Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOAL HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, MNDC, OLC, RP, RR, OPR, MNR, MNSD, FF

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent dated July 22, 2016. They also seek a monetary award for the cost of repairs and services to the premises, as well as compliance orders and a rent rebate and reduction due to the condition of the premises. They also seek an order restricting the landlord's right of entry.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and a monetary award for unpaid rent and loss of rental income.

For time reasons, the matter of the ten day Notice, the landlord's claims for rent and an order of possession were severed from the general claim and heard first. Interim Decision #2, issued September 20, dealt with those claims. The Notice was set aside as not having the appearance of being issued by the tenants' proper landlord. It was determined that there had been no enforceable agreement to alter the $3000.00 per month rent stated in the tenancy agreement.

This decision concerns the remainder of the tenants' claims.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord has failed to provide the premises and services agreed to? Has the landlord failed to conduct timely repairs? What is the appropriate compensation if the landlord is found to be in breach of his obligations? Has the landlord wrongfully entered the premises leased to the tenant and if so, is an order required to restrict his access?

Background and Evidence

The rental unit is a house located on a rural property. The tenancy started in May 2015 for a one year fixed term ending April 30, 2016. There is a written tenancy agreement. In its handwritten addendum it provides that unless the tenants give their notice by February 2016, then at the expiry of the fixed term the tenancy will automatically renew for another one year fixed term at the same rent plus the legislated allowable rent increase.

The agreement names Mr. H. E. (incorrectly referred to as Mr. H.I. in the second Interim Decision) as the landlord and directs that rent be paid to G.H., the corporate applicant. G.H. is a company solely owned by Mr. H. E. Interim Decision #2 determined that Mr. H.E. is the tenants' landlord, not G.H.

The tenancy agreement states the rent is $3000.00. The landlord holds a $1500.00 security deposit and a $1500.00 pet damage deposit.

The party V.E.S. is an entity retained by the landlord to pursue the eviction of the tenants. It was represented at hearing by Ms. S.A.

The tenancy agreement reserves to the landlord the use of a suite in the lower portion of the home. He seldom made use of it and may have tried to rent it out during the tenancy.

There is a large shop on the premises. It is also referred to as a "warehouse" in various documents and as a "store" in another. It is a large farm building of about 2600 square feet. Included in it is a smaller shop which the tenancy agreement addendum states is 600 square feet but which the tenants say is 711 square feet.

The tenancy agreement reserves to the landlord the use of the small shop.

The area covered by the tenancy includes an area of orchard but not a six acre hayfield next to the property.

The tenants' complaints about their experiences and problems over the first year were set out in a letter to the landlord dated April 11, 2016. The letter lists 32 grounds of complaint.

Over the next month or two following the letter, the parties met to negotiate a resolution of the tenants' complaints. The tenants made a proposal with options. The landlord appears to have accepted an option not contained in the tenants' proposal and proceeded to direct his property manager or bookkeeper that the rent would be $2500.00.

Interim Decision #2 determined that there was no "meeting of the minds" on any agreement regarding a change to the written tenancy agreement.

The tenants have not paid rent in any amount since June 2016.

The tenants have filed a monetary order worksheet seeking back rent for the diminished amenity of the premises and for all the trouble they've been put to over the first year. They claim $1000.00 per month.

They also seek out of pocket costs for bottled water, various repairs, propane, a weed wacker, the landlord's share of hydro and and return of their deposit money in light of their (mistaken) belief that the monthly rent had changed.

Apparently the home on this property suffered a fire not long ago and the home was rebuilt or significantly restored about two or three years ago.

The tenant Mr. M.E. testifies that the electrical work the landlord had done on the property during its restoration was not carried out with the necessary permits. The landlord denies it, saying everything was done properly. Mr. M.E. proposed to introduce an audio recording from an electrician who had visited the property and who stated the landlord "had trouble" getting permits. I consider this evidence to be of little if any value. There is no evidence that person knew his comments would be used in a dispute resolution. There is no way to confirm his identity. He was not subject to questioning about his statement.

Mr. M.E. testifies about the missing garage door opener. He complains that the garage is full of the landlord's belongings. He admits that the tenants moved them there from the landlord's suite. Mr. M.E. had the landlord's permission to fix the garage door but he was unable to adequately do so.

Mr. M.E. testifies that the shop is not insulated. He later qualified this testimony to say that it is uninsulated only in certain areas; in every corner and where the walls meet the roof. He produces photos of the area but they were not helpful in clarifying his explanation.

Mr. M.E. is conducting business from the shop. It is a "technology" business and involves the use of various computers and low level manufacturing machines. He say it has cost a lot to heat the shop and that he's purchased extra heaters over and above those existing in the shop. He says the landlord assured him that the shop was sealed and insulated and that it had appropriate electrical service.

The landlord says the shop is properly insulated.

Mr. M.E. testifies that three months ago he had to install internet cable from the house to the shop and that there was evidence of such a connection at move in but it was discovered to have been cut.

He says that the underground internet cable from the street to the house did not work. He says it had been severed by work in the yard/orchard between the two locations.

Mr. M.E. complains about the state of the yard, broken eaves, dirty windows and broken fruit trees.

He complains that the landlord does not keep the small shop clean and has left the heat on, at the tenants' expense.

The tenant has conducted many improvements to the property, particularly the shop, on his own, without notifying the landlord. He describes himself as being handy.

The tenant Ms. S.C. reviewed the tenants' Monetary Order Worksheet.

In regard to the matter of the washer/dryer, she says the landlord had new ones delivered on or about the move-in date of May 5, 2015, but the delivery person would not install them. The tenants installed them but they did not work. She says the tenants then bought their own and installed them but they did not work either. They called an

electrician in June who came out and fixed an electrical problem. He determined that one of the power wires at the breaker was not installed correctly. He fixed it at a cost of $114.00 and did other work including tightening wires in the panel and attaching shop outlets to their breakers. His total bill was $336.26 and is dated September 8, 2015. The landlord reimbursed the tenants for it.

She says she incurred an estimated $280.00 in laundromat costs awaiting a working washer and dryer.

Ms. S.C. says that the water at the property was sulfur laden and was not fit to drink. As a result the tenants' purchased water or had it delivered, at a total cost of $190.43.

The landlord had the water tested in May 2016. It was determined to be "hard." The landlord had a water softener installed but the tenants still don't like the water and have resumed bringing water in.

Ms. S.C. testified about a list of expenses the tenants have incurred, totalling $1488.54, mostly hardware items, she referred specifically to the the cost of a propane heater and stove for $215.05 and a firewood barrel stove for $500.00 in January 2016. She says they were required in order to heat the premises.

The tenants' bought a "weed wacker" in May or June 2016. It is apparent the landlord has agreed for them to take it off rent but no adjustment has yet been made.

Ms. S.C. says the landlord should be paying his share of Hydro for the suite and small shop. The tenancy agreement is silent on the point but she refers to an email sent by the landlord's property manager April 17, 2015 during negotiations prior to the tenancy stating that the landlord would use the downstairs suite and small shop and "utilities would be divided proportionally based on useable square footage."

She calculates the landlord's share to be 14% and calculates the amount owed at $600.82.

Ms. S.C. states that the electrical line running from the shop to the house is faulty.

She refers to an undated ad from a real estate website, saying she saw the ad before renting. The ad says the home is 2608 square feet in size. The ad implies that running a business from the property was fine. The ad appears to be a sale ad, not a rental ad for a residential property.

She says that when she and Mr. M.E. came to view the premises with the landlord they tried the internet to confirm it worked and pulled the boards away to confirm insulation.

She says that ultimately the internet provider ran an internet line to the house from the street, at no charge, but it took six months to negotiate that installation.

She says the landlord said he'd take care of the fruit trees on the property but he hasn't. No one has harvested the fruit from the trees with any concerted effort and it falls and rots, attracting wildlife.

The tenants bought hot water lines for the washer/dryer. The landlord reimbursed them.

She says that in June 2015 the tenants contacted the landlord about the air conditioning in the house not working. The landlord authorized them to have it looked after. They called a repairman who filled the system with refrigerant but reported leakage. She says the repairman did not return and it never got fixed properly. It worked for only two or three days.

She also feels that the landlord breached her privacy by sharing her email address by cc'ing it in an email to a business associate regarding the property. The tenants want compensation for that.

Ms. S.C. says that in February 2016 the shop suffered electrical power surges. The landlord sent an electrician who ran a temporary extension/bypass from the house to the shop. The line remains and is an inconvenience.

In May 2016 she says they lost power and water in the shop. It appears the landlord was informed and sent someone to fix the problem but the repairman arrived a day after he was expected, upsetting the tenants.

She says the tenants have remained at the property because it is hard to find places that will accept pets and come with a shop and that the tenants have improved the shop.

Mr. M.E. testified again stating that the shop wasn't properly wired when they moved in. He says the wiring to the outlets in the walls was completely missing but for a few feet running out of each box up the wall. He had it repaired. The landlord permitted him to take the bill of the rent.

Mr. M.E. is of the general view that the landlord simply “hired people off the street” to repair the home after the fire. He says the power surges cost him a lot but did not go into detail and makes no claim in that regard.

He complains that the landlord has provided them with no equipment to maintain the property and has even come and taken a ladder.

He says the tenants took over the small suite at the end of August 2015.

He thinks that the roof membrane on the house has not been properly finished and is liable to lift and leak.

He is upset that on one occasion he discovered people burning debris on the property during a government fire ban.

He says the shop gets very hot in the summer because of the lack of insulation and that it affects or even shuts down his computers as a result.

The landlord Mr. H.E. testifies that this is a residential property not a commercial one and that if the tenants are running a business then that’s their affair. He feels he has no responsibility to accommodate them. He is not responsible for providing premises adequate for commercial use.

He says the tenants are entitled to what is in the tenancy agreement, despite what any ad might have said.

He says there is adequate heat in the house and shop.

He says that all the tenants’ issues in the April 16 letter are false and that he addressed all their issues as they came up. He authorized them to attend to things and take if off rent and that they were agreeable to doing things that way.

He says the water is fine.

Regarding the construction of the home, he says he obtained an occupancy permit and that means that the home was inspected at every stage. He says the tenant Mr. M.E.’s proposition that great lengths of wire were missing behind the shop walls is not possible. An electrical inspector would have inspected the wiring before it was covered up.

He is concerned that the tenants have been making secret recordings of him.

He says that he was there when the shop was built and that it is fully insulated. The tenants are making up stories about the wiring and insulation.

Analysis

To being, it should be noted that generally, when a problem arises with a rental unit, a tenant is required to inform the landlord and the landlord is obliged to investigate, make a determination about the existence and extent of the problem and take reasonable steps to fix it.

The testimony shows that in may cases the tenants encountered problems during this tenancy, they either attended to the problem themselves without informing the landlord or obtained the landlord's permission to attend to the problem at his expense.

From the evidence it appears that almost invariably when the tenants encountered a problem and did contact the landlord, the landlord would say "can you take care of it," in the words of Mr. M.E. The landlord would then cover the cost of the rent. It is also apparent that the parties were satisfied with that arrangement.

There is a noted lack of any of the normal back and forth communication associated with an escalating problem between a landlord and a tenant. As a result the landlord has lost the opportunity to investigate complaints and possibly mitigate loss or preserve evidence regarding the problem.

In an attempt to put some order to this analysis I will review matters according the tenants' complaint letter of April 16 and then the tenants' Monetary Order Worksheet.

The April 16 Letter

1. Poor quality drinking water: There is no evidence that the water is harmful. It is sulfur laden and is, I assume, well water. This would have been a condition readily apparent to the tenants before they rented the property. When the landlord received the tenants' complaint about it he provided a water softener. I find that he has satisfied any obligation he might have in that regard. I dismiss this item of the tenants' claim.

2. Poorly performing dishwasher. There is little if any evidence that this complaint was ever conveyed to the landlord before this letter. There was no testimony about this complaint. It appears to be related to water quality and must be dismissed for those same reasons.

3. No washer/dryer for extended period. There is insufficient evidence to conclude that the landlord failed to attend to the installation of the washer/dryer he had delivered at the start of the tenancy. He might have failed to arrange for installation immediately at delivery, but it is apparent the tenant's took it upon themselves to install the equipment. It is likely that these units were not faulty, as intimated by the April 16 letter. Rather, they failed for the same reason the second units failed. Had the landlord been required to arrange installation, in my view an installer would have or could have confirmed adequate power supply and the entire problem averted. I dismiss this item.

4. No functioning fire extinguisher. The property came with a fire extinguisher and so the landlord is obliged to maintain it. **I direct and order** that the landlord or his workmen examine any fire extinguisher existing on the site at the start of this tenancy and if empty or expired, take steps **within 30 days** of this decision, to ensure that the equipment is current and in good working order. In default the tenants may obtain one and apply to recover the cost.

5. Electrical panel/wiring unsafe. The audio recording of the electrician adduced by the tenants is of only minimal weight, as previously noted. This claim has been resolved. The landlord reimbursed the tenants for the cost of the electrician. There is insufficient evidence to conclude the condition of the panel/wiring posed any significant risk. In order to reach such a conclusion it would be necessary to receive evidence from a certified electrician. The person the tenants presented on the audio recording does not suffice. I dismiss this item of the claim.

6. Delayed hot water. There is no dispute but that the hot water for use in the home comes from a heater in the shop. It has to run in a pipe underground between the structures, a distance the tenants say is 200 feet. This setup is one that deviates from the norm and is not a setup a prospective tenant would see or realize. I consider the inconvenience of the setup to be relatively minor, but I find there is significant effect on the cost of hot water. Because of this odd system, the water heater located in the shop must heat the water in the hot water tank and the water in the long pipe to the house. That is an extra cost the tenants should not have to pay.

It was not claimed that the setup violates any rules or codes. I decline to make any compliance order. However, the tenants should be compensated for the extra heating cost.

The assessment of loss in such a circumstance cannot be exact. Having regard to all the circumstances I award the tenants $15.00 per month for the extra cost of hot water heating, for a total of **$270.00** to and including the month of October 2016. Further, I direct that the tenants' monthly **rent be reduced by $15.00** from $3000.00 to $2985.00 commencing November 1, 2016 unless and until the landlord plumbs in an operational hot water heater in the house.

7. Garage door. The premises were rented with a powered garage door and the landlord is responsible to see that it works properly for the tenants. The evidence shows that the tenants assumed the responsibility for its repair at the landlord's cost and for reasons not clearly related by them, repair has not yet been effected. In such circumstances I decline to make any monetary award.

By virtue of this hearing responsibility for the door has now been given back to the landlord. **I direct and order** that the landlord take all necessary steps to having the garage door examined by a qualified person and that any repairs necessary be performed **within 30 days** from the date of this decision. In default, the tenants may reapply for a rent redirection or other appropriate relief.

8. Garage door lock and handle. No claim. Tenants repaired it with the landlord's consent and at landlord cost.

9. Kitchen slider door. The undisputed evidence is that the lock on this door is not functioning. Doors with locking mechanisms are expected to be functional. **I direct and order** that the landlord attend to repair of the door **within 30 days** from the date of this decision. In default the tenants may reapply for a rent redirection or other appropriate relief.

10. Pond and lake. The state of the water in these bodies was easily determinable before the tenants entered into the tenancy. I dismiss this item of the claim.

11. Orchard problems. The addendum to the tenancy agreement states the tenants will be responsible for "landscaping." That term is not defined in the addendum. The definition of "landscaping" is: "the process of making a yard or other piece of land more attractive by altering the existing design, adding ornamental features, and planting trees

and shrubs." That means changing and improving a yard. It does not encompass the cleaning of a yard or the pruning of trees.

The addendum clause does not specify what landscaping changes or improvements the tenants are required to make. I find the clause to be too vague to be enforceable.

Residential Tenancy Policy Guideline #1 "Landlord & Tenant: Responsibility for Residential Premises" provides:

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.

and

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

In the circumstances of this case I find that the landlord is responsible to prune the fruit trees, the tenants are responsible for maintaining the ground under them including picking up dead branches.

The tenancy agreement addendum specifies that the tenants may take fruit for their own consumption and that the "owner, retains access to remainder." From this term I find that the landlord has the right to harvest the fruit and that implicitly he will harvest it. If he declines to do so, resulting in an inordinate amount of fruit falling to the ground to spoil and rot, he is responsible for its cleanup.

I decline to make an order or award in regard to this item now that the parties' rights and obligations have been clarified. Despite the tenants' stated concern about wild animals, all fruit orchards suffer windfall and attract animals. It has not been shown that the present situation is out of the ordinary. If the landlord fails in his duty to harvest the orchard the tenants are free to re-apply for relief.

12. Spiders. As seen in the Policy Guideline above, a landlord is responsible for insect control. The spider problem has been reported to the landlord and he is responsible to investigate it. **I direct and order** that the landlord engage the services of a qualified insect control person to attend and assess the alleged infestation **within the next 60** days after the date of this decision and to take necessary steps for eradication. In default, the tenants may re-apply, as above.

13. Wasp and hornet infestation. There was little if any evidence about this complaint. It cannot be reasonably assumed to be a significant problem without that evidence. I dismiss this item of the claim.

14. Mouse infestation. There was little if any evidence about this item. It cannot be determined that the problem is a significant one requiring a direction order or compensation. This item of the claim is dismissed.

15. Workshop insulation. The tenants say the shop is not properly insulated. The landlord says it is. The photos the tenants referred to are far from determinative and are of little assistance.

The shop is, in essence, a farm building, not a commercial premises in a manufacturing district. It is not unreasonable that it not be as weather tight as a true commercial premises. In any event, there is no reason to prefer one side's evidence over the other's about the level of insulation in the shop. I must dismiss this item of the claim as not having been proved.

16. Shop electrical. The tenants' claim that there was a representation about the amperage to the shop is problematic. There is an evidentiary principle that presumes that a complete, unambiguous written agreement embodies the complete agreement between the parties involved and cannot be altered by oral or extrinsic evidence purporting to contradict, vary, add to, or subtract from, the terms of a written contract.

While that principle is often relaxed by the courts and while the *Act* does not bind an arbitrator to follow the rules of evidence, the principle still has weight.

This tenancy is primarily a residential tenancy. The idea of tenants carrying on a business from the home was acceptable to the landlord but if the tenants required special provision for that business, such as 20 amp service, then that term should have been noted in the tenancy agreement.

Section 6 of the *Act* requires that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I am unable to conclude that 20 amp service to the shop was an enforceable term of the tenancy agreement. I dismiss this item of the tenants' claim.

In any event, the service was fixed at the landlord's expense and there is no particular evidence of any loss having been suffered by the tenants.

17. Underground internet lines. The tenants' evidence about this item was confusing. Mr. M.E. said the internet line from the street to the house had been cut before the start of the tenancy, but Ms. S.C. stated that the tenants tried the internet and it worked.

There is no evidence of any communication with the landlord about the lack of internet service or that he was failing in his tenancy agreement. He took no part in its installation or repair. He appears to have been uninformed about the lengthy delays the tenants say they suffered in having the service provider relay the line from the street.

If the street to house cable was cut, there is no objective evidence to conclude it was the fault of the landlord or his workmen or that he knew about it before the tenants moved in. The tenants attended to the problem themselves and in my view the landlord cannot be held responsible for the delays incurred while they did so. I dismiss this item of the claim.

18. Clogged bathroom plumbing. There was little if any evidence given about this item during the hearing, but for its inclusion in the April 16 letter. It is not possible to determine the nature or extent of the complaint and so this item must be dismissed.

19. House baseboard heaters. The photos adduced by the tenants show that the home is fitted with baseboard heaters but some are far smaller than the width of the window above them and some are place other than under the windows. In my view and experience, this is an unusual circumstance. It gives rise to a likelihood that the heating is inadequate.

I direct and order that **within 30** days following the date of this decision the landlord retain a qualified heating contractor to provide a written statement to the tenants that the heating installed in the home is within the requirements of applicable rules and codes and that it is reasonable heating for the room in which it is located. If the heating system does not meet those requirements in any manner, **I direct and order** that the landlord attend to bringing the home heating system up to a level acceptable to that qualified heating contractor **within 30 days** after the date of the report. In default the tenants may re-apply for a rent redirection or other appropriate relief.

Given the speculative nature of the tenants' claim of financial loss resulting from the home heating system, I make no monetary award.

20. Stove duct. The tenants claim the duct is uninsulated. **I direct and order** that the landlord, **within 30** days following the date of this decision retain a qualified contractor to examine the duct and if it lacks necessary insulation, to attend to its repair within that time. In default the tenants may re-apply for a rent redirection or other appropriate relief.

The tenants' evidence about the lack of insulation is too vague and the claimed increased cost of heating too vague to permit any monetary award under this item.

21. Air conditioning. The home is rented as an air conditioned home and the landlord is obliged to ensure that it is operational. The landlord authorized the tenants to have the air conditioning repaired during the summer of 2015. It is not clear who sent the contractor to examine it and it is not clear that the landlord was ever made aware that it had not been fixed. As a result I make no monetary award regarding this complaint.

However, the landlord knows now and so **I direct and order** that **within 120 days** following the date of this decision the landlord engage the services of a qualified air conditioning contractor to inspect and carry out any necessary repairs to the air conditioning system so as to ensure it is in good working order. In default the tenants may re-apply as above.

22. Front door. The tenants' evidence satisfies me that there is likely a significant gap under the front door. **I direct and order** that the landlord **within 30 days** following the date of the decision, retain a qualified tradesman to inspect the door and to carry out any repairs reasonably necessary to ensure that it is weather tight. In default, the tenants may re-apply as above.

The tenants' evidence about the lack of gap and the claimed increased cost of heating are too vague to permit any monetary award under this item.

23. Security systems. I find that the home and shop were provided with security systems. It is the landlord's obligation to maintain them. Again, it appears that the tenants had not raised this, or many other of these items with the landlord until April 2016, twelve months into the tenancy.

I direct and order that **within 30 days** following the date of this decision the landlord investigate the claim that the security system is malfunctioning and that he arrange for any necessary repair. In default the tenants may re-apply, as above.

There is no basis shown for any monetary award under this item.

24. Landlord visitors. The tenants' testimony about people approaching them on the property was vague.. It was insufficient to fairly substantiate any compliance or monetary award.

The landlord has reserved a portion of the shop for himself and perhaps, still, the lower suite. He has a right to pass over the property to and from his area and to bring guests. If the guests wish to engage with the tenants while outside on the property it is up to the tenants to permit them to do so or to refuse. The tenants have exclusive possession of the home (perhaps including the lower suite, that is uncertain on this evidence) and the large shop. They may refuse others entry to those areas if they wish. I dismiss this item of the claim.

25. Post box keys. There was no evidence given about this item. I dismiss it

26. Poor lighting outside. The tenants indicate the lighting is poor and that they are afraid that wild animals might be outside in the dark. The outside lighting was easily observable on the occasions the tenants viewed the premises before signing the tenancy agreement. By entering into the tenancy they accepted the extent of the outdoor lighting. The landlord has not further obligation in that regard but to maintain it. I dismiss this item of the claim.

27. Bears and coyotes. The evidence does not show on a balance of probabilities that the landlord is doing something or failing to do something that is causing such a problem. This is a rural area and it is a fruit farm. If there are wild animals in the area, it is reasonable to expect they will visit the farms. The tenants are free to deal with the perceived threat as they consider best, but the landlord has not legal obligation. I dismiss this item of the claim.

28. Fruit on trees left to rot. This item has been dealt with in Item 11, above.

29. Fire on property. It is not the role of the Residential Tenancy Branch to enforce burning ban laws. The tenants are free to report any violation to the persons charge with enforcement of those laws. I dismiss this item of the claim.

30. Soffits. The tenants' evidence and photos show that one and perhaps two of the soffit boards under the eaves have become displaced. The landlord is responsible for this sort of maintenance and repair. **I direct and order** that the landlord **within 45 days**

following the date of this decision attend to the repair of the soffits shown in the tenants' photos and also attend to the cleaning of the window below the soffits, spattered by the droppings of birds attracted to the open eaves. In default, the tenants may re-apply, as above.

31. High energy consumption due to lighting ballasts in shop. The tenants argue that the electrical consumption in the shop is too high because the ballasts in the lights. In order to accept this assertion it would require some evidence of a person holding special knowledge in such matters. There was no such evidence. I dismiss this item of the claim.

32. Roof membrane. The landlord is responsible for maintenance and repair of the roof. As there is presently no leaking or other apparent danger from the roof, I make no order and issue no monetary award. However, the landlord has been put on notice of the tenants' concerns about the roof. Those concerns appear to be sincere and it is recommended the landlord inspect the state of the roof.

At hearing the tenant Ms. S.C. indicated a claim for loss of privacy when the landlord shared her email address. This claim has not been reasonably disclosed to the landlord prior to the hearing and so I decline to render any decision about it. The tenants are free to re-apply.

The Tenants' Monetary Claim

Item 1. Back Rent. I dismiss this item of the claim. It is a general claim in which the tenants hope to encompass all there problems and efforts over the first year of the tenancy. In many cases the problems were not relayed to the landlord or once they were, then by agreement they were left to the tenants to resolve and for which the landlord would pay.

Item 2. Laundromat. I dismiss this item of the claim. The tenants failed to give the landlord the opportunity to determine why the washer/dryer he delivered did not work. Any delay in the tenants locating the problem and having it repaired cannot be placed on the landlord.

Item 3. Bottled Water. I dismiss this item of the claim. There is no evidence that the water coming from the taps was harmful to health. The tenants had a reasonable opportunity to test the quality of the water before the tenancy and must be taken to have accepted it when they entered into the tenancy.

Item 4. Various receipts. The tenants refer to a spreadsheet listing 22 items they purchased relating to the house. At the hearing they did not explain any but the heater and the stove. It has not been shown on a balance of probabilities that the heating of the home was inadequate. It has not been shown that there was any term of the tenancy requiring the shop to be heated to any particular level or that the heating and insulation in the shop was inadequate for the farm building that it is. I dismiss this item of the claim.

Item 5. Propane for heat. As per the reasons in Item 4, I dismiss this item of the claim.

Item 6. Weed wacker. The landlord had authorized the tenants to deduct this $278.88 cost from rent but it has not been accounted for yet. I award the tenants the $278.88.

Item 7. Hydro Share. I allow this item. It was implicit in the tenancy agreement that if the landlord reserved a portion of the heated buildings on the rented property for himself he would pay a proportionate share of the utilities. Any requirement that the tenants pay the cost of heating the landlord's area would, in my view, be unconscionable (see Policy Guideline #8, "Material and Unconscionable Terms).

The tenants have claimed $600.82 based upon their calculation of the square footage of the home, shop and areas reserved for the landlord' use. Mr. M.E.'s evidence is that the tenant's calculation also takes into account the fact that the tenants have been using the small suite since August.

I allow this item of the claim as presented and award the tenants $600.82.

The landlord is responsible to continue to pay for his share of the Hydro expenses of the small shop, which I find to comprise 14% of the total area.

Item 8. Deposit Return. A tenant is not entitled to return of a deposit until after the tenancy. However, if the rent is reduced the tenant may be entitled to return of some of the deposit money if it exceeds one half the rent (the maximum amount permitted under s.19 of the *Act*). In this case the rent has been reduced by $15.00 per month. The tenants are entitled to return of $7.50 of their $1500.00 security deposit and $7.50 of their $1500.00 pet damage deposit for a total of $15.00.

In summary the tenants are entitled to a total award of $720.97. As they were successful in having the Notice to End Tenancy cancelled and they have been partially

successful in their remaining application, they are entitled to recover the $100.00 filing fee for their application, for a total award of $820.97.

Landlord Claim for Rent.

Interim Decision #2 determined that the parties had not reached any enforceable agreement to alter the $3000.00 monthly rent due under the written tenancy agreement.

I find that the landlord is owed $15,000.00 rent for May to September 2016 inclusive, less the tenants' payment of $2500.00 on May 25, 2016 and their payment of $1900.00 on June 9, 2016, and less the $820.97 awarded here. The landlord is also entitled to recovery of his $100.00 filing fee, leaving a balance due to the landlord in the amount of $9879.03.

Conclusion

The tenants' application to cancel the ten day Notice to End Tenancy dated July 22, 2016.

As well, the tenants are entitled to the direction and compliance orders issued above.

The landlord's application for an order of possession is dismissed. His application for a monetary award for unpaid rent is allowed in the net amount of $9879.03.

He will have a monetary order against the tenants in that amount.

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: October 01, 2016

Residential Tenancy Branch