



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, FF, O; MNR, MNDC, MNSD, RR, FF

### Introduction

This hearing dealt with the landlord's amended application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72; and
- an "other" remedy.

This hearing also dealt with the tenants' amended application pursuant to the Act for:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both tenants appeared. The landlord appeared with counsel. All issues of service were resolved.

These applications were scheduled over four hearing dates and nearly ten hours of hearing time.

The landlord seeks \$25,000.00 in compensation; however, the landlord has enumerated claims totaling \$62,500.00:

| <b>Item</b>                   | <b>Amount</b>      |
|-------------------------------|--------------------|
| Unpaid Rent (Feb, March)      | \$3,200.00         |
| Loss of Use of the Property   | \$3,000.00         |
| Carpet                        | 3,900.00           |
| Yard                          | 4,000.00           |
| Roof                          | 3,500.00           |
| Laminate                      | 4,000.00           |
| Cedar Paneling                | 100.00             |
| Deck                          | 6,000.00           |
| Ceiling and Wall Repair       | 10,000.00          |
| Main Bathroom                 | 1,000.00           |
| Holes in Walls                | 100.00             |
| Front Door                    | 300.00             |
| Stained Glass                 | 1,000.00           |
| Cabinets and Glass            | 3,000.00           |
| Counters                      | 700.00             |
| Hardwood                      | 200.00             |
| Attic                         | 3,800.00           |
| Garage Panel                  | 2,000.00           |
| Deck                          | 7,500.00           |
| Eaves Troughs and Downspouts  | 3,200.00           |
| Fridge                        | 1,000.00           |
| Dishwasher                    | 500.00             |
| Vacuum                        | 400.00             |
| Filing Fee                    | 100.00             |
| <b>Total Enumerated Claim</b> | <b>\$62,500.00</b> |

The tenants seek \$25,000.00 in compensation; however, the tenants have enumerated claims totaling \$65,549.04:

| <b>Item</b>                        | <b>Amount</b> |
|------------------------------------|---------------|
| Deck Repair                        | \$6,998.79    |
| Rent Reduction                     | 6,079.72      |
| Rent Increase                      | 540.00        |
| Loss of Quiet Enjoyment            | 43,335.43     |
| Subsection 51(2) Compensation      | 3,200.00      |
| Sofa                               | 920.00        |
| Repair Costs                       | 2,846.84      |
| Security Deposit, Subsection 38(6) | 1,528.26      |

|                               |                    |
|-------------------------------|--------------------|
| Compensation, and Interest    |                    |
| Filing Fee                    | 100.00             |
| <b>Total Enumerated Claim</b> | <b>\$65,549.04</b> |

Both parties waived the amount of their claim in excess of the Branch's statutorily prescribed limit.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit? Is the landlord entitled to retain all or a portion of the tenants' security deposit? Is the landlord entitled to recover his filing fee for this application from the tenants?

Are the tenants entitled to a monetary order for the cost of emergency repairs to the rental unit? Are the tenants entitled to the return of all or a portion of their security deposit? Are the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided? Are the tenants entitled to recover their filing fee for this application?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

The parties entered into a written tenancy agreement on 19 October 2007. Monthly rent under the tenancy agreement was \$1,500.00. The tenancy began 1 November 2007. The tenants vacated the rental unit on 10 March 2016. The landlord continues to hold the tenants' security deposit in the amount of \$750.00, which was collected 19 October 2007.

Initially, the landlord used professional property managers. These property managers conducted a condition inspection with the tenants on or about 20 November 2007. The contract with the property managers terminated in or about February 2010. The parties agreed that the amount that was originally paid to the property management company (\$150.00 monthly) would be reduced from rent to compensate for the property management services.

In the course of the tenancy, the landlord increased rent:

- 29 July 2008 increase of \$55.00; total rent \$1,555.00; and
- 14 November 2014 increase of \$45.00; total rent \$1,600.00.

The increase issued 29 July 2008 was on the prescribed form and provided three months' notice. The landlord did not use the prescribed form for the 14 November 2014 increase.

The tenants did not pay rent for February or March 2016.

### *Documents*

I was provided with a condition inspection report created 20 November 2007. The repair notes that the condition of the rental unit is good or fair.

I was provided with an email dated 19 December 2007 from the property manager to the landlord. In that letter, the property manager informs the landlord that the tenants have complained of leaks in the roof. The property manager asks for authorization to allow a roofer to carry out the repairs.

I was provided with an email dated 16 July 2008 from the property manager to the landlord. In that letter, the property manager asks when the leaks in the roof will be repaired. The landlord indicates in a reply email that he intends to conduct repairs that summer.

I was provided with an email dated 31 December 2012 from the tenant to the landlord. The email notes that as at the date of the mail the balance for the repair services was \$50.31.

I was provided with an email dated 28 October 2014 from the landlord to the tenant. The landlord set out that he believes that the roof is sound and that leaks are the result of high humidity and poor ventilation. The landlord sets out "I was going to ask you to pay another \$100 a month starting in December. Would you take that increase and use it towards your budget of caring for the house?"

I was provided with an email dated 13 November 2014 from the tenant to the landlord. The email sets out that the roof is leaking. The tenant asks the landlord to consider a rent increase to \$1,600.00. The tenant also sets out "As you suggest, I think I will just bank the money I don't spend so we can do something substantial from time to time. Ie. The fence (falling apart) deck, whatnot. As it is pretty much anything I do costs more

than \$150.00 anyway so it spills over from one month to the next. I'll put together an accounting before the year is out."

I was provided with an email dated 14 November 2014 from the landlord to the tenant. In that email the landlord establishes a rent of \$1,600.00 and sets out "I will compromise with the rent being \$1,600.00 starting March 1<sup>st</sup> and you using the increase to offset repairs."

I was provided with a FLIR report dated 1 April 2015. The report notes temperature differences showing water damage. The report also includes moisture meter readings. In certain areas the moisture in the drywall was as high as 43%.

I was provided with an email dated 2 October 2015 from the landlord to the tenant. The email sets out:

Would you please send me a detailed list of expenses and of the repairs. I am not aware that we agreed to you doing such an expensive repair to the house. ...I though we agreed that you would put aside \$200.00 a month from the \$1,600.00 a month rent for any repairs that needed to be done...now you send me a bill for work that we didn't consent to, I am a bit confused why you would spend so much without my approval. I appreciate the work you have done and you will get paid for it, but I just don't know how at this time.

On 13 January 2016, the landlord issued the 2 Month Notice to the tenants. The 2 Month Notice set out an effective date of 31 March 2016. The notice was given as the landlord intended in good faith to occupy the rental unit.

I was provided with an email dated 1 February 2016 from the tenant JD to the landlord indicating that he was applying the rent amount of \$1,600.00 against the balance he was owed for repairs to the rental unit.

I was provided with an email dated 1 February 2016 from the landlord to the tenant insisting on rent payment and asking the tenant to stop completing repairs without approval.

On 4 February 2016 the landlord issued the 10 Day Notice to the tenants. The 10 Day Notice set out that the tenants had failed to pay rent in the amount of \$1,200.00 that was due 1 February 2016. The 10 Day Notice asked the tenants to vacate by 29 February 2016.

I was provided with a condition inspection report created 9 March 2016. Many areas are recorded as damaged or dirty. The following is of note:

- Water stains and damage;
- Broken handle on dishwasher; and
- Dog scratches on door.

The tenant JD signed the report and checked the box indicating that he agreed with the report. The tenants provided their forwarding address on 11 March 2016 by email.

I was provided with a quote dated 29 March 2016 for repairs to the rental unit. The quote is in the amount of \$59,738.70. The description contains the following information:

*Upper deck.*  
*Doors-3 exterior man doors.*  
*Drywall plus removal...*  
*Carpets*  
*Cabinets/Counter tops.*  
*Soffit repair plus siding repair.*  
*Rot on interior of house plus exterior of house.*  
*Repair roof vents.*  
*Concrete plus torch on for deck.*  
*Repair water damage in attic.*  
*Labour.*

### *Digital Evidence*

I was provided with extensive digital evidence. The digital evidence records various deficiencies in the rental unit at the end of tenancy.

### *Testimony of the Tenant JD*

JD testified that he encountered opposition from the landlord to fixing things from the beginning of the tenancy. JD testified that the landlord took the position that if the tenants did not like the condition of the rental unit, then the tenants could move. JD testified that moving is difficult as they are a family of ten including eight children. JD testified that the tenants continued to look.

The JD testified that the first week he moved he woke up at 0230 to a loud bang. JD testified that he went to see what had happened and discovered that water was entering

into the rental unit through the skylight area as the skylight had blown off. The water was pouring onto the grand piano. JD testified that the tenants also had to replace an air hockey table because of water damage from a leak. Another leak emerged close to the servers containing JD's entire business operations.

JD testified that he applied tar to an area of the roof to stop the leaking. JD testified that he became the "roofing contractor" for the house. JD testified that he went through buckets of tar.

The JD testified that he repaired the deck in October in order to stop leaking. JD testified that the prior decking material was deteriorated. JD testified that he was able to take a screwdriver, apply medium force and push it through the deck. JD testified that it was necessary to replace the joists as they were "shot".

JD testified that there was a rodent problem in the rental unit. JD testified that rat scratching was audible. JD testified that the tenants observed a rat exit through a hole under the kitchen sink. JD alleges that the tenants trapped ninety rats.

JD testified that when the tenants informed the landlord that the roof would have to be repaired, the tenants were told to leave. JD testified that the water damage is so extensive that there are things growing from the walls. JD alleges that mould is causing health issues in one of the children. JD testified that a mould professional found mycotoxic mould in the rental unit, but said that the levels were acceptable. JD submits that this is evidence of the tenants' mitigation working.

JD testified that the perimeter drains were either not installed or not working. JD testified that there would be two to three inches of water under one section of the rental unit. JD testified that this was causing water to leak into the foundation, causing a wet footing, and heaving.

JD testified that the kitchen counters are flaking because the edge of the counter is tacked on and is not a professional countertop. JD testified that he installed sealant around the sink.

JD testified that the landlord's fridge as provided was very old so the tenants purchased their own. JD testified that the fridge is in the garage and is still functional if the landlord wishes to reinstall it.

JD testified that the prior fireplace insert was not properly rated or installed and was a safety hazard. JD testified that he financed the replacement of a new insert. JD testified that the tenants discarded the old insert.

JD testified that the lock on an exterior door would lock automatically and that he had to replace the lock.

JD admits that the tenants put tape on the walls and mounted fixtures to the walls. JD admits that he did not get permission to do this in advance of the installation. JD submits that the landlord walked through the house and saw everything on the walls and did not make an objection. JD testified that he considers this tacit approval.

JD testified that the stove was clean at the end of tenancy. JD testified that the floors were washed, but he does not know whether or not they were waxed.

JD agrees that the condition inspection report created at the beginning of tenancy accurately reflects the condition of the rental unit at the commencement of the tenancy. JD agrees that the rental unit was clean and in good condition. JD testified that when the parties conducted a condition inspection at the end of tenancy, the house was "pristine".

JD testified that the tenants did not professionally clean the carpets at the end of tenancy because of the water damage/staining. JD submits that this is permitted under the Act. JD testified that the tenants purchased a carpet steam cleaner and would periodically steam clean the carpets.

JD testified that at the end of the tenancy there were items left in the garage. JD testified that these were the landlord's. JD admits that the tenants did not wash the garage floor but did sweep the floor and blow it out with a blower.

JD testified that he does not know if the light fixtures were removed and cleaned.

JD admitted that the landlord's photographs accurately represented the condition at the beginning of the tenancy; however, JD says that certain detailed damage is not visible because of the quality of the images.

JD admits that he entered into an agreement to take on the property management contract including periodic repairs. JD testified that it was his job to fix issues with the rental unit under the agreement. JD testified that he had a standing authorization to fix things. JD admits that the landlord did provide contact information. JD agreed that the



parties would originally communicate by email and that there were some telephone calls. The tenant testified that he got tired of trying to get the landlord to conduct repairs.

JD agreed that the landlord was responsible to requests for a new dryer and stove and to the circuit breaker issue.

JD testified that he removed the sump as it was not working.

The tenant testified that the damage to the atrium carpet was caused by normal wear and tear. The tenant says that the carpet was not glued down.

The tenant testified that he does not know where the residue in the installed vacuum system came from.

The tenant testified that the dents in the walls are from hockey pucks. The tenant testified that he did not know whether the dents on the fridge were from hockey pucks.

The tenant JD and the landlord entered into an agreement to care for the eaves and downspouts in exchange for the landlord granting permission to the tenants to have dog.

The tenant submits that the rat issue was not because of accumulation around the house or doors being left open.

The tenant agreed that he caused minor damage to the garage door when he hit it with a vehicle.

#### *Testimony of the Tenant MD*

The tenant MD testified that the tenants would fix issues as they came up. The tenant MD testified that the landlord let everything to the tenants to repair.

The tenant MD testified that the leaks caused the tenants worry as they worried about the health and security of their children and damage to their personal property. The tenant MD testified that the tenants could not entertain in the rental unit.

The tenant MD testified that as she home schools here eight children it is not her priority to do yard work.

The tenant MD admits that the dog caused scratches to the front door.

The tenant MD testified that the nature of the kitchen counter was not conducive to high traffic and active children.

*Testimony of the Landlord*

The landlord testified that he listed the house for sale prior to the tenancy commencing. The landlord testified that the rental unit was in great shape at the commencement of the tenancy. The landlord testified that prior tenants did not complain about leaks or rats. The landlord testified that he had three prior tenants during the period 2004 to 2007.

The landlord testified that the house was constructed in 1970. The landlord testified to the following installation dates:

- back deck 1980
- fridge, roof and garage door 1995
- kitchen cabinets and countertop 2000
- upper deck 2004
- eaves troughs 2004
- walls repainted and marks repaired 2004
- dishwasher 2004
- vacuum 2004
- pool/games room
  - carpet 2004
  - laminate 2004
- living room laminate 2004/2005
- ding room 2004/2005
- main bathroom 2004/2005
- hardwood floor looked new at the beginning of the tenancy as it had been refinished

The landlord submits that the photographs provided show that the rental unit was in good repair at the beginning of the tenancy.

In response to the tenant's claims and testimony, the landlord submits that; the asphalt shakes have ten more years of useful life; the landlord testified that the tenants used the atrium as a woodshed and that this caused damage to the carpet; it appears to him that the tenant damaged the door when he attempted to enlarge the hole in the door and

ripped out a piece of the wall; the repairs the tenants conducted caused damage to the rental unit; and that the tenants caused or permitted cement or mortar to enter into the drain of the toilet. The landlord denies that this is caused by scaling.

The landlord also submits that the tenant caused damage to the rental unit by not attending to the lifted laminate. The landlord testified that the shower door would not close because the floor was swollen with water. The landlord testified that the tenant spilled toilet cleaner on the floor and damaged the laminate flooring in the downstairs bedroom. The landlord submits that further damage was caused by venting of one of the bathrooms into the attic space.

The landlord testified that the rental unit has a perimeter drain and that the tenants caused the drains not to function properly because of debris stacked over the drain area. The landlord testified that the blockage caused water to enter into the crawlspace. The landlord also testified that the tenant removed the sump pump in 2010. The landlord identified this in February 2015.

The landlord testified that nails and screws inserted in the roof caused leaks to occur. The landlord testified that additional humidity accumulated because of the tenants' decision to vent the dryer and bathroom into the attic. As well, wicking action of the fireplace as the sump pump was removed.

The landlord testified that when he took possession of the rental unit he had to conduct extensive repairs. The landlord testified that it took five months of repairs to restore the rental unit. The landlord testified that he is now residing in the rental unit.

The landlord testified that he spent eight hours steam cleaning the carpet in the games room. The landlord testified that although the carpet was old, it was very useable and clean. The landlord testified that it was the tenants' responsibility to treat and rewax the floors. The landlord testified that the kitchen cabinets and countertop were damaged by the tenants. The landlord testified that the tenants damaged the dishwasher. The landlord testified that the handle was broken as well as parts inside the dishwasher. The landlord testified that the main bathroom was destroyed. The landlord testified that the kitchen repairs cost \$1,000.00 in materials and twenty hours of labour.

The landlord testified that the back deck was rotted. The landlord submits that the damage was caused by the inadequately maintained drainpipes and the accumulation of plant litter. The landlord testified that the repair was \$300.00 in materials and 10 hours of labour.

The landlord testified that he assumes it will be approximately \$2,000.00 to replace all of the panels in the garage door to fix the hockey puck dents. The landlord testified that the tenant did not repair the garage door from a car accident. He testified that it cost \$200.00 to repair a hole in the pocket door and \$200.00 to repair the trim around the pocket door. The landlord testified that the tenants caused damage to the fences and removed fence panels in order to bring in firewood.

The landlord testified that the tenants neglect caused damage to the shrubs. The landlord testified that the tenants left debris in the back yard from the unsanctioned repair to the decking.

The landlord testified that the tenants did not contact the landlord to do repairs. The landlord testified that he did not authorize the repairs. The landlord testified that the tenants did not contact him regarding emergency repairs.

The landlord estimates that he conducted five inspections of the property over the eight year tenancy. The landlord testified that he could not recall how many times that he inspected within the rental unit. The landlord testified that he was invited in by the tenants on one occasion. The landlord testified that he was unaware that the rental unit required repairs on the interior.

The landlord testified that he was not aware of any gap in the windows of the atrium, but testified that there is a space to let hot air out. The landlord testified that he believes that the tenants wood stacks caused the atrium wall to be pushed out or ants were eating the frame of the wood. The landlord admits that he did not ask the tenant to stop storing wood in the atrium. The landlord testified that he considers the atrium to be outside the house.

The landlord testified that the discounted rent was an easy way to reimburse the tenant for repairs he made. The intent was to reimburse for incidental expenses and that for anything more the tenant should have contacted the landlord to ask as that "just stands to reason".

The landlord submits that it is the tenants' responsibility to take care of the downspouts. The landlord testified that he was only ever advised of water damage. The landlord testified that the tenants never made arrangements for emergency repairs.

The landlord testified that when he was advised about the rodent issue, he informed the tenants to clean up the debris and store it elsewhere to prevent the rats from nesting on

the property. The landlord testified that he has not had problems with rats since the debris was removed and the property cleaned up.

### *Submissions*

I received extensive submissions from the parties. I have considered all relevant submissions and address all relevant submissions in my analysis.

### Analysis

#### *Landlord's Claim for Cost of Repairs and Tenant's Claim for Rent Reduction and Loss of Quiet Enjoyment*

The limitation date for claims arising under the Act is calculated from the date the tenancy ends. The limitation period is set out in subsection 60(3) of the Act and is two years from the end of the tenancy. As the tenancy ended 11 March 2016, the tenants claims are not statute barred.

I find on the basis of the email exchanges that the landlord and tenants entered into a service agreement for maintenance to the rental unit. Section 32 of the Act prescribes the responsibility for certain maintenance and repair obligations to the tenant and landlord. Guideline 1 helps specify the tangible application of section 32 of the Act. Section 5 of the Act prevents parties from contracting out of the Act and any term or agreement that purports to do so within a tenancy agreement is unenforceable.

This does not prevent the landlord and tenant from entering into a separate services agreement; however, this service agreement is outside the jurisdiction of this Branch. Whether the tenant conducted his duties under the service agreement in accordance with that agreement or whether the landlord owes payment to the tenant under that agreement is beyond my jurisdiction.

I was provided with extensive video and photographic evidence of the condition of the rental unit at the bringing and end of tenancy. These records are of much greater assistance than the inspection reports as they accurately document the condition of the rental unit without the subject interference of human interpretation.

It is undeniable that extensive deterioration of the rental unit occurred between the commencement and termination of the tenancy. What remains to be determined on the evidence is whether this damage resulted from the tenants' actions or neglect, reasonable wear and tear, or the landlord's failure to maintain the property. These

categories are not necessarily mutually exclusive: as is the case in this situation. The situation is further complicated as a result of the services agreement the parties entered into, which is outside the jurisdiction of this Branch. For the reasons that follow, I have found that some of the damage is the responsibility of the landlord, while other damage is the tenants' responsibility.

This apportionment of liability is complicated by the tenant JD's two hats: one as tenant and one as a contractor for the purposes of providing repair services.

"Landlord" is defined in section 1 of the Act:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; ...
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;...

If the tenant was acting pursuant to the services agreement than by virtue of the Act they are an agent of the landlord and thus, in accordance with the highly inclusive definition of "landlord" in section 1 of the Act a "landlord"; however, it is trite law that a person cannot bring suit against themselves.

On the basis of the evidence before me, I find that the following issues arise from the performance of the services agreement and are outside my jurisdiction:

- water damage from repairs to roof
- water damage from humidity from venting
- water damage from removal of sump pump
- damage to yard (except routine maintenance)
- damage to the bathroom
- damage to the front door from the lock repair
- damage to the eaves troughs and downspouts
- the damage to the upstairs deck

I accept that the tenants' use of the vacuum caused accumulation of debris in the vacuum; however, I find that this damage is ordinary wear and tear. Similarly, I find that the damage to the fence was in the nature of wear and tear.

On the basis of the evidence considered above, I find that the following damage resulted from the tenants' actions or neglect:

- The tenants failed to clean the carpets and caused damage to the carpets above that of the water damage, in particular in the atrium area.
- The tenants did not conduct routine maintenance of the yard as required.
- The tenants allowed plant debris to accumulate on the deck causing it to rot.
- The tenants allowed their children to shoot hockey pucks against the door causing damage to the garage door.
- The tenants caused damage to the laminate flooring by allowing excessive amounts of water from showering onto the floor and splining a corrosive cleaner.
- The tenants caused an excessive number of holes in the walls of the rental unit and did not repair them.
- The tenants caused damage to the dishwasher.
- The tenants caused damage to the wood panelling by causing screw holes.
- The tenants caused damage to the wood flooring as a result of their pet's scratches.

*Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with direction in determining damage to capital property. Guideline 40 sets out the following useful life terms:

- Wood deck: 20
- Garage door: 10
- Windows: 10
- Doors 20
- Carpet: 10
- Flooring: between 10 and 20
- Interior paint: 4
- Paneling: 20
- Dishwasher: 10
- Refrigerator: 15
- Cabinets and counters: 25

The landlord provided a list of items that were newer than the 1970s home:

- Back deck was installed in 1980
- Garage door was 1995

- Walls were repaired in 2004
- Laminate was installed in 2004
- Carpet was installed in 2004
- Kitchen cabinets were installed in 2004
- Hardwood floor was restored at beginning of the tenancy
- the fridge was from 1995
- the dishwasher was from 2000

The wood deck, the garage door, the windows, the door, the carpet, the interior paint, the paneling, the dishwasher, the refrigerator were all past their useful life expectancy. As such, the capital value of the assets had depreciated to nothing. On this basis, the landlord is not entitled to compensation for their repair as the items had exceeded their useful life.

This guideline sets out that the useful life expectancy of tile and carpet is ten years. The guideline sets out that the useful life expectancy of hardwood is 20 years. The policy is silent on laminate, but I find that this floor covering is more analogous to both tile and carpet to assign the same useful life expectancy to laminate. Hardwood is significantly more durable. As such, the laminate had exceeded its useful life.

The counters and cabinets in the kitchen were installed in 2004. On this basis, they had a useful life of 13 years remaining at the end of the tenancy. The landlord claims for \$3,700.00 for the cost of repairing the cabinets and counters. The tenants did not dispute the amount of the landlord's cost claimed for the repair. On the basis that the value of the cabinets and counters had depreciated by 12/25 the landlord is entitled to recover \$1,924.00 from the tenants.

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) sets out the parties responsibilities for landscaping care:

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.



The video and photographic evidence shows that the tenant did not conduct routine maintenance required in the back yard and that it was left in disrepair; however, much of the lack of maintenance was also the landlord's responsibility. In particular, a landlord is responsible for pruning trees and large work. The landlord claims \$4,000.00 for the yard damage. This includes the larger projects. There is no foundation for me to apportion the cost between the tenants and landlords. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the landlord nominal damages of \$200.00 for the poor yard maintenance.

Guideline 1 sets out the tenants' responsibility for nail holes:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

...

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The photographs show that the tenants put an excessive number of nail holes in the walls. On this basis the tenants are liable for the patch work. As with the yard work, the landlord's claim is not apportioned to this level of detail. Based on this, I award the landlord nominal damages of \$100.00 for the nail holes.

The tenants pet caused scratches on the hardwood floor that required refinishing. Further, the wood required routine treatment which was the tenant's responsibility. The landlord claims \$200.00 for this refinishing. I find that the landlord is entitled to recover the full amount.

The tenants claim for devaluation in the tenancy and loss of quiet enjoyment.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant.

The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenants did not report the issues to the landlord and undertook the repairs themselves pursuant to the services agreement. Either through the tenants' failure to involve the landlord or the tenants' inadequate repairs, the deterioration of the rental unit for which the tenants claim the rental abatement, damage to the sofa and loss of quiet enjoyment resulted. Thus the landlord did not create the situation that led to the claimed decline of the rental unit and the tenants cannot satisfy the causal requirement of section 67 as it was their own actions that led to the damage. On the basis of the evidence and submissions, I find that the following repairs were made pursuant to the services agreement and, accordingly, any claims arising from these repairs or the original issue are not compensable as the landlord is not the cause of the damage. Accordingly, the tenants are not entitled to claim for rent abatement or the loss of quiet enjoyment as the landlord was not the cause of the devaluation or loss. This portion of the tenants' claim is dismissed.

#### *Tenants' Claim for Emergency Repairs and Repairs*

Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount (Act, s. 33(7)).

The tenants did not follow the steps required in section 33 of the Act in that they failed to contact the landlord twice in respect of each emergency repair. The requirements of the Act are strict and I have no discretion to go beyond the Act to order restitution for emergency repairs and repairs. As the tenants failed to comply with section 33 of the Act, the tenants claim to recover the cost of emergency repairs is dismissed.

As set out above the tenants claims arising under the services agreement are outside my jurisdiction. Accordingly, I cannot order compensation to be paid under that agreement.

### *Landlord's Claim for Unpaid Rent*

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

The landlord was entitled to rent due 1 February 2016. The tenants did not pay that rent. The tenants were entitled to withhold rent due 1 March 2016 pursuant to subsection 551(1.1) of the Act. Accordingly, the landlord is only entitled to recover rent for February.

### *Tenants' Claim for Subsection 51(2) Compensation*

The tenants claim for compensation pursuant to subsection 51(2) of the Act:

- (2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[emphasis added]

On the evidence before me, I find that the landlord began residing in the rental unit within a reasonable period after the effective date of the notice. The initial occupancy was delayed to complete some repairs, but this did not result in such a delay that the tenants are entitled to compensation pursuant to subsection 51(2) of the Act.

This portion of the tenants' claim is dismissed.

#### *Claim for Double the Security Deposit*

The tenants claim for double their security deposit for the landlord's failure to return the tenants' security deposit.

I find on a balance of probabilities that the tenants did receive a copy of the condition inspection report at the beginning of tenancy. On the basis of the evidence before me, I find that there are no issues of extinguishment arising from the parties conduct with respect to condition inspections.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The landlord made his application 24 February 2016, which included a claim for extensive damage to the rental unit. The tenancy ended 11 March 2016. The landlord received the tenants' forwarding address no later than 11 March 2016. As the landlord

made his application in time, the tenants are not entitled to return of double the security deposit.

Pursuant to the Act, the tenants are entitled to interest on their security deposit calculated pursuant to a prescribed rate. The interest payable on the security deposit is \$13.56.

This amount is offset against the landlord's award.

### *Rent Increase*

Pursuant to section 43 of the Act, a landlord may impose a rent increase only up to the amount:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director, or
- (c) agreed to by the tenant in writing.

The tenant suggested the amount of the rent increase and included it in writing in an email of 13 November 2014. Although email is not ordinarily a permissible form of service and is sometimes not found to be sufficient under the Act, using the provisions set out in subsection 71(2) of the Act, I find that this constituted delivery in writing. On this basis, the rent increase was not unlawful.

### *Filing Fees*

As the landlord has been more successful in these applications than the tenants, I order that the landlord is entitled to recover his filing fee. .

### Conclusion

The landlord has proven his claim to the following monetary award:

| <b>Item</b>                        | <b>Amount</b>     |
|------------------------------------|-------------------|
| Unpaid Rent Feb                    | \$1,600.00        |
| Yard                               | 200.00            |
| Holes in Walls                     | 100.00            |
| Cabinets and Glass; Counters       | 1,924.00          |
| Hardwood                           | 200.00            |
| Less Security Deposit and Interest | -763.56           |
| <b>Total Monetary Award</b>        | <b>\$3,260.44</b> |

I issue a monetary order in the landlord's favour in the amount of \$3,260.44. The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 12, 2016

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Residential Tenancy Branch