Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MND, MNDC, MNSD
CNR, MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant.

The landlord has applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for breach of an agreement; for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for return of all or part of the pet damage deposit or security deposit; and for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The hearing did not conclude on the first day scheduled and was adjourned from time to time for continuation, resulting in 6 separate hearing dates. The landlord and the tenant attended on all scheduled dates and were represented by legal counsel. Counsel made several objections, and allegations of unprofessionalism which I find contributed to the lengthy hearing. I made no findings with respect to the conduct of either counsel, and chose to concentrate on the issues of the parties.

On the first day of the hearing, the parties advised that the tenant and family have vacated the rental unit and therefore, the landlord's applications for an Order of Possession are dismissed as withdrawn. Similarly the tenant's application for an order cancelling a notice to end the tenancy is dismissed as withdrawn.

The parties provided evidentiary material in advance of the hearing, but issues were raised with respect to exchanging evidence on time. The landlord's counsel submitted a USB stick and 19 pages by facsimile, however that evidence is not considered, with the consent of the landlord's counsel. All other evidence has been reviewed and is considered in this Decision, by consent.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for liquidated damages, loss of rental revenue and a Stop Payment fee?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for aggravated damages and loss of quiet enjoyment?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this tenancy began on September 8, 2015 as a fixed-term, to expire in September, 2016, however the tenancy ended on May 5, 2016. The tenancy agreement was originally with a different landlord, and the rental unit was purchased by the current landlord in February, 2016. Rent in the amount of $4,400.00 per month was payable on the 9th day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit in the amount of $2,200.00 which is held in trust by the current landlord, and no pet damage deposit was paid. The rental unit is a 3-level single family dwelling with a double garage and extra parking at the back of the property. The bottom level has a self-contained suite which is also occupied by the tenant and his family. A copy of the tenancy agreement has been provided.

The tenant further testified that no move-in condition inspection report was completed at the beginning of the tenancy, and the tenant observed minor deficiencies when moving in, such as stains on carpets, stains and damage to window coverings, a damaged screen on the patio door, a crack in the window by the patio, the front glass was loose on kitchen drawers, mold in drawers, the dishwasher was missing the base piece, and carpeting was torn. The tenant brought those issues to the attention of the then landlord in an email, but did not ask for any repairs to be made. The parties had a good relationship and the issues were not a major concern to the tenant. The landlord at that time responded timely to some repairs requested including cleaning, and the tenant took on some on his own initiative. The repairs required when the tenant moved out were required when the current landlord purchased the rental home, but the tenant didn't bother the previous landlord about them.

The tenancy agreement contains a penalty clause, which would require the tenant to pay 2 months rent if the tenant moved out early. It states: "The Tenant agrees to pay to the Landlord as a remedy an amount of equal two months of the rent amount, if the tenant wishes to move out sooner than the end of the fixed term. This amount is excluded from the damage deposit. The tenant is responsible to give a one month notice to the Landlord starting from 1st of each month." The landlord told the tenant that she purchased the rental property for her own use and wanted the tenant to move out. The tenant told the landlord that the fixed term was still in place, and the landlord replied to let her know if the tenant wanted to move out early and no penalty would be charged. The landlord contacted the tenant again saying she wanted to use the property for her own use and if the tenants would allow the landlord to move into the lower level, rent would be decreased by $1,300.00. The tenant replied that he would find a place to move to, but refused to allow the landlord to move into the lower level of the rental home. The landlord told the tenant on more than 1 occasion to leave, and the penalty would be waived, but whenever the tenant tried to find

a place to move into, the landlord would change her mind saying she would charge the penalty. Emails with other prospective landlords have been provided.

On February 9, 2016 the tenant requested to sub-let so the tenant could move out early, but the landlord denied the request, stating that she would take responsibility to find another tenant, and if none was found, the tenant would have to pay the 2 month penalty. When the tenant refused, the landlord called the tenant a horrible person, saying she had to cancel a trip as a result of the tenant, and that the tenant is not a good Rabbi. The tenant felt it discriminatory, and later the landlord went around town slandering the tenant. The tenant only sought another unit because the landlord said there would be no penalty.

On February 16, 2016 the tenant told the landlord that water was leaking, and the landlord inspected, bringing with her a person she said was a professional, to inspect the window. The tenant's wife let them into the room, and found the landlord had wandered down to the lower level of the rental home looking in all rooms and in closets. When asked why she was there, the landlord smiled and laughed and said not to worry. The landlord did not take the privacy of the tenant and his family seriously. The following day, the tenant sent the landlord a letter advising that intrusive forms of inspection without reasonable notice was not okay.

On February 19, 2016 the tenant advised that the garage door was broken, and was not comfortable with the landlord being at the rental unit when the tenant wasn't home, and asked the landlord to send a professional. The landlord didn't arrange to have a professional fix it for 3 weeks. The landlord made one offer to schedule it, but it was on the Sabbath. It was urgent for the tenant to have it repaired because the rental home is on the corner of a busy street, and the tenant has a special needs daughter. It was important that the tenant's family had the safety of the garage, and the landlord was advised of that. The tenant asked the landlord to attend when the tenant was home, but the landlord arrived prior to that. The tenant's wife called the tenant saying there were people in the garage, and the tenant advised his wife to call police if she was afraid. Police arrived, and told the tenant that the landlord said the garage door could not be fixed. The police also advised the tenant that the landlord would be happy if the tenant moved out that day, and that the landlord would waive the penalty.

After that, the landlord attended the rental home on 3 occasions for a general inspection accompanied by police, and all 3 occasions were at the wrong time. The tenant had told the landlord that due to his faith, it would be better to visit other than between dusk on Fridays and dawn on Sundays. On one of the occasions, the landlord put her foot in the door and was aggressive. The tenant said it wasn't a good time due to the tenant's special needs child, and the landlord asked for proof that the child had special needs and called the tenant a liar. On more than 1 occasion during February and March the tenants noticed the landlord walking on the rental property without notice, and on more than 1 occasion had other people with her in violation of the tenant's privacy. The visits were extreme and unreasonable, and the landlord said it was her house so she was allowed.

On March 23, the tenant told the landlord that the kitchen sink needed repair on an urgent basis. It was leaking and the landlord told the tenant not to use it until it was fixed. The tenant called a plumber after receiving no response from the landlord from the tenant's email, and the plumbing bill was $308.00 which the tenant claims against the landlord. A copy of the invoice has been provided.

On March 28, 2016 the tenant was informed that the landlord had approached the tenant's employer, and an Affidavit sworn by the employer has been provided. The employer told the tenant that the landlord had said the tenant was very difficult, the landlord wants the tenant to move out; the tenant caused the

landlord to lose sleep, drink before going to sleep, and stress. The landlord also told the tenant's employer that the landlord went to another Senior Rabbi to discuss problems with the tenant. It bothered the tenant very much, being a Rabbi and fairly new to the community. The Senior Rabbi that the landlord spoke to has not received a good impression of the tenant, and it's the tenant's livelihood and his faith. The tenant's employer advised that regardless of the landlord's behaviour, because the tenant is a leader and a Rabbi, it's important for the tenant to keep his reputation intact, and that the best thing would be to resolve the problems by leaving the rental home. The tenant's employer also talked to the landlord about resolution, and the landlord agreed that the tenancy would terminate at the end of April, 2016 without penalty and the security deposit would be returned if there were no damages. The landlord also agreed to provide a letter of reference for the tenant. The tenant had until April 30 to find a house, and each party would drop their claims and move on.

On April 9, 2016 the tenant cancelled the post-dated cheque the landlord had for April's rent. The tenant testified that the agreement between the parties was a grace period to not pay rent for that month in order to find another place to live, and the tenant relied on that, believing that it was compensation for having to move out early. However, on April 17, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit. A copy has been provided and it is dated April 9, 2016 and contains an effective date of vacancy of April 28, 2016 for $4,400.00 of unpaid rent that was due on April 9, 2016. That surprised and concerned the tenant because it didn't fit with the agreement that the landlord had proposed. The tenant had not yet found a new home to move to, and 10 days was not enough time. The tenant disputed the notice, but has not paid any rent since the issuance of the notice.

On April 27, 2016 the landlord filed an application for dispute resolution alleging damages by the tenant, but the tenant hadn't yet moved out and no inspection was done. The landlord continuously dealt with the tenant in a demeaning manner. The tenancy agreement requires the tenant to have the carpets professionally cleaned at the end of the tenancy, and the tenant was happy to reimburse the landlord for a reasonable amount.

The tenant signed a lease for a new rental home in mid-April, but didn't move in until May 4, 2016. The keys were returned to the landlord on May 5.

In response to the landlord's claim for damages, the tenant testified that he did not use the dishwasher due to his faith, so has no knowledge of whether or not it was functional. The kitchen on the main floor of the home didn't have a microwave. Also at the beginning of the tenancy, the tenants cleaned out the cupboards and removed some doors or drawers because they got moldy from previous use. The window in the bedroom occupied by the tenant's daughter was never opened by the tenants who were very careful to keep it shut due to the daughter's special needs, because it would be easy to climb out. The tenant also hired 2 cleaners at the end of the tenancy and paid them.

The tenant had a lawyer attend as his agent for the move-out condition inspection, who also gave 30 days notice to the landlord to end the tenancy. It was an agreement for a grace period, and as soon as the tenant found a new place the lawyer got in touch with the landlord. Once the agreement was in place, the tenant cancelled the rent cheque for April. It was through the tenant's employer that the grace period was agreed to, who has also provided an Affidavit for this hearing.

The tenant paid the water utility bill, but not after the landlord purchased the building, or since January, 2016, and agrees to pay the most current bill.

The tenant claims double return of the $2,200.00 security deposit (or $4,400.00), recovery of 2 months' rent for loss of quiet enjoyment and delayed responses for repairs required, recovery of the cost of emergency repairs of $308.00, and recovery of the $100.00 filing fee for the cost of this application, for a total of $13,681.00, less the amount of the outstanding water utility bill and a reasonable amount for carpet cleaning. The tenant also agreed that he is responsible for light bulbs and garden bulbs.

The tenant's witness is an Articled Student and represented the tenant at the move-out condition inspection due to the strained relationship between the landlord and the tenant. There was also another fellow there, but the landlord didn't have an inspection report to complete. The landlord wanted the witness to simply look at different rooms, and pointed out damaged areas. There was no move-in condition inspection report to compare to.

The home is not new, perhaps 20 years old, and the witness described it as more rough around the edges for sure and well used. When the witness saw it, to a certain degree it was cleaned, although the toilet could have been cleaned. The witness was not present when the landlord took photographs but received copies at a later date. The landlord provided a list of 25 items that were defective or broken, printed on the back of photographs, which the witness saw perhaps 2 weeks later. The landlord didn't have a report to complete or one to compare to at the time, and the witness was never asked to compare the photographs to his memory of the condition of the rental unit when the witness attended.

The landlord testified that she viewed and agreed to purchase the rental home in November, 2015 and the deal closed at the end of January, 2016. While inspecting the home in November, 2015 there was no glass broken and appliances were in good working order. There were no marks on walls, the glass patio door was not broken, and the home contained 2 dryers, washers, stoves microwaves and a dishwasher. The landlord returned to look it over and talk to the tenant with a realtor on January 27, 2016 and the tenant gave the landlord post-dated cheques for the remaining months' rent to the end of the fixed term. The tenant indicated he wanted to stay, and the landlord offered to rent the lower level, but the tenant didn't agree so the landlord agreed to find another place to live.

The next contact between the parties was a text message from the tenant saying that the sink drain was blocked. The landlord went to the rental unit the night of January 30 and fixed it. The tenant texted later saying it worked well.

The tenant then said water was entering a window and should be looked at, so the landlord arranged for a tradesperson and an engineer to attend, and the tenant gave permission to enter on February 3, 2016. The landlord denies wandering around the rental home snooping, or that the tenant's spouse said anything to the landlord about that. The water was from a window that had been left open and the landlord had to pay $450.00 for the visit. A copy of the receipt has been provided.

On February 5, 2016 the tenant called the landlord saying he wanted to move out. The landlord had just moved into a new rental home, and her current landlord would not allow her to break her fixed term tenancy. The tenant then said he wanted to sublet, but refused the landlord's help.

On February 8, 2016 the tenant emailed asking to move out on March 9. The parties discussed it by email exchanges, and the landlord wanted to ensure a new tenant was a good one and asked the tenant to take photographs of the rental home so the landlord could help find a new tenant, but the tenant refused.

The tenant also sent the landlord an email about the garage door not working properly but wouldn't let the landlord check it. On February 24 the tenant allowed the landlord to enter the rental unit to check the garage door and the sink with a contractor. When they arrived, the landlord was not allowed entry, only the contractor, and the landlord had to wait at the door. The contractor fixed the sink, and looked at the garage door stating that he had to get a technician. The landlord emailed the tenant asking for permission to get it fixed, but the tenant didn't reply so it didn't get done. The parties agreed to a later date but no one was there when the landlord arrived. The landlord and technician went to check the garage door, the tenant's wife and children arrived and the tenant's wife called police. The landlord advised that she was fixing the garage door, and police said someone called saying there was a robbery taking place. The tenant and his father then appeared, scaring the landlord by yelling and shouting. The police told the landlord to leave, and the landlord had to pay the technician $300.00. An invoice has been provided.

The landlord was scared, so went to a synagogue to reach out to the Rabbi for help and mediation. The Rabbi said he would speak to the tenant to resolve the problem by drafting an email for the landlord to send to the tenant. The landlord denies talking about drinking, but did talk about stress, and discussed terms to end the tenancy. The landlord and the Rabbi exchanged emails about an agreement, and the landlord added that the security deposit would be returned if there was no damage, but at no time did the landlord agree to a grace period or free rent. Further, the tenant did not respond that there was an agreement to end the tenancy.

The landlord then received an email from the tenant's lawyer threatening a law suit, as well as an email from the tenant referring to suing.

The landlord denies threatening to evict the tenant, or harassing the tenant or entering the rental property unnecessarily or without the tenant's consent. The tenant's testimony of the landlord being on the property multiple times is not true. Repairs were done in a reasonable time, and the landlord never unreasonably withheld consent to sublet. The landlord never mutually agreed to end the tenancy.

The tenant's lawyer attended for the move-out condition inspection and the landlord took photographs after he left. The landlord testified that the terrible condition of the rental unit was heart breaking. In comparison to when the landlord purchased the rental home, at the end of the tenancy the kitchen drawer was on the floor, the window has a cross-break in it, the home was smelly inside, the microwave was gone, and the fridge was so messy and vey dirty inside. The carpets had lots of big spots, some was pulled out and there is a hole in it. The wall has a hole or a yellow mark, window blinds are very dirty, the dryer is broken and doesn't work, and the yard is very messy. The dishwasher cannot be repaired and needs to be replaced. The landlord testified that the photographs depict a true condition of the home after the tenant had moved out. A list of 25 items that were dirty or damaged was provided to the tenant, as well as a letter from the previous owner stating that stains on the carpet were pre-existing. The landlord was not able to re-rent it due to damages that need to be repaired, and testified that short-term rentals are hard to lease out. The landlord was able to get out of her lease with a $100.00 penalty to her landlord, and moved into the basement of the rental home on June 1, 2016.

The landlord testified that it cost her about $1,000.00 to have to the rental home cleaned, and the cost to replace the microwave is about $200.00.

The tenant also owes $393.57 for a water bill, a copy of which has been provided.

The landlord has provided an updated Monetary Order Worksheet dated May 24, 2016 claiming the following relief:

- $4,400.00 for unpaid rent for the month of April, 2016;
- $8,800.00 for loss of rental revenue;
- $8,800.00 for ending the tenancy early;
- $393.57 for unpaid water utilities;
- $259.40 for carpet cleaning;
- $451.24 for shade cleaning;
- $1,045.26 for broken glass and screen;
- $750.00 for cleaning;
- $525.00 for repairing kitchen drawers;
- $787.50 for garage door and window leak;
- $223.69 for garden lights;
- $650.00 for a broken clothes dryer;
- $500.00 for a broken Bosch dishwasher;
- $141.75 for changing locks;
- $500.00 for repairing the central vacuum;
- $500.00 for a Bosch microwave; and
- $136.69 for recovery of the filing fee and Stop Payment fee,

for a total claim of $20,064.10.

Analysis

Firstly, with respect to the security deposit, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of the tenancy, and the regulations go into detail of how that is to happen. I appreciate that the landlord was not the landlord at the beginning of the tenant's tenancy in the rental home, however the landlord did not ensure that a move-out condition inspection report was scheduled. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

A landlord is required to return a security deposit to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlord issued a notice to end the tenancy for unpaid rent, and made an application for dispute resolution claiming unpaid rent (among other things) prior to the end of the tenancy. The landlord's right to claim against the security deposit for unpaid rent is not extinguished. Therefore, I find that the tenant is not entitled to double recovery of the security deposit.

The *Act* also specifies how a tenancy ends, one of which is a mutual agreement in writing signed by the landlord and by the tenant. In this case, the tenant assumed the tenancy had ended because he was told that by his employer. That method is not sanctioned by the *Act,* and the landlord testified that she didn't have confirmation of the end of the tenancy until after the rent cheque was cancelled by the tenant. The

tenant believed the final month of the tenancy was a “grace period,” meaning that since the landlord wanted to end the tenancy the tenant would not have to pay rent. A landlord is only obligated to provide compensation for landlord’s use of rental property if the landlord serves the tenant with a 2 Month Notice to End Tenancy for Landlord’s Use of Property. That did not happen in this case, and I find that there was no written mutual agreement to end the tenancy or to waive the payment of rent. Therefore, I find that the tenant is responsible for the $4,400.00 rent from April 9 to May 8, 2016.

The parties had a fixed-term tenancy agreement to commence on September 9, 2015 and expiring on September 8, 2016. The tenancy agreement also specifies a “remedy” of 2 months rent if the tenant ends the tenancy earlier. During the course of the hearing, it was referred to by the parties and their counsel as a “penalty” which is contrary to the *Act*. The *Act* also specifies that terms that are contained in a tenancy agreement that are unconscionable are not enforceable, and a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Parties may enter into an agreement that specifies liquidated damages, which must be a true estimate of the costs associated with re-renting at the time of entering into the tenancy agreement, if the tenant ends the tenancy earlier than the expiry date of the fixed term. The tenant was happy to enter into that agreement with the previous landlord, and having found that the parties did not mutually agree in writing to end the tenancy, I see no reason for it to not be an enforceable clause. I find that the tenant is indebted to the landlord for the liquidated damages of $8,800.00.

I am not, however satisfied that the landlord mitigated any loss of rental revenue. The emails suggest ending the tenancy, and I find that the landlord was well aware that the tenant was moving out. The landlord testified that the rental unit could not be re-rented due to its condition, however I also find that the landlord has no intention of re-renting and never did. Therefore, no damage or loss exists as a result of the landlord’s ability or inability to re-rent, and the landlord’s application for monetary compensation for loss of rental revenue is dismissed.

The landlord has provided evidence of having been charged by her financial institution a fee of $7.00 for Stop Payment of the tenant’s rent cheque. A landlord may charge a late fee, if it’s contained in the tenancy agreement, and any fee charged by a landlord’s financial institution for a returned cheque given by a tenant, and therefore, the $36.00 claim by the landlord is allowed at $7.00.

The tenant does not dispute the utility water bill, and I find that the landlord is entitled to $393.57.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party’s failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the landlord’s claim for damage to the unit, site or property, I have reviewed the emails provided and other evidentiary material. The tenant testified that damages were pre-existing but didn’t bother the previous landlord about the issues because they had a good relationship. A tenant has an obligation to notify a landlord if repairs are required.

The tenant testified that the keys were returned to the landlord on May 5, 2016. A landlord is responsible for re-keying at the end of the tenancy, and therefore, the landlord's claim of $141.75 for changing locks is dismissed.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. I don't accept that because it may not have been reasonably clean at the beginning of the tenancy that the tenant's obligation in that regard should be waived, and there is no authority for that. The landlord testified that she spent about $1,000.00 and the Monetary Order Worksheet claims $750.00 for cleaning and $451.24 for shade cleaning. The tenant testified that he paid 2 people to clean at the end of the tenancy, however considering the photographs provided by the landlord, I find that there was more cleaning to be done. I am not satisfied that the landlord has established $1,000.00 as testified, or $750.00 and $451.24 for shade cleaning as set out in the Monetary Order Worksheet. I allow 8 hours at $20.00 per hour for cleaning an empty house, or $160.00.

The tenant agreed to reimburse the landlord a reasonable amount for carpet cleaning, and I have reviewed the receipt and the tenancy agreement which requires that at the end of the tenancy. I find that the landlord has established the $259.40 claim for carpet cleaning. Further, the tenant does not dispute the garden lights, and I find that the landlord has established the $223.69 claim.

With respect to the landlord's claims of: $1,045.26 for broken glass and screen; $525.00 for repairing kitchen drawers; and $787.50 for garage door and window leak, $650.00 for a broken clothes dryer; $500.00 for a broken Bosch dishwasher; $500.00 for repairing the central vacuum; and $500.00 for a Bosch microwave, I have considered the testimony of the parties. Also, the tenant's witness who attended for the move-out condition inspection on behalf of the tenant at the end of the tenancy testified that the rental home was older and well-used and rough around the edges for sure, and no one disputed that testimony. Any such award must not put the landlord in a better position financially than the landlord would be if the damage or loss didn't exist. In other words, to provide the landlord with a new window when there wasn't a new window there at the beginning of the tenancy would put the landlord in a better financial situation at the tenant's expense. In the absence of any condition inspection reports, and in the absence of any evidence of how old any of the items were at the beginning of the tenancy, I am not satisfied that the landlord has established that they need to be repaired or replaced as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and the applications for those items are dismissed.

With respect to the tenant's claim of loss of quiet enjoyment of the rental unit, I find it absolutely appalling that the landlord would attend a synagogue to discuss a tenant. I am not at all satisfied that the landlord had no other options, nor am I satisfied that the landlord did so to ask for mediation. The landlord did so to tell on the tenant hoping that the Rabbi would deal with the tenant. The *Residential Tenancy Act* does not permit me to award monetary compensation for defamation or to punish a party. However, the *Act* does permit me to determine whether or not the landlord has failed to comply with the *Act* and whether or not the circumstances establish that the failure was aggravated by the actions of the landlord, and I find that they were. The landlord denies the several occasions of walking around on the rental property or snooping in the rental unit unaccompanied by either of the tenants. The tenant's spouse who allegedly witnessed that did not testify. However, I agree with the closing submissions of the tenant's counsel that the tenant's right to quiet enjoyment was infringed upon by the landlord's invitation to involve either Rabbi or the tenant's employer. I also find that the infringement caused undue stress and aggravation to the tenant and his family, for absolutely no legitimate reason.

The tenant claims the equivalent of 2 months rent, which is approximately the amount of time that the current landlord was the tenant's landlord after purchasing the rental property. The amount includes the untimely response by the landlord to make repairs, particularly to the garage door which rendered the rental unit unsafe for the tenant's special needs daughter, and the tenant told the landlord that. I also accept the undisputed testimony of the tenant that the landlord asked the tenant to prove the daughter was special needs and called the tenant a liar. I find that the tenant has established aggravated damages as claimed in the amount equivalent to 2 months rent, or $8,800.00.

The *Residential Tenancy Act* specifies that emergency repairs may be made by a tenant and reimbursed by a landlord in certain situations. The *Act* also defines emergency repairs:

33 (1) In this section, **"emergency repairs"** means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

In this case the tenant claims $308.00 for the cost of repairs to the kitchen sink and the tenant testified that he contacted the landlord on March 23 stating the kitchen sink needed repair on an urgent basis, and the landlord told the tenant to not use it until it was repaired. It leaked on top and after not receiving a response from the landlord, the tenant called a plumber who said that it needed to be fixed right away. The tenant paid the plumber and has provided an invoice for $308.00. I am satisfied that the repair constitutes an emergency repair, and the tenant's application for reimbursement in that amount is granted.

In summary, I find that the landlord has established a claim of $4,400.00 for unpaid rent from April 9 to May 8, 2016; $7.00 for the returned cheque fee; $8,800.00 for liquidated damages; $393.57 for the water utility; and $259.40 for carpet cleaning; $223.69 for garden lights and $160.00 for cleaning, for a total of $14,243.66.

The tenant is entitled to recovery of the $2,200.00 security deposit; and having found that the tenant has established additional claims of $308.00 for the cost of emergency repairs and $8,800.00 for loss of quiet enjoyment and aggravated damages, I set off the awards, and I grant a monetary order in favour of the landlord for the difference in the amount of $2,935.66.

Since both parties have been partially successful with the applications, I decline to order that either party recover filing fees.

Conclusion

For the reasons set out above, the landlord's applications for an Order of Possession are hereby dismissed as withdrawn, and the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

I hereby order the landlord to keep the $2,200.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,935.66.

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: September 02, 2016

Residential Tenancy Branch