Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNDC FF – Landlord's Nov. 6, 2015 Application
MND MNSD MNDC FF - Landlord's Nov. 27, 2015 Application
MNR MNDC MNSD FF – Tenant's March 31, 2016 Application

Introduction

This matter convened on June 30, 2016 for 66 minutes at which time the hearing time expired. On July 4, 2016 I issued an Interim Decision which summarized the submissions of June 30, 2016, confirmed my oral orders that these matters would reconvene during the morning of September 6, 2016 and September 7, 2016. As such, this Decision must be read in conjunction with my July 4, 2016 Interim Decision.

The hearing reconvened on September 6, 2016 for 150 minutes and again on September 7, 2016 for 136 minutes. The three hearings totalled 352 minutes from (5 hours 52 minutes). Both parties were provided with the opportunity to present relevant oral evidence; respond to each other's submissions; to ask questions; and to make relevant submissions. All relevant documentary evidence; written submissions; and oral submissions were considered. Given the volume of relevant submissions, although they were considered, they are not all stated in this Decision.

Issue(s) to be Decided

1) Has the Landlord proven entitlement to monetary compensation for repairs and cleaning of the rental unit?
2) Is the Landlord entitled to monetary compensation equal to an amount he asserts the Tenant was paid for subletting the basement of the rental unit?
3) Is the Landlord entitled to compensation for landscaping and yard maintenance for the period of October 2014 to October 2015?
4) Has the Tenant proven entitlement to monetary compensation regarding receipt of a 2 Month Notice to end tenancy?
5) Has the Tenant proven entitlement to monetary compensation for emergency repairs and a replacement stove?
6) Has the Tenant proven entitlement to monetary compensation for his labour costs for installing a wood floor in the rental unit?
7) Is the Tenant entitled to the return of double his security deposit?

Background and Evidence

The Tenant began occupying the upper level of the rental house in October 2005 after he entered into a tenancy agreement with the previous owner/agent of the rental property. In 2011 the Tenant entered into a new tenancy agreement with the previous owner/agent and rented the entire house (upper and lower levels).

On October 16, 2014, nine years after the Tenant began occupying the rental property the Landlord purchased the rental property. The Landlord testified that a realtor had initially offered to purchase the rental house from another realtor and then assigned that purchase of the house to the Landlord. The Landlord informed the seller of the assignment of purchase on October 15, 2014 and the Landlord took possession of the property on October 16, 2014. The Landlord stated that prior to his purchase of the house he did not have a building inspection conducted on the house and he did not see the bank appraisal which had been completed by the second realtor who had assigned the purchase to him.

The Landlord testified that he had purchased the house “sight unseen”. The Landlord submitted that after he purchased the house he did a walk through on October 16, 2014 during which he took photographs of everything.

The Landlord stated he brought two complete copies of the new tenancy agreement and addendum with him to have the Tenant sign on October 16, 2014, during the Landlord’s walk through. The Landlord asserted he left a full copy of the tenancy agreement and addendum with the Tenant that day. The Landlord submitted that he and the Tenant entered into a new written fixed term tenancy agreement which began on October 16, 2014 which was set to expire on October 31, 2015. Rent of $2,012.00 was payable on the first of each month.

The Tenant disputed the Landlord’s submissions and stated he was only provided a copy of the first and last page of the tenancy agreement. He asserted the Landlord told him it was only a name change and the terms of the Tenant’s previous tenancy agreement would remain the same. The Tenant submitted that he did not sign or initial page two of the tenancy agreement, nor did he sign the addendum as he was never provided a copy at that time. The Tenant asserted he never saw or received copies of the addendum or the other pages of the tenancy agreement until he received the Landlord’s evidence packages.

The Landlord described the rental property as being a single detached home built in approximately 1940. He stated the house was approximately 2000 square feet and had two levels. Each level of the house had three bedrooms and one bathroom.

The Tenant disputed the Landlord’s submission and stated he had checked the details of the house and it was built in 1914. He asserted the top floor was 1000 square feet and the lower level was 800 square feet.

The Tenant paid his original security deposit of $500.00 in 2005 when he had rented only the upper level. When the Tenant began renting the entire house in 2011 he increased his security deposit by an additional $450.00 on December 6, 2011 for a total security deposit paid of $950.00. The Landlord confirmed the $950.00 security deposit was transferred in the disbursements of his purchase of the property in October 2014.

On September 1, 2015 the Landlord sent the Tenant an email informing the Tenant that rent for the “New 1 year lease contract starting November 1, 2015” would be $1,700 per month for the upstairs; plus $500.00 per month for the garage; plus a minimum of $1,600.00 for the lower level; a total of $3,800.00. The Landlord also stated the following in that email “If you would like to sublet the downstairs for equal or more than $1600 that is up to you.”

The Tenant responded to the Landlord’s aforementioned email fifteen minutes after it was sent on September 1, 2015. The Tenant replied as follows:

Please check with government regulation
You cannot raise the rent as you please !!!

[Reproduced as written]

On September 10, 2015 the Tenant received, via registered mail, a 2 Month Notice to end tenancy for landlord's use signed by the Landlord on September 1, 2015. On September 11, 2015 the Tenant filed an application for Dispute Resolution to dispute the 2 Month Notice. That application was scheduled to be heard on November 13, 2015.

On October 21, 2015 the Landlord issued the Tenant a 1 Month Notice to end tenancy for cause. The 1 Month Notice listed an effective date of November 30, 2015 and the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
  - Damage the landlord's property
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit without landlord's written consent

On November 2, 2015 the Landlord issued the Tenant a 10 Day Notice to end tenancy for unpaid rent of $2,012.00 that was due on November 1, 2015.

On November 3, 2015 the Tenant filed an application for Dispute Resolution to dispute the 10 Day Notice to end tenancy. That application was not scheduled to be heard until January 6, 2016.As the tenancy ended November 16, 2015 when the keys were returned to the Landlord the application to cancel the 10 Day Notice was dismissed.

As stated above, on September 11, 2015 the Tenant filed an application for Dispute Resolution. That application for Dispute Resolution was filed seeking orders to dispute the 2 Month Notice; dispute an additional rent increase; and to recover the cost of his filing fee. That application was heard on November 13, 2015, as referenced on the front page of this Decision.

From the November 13, 2015 Decision the Arbitrator, who conducted the November 13, 2015 hearing, found that the tenancy was a month to month tenancy because the Tenant had not initialed page 2 of the new tenancy agreement therefore there the Arbitrator concluded the Tenant did not agree that he would have to move out at the end of the fixed term on October 31, 2015.

In addition, the aforementioned Arbitrator noted that the Tenant informed the Landlord he would be moving out of the rental unit during the hearing. The Arbitrator determined the Tenant was not required to pay rent for November 2015 as the Tenant was entitled to compensation equal to one month's rent for being issued the 2 Month Notice; as required pursuant to section 51 of the *Act.* As such, the Arbitrator determined the Tenant was no longer disputing the 2 Month Notice and issued the Landlord an Order of Possession effective November 30, 2015; the corrected effective date of the 2 Month Notice.

The Landlord testified he was of the opinion the 1 Month Notice for cause and the 10 Day Notice for unpaid rent cancelled out the 2 Month Notice for landlord's use as they were issued after the 2 Month Notice. He asserted he was a new landlord and was not fully aware of the *Residential Tenancy Act (*the *Act*).

The Landlord now seeks monetary compensation of $25,000.00 comprised of as follows: $1,942.50 as estimated for removal and replacement of garage door (the door has not yet been replaced); $945.00 estimated cost for one year of yard maintenance; $800.009 estimated cost for stove replacement – age unknown; $157.50 estimate cost to install stove and natural gas pipe; $25.73 registered mail costs for service of evidence; $100.00 to unplug the kitchen drain on December 2, 2014 as per the receipt; $18,000.00 for revenue earned by the Tenant who sublet the basement suite without written permission from the Landlord; $989.06 for the actual cost to replace the stove; $654.26 ($424.25 + $222.19 + $7.82) actual amounts paid for parts and supplies needed to repair and clean the rental unit; and $2,782.50 for estimated costs for labour to conduct the work.

In support of the items being claimed the Landlord submitted photographs which he testified were all taken on November 16, 2015; except for the pictures of the garage door which he stated were taken on October 16, 2015 and May 27, 2015. The Landlord confirmed that he had not submitted any other photographs taken from when he first purchased the property on October 16, 2015 nor did he submit copies of a move in condition inspection report form; although he stated he had a copy of one.

The Landlord testified that he did not seek to recover the $100.00 plumbing costs from December 2014 sooner because he alleged the Tenant told him they would discuss it at the end of the tenancy when they discussed deductions off his security deposit. The Tenant denied that submission stating he never once told the Landlord he could make deductions from his deposits.

All of the written estimates submitted by the Landlord were issued by the same Limited company; a company the Landlord testified he was not associated with. The Landlord asserted he used this company to provide the written estimates; however, the work was performed by the Landlord himself.

Upon review of the Landlord's first application the Landlord withdrew his request for $800.09 for the new stove/oven. He stated the $800.09 was an estimated amount which he withdrew in favor of the actual amount claimed on his second application of $989.06.

The Landlord stated he was at the rental unit on May 27, 2015 to conduct an inspection with the bank appraiser. He asserted that May 27, 2015 was the first time he noticed the garage door was broken and he had noticed there was a stainless steel stove in the rental unit. The Landlord stated the Tenant had placed the stove out on the deck for several months and then argued the Tenant never told him the stove broke.

The Landlord later submitted the original white stove was still in the rental unit when he was at the appraisal in May 2015. Throughout the remainder of his testimony the Landlord asserted the first time he found out about the broken stove was when he regained possession on November 16, 2015 and saw the stove sitting away from the wall.

The receipts submitted by the Landlord included, in part, the followings items: light bulbs; closet doors hardware; replacement blinds; cleaning products general and for stove; new deadbolt locks; and new door handles. The Landlord asserted the Tenant did not return all keys to the rental unit. Upon further clarification the Landlord stated he did not know exactly how many keys the Tenant had been given at the start of the tenancy. He said he received a "pile of keys" from the Tenant and the Tenant could not tell him if his sublet tenants had returned all of their keys. The Landlord stated the Tenant did not return the garage door remotes.

The Landlord testified he completed the repairs and renovations over a period of about 2 ½ months. He stated his new tenants occupied the rental property as of February 1, 2016.

The Tenant disputed all items claimed by the Landlord. He asserted the company listed on the Landlord's estimates did not exist. He said he searched that company and found nothing so he called the telephone number listed on the estimate documents. He said when he called the Landlord answered the phone. He said shortly afterwards he had his wife call the same number and another man answered who told his wife he was the Landlord's business partner and their business was renovation work. The Landlord did not dispute this submission.

The Tenant testified that he first informed the Landlord the stove broke in early January 2015. He said the Landlord had it repaired once and when it broke again they were told it could not be fixed. He said it was at that time the Landlord simply stopped responding to his repair request emails and texts so he purchased a new stove and paid to have it installed. The Tenant stated he took the stove and new gas pipe with him when he moved out and placed the old stove back inside. He did not have the old stove hooked up to the gas again because it was broken.

The Tenant asserted the Landlord's photographs of the garage door were taken on October 16, 2014 and not in May 2015. He described the pile of doors that were in both photographs and indicated that those doors were not inside the garage in May 2015; therefore, they would not be shown in a picture that was taken in May 2015. The Tenant argued the garage door was old and it simply broke due to normal wear and tear prior to the Landlord purchasing this property. He stated he repaired the door himself and noted how both photographs submitted by the Landlord displayed the exact same condition of the garage door.

The Tenant asserted there was no bank appraiser at the rental unit in May 2015 as those appraisals were conducted in November and/or December 2014. The Tenant argued that if the Landlord had been at the rental unit in May 2015 looking at the garage door, he would have seen the broken stove sitting on the deck which was visible from the garage. He noted the Landlord's own testimony disputed the allegation that the Landlord was not aware the stove had broken prior to the end of the tenancy.

The Tenant submitted evidence of his previous tenancy agreement which indicated he was not responsible for lawn maintenance. He denied signing a tenancy addendum or anything that required him to conduct lawn maintenance; even though he alleged he and his wife took care of the gardens during their tenancy. He asserted that he rented the entire house and was given permission from the previous owner to rent out the basement suite after he had had problems with previous tenants when he first moved into the upper level. He stated that is why he began renting the entire house.

The Tenant denied leaving the rental unit dirty or requiring repairs that were above normal wear and tear. He submitted evidence of a receipt he paid for the cleaning completed at the end of

his tenancy. The Tenant admitted that he had not looked inside the stove that was located in the lower suite so that may have been missed in the cleaning.

The Tenant testified he returned all keys to the Landlord and confirmed that he did not give the Landlord the garage door remotes. He asserted the garage remotes were his own property as the previous owner did not provide him with remotes.

The Tenant filed his application for Dispute Resolution seeking $11,131.00 which is comprised of: $950.00 for the return of his security deposit; $4,024.00 compensation equal to two month's rent as the Landlord re-rented the units and did not occupy the rental property; $2,012.00 for compensation for November 2015 rent due to the 2 Month Notice (the Tenant did not pay rent for November 2015); $200.00 for the gas pipe; $500.00 to remove old and install new gas pipe; $1,200.00 yard maintenance performed by Tenants; $2,000.00 labour to install wood floor; $245.00 past filing fees and registered mail costs.

The Tenant testified that by the end of the tenancy he and the Landlord were "really fighting". He noted that the Arbitrator of the November 13, 2015 hearing had him provide the Landlord with his forwarding address during that hearing. He noted that the Landlord used that same address as his service address on both of the Landlord's applications for Dispute Resolution which were filed in November 2015. The Tenant confirmed he and the Landlord conducted a move out walk through on November 16, 2015 at which time the Landlord had already been given his forwarding address; however, no condition inspection report forms were completed by the Landlord during that inspection.

The Landlord confirmed receipt of the Tenant's forwarding address during the November 13, 2015 hearing and again in writing with the Tenant's evidence and application submissions.

The Landlord disputed the Tenant's submissions regarding him not receiving the full tenancy agreement and addendum when they were signed on October 16, 2014. He asserted he provided the Tenant with copies of both completed documents. The Landlord questioned why the Tenant would sign a legal document if he only saw one or two pages of a multi-page document.

Analysis

The *Residential Tenancy Act* (the *Act),* the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to both these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

After careful consideration of the foregoing, documentary and oral submissions, and on a balance of probabilities I find, pursuant to section 62 of the *Act,* as follows:

Landlord's Application

The *Residential Tenancy Act* (the *Act),* the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) provisions regarding the Landlord's application:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 37of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and return all keys issued to them to the landlord.

Section 25 of the *Act* stipulates, in part, a landlord is required to pay all costs associated with rekeying or otherwise altering the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit.

Residential Tenancy Policy Guideline 1 provides that normal wear and tear or reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces that cause wear to an item given its age. An example of normal wear and tear would be gradual deterioration of the paint finish on a wall that would occur from reasonable washing or appliance parts breaking down due to regular daily use as the appliances age. I concur with this policy and find it is relevant to the matters currently before me.

In addition, Residential Tenancy Policy Guideline 1 provides the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. As stated above, I concur with this policy and find it is relevant to the matters currently before me.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of sufficient evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The burden to prove a monitory claim for damages to a rental unit rests with the applicant; in this case the Landlord. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred during a

tenancy. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

Regarding Repairs (Labour and Materials)

After careful consideration of the foregoing I favored the evidence of the Tenant. I favored the evidence of the Tenant over the Landlord's evidence, in part, because the Tenant's submissions were forthright, consistent, and credible. The Tenant readily acknowledged he did not look inside the lower suite's stove after the house had been cleaned and he provided reasonable explanations as to how the stove and garage door broke given their age. In my view the Tenant's willingness to admit that fault when he could easily have stated he did have the inside of the downstairs stove cleaned lends credibility to their evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Notwithstanding the Landlord`s initial submissions that he was in no way involved with or related to anyone who owned or operated the alleged repair company who provided his written repair estimates, the Landlord did not dispute the Tenant's submissions that the aforementioned company did not exist. Nor did the Landlord dispute the Tenant`s submissions that the Tenant and his wife had called the telephone number listed on those estimates and first spoke to the Landlord and then his business partner.

Furthermore, I find it presumptuously suspicious that the Landlord failed to provide evidence of the condition of the rental property as of the date he purchased the property on October 16, 2014; as by his own submissions he took numerous photographs on that date. I find that the Landlord's explanation that he was unaware of what evidence should be submitted to be improbable given the circumstances presented to me during this hearing and the fact that he submitted photographs of the garage door allegedly taken on October 16, 2014 and May 27, 2015. Rather, I find given how this tenancy became acrimonious, and in consideration that the Landlord became aware of the consequences of serving the Tenant a 2 Month Notice for landlord`s use during the previous hearing, I find the Landlord`s explanations regarding his failure to provide evidence of the condition of the property as of October 16, 2015 to be improbable given the circumstances presented to me during the hearing.

After careful consideration of the above, I find the Landlord provided insufficient evidence to prove the Tenant breached the *Act* and caused damages to the rental unit, above normal wear and tear, during the period of October 16, 2014 and November 16, 2015. Rather, I conclude the majority of the damages were in existence at the time the Landlord purchased the property "sight unseen". It is reasonable to conclude the Landlord ought to have done his due diligence in

negotiating a fair market value so all existing damages and the actual condition of the property would have been reflected in the Landlord's purchase price. By his own submissions the Landlord chose to purchase this property sight unseen, without a building inspection, and without a building appraisal.

In the absence of condition inspection report forms, proof of the actual age of the appliances, or irrefutable photographic evidence, I find there was insufficient evidence before me to prove the actual condition of the rental unit, its contents, and the property as of October 16, 2014 which was the start of this tenancy between this Landlord and Tenant. Accordingly, I dismiss the Landlord's claims for: the garage door; gas stove and installation; washroom handle; all door handles and dead bolt locks; light bulbs; closet door parts; and all labour costs associated with the aforementioned renovations and/or repairs. The aforementioned claims are dismissed, without leave to reapply.

Regarding Cleaning

The Tenant acknowledged that he had not checked inside the downstairs stove to confirm the cleaning person he had hired had cleaned it. Therefore, I accept the Landlord's photographic evidence as to the condition of the stove and I grant him monetary compensation comprised of $7.82 for the stove cleaner, as claimed, plus $50.00 labour costs based on $25.00 per hour x 2 hours for a total award of **$57.82**, pursuant to section 67 of the *Act.*

Landscaping and Sublease Amounts Claimed

If the Landlord was of the opinion the Tenant had been breaching the *Act* by not taking care of the yard work or by renting out the basement suite, the Landlord was required to take steps to mitigate or minimize any losses resulting from those actions by bringing an application for Dispute Resolution forward sooner, pursuant to section 7 of the *Act.*

The Landlord has sought $945.00 an estimated cost for a landscaping contract, which the Landlord did not pay for, plus $18,000.00 for a share of the Tenant's alleged revenue from subleasing the basement suite. As stated above, the dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act.* The *Act* does not provide jurisdiction for an application for a loss that could have been suffered or for a claim against someone else's revenue or earnings. Accordingly, I decline the claims for $945.00 and $18,000.00 respectively, for want of jurisdiction. The Landlord is at liberty to seek a remedy against the former owner through the court that holds competent jurisdiction.

Registered Mail Costs

Even had the landlord been fully successful with his application or in opposing the Tenant's application, a residential tenancy arbitrator does not have jurisdiction to award items in the nature of "fees and disbursements" incurred in the dispute resolution process, such as costs incurred for a service method choice. An arbitrator is limited to awarding recovery of any filing fee. Accordingly, I declined the Landlord's claim for registered mail fees and disbursements, for want of jurisdiction. The Landlord is at liberty to seek a remedy against the former owner through the court that holds competent jurisdiction.

Plumbing Costs

In consideration that the rental house was 102 years of age; and in absence of sufficient evidence to prove the drains clogged due to the Tenant's negligence; I find the Landlord submitted insufficient evidence to prove his claim for $100.00 plumbing costs. Accordingly, the $100.00 claim is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

After consideration of the Landlord's minimal success with his application; I award recovery of the filing fee in a minimal amount of **$50.00**, pursuant to section 72(1) of the Act.

Landlord's monetary award:

As stated above, the Landlord has been awarded monetary compensation of **$107.82.** Section 72(2)(b) of the *Act* provides that the arbitrator may offset monetary awards against the Tenant's security deposit. Therefore, I order the $107.82 award to be deducted from the Tenant's $950.00 security deposit which leaves a balance of the security deposit **owed to the Tenant of $842.18**.

Tenant's Application

The *Residential Tenancy Act* (the *Act),* the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) provisions specific to the Tenant's application:

Section 51(2) of the *Act* stipulates that in addition to the amount payable under subsection (1), if 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 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.

As stated above, Residential Tenancy Policy Guideline 1 provides the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. I concur with this policy and find it is relevant to the matters currently before me.

Residential Tenancy Policy Guideline 11 stipulates a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. Also, as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given. I concur with this policy and find it is relevant to the matters currently before me.

Compensation for the 2 Month Notice to end tenancy

Notwithstanding the Landlord's submission that he was of the opinion that the subsequent notices to end tenancy cancelled out the 2 Month Notice, a legally binding Decision was issued November 13, 2015 whereby the 2 Month Notice was considered to be: valid; in full force and

effect; and undisputed. As such the Landlord was granted an Order of Possession based on that 2 Month Notice effective November 30, 2016.

In addition, the previous Arbitrator ordered in the November 13, 2015 that the Tenant was not required to pay November 1, 2015 rent as the compensation equal to one month's rent pursuant to section 51(1) of the *Act.* The undisputed evidence before me was the Tenant had not paid rent for November 2015 and the Tenant had not given the Landlord 10 days written notice to end the tenancy prior to the effective date of the 2 Month Notice.

Res judicata is a doctrine that prevents rehearing of claims and issues, arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case. Based on the aforementioned I hereby dismiss the tenant's application without leave to reapply.

Upon review of the foregoing, I find there is no provision under the *Residential Tenancy Act* (the *Act)* which would allow the matter of the compensation equal to one month's rent pursuant to section 51(1) of the *Act* or the validity of the 2 Month Notice to be reconvened and reheard in this hearing; as to do so would constitute res judicata. Accordingly, I declined to hear the Tenant's request for $2,012.00.

I accept the undisputed evidence that the rental unit was not occupied by the Landlord or their family members for the period of a full 6 months after the Tenant had vacated the rental unit. Rather, the Landlord renovated the property over a period of approximately 2 months and then rented out the upper and lower levels to new tenants

Accordingly, I find that steps had not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act,* as listed on the 2 Month Notice*.* Accordingly, I grant the Tenant's application in the amount of **$4,024.00** (2 x $2,012.00 monthly rent), pursuant to section 67 of the *Act.*

<u>Claim for stove(range/oven) and natural gas pipe repair and replacement</u>

Section 33(1) of the *Act* defines emergency repairs which includes repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property.

Section 33(5) of the *Act* stipulates a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and the tenant provides the landlord with a written receipt for each amount claimed.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property

even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

Furthermore, Policy Guideline 6 states that in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed. I concur with this policy and find it is relevant to the issues before me.

The irrefutable evidence was the natural gas line which was connected to the stove began to leak and the stove continued to break down. Replacement of that gas line and stove were arranged by the Tenant. I accept the submissions from the Tenant that a leaking natural gas line meets the definition of emergency repairs, pursuant to section 33 of the *Act.*

After consideration of the evidence regarding the Landlord's insistence on raising the rent and the breakdown of the landlord/tenant relationship which followed, I accept the Tenant's submissions that he informed the Landlord of the continued problems with the natural gas line and the broken stove and the Landlord simply refused or neglected to respond; which left the Tenant to take action to arrange the replacement of the gas line and stove.

In determining the amount to be award to the Tenant in response to his claim of $200.00 for the gas line plus $500.00 for the stove (range/oven), I must first consider that the Tenant removed the gas line and stove he had purchased; took them with him when he moved out; and then later benefited financially from the sale of those items. Based on the aforementioned I find the Tenant is not entitled to reimbursement of the purchase costs for the gas line and stove from the Landlord, as those items were not left in the possession of the Landlord and the Landlord received no benefit from their purchase.

In addition, I must consider the issue of emergency repairs in relation to the Tenant's quiet enjoyment of the rental unit, pursuant to section 28 of the *Act.* In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the rental building would deteriorate occupant comfort and the long term condition of the rental unit.

I find it undeniable that the Tenant suffered a loss of quiet enjoyment on the day the natural gas line broke on February 18, 2015 and during the period when he attempted to have the Landlord repair the stove until April 1, 2015 when he purchased the new stove. As a result, after consideration of Policy Guideline 6 and the evidence before me regarding the attempts made from the Tenant to have the Landlord enact the repairs, I find the Tenant is entitled to compensation for that loss of quiet enjoyment in the amount 5% of the daily rent of $66.15/day for the 41 day period for a total award of **$135.71**, pursuant to section 67 of the *Act.*

Regarding Yard Maintenance

In support of his claim for compensation regarding yard maintenance, the Tenant relied on a tenancy agreement he had entered into with the form owner which included a statement regarding yard maintenance being included. The Landlord submitted a different version of a previous tenancy agreement with the previous owner that did not include yard maintenance.

After consideration of the aforementioned conflicting evidence, I find the Tenant submitted insufficient evidence to prove he took actions to minimize the alleged loss of yard maintenance services. If the Tenant truly was entitled to year round yard maintenance services, he ought to have sought a remedy back in October 2014 or shortly afterwards, as required by section 7 of the *Act.* Accordingly, I find there was insufficient evidence to prove the $1,200.00 claim and it is dismissed, without leave to reapply.

Wood Flooring Costs

By his own submission the Tenant stated he entered into an agreement with the previous owner for the cost of his labour and materials to install a wood floor. The *Act* does not govern contracts for services. Accordingly, I decline the claim for $2,000.00 for labours costs, for want of jurisdiction. The Tenant is at liberty to seek a remedy against the former owner through the court that holds competent jurisdiction.

Previous Filing Fees and Mail Costs

In response to the request for reimbursement of filing fees relating to previous applications, filing fees are determined by the arbitrator on a case by case basis for each individual application. Therefore, I find there is no provision under the *Residential Tenancy Act* (the *Act)* which would allow the Tenant's request for reimbursement of previous filing fees to be reconvened and reheard in this hearing; as that would constitute res judicata. Accordingly, I declined to hear those requests.

As stated above, the *Act* does not provide for claims for mailing fees related to a service method choice. Accordingly, I declined the Tenant's claim for registered mail fees and disbursements, for want of jurisdiction.

Regarding Security Deposit

Notwithstanding the Tenant's submission that he paid $500.00 as the security deposit in October 2005 when for his first tenancy agreement; in calculation of any interest owed I must consider the full deposit of $950.00 from the subsequent tenancy agreement he entered into on December 6, 2011 when the Tenant rented the entire house. If there was interest owed on the $500.00 for the period of October 2005 to December 5, 2011 the Tenant must seek to recover that interest from the previous owner.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $950.00 deposit since December 6, 2011. As indicated above, the security deposit of $950.00 was considered in the offset amount in the Landlord's application above which left a balance owed to the Tenant of **$842.18**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, pursuant to section 72(1) of the Act.

As listed above, the Landlord is hereby ordered to pay the Tenant the sum of **$5,101.89** ($4,024.00 + $135.71 + $842.18 + $100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **$5,101.89.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Landlord was minimally successful with his application and was granted compensation of **$107.82** which was offset against the Tenant's security deposit currently held in trust by the Landlord.

The Tenant was partially successful with his application and was award $4,259.71 plus the $842.18 balance of his security deposit for a total monetary order amount of **$5,101.89.**

This decision is final, legally binding, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 16, 2016

Residential Tenancy Branch