Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This proceeding dealt with cross applications filed by both parties for monetary compensation against the other party. The landlords applied for a Monetary Order for unpaid rent and utilities; damage and cleaning costs; and authorization to retain the security deposit. The tenants applied for a Monetary Order for overpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

This proceeding was held over five dates for hearing and one date for written submissions. Interim Decisions were issued after each hearing date and should be read in conjunction with this decision.

By way of the fifth interim decision I issued orders to the parties with respect to submitting and serving their written submissions.

The tenants provided their written submission to the Branch on June 14, 2016 and a registered mail receipt indicating it was sent to the landlords on that same date. I am satisfied their submissions was made within the time limit for doing so and I have considered it in making this decision.

The landlord provided a submission to the Branch on June 24, 2016 and included a registered mail receipt indicating it was sent to the tenants on that same date. I am satisfied the landlord met the time limit for making a submission and I have considered it in making this decision.

It should be noted that this decision is made more than 30 days after receiving the deadline imposed upon the landlord for making the landlord's submission. This is due to the large volume of disputed materials and submissions as well as technical difficulties. Despite surpassing 30 days, section 77(2) of the Act provides: "The director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period…"

Issues to be Determined

1. Have the landlords established an entitlement to recover the amounts claimed against the tenants for unpaid rent or utilities; damage and cleaning; and, other damages or losses?
2. Have the tenants established an entitlement to recover the amounts claimed against the landlords for overpaid rent and damages or loss under the Act, regulations or tenancy agreement?
3. Are the landlords authorized to retain the security deposit or the tenants be awarded return of double the security deposit?

Background and evidence

I was presented with copious amounts of disputed submissions and evidence from both parties, in the form of oral testimony, written submissions, documentary evidence and photographs. I have considered all of the relevant evidence and submissions in making this decision; however, with a view to brevity I have provided the most pertinent facts and submissions in summary form below.

The parties executed a tenancy agreement April 6, 2013 for a fixed term tenancy set to commence May 1, 2013 and expire April 30, 2014. The tenancy agreement provides that upon expiry of the fixed term "the tenancy will terminate" and "any continuation would require a new written lease agreement"; however, there was no requirement for the tenants to vacate the rental unit at the end of the fixed term. The monthly rent was set at $1,675.00 and due on the first day of every month. A security deposit of $837.50 was collected. This tenancy agreement is herein referred to as "the first tenancy agreement".

Also provided as evidence is a second tenancy agreement for a fixed term set to commence May 1, 2014 and expire on April 30, 2015. The rent was recorded as being $1,725.00. This agreement also differs from the first tenancy agreement in that it provides that garbage fees are the responsibility of the tenants. The tenants' signatures appear on the signature page of this document. This tenancy agreement is herein

referred to as “the second tenancy agreement”. The tenants presented the landlord with post-dated cheques in the amount of $1,725.00 and the security deposit of $837.50 carried forward from the first tenancy agreement.

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The tenants submitted that when they signed this agreement they were presented with the signature page only and they signed it with the understanding that it was to extend the term of their tenancy. The landlord refuted the tenants’ submissions that they were presented with the signature page only. Further submissions on this disputed matter are provided further below.

A move-in inspection report was prepared on May 1, 2013 and the female tenant signed the report indicating she agreed with the landlord’s assessment of the property. A move-out inspection report was prepared on April 30, 2015 and the tenant indicated that she did not agree with the landlord’s assessment of the property. The tenant provided a forwarding address in writing on the move-out inspection report.

Monetary claims

Landlords’ claim for unpaid vs. Tenants’ claim for overpaid rent

Both parties made a claim against the other with respect to rent owing. The landlords submitted that the tenants failed to pay rent owed for the month of April 2015 in the sum of $1,725.00. The tenants acknowledge that they did not pay rent for April 2015 but are of the position that the landlords unlawfully increased the rent in their last year of tenancy and as a result they overpaid rent which they are entitled to recover. Below, I have summarized each of the parties’ respective positions regarding this matter.

The landlord submits that the second tenancy agreement was presented to the tenants in its entirety, there was a discussion concerning changes, the parties executed the agreement, and it is binding. As a result, the tenants were obligated to pay rent of $1,725.00 each month for the months of May 2014 through April 2015. Since the tenants failed to pay rent for April 2015 the landlord seeks to recover $1,725.00 for the month of April 2015.

The tenants point out that in January 2015 the landlord had given them a Notice of Rent Increase in an attempt to increase the rent from $1,675.00 to $1,725.00 and that this increase exceeded the annual allowable amount and the rent increase is not valid and the amount of the unlawful increase paid by the tenants is recoverable. The tenants are also of the position that the Notice of Rent Increase is further evidence the parties were

merely extending the term of their first tenancy agreement when the second tenancy agreement was signed.

The tenants submit that they were only presented with the signature page of the second tenancy agreement and that they signed it because they thought they were merely extending the term of the tenancy. The tenants also submit that there was no discussion concerning changes with the exception of a discussion about a shed. Further, a copy of the second agreement was not provided to them until approximately 8 months later. Accordingly, the tenants are of the position that the second tenancy agreement is not binding or enforceable.

The tenants submit that the rent payable for each month remained at $1,675.00 and they are entitled to recover the additional $50.00 they paid in rent for each of the months of May 2014 through March 2015, or $550.00.

The landlord acknowledged that a copy of the second tenancy agreement was provided to the tenants a number of months into the tenancy but that this was another copy of the tenancy agreement that had already been provided to them.

Landlords' claim for water, sewer, and garbage bill for period of January 2015 – April 2015 ($300.80) vs. Tenants' claim to recover garbage bills paid for August 2014 through December 2014 ($116.68).

The landlord submitted that the tenants are required to pay for all utilities, including garbage, and failed to pay the last bill for water, sewer and garbage services at the property. The bill was in the tenant's name but the landlord was notified of the non-payment by the City. The landlord paid the bill and the penalty that was applied for late payment. The landlord seeks to recover the amount paid for the services for January 2015 through April 2015 and the penalty in the total amount of $300.80.

The tenants acknowledged that they are responsible for water and sewer for the period of January 2015 through April 2015 but objected to paying for the garbage component. The tenants also seek to recover from the landlords the sum of garbage bills they paid for the period of August 2014 through December 2014 as they are of the position they are not responsible to pay for garbage pick-up.

I heard that the tenants had been paying the combined water, sewer, and garbage bill to the City during the tenancy, up to December 2014. The landlord reimbursed the tenants for the garbage component of the bills for the period up to April 2014 after the tenants raised this issue and considering the first tenancy agreement was silent with respect to

garbage bills. However, the second tenancy agreement specifically provided that garbage costs were the tenants' responsibility and the dispute focused on whether the second tenancy agreement was valid and enforceable.

The tenants are of the position the second tenancy agreement is not valid or enforceable because they did not receive a copy of the agreement within 21 days of entering into the agreement, as required under the Act. The tenants also submitted that the landlord did not bring to the tenants' attention the change to the second tenancy agreement with respect to garbage costs. Further, the tenants allege that they were only presented with the signature page of the second tenancy agreement and they signed it with the understanding they were merely extending the term of their tenancy agreement.

The landlord acknowledged that the first tenancy agreement was silent with respect to the tenant's paying for garbage and that is why the landlord did reimburse the tenants for the garbage component they paid during the first tenancy but that the second tenancy agreement clearly indicates the tenants were responsible for paying for garbage. The landlord submitted that the tenants were presented with the entire second tenancy agreement for signature and that the second tenancy agreement is valid and enforceable. The landlord submitted that a copy of the second tenancy agreement was provided to the tenants and that another copy was provided months later when the tenants claimed they did not have a copy.

Landlords' request to retain security deposit vs. Tenants' claim for double security deposit -- $1,675.00 ($837.50 x 2)

In filing the landlord's application on May 14, 2015 the landlords requested authorization to retain the tenants' security deposit as part of their monetary claim.

The tenants seek return of double the security deposit on the basis the landlord failed to provide them with a copy of the move-out inspection report within 15 days of the end of tenancy. The tenants submit that it was mailed to them on May 23, 2015 and they received it May 25, 2015.

The landlord acknowledged that the move-out inspection report was not mailed until May 23, 2015 as an oversight. The landlord stated that the tenants did take a photograph of the report on April 30, 2015.

Landlords' damage and cleaning claims

1. Sewer blockage – $677.25

It was undisputed that the sewer pipe at the residential property became clogged in January 2015 and it was cleared by the landlord with the assistance of his brother. The landlord is a licensed plumber. The landlord rented a sewer snake and brought his inspection camera. The landlord attributes the blockage to an excessive amount of toilet paper found at approximately 23 feet from the house. There was also some brown hair found in the sewer line. The landlord explained that hair can cause toilet paper to form a large wad in the sewer line. The landlord also inspected the sewer pipe for approximately 100 feet to look for anomalies in the line, including tree roots, and found none. The landlord described the sewer line as being otherwise clean and smooth meaning nothing in the line itself would have cause the toilet paper to accumulate.

The landlords' claim includes the cost of the sewer snake rental, 5 hours of the landlord's time and 4.5 hours of the landlord's brother's time. The landlord seeks compensation of $25.00 per hour for his brother's time. For the landlord's time, the landlord prepared an invoice in the amount of $502.03 including GST even though there is no GST registration number on the invoice and the customer is not identified. The landlord acknowledged that he did not remit GST for this invoice.

The tenants are of the position that they are not responsible for paying to unclog sewer pipes unless they were negligent. The tenants submit that toilet paper and hair are items one would ordinarily expect to see in a sewer pipe. Further, the hair was brown and their daughter's hair was purple at the time so the hair may be from previous tenants.

The landlord pointed out that the hair could be from the tenants' sons who have shoulder length brown hair. Further, the landlord stated the previous tenants had black hair and was of the position that if hair was in the line from previous tenants, approximately 21 months prior, the clog would have happened much sooner than it did.

The tenants were of the position that any extra work the landlord did with inspecting the pipe beyond the clog was for the landlord's own benefit and beyond the scope of clearing the clog.

Although the tenants maintained the position that they are not liable to pay to unclog the sewer pipe, such service calls typically cost about $150.00 and not the several hundreds of dollars claimed by the landlord. The male tenant explained that he works in

a hotel where clogged toilets and lines are not uncommon and plumbers typically charge $150.00 to unclog the line. The landlord responded by explaining that if he had called a plumbing company, overtime rates would have applied.

Finally, the tenants also pointed out that on or about the time of the clog it had been raining very heavily and they suggested the blockage may be related to overburdened storm system. The landlord responded by stating the sewer and storm systems are completely separate.

2. Carpet cleaning - $329.49

The landlord submitted that the tenants failed to leave the carpets sufficiently clean at the end of the tenancy and the landlord called in a professional cleaner. The landlord pointed to the tenants' obligation to have the carpets professionally cleaned in the addendum to the tenancy agreement and seeks to recover the cost of the professional cleaning from the tenants. The landlord provided evidence to show the carpets were professionally clean at the start of the first tenancy. The landlord provided the receipt for the carpet cleaning company that came in May 1, 2015 and pointed out that the receipt indicates the carpeting was very dirty, stained and had a strong odor from over-wetting.

The tenants submit that the term in the tenancy agreement that requires the tenants to use a professional carpet cleaner of the landlord`s choosing is unenforceable. The tenants submit that the male tenant did clean the carpets using a carpet cleaning machine he obtained from work. The male tenant asserted that he routinely uses such a machine as part of his employment at a hotel. The tenants were of the position the landlord`s standards are higher than the tenants' legal standard to leave the carpeting reasonably clean. The tenants also pointed out that the landlord gave the tenants' two carpet cleaning companies to choose from but the landlord went with a different company.

The landlord acknowledged some attempts to clean the carpeting was made by the male tenant but maintained his position that they were still dirty and smelled.

3. Fence repair -- $175.00

The landlord submitted that the tenants' moving truck hit the neighbour's fence and damaged it. The landlord claims the tenants promised to fix it but did not so the landlord paid to have the neighbour`s fence repaired. The landlord seeks to recover the repair cost from the tenants.

The tenants acknowledge that the neighbour`s fence was damaged by their moving truck but claim the neighbour did not seek compensation from them as he indicated he intended to replace the fence. The tenants were of the position the landlord took it upon himself to repair the fence.

The landlord submitted that he had an audio recording taken during the move-out whereby the tenants agree to pay for the fence damage.

4. Carpet stretching -- $ 60.00

The landlord submitted that the basement carpet required re-stretching due to a buckle in the carpet apparent at the end of the tenancy, which the landlord did himself. The landlord seeks compensation for two hours to do this work. The landlord attributed the need for re-stretching to the tenant over-wetting the carpeting during his attempts to clean the carpeting.

The tenants were of the position the carpeting was not in good condition and had been installed in pieces. The tenants disagreed that they are liable to compensate the landlord for stretching as they are of the position they did nothing to causing the buckling.

The landlord responded by stating the carpeting had been professionally installed in 2009 and there was no buckling apparent when the unit was inspected in January 2015.

5. Chimney and Duct cleaning -- $300.00

The landlord seeks to compensation to have the ducts and chimney cleaned. The landlord pointed to the tenancy agreement where it provides that the tenants are required to professionally clean the chimney and ducts by a cleaner of the landlord’s choosing. The landlord alleged that the ducts and chimney were cleaned at the start of the tenancy although a receipt could not be located.

The tenants submitted that the term in the tenancy agreement is not enforceable and that cleaning ducts and a chimney are not the responsibility of tenants. The tenants point out that the landlord never cleaned the ducts and chimney during the tenancy. The tenants acknowledged using the fireplace and claimed to have vacuumed it out at the end of the tenancy.

6. General cleaning -- $75.00

The landlord seeks compensation for additional cleaning. The landlord submitted that the tenants failed to clean behind the refrigerator, which is on rollers. Window sills and tracts and the floor also required additional cleaning. The landlord seeks compensation for three hours at $25.00 per hour.

The tenants were of the position the rental unit was left reasonably clean as they were required to do.

7. Wash deck -- $53.00

The landlord submitted that the tenants failed to clean the sundeck and the landlord seeks compensation for two hours of labour plus $3.00 for detergent.

The tenants submitted that they are not responsible for power washing the deck and pointed out that the deck was subject to debris and grime from nearby trees and bushes. The tenants submit that they left the deck reasonably clean by sweeping it.

The landlord responded by stating his claim is not for power washing but manual washing.

8. Replace fridge -- $120.00

The landlord submitted that a second hand fridge was supplied to the tenants during their tenancy and that at the end of the tenancy there were cracks in the crisper drawers that were not there when the fridge was delivered to them. The landlord suspects the drawers cracked by closing the fridge door while the drawers were still pulled out. The landlord explained that due to its age replacement drawers cannot be found and the landlord is claiming the cost to purchase another second hand fringe.

The tenants submit that the when the fridge was delivered to them it was left on the sundeck in a dirty condition and an inspection was not made of the fridge together. The tenants claim the fridges provided at the start of the tenancy and during their tenancy were old, at least 10 years, and they denied responsibility for damaging the fridge. The tenants also point out that the landlord did not provide a receipt or proof of the value of the loss.

The landlord explained that he left the fridge on the deck because fridges need to settle before plugging them in after moving. The tenants took upon themselves to move the

fridge inside. The landlord estimated that the age of damaged fridge was 8 to 10 years old.

9. Replace stove -- $125.00

The landlord submitted that the tenants moved the stove provided with the rental unit downstairs in order to use their own stove and in the process damaged the door hinge to the oven. I noted that the stove appeared as though was very old in the photographs provided to me. The landlord explained that it was still working, with the exception of a burnt out element, but acknowledged that he replaced the stove with a newer one as he did not want another one that old.

The tenants submitted that the stove provided to them was very old and was not working properly before they replaced it with their own stove. The tenants acknowledged moving it but claim they did not damage it. The tenants pointed out that the landlord did not provide evidence as to the amount being claimed.

10. Kitchen flooring damage -- $150.00

The landlord submitted that at the end of tenancy there was a hole in the middle of the vinyl floor in the kitchen. New vinyl flooring will cost $750.00 to replace but the landlords limited their claim to 20%, or $150.00.

The tenants submit that the vinyl flooring was old and had pre-existing damage including stains and discoloration. The tenants pointed to a photograph to demonstrate it had pre-existing damage.

The landlord questioned the date the tenants' photograph was taken. The landlord also pointed to the move in condition inspection report as evidence of the condition of the floor at the start of the tenancy. The landlord acknowledged there was a red stain at the start of the tenancy but that it was coverable with a rug and that replacement is necessary to rectify the damage caused by the tenants.

11. Window screen -- $30.00

The landlord submitted that there was a hole in the window screen caused by the tenants. The landlord seeks compensation of $30.00 for the hole.

The tenants acknowledge causing a very small hole and attributed it to wear and tear.

12. Wall damage -- $60.00

The landlord submitted that the tenant applied filler to holes in the textured walls and in doing so created a lot of work for the landlord to remove the filler from the textured walls. The landlord submitted that this took approximately two hours to remove.

The tenants acknowledged filling many holes in the walls, even ones they did not cause, and claimed that the filler was water soluble and merely required the excess filler to be washed away. The tenants also pointed out that the house was in need of re-painting.

The landlord refuted that the filler could be easily washed away and instead the landlord had to carefully extract the excess filler from the textured walls.

13. Garbage removal -- $25.00

The landlord withdrew this claim.

14. Re-grading of side yard -- $60.00

The landlord submitted that the tenants had dumped wood chips and soil on the exterior of the house at the side of the sundeck. The pile of debris was higher than the stucco and had to be removed. The landlord seeks compensation for time spent removing the debris.

The tenants were of the position they took good care of the yard and pointed to before and after pictures of the front flower beds. The tenants point out that there is no mention of the condition of the exterior on the condition inspection reports. The tenants questioned when the landlord took his photographs since his photographs appear to have been taken in July 2015 yet new tenants moved in starting in May 2015.

The landlord acknowledged that this area was not inspected during the move-out inspection and that he observed the debris afterward but maintained that is was the tenants who must have put the debris there.

15. Light bulbs and key -- $6.00

The landlord submitted that a light bulb was burnt out at the end of the tenancy and the tenants failed to return a key.

The tenants acknowledged one burnt out light bulb but were of the position they returned all keys and pointed out the landlord did not submit a receipt for the amount claimed.

The landlord stated that at the end of the tenancy two keys were not returned but that the male tenant returned a key at a later time leaving one key still missing.

In addition to the above, claims, the landlord also seeks to recover the cost to send registered mail to the tenants for this dispute. This claim was dismissed summarily as the Act does not provide for costs associated to a dispute resolution proceeding to be recovered with the exception of the filing fee.

Tenants' claim for compensation to install bathroom vanity -- $50.00

The tenants submit that they were not compensated for their time to install a bathroom vanity during the tenancy. The tenants seek $50.00 for this service. The tenants explained that the landlord did reimburse them for the purchase of a new bathroom vanity. The tenants acknowledge that there was a vague oral agreement to reimburse them for improvements but no specific agreement as to any labour they may contribute.

The landlord responded by stating there was no agreement to compensate the tenants for labour but that the landlord agreed to pay for materials the tenants had purchased, which was done.

Tenants' claim for damages or loss re: electrical issues and rodent infestation -- $4,942.25

The tenants made a claim of $4,800.00 (calculated as $200.00 per month multiplied by 24 months of occupancy) for loss of use and enjoyment. The tenants identified multiple issues under this claim by way of six pages of their Monetary Order Worksheet. Upon review of the listing, I noted that certain items would not be compensatory, such as the rental unit having single pane windows; flooring older than 10 years; mismatched paint colours; and the like. I also informed the tenants that grouping several issues under one amount would be problematic in the event the tenants succeeded in establishing an entitlement to compensation for some items and not others. In order to proceed with the claim as opposed to dismiss it, I permitted the tenants to identify the most significant and detrimental issues to them during their tenancy. The tenants identified two issues: non-compliant electrical service and rodent infestation. Below, I have summarized the parties' respective positions regarding these two issues.

1. Non-compliant electrical service

The tenants submitted that they called for an electrical inspection of the property near the end of their tenancy in March 2015. A British Columbia Safety Authority officer inspected the property on March 25, 2015 and issued an inspection report (the report). The report indicates that the electrical service at the property failed several requirements and the landlord was given a deadline to rectify the non-compliances. The tenants provided a copy of the report as evidence and the safety officer was available to testify as to his findings; however, I was satisfied by the evidence that the property had failed the electrical inspection and it was unnecessary to call the officer to testify.

The tenants submit that the non-compliant electric service was observed by them in the following ways:

- Some outlets did not work
- Lights would flicker
- There was only one outlet in each bedroom and extension cords had to be used to plug in portable heaters in bedrooms
- An intermittent buzzing sound could be heard coming from the electrical box

The tenants submitted that the landlord did electrical work in the unit at the start of the tenancy. The tenants also pointed out electrical issues they were having during the tenancy and the landlord's response was that he would get to it but never did. The tenants claim that four rooms were affected by inadequate electrical service and that they suffered as follows: "loss of full use of these rooms. It was complicated to furnish lighting, run computers, TV and heaters."

The tenants are of the position they should be compensated for the inadequate electrical system for the entire 24 months of their occupancy because electrical issues were present from the start of the tenancy.

The tenants explained that they called for the safety inspection in March 2015 because they were concerned for their safety, especially due to the buzzing sound coming from the electrical box; however, they also acknowledge that at the time they called for the safety inspection they had already secured new housing and were preparing to move out. The tenants allege they called for the inspection out of concern of future tenants.

The tenants acknowledge that they did not inform the landlord of their intention to call the safety authority before doing so.

The landlord acknowledged doing some electrical work in the rental unit at the start of the tenancy. The landlord explained that due to the age of the building, approximately 100 years, there is only one outlet in each bedroom. The landlord was of the position that the house is heated by a furnace and the tenants should not have been using electrical portable heaters on extension cords to heat the bedrooms. The landlord testified that in the fall of 2013 the tenants informed him that the breaker was tripping when they were using portable heaters the landlord advised them to stop using portable heaters as they draw more power than is available. After that the landlord did not hear anything further about electrical issues until February 2015 when the parties were in dispute about the sewage clog. When the tenants raised the electrical issue again in February 2015 it was the same complaint concerning use of portable heaters.

The landlord was of the position that the tenants called for the electrical inspection in retaliation for the landlord's demand in March 2016 that they remove the cat that they had brought into the property. The landlord submitted that the day the landlord served the tenants with an eviction notice regarding the cat the tenants called for the electrical inspection. The landlord stated that in March of 2015 the tenants raised all sorts of issues and this is the first time the landlord heard them complaint of a buzzing sound coming from the electrical box. The landlord wanted to inspect the issue and the tenants were resistant to letting the landlord in the house. When the landlord was shown the electrical box it was not buzzing. After further investigation it was determined that the buzzing was from the front door bell transformer and there was no hazard. The landlord claimed that the non-compliant electrical service was not a hazard and the inspection failed because of lack of permits, as evidence by an extension of time the landlord was provided to rectify the non-compliances.

2. Rodent Infestation

The tenants submitted that rodents had entered the rental unit, in the kitchen, and a storage area. The tenants noticed signs of rodents in December 2013 and advised the landlord. The landlord's response was to advise the tenants to get traps and lay out poison, which the tenants did and they caught 3 or 4 rodents but the problem did not go away entirely.

The tenants submit that in the spring of 2014 they saw a rat and bought a larger trap. The landlord came to inspect the property and advised the tenants to cover up holes, which the tenants did. The tenants did not observe much rodent activity thereafter;

however, in the summer of 2014 they found rodent feces and urine on their personal possessions in a storage room. The tenants discarded the contaminated property and purchased a rodent deterrent.

The rodent activity returned in the winter of 2014/2015 and the landlord advised the tenants to put down gravel to keep rodents from coming into the rental unit, which the tenants did.

The tenants submit that it was not until February 2015 that the landlord finally offered to deal with the rodents by buying a live trap; however, the landlord did not bring in professional exterminators.

The landlord submitted that the tenants informed him that there may have been a rat in the outside storage area in the summer of 2014. The landlord acknowledged to the tenants that there has been the occasional rat makes its way into the outside storage area which is why he advised the tenants to keep the door leading to the laundry room closed. The landlord claims he asked subsequently asked the tenants about further rodent activity and they indicated it was not an issue at the time and he left it with them to notify him if there were further problems. The landlord denied telling the tenants to cover holes with wood but did advise them to cut back branches.

The landlord pointed to an email exchanged between the parties in January 2015 whereby he asked the tenants to identify any issues and their response was that they had no issues except for a leak into the storage room. They made no mention of electrical or rodent issues.

The landlord stated that he was not informed of any mice in the house until the discussion on the deck in February 2015 when they were talking about the sewage clog.

The landlord claimed that when he saw rodent feces at the property he raised the issue with the tenants and the tenant said they had not seen any recent activity. Regardless, the landlord decided it prudent to set up a trap himself and he did not catch anything.

In April 2015 the tenants told the landlord of rodent activity again but they had already ceased living in the rental unit on that date. The landlord stated that during the move-out inspection on April 30, 2015 the tenants were talking about the rat in the storage room and stated that they did not notice mice had been in the house until they were moving out.

Aside from the $4,800.00 in compensation the tenants seek for loss use and enjoyment of the rental unit for the above issues, the tenants seek compensation for items they discarded due to contamination with rodent urine and feces; the cost of taking items to the dump; and, the cost of purchasing the rodent deterrent. The tenants acknowledge that there had not been a discussion with the landlord concerning reimbursement for these expenses as their focus was to clear the property of rodents and contaminated property. The sum of these expenses is $142.25.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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 whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons with respect to all of the claims each party has made against the other.

Landlords' claim for unpaid rent vs. Tenants' claim for overpaid rent

Under section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has the legal right to withhold rent.

One legal basis for withholding or making deductions from rent is if the tenant has previously overpaid rent, including an unlawful rent increase.

It is undisputed that the tenants did not pay rent for April 2015. The issues raised were: 1) whether the monthly rent for April 2015 was $1,675.00 or $1,725.00 and 2) whether

the tenants overpaid rent during the months of May 2014 through March 2014 when they paid $1,725.00 per month.

It is undisputed that that the landlord issued a Notice of Rent Increase to the tenants in January 2014 in an attempt to increase the rent from $1,675.00 to $1,725.00 starting May 1, 2014 and it is undeniable that an increase of $50.00 exceeds the annual allowable increase for 2014 as calculated in accordance with the Residential Tenancy Regulations. Accordingly, the Notice of Rent Increase is invalid and of no consequence to the requirement to pay an increased amount of rent. However, I was presented a second tenancy agreement that provides for a monthly rent of $1,725.00 starting May 1, 2014 on the first page of the agreement and the signatures of both parties on the signature page of the agreement. Where parties enter into a subsequent tenancy agreement it replaces any prior tenancy agreement. Accordingly, the question becomes: did the parties enter into a new agreement on May 1, 2014? If so, the rent payable would become $1,725.00 by way of a new tenancy agreement as opposed to the Notice of Rent Increase.

Both parties made vigorous submissions as to whether the entire second tenancy agreement was presented to the tenants before they signed. Generally, it is upon a person signing a document to read and understand the document they are signing. Further, upon hearing from both parties over the course of several dates and upon consideration of their extensive written submissions, I find, based on the balance of probabilities, that it unlikely the tenants were presented only the signature page of the tenancy agreement before they signed. I make this finding considering the female tenant, who was the primary speaker for the tenants throughout the hearing process, presented as being a highly intelligent and capable individual. The tenant also demonstrated extensive familiarization with legal obligations and rights as it pertains to tenancy laws as evidence by their oral and written submissions. I find it unlikely that she would blindly sign a document upon being presented with one page of a multiple page document. Accordingly, I reject the tenants' position and I find I prefer the landlord's submission that the second tenancy agreement was presented to the tenants in its entirety for them to review and sign.

I find the tenants' position that the landlord did not bring changes in the second tenancy agreement to their attention to be irrelevant. The Act does not impose an obligation upon a landlord to point out any changes between one tenancy agreement and another. Rather, it is upon the person entering into the agreement to read and understand what they are agreeing to be bound by.

The tenants' argument that they were not provided a copy of the second tenancy agreement in a timely manner was in dispute but I find it unnecessary to give this argument further consideration. Although the Act does require the landlord to give the tenant a copy of the tenancy agreement within a certain number of days, the failure to do so does not invalidate the agreement.

In light of the above, I find the rent was set at $1,725.00 staring May 1, 2014 by way of the second tenancy agreement, and not the Notice of Rent Increase. As such, the tenants were obligated to pay this amount every month for the term of their tenancy, up to and including April 2015. Since the tenants failed to pay rent for April 2015 I award the landlords $1,725.00 for unpaid rent as requested.

Having rejected the tenant's positon that the second tenancy agreement was not binding and that rent remained at $1,675.00 I find the tenants did not overpay rent and I dismiss their request to recover a rent overpayment of $550.00.

Landlords' claim for unpaid water, sewer and garbage bill vs. Tenants' claim to recover garbage bills paid

It was undisputed that the tenants did not pay for water and sewer services from January 2015 through April 2015 and they were responsible for these costs and I award the landlord these amounts.

At issue is whether the tenants are responsible for paying for garbage pick-up. Garbage pick-up service was provided by the City and included in the combined water, sewer, and garbage bills issued to the tenants by the City. The second tenancy agreement provides that the tenants are responsible for paying for garbage. The tenants argued that the second tenancy agreement was not binding and for reasons already provided in the section above, I find the second tenancy agreement to be binding upon the tenants. Therefore, I find the tenants responsible for paying for garbage during the second tenancy agreement.

I also accept that the tenants' failure to pay the last bill resulted in a late payment penalty that the landlord had to pay and I award the landlords recovery of the penalty.

In light of the above, I grant the landlords request to recover $300.80 for water, sewer and garbage for January 2015 through April 2015 plus the penalty and I dismiss the tenants' request to recover garbage services hey paid during the second tenancy agreement.

Landlords' request to retain security deposit vs. Tenants' claim for return of double security deposit

If a landlord does not have a tenant's written consent or authorization of an Arbitrator to retain all or part of a security deposit, a landlord must repay the security deposit to the tenant or make a claim against it within 15 days of the tenancy ending or receiving the tenants' forwarding address, whichever date is later. Where a landlord fails to meet this obligation the landlord must pay the tenant double the security deposit. These provisions are contained in section 38 of the Act.

In this case, the tenants did not give the landlord written authorization to retain the security deposit and the landlord did not have authorization to do so from an Arbitrator. Accordingly, the landlord was obligated to either refund the security deposit or make a claim against it within 15 days of April 30, 2015. The landlord made a claim against the security deposit within 15 days by way of the landlord's Application filed on May 14, 2015.

The tenants' argued that the landlords extinguished their right to make a claim against the security deposit in failing to provide them with a copy of the move-out inspection report within 15 days of completing the move-out inspection. As provided under section 36(2) of the Act, the consequence for a landlord's failure to meet the move-out inspection report requirements is extinguishment of the right to claim against the security deposit for damage to the rental unit. The landlord does not lose the right to make a claim against the deposit for amounts other than damage.

In this case, the landlords made a claim against the security deposit for amounts other than damage, including unpaid rent and utilities, and the landlords' failure to provide the move-out inspection report to the tenants within 15 days did not extinguish that right.

Since the landlords filed an Application within 15 days of the tenancy ending and receiving the forwarding address, and the landlords had the right to make a claim against the security deposit for amounts such as unpaid rent and utilities, I find the landlords met their obligation to take action with respect to the security deposit and the tenants are not entitled to doubling of the deposit. Therefore, I dismiss the tenant's request for return of double the security deposit.

Having awarded the landlord unpaid rent and utilities already, I authorize the landlords to retain the security deposit in partial satisfaction of these amounts.

Landlords' damage and cleaning claims

Under section 32 of the Act both the landlord and the tenant have responsibilities with respect to repairing and maintaining a property. A tenant is responsible for repairing damage caused by way of their actions or neglect or those of persons they permit on the property. Under section 37 of the Act a tenant is required to leave a rental unit reasonably clean and undamaged. Both of these sections further provide that reasonable wear and tear is not damage and a tenant is not responsible for wear and tear. Residential Tenancy Policy Guideline 1 provides several policy statements concerning a landlord's and a tenant's respective obligations to repair and maintain for many common issues. I have referred to this policy guideline in making my findings.

Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Regulations is the best evidence of the condition of the rental unit unless there is a preponderance of evidence to the contrary. I was not presented any evidence to suggest the move-in inspection report was not prepared in accordance with the Regulations and the tenant signed in agreement with the landlord's assessment at the start of the tenancy. Accordingly, I view the move-in inspection report as the best evidence of the condition of the rental unit at the start of the tenancy. As to the move-out inspection report, since the tenant disagreed with many of the landlord's assessments I find the landlord requires other evidence in support of assessment. As to whether the landlord succeeding in providing sufficient evidence as to the condition at the end of the tenancy, and the tenants' liability, I have analyzed each claim accordingly.

Also of consideration is that awards for damages are intended to be restorative and where an item is so damaged it has to be replaced it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

1. Sewer blockage

Residential Tenancy Policy Guideline 1 does not deal with sewer lines specifically but under the heading Septic, water and oil tanks, it provides:

> The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the

> blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.
>
> [Reproduced as written with my emphasis underlined]

The tenants largely relied on the above policy statement in asserting that they are not responsible for clearing the sewer line blockage unless it was their negligence that caused the blockage. I accept the tenants' position as to assigning responsibility to a tenant only in the case of negligence as being consistent with the Act and the policy guideline. Accordingly, I proceed to consider whether the tenants were negligent and their negligence resulted in the clog, based on the balance of probabilities.

I heard undisputed evidence that the sewer line was blocked approximately 23 feet from the house by a wad of toilet paper and hair. The tenants argued that one would ordinarily expect to find these items in a sewer line. The tenants also argue that the hair could have been introduced prior to their tenancy, pointing to the brown colour of hair found in the sewer line and their daughter's vibrantly coloured hair at the time.

I accept that toilet paper and some hair would be a common sight in a sewer line, along with other biological matter. However, given a sewer pipe is of limited size and capacity I also accept that introducing too much of an item may clog the line, even if the line does not have any other obstructions or anomalies, as submitted to be the case by the landlord.

I find the landlord's submission that hair introduced into the sewer line before this tenancy started in May 2013 would have resulted in a clog before January 2015 to be reasonable and credible especially considering he is a licensed plumber. Further, I heard that the tenants' household included a number of people and not just their daughter with vibrantly coloured hair. Therefore, I reject the tenants' position that the brown hair cannot be attributed to them without vibrantly coloured hair being present.

All things considered, I find it most likely that the clog is the result of too much toilet paper and/or too much hair being introduced into the sewer line during the tenancy and that failure to limit the amount introduced to a reasonable amount is negligence. Therefore, I find the tenants actions or negligence, or the actions or negligence of persons they permitted on the property, caused the sewer pipe clog.

As to the amount of compensation sought by the landlord for the sewer clog, I find the amount excessive and not entirely the responsibility of the tenants. Where a party seeks compensation against another party for their negligent actions, an award is

generally associated to the foreseeable consequence. Where a person clogs the sewer line I find it reasonable that the person would expect the consequence is to pay for unclogging of the line. In this case, the clog was found relatively close to the house; yet, the landlord and his brother proceeded to inspect further down the line for other items such as tree roots, which is not the tenants' responsibility. Therefore, I award the landlord based upon the reasonable approximation to unclog a sewer line provided by the tenants, or $150.00, in the absence of a more reasonable estimate from the landlord for clearing the line only.

2. Carpet cleaning

The tenancy agreement contains a provision with respect to having the carpets professionally cleaned at the end of the tenancy using a truck mounted machine and a cleaner of the landlord's choosing. The tenants submit that the term in the tenancy agreement exceeds the tenant's requirements under the Act and is not enforceable.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean; however, the Act does not specify how "reasonably clean" is to be accomplished meaning the tenant is at liberty to employ reasonable measures to achieve a "reasonably clean" condition. Since the term in the tenancy agreement is very specific and requires the tenant to achieve a level of cleanliness in a manner required by the landlord, I accept the tenant's position that the term in the tenancy agreement exceeds the tenants' legal obligations under the Act. Section 6 of the Act provides that a term of a tenancy agreement that conflicts with the Act is not enforceable. Therefore, I find the term in the tenancy agreement conflicts with the Act and is not enforceable.

Residential Tenancy Policy Guideline 1 provides that a tenant is generally responsible for cleaning the carpeting if the tenancy exceeds one year or the tenant had an uncaged animal in the premises. Given the tenants occupied the rental unit more than one year and they had a cat in the rental unit I find the tenants obligated to clean the carpets in order to meet their obligation to leave the carpets "reasonably clean".

The tenants argued that they cleaned the carpets using a machine from the hotel where the male tenant works and that he did the work himself. The landlord appeared to acknowledge that the male tenant did so and that there was some improvement; however, the carpeting was still very dirty and had an odor, as seen on the carpet cleaning invoice dated May 1, 2015.

While the tenant may have tried cleaning the carpeting, based upon the carpet cleaning companies' invoice, I find that the carpeting was still unreasonably dirty even after the

tenant made his efforts and that further cleaning was required. Therefore, I grant the landlord's request to recover the amount paid for carpet cleaning.

3. Fence repair

The fence that was damaged by the tenants' moving truck was not the fence on the residential property and was the property of the neighbour. While the tenants may have a moral obligation to pay for damage they caused, I find there is not a legal obligation of the tenants to pay the landlord for this damage. The landlord's entitled to compensation for damage is where it is established that the tenants damaged the rental unit, the residential property; or, the property provided to the tenants under the tenancy agreement. While I appreciate the landlord was likely motivated to keep good relations with his neighbour, the landlord stepped in on his own volition and that does not create a legal obligation for the tenants to compensate the landlord for his decision. Rather, the legal remedy was for the neighbour to make a claim against the tenants, or the driver or owner of the moving truck, in the appropriate forum. Therefore, I dismiss this portion of the landlords' claim.

4. Carpet stretching

It was undisputed that at the end of the tenancy there was a piling of the carpet that required the carpet to be re-stretched, which the landlord did himself. At issue is the cause of the piling and whether it was the actions or negligence of the tenants that caused the piling of the carpeting.

The landlord suggested that one reason a carpet will buckle if where it is over-wetted. While over-wetting may be one cause, I find I am not persuaded that it is the cause of the buckling in this case considering carpet is a fabric that is subject to stretching due to regular use and cleaning and the carpeting was a number of years old. Therefore, I find it just as likely this is the result of wear and tear. As provided under section 32 and 37 reasonable wear and tear does not constitute damage and a tenant is not responsible for wear and tear.

In light of the above, I find I am not satisfied that the tenants are responsible for re-stretching the carpet and I dismiss this claim.

5. Chimney and Duct cleaning

A tenant's obligation is to leave a rental unit reasonably clean and undamaged at the end of the tenancy; however, the tenant is not responsible for wear and tear associated with using the rental unit as it was intended to be used.

As provided previously, any term in a tenancy agreement that conflicts or exceeds a tenant's obligation under the Act is not enforceable. I find the term in the tenancy agreement that provides for the tenants to have the chimney and ducts cleaned if they were cleaned prior to the tenancy to exceed the tenant's legal obligations.

Policy Guideline 1 provides the following policy statements with respect to furnaces, ducts, vents, fireplaces and chimneys.

> **FURNACES**
> 1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
>
> **FIREPLACE, CHIMNEY, VENTS AND FANS**
> 1. The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.
>
> 2. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.
>
> 3. The tenant is required to clean the screen of a vent or fan at the end of the end of the tenancy.
>
> 4. The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

[Reproduced as written with my emphasis underlined]

In light of the above, I find the landlord is not entitled to seek compensation from the tenants for duct and chimney cleaning as this is an ordinary expense of a landlord as part of their obligation to repair and maintain the property and in recognition that there will be wear and tear at the end of the tenancy. Therefore, I dismiss this portion of the landlords' claim.

6. General cleaning

The parties were in dispute as to whether the tenants left the rental unit reasonably clean at the end of the tenancy, as is their requirement to do under the Act. On the move-out inspection report the landlord indicates areas are dirty and the tenant refutes this on the report by stating “house thoroughly cleaned”. I find the landlords’ photographs lend credibility to the landlord’s assertion that additional cleaning was required to the area behind and under the fridge and window sills and tracts. However, I limit the claim in recognition that the move-out inspection report does not indicate the flooring was dirty and I find the photographs of dirty socks and water do not constitute a preponderance of evidence that the tenants left the floors unreasonably dirty. Therefore, I award the landlord $50.00 for additional cleaning.

7. Wash deck

On the move-out inspection report the landlord records the deck as being dirty. The tenant had countered the landlord’s assessment of the lack of cleanliness with the blanket statement that the “house thoroughly cleaned” and I find it unclear as to whether the tenant is indicating the deck had been thoroughly cleaned as well. However, during the hearing the tenant indicated the deck had been swept and suggested that the deck is subject to grime and debris from the numerous trees and bushes around the property.

Upon review of photographs the landlord took of the deck, I find I am not satisfied that it was unreasonably dirty or stained from the actions or negligence of the tenants. Further, I accept that a house surrounded by trees and bushes may need a more thorough cleaning from time to time. While Policy Guideline 1 does not address cleaning of decks specifically I note that it provides that a landlord is responsible for washing the exterior of windows and I apply this same logic that the landlord is obligated to clan the exterior of the building periodically, except where it is necessary due to the actions or negligence of the tenants. Therefore, I find that the periodic washing of a deck that becomes dirty due to tree or plant debris, pollen, other environmental pollutants and the like is the responsibility of the landlord and I dismiss the landlords’ claim against the tenants for deck washing.

8. Replace fridge

While it was undisputed that the crisper was cracked at the end of the tenancy, the tenants denied breaking the crispers and I find the landlord failed to establish an entitlement to the amount claimed. One consideration is that the fridge was not inspected together and its condition not documented when it was brought to the rental

unit during the tenancy. In any event, I find the landlord did not establish the value of the loss even if the tenants cracked the crisper. The landlord did not provide evidence as to the cost of the fridge; or that the fridge has been replaced and at what cost. Further, I find that a cracked crisper does not entirely negate the value of a second hand fridge. Therefore, I dismiss the landlords' claim for the cost to replace the second hand fridge at the tenants' expense.

9. Replace stove

It was undisputed that at the end of the tenancy the door to the oven provided to the tenants was broken. However, I find the value of the loss claimed by the landlords has not been sufficiently supported. Residential Tenancy Policy Guideline 40 provides that appliances have an average useful life of 15 years. The stove in question appears to be decades old in the photographs provided to me. The landlord acknowledged that when he replaced the stove even he did not want to buy a second hand stove that old. Accordingly, I find the stove had little or no remaining value and it is unjust that the tenants be held responsible for providing the landlord with a much newer and valuable stove than what he had provided to them. For these reasons, I dismiss this portion of the landlords' claims against the tenants.

10. Kitchen flooring damage

The landlord alleged that the tenants caused a hole in the kitchen flooring that was not there at the start of the tenancy. The tenants assert that it was pre-existing damaged. It is undisputed that there was some pre-existing staining on the floor but the landlord maintained the hole was not there at the beginning of the tenancy. I also heard disputed evidence as to the age of the flooring. The landlord stated it was 8 – 10 years old; whereas, the tenants assert it was at least 10 years old.

The move-in inspection report indicates the flooring was stained but does not mention the hole in the floor. I find the move-in inspection report to be the best evidence as to the condition of the rental unit as it was detailed and signed by the tenant without dispute. The landlord claims the date on the tenant's picture is false and I have no way of determining whether the date is accurate. Accordingly, I accept that the hole in the floor materialized during the tenancy.

Despite finding the hole in the floor likely appeared during the tenancy, I find I am unsatisfied that it is the result of damage as opposed to the aging and wear of the floor. From the photographs of the floor and the house in general, it is obvious that the house is very old as are most of its components, including the kitchen. Residential Tenancy

Policy Guideline 40 provides that vinyl flooring has an average useful life of 10 years. I find the flooring to be at or near the end of useful life and of little or no value. Therefore, I dismiss the landlords' claims against the tenants for floor damage.

11. Window screen

It is undisputed that there was a hole in the window screen and I accept that this is not the result of wear and tear. However, the landlord did not provide evidence to establish or provide a basis for determining the value of the loss and the amount claimed. Therefore, I dismiss this portion of the landlords' claim.

12. Wall damage

I was provided undisputed evidence that the tenant filled several holes in the walls, even those caused prior to their tenancy, and that many walls are textured. The landlord asserted that filling the textured walls as the tenant did caused the landlord more work to remove the excess filler. The tenant asserted that the filler was water soluble.

From the photographs provided to me, I note that the filler appears to be dry and I find it unlikely it is as easy as wiping away the excess filler with water especially where the excess filler has settled in the low sections of texture. Therefore, I find the tenant's method of filling the holes on the textured walls, while they may have been well intentioned, was inappropriate and resulted in the landlord spending more time to remove the excess filler from the textured walls.

The landlord submitted that this extra work took approximately two hours and I find that to be reasonable. I award the landlord $50.00 for this time.

13. Garbage removal

This claim was withdrawn and no award is making.

14. Re-grading of side yard

The move-out inspection report is silent with respect to the yard. The landlord acknowledges he saw the wood chips and extra soil after the tenancy ended. The landlord is of the position that the soil and wood chips were deposited there by the tenants. The tenants' claim the landlord's photographs were taken in July 2015 well after subsequent tenants moved in.

Given the disputed evidence and the failure to inspect and document this issue at the time of the move out inspection, I find the landlord has not met the burden to demonstrate the deposit of soil and wood chips was by tenants.

15. Light bulbs and key replacement

The landlord did not provide a receipt or other evidence to substantiate the amount claimed and I dismiss this portion of the claim without further consideration.

Tenants' claim for compensation to install bathroom vanity

My jurisdiction to resolve disputes is limited to tenancy agreements and contracts for services are outside of my jurisdiction. Accordingly, only where the parties have a contract for services that affects the tenancy agreement may I exercise jurisdiction to resolve the dispute. Just because two parties have a landlord and tenant relationship does not automatically mean any and every dispute they may have is a landlord and tenant dispute that falls under the Act. An example of a contract for services where it affects the tenancy agreement would be where parties agree that the tenant will make a repair or improvement to the property and the landlord agrees that the tenant may make a deduction from rent as compensation for their services. An example of where the contract for services does not affect the tenancy is where the parties agree the tenant will make repairs or improvements to the property and the landlord will pay the tenant for the services but then refuses to pay. In the latter example, the parties would have to resolve their dispute concerning compensation for services performed in the appropriate forum, such as Small Claims court.

In this case, I was not presented any evidence to suggest there was an agreement for services to be performed in lieu of paying rent. The tenants also acknowledge that there was not a clear agreement for the tenants to be compensated for their labour. Accordingly, I find it inappropriate to further consider whether the tenants are entitled to compensation for labour to install a bathroom vanity as this would be a contract for services for which I do not have jurisdiction to resolve.

Tenants' claim for damages or loss re: electrical issues and rodent infestation

I accept the electrical inspection report demonstrates that the electrical service at the residential property did not meet building laws and that it had the potential to be unsafe as evidenced by the inspection report. This is a violation of section 32 of the Act which

requires that a landlord is required to repair and maintain a property so that it complies with health and safety and building laws.

I further accept that there was a rodent or rodents that entered the outside storage area and possibly the kitchen during the tenancy. Generally, a landlord is responsible for pest control unless the tenants' actions or negligence resulted in an infestation. I find that rodents are a pest that should be eliminated in order to meet health and safety requirements under section 32 of the Act.

Where a tenant has a repair or pest issue, it is expected that the tenant will raise this concern with the landlord so that the landlord may take appropriate action. This expectation is also in keeping with a party's obligation to mitigate losses in the event they seek monetary compensation from the other party. Where a tenant raises a repair or pest issue with the landlord and the landlord fails to take sufficient action the tenants' remedy is to seek a repair order or order for compliance by filing an Application for Dispute Resolution.

It is important to emphasize that a breach of the Act does not in itself entitle a tenant to compensation. As outlined in the beginning of the analysis section of this decision, a party making a monetary claim has four criteria to prove, including mitigation of losses.

The tenants never did file an Applicant for Dispute Resolution to seek repair orders or orders for compliance. Further, when the landlord asked the tenants to identify any issues with the rental unit in January 2015 they did not indicate they were having any problems with the electrical system or rodents. Rather, the tenants waited until the landlord moved to evict them and they had secured new housing to call for an electrical inspection and raise the issue of rodents again. Not only do the tenants' actions reek of retaliation but I find the tenants failed to satisfy me that they took reasonable steps to mitigate their losses, if any. Therefore, I find the tenants are not entitled to the compensation they are seeking and I dismiss this portion of their claim against the landlords.

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Summary of awards

Below, I have summarized the awards I have made by way of this decision.

Awarded to landlords:

Unpaid rent – April 2015	**$1,725.00**
Unpaid utilities and penalty	**300.80**
Sewer blockage	**150.00**
Carpet cleaning	**329.49**
Cleaning	**50.00**
Wall damage	**50.00**
Total	**$2,605.29**

I have authorized the landlords to retain the tenants' security deposit in partial satisfaction of the unpaid rent and utilities. Given the landlords' partial success in this application I award the landlords recovery of one-half of the filing fee paid by the landlords, or $25.00. The remainder of the landlords' claims against the tenants' have been dismissed. Accordingly, the landlords are provided a net award of $1,792.79 [calculated as $2,605.29 – $837.50 + $25.00].

The tenants' claims against the landlords have been dismissed in their entirely.

Conclusion

The landlords are authorized to retain the tenants' security deposit and I have provided the landlords with a Monetary Order for the balance of $1,792.79 to serve and enforce upon the tenants.

The tenants' claims against the landlords have been dismissed.

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: August 11, 2016

Residential Tenancy Branch