



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenants – MNSD, MNDC, OLC

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and amended their application to include a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The hearing was adjourned on May 29, 2017 as the Arbitrator had not received the landlord's documentary evidence and the landlord had not received the hearing package or evidence from the tenant. The landlord testified that he had been overseas for a few months at the time the registered mail packages were sent and did not receive the hearing documents. Consequently, pursuant to Rule 7.8 and 7.9 of the Residential Tenancy Rules of Procedure I adjourned the original hearing to provide a fair opportunity for the landlord to review the tenants' application and evidence package. The hearing was reconvened today and both parties' applications were heard.

The tenant AO and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence although the tenant declined this opportunity. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this reconvened hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?  
Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover double the security deposit?
- Are the tenants entitled to an Order for the landlord to comply with the Act?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

#### Background and Evidence

The parties agreed that this tenancy started on March 15, 2009 for a fixed term tenancy that expired on March 31, 2010 thereafter continuing as a month to month tenancy. Rent for this unit was \$3,200.00 per month due on the 1<sup>st</sup> of each month at the start of the tenancy but when a new agreement was entered into on March 01, 2014 the rent increased to \$3,550.00 per month. The tenants paid a security deposit of \$1,600.00 on

March 01, 2009. The tenants provided a forwarding address in writing to the landlord on November 02, 2016.

### **The tenants' application**

The tenant testified that the landlord failed to complete a move in or a move out condition inspection report at the start or end of the tenancy. The tenants gave written notice to end the tenancy on September 21, 2016 and the tenancy ended on November 01, 2016, the tenant testified that they did not give the landlord permission to keep all or part of the security deposit and the landlord has failed to return their security deposit. Therefore the tenants seek to recover double the security deposit to an amount of \$3,200.00.

The tenants provided some late evidence that states that the landlord did not file this application until November 24, 2016.

The tenant testified that they had to carry out some repairs to the rental unit; the wooden porch at the front of the in-law suite was decaying and when you stepped on it you could fall through. The tenant had a conversation with the landlord about the male tenant doing this repair and the landlord suggested that the male tenant did the repair as he is a contractor. The male tenant replaced the wood and they paid for the materials and also had to pay for the labour for one of the male tenant's workers. The tenant testified that along with this repair they had to build a garbage cabinet to prevent bears getting into the garbage cans. The landlord was aware of problems with the bears but the tenant agreed he did not give them permission to build the garbage cabinet. The tenants seek to recover \$735.00 for this work.

The tenant testified that the stackable washer in the unit stopped working. The tenants spoke to the landlord about this issue and he said they could replace it. As this was both a washer and dryer they could not just replace the washer section and they had to replace the whole thing. Later the landlord said he would only pay for half of the replacement cost as he then informed the tenants that they should have purchased a

second hand washer/dryer. The total bill was \$1,091.92; the tenants seek to recover \$545.00.

The tenant testified that the house was infested with skunks. The skunks would often spray the tenants and would crawl under the house and spray up into the house. The tenants had ongoing conversations with the landlord for over a year but the landlord would not agree to get an exterminator in to deal with the skunks; when the skunks sprayed into the house the smell got onto the tenants' furniture and clothing. The tenants had to hire an ozone generator to clear the smell from the house and they had to stay in a hotel while this generator worked. The tenants seek to recover the cost to hire the generator of \$58.18.

The tenant testified that they had a problem with the toilet. They got a plumber in and were told by the plumber that they would have to replace the toilet. The tenant testified that they spoke to the landlord about this but agreed he may not have given his permission to replace the toilet. The tenant testified that as the toilet could not be repaired they replaced it and they seek to recover the cost of \$596.40.

The tenant testified that there were some light switches for the hallway and bathroom that did not work. The tenants could not get hold of the landlord as he was difficult to reach so they replaced these switches and lights. The tenants seek to recover \$455.87 for this work.

The tenant testified that during heavy rainfall the gutter would overflow which caused water to go into the in-law suite. The tenant had a company come out to look at the gutters and they informed the tenants that it looked like the gutters had not been cleaned in some time. The tenant testified that they did not ask the landlord's permission to get the gutters cleaned but they did get this company to clean them and seek to recover the amount of \$294.00 from the landlord for this work.

The tenant testified that they had some evasive bamboo removed from the garden as it was overtaking the plants. They had to pay someone to dig up this bamboo and this

person also fixed the moss issue on the grass. Further to this the city cut down some trees which also damaged the grass. The tenants had to fix these issues. The tenant testified that when they had moved into the property there was moss and although the landscaping looked great the tenants were responsible to keep up with the landscaping. The tenants seek to recover \$1,300.00 for the amounts paid out to remove the bamboo and moss and to repair the grass.

The tenant testified that as a curtesy to the landlord they painted the interior of the main house when they left. The only part not painted was one trim on a doorway on which the tenants had recorded their children's' heights. The tenants seek to recover \$1,732.50 for painting.

The tenant testified that in the in-law suite there was a raised platform at the entrance. The wood on this platform was rotting and had caved in. The tenant spoke to the landlord about it along with some other issues such as mould. The landlord said the tenant could make the repairs but the landlord would only pay \$200.00 towards any repairs. The tenants did the repairs and seek to recover the costs of \$816.68.

The tenants seek an Order for the landlord to comply with the *Act*. I explained to the tenants that as this tenancy has now ended then no such order would be enforceable and this section of the tenants' application has not been considered.

The tenants have provided some photographic evidence and invoices in documentary evidence.

### **The landlord's rebuttal**

The landlord disputed the tenant's application to recover the security deposit. The landlord agreed he did not do a condition inspection report at the start and end of the tenancy.

The landlord disputed the tenants' application concerning the replacement of the deck outside the in-law suite. The landlord testified that he was not notified about a rotten deck and the deck was only two years old when the tenants moved in. The male tenant had contacted the landlord about a blocked storm drain located by the deck but did not inform the landlord that the deck was rotten. The landlord also testified that they did not have city garbage cans and they tenants knew when they rented the property that they occasional had bears on the property; however, no permission was given to the tenants to build a cabinet for the garbage cans.

The landlord testified that in regard to the replacement washer and dryer. The tenants had called the landlord and informed him there was a problem with the washer and had stated that they would replace it. The landlord agreed to pay half the costs but believes the tenants deducted the other half from their rent. The landlord testified that he is not sure which month the tenants made this deduction.

The landlord disputed the tenants' application for the rental costs for the ozone generator. The landlord testified that the property is in an area where there are skunks. The tenants were aware of this. The landlord had called professional to come and get rid of the skunks but the male tenant called before this company went out and informed the landlord that he would put wire up around the house to keep the skunks from getting under the house. The arrangement was that the tenants would call the landlord if they had any further problems. They had other conversations but the tenants said they had taken care of the problem.

The landlord disputed the tenants' application for costs to replace the toilet. The landlord testified that he was not informed of any issues with the toilet and did not give the tenants permission to replace the toilet.

The landlord disputed the tenants' application for costs to replace switches and lights. The landlord testified that he was not informed of any electrical issues in the unit and did not give the tenants' permission to replace these items.

The landlord disputed the tenants' application regarding the gutter cleaning. The landlord testified that he had changed the roof and cleaned the gutters one and a half years before the tenants moved in. The tenants did not notify the landlord that the gutters required cleaning. If the tenants had notified the landlord then the landlord would have cleaned the gutters.

The landlord disputed the tenants' application regarding the bamboo and lawn repairs. The landlord testified that he was not made aware of issues with the bamboo. The landlord used to have a gardener that maintained the landscaping for \$300.00 per month. The tenants negotiated a cheaper rent at the start of the tenancy and agreed to look after the landscaping themselves. At the end of the tenancy they left the landscaping in a poor condition and the landlord had to get his gardener back in. The landlord agreed the tenants did re-seed the front lawn but they had informed the landlord that they would do this at the end of the tenancy as they wanted to use that area for parking.

The landlord raised some concerns about the tenants' invoices provided in evidence. The landlord testified that the dates on the cleaning invoice shows the cleaning was done before the painting work. The landlord questions this and testified that why would the tenants clean the house and then paint it. The landlord testified that at the end of the tenancy he walked around the house with the male tenant and showed him all the patches on the walls which had not been painted and the door frames which were not painted where the children's height charts were left.

The tenant testified that the cleaning invoice is dated October 29, 2016 but the work was done on October 04, 11 and 18, 2016. The painting invoice is dated November 01,

2016. The tenant testified that they actually vacated on October 01 but paid rent until the end of October.

The landlord argued that the painting invoice shows the unit was painted October 12, 13 and 19, 2016 after the cleaning was done. The landlord testified that he last painted the unit in March 2009; however, the tenants never asked the landlord to re-paint it during their tenancy.

The landlord disputed the tenants' application to replace the front entrance area of the in-law suite as the tenants did not inform the landlord there were issues and the landlord could have repaired this if indeed it required repair.

The landlord asked the tenant if they had his permission for their mother to live in the in-law suite. The tenant responded that her mother was part of their family.

### **The landlord's application**

The landlord testified that the tenants were responsible for the hydro, heating and water bills. The tenants failed to pay the water bills. The landlord seeks to recover the amount of \$536.44 as the final bill was reduced to take into account a water leak and the tenants' payment made towards the final bill and the landlord has amended his claim during the hearing.

The landlord testified that due to the damage to the unit and the time taken to repair this damage the unit could not be re-rented for the month of November, 2016. Before the landlord finished the repair work he advertised the unit on an internet site but the unit was not re-rented until April, 2017. The landlord seeks to recover a loss of rent for November, 2016 of \$3,650.00.

The landlord testified that the tenants caused damage to the rental unit. The carpets had two burn marks. The landlord asked the male tenant to change the carpets but he said he did not have time. The landlord referred to his invoice in documentary evidence



for new carpets and seeks to recover \$715.88 and \$358.68 to install them. The landlord agreed the carpets were 10 years old.

The landlord testified that he had to hire a contractor to re-paint the house and the in-law suite and make repairs. Holes had to be patched, cabinets in the kitchen had to be fixed, a cabinet in the master bedroom ensuite had to be fixed, doors and frames had to be repainted, French doors had to be replaced because of two broken glass panels which could not be replaced and a water line was blocked and had to be replaced. The male tenant had informed the landlord that he had noticed a leak and so he took the outside faucet off this water line.

In addition to this a door frame had been chewed by the tenants' dog which the landlord had not given permission for them to have and no pet damage deposit was paid. The tenants had simply covered up this damage with paint. During the move out walk through with the male tenant, the male tenant agreed that they had caused the damage and only patched some of the walls. The landlord testified that the house and in-law suite were in perfect condition when the tenants moved in. The towel rail in the bathroom was loose and was hanging off. The landlord testified that the back yard and the landscaping also had to be cleaned up. The landlord testified that the oven was also left unclean and greasy

The landlord seeks to recover \$5,650.00 for all this work. The landlord has provided photographic evidence and invoices in documentary evidence.

### **The tenants' rebuttal**

The tenant does not dispute the landlord's adjusted application for the water bill of \$536.44.

The tenant disputed the landlord's application for a loss of rent for November, 2016. The tenant testified that the landlord had showed the unit to a few people while the tenants were still living there, when the tenants handed over the home it was all in great

condition other than some small burn marks on the carpet from the tenants' son's reptile light, which their son had placed on the carpet, and the door frame with their children's height marks. This damage would not prevent the landlord from re-renting the property.

The tenant disputed the landlord's application for replacement carpets; the tenant agreed her son's reptile light did cause small burn marks on the carpet in one room, yet the landlord is seeking costs to replace carpet in two bedrooms. The tenant testified that they had the carpets professionally cleaned at the end of the tenancy and these two small marks would not warrant replacing the carpet in both rooms.

The tenant disputed the landlord's application for painting and repairs. The tenant testified that they had painted the interior of the main house but in the in-law suite they had only filled in any holes. Where the landlord has claimed for holes made in the bathroom these holes were caused when the landlord took off the bathroom fixtures and a light fixture. The tenant disputed taking off any towel rails.

The tenant testified that when they moved into the unit the cabinet face in the master bedroom on suite was not connected and was in the cabinet. It was left this way at the end of the tenancy. The tenant testified that the French door glass had two hair line cracks in them when they moved in. The tenant agreed the glass did get broken and that she put sticky plastic over the glass.

The tenant testified that the cabinet faces and drawers in the kitchen became loose overtime. These had to be tightened regularly. The tenant testified that they replaced bulbs as required and if there was one burnt out at the end of the tenancy this was not intentionally left as the tenants needed to have lights in the house.

The tenant agreed that one door frame was not painted that had their children's height chart and the tenant agreed that their dog did chew the other door frame. The tenant does not dispute this damage.

The tenant testified that the water line never worked and it had a small leak so her husband shut it off as they had to pay for the water usage. The tenant disputed the landlord's claim for yard clean up and landscaping and testified that they had cleaned up the yard and the landscaping and had planted new plants as shown in their photographic evidence.

The landlord testified that when the carpet people came in to look at the carpets they showed the landlord some damage to the carpets in the second room. This carpet had pulls and staining. The carpets are old and the carpet people said they were not cleanable.

The landlord agreed the French doors were 18 years old.

The landlord asked the tenant how they managed to water the yard if the water line was not working from the start of their tenancy. The tenant responded that they used the other faucet and connected two hoses together. The landlord asked why the tenants left the ensuite cabinet door inside the cabinet during their seven year tenancy. The tenant responded that she did try to fix it but could not do so. The landlord asked how long the tenant's husband has been a contractor and why he could not have fixed the cabinet door. The tenant responded that she had tried to repair it not her husband.

The landlord asked the tenant if she saw the pictures of the patches on the walls and why did she say they had professionals in to paint the unit. The tenant responded that the pictures show holes made by the landlord when he took shelves down and took down the towel rail. The landlord asked the tenant why does she suppose he would do this. The tenant responded to paint.

The landlord testified that some of the tenant's invoices are dated prior to them renewing their lease in 2014 and wonders why the tenants are only making a claim against the landlord now.

The tenant testified that at the end of the tenancy the landlord only did a walk through but did not say anything about all these damages he is claiming for. The landlord testified that he walked through the unit with the male tenant only so this tenant would not be aware of the things that were mentioned or pointed out. The tenant agreed that she was not aware of the conversation between her husband and the landlord.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' application to recover double their security deposit; as the landlord has also applied to keep the security deposit I will deal with this under the landlord's application.

With regard to the tenants' application for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

With this test in mind I have considered the following items under the tenants' application:

*Front porch repair and garbage cabinet* – When tenants feel that the landlord has not maintained the property or that repairs are required that are either emergency repairs

under s. 33 of the *Act* or general repairs under s. 32 of the *Act* then the tenant are afforded some protection under the *Act*. The tenant must contact the landlord in writing and inform him of the required repairs and then request that the landlord makes these repairs within a certain time frame or get written permission from the landlord to do the repairs themselves. If the landlord does not make the repairs then the tenants have recourse under the *Act* to prove that the repairs are required, prove that they requested the landlord make the repairs or provide proof that the repairs fall under the category of emergency repairs.

In the instance of the porch repairs and the garbage cabinet the tenant testified that they had verbal permission from the landlord to repair the porch, however, this does not fall under the criteria of emergency repairs as defined under s. 33 of the *Act*. There is insufficient evidence from the tenants that they had the landlord's verbal permission to make any repairs or that the landlord would contribute financially to these repairs. The tenants agreed that they did not ask the landlord to build a garbage cabinet to keep the bears out of the garbage and without the landlord written permission the tenants cannot now seek compensation for any costs incurred in making these repairs or building a cabinet. The tenants' application for \$735.00 is therefore dismissed.

*Washer and dryer* – the tenants seek to recover half the costs incurred to replace the washer/dryer stackable unit. The tenant testified that the landlord agreed to pay half of the cost for the replacement units. The landlord testified that he did agree to pay half but that the tenants had deducted this from their rent; however, the landlord has insufficient evidence to show that the tenants did deduct this amount from any of their monthly rent payments; I therefore find in favor of the tenants' application to recover the amount of **\$545.00**.

*Rental of ozone generator* – the parties agreed that there was a problem with skunks at the property. The landlord also agreed that the skunks did spray at the property. The landlord was willing to call in professionals to get rid of the skunks but the tenants did the work required to prevent the skunks accessing the crawl space under the house. As

there was clearly an issue with skunks spraying I am satisfied that the tenants had to hire this ozone generator to get rid of the smell inside the house after the skunks had sprayed. I therefore find in favor of the tenants' application to recover the costs to rent this ozone generator of **\$58.18**.

*Replacement toilet* - As written above; I find there is insufficient evidence to show the tenants notified the landlord that there was an issue with the toilet. When the plumber informed the tenants that the toilet could not be repaired the tenants should have still notified the landlord so the landlord could have made his own decisions about the repair or replacement of the toilet. Instead the tenants took it upon themselves to carry out this work and therefore I find the tenants are not entitled to recover the costs incurred.

*Replacements lights and switches* - I find there is insufficient evidence to show that the tenants made every effort to contact the landlord to notify him that they had an issue with switches or lights in the unit. The tenants cannot simply carry out repairs without making an attempt to contact the landlord and if the repair is considered to be an emergency repair, which in this case I am not satisfied it was, then the tenants must follow s. 33 of the *Act* in order to be reimbursed. Consequently, I find this section of the tenants' application is dismissed.

*Gutter cleaning* – In this regard the tenants did not inform the landlord that the gutters were overflowing into the in-law suite; instead the tenants engaged a company to come out and clean the gutters. There is insufficient evidence to show that the gutters had not been cleaned for some years and this should be considered part of regular maintenance of a rental unit. Without notifying the landlord that there was an issue so the landlord could mitigate the loss and arrange to clean the gutters himself, I find the tenants are not entitled to recover the costs they incurred and this section of their application is dismissed.

Bamboo removal and lawn repair – in accordance with the tenancy agreement and addendum, the tenants are responsible for yard maintenance. I refer the parties to the

Residential Tenancy Policy Guidelines (Policy Guidelines) #1 which provides some guidance on the maintenance of yards and states:

### **PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

While the landlord is responsible for major projects such as tree cutting, pruning and insect control, the landlord must be given the opportunity to do this work before the tenants employ the services of someone else. In this instance the tenants removed the bamboo because they claim it became invasive and they seek to recover these costs; I am not satisfied that the tenants gave the landlord the opportunity to do this work or to prune back any invasive plants such as the bamboo before taking it upon themselves to do this work. Furthermore any lawn maintenance is the responsibility of the tenants and if the tenants wanted the moss removed or to reseed areas of lawn or undertook any

additional yard work to create a better ambiance for the tenants then the tenants must bare these costs. This section of the tenants' application is therefore dismissed.

*Painting of the house* - the tenant testified that as a curtesy they painted the interior of the house at the end of the tenancy. If the tenants did this as a curtesy then I am puzzled why the tenants are now claiming this cost back from the landlord. Under the Policy Guidelines #1 it states that:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The tenants were therefore only required to paint the interior of the house if they had caused damage inside the unit. If this was the case then the tenants are responsible for any costs to paint the interior. If the tenants did not cause damage then they are not required to paint the interior especially because the landlord agreed the unit had not been painted since 2009 and the useful life of interior paint is calculated at four years. Either way the tenants are not entitled to recover any costs incurred to repaint the unit and this section of their application is dismissed.

*Floor entrance repair* - The tenants testified they had to repair the entrance of the in-law suite and had the landlords verbal permission to do so; however, the landlord disputed this and without further corroborating evidence from the tenants and in light of the other repairs done without permission I find there is insufficient evidence that the landlord agreed the tenants could make this repair and the landlord would pay up to \$200.00. This section of the tenants' application is therefore dismissed.

### **The landlord's application**

*Unpaid utilities* – The tenant did not dispute the landlord's revised claim for unpaid utilities of **\$536.44**. I therefore find in favor of the landlords revised claim and award this amount to the landlord.



*Loss of rent* - The landlord seeks to recover a loss of rent for November, 2016 because of the level of repairs required in the unit after the tenants vacated that prevented the landlord re-renting the unit; I have considered the evidence before me and I am not satisfied that the level of repairs required that were the responsibility of the tenants would have prevented the landlord re-renting the unit in a timely manner. The tenants gave the landlord sufficient notice to end their tenancy and the landlord only placed an advert to re-rent the unit why he was doing the repairs. The landlord has the burden of proof in this matter and I find there is insufficient evidence of the level of work required inside the unit or the date for which an advert was placed by the landlord to mitigate the loss of rent. As this unit was not re-rented until six months later there may have been other factors that prevented this unit from being rented. Consequently, I dismiss this section of the landlord's application.

*Carpets* – I refer the parties to the Policy Guidelines #40 which provides guidance on the useful life of building elements. This guideline states that carpets have a useful life of 10 years. As the landlord agreed these carpets were 10 years old then I must deem that they were past their useful life and therefore had little or no value due to depreciation. The landlord's application to recover the costs to replace the carpets is therefore dismissed.

*Repairs and painting* – The tenant agreed that their dog caused some damage to the door trim and the tenant had failed to paint over their children's height chart on a door frame. I therefore find the landlord is entitled to some compensation for this damage. In considering the remainder of the damage and painting claim, I have turned my mind to the burden of proof that falls to the landlord. The tenant disputed all other aspects of the landlords claim for damage and testified that they had painted the interior of the main house and just patched the interior of the in-law suite.

The *Act* places the onus on the landlord to ensure that both inspections are completed in accordance with the regulations. That didn't happen at the beginning or end of the

tenancy. The *Act* also specifies that those reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and in the absence of these reports I cannot conclude that the tenants caused damage to the ensuite cabinet or that the doors and drawers to the kitchen cabinets were in a good condition at the start of the tenancy. The tenant testified that two panes of glass that were broken during the tenancy in the French doors were already cracked and the landlord agreed these doors were 18 years old and I therefore find these were almost at the end of their useful life of 20 years. The landlord has also not shown that the tenants blocked a water line that was in a good condition at the start of the tenancy. Without further corroborating evidence showing the condition of the unit at the start of the tenancy against the condition of the unit at the end of the tenancy I must find that the landlord has not meet the burden of proof in this matter and the landlord's application for damages is limited to the two doorframes. I therefore award the landlord the amount of **\$250.00** as a nominal amount to repair this damage.

*Both parties' applications for the security deposit.* The tenants seek double the security deposit the landlord seeks to retain the security deposit. I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Therefore, based on the above and the undisputed evidence presented I find that the tenancy ended on November 01, 2016 and the landlord received the tenants' forwarding address by email on November 02, 2016. The tenants provided late evidence after the hearing had concluded in which they state the landlord did not file his application until November 24, 2016 as this is the date on the Notice of Hearing; however, the landlord did file his application on November 11, 2016 and the date shown on the Notice of

Hearing is the date it was processed by the RTB. Furthermore, as the landlord filed his application to retain the security deposit for unpaid rent and utilities as well as for damages then the landlord has not extinguished his right to do so because he failed to complete the inspection reports, as that extinguishment only refers to filing a claim just for damages. Therefore, the tenants are not entitled to recover double the security deposit but are entitled to recover the balance of the security deposit after the landlord's monetary claim has been satisfied. It is therefore my decision that the landlord is entitled to retain a portion of the security deposit pursuant to s. 38(4)(b) of the *Act* in satisfaction of his monetary claim and the balance must be returned to the tenants pursuant to s. 67 of the *Act*. There has been no accrued interest earned on the security deposit for the duration of the tenancy.

The parties are entitled to the following monetary awards:

**The tenants' monetary award**

Half costs for washer/dryer	\$545.00
Rental of ozone generator	\$58.18
<b>Total amount due to the tenants</b>	<b>\$603.18</b>

**The landlord's monetary award:**

Unpaid utilities	\$536.44
Nominal amount for damages	\$250.00
<b>Total amount due to the landlord</b>	<b>\$786.44</b>

As the parties have both been partially successful with their applications I have offset the higher amount against the lower amount and the landlord is entitled to retain the amount of **\$183.26** from the security deposit leaving a balance of \$1,416.74 which must be returned to the tenants. The tenants have been issued with a Monetary Order for this amount pursuant to s. 67 of the *Act*.

As both parties applications have been partially successful the parties must bear the cost of any filing fees paid for their applications.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to a monetary award of **\$786.44**. This amount has been offset against the tenants' monetary award and the landlord is ordered to retain the balance of **\$183.26** from the security deposit.

I HEREBY FIND in partial favor of the tenants' monetary claim. The tenants are entitled to a monetary award of **\$603.18** which has been offset against the landlord's monetary award, and the balance of the security deposit of **\$1,416.74**. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,416.17**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: June 19, 2017

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Residential Tenancy Branch