Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF (Landlord's Application)
MNDC, MNSD, FF (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed October 26, 2015, they sought a Monetary Order in the amount of $3,067.36 for damage to the rental unit and unpaid rent, authority to retain the security deposit and recovery of the filing fee. In the Tenants' Application for Dispute Resolution, filed on November 4, 2015, they sought a Monetary Order in the amount of $11,000.00 for return of double the security deposit paid, return of rent paid and recovery of the filing fee.

Both parties appeared at the hearing. The Tenants were represented by an agent K.C.

At the outset of the hearing I explained the hearing procedure to the participants and they were offered the opportunity to ask questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

On the Tenant's Application for Dispute Resolution they named C.C. as a Landlord. C.C. is the Landlord's property manager, and is not in fact the Landlord. Section 64(3)(c) of the *Residential Tenancy Act* allows me to amend an application for dispute

resolution; in this case, I exercise my discretion to amend the Tenants' Application to accurately name the Landlord as P.K.P.

Similarly, on the Landlord's Application for Dispute Resolution, D.S., is noted as the Landlord. Again, D.S. is an employee of the corporate Landlord and pursuant to section 64(3)(c) I amend the Landlord's Application to correctly name the Landlord as P.K.P.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for damage to rental unit or unpaid rent?

2. Are the Tenants entitled to monetary compensation from the Landlord?

3. What should happen with the Tenants' security deposit?

4. Should either party recover the filing fee paid for their respective applications?

Background and Evidence

As the Landlords filed for dispute resolution on October 26, 2015 and the Tenants filed on November 4, 2015, the Landlords presented their case first.

LANDLORDS' CLAIMS

The Landlord testified with respect to the background of the fixed term tenancy as follows: the tenancy began on October 15, 2014 to October 15, 2015. J.A. testified that the tenancy moved in October 1, 2014; monthly rent was payable in the amount of $2,500.00; and the Tenants paid as security deposit of $1,250.00 and a pet damage deposit of $1,250.00.

The tenancy ended on October 14, 2015. Introduced in evidence was a copy of the move out condition inspection report which occurred on October 14, 2015.

Also introduced in evidence by the Landlord was a Monetary Orders work sheet wherein the Landlord claimed the sum of $3,067.36. On this document were various hand-written notes, noting the actual expense incurred and which indicated they sought $2,472.00.

The Landlord's managing broker, J.A., testified on the Landlord's behalf and explained the notations on the work sheet as follows, as well as noting further adjustments as follows:

Unpaid rent for October 1, 2015 to October 14, 2015 ($1,209.67 less $850.00 for the "settlement for the hot tub" as Landlor claimed the parties agreed to a settlement whereby the Landlord would pay the Tenants $1,700 for the lack of a hot tub)	$359.58
outstanding utilities, including: $154.54 Fortis bill (invoice included in materials) $351.97 City water bill (invoice included in materials)	$506.51
Restoration work for laundry room floor damage caused by water	$195.60
Repair of hardwood flooring as a result of damage caused by laundry room flooding $315.00 for the installation (see invoice) $575.10 materials	$890.00
Replace basement window (invoice)	$176.97
Carpet cleaning as Tenants failed to clean carpets	$293.90
Recovery of filing fee	$50.00
TOTAL CLAIMED	**$2,472.66**

J.A. confirmed that while the work sheet initially included claims for the repair of the washing machine, painting of the rental unit and general cleaning, those amounts were not sought at the hearing.

The first amount noted was the Landlord's claim for unpaid rent in the amount of $359.58. The Landlord claimed the Tenants failed to pay rent for the time period October 1-15, 2015 and accordingly, the Landlords sought compensation in the amount of $1,209.67 for these 15 days. The Landlord's managing broker, J.A., explained that the Landlord's claim for outstanding rent was $359.58 as the $1,209.67 figure was to be adjusted for what they deemed "loss of hot tub use settlement" in the amount of $850.00.

J.A. testified that the property was advertised as having a hot tub. They confirmed that when the tenancy began it was discovered that the hot tub did not work. J.A. stated that it was his understanding that the rental unit does not have adequate electricity to run the hot tub. He testified that the Landlord's agents and the Tenants attempted to find a hot tub to replace the one that was offered in the advertisement and when that wasn't

possible, the parties agreed to a settlement whereby the Tenants would be credited the sum of $1,700.00 for the lack of a hot tub.

The Landlord also sought the sum of $506.51 for outstanding utilities. The residential tenancy agreement introduced in evidence confirms that the Tenants were responsible for paying for their own water and utilities and J.A. testified that when the tenancy ended these amounts remained outstanding in the amounts noted above. The Landlord also submitted in evidence an invoice from the electrical utility company as well as from the City for the water utility.

The Landlord also sought compensation for water damage to the rental unit. J.A. testified that there were a series of problems with the washing machine and that the washing machine was replaced during the tenancy. He further stated that the Tenants called the Landlord on September 12, 2015 to advise that the washing machine had stopped working. According to J.A., the Tenants sated that they were concerned their clothes would be damaged because their clothes were trapped inside.

J.A. submitted that the Landlord responded to their concerns in timely manner, and that on September 14, 2015 the Landlord contacted the repair company. He further stated that on September 16, 2015 the repair company called and informed the Landlord that the parts were in. J.A. claimed that the washing machine door was opened at that time and the Tenants were offered the opportunity to remove their clothes.

J.A. stated that further parts were ordered and the repairs were completed on September 23, 2015. Introduced in evidence was a copy of the invoice from the repair company.

J.A. testified that he was informed by an email sent by the repair company that the repair person offered to let the Tenants clear the machine of their clothing, and that the Tenants refused to do so. J.A. further stated that he was informed by the person doing the repairs that the Tenants stated they would be suing the Landlord. The Landlord did not call the employee of the repair company to give testimony at the hearing.

J.A. confirmed during the hearing that the Landlord was not seeking costs with respect to the washing machine repairs, only the water damage to the floor.

The Landlord testified that the window was broken during the tenancy and as such the Landlord sought compensation for its replacement.

The Landlord testified that the Tenants failed to provide a receipt showing they had the carpets professionally cleaned and as such the Landlord claimed compensation for the amount to clean the carpets.

Introduced in evidence by the Landlord were photos of the rental unit depicting the following:

- a photo of the washer and dryer with the notation that this photo was taken “on move in”;
- a photo of the washer and dryer as well as a taped off area of the floor with a notation “Damage to floor (after [name withheld] restoration);
- a photo of a crack in the basement window;
- photos of the walls which relate to the Landlord’s abandoned claim for painting.

TENANT’S RESPONSE TO LANDLORD’S CLAIMS

K.C. testified on behalf of the Tenants as follows.

K.C. submitted that the parties did not reach a comprehensive agreement with respect to the hot tub and as such, the rent and hot tub issues should be separated because the parties did not reach an agreement.

Dealing first with the Landlord’s claim for unpaid rent, K.C. confirmed that it was the Tenants position that they paid $30,000.00 for 12 months at $2,500.00 starting at October 15, 2014 and concluding on October 15, 2015 such that no rent is outstanding. The Tenants do not deny that they were given access to the home early, but K.C. stated that was merely to allow them to move their possession in. K.C. confirmed that the tenants paid rent quarterly, although many of the payments were made on the 1st of the month.

K.C. also noted that the residential tenancy agreement confirms that the tenancy began on October 15, 2014 and was to end on October 15, 2015. As well, he pointed out that the move in Condition Inspection Report was completed on October 14, 2014, which was the start of the tenancy.

With respect to the Landlord’s claim that the Tenants agreed to the sum of $1,700.00 as compensation for the loss of a hot tub, the Tenants submit that while they agreed they should be compensated, they did not agree to the amount offered by the Landlord.

In response to the Landlord's' claim for outstanding utilities, K.C. confirmed that it was the Tenants position is that the electrical bill submitted in evidence does not relate to the subject rental property.

I advised the parties during the hearing that the electrical utility bill which was submitted in evidence was not readable and as such I was not able to confirm whether it related to the subject property.

With respect to the Landlord's claim for $351.97 for the outstanding water utilities payable to the city, K.C. noted that the letter from the City, dated August 19, 2015, and was well before the tenancy ended. K.C. testified that this invoice was paid by the Tenants. A.R. also testified that she paid the utility bill via online banking at the end of August 2015.

K.C. confirmed that it was the Tenants' position that they are not responsible for the water damage to the flooring caused by the faulty washing machine as this appliance is the responsibility of the Landlord. K.C. testified that the Tenants could not see the water accumulating as the cork flooring absorbs water quicker than other flooring. The Tenants submit that the Landlord should be responsible for the repair of the washing machine, any water damage to the floor caused by the malfunctioning machine or the delay in repairs.

K.C. stated that the Tenants are unaware of how the damage to the basement window occurred. K.C. confirmed that, as a gesture of good faith, the Tenants were willing to pay half the claimed cost of $176.97. J.A. confirmed the Landlord sought the full sum.

K.C. confirmed the Tenants were agreeable to paying the cost of carpet cleaning.

LANDLORD'S REPLY

In reply the Landlord stated that the statement provided in evidence with respect to the rent paid was correct. He said it showed rent being paid as of October 1, 2014 such that the time period October 1, 2015 to October 15, 2015 was not paid for. He also pointed out that the quarterly payment made on April 1, 2015 was reduced by $850.00, representing half of the $1,700.00 agreed upon sum for compensation for lack of a hot tub.

J.A. confirmed that the hot tub $1,700.00 settlement agreement was not reduced to writing.

J.A. further testified that the washing machine was broken because the water was trapped inside. He claimed here was no water on the floor. The Landlord said that the washing machine did not cause the water damage. He stated that he did not know how the floor got damaged, but it got damaged during the tenancy and as such the Tenants should be liable.

TENANT'S CLAIMS

The Tenants submitted a Monetary Orders Work Sheet wherein they confirmed they sought compensation for the following:

Double the pet ($1,250.00) and security deposit ($1,250.00) paid	$5,000.00
"aggravated tenancy"	$6,000.00
Filing fee	$100.00
TOTAL CLAIM	$1,100.00

K.C. confirmed that as the Tenants were not served with the Landlord's Application for Dispute Resolution in time, it was their position that they are entitled to return of double the return of the pet and security deposit.

The tenancy ended on October 14, 2015. The Landlord's Application for Dispute Resolution was filed on October 26, 2015. A.R. testified that she received the Landlord's Application for Dispute Resolution on or about November 10, 2015.

K.C. also confirmed the Tenants sought the sum of $500.00 per month for each month of their tenancy, due to issues with the tenancy, primarily the fact it was without a hot tub, as well as other issues which affected their enjoyment of the rental unit.

The Tenants prepared a three page typed document which set out the basis of their claim. During the hearing they both affirmed the contents of the letter. I informed the parties that I accepted the letter as their affirmed testimony. The Landlord confirmed receipt of that document and acknowledged that the contents would form part of the Tenants' evidence.

In this document the Tenants write that the property was advertised with a hot tub and that the use of a hot tub was essential to both of them due to their past back injuries. The Tenants further write that when they discovered, within the first few days, that the hot tub didn't work, it was "too late" as they had signed a year lease and were told they

could not get out of the lease due to the malfunctioning hot tub. The Tenants continue that the Landlord's property managers attempted to fix the hot tub, but in doing so left a "massive hole" in the deck for weeks. They note they have three small children and a pet and were concerned about the hazard created by this hole.

The Tenants also write of other issues including the following:

- a leak in the master bathroom shower which caused a hole in the kitchen roof (They claim the Landlord did not address this problem in a timely fashion);

- "small things" such as light bulbs, door handle tightening, required painting, lack of lawn maintenance; and,

- Issues with the washing machine.

With respect to the final matter, the Tenants write of the Landlord's delay in addressing the issues with the washing machine. The Tenants also write that the repair person forced the door open when it was full of water causing significant flooding and the damage to the cork flooring.

The Tenants sought the sum of $500.00 for what they described as an "aggravated tenancy". I confirmed with their agent that the Tenants claim as more properly characterized as a request for a rent abatement for the lack of a hot tub pursuant to section 65(1) as well as possibly for loss of quiet enjoyment as a result of the other issues noted in their evidence.

The Tenant, A.R., testified that the parties had a lot of discussion back and forth about the hot tub but that there was no agreement. She confirmed that they never signed anything, and never agreed to what the Landlord proposed.

A.R., further testified that they asked the Landlord for a rent reduction in the amount of $500.00 per month, however she could not recall when that request was made.

LANDLORD'S RESPONSE TO TENANT'S CLAIMS

In response J.A. testified that nowhere, in any of their records, did they see or hear the Tenants' request for a rent reduction of $500.00 per month. He said that it was only brought up in their claim before the Branch, and he also noted that this request was not in their written statement.

J.A. also drew my attention to an email dated January 24, 2015 wherein he submitted the Tenants agreed to a “rent reduction”. J.A. testified that the cost of a family pass to the local swimming pool was $1,700.00 and that was the amount the Landlord agreed to compensate the Tenants.

J.A. stated the deck was repaired quickly, was secured by a gate and if it was open at any time, the Tenants must have opened it.

J.A. further testified that the shower did leak and cause a hole in the roof but that it was repaired in a reasonable time line; he conceded that it did take some time as the problem occurred over the Christmas holiday.

J.A. conceded that a second leak occurred, but stated that the roof was repaired within 2 days because of the time required for the drywall mud to dry.

J.A. testified that there were some problems with the property but that the Tenants were very demanding. He submitted that the Landlord, at all material times, responded to the Tenants’ demands and tended to repairs. J.A. submitted that when necessary the Landlord hired professionals and responded in a timely fashion but that there were times when the Tenants made it difficult to schedule repairs. He did not elaborate on this point.

J.A. also noted that replacing light bulbs is a Tenants’ responsibility but the Landlord replaced them to be helpful and again did so in a timely manner.

J.A. also stated that the Tenants made a claim about a burned electrical outlet in the garage. He confirmed that an electrician did come and check it out, determined it was safe and was addressed in a timely fashion.

In response to the Tenants’ claim for a rent reduction of $500.00 per month, J.A. stated that this seems exceptionally large. He confirmed the Landlord’s position that the hot tub settlement of $1,700.00 was fair, and reminded me that the Tenants had already accepted one half of the sum as a $850.00 reduction.

J.A. also stated that the Tenants’ claim that the washing machine repair person pulled open the door and water came out is false. In support he provided an email from an employee who writes of their discussions with the repair person. Further, J.A. testified that based on the Tenants written statement, the Tenants were not even home when the repairs were done.

TENANT'S REPLY

In reply, K.C., testified that the statement was written by both Tenants and that in fact, T.R. was there when the washing machine was repaired.

In response to the Landlords' claims with respect to the leaky shower and the hole, K.C. submitted that the hole was in the roof for four weeks. K.C. also stated that the washer repair took two weeks to fix. He confirmed the Tenants' evidence that the attempts to repair the hot tub and deck took three weeks. He also stated the electrical in the garage was never repaired and the Tenants were told to find another outlet.

In response to the Landlord's claim that there was a settlement agreement as evidenced in the email of January 24, 2015, K.C. noted that the Tenants agreed to a rent reduction, but there was no agreement as to the amount.

Finally, K.C. also stated that J.A. was not the property manager at the material time and as such, all of his evidence was second hand information.

Analysis

After careful consideration of the evidence before me, the affirmed testimony of the participants,and the applicable provisions of the *Residential Tenancy Act,* the *Residential Tenancy Branch Rules of Procedure* and the *Residential Tenancy Policy Guidelines,* I find as follows.

I will first deal with the Landlord's claim for unpaid rent. I will deal with this request separately from any adjustment for the lack of a hot tub.

I am in agreement with the Tenants' submission that no amount of rent is owing for the time period October 1, 2015 to October 15, 2015. The residential tenancy agreement confirms that the tenancy began on October 15, 2014 and was to end on October 15, 2015. Further, the move in condition inspection report confirms the move in date as October 14, 2015. Accordingly I dismiss the Landlord's claim for the sum of $1,209.67.

The Landlord claims compensation for outstanding utilities. As noted during the hearing, I was unable to read the electrical utility account submitted in evidence by the Landlord. As such, I am unable to find that the invoice relates to the subject property. The Tenants also claim they paid the outstanding water utility to the City. The Landlord did not dispute this testimony.

As I am unable to find that the electrical utility relates to the subject property, and I am not satisfied the water utility remains outstanding, I dismiss the Landlord's claim for compensation for these amounts with leave to reapply.

The Landlord claims compensation for water damage caused to the rental unit floor.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

> **Leaving the rental unit at the end of a tenancy**
>
> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim for compensation for the cost to repair the rental unit floor.

The was no dispute that the washing machine in the rental unit required repairs. The Tenants allege that the repair person forced open the front loading washing machine causing water to flow onto the cork flooring thereby causing the damage.

The Landlord alleges the damage was caused by the Tenants. In support the Landlord submits an email from R.S. dated September 16, 2015 wherein R.S. writes that he spoke to "J.", the person who performed the repairs, who apparently stated he did not cause the water damage. This is an unsworn second hand statement more properly characterized as double hearsay.

While hearsay evidence is admissible in proceedings before the Residential Tenancy Branch, it is within my discretion to determine the weight given to such evidence. In this case, I have the affirmed testimony of the Tenant, T.R., who testified that J. forced the door open causing water to flood on the floor. Notably, J. did not testify at the hearing. In the circumstances, I prefer the evidence of T.R. as he was present during this event.

I further accept the evidence of the Tenants that the cork flooring would absorb water more quickly and thereby disguise any standing water.

In all the circumstances, I find that the Landlord has failed to prove the Tenants caused the damage to the rental unit floor by their actions or neglect and as such I dismiss the Landlord's claim for compensation for the damage to the floors.

I accept the Landlord's evidence that the basement window was damaged during the tenancy. The Tenants agreed to pay half the cost of replacing the window on the basis that they did not know how this was caused. They did not however, offer any alternate explanation as to how this window was broken. I find it more likely that the window was broken due to the actions or neglect of the Tenants and as such, I award the Landlord the **$176.97** claimed.

The Tenants agreed to pay the cost of the carpet cleaning. Accordingly, and pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Rules of Procedure* I record their agreement in this my Decision and find the Landlord entitled to the sum of **$293.90**.

In total, I award the Landlord the sum of **$470.87.**

I will now address the issues relating to the hot tub.

I find that the parties reached an agreement that the Tenants would be compensated for the lack of a hot tub by way of rent reduction. However, I find that they did not reach an agreement with respect to *amount* the rent was to be reduced. While the evidence establishes that the Landlord provided the Tenants with a credit of $850.00 during the tenancy, this does not prove that the Tenants accepted this sum as full, or 50% compensation for the lack of a hot tub.

The $2,500.00 monthly rent paid pursuant to the tenancy agreement is not an insignificant sum. I find that the fact the rental unit had a hot tub to be an enticing factor for potential renters, and particularly appealing for these Tenants due to their claimed back issues. The evidence also establishes that both parties attempted to resolve this matter; as such, it was clearly an important issue for both parties.

The Landlord submits that the use of the hot tub is comparable to the use of a public swimming pool and related facilities. While there are obvious similarities, a hot tub at ones' home has the added benefit of privacy, among other benefits.

The Landlords concede some compensation is warranted, and submit the sum of $1,700.00 for the duration of the tenancy is sufficient; this equates to $141.66 per month.

The Tenants seek the sum of $500.00 per month, or $6,000.00 for the duration of the tenancy for the lack of a hot tub and other inconveniences during the tenancy. The Tenants did not break down this amount for my benefit although they did describe the other issues as minor. Based on the Tenants' submissions, I find that $450.00 per month of the Tenants' $500.00 per month claim relates to the lack of a hot tub.

Neither party submitted any evidence which would support a finding as to the relative value of rental homes in the subject city with or without hot tubs. As well, neither party submitted evidence as to the monthly cost to rent a hot tub.

Residential Tenancy Branch Policy Guideline 16—Claims in Damages provides in part as follows:

> …
> Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.
> …

Section 65 of the *Residential Tenancy Act* provides in part as follows:

> **Director's orders: breach of Act, regulations or tenancy agreement**
>
> **65** (1) Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
>
> **…**
>
> (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Based on the foregoing, I find that the Tenants are entitled to a rent abatement in the mount of $300.00 per month for the loss of use of the hot tub at the rental unit. I am persuaded that the Tenants rented this home on the basis that it had a hot tub. Although not specifically provided for in the tenancy agreement, the parties agreed the hot tub was included in the rental. There was also significant evidence that the Landlord attempted to resolve this issue thereby confirming its importance to the tenancy.

The $300.00 per month abatement equates to the sum of $3,600.00. As the Tenants have already been credited the sum of $850.00, I award them the sum of **$2,750.00.**

I make no further adjustments for the other issues during the tenancy, such as the leaking shower, light bulbs, electrical issues, washing machine, etc. I find these to be minor and further find that the Landlord responded to those concerns in a timely fashion.

I will now deal with the Tenants' claim for return of double the pet and security deposit paid.

Section 38 of the *Residential Tenancy Act* provides as follows.

> **Return of security deposit and pet damage deposit**
> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Branch Rules of Procedure 2.6 provides as follows:

> **2.6 Point at which an application is considered to have been made**
> The Application for Dispute Resolution has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.

The tenancy ended on October 14, 2015 when the parties completed the move out condition inspection. The Landlord made their application on October 26, 2015.

Section 38(6) refers to section 38(1) which makes no reference to serving. Policy Guideline 2.6 (reproduced above) also makes no mention of service, merely that an application is *made* when it is submitted and the filing fee paid. Accordingly, I find the LL made the application within 15 days as required by section 38(1) and I therefore decline the Tenant's request for *double* the deposits paid.

The Tenants are entitled to return of their deposits paid in the amount of **$2,500.00.**

As the Tenants have been substantially successful, I award them recovery of the **$100.00** filing fee paid for a total of **$5,350.00**.

The Landlord has been awarded the sum of **$470.87** and the Tenants have been awarded **$5,350.00.** These amounts are to be offset one another such that the Tenants are awarded a Monetary Order in the amount of **$4,879.13.** This Monetary Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord's claim for unpaid rent is dismissed. The Landlord's claim for compensation for damage to the rental unit floor is dismissed. The Landlord has established a claim for compensation in the amount of $470.87 for the replacement of the basement window and the carpet cleaning. The Landlords claim for unpaid utilities is dismissed with leave to reapply.

The Tenants are entitled to compensation in the amount of $300.00 per month during the tenancy for the lack of a hot tub. This amount is adjusted by the $850.00 credit already provided to the Tenants. The Tenants claim for double the deposits paid is dismissed as the Landlord made their application in the time required by section 38 of the *Act*. The Tenants are awarded return of the deposits paid in the amount of $2,500.00. The Tenants, having been substantially successful are granted recovery of their filing fee in the amount of $100.00. The total amount awarded to the Tenants is $5,350.00.

These amounts are offset against one another such that the Tenants are awarded a Monetary Order in the amount of **$4,879.13.**

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: June 16, 2016

Residential Tenancy Branch