Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, OLC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, and to keep all or part of the security deposit.

The Agent for the Landlord stated that sometime in July of 2015 the Landlord's Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant, via registered mail. The Tenants acknowledged receiving these documents. The Landlord did not serve the Tenants with any evidence in support of their claim at this time.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of their security deposit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on December 03, 2015 the Tenant's Application for Dispute Resolution, the Notice of Hearing, and 54 pages of evidence that were submitted to the Residential Tenancy Branch on December 09, 2015 were sent to the Landlord, via United States registered mail. The Agent for the Landlord stated that they have been traveling and they did not receive these documents until December 18, 2015.

On the basis of the undisputed evidence, I find that the Tenant's Application for Dispute Resolution, the Notice of Hearing, and 54 pages of evidence were served in accordance with rule 3.1 of the Residential Tenancy Branch Rules of Procedures and the evidence was accepted as evidence for these proceedings.

On January 05, 2016 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch, which contained several black and white photocopies of photographs.

The Agent for the Landlord stated that this evidence was served in response to the Tenants' Application for Dispute Resolution, although the Tenants were served with colour photocopies of the photographs. The Agent for the Landlord stated that this evidence was mailed to the Tenants on January 05, 2016. The Tenants acknowledged receipt of this evidence.

On the basis of the undisputed evidence I find that the evidence mailed to the Tenants on January 05, 2016 was not served in accordance with rule 3.15 of the Residential Tenancy Branch Rules of Procedures, as it was not received by the Tenants within seven days of the hearing on January 11, 2015. The male Tenant stated that the Tenants do not require an adjournment for the purposes of considering the "late" evidence and that they are prepared to proceed with the hearing. As the Tenants declined the opportunity for an amendment for the purposes of considering the "late" evidence, the evidence was accepted as evidence for these proceedings.

On January 05, 2016 the Landlord submitted a Canada Post receipt the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenants. As the receipt was not served to the Tenants, it was not accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on January 11, 2016 and that hearing was adjourned. The hearing was reconvened on March 09, 2016 and was concluded on that date.

Prior to the conclusion of the hearing on January 11, 2016 and in my interim decision of January 12, 2016 the Landlord was advised that the Landlord has the right to submit colour photocopies of the Landlord's "photographs" to the Residential Tenancy Branch, which had previously submitted in black and white. This was based on my understanding that colour photocopies have been served to the Tenants, which are better quality than the black and white copies submitted to the Residential Tenancy Branch.

On March 02, 2016 the Landlord submitted 12 colour photographs to the Residential Tenancy Branch. Although it is difficult to determine, it appears that only four of these photographs are colour copies of the black and white photographs previously submitted. Those four photographs have been accepted as evidence for these proceedings.

In my interim decision of January 12, 2016 the Landlord was given authority to submit additional evidence in response to the claims being made by the Tenants.

On March 01, 2016 the Landlord submitted 23 pages of evidence to a Service BC office which was forward to the Residential Tenancy Branch, via fax.
On March 02, 2016 the Landlord submitted 20 pages of evidence to the Residential Tenancy Branch. This appears to be a duplicate of the evidence submitted on March 01, 2016, with the exception that the second package contained colour photographs, the first package has two copies of one particular document, the first package has a

copy of the Notice of Hearing, and the first package has the last page of my interim decision.

The Agent for the Landlord stated that the evidence package submitted on March 02, 2016 was served to the Tenants, by registered mail, on February 05, 2016. The male Tenant acknowledged receipt of this package of evidence, although it appears that the package submitted to the Residential Tenancy Branch is missing two photographs that were included in the Tenants' package. As I do not have those photographs, they could not be accepted as evidence.

Much of the evidence in the evidence package of March 02, 2016 appears to have been submitted in response to the Tenants' Application for Dispute Resolution. In particular, many of the emails submitted appear to relate to the sale of the property. Any of the documents that relate to the sale of the property, in my view, constitutes evidence submitted in response to the claims being made by the Tenants and will, therefore, be accepted as evidence for these proceedings.

Any colour photographs of furniture which were not previously submitted to the Residential Tenancy Branch in a black and white format appear to be new evidence submitted in support of the Landlord's Application for Dispute Resolution. As the Landlord was not given leave to submit additional evidence in support of her Application for Dispute Resolution, I decline to accept any of those "new" photographs as evidence for these proceedings.

Residential Tenancy Branch records indicate that on January 05, 2016 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch. On January 21, 2016 the Landlord appears to have submitted a duplicate copy of the evidence package that was submitted to the Residential Tenancy Branch on January 05, 2016. As this is a duplicate copy of evidence that has already been accepted, I find there is no need to consider whether this package of evidence should also be accepted.

In my interim decision of January 12, 2016 I granted the Tenants the right to submit evidence in response to the additional evidence served by the Landlord. The male Tenant stated that no additional evidence was submitted by the Tenants.

The parties represented at the hearings were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

At the outset of the hearing on January 11, 2016 the Agent for the Landlord requested an adjournment for the purposes of preparing a response to the documents the Landlord received from the Tenants on December 18, 2015.

The Landlord and the Tenant were advised that the hearing on January 11, 2016 would proceed for the purposes of considering the Landlord's Application for Dispute Resolution. Given that the Landlord filed the Landlord's Application for Dispute Resolution in July of 2015, I find that the Landlord has had ample time to prepare for that hearing and that the issues in dispute in the Landlord's Application for Dispute Resolution could be considered on January 11, 2016.

At the outset of the hearing the parties were advised that after we considered all of the issues in dispute in the Landlord's Application for Dispute Resolution I would consider whether the hearing should be adjourned to give the Landlord more time to consider the Tenant's Application for Dispute Resolution.

As the hearing on January 11, 2016 was adjourned due to lack of time, I find there is no need to consider whether the hearing should be adjourned to give the Landlord more time to consider the Tenant's Application for Dispute Resolution. Given that we did not discuss the merit of the Tenants' claim for compensation at the hearing on January 11, 2016, the Landlord will have ample time to consider the claims being made by the Tenants.

When the parties were advised that I would be considering the issues in dispute in the Landlord's Application for Dispute Resolution at the hearing on January 11, 2016, the Agent for the Landlord argued that the Landlord's Application for Dispute Resolution should not be severed from the Tenants' Application for Dispute Resolution, as the issues are closely related. The parties were advised that the Applications for Dispute Resolution are not being severed and that I will be adjudicating both Applications.

Preliminary Matter #2

The Tenants were prevented from making submissions relating to the Landlord sharing personal information regarding the Tenants with a third party and from making submissions relating to the Landlord making false and/or libelous comments about the Tenants. Those are issues that are not governed by the *Act* and I do not have jurisdiction over such matters.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Is the Landlord entitled to compensation for unpaid utilities?
Are the Tenants entitled to compensation as a result of the Landlord attempting to sell the rental unit during the tenancy?
Should the security deposit be retained by the Landlord or returned to the Tenants?

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants moved into the rental unit in August of 2012;
- the Landlord and the Tenants entered into a new written tenancy agreement that began on July 01, 2014;
- the newest tenancy agreement was for a fixed term that ended the tenancy on June 30, 2015;
- in the newest tenancy agreement the Tenants agreed to pay monthly rent of $7,500.00 by the first day of each month for the duration of the tenancy;
- the Tenants paid a pet damage deposit of $3,000.00 and a security deposit of $3,000.00; and
- the Tenants vacated the rental unit prior to the end of the day on June 30, 2015.

The male Tenant stated that a condition inspection report was not completed at the start of the tenancy. The Agent for the Landlord stated that a condition inspection report was completed at the start of the tenancy, which he stated is “Schedule A” that is attached to the written tenancy agreement.

The Agent for the Landlord stated that “Schedule A” was prepared sometime after the rental unit was jointly inspected and prior to August 15, 2014; that it was prepared in the absence of the Tenants; and that it was presented to the Tenants after it was completed. The male Tenant stated that “Schedule A” was presented to the Tenants prior to the unit being inspected.

The Agent for the Landlord stated that a different agent for the Landlord sent the Tenants an email in an attempt to schedule a final inspection of the rental unit at the end of the tenancy, but the Tenants did not respond to the email. The male Tenant stated that they did not receive an email in which the Landlord or anyone acting on behalf of the Landlord attempted to schedule a final inspection. The Landlord did not submit a copy of the email that was allegedly sent.

The Agent for the Landlord stated that a different agent for the Landlord left telephone messages for the Tenants in an attempt to schedule a final inspection of the rental unit at the end of the tenancy, but the Tenants did not respond to those messages. The male Tenant stated that they did not receive any phone messages in which the Landlord or anyone acting on behalf of the Landlord attempted to schedule a final inspection.

The male Tenant argued that the Landlord has abandoned his right to claim against the security deposit because the Landlord did not complete a proper inspection report at the start of the tenancy or at the end of the tenancy.

The male Tenant stated that the Tenants sent their forwarding address to the Landlord, via email, on June 30, 2015. He stated that a copy of this email was not submitted in evidence.

The Agent for the Landlord stated that on July 05, 2015 the Landlord received an email from the Tenants that was sent on July 02, 2015, in which the Tenants provided a

forwarding address. He stated that the Landlord did not receive a forwarding address from the Tenants, via email, prior to July 05, 2015.

The male Tenant stated that on July 14, 2015 the Tenants mailed their forwarding address to Landlord at the rental unit. The Agent for the Landlord stated that the forwarding address was located inside the rental unit, near the mail slot, sometime in July of 2015.

The Landlord is seeking compensation, in the amount of $3,224.48, for replacing a sofa that was provided with the rental unit.

The Landlord and the Tenant agree that there were two small tears in the sofa at the start of the tenancy, as outlined in line eight of "Schedule A" of the tenancy agreement. The Landlord submitted photographs of the damaged couch, which the parties agree reflect the condition of the sofa at the end of the tenancy.

The Agent for the Landlord stated that the couch appears "shredded" and he speculates it was damaged by the Tenants' pet. The male Tenant stated that the existing tears on the couch simply expanded as a result of normal use and that the damage constitutes "normal wear and tear".

The Agent for the Landlord stated that the sofa was purchased in 2009 and that the Landlord no longer has the receipt for the sofa. The Landlord submitted a link to an email address on page six of the Landlord's evidence package. He stated that this link shows the cost of a sofa of similar quality.

The Landlord is seeking compensation, in the amount of $1,000.00, for a damaged oven. The Agent for the Landlord stated that when the rental unit was inspected after the end of the tenancy it was determined that the oven did not work and the oven door could not be opened.

The male Tenant stated that the oven and the oven door were functioning properly at the end of the tenancy.

The Landlord submitted a contract of purchase and sale addendum, dated August 06, 2015, which indicates that the Landlord agreed to reimburse the purchaser of the rental unit for the "clean up, junk removal and appliance repair (stove in kitchen)".

The Landlord submitted an email, dated July 07, 2015, in which the Landlord outlines a variety of deficiencies with the rental unit. I note that there is no mention of the oven/oven door in this email.

The Landlord is seeking compensation, in the amount of $1,499.97 for replacing the washing machine that was broken during the tenancy. The Landlord stated that after the tenancy ended a technician advised her that the washing machine needed new bearings and should be replaced. The Agent for the Landlord stated that the Tenants

did not report this problem to the Landlord and the Landlord was not aware of the problem until after the tenancy ended.

The Landlord submitted a link to an email address on page nine of the Landlord's evidence package. He stated that this link shows the cost of a washing machine of similar quality. He estimates the washing machine was purchased in 2007.

The male Tenant stated that the washing machine broke during normal use in April of 2015; that the Tenants had the washing machine inspected by a technician, who determined the machine needed new bearings; and that the problem was reported to the Landlord. He estimates the machine was approximately ten years old at the end of the tenancy.

The Tenants submitted an invoice from an appliance repair company, dated March 21, 2015, on which there is a note that indicates the "washer needs bearings".

The Landlord and the Tenants agree that the Tenants are obligated to pay the metered utility statement, dated June 30, 2015, in the amount of $325.84. The male Tenant stated that the Tenants have not yet paid that bill and that they are willing to pay the full amount due.

The Landlord and the Tenants agree that the Landlord agreed to reduce the rent by $1,500.00 per month in compensation for "management fees".

The Agent for the Landlord stated that the $1,500.00 "management fee" required the Tenants to maintain the property and furniture in a manner that exceeds the duty of care required by most tenants. He submits that as a result of this "management fee" the Tenant was obligated to repair all damage to the rental unit, including damage that constitutes normal wear and tear.

The male Tenant stated that he understood the "management fee" to mean that the Tenants would conduct routine maintenance of the property and ensure minor repairs were completed when necessary. He did not agree that he would be responsible for repairing damage that can be considered normal wear and tear.

A copy of the addendum to the tenancy agreement, which explains the responsibilities associated with the "management fee", was submitted in evidence.

The Tenants are seeking compensation, in the amount of $17,000.00, because the rental unit was listed for sale during this tenancy.

The Tenants contend that the Landlord agreed not to list the property for sale during the term of their most recent fixed term tenancy and that they only signed the new fixed term tenancy agreement because the Landlord agreed the property would not be listed for sale.

The Agent for the Landlord stated that the Landlord told the Tenants they hoped they would not need to list the property for sale during the most recent fixed term tenancy, although they did not explicitly agree that they would not list the property for sale.

The Landlord and the Tenants agree that there is nothing in the written tenancy agreement or the addendum to the tenancy agreement that specifies the rental unit will not be listed for sale during the most recent fixed term tenancy.

The Landlord and the Tenants agree that the parties exchanged a series of emails on April 21, 2014, copies of which were submitted in evidence, in which:

- the male Tenant asks the Agent for the Landlord if the Tenants can "assume that once the lease is signed the property will be pulled from the market and the "For Sale" sign removed;
- the male Tenants asks the Agent for the Landlord if the Tenants can "also assume that the house will not be re-listed during the tenancy period";
- the Agent for the Landlord advises the Tenants that the listing is terminated effective April 30th and that the sign will be removed when the listing is terminated;
- the Agent for the Landlord advises the Tenants that the Landlord is "no longer intending to sell in the near future or possibly at any time"; and
- the Agent for the Landlord advises the Tenants that "in the event we changed our mind about selling again down the road we might relist it again if you were intending to vacate at the end of the current term or if there is a sharp increase in our mortgage interest rates next spring".

The Landlord and the Tenants agree that the rental unit was listed for sale sometime in December of 2014.

The Landlord and the Tenants agree that the Tenants communicated with the real estate agent to arrange mutually convenient times to show the property and that the property was shown on approximately eight occasions in January, February, and March of 2015.

The Tenants are seeking compensation for lost wages arising from the Tenants needing to vacate the rental unit during the showings and for compensation for the stress the listing placed on their daughter, who was experiencing anxiety during this tenancy.

The Tenants submitted two invoices to show that the male Tenant charges an hourly rate of $500.00. The Agent for the Landlord questioned the credibility of that hourly rate, as the Tenant generated the invoice and there is no evidence that amount has actually been paid to the Tenant.

The Agent for the Landlord argued that the Tenants should have mitigated any losses arising from the showings by arranging to have the house viewed when the Tenants

were not working or by working remotely. The male Tenant stated that it is difficult for him to work remotely.

The Agent for the Landlord argued that in the event the Landlord was prevented from listing the property for sale during the tenancy that agreement would be repudiated by the fact rent was not always paid when it was due. The parties agree that the Landlord has never served the Tenant with a Notice to End Tenancy on the basis of late rent.

Analysis

Section 24(2) of the *Residential Tenancy Act (Act*) stipulates that a landlord's right to claim against the security deposit and/or pet damage deposit for damage to the rental unit is extinguished if the landlord does not comply with a various obligations outlined in section 23 of the *Act*.

Section 36(2) of the *Residential Tenancy Act (Act*) stipulates that a landlord's right to claim against the security deposit and/or pet damage deposit for damage to the rental unit is extinguished if the landlord does not comply with a various obligations outlined in section 35 of the *Act*.

Even if I concluded that the Landlord's right to claim against the security deposit and/or pet damage deposit for damage to the rental unit has been extinguished in accordance with sections 24(2) or 36(2) of the *Act,* the Landlord retains the right to file against those deposits for unpaid utilities. I therefore will consider the Landlord's application to retain all, or part, of the security/pet damage deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Tenants submitted insufficient evidence to establish that they provided a forwarding address to the Landlord, via email, on June 30, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a copy of the email, which corroborates the Tenants' submission that the email was sent or that refutes the Landlords' submission that the email was not received. As there is insufficient evidence to establish that the Landlord received a forwarding address for the Tenants, via email, in June of 2015, I cannot conclude that the Landlord was required to comply with the provisions of section 38(1) of the *Act* in June of 2015.

On the basis of the testimony of the male Tenant, I find that the Tenants mailed their forwarding address to the rental unit on July 14, 2015. On the basis of the testimony of the Agent for the Landlord, I find that the Landlord received this forwarding address sometime in July of 2015.

Section 90 of the *Act* stipulates that documents served by mail are deemed received on the 5th day after it is mailed. As the forwarding address was mailed on July 14, 2015 and the Landlord does not recall when it was received, I find that it is deemed received on July 19, 2015.

As the Landlord is deemed to have received the forwarding address on July 19, 2015 and the Landlord filed an application to retain the deposit on July 21, 2015, I find that the Landlord has complied with section 38(1) of the *Act*.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

On the basis of the undisputed evidence I find that there were two small tears in the leather sofa at the start of the tenancy. On the basis of the photographs submitted in evidence by the Landlord, I find that there were three large tears and several smaller tears in the sofa at the end of the tenancy. In my view the damage to the couch exceeds normal wear and tear and I therefore find that the Tenants were obligated to repair the damage to the couch.

On the basis of the email link submitted by the Landlord, I find that it would cost approximately $2,774.00 to replace the sectional with a new sofa.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

Residential Tenancy Policy Guideline #40 suggests that the life expectancy of furniture is ten years. The evidence shows that the sofa was purchased in 2009 and was, therefore, approximately 5.5 years old when the tenancy ended on June 30, 2015. I therefore find that the sofa had depreciated by 55% and that the Landlord is entitled to 45% of the cost of a new sofa, which is $1,248.30.

I find that the Landlord submitted insufficient evidence to establish that the oven and/or the oven door were not working properly at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a report from an appliance technician, that corroborates the Landlord's submission that the oven door

and the oven were not working properly at the end of the tenancy or that refutes the Tenants' submission that the oven/door were functioning properly at the end of the tenancy. As the Landlord has not established that the oven/oven door was not working at the end of the tenancy, I dismiss the Landlord's claim for compensation for da mage to the oven.

In determining that the Landlord has failed to establish that the oven/oven door was damaged at the end of the tenancy, I considered the contract of purchase and sale addendum that was submitted in evidence. Although this addendum helps establish that the stove was damaged on August 06, 2015, it does not establish that the oven/oven door was damaged at the end of the tenancy, which was approximately five weeks earlier. I find it entirely possible that someone viewing the house in those five weeks could have damaged the oven.

In determining that the Landlord has failed to establish that the oven/oven door was damaged at the end of the tenancy, I considered the email the Landlord sent on July 07, 2015, in which the Landlord listed a variety of deficiencies with the rental unit in this email. As there is no mention of the damaged oven/oven door in this email, I find it entirely possible that the oven/oven door was damaged after July 07, 2015.

On the basis of the undisputed evidence, I find that the washing machine, which was between eight and ten years old at the end of the tenancy, needed new bearings. I find that there was no evidence submitted that shows the washing machine was used for a purpose for which it was not intended. I therefore find it reasonable to conclude that the washing machine needed repair as a result of normal use and therefore constitutes "reasonable wear and tear".

As section 37 of the *Act* does not require tenants to repair damage arising from "reasonable wear and tear", I dismiss the Landlord's claim for repairing/replacing the washing machine.

In adjudicating all of the Landlord's claims for damages, I have considered the addendum to the tenancy agreement that outlines the expectations of the Tenants in regards to the $1,500.00 "management fee". This addendum outlines the management responsibilities of the Tenants during the tenancy.

Section 5 of the *Act* stipulates that landlords and tenants may not avoid or contract out of the *Act* and that any attempt to avoid or contract out of the *Act* is of no effect. I find the addendum to the tenancy agreement cannot be relied upon to require the Tenant to make repairs arising from normal wear and tear, as that would be an attempt to contract out of the *Act*.

As the Tenants do not dispute that they owe for the metered utility statement, dated June 30, 2015, in the amount of $325.84, I find that the Tenants must pay this amount to the Landlord.

I find that the Tenants have submitted insufficient evidence to establish that there is a term in their tenancy agreement which prohibits the Landlord from listing the property for sale.

In reaching this conclusion I was heavily influenced by the tenancy agreement that was submitted in evidence. There is nothing in the tenancy agreement or addendum to the agreement that prohibits the Landlord from listing the property for sale. In the event the Tenants considered this to be a material term of their tenancy agreement, as the Tenants contend, they would have been well advised to include that term in the written tenancy agreement.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord explicitly agreed that she would not list the property for sale during the most recent fixed term tenancy.

In adjudicating this matter I considered the emails exchanged between the parties on April 21, 2014. Although it is clear that the Tenants interpret these emails to be a promise to not list the rental unit during the most recent fixed term tenancy, I do not interpret the emails in that way. In my view the Agent for the Landlord has simply informed the Tenants that the Landlord has no current intentions to sell the property, however he clearly informs the Tenants that there are circumstances under which the Landlord may change her mind about selling.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant damage or loss as a result of the landlord not complying with the *Act*, the regulations or a tenancy agreement. As the Tenants have failed to establish that the Landlord breached the *Act*, the regulations or a tenancy agreement when they listed the rental unit for sale, I find that the Tenants are not entitled to compensation for any damage/loss arising from that listing. I therefore dismiss the Tenants' claim for compensation in the amount of $17,000.00.

As I have concluded that the Tenants are not entitled to any compensation arising from the rental unit being listed for sale, I do not need to consider the amount of compensation being sought by the Tenants or whether the Tenants properly mitigated their losses.

I have completely disregarded the Landlord's submission that any term preventing the Landlord from listing the property for sale during the tenancy would be repudiated by the fact rent was not always paid when it was due. Although a landlord does have the right to end a tenancy on the basis of unpaid rent, the payment of rent does not absolve a landlord from complying with his/her obligations under a tenancy agreement.

As the Tenants have failed to establish that they are entitled to compensation arising from the Landlord listing the property for sale, I dismiss the Tenants' application to recover the fee for filing an Application for Dispute Resolution. I note that the Tenants did not need to file an Application for Dispute Resolution to recover their security

deposit/pet damage deposit, as I would have returned those deposits after concluding that the Landlord had not established a right to keep the full amount of the deposits.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,574.14, which includes $325.84 for unpaid utilities and $1,248.30 for replacing the sofa. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain this amount from the Tenants' security deposit of $3,000.00 in full satisfaction of this monetary claim.

As the Landlord has failed to establish a right to the remainder of the Tenants' security deposit or pet damage deposit, I find that the Landlord must return the remaining $4,425.86. Based on these determinations I grant the Tenants a monetary Order for the amount $4,425.86. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: March 11, 2016

Residential Tenancy Branch