Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, O

Introduction

On January 25, 2017 a hearing was convened in response to cross applications.

On July 04, 2016 the Landlords filed an Application for Dispute Resolution in which they applied to keep all or part of the security deposit or pet damage deposit. In this Application the Landlords applied for a monetary Order for $1,950.00.

In my interim decision of January 26, 2017 I concluded that this Application for Dispute Resolution was served to the Tenant with the initials “S.H.”, hereinafter referred to as the Tenant.

On July 21, 2016 the Landlords filed an amended Application for Dispute Resolution in which they applied to keep all or part of the security deposit or pet damage deposit and for “other”. In this amendment the Landlords applied for a monetary Order of $1,900.00 - $2,200.00. In my interim decision of January 26, 2016, I concluded that there was insufficient evidence to determine whether the amended Application for Dispute Resolution was served to the Tenant.

At the hearing on March 01, 2016 the Tenant clarified that he received the amended Application for Dispute Resolution and I am now satisfied that he received the amended Application.

The Landlords submitted three pages of evidence to the Residential Tenancy Branch with this amendment. As outlined in my interim decision of January 26, 2016, I found there was insufficient evidence to determine whether these documents were properly served to the Tenant.

As outlined in my interim decision of January 26, 2017 I am not satisfied that the Application for Dispute Resolution was served to the Tenant with the initials “K.R.”.

As outlined in my interim decision of January 26, 2017 the Landlords’ Application for Dispute Resolution was amended by removing the name of the Tenant with the initials “K.R.”. As this party is no longer a Respondent to these proceedings, he will not be named on a monetary Order if one is granted to the Landlords.

On July 29, 2016 the Tenant filed an Application for Dispute Resolution in which he applied for a monetary Order for money owed and compensation for damage or loss and for the return of his pet damage deposit and security deposit. As outlined in my interim decision of January 26,

2017, I am satisfied that both Landlords have viewed the Tenant's Application for Dispute Resolution.

The hearing on January 25, 2017 was adjourned for reasons outlined in my interim decision of January 26, 2017. The hearing on March 01, 2017 was adjourned for reasons outlined in my interim decision of March 02, 2017. The hearing was reconvened on April 04, 2017 and was concluded on that date.

On December 05, 2016 the Landlords submitted 60 pages of evidence to the Residential Tenancy Branch. As outlined in my interim decision of January 26, 2017, I found that these documents were served to the Tenant in accordance with section 88 of the *Act*; however they were not received by the Tenant.

As outlined in my interim decision of January 26, 2017, the Landlords were granted the right to re-serve the Tenant with the amended Application for Dispute Resolution and duplicate copies of all evidence previously served to the Residential Tenancy Branch in regards to these proceedings.

At the hearing on March 01, 2017 the Agent for the Landlords stated that all of the documents submitted to the Residential Tenancy Branch by the Landlords were re-served to the Tenant on January 27, 2017, via registered mail, with the exception of the following documents:

- the Application for Dispute Resolution that identifies the Tenant's service address as "unknown"; and
- the monetary Order worksheet in the amount of $2,276.00.

The Tenant acknowledged receipt of the documents mailed to him on January 27, 2017 I accepted the Landlords evidence as evidence for these proceedings.

As outlined in my interim decision of January 26, 2017, the Tenant was granted the right to serve the Landlords with any evidence in response to evidence that is served to him by the Landlords.

At the hearing on March 01, 2017 the Tenant stated that he submitted 31 numbered pages and 4 non-numbered pages of evidence to the Residential Tenancy Branch on February 07, 2017. He stated that this evidence was sent to the Landlords, via registered mail, on February 07, 2017. The Agent for the Landlords acknowledged receipt of this evidence.

The parties were advised that I had not received the evidence the Tenant submitted to the Residential Tenancy Branch on February 07, 2017. As outlined in my interim decision of March 02, 2017, the Tenant was directed to resubmit this evidence to the Residential Tenancy Branch. The evidence was resubmitted and it was accepted as evidence for these proceedings. This evidence was available to me at the hearing on April 03, 2017.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

In the Landlords' Application for Dispute Resolution the Tenant's name is spelled differently that it is spelled in the Tenant's Application for Dispute Resolution. At the hearing on January 25,

2017 the Tenant confirmed that his name is spelled correctly in his Application for Dispute Resolution.

With consent of both parties the Landlords' Application for Dispute Resolution was amended to reflect the correct spelling of the Tenant's name, as it was provided during the hearing.

Preliminary Matter #2

On March 08, 2017 the Landlords submitted a second Application for Dispute Resolution, the file number of which appears at the bottom of the first page of this decision. In this second Application for Dispute Resolution the Landlords are claiming compensation for additional damage to the rental unit, in the amount of $4,688.28 and to recover the fee for filing both Applications for Dispute Resolution.

The Agent for the Landlords stated that the Landlords were aware of the additional damages when the first Application for Dispute Resolution was filed, but they did not seek compensation for an amount that exceeds the security deposit and pet damage deposit that was paid because the Landlords did not wish to enforce a monetary Order. She stated that the Landlords merely wanted authority to retain the security deposit and pet damage deposit in partial compensation for the damages.

The Agent for the Landlords stated that after learning the security deposit/pet damage deposit might be doubled, she determined that it would be appropriate to seek compensation for all of the damage done to the rental unit.

The Agent for the Landlords stated that the second Application for Dispute Resolution was filed because I had previously informed her that the original Application for Dispute Resolution could not be amended to increase the amount of the original claim after the proceedings had commenced.

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure allow an applicant to amend the amount of the claim by submitting an Amendment to an Application for Dispute Resolution. I find that the Landlords were aware of the procedures for amending the amount of their claim, as they filed an Amendment to an Application for Dispute Resolution on July 21, 2016, in which they amended the amount of their original claim. I find that the Landlords should have amended their original Application for Dispute Resolution, pursuant to section 4.1 of the Residential Tenancy Branch Rules of Procedure, prior to the start of these proceedings as the Landlords if they wished to seek additional compensation.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I find that the Landlords did not have the right to amend the amount of the claim at the hearing as the Tenant could not reasonably anticipate that the amount of the claim for compensation would increase after the Application for Dispute Resolution was filed.

Rule 4.7 of the Residential Tenancy Branch Rules of Procedure grant me authority to dismiss an application to amend an Application for Dispute Resolution if I determine the amendment would prejudice the other party or result in a breach of the principles of natural justice. The Agent for the Landlords was advised at the hearing on January 25, 2017 that the Landlords

could not amend the amount of their monetary claim once the proceedings had commenced because I believed that would be unfair to the Tenant, given that he had not had adequate time to respond to the claims.

On the basis of the Agent for the Landlords' testimony that the second Application for Dispute Resolution was filed because I had previously informed her that the original Application for Dispute Resolution could not be amended, I find that the second Application was filed in an attempt to circumvent the Rules of Procedure regarding amendments. I therefore dismiss the Application for Dispute Resolution without leave to reapply, which means the Landlords cannot file another application seeking compensation for the damages cited in the second Application.

In concluding that the second Application for Dispute Resolution without leave to reapply, I was heavily influenced by my conclusion that the principle of res judicata prevents the Landlords from making a second claim for damages arising from the same tenancy.

In reaching this conclusion I was guided by the decision of the Supreme Court of British Columbia In *London Life Insurance Company v. Zavitz et al*, [1990] S.C.B.C., Vancouver Registry No. C881705, in which the learned author identifies the elements required to support a plead of "former recovery" (at page 359) as:

> (i) That the former recovery relied upon was obtained by such a judgment as in law can be the subject of the plea.
>
> (ii) That the former judgment was in fact pronounced in the terms alleged;
>
> (iii) That the tribunal pronouncing the former judgment had competent jurisdiction in that behalf;
>
> (iv) That the former judgment was final;
>
> (v) That the Plaintiff, or prosecutor, is proceeding on the very same cause of action, or for the same offence, as was adjudicated upon by the former judgment;
>
> (vi) That the parties to the proceedings, or their privies, are the same as the parties to the former judgment, or their privies.

The learned author commented further wrote (at p. 380):

> ... where there is substantially only one cause of action, and it is a case, not of "splitting separable demands", but of splitting one demand into two quantitative parts, the plea [of res judicta] is sustained. In homely phrase, a party is entitled to swallow two separate cherries in successive gulps, but not to take two bites at the same cherry. He cannot limit his claim to a part of one homogeneous whole, and treat the inseparable residue as available for future use, like the good spots in the curate's egg.
> ... Thus, where the omitted matter is a portion of the entire sum, or an item or parcel of the entire property, recoverable on a single cause of action, the judgment is a bar to any subsequent action in respect of such omitted matter.

In the Landlords' second Application for Dispute Resolution the parties are identical to the parties in these proceedings. My decision from these proceedings will be final and binding. The claims before me, as are the claims in the second Application for Dispute Resolution, are for damage to the rental unit that were discovered at the end of the tenancy.

I determined that by filing this second Application for Dispute Resolution bringing the Landlords are splitting one homogenous claim for damage into two quantitative parts, when the full amount of damage could have been recovered through the original Application for Dispute Resolution, which is not permitted. .

Preliminary Matter #2

The Agent for the Landlords sought to call a witness and was given leave to do so. The Agent for the Landlords attempted to contact the witness, by text message, to obtain a phone number for the witness. After waiting five minutes for a response from the witness, I concluded that a response would not be forthcoming and the hearing was concluded shortly thereafter.

A party who wishes to have a witness participate in a hearing must make reasonable efforts to have that witness prepared to participate in the hearing. This includes have a telephone number for the witness so she can be dialed into the teleconference and informing the witness that that may be contacted at a particular date and time.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?
Should the security deposit and pet damage deposit be returned to the Tenant or retained by the Landlords?

Background and Evidence

The Landlords and the Tenant agree that the tenancy began on September 07, 2015; the tenancy ended on June 18, 2016; and the Tenant and his co-tenant agreed to pay monthly rent of $1,300.00 by the first day of each month.

The Agent for the Landlords stated that a security deposit of $1,300.00 and a pet damage deposit of $650.00 were paid. The Tenant stated that a security deposit of $975.00 and a pet damage deposit of $975.00 were paid. The tenancy agreement that was submitted in evidence by the Landlords, which was signed by all parties, declares that a security deposit of $1,300.00 and a pet damage deposit of $650.00 were paid.

The Tenant stated that he provided the Landlords with a forwarding address, via text message, shortly after the rental unit was vacated. At the hearing on January 25, 2017 the Agent for the Landlords stated that the Landlords did not receive a forwarding address, via text message, at any time after the end of the tenancy. She stated that the Landlords did not receive a forwarding address, in writing, until the Landlords received the Tenant's Application for Dispute Resolution.

At the hearing on April 04, 2017 the text messages that had been sent to the Landlord on July 08, 2016 and July 18, 2016 were brought to the attention of the Agent for the Landlord. At this point the Agent for the Landlords stated that she had not previously stated that the forwarding

address was not received by text message and she acknowledged that these text messages were received.

The Agent for the Landlords stated that the rental unit was jointly on September 07, 2015, which was the start of the tenancy. The Tenant stated that neither he nor his co-tenant was present when the unit was inspected at the start of the tenancy, as they did not arrive in the community until September 09, 2015.

The Agent for the Landlords stated that the person conducting the inspection on behalf of the Landlords only partially completed the inspection report at the time of the inspection, as she neglected to have either Tenant sign the report. She stated that there is a notation on the report that indicates the inspection was “done verbally”. The Agent for the Landlords stated that she interprets this note to mean that the condition of the rental unit was discussed at the start of the tenancy.

The Tenant stated that neither he nor his co-tenant signed the condition inspection report at the start of the tenancy because they were not present when it was completed.

The Tenant stated that the Tenants were not provided with a copy of the condition inspection report that was allegedly completed at the start of the tenancy until it was served as evidence for these proceedings. The Agent for the Landlords stated that she does not know if the report was provided to the Tenants prior to the commencement of these proceedings.

The Agent for the Landlords and the Tenant agree that on September 09, 2015 the Tenant sent the Landlords a text message in which they inform the Landlords that they have arrived and have found everything “all right”.

The Agent for the Landlords stated that a final condition inspection report was completed by the Landlords on June 22, 2016 and she does not know if the Tenant or the co-tenant was present when the rental unit was inspected.

The Tenant stated that the Landlords did not contact him or his co-tenant to arrange for a final inspection of the rental unit and that neither of them was present at the final inspection.

The Agent for the Landlords stated that she does not believe the Landlords attempted to schedule a time to meet to complete the final inspection because the relationship between the Landlords and the Tenant had become quite “volatile” by the end of the tenancy.

The Landlords are seeking compensation, in the amount of $882.10, for cleaning the rental unit and the deck. The Landlords submitted photographs, which the Agent for the Landlords stated were taken between June 23, 2016 and June 30, 2016 while the unit was being cleaned. The Tenant stated that he cleaned the rental unit and that the photographs submitted in evidence do not represent the condition of the rental unit at the end of the tenancy.

In regards to the photographs on pages 8 and 9 the parties agree that the photographs depict the bathroom floor.

In regards to the photograph on page 10 the Agent for the Landlords said she believes that is an area behind the stove and the Tenant stated that he does not recognize that area and he does not believe it is an area behind the stove.

In regards to the photograph on page 12 the parties agree this is a photograph of the door sill near the front door. The Agent for the Landlords contends the laminate floor is dirty and the Tenant contends the floor is clean.
In regards to the photographs on pages 13 and 14 the Agent for the Landlords contends the photographs show the microwave was dirty. The Tenant stated that he does not recall whether the microwave was cleaned at the end of the tenancy.

In regards to the photographs on pages 15 and 17 the Agent for the Landlords contends the photograph shows the stove was dirty. The Tenant acknowledged that he did not clean under the stove burners.

In regards to the photograph on page 16 the Agent for the Landlords contends the photograph shows the amount of hair that was wiped from the floor at the end of the tenancy. The Tenant stated that he cannot believe there was that much hair on the floor as he cleaned the unit at the end of the tenancy.

In regards to the photographs on pages 18, 19, and 24 the Agent for the Landlords contends the photographs shows the condition of the deck at the end of the tenancy. The Tenant stated that he swept the deck at the end of the tenancy but it was raining when he left and any dirt in the photographs must have accumulated after he vacated.

In regards to the photograph on page 23 the parties agree that the Tenant left boxes in the rental unit at the end of the tenancy. The Agent for the Landlords contends the boxes were full of dirty cat litter and the Tenant contends they were empty.

In regards to the photographs on pages 26, 27, 28, and 29 the parties agree that the linens are not clean. The Tenant stated that he cleaned the linens near the end of the tenancy but he acknowledges they were covered with lint from his co-tenants blanket.

In regards to the photographs on pages 31 and 32 the Agent for the Landlords contends the photograph shows the baseboards and floors were not cleaned. The Tenant contends that the dirt in the photograph must have been tracked in after he left.

The Agent for the Landlords stated that:

- the Landlords spent 18-19 hours cleaning the rental unit and the deck, and they are seeking compensation for their labour;
- the Landlords paid $245.00 to an agent for cleaning but they did not provide a receipt for this expense;
- the Landlords paid $32.10 for cleaning supplies but they did not provide a receipt for this expense; and
- the Landlords rented a power washer to clean the deck but they did not provide a receipt for this expense.

The Landlords are seeking compensation, in the amount of $157.50, for yard maintenance at the end of the tenancy.

In regards to the claim for yard maintenance the Agent for the Landlords stated that:

- when this tenancy began the Tenants agreed to maintain the yard, which included watering plants, mowing the lawn, and trimming bushes;
- at the end of the tenancy a lot of plants had died as they were not watered;
- at the end of the tenancy the lawn needed mowing and a lot of debris needed to be removed;
- when this tenancy began there were many plants on the property, which died due to lack of water;
- the Landlords did not provide a photograph of the condition of the yard at the start of the tenancy;
- the photograph on page 23, which was taken between June 23, 2016 and June 30, 2016, shows the condition of the yard at the end of the tenancy;
- part of the claim for compensation is for paying a gardener, although a receipt for this expense was not submitted; and
- part of the claim for compensation is for buying plants, although a receipt for this expense was not submitted.

In regards to the claim for yard maintenance the Tenant stated that:

- the Tenants agreed to maintain the yard, which included mowing the lawn;
- the father of one of the Landlord's was responsible for watering the plants and trimming;
- the Tenants did not water the plants unless the father asked for assistance;
- the yard was in the same condition at the end of the tenancy as it was at the beginning of the tenancy, except debris from a large tree limb that had fallen was spread around the yard
- the photograph on page 23 of the Tenant's evidence package is a black and white photograph, which is not very clear so he does not know if it fairly represents the condition of the yard at the end of the tenancy.

In the tenancy agreement submitted as evidence there is an addendum that declares the Tenant is responsible for "yard work", although the term "yard work" is not clarified. On the deposit receipt there is an addition that is initialed by the Tenant that declares the Tenant is responsible for fall and spring clean-up in the yard and regular maintenance on the grounds.

The Landlords are seeking compensation, in the amount of $750.00, for replacing a couch. The Agent for the Landlords stated that this couch was in good condition at the start of the tenancy and that it was damaged by the Tenants' cats during the tenancy.

The Tenant stated that the couch was stored in an area of the basement behind a closed door and that the Tenants' cats could only have damaged the couch if people working in the unit at the request of the Landlords allowed the Tenant into this secured area.

The Landlords did not submit a receipt for the couch or an estimate for replacing the couch. The Landlord submitted photographs of the couch, which appears to have been damaged by a cat.

The Landlords are seeking compensation, in the amount of $90.00, for replacing two mats. The Agent for the Landlords stated that there was a door mat at the front and rear door; that both mats were torn and dirty at the end of the tenancy; and that both mats were a couple of years old at the start of the tenancy but were in good condition.

The Tenant stated that there was a door mat at the inside of the front and the outside of the front door at the start of the tenancy. He stated that neither was in particularly good condition at the start of the tenancy, although he did not pay much attention to them. He stated that neither of them was torn at the end of the tenancy and the interior mat had one piece of material sticking out of it.

The Landlords did not submit a receipt for the couch or an estimate for replacing the mats. The Landlords submitted a photograph of one of the damaged mats. The Tenant stated that the photograph does not represent the condition of the mat at the end of the tenancy, as it was not torn.

The Landlords are seeking compensation for painting one of the bedrooms. The Agent for the Landlords stated that the bedroom needed painting as the Tenants permitted smoking in the unit; the room smelled strongly of smoke; and the walls were slightly stained.

The Tenant stated that nobody smoked in the rental unit and none of the rooms smelled of smoke.

The Landlords submitted a written statement from an individual who had been in the rental unit during the tenancy for the purposes of completing repairs (p. 57). In the written statement the author declares, in part, that there "was a smell of marijuana smoke" and that there were "2 dogs living in the small unit".

The Tenant stated that he has never met the author of this document, although he acknowledges there were people working in the rental unit, on occasion, when he was not at home. He questions the credibility of the witness, as he does not have two dogs.

The Landlords submitted a written statement from an individual who had viewed the rental unit during this tenancy for the purposes of renting it after the end of this tenancy (p. 56). In the written statement the author declares, in part, that "the two young men who were living there at the time allowed me to enter" and that "it smelled very smoky" there "was a smell of marijuana smoke".

The Tenant stated that he has never met the author of this document and neither he, nor his co-tenant, allowed her to view the rental unit. The Agent for the Landlords may have met two men during this inspection and erroneously concluded that both men were tenants.

The Landlords submitted a copy of a receipt for painting the bedroom, in the amount of $367.50.

Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on June 18, 2016 and that the Tenants paid a total of $1,950.00 in pet damage and security deposits.

Section 38(1) of the *Residential Tenancy Act (Act*) stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the testimony of the Tenant and the April 04, 2017 testimony of the Agent for the Landlords, I find that the Tenants provided the Landlords with a forwarding address on July 08, 2016 and July 18, 2016, via text message.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. I therefore find that the text messages sent to the Landlords constitute service of a forwarding address in writing.

In concluding that the Landlords received a forwarding address, in writing, by text message I was heavily influenced by the fact the Landlords cited that address in the amended Application for Dispute Resolution they filed on July 21, 2016. As the Tenant did not file his Application for Dispute Resolution until July 25, 2016, I find that the Landlords must have received the forwarding address by text message. I therefore find, pursuant to section 71(2) of the *Act,* that the forwarding address has been sufficiently given or served for purposes of this *Act*.

As the Landlord acknowledges receiving a text message in which the Tenant provided his forwarding address and the Landlord used that address when , I find there is sufficient evidence to conclude that the Landlord was sufficiently served with the Tenant's forwarding address, in writing.

On the basis of the undisputed evidence I find that the Landlords also received a forwarding address for the Tenant when he served them with his Application for Dispute Resolution.

Section 23(1) of the *Act* stipulates that a landlord and tenant must jointly inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. I favour the Tenant's testimony, who stated that the rental unit was not jointly inspected on September 07, 2016, over the Agent for the Landlord's testimony that it was jointly inspected on that date. I favoured the Tenant's evidence in this regard because:

- there is no evidence from the person who conducted that inspection on behalf of the Landlord to establish who was present during the inspection;
- the condition inspection report was not signed by either party, which lends credibility to the Tenant's version of events;
- the condition inspection report indicates the inspection was "done verbally", which is not consistent with a report that was completed at the time of a joint inspection; and
- the text message sent on September 09, 2015 in which the Tenant sent the Landlords a text message in which they inform the Landlords that they have arrived and have found everything "all right", which supports the Tenants testimony that they did not meet with an agent for the Landlord prior to that date.

Section 23(4) of the *Act* requires landlords to complete a condition inspection report after the rental unit is jointly inspected at the start of the tenancy. Section 23(5) of the *Act* stipulates that the landlord and the tenant must sign the condition inspection report and that the landlord must give the tenancy a copy of the report. On the basis of the undisputed evidence I find that the Landlords did not provide the Tenant with a copy of the inspection report that is dated September 07, 2015 until it was provided as evidence for these proceedings.

As I have concluded the rental unit was not jointly inspected at the start of the tenancy I find that the condition inspection report that was submitted in evidence has little evidentiary value, as the parties did not agree the report represented the condition of the unit at the start of the tenancy.

Section 35(1) of the *Act* stipulates that a landlord and tenant must jointly inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. The undisputed evidence is that the parties did not jointly inspect the rental unit at the end of the tenancy.

Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities to participate in a final inspection. The *Residential Tenancy Regulation* requires that at least one of those opportunities must be made in writing. On the basis of the undisputed evidence, I find that the Landlords did not make any effort to schedule a time for a final inspection of the unit.

In adjudicating this matter I have placed no weight on the Landlords' submission that a final inspection of the rental unit was not scheduled because their relationship with the Tenant had become "volatile". Even if that were true, the Landlords could have made arrangements to comply with section 35(2) of the *Act* by being represented by a third party at the inspection or by having a third party present during the inspection.

As I have concluded the rental unit was not jointly inspected at the end of the tenancy and the Landlords did not schedule a time for the final inspection as required by the legislation, I find that the condition inspection report that was submitted in evidence has little evidentiary value, as the parties did not agree the report represented the condition of the unit at the end of the tenancy.

Section 36(2)(a) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant at least 2 opportunities to participate in a final inspection of the rental unit, at least one of which must be made in writing. As the Landlords did not make any effort to schedule a time for a final inspection of the unit, I find that the Landlords' right to claim against the security deposit for damage is extinguished, pursuant to section 36(2)(a) of the *Act.*

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlords' right to claim against the security deposit has been extinguished, pursuant to section 36(2)(a) of the *Act,* the Landlords do not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlords did not comply with section 38(1) of the *Act*, as the Landlords have received a forwarding address and have not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section

38(1) of the *Act*, I find that the Landlords must pay double the pet damage deposit and security deposit to the Tenants.

As the Landlords' right to claim against the security deposit/pet damage deposit has been extinguished, I find that the Landlords do not have the right to claim against those deposits for damage. Residential Tenancy Branch Policy Guideline 17, with which I concur, suggests that a landlord who has lost the right to claim against the security deposit for damage to the rental unit, retains the right to file a monetary claim for damage to the rental unit. As it is readily apparent from information provided with the Application for Dispute Resolution that the Landlords are seeking compensation for damage to the rental unit, I will consider the Landlords' application for compensation of up to $2,229.60, which is the amount on the Monetary Order Worksheet.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy. It is left to me to determine whether the rental unit was left reasonably clean, which is not necessary the personal standards of the Landlord, the Tenant, or me.

While I accept that the Tenant may believe the rental unit was left in reasonably clean condition I find, on the basis of the photographs submitted in evidence, that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy**.**

In reaching this conclusion I was influenced by the photographs on pages 8, 9, 18, 19, 24, 31, and 32 which are representative of dirt that has accumulated over long periods and is not consistent with dirt that accumulated within days of a tenancy ending.

In reaching this conclusion I was influenced by the photograph on pages 12, which I find shows that the laminate flooring needed cleaning.

In reaching this conclusion I was influenced by the photographs on pages 13, 14, 15 and 17, which show that some kitchen appliances required additional cleaning, which the Tenant does not dispute.

In reaching this conclusion I was influenced by the photograph on page 23, which show that boxes were left behind, which the Tenant does not dispute. I find, however, that I have insufficient evidence to show that the boxes were filled with dirty kitty litter.

In reaching this conclusion I was influenced by the photographs on pages 26, 27, 28, and 29, which show that the linens required additional cleaning, which the Tenant does not dispute.

I find that when the photographs are considered in their entirety, the Landlords have established that significant cleaning was required. I therefore find that the Landlords are entitled to cleaning the rental unit, including the deck.

As the rental unit was not left in reasonably clean condition, I find that the Landlords are entitled to compensation for the cost of cleaning the rental unit. In addition to establishing that a tenant did not leave a rental unit reasonably clean, a landlord must also accurately establish the cost of cleaning, whenever compensation for damages is being claimed. When receipts for expenses can be provided with reasonable diligence, I find that applicants have an obligation to submit receipts.

In these circumstances I find that the Landlord failed to establish the true cost of hiring a cleaner, renting a power washer, and buying supplies. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' submission that they paid $245.00 to a cleaner; that they paid $32.10 for cleaning supplies; or that they rented a power washer. I therefore dismiss the Landlords' claim for these expenses. I find that the Landlords are entitled to compensation for the approximately 17.5 hours they spent cleaning the house, at an hourly rate of $25.00, which equals $437.50.

On the basis of the undisputed evidence I find that the Tenant was obligated to mow the lawn at the rental unit, as I consider that to be "regular maintenance".

I find that there is insufficient evidence to establish that the Tenant was obligated to water the plants or trim the bushes. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that he was told the father of one of the Landlords would water the plants and trim the bushes and the absence of any specific reference to these tasks in the tenancy agreement. Although it would be reasonable to assume the watering would be included in "regular maintenance", it would also be reasonable not to water if a third party is completing that task.

On the basis of the photograph of the yard that was submitted in evidence I find that the yard was not mowed at the end of the tenancy. Although the photograph is not of a lawn it appears that the yard is not well maintained and is in need of mowing/trimming.

Even if I accepted that the Tenant had breached section 37(2) of the *Act* by not leaving the yard in good condition at the end of the tenancy, I would dismiss the Landlords' claim for compensation because they failed to establish the true cost of hiring a landscaper or purchasing plants. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' submission that they incurred these expenses.

Even if I accepted that the Tenants cat damaged the couch that was stored in the basement, I would dismiss the Landlords' claim for compensation because they failed to establish the true value of the couch. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' claim that the couch was worth $750.00.

Even if I accepted that two mats were damaged during the tenancy, I would dismiss the Landlords' claim for compensation because they failed to establish the true value of the mats. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlords' claim that the mats were worth $90.00.

I favour the testimony of the Agent for the Landlords, who stated that the bedroom smelled like smoke at the end of the tenancy, over the testimony of the Tenant who stated that the bedroom

did not smell like smoke. I favoured the testimony of the Agent for the Landlords because her testimony was corroborated by the written declaration of two parties, both of whom appear to be reasonably unbiased parties.

I find that the evidence of the individual who was in the rental unit is still valuable even if he incorrectly reported that the Tenants had two dogs. I find it entirely possible that there was a dog visiting in the rental unit that the author believed belonged to the Tenants or that this declaration was simply a mistake. I find that this error does not detract from his observations that the rental unit smelled of smoke, as that is entirely unrelated to the observation regarding the dogs.

I find that the evidence of the individual who viewed the rental unit is still valuable even if she incorrectly reported that the two Tenants were present when she viewed the unit. I find it entirely possible that there were two men in the unit at the time of viewing that she incorrectly believed were the Tenants or that this declaration was simply a mistake. I find that this error does not detract from her observations that the rental unit smelled of smoke, as that is entirely unrelated to the observation regarding the men in the unit.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to eliminate the smell of smoke from the bedroom at the end of the tenancy. I therefore find that the Landlords are entitled to recover the $367.50 they paid to paint this room.

Conclusion

The Tenant has established a monetary claim of $3,900.00 which represents double the security/pet damage deposit.

The Landlords have established a monetary claim of $755.00, which includes $437.50 for cleaning and $317.50 for painting.

After offsetting the two claims I find that the Landlords owe the Tenant $3,145.00 and I grant the Tenant a monetary Order for this amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: April 04, 2017

Residential Tenancy Branch