Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEWPORT PROPERTY MANAGEMENT LT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the "*Act*") for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, for a rent reduction for repairs, services or facilities agreed upon but not provided, and for the recovery of the cost of the filing fee.

The tenant D.C. (the "tenant") who was representing both tenants, and an agent for the landlord (the "agent"), attended the hearing and gave affirmed testimony. During the first portion of the hearing on April 6, 2016, the hearing was adjourned after 62 minutes and an Interim Decision was issued dated April 11, 2016. The Interim Decision should be read in conjunction with this Decision. On May 18, 2016 the hearing reconvened and concluded after an additional 150 minutes.

The affirmed testimony and evidence of the parties who attended the hearing is summarized below and includes only that which is relevant to the matters before me.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act,* and if so, in what amount*?*
- Are the tenants entitled to an ongoing rent reduction under the *Act,* and if so, in what amount?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2015 and ends on July 31, 2016, requiring the tenants to provide vacant possession of the rental unit to the landlord. Monthly rent in the amount of $3,900.00 is due on the first day of each month. A security deposit of $1,950.00 and pet damage deposit of $1,950.00 was paid by the tenants at the start of the tenancy.

The tenants submitted the following monetary claim:

ITEM DESCRIPTION	AMOUNT
1. Repayment of Rent comprised of: 1A – Loss of lower level 1B – Loss of main living area 1C – Loss of living room area 1D – Loss of lower patio 1E – Loss of side yard	1A: $5,125.41 1B: $564.31 1C: $554.93 1D: $878.28 1E: $916.66 $8,039.59
2. Loss of portion of sectional sofa	$3,000.00
3. Damaged dining chair	$200.00
4. Reimbursement of tenant cleaning at move in (15 hours)	$375.00
5. Reimbursement of tenant cleaning after trades visits	$250.00
6. Ongoing rent reduction for remainder of tenancy	Unspecified
TOTAL	**$11,864.59**

For ease of reference, I will refer to the each item and sub-item based on the table above.

Item 1A

Tenants' Evidence

The tenants are claiming $5,125.41 which the tenant stated was for the loss of the lower level and that he reached the amount claimed by indicating that according to him, the monthly rent was related to 90% interior space and 10% exterior space, and that item 1A was comprised of .2572 of the interior space of the home. As a result his calculation was $3,900 X .90 X .2572 X (5 months and 21/31 month) = $5,125.41. The time period claimed for item 1A included the start of the tenancy from August 1, 2015 to December

21, 2015, when the matter was finally corrected by the landlord to the tenant's satisfaction.

The tenant testified that the entire lower level was unusable from the start of the tenancy due to an extreme odour which the landlord identified at various times as mildew from water leakage and animal urine from the pets of previous tenants. The issue was raised after a first viewing of the property with a landlord agent to which the agent S.A. responded by email in April 2015. During a second showing with the agent who attended the hearing which occurred in May 2015, the tenants stated that they discussed the smell in the lower floor area and that the agent identified the smell as urine from the pet(s) of a prior tenant. The tenant stated that the agent was informed that they could not live with the smell and that the agent assured the tenants that it would be taken care of prior to the tenants moving in. Based on that information, the tenants agreed to lease the home.

The tenant confirmed that while some routine carpet cleaning was done throughout the home, the lower floor area had an unbearable smell which permeated the rest of the house. The tenant also stated that the carpet issue was identified on the Condition Inspection Report which indicates among other items under the section "MAINTENANCE to be addressed:"

> …
>
> carpet cleaning..."
>
> [reproduced as written]

The tenants indicate in their written submissions that it was not until September before a professional and thorough attempt to clean the carpets was made. Furthermore, the tenant indicated that the tenants' emails dated September 18, 2015 and September 25, 2015, support that this issue remained a problem for the tenants and that their frustration level was growing due to the landlord's delays and lack of action to address their concerns. The tenants refer to an email dated October 10, 2015 which supports the tenants' further frustration with the delay. The tenants referred to the landlord's email dated November 12, 2015, in which the landlord finally agrees to replace the carpet throughout the lower level; however, it would be two additional months before the work would be completed. The tenants' position is that the landlord should have addressed the problem before they moved in versus drawing out the issue for almost six months into their tenancy.

Landlord's Evidence

The agent testified that no promises were made to the tenants about the smell in the rental home although he did notice a smell. The agent stated that the previous tenants would be responsible for cleaning the rental home. An email from former agent S.A. supports that she wrote to the tenants indicating that she didn't think anything could be done about the smell. The agent referred to the tenants' evidence which includes an email dated May 19, 2015, that specified list of 10 items the tenants wanted answers to in May of 2015 which was three days before the tenancy agreement was signed by the parties on May 22, 2015. That 10 item list did not include any mention of the lower area carpet smell or odour which the tenant confirmed during the hearing.

The agent stated that they responded to the tenants' concerns regarding the lower level area smell by submitting receipts for carpet cleaning from several companies that attempted on multiple occasions to remove any remaining odour from the lower carpets. The tenant confirmed that the carpet cleaners came three times and that the second carpet cleaning helped a lot. The agent stated that after continued complaints from the tenants, the landlord decided to completely replace the carpets at a cost to the landlord in the amount of $3,679.88, which was supported by an invoice submitted in evidence.

The agent also stated that while the tenants did complain about an odour from the lower level, they still used the area for storage and had use of the area which is inconsistent with their claim which is for no use of the lower area for almost six months of the tenancy. The tenant did agree during the hearing that the landlord absolutely did work with them to remedy the carpets and that boxes were stored in the lower area but that the tenants' original plan for that area was for his niece to occupy that space which they could not do due to the smell.

Item 1B

Tenants' Evidence

The tenants are claiming $564.31 which the tenant stated was for the loss of the main living area and that he reached the amount claimed by indicating that according to him, item 1B was comprised of .1322 of the interior space of the home but did not included the kitchen area as the kitchen was not impacted. As a result his calculation was $3,900 X .90 X .1322 X (16/31 month + 21/30 month) = $564.31. The time period claimed for item 1B included 16 of 31 days for October 2015 plus an additional 21 of 30 days for November 2015.

The tenant writes in his submission that this portion of his claim is sometimes referred to as the sunroom as it has a glass ceiling structure. The tenant writes that this central area of the home is problematic on sunny days as there is almost no air flow and temperatures can reach 40 degrees Celsius and that the area became more problematic due to leaking which started on October 15, 2015 and was not repaired until November 21, 2015. The tenant writes that in the first few days of rain a small amount of water leaked into this room but as winter progressed and rains became harder, the leaking was constant and the drip turned into a flow. The tenant writes that during their walkthrough of the home prior to entering into the lease, they raised concerns to the agent regarding evidence of past leaking and that the agent acknowledged that there had been problems but assured the tenants that it had been fixed for some time. The tenant writes that during the leaking the dining chair was soaked and damaged. The tenant stated that while they do have tenants' insurance to protect their personal property, they did not feel they had to file a claim as it is their position that the landlord is responsible for replacement of their contents.

The tenant referred to a response from the agent three days after the tenant advised of the leak by email indicating that someone will inspect and seal the area. The tenant stated that multiple attempts were made and although he can't recall the specific dates, it was two or three attempts to repair the leaking. The parties agreed that after several attempts to fix the leaking, a different company was able to fix the leak as of November 21, 2015.

Landlord's Evidence

The agent testified that while a previous leak had occurred during a previous tenancy in this area of the rental home, the area was repaired and did not leak when the tenants moved into the rental unit in August 2015. The agent also referred to several e-mails submitted in evidence which support that the landlord took appropriate steps in attempting to repair a leak which can be difficult to repair as water ingress is difficult to diagnosis and that the landlord complied with the *Act* as a result.

The agent referred to several emails submitted in evidence which support that the volume of water at the start of the leak was small. The landlord referred to an invoice from the year prior from a glass company that had repaired the skylight area that cost the landlord $756.00 to repair the year prior. The agent referred to that as mitigation during the previous tenancy.

The agent also referred to emails to support that several companies were contacted to determine the cause of the leak and to repair the leak. The agent described that there

was some delay on the part of the glass company due to the time of year and the number of repairs the glass company was dealing with during the rainy season. Furthermore, the actual work to repair the leak was weather dependent and could not be performed while it was raining.

The agent stated that they were eventually able to determine the cause of the leak to an isolated beam and that there was no loss of the entire room during the leaking period. The agent also testified that given the landlord's many attempts to have the leak repaired that a further reduction in rent or the return of rent is not a reasonable request by the tenants.

Item 1C

Tenants' Evidence

The tenants are claiming $554.93 which the tenant stated was for the loss of the living room area and that he reached the amount claimed by indicating that according to him, item 1C was comprised of .0892 of the interior space of the home. The tenant stated that this portion of their claim relates to the other living space not included in 1C described above. As a result his calculation was $3,900 X .90 X .0892 X (18/30 month + 1 month + 5/29 month) = $554.93. The time period claimed for item 1C included 18/30 days for November 2015, plus all of December 2015 and 5/29 days for January 2016.

The tenant testified that water first began to leak through the ceiling near the fireplace. The tenants also call this area the fireplace room and described being located directly below the deck off the master bedroom above. The tenant writes in his submission that the floor tiles show evidence of water damage from prior leaking, and that the agent stated that previous leaks had been addressed prior to the start of the tenancy. The tenant stated that this area became unusable after severe leaking started on November 12, 2015. The tenant writes that he contacted the landlord by email with pictures on November 13, 2015 and that many people have been sent to the property to inspect the situation and recommend or affect solutions comprised of at least six people from three different companies and an independent operator.

The tenant also writes that after several attempts to patch various areas on the deck above the leaking ceiling, eventually the leaking has stopped and that no further leaking has been identified since the week of February 1, 2016. The tenant writes they have not moved good furniture back to that area for fear of further leaking and that only water damaged furniture remains in that area. The tenant also writes that a drywall crew

occupied the living room as well as the dining room/TV room for two weeks from January 25, 2016 until February 5, 2016.

Landlord's Evidence

The agent testified that when he received the tenants' email on November 13, 2015 he called someone to attend the rental home that week to attempt to repair the leak. The agent stated that the point of entry for the water was not obvious which made the repair challenging. The agent described a total of four repair attempts between November 2015 and the first week of February 2016 when the leak was finally repaired. The agent testified that work to the ceiling also involved removing not one, but two layers of drywall and testing for asbestos, which luckily tested negative for asbestos, but did cause delays in accessing, removing and repairing the ceiling and roof areas involved with this portion of the tenants' claim.

The agent referred to several work orders and invoices for several companies and an independent contractor for the following amounts: $252.00, $871.50, $300.00, $250.00, $300.00, $1,351.35 and $3,654.00 between November 2015 and February 2016. The agent testified that after a roofing expert plugged the roof drain and tested for the worst case scenario, they completed an additional roof repair to avoid a worst case scenario of high water on the deck above. The agent stated that significant work was involved including all of the work to identify the cause of the leak, repair the leak, remove and replace the ceiling drywall and insulation, patch and paint of the drywall, spraying of the wood, and taping, etc. The agent testified that the home was built in 1980 so the tenants rented a home that was typical for the age and characteristic of the homes built from that era.

During the hearing the tenant testified that three days after the restoration company installed a blower to reduce moisture in the home, the tenant turned the fan off due to the noise it was causing.

The tenant testified that he requested both the asbestos report and a work plan we he claim he did not receive. However, the agent referred to an email where the asbestos report was attached along with details regarding the work plan involving when people would be at the home, that a curtain would be installed and that a contractor would be disinfecting any sort of mildew. The agent testified that there was an unexpected delay when their worst case scenario leak testing resulted in another leak which had to be dried out before it could be repaired.

Item 1D

Tenants' Evidence

The tenants are claiming $878.28 which the tenant stated was for the loss of use of the lower patio area and that he reached the amount claimed by indicating that according to him, item 1D was comprised of .2815 of the exterior space, with exterior space representing a value of 10% of the total monthly rent. As a result his calculation was $3,900 X .10 X .2815 X (8 months) = $878.28. The time period claimed for item 1D included from the start of the tenancy in August 2015 due to safety concerns related to the unprotected open pool.

The tenancy agreement indicates under "Special Conditions" that "the swimming pool is provided on an 'as is, no repair' basis." The tenant referred to the swimming pool in an email to the agent dated May 19, 2015 under #8 which reads:

> "8. We would have no intention of using the swimming pool. The pool should be cleaned and left in a "maintenance-free" (and safe) manner prior to our occupancy. We would not take on any responsibility or liability related to the swimming pool."
>
> [reproduced as written]

The agent responded by writing "This is fine". Although the tenant first described an issue of not having a pool cover installed, during the hearing the tenant acknowledged that the pool cover was simply cosmetic and did not address the issue of safety.

Landlord's Evidence

While the agent did not dispute any of the tenant's testimony regarding the request for a pool cover and the agent's commitments to order and install the pool cover, the agent did not agree that the tenant was entitled to compensation for this portion of their claim.

The parties were able to reach a mutual agreement regarding the pool cover and the pool safety concerns raised by the tenants. During the hearing the parties formed a mutual agreement regarding the pool as follows:

Mutual Agreement

> The parties agree that the agent will have temporary fencing installed that will prevent falling into the pool by June 1, 2016. In addition, the agent agrees to have the pool drained and cleaned by June 1, 2016 and that the parties mutually agree that a pool cover is no longer necessary for the remainder of the tenancy.

I note that the mutual agreement between the parties regarding item 1D did not resolve the monetary claim for item 1D between the parties.

Item 1E

The tenants are claiming $916.66 which the tenant stated was for the loss of the use of the flat piece of grass area of the side yard (the “side yard”) and that he reached the amount claimed by indicating that according to him, item 1E was comprised of .2938 of the exterior space of the property. As a result his calculation was $3,900 X .10 X .2938 X (8 months) = $916.66.

The tenant testified that he was advised by the neighbor that the side yard belonged to the neighbor; however, the agent does not recall being advised of such a conversation by the tenant. The agent referred to a colour copy of the property from an aerial view from the local municipality which shows the property line in red, and all but a small portion as being part of the rental property. The tenant claims that he has viewed a different property aerial view document but confirmed he did not submit that in evidence. The tenant also claimed there was an agreement between the property owners but had no evidence to support such an agreement. The agent testified that if the neighbor claims that side yard solely belongs to him, that he is incorrect.

Other than the mutual agreement described above, the agent did not agree with any compensation portion for items 1A through 1E, inclusive.

Item 2

For this portion of their claim, the tenants have claimed $3,000.00 for the loss of a portion of their sectional sofa. The tenant testified that while they do have insurance, they have not made a claim as they feel the repairs could have and should have been made to the home prior to the tenants moving in and that the landlord is responsible as a result. The agent testified that the landlord did make repairs the year before and were not aware of any further problems until being notified by the tenants during the tenancy

and that the landlord is not the tenants' insurer. The agent referred to sections 28 and 29 of the tenancy agreement which read:

> "28. The Tenant waives and releases the Landlord from any liability in connection with the use by the Tenant of the Rental Unit and the Service and Facilities, including injuries or damages caused by or omitted from being done by the Landlord. The Landlord shall not be liable to the Tenant for any loss or damage to the Tenant's possessions including damage, discomfort, or loss arising from any work or renovation to the rental property and breakdown of Appliances or Equipment, power failure or any other thing except in the case of the Landlord's default."
>
> …
>
> "29. The Tenant is required to purchase and maintain adequate tenant's insurance coverage for liability, for fire, smoke, and water damage and theft of the Tenant's possessions."
>
> [reproduced as written]

The tenant confirmed that he did not submit any receipts to support the value of the amount being claimed for this portion of the tenants' claim.

Item 3

For this portion of their claim, the tenants have claimed $200.00 for damage to a dining chair. The tenant confirmed that they are relying on the same evidence from item 2 to support this portion of their claim, and the agent responded with the same evidence also. The tenants did not submit any receipt to support the value of the amount being claimed for this portion of the tenants' claim.

Item 4

This portion of the tenants' claim is in the amount of $375.00 and is for reimbursement of cleaning performed by the tenants when they moved in, which was comprised of 15 hours of cleaning according to the tenant.

The condition inspection report indicates that washing of the floors and the windows was required as maintenance to be addressed at the start of the tenancy. The agent presented two invoices in evidence which support that the landlord paid for 9 hours of

additional cleaning on August 7, 2015 at a rate of $28.00 per hour for a total amount including taxes of $264.60, plus an additional 4 hours of additional cleaning the next day on August 8, 2015 for a total invoice including taxes for August 8, 2015 of $117.60.

There was no photographic evidence submitted to support that further cleaning was required beyond the additional cleaning provided by and paid for by the landlord on August 7 and 8, 2015. The agent did not agree with this portion of the tenants' claim.

Item 5

This portion of the tenants' claim is in the amount of $250.00 and is for reimbursement of cleaning performed by the tenants after the trades had worked in the rental unit. The tenant testified that this amount is comprised of 10 hours at $25.00 per hour. The tenant did not provide any photographic evidence to support this portion of their claim. The agent did not agree with this portion of the tenants' claim. The agent also stated that he does not recall hearing from the tenants regarding the need for cleaning after the trades had left the rental unit.

Item 6

For this portion of the tenants' claim, the tenants have claimed an ongoing rent reduction in an unspecified amount in the monetary worksheet provided with their Application for Dispute Resolution. The tenant alleges that the following items remain outstanding during the hearing:

1. Heat pump not working;
2. Pool issue;
3. Privacy fencing
4. Exposed nails and splinters;
5. Rear fences;
6. Lower level drywall missing;
7. Outside birds nesting in empty lighting boxes;
8. Paint touchups as indicated on the condition inspection report and
9. Weeding of the flower box.

After providing the above list, the tenant then clarified that item 1, the heat pump, the tenants are no longer seeking to have repaired as the tenancy ends on July 31, 2016 and that item 9, weeding of the flower box, was already completed by the tenants.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Item 1A

After carefully considering the evidence presented, I find that the tenants have provided insufficient evidence that an agreement existed between the landlord and the tenants to do more than carpet cleaning in the rental unit and that the landlord did clean and/or sanitize the carpets on three occasions before eventually making the decision to replace the lower area carpets completely at a cost to the landlord in the amount of $3,679.88.

Firstly, section 28 of the *Act* applies and states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> **(b) freedom from unreasonable disturbance;**
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.
>
> [my emphasis added]

Secondly, Residential Tenancy Branch Policy Guideline #6 – Right to Quiet Enjoyment states that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

Therefore, based on the evidence before me, I find that tenants’ claim for this portion of their claim is not entirely reasonable as the tenants’ calculations of loss of use implies 100% loss of use for the period being claimed and I find that the tenants still had some use of the lower area during the entire term of the tenancy. Nevertheless, I also find that while the landlord cleaned and/or sanitized the carpets three times before deciding to replace the lower area carpets, the tenants did suffer some loss of use of the lower area due to the undisputed odour, which is a breach of the covenant of quiet enjoyment. Therefore, **I grant** the tenants 50% of their $5,125.41 claim for this item in the amount of **$2,562.70.**

Item 1B

Further to my findings above, I have carefully reviewed the evidence presented for this portion of the tenants’ claim and I find that tenants’ claim for this portion of their claim is not entirely reasonable as the tenants’ calculations of loss of use implies 100% loss of use for the period being claimed and I find that the tenants still had some use of the main living area during the entire term of the tenancy. Nevertheless, I find the tenants did suffer some loss of use of the main living area due to the undisputed leaking area, which is a breach of the covenant of quiet enjoyment. Therefore, **I grant** the tenants 50% of their $564.31 claim for this item in the amount of **$282.16.**

Item 1C

Further to my findings above, after carefully reviewing the evidence presented for this portion of the tenants' claim and I find that tenants' claim for this portion of their claim is not entirely reasonable as the tenants' calculations of loss of use implies 100% loss of use for the period being claimed. I find that the tenants still had some use of the area described as the living room area during the entire term of the tenancy. However; I do find the tenants did suffer some loss of use of the living room area due to the undisputed leaking area, which is a breach of the covenant of quiet enjoyment. Therefore, **I grant** the tenants 50% of their $554.93 claim for this item in the amount of **$277.47.**

Item 1D

Firstly, I note the parties formed a mutual agreement related to this item, which excluded the monetary portion being claimed by the tenants. The mutual agreement is as follows:

Mutual Agreement

> The parties agree that the agent will have temporary fencing installed that will prevent falling into the pool by June 1, 2016. In addition, the agent agrees to have the pool drained and cleaned by June 1, 2016 and that the parties mutually agree that a pool cover is no longer necessary for the remainder of the tenancy.

Pursuant to section 63 of the *Act* **I order** the parties to comply with the terms of their mutually settled agreement described above.

After carefully considering the evidence presented, I find the tenants have failed to meet the burden of proof and have provided insufficient evidence to support that the landlord breached the covenant of quiet enjoyment in terms of issues related to the use of the lower patio area including all pool related issues. While the parties may have had differing expectations regarding what would be done with the pool during the tenancy or what the pool area would look like during the tenancy, I find it reasonable that if the tenants required the pool to be fenced before they moved in, then that should have been included as a specific term in the tenancy agreement, which is was not or have applied for immediate repairs for health or safety reasons which the tenants failed to do. In reaching this conclusion I have weighed the fact that a majority of the testimony regarding this item related to the pool cover which ultimately the tenant stated was not

required as it was cosmetic in nature. As a result, **I dismiss** this item **without leave to reapply,** due to insufficient evidence.

Item 1E

I have considered all of the evidence presented for this item and find that the tenants have failed to meet the burden of proof and have provided insufficient evidence to support that the landlord breached the covenant of quiet enjoyment regarding this portion of their claim. The tenants have failed to provide evidence that they have been unable to use the side yard and I prefer the evidence of the landlord over that of the tenant for this item as the landlord's evidence is from the municipality and clearly indicates that almost all of the side yard is on the rental property, which would have been known to the tenant through due diligence versus relying on the word of the neighbor. As a result, **I dismiss** this item **without leave to reapply,** due to insufficient evidence.

Items 2 and 3

The tenant testified that while they do have insurance, they have not made a claim. I find that the tenancy agreement section 28 and 29 is clear that the landlord is not the tenants' insurer and that the tenants must carry tenant's insurance which include coverage for personal items damaged by a leaking roof. I do not accept the tenant's assertion that the landlord failed to adequately maintain the roof, which is supported by an invoice from the previous year indicating that a costly repair was completed by the landlord to resolve the issue at that time. Furthermore, the tenants failed to provide any supporting evidence of the value of the couch and chair which fails to meet part three of the above-noted test for damages or loss. Therefore, items 2 and 3 are **dismissed in full**, **without leave to reapply** due to insufficient evidence.

Item 4

I find the tenants have failed to provide sufficient evidence that the landlord breached the *Act* regarding this item. Although the tenants claim they spent 15 hours cleaning at the start of the tenancy, they have no photographic evidence to support that there was a need to do additional cleaning. Furthermore, the landlord did provided evidence that two additional cleanings were provided at the cost of the landlord on August 7, 2015 and August 8, 2015, comprising of 9 hours of cleaning and 4 hours of cleaning respectively.

In addition, the condition inspection report only indicates that washing the floors and windows was required which I find does not support the tenants' claim for further

cleaning beyond the extra 13 hours provided and paid for by the landlord. I note that while there was carpet cleaning mentioned, the carpet cleaning has already been considered in item 1A above. As a result, **I dismiss** this item **without leave to reapply,** due to insufficient evidence.

Item 5

I find the tenants have failed to provide sufficient evidence that the landlord breached the *Act* regarding this item. Although the tenants claim they spent 10 hours cleaning at $25.00 per hour after the trades performed repair work in the rental unit, I note the tenants failed to provide photographic evidence to support that there was a need to do additional cleaning. I have also taking into account that the agent testified that he does not recall hearing from the tenants regarding the need for cleaning after the trades had left the rental unit and the onus of proof is on the tenants to prove their monetary claim. As a result, **I dismiss** this item **without leave to reapply,** due to insufficient evidence.

Item 6

For this portion of the tenants' claim, the tenants have claimed an ongoing rent reduction in an unspecified amount in the monetary worksheet provided with their Application for Dispute Resolution and testified that the following items remain outstanding during the hearing:

1. Heat pump not working;
2. Pool issue;
3. Privacy fencing;
4. Exposed nails and splinters;
5. Rear fences;
6. Lower level drywall missing;
7. Outside birds nesting in empty lighting boxes;
8. Paint touchups as indicated on the condition inspection report and
9. Weeding of the flower box.

After providing the above list, the tenant then clarified that item 1, the heat pump, the tenants are no longer seeking to have repaired as the tenancy ends on July 31, 2016 and that item 9, the weeding of the flower box, was completed by the tenants. As for items 2 through 8, I find the tenants have provided insufficient evidence to support the four part test described above. Therefore, **I dismiss** this item **without leave to reapply,** due to insufficient evidence.

As the tenants were successful with only a portion of their application, **I grant** the tenants the recovery of half of the $100.00 filing fee, in the amount of **$50.00**.
I find that the tenants have established a total monetary claim of **$3,172.33** comprised of $2,562.70 for item 1A, $282.16 for item 1B, $277.47 for item 1C, plus $50.00 of the filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **$3,172.33**.

Conclusion

The tenants' application is partially successful.

The tenants have established a total monetary claim of $3,172.33 as indicated above. The tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of $3,172.33. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2016

Residential Tenancy Branch