Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

The hearing on February 16, 2016 was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent or utilities, a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on August 19, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on August 21, 2015 were sent to the Tenants, via registered mail. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The male Landlord stated that on January 18, 2015 the amended Application for Dispute Resolution and evidence the Landlord submitted to the Residential Tenancy Branch on January 18, 2016 were sent to the Tenants, via registered mail. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 01, 2016 the Landlords submitted an additional 4 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was mailed to the Tenants on January 28, 2016. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 16, 2015 the Tenants submitted 97 pages of evidence to the Residential Tenancy Branch. On September 17, 2015 the Tenants submitted 6 pages of evidence to the Residential Tenancy Branch. On September 21, 2015 the Tenants submitted 15 pages of evidence to the Residential Tenancy Branch. On January 25, 2106 the Tenants submitted 6 pages of evidence to the Residential Tenancy Branch. The male Tenant stated that all of this evidence was mailed to the Landlords, although he does

not recall when any of the documents were mailed. The male Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on February 16, 2016 so the matter was adjourned. The hearing was reconvened on April 12, 2016 and was concluded on that date.

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

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid utilities, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in April of 2008;
- when the tenancy began the Tenants agreed to pay $1,200.00 in rent by the first day of each month;
- the Tenants paid a security deposit of $600.00;
- the Tenants paid a pet damage deposit of $600.00;
- a condition inspection report was completed at the beginning of the tenancy;
- the rental unit was vacated on August 01, 2015;
- a condition inspection report was not completed, in the presence of both parties, completed at the end of the tenancy; and
- the Tenants provided the Landlords with a forwarding address, via email, sometime prior to the end of the tenancy.

The male Landlord stated that this tenancy ended as a result of a One Month Notice to End Tenancy that was served to the Tenants on May 16, 2015. The male Landlord cannot recall the declared effective date of that Notice to End Tenancy. The male Tenant stated that the Landlords did not serve them with a One Month Notice to End Tenancy.

The Landlords and the Tenants agree that this tenancy was the subject of a dispute resolution hearing on July 14, 2015. The file number of this matter appears on the front page of this decision. A portion of this decision was submitted in evidence by the Landlord.

Residential Tenancy Branch records show that the hearing on July 14, 2015 was convened in response to an Application for Dispute Resolution filed by the Tenants, in

which the Tenants applied to cancel a One Month Notice to End Tenancy. In the decision relating to this matter the Arbitrator noted that both parties submitted a copy of a One Month Notice to End Tenancy for Cause that was issued on May 16, 2015 and which had an effective vacancy date of June 21, 2015.

The male Tenant stated that at the hearing on July 14, 2015 the Arbitrator gave the Tenants ten days to vacate the rental unit. In the decision relating to this matter the Arbitrator upheld the One Month Notice to End Tenancy for Cause; he determined the effective date of the Notice to be June 30, 2015; and he declares that the Tenant must vacate the rental unit on the basis of the Notice to End Tenancy. He does not grant the Landlord an Order of Possession and he does not declare that the Tenant has ten days to vacate the rental unit.

The Landlords are seeking compensation for replacing a broken window in the garage. The male Landlord stated that:

- the broken window was never reported to the Landlords;
- at the end of the tenancy he found broken glass near the broken window;
- there was tin covering the window at the end of the tenancy;
- there was an arbor beside the broken window at the start of the tenancy;
- the arbor was gone at the end of the tenancy; and
- it is possible the window was damaged by the arbor, although he finds it unlikely because the glass was shattered.

The male Tenant stated that:

- during a large snowfall in 2009 an arbor fell against the window;
- the glass broke when the arbor fell;
- the damage to the arbor was reported to the Landlords, by email; and
- he covered the window with tin.

The Landlords are seeking compensation for replacing the carpet in the room they refer to as the “pellet stove” room. The Landlords contend that the carpet in this room was not stained at the start of the tenancy and that it was baldy stained at the end of the tenancy. The Landlords submitted photographs 5 and 5A that were taken at the end of the tenancy, which show the carpet in this room was badly stained. The male Landlord estimates that the carpet in this room was eight years old at the end of the tenancy.

The male Tenant stated that the photographs of the carpet in the “pellet stove” room show the condition of the carpet at both the start and the end of the tenancy.

The Landlords submitted a copy of a condition inspection report that was completed by a third party representing the Landlords. Neither party was certain which room on the report corresponded to the “pellet stove” room, although they agree it was not one of the living areas with laminate flooring.

The Landlords are seeking compensation for replacing the carpet in the office. The Landlords contend that the carpet in this room was not damaged at the start of the tenancy and that it was torn at the end of the tenancy. The Landlords submitted photographs 6 and 7 that show the carpet in this room was damaged. The male Landlord estimates that the carpet in this room was eight years old at the end of the tenancy.

The male Tenant stated that the photographs of the carpet in the office demonstrate the condition of the carpet at both the start and the end of the tenancy.

The Landlords submitted a receipt to show they were charged $642.26 for replacing the damaged carpet in the office and the “pellet stove” room.

The Landlords are seeking compensation for replacing the carpet in the stairway. The Landlords contend that the carpet on the stairs was not damaged at the start of the tenancy and that it was damaged at the end of the tenancy. The Landlords submitted photograph 8 that was taken at the end of the tenancy, which show the carpet is damaged. The male Landlord estimates that the carpet was eight years old at the end of the tenancy.

The male Tenant stated that the carpet was damaged when the Tenants were cleaning after the basement flooded.

The Landlords submitted an estimate from a floor company that indicates the carpet on the stairs can be replaced for $450.32.

The Landlords are seeking compensation for replacing the carpet in the porch area. The Landlords and the Tenants agree that Tenants added the porch area to the rental unit and installed the carpet in that area at the expense of the Tenants.

The Landlords are seeking compensation, in the amount of $663.84, for removing rubbish from the exterior of the rental unit. The Landlords submitted photographs 16-29 that the male Landlord stated show the amount of rubbish left on the property.

The male Tenants stated that all of the property shown in photographs 16-29 belonged to the Tenants and they simply did not have time to remove it all by the time they vacated the rental unit.

The Landlords submitted two receipts that $187.00 in disposal fees were paid on August 07, 2015. The Landlords submitted an invoice that indicates the Landlords paid $315.00 for having the rubbish removed on August 07, 2015. At the bottom of the invoice there is a note that indicates an additional $105.00 was paid to a third party. The male Landlord stated that the person hired to remove the rubbish hired someone to help him and that $105.00 was paid to this person, as noted on the invoice.

The Landlords are seeking compensation for removing oil stains from the driveway. The Landlords submitted photographs 13-15 that the male Landlord stated show oil on the driveway. The male Tenant agreed that this oil stains were the result of him changing the oil in his vehicle during the tenancy.

The Landlord submitted an estimate that indicates it will cost $120.00 to remove the oil stains from the driveway and $360.00 to pressure wash the driveway, plus tax of 5%.

The Landlords are seeking compensation for cleaning the exterior of the rental unit. The Landlords submitted photograph 3 that the male Landlord stated shows oil on the siding. The Landlords are seeking compensation for cleaning this siding.

The male Tenant stated that this is the siding on the porch that he added to the rental unit and that the siding was used and stained when it was installed, at the expense of the Tenant. The male Landlord agreed that photograph 2 is a photograph of siding installed at the expense of the Tenant.

The Landlords are seeking compensation for replacing a set of drapes and a curtain rod in the dining room. The male Landlord stated that these items were in the dining room at the start of the tenancy and they were missing at the end of the tenancy. He estimates they were over ten years old at the end of the tenancy.

The male Tenant stated that the drapes were very old and dirty at the start of the tenancy. He stated that the drapes fell apart when his wife tried to clean them so they were never replaced. He stated that the Landlords told the Tenants to discard the drapes, which the Landlords deny.

The Landlords submitted an estimate to show the drapes would cost $19.99 to replace and the curtain rod would cost $29.97 to replace.

The Landlords are seeking compensation for cleaning the rental unit, in the amount of $700.00. The Landlords contend the unit required cleaning at the end of the tenancy. The Landlords submitted photographs 9-12A, which the parties agree fairly represent the condition of the rental unit at the end of the tenancy.

The male Tenant stated that the rental unit was “99% clean” at the end of the tenancy but they did not have time to complete the remainder of the cleaning.

The Landlords submitted an email that shows a professional cleaning company charged the Landlords $700.00 for cleaning the unit.

The Landlords are seeking compensation, in the amount of $1,680.00, for landscape repairs.

The male Landlord stated that part of the claim for landscape repairs was for repairing ruts on the property, which he speculates were caused by ATVs or trucks being driven

on the property. The male Tenant stated that the ruts on the property were caused by a machine a contractor used to repair the septic field on behalf of the Landlords. The male Landlord stated that he had the septic filed repairs about 2 or 3 years ago and it was the contractor who repaired the septic field that told him someone had been driving on the septic field.

The male Landlord stated that part of the claim for landscape repairs was for removing and repairing the area where the Tenants had built a fire pit. The male Tenant acknowledged that a fire pit was built during the tenancy, which was left in place at the end of the tenancy because they did not have enough time to remove it.

The male Landlord stated that part of the claim for landscape repairs was for repairing a trench the Tenants dug to bury cable. The male Tenant acknowledged that he "pulled back the grass" to bury some cable.

The male Landlord stated that part of the claim for landscape repairs was for repairing an area in the yard where the Tenants had installed a "hard pad", which he describes as an area where gravel has been pounded flat to create a hard surface. He stated that the gravel has been removed but the grass is damaged in this area. The male Tenant acknowledged that a "hard pad" was installed during the tenancy but he contends he re-seeded the area.

The male Landlord stated that the Landlords did not submit photographs of the ruts on the property. The Landlords submitted photographs of the fire pit and the area where the cable was buried.

The Landlords submitted an email from a contractor, dated August 12, 2015, in which he declared that he would remove the fire pit, spread a couple of loads of top soil , and seed for $1,600.00 plus gst.

The Landlords are seeking compensation, in the amount of $409.11, for the cost of water. The male Landlord stated that when this tenancy began water was included with the tenancy; in May of 2013 the Tenants verbally agreed that they would pay the water bills as a term of their tenancy; he asked the Tenants to start paying for water because water in the area was going to be metered and the Tenants had a swimming pool; and they stopped paying the water bills in 2013.

The female Tenant stated that they started paying the water bill at the verbal request of the male Landlord because he told them it was required and they eventually stopped paying it because they learned it was not a requirement of their tenancy agreement. The male Tenant stated that they stopped paying the water bills in March of 2015.

A copy of the tenancy agreement was submitted in evidence, which declares that water is included in the rent.

The Landlords are seeking compensation, in the amount of $80.00, to replace 4 window screens, which the Landlords refer to as “bug guards”. The male Landlord stated that a receipt or estimate for the cost of replacing the damaged screens was not submitted in evidence.

The male Landlord stated that all of the screens were in place at the start of the tenancy, that none of them were damaged, and that 4 damaged screens were found lying on the residential property at the end of the tenancy. The male Tenant that some damaged screens were laying on the residential property at the start of the tenancy, the Tenants removed one screen at the end of the tenancy and did not replace it, and that no screens were damaged during the tenancy.

The Landlords are seeking compensation, in the amount of $18.00, to replace 4 light bulbs. The male Landlord stated that a receipt for the cost of replacing the bulbs was not submitted in evidence. The Landlords and the Tenants agree that 4 light bulbs were burned out at the end of the tenancy and were not replaced.

The Landlords are seeking compensation, in the amount of $690.00, for “B&R Renovations”. At the hearing on April 12, 2016 the male Landlord stated that this includes a claim of $220.00 to replace a door, $150.00 to repair siding, $240.00 to replace a porch railing, $55.00 for removing a padlock from the garage door, and $25.00 for replacing a bathroom door. The male Tenant stated that the Tenants understood the Landlords were claiming compensation for these items and that they were prepared to respond to those claims at these proceedings.

The Landlords are seeking $220.00 to replace a door. The Landlords and the Tenants agree that during the tenancy the Tenants installed a new door/doorway into the rental unit and that prior to the end of the tenancy the door damaged, was removed from the doorway, and was left on the residential property. The Landlords submitted a receipt to show they paid $220.00 to replace the door.

The Landlords are seeking $150.00 to repair siding. The Landlords and the Tenants agree that the siding beside a rose bush near the front porch was damaged during the tenancy. The Landlords submitted a receipt to show they paid $150.00 to repair the siding and a photograph of the damaged siding.

The male Tenant stated that the rose bush was attached to the siding and that during a heavy wind storm the bush became detached from the siding, which damaged the siding.

The Landlords are seeking $240.00 to repair a railing around the front porch.

The male Landlord stated that the railing was removed to facilitate the new doorway the Tenants installed and was simply never replaced. The Landlords submitted a receipt to show they paid $240.00 to replace the railing.

At the hearing on April 12, 2016 the male Tenant stated that the railing was damaged prior to the installation of the new doorway. He stated that the railing was damaged in 209 when the arbor beside the unit fell due to a heavy snow load.

The male Landlord argued that at the hearing on February 16, 2016 the male Tenant had testified that the arbor fell to the left and broke a garage window. He stated that the arbor would have had to fall to the right to damage the railing, which he contends in inconsistent with the Tenant's earlier testimony.

On April 12, 2016 the male Tenant stated that the arbor twisted under the weight of the snow and that a portion of it fell to the left and damaged the window and a portion of it fell to the right and damaged the railing.

The Landlords are seeking $55.00 for removing a padlock from the garage door. The male Landlord stated that the Tenants installed a padlock on the garage door, that the padlock was not removed at the end of the tenancy, that the Landlords did not have a key to the padlock, and that the Landlords paid $55.00 to have the padlock removed.

The male Tenant stated that he removed the padlock at the end of the tenancy and took it with him.

The Landlords submitted a receipt to show they paid $55.00 to "supply and fit new bolt to garage door".

The Landlords are seeking $25.00 for replacing a bathroom door. The Landlords and the Tenants agree that the door was removed sometime prior to the end of the tenancy and this it was not replaced. The Landlords submitted a receipt to show they paid $25.00 to refit the door.

At the hearing the Landlords withdrew their claim of $265.00 to repair some garage eaves.

Analysis

I favour the testimony of the male Landlord, who stated that this tenancy ended on the basis of a One Month Notice to End Tenancy that was served to the Tenants on May 16, 2015 over the testimony of the male Tenant, who stated that the Tenants were never served with a One Month Notice to End Tenancy. This decision was heavily influenced by the undisputed evidence that the Tenants filed an Application for Dispute Resolution to dispute a One Month Notice to End Tenancy and that there was a hearing on July 14, 2015 to consider the merits of the One Month Notice to End Tenancy.

Section 37(2) of the *Act* requires tenants to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. Given that the Tenants received a One Month Notice to End Tenancy on May 16, 2015 and they did not vacate the rental

unit until August 01, 2015, I find that the Tenants had ample time to comply with their obligations under section 37(2) 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.

I find that the Landlords submitted insufficient evidence to establish that the Tenants are responsible for repairing the broken window in the garage. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the male Tenant's testimony that the window was damaged by an arbor that fell during the winter of 2009. Although the male Landlord speculates that it is unlikely, due to the nature of the shattered glass, he does acknowledge that the arbor is gone and that it could have caused the damage. In the absence of evidence that establishes the Tenants damaged the window, I dismiss the Landlords' claim for repairing the windows.

I find, on the balance of probabilities, that the "pellet stove" room is referred to on the condition inspection report as the "bedroom (2) downstairs". Although it is difficult to read, the condition inspection report that was completed at the start of the tenancy by a person not present at the hearing appears to indicate that the carpet in this room is missing a large piece "where stove was", which causes me to conclude that it is the "pellet stove room". I note that the report does not indicate that the carpet in this room is stained.

The condition inspection report does not indicate the carpet in the office or in the stairway was stained or damaged at the start of the tenancy.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the condition inspection report does not indicate that the carpet in the "pellet stove" room was stained at the start of the tenancy and the Tenants have not submitted evidence that corroborates their submission that it was stained, I must conclude that the carpet in the "pellet stove" room was not stained at the start of the tenancy.

On the basis of the undisputed evidence that the carpet in the "pellet stove" room was stained at the end of the tenancy, I must conclude that the carpet was stained during the tenancy. I therefore find that the Tenants were obligated to clean or replace the carpet in the "pellet stove" room at the end of the tenancy.

As the condition inspection report does not indicate that the carpet in the office was damaged at the start of the tenancy and the Tenants have not submitted evidence that corroborates their submission that it was damaged, I must conclude that the carpet in the office was not damaged at the start of the tenancy.

On the basis of the undisputed evidence that the carpet in the office was damaged at the end of the tenancy, I must conclude that the carpet was damaged during the tenancy. I therefore find that the Tenants were obligated to repair or replace the carpet in the office at the end of the tenancy.

As the condition inspection report does not indicate that the carpet in the stairway was damaged at the start of the tenancy and the Tenants have not submitted evidence that corroborates their submission that it was damaged, I must conclude that the carpet in the stairway was not damaged at the start of the tenancy.

On the basis of the undisputed evidence that the carpet in the stairway was damaged at the end of the tenancy, I must conclude that the carpet was damaged during the tenancy. I therefore find that the Tenants were obligated to repair or replace the carpet in the stairway at the end of the tenancy. In reaching this conclusion I have placed no weight on the male Tenant's testimony that the stairs were damaged while the Tenants were cleaning after a basement flood, as the damage to the stairs depicted by photograph 8 is entirely inconsistent with damaged caused by cleaning.

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 <u>not</u> 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.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet in the "pellet stove" room, the office, and the stairway was eight years old at the end of the tenancy. I therefore find that the carpet in these areas had depreciated by 80%. I therefore find that the Landlord is entitled to recover 20% of the cost of replacing the carpet in the office and the "pellet stove" room, which is $128.49 and 20% of the estimated cost of replacing the carpet on the stairway, which is $90.06.

On the basis of the undisputed evidence that the Tenants added the porch area to the rental unit and installed the carpet in the addition, I cannot conclude that the Tenants had an obligation to maintain or repair the carpet in this porch. A tenant is not obligated to repair damage to his/her own property. I therefore dismiss the claim for replacing the carpet in the porch.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove all of their belongings/rubbish from the exterior of the rental unit. I therefore find that the Landlord

is entitled to compensation for the cost of removing the rubbish, in the amount of $607.00, which includes $420.00 paid to the people removing the garbage and $187.00 in dump fees.

In adjudicating the claim for dump fees I have placed no weight on the Tenants' submission that they did not have time to remove their property from the exterior of the rental unit. Given that they received a One Month Notice to End the Tenancy on May 16, 2015 and they did not vacate the unit until August 01, 2015, I find they had ample time to arrange to have this property removed.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove the oil stains in the driveway. I therefore find that the Landlords are entitled to compensation for the cost of removing the oil, in the amount of $482.40.

On the basis of the undisputed evidence that the Tenants added the porch area to the rental unit and installed the siding on the addition, I cannot conclude that the Tenants had an obligation to maintain or repair the siding. A tenant is not obligated to repair damage to his/her own property. I therefore dismiss the claim for cleaning the siding on the porch.

On the basis of the testimony of the male Tenant and in the absence of evidence to the contrary, I find that the dining room drapes "fell apart" after they were washed by the Tenants. Even if I were to conclude that the Tenants were obligated to replace the drapes, I would find that the drapes have exceeded their life expectancy, which is ten years, and that the Landlords would not, therefore, be entitled to compensation for replacing the drapes. I therefore dismiss the claim for replacing the drapes.

On the basis of the testimony of the Landlords and, in particular, the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave the rental unit in reasonably clean condition. In my view those photographs shows a substantial amount of additional cleaning was required. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the unit, in the amount of $700.00.

In adjudicating the claim for cleaning I have placed no weight on the Tenants' submission that they did not have time to finish cleaning. Given that they received a One Month Notice to End the Tenancy on May 16, 2015 and they did not vacate the unit until August 01, 2015, I find they had ample time to clean the unit.

I find that the Landlords submitted insufficient evidence to establish that the Tenants significantly damaged the residential property by driving on it with an ATV or a vehicle. In reaching this conclusion I was heavily influenced by the absence of photographs if the ruts. In the absence of photographs, I am simply unable to conclude that the property has been significantly damaged. I therefore cannot award compensation for the cost repairing ruts on the property.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to remove the fire pit they built and to repair the damage to the property as a result of the fire pit. I therefore find that the Landlord is entitled to compensation for the cost of removing and repairing the fire pit. On the basis of the email from the contractor, dated August 12, 2015, who declared he will remove the fire pit, spread top soil, and seed for $1,600.00 plus GST, I find that the Landlords are entitled to their claim for $1,600.00.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the area of the yard that was disturbed for the purpose of burying cable. I therefore find that the Landlords are entitled to compensation for the cost of removing and repairing the fire pit. Although it is not specifically stated, I find it reasonable to conclude that this area would be repaired when the contractor spread top soil and seed.

Given that the area where the hard pad was installed was still identifiable at the end of the tenancy, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to fully repair that portion of the yard. I therefore find that the Landlords are entitled to compensation for the cost of repairing this area. Although it is not specifically stated, I find it reasonable to conclude that this area would be repaired when the contractor spread top soil and seed.

Section 14(2) of the *Act* stipulates that a term in a tenancy agreement may be added, providing it is not a standard term, if both the landlord and tenant agree to the amendment. Section 14(3)(a) of the *Act* stipulates that section 14(2) of the *Act* does not apply to rent increases, which are subject to separate rules.

Section 41 of the *Act* stipulates that a landlord must not increase rent except in accordance with the legislation, which limits the amount of rent that can be increased in each year and requires a landlord to give a tenant notice of a rent increase at least 3 months before the effective date of the increase, on the approved form.

I find that the requirement to pay for a service, such as water, that was previously included with the rent constitutes a rent increase and is, therefore, subject the requirements of section 41 of the *Act.* As there is no evidence that the Landlords gave the Tenants written notice of the “rent increase” on the approved form, I find that the Landlords did not have the right to charge the Tenants for water consumption. I therefore dismiss the Landlords’ application for compensation for water charges.

Even if I concluded that the Tenants failed to comply with the *Act* when they did not repair or replace some damaged screens, I would dismiss the Landlords’ claim for compensation for replacing 4 screens. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed.

I find that the Landlords failed to establish the true cost of repairing or replacing the screens. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' submission that I cost $80.00 to replace the screens. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the documentary evidence. As the Landlords have failed to establish the cost of replacing the screens, I dismiss their claim for compensation for the screens.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to replace 4 light bulbs that burned out during the tenancy.

I find that the Landlords failed to establish the true cost of replacing the light bulbs, as they did not submit receipts that corroborate their claim that it cost $18.00 to replace the bulbs. As the Landlords have failed to establish the cost of replacing the bulbs, I dismiss their claim for compensation for the bulbs.

On the basis of the undisputed evidence I find that the Tenants altered the rental unit during the tenancy to install a new door and doorway. I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the door in place at the end of the tenancy. I note that the Landlords are not seeking compensation for removing the doorway however I find it reasonable for the Landlords to expect the new doorway to be secured with a door at the end of the tenancy. I therefore find that the Landlords are entitled to recover the $220.00 they paid to install a new door.

I find that the Landlords submitted insufficient evidence to establish that the Tenants are responsible for repairing the broken siding. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the male Tenant's testimony that the siding was damaged during a windstorm when a rose bush that was attached to the siding became detached. In the absence of evidence that establishes the Tenants damaged the siding, I dismiss the Landlords' claim for repairing the siding.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the male Tenant's testimony that an arbor fell and damaged a window to the left of the arbor and a railing to the right of the arbor lacks credibility. On the basis of the photographs available to me I find it highly unlikely that the damage to the garage window and the damage to the railing were both caused by the arbor falling, given that the window and the railing are not in the same location.

I have accepted the male Tenant's testimony that the falling arbor broke the window. I do not find it likely that the falling arbor also broke the railing. I find it more likely that the Tenants removed the railing when the new doorway was installed, as the railing would have had to be removed to accommodate the new doorway. I therefore do not accept the railing was damaged by the arbor.

Although the Landlords are not seeking compensation for removing the doorway, I find it reasonable for the Landlords to expect that the railing should have been replaced after the doorway was installed. I therefore find that the Landlords are entitled to recover the $240.00 they paid to install a new railing.

I find that the Landlords submitted insufficient evidence to establish that the Tenants left a padlock on the garage door. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the male Landlord's testimony that a padlock was left on the door or that refutes the male Tenant's testimony that he took the padlock with him. I note that the receipt from the person making repairs to the rental unit does not corroborate the Landlords' submission that a padlock needed to be removed. Rather, the receipt indicates that a new bolt was installed. As the Landlords have failed to establish that the Tenants' left a padlock on the garage door, I dismiss the Landlords' claim for $55.00 for removing the padlock.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not refit the bathroom door they removed prior to the end of the tenancy. I therefore find that the Landlords are entitled to recover the $25.00 they paid to install a new door.

I find that the Landlords' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application.

Conclusion

The Landlords have established a monetary claim, in the amount of $4,192.95, which is comprised of $4,092.95 in damages and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenants' security and pet damage deposits of $1,200.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance of amount $2,992.95. In the event that the Tenants do not voluntarily 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: April 13, 2016

Residential Tenancy Branch