the absence of evidence that establishes the Landlord asked the Tenant to remove the carpet, I cannot conclude that the Tenants are entitled to compensation for this labour. I therefore dismiss the Tenants' claim for removing the carpet.

On the basis of the undisputed evidence, I find that the Landlord did not agree to pay the Tenants to install a tile backsplash, with the exception of the cost of materials. As there is no evidence the Landlord agreed to pay for labour associated to this repair/renovation, I find that the Tenants are not entitled to compensation for labour for this repair/renovation. I therefore dismiss their claim for these labour costs.

On the basis of the undisputed evidence, I find that the Landlord did not ask the Tenants to maintain the yard and that the Tenants were not obligated to maintain the yard. As there is no evidence the Landlord agreed to pay for yard maintenance I dismiss the Tenants claim for compensation for time spent maintaining the yard or for any costs related to yard maintenance.

I find that the Tenants have failed to establish that the Landlord asked them to sand a door in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants' submission that they were asked to sand the door or that refutes the Landlord's submission that that the Tenants were not asked to sand the door. As there is no evidence the Landlord agreed to pay for Tenants to sand the door, I dismiss the Tenants' claim for compensation for sanding the door.

On the basis of the photographs submitted in evidence, which demonstrate a significant renovation/repair was completed, I find it reasonable to conclude that the Tenants needed to clean the carpet as a result of the construction in 2015.

In determining the Tenants' claim for cleaning the carpet as a result of the construction I have considered whether the need to clean the carpet has breached the Tenants right to the quiet enjoyment of the rental unit. Residential Tenancy Branch Policy Guideline #6, with which I concur, suggests that:

- at common law, the covenant of quiet enjoyment grants tenants the right to use and possess the rental unit in peace and without disturbance;
- temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment;
- it is necessary to balance a tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises; and
- a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In spite of any attempts the Landlord may have made to minimize the disruptions related to the mould remediation I find the need to clean interfered with their right to the quiet enjoyment of the rental unit and that they are entitled to their full claim of $132.00 for cleaning the carpet. I find this claim reasonable given that they spent approximately five hours cleaning the carpet and they appear to have spent more than $132.00 for renting carpet cleaners.

On the basis of the photograph submitted in evidence, the recorded transcript of the carpenter who repaired the stairs, and the fact the stairs were repaired, I find that the stairs were in need of repair. I find, however, that the Tenants have submitted insufficient evidence to show that the condition of the stairs prevented the Tenants from using the laundry facilities in the lower level of the residential complex.

Even if I accepted that the rotting railing on the rear stairs leading from the rental unit to the lower level render that stairway unsafe, I find that the Tenants have submitted insufficient evidence to establish that they could not access the laundry facilities by using their front entry and accessing the lower level from the yard. In reaching this conclusion I note that there are no photographs that corroborate the Tenants submission that the steps on the lower staircase were rotting.

As the Tenants have failed to establish that they were unable to use the laundry facilities for legitimate safety reasons, I dismiss their claim for compensation for using off-site laundry facilities.

In adjudicating the claim for using off-site laundry facilities, I have placed little weight on the recorded conversation between the Tenant with the initials "----." and the carpenter. Although the carpenter describes the stairs as "deadly" I find the statement has little evidentiary value without the ability to clarify the meaning of that comment.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenants' claim for compensation for legal fees and parking costs.

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

Conclusion

The Landlord has established a monetary claim, in the amount of $16,144.30, which is comprised of $14,833.88 in unpaid rent, $1,210.42 in unpaid utilities, and $100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit of $425.00, in partial satisfaction of the monetary claim, leaving an amount owing of $15,719.30.

The Tenants have established a monetary claim, in the amount of $232.00, which is comprised of compensation for cleaning the carpet and $100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two claims I find the Tenants owe the Landlord $15,487.30 and I grant the Landlord a monetary Order for that amount. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: January 21, 2016

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Residential Tenancy Branch