Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

A hearing was convened on April 10, 2107 in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent or utilities, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, for other, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that his Application for Dispute Resolution, the Notice of Hearing, and a large package of evidence, labelled A to G were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of the documents and the evidence was accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that the Tenants' Application for Dispute Resolution, the Notice of Hearing, and 65 pages of evidence the Tenants submitted with the Application were sent to the Landlord, via registered mail, on December 11, 2016. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 20, 2017 the Landlord submitted an Amendment to an Application for Dispute Resolution, in which the Landlord reduced the amount of his claim from $8,268.08 to $7,329.49. On March 20, 2017 the Landlord submitted an additional ten pages of

evidence. The Landlord stated that these documents were served to the Tenants on March 20, 2017, via registered mail. The Tenants acknowledged receipt of the documents and the evidence was accepted as evidence for these proceedings.

There hearing on April 10, 2017 was adjourned, as there was insufficient time to conclude the hearing on that date.

The hearing was reconvened on June 02, 2017 and was again adjourned as there was insufficient time to conclude that hearing.

The hearing was reconvened on July 26, 2017 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The documentary evidence submitted was viewed but was only referenced in this decision if it was relevant to my findings.

Preliminary Matter #1

During the first two hearings a significant amount of time was spent discussing information the Landlord added to the condition inspection report after it was signed by the Tenant on September 30, 2016.

At the conclusion of the hearing on June 02, 2017 the Landlord declared that he had not had sufficient time to explain the circumstances surrounding the information he added to the report after it was signed by the Tenant. I do not concur with that submission. I find that the Landlord had ample time to make submissions regarding the condition inspection report and when he was provided with additional time he simply reiterated information that had previously been provided.

At the end of the second hearing both parties were advised that the circumstances surrounding the completion of the condition inspection report would not be discussed again. This direction was given, in part, because I was satisfied that both parties have had a fair opportunity to present evidence in this regard.

More importantly, this direction was given because I had concluded that the inspection report that was completed at the end of the tenancy was of little evidentiary value. When the Tenant signed the report on September 30, 2016 he noted that he did not agree that the report fairly represented the condition of the rental unit at the end of the tenancy.

As the Tenant did not agree that the report fairly represented the condition of the rental unit at the end of the tenancy, the report has no evidentiary value other than to record the Landlord's opinion of the condition of the unit at the end of the tenancy.

Preliminary Matter #2

On several occasions during these proceedings the Landlord was reminded not to interrupt while other people were speaking and he was frequently prevented from providing repetitive testimony.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and unpaid utilities?
Should the security deposit be retained by the Landlord?
Are the Tenants entitled to the return of double their security deposit?
Are the Tenants entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on October 02, 2015;
- the tenancy ended on September 30, 2016;
- monthly rent of $1,600.00 was due by the first day of each month;
- the Tenants paid a security deposit of $800.00;
- a condition inspection report was completed at the beginning of the tenancy;
- the Tenant signed the condition inspection report that was completed at the start of the tenancy and agreed that it fairly represented the condition of the rental unit at that time; and
- they met on September 30, 2016 to complete a condition inspection report at the end of the tenancy.

The Landlord submitted a copy of the condition inspection report that was completed in regards to this tenancy.

The male Tenant stated that he photographed two pages of the condition inspection report after it was signed on September 30, 2016; that he left the rental unit shortly after the report was signed; and that he did not observe the Landlord make additional entries to the condition inspection report after he signed the report.

The Tenants submitted a copy of the photographs taken of page 2 and page 5 of the report. The Landlord and the Tenants agree that there are significant differences between the two documents.

The Landlord acknowledged that he added items to the report after the report was signed by the Tenant. He stated that additional information was added to the report because he discovered additional damage after the report was signed and that the Tenant was present when the additional damage was noted on the report.

The Landlord and the Tenants agree that the Tenants were required to pay 2/3 of the hydro and gas bills. The Landlord submitted three gas bills and two hydro bills in evidence, which total $262.87. The Landlord and the Tenants agree that the Tenants have not paid their portion of these utility bills.

The Landlord stated that the Tenants owe 2/3 of the utility bills, which is $175.25. The male Tenant acknowledged that he owes 2/3 of the bills, which he estimates is $150.00.

The male Tenant stated that he does not understand why there is a credit of $220.00 on one of the utility bills. The Landlord stated that this is a security deposit that was placed on the account after this tenancy ended.

The Landlord is seeking compensation, in the amount of $639.99, for replacing the laminate floor in the kitchen. The Landlord stated that the floor was in good condition at the start of the tenancy, with the exception of a dent near the dishwasher, and that the floor was scratched during the tenancy.

The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show a scratch near the center of the floor (Photos 46 and 47).

The male Tenant stated that the scratch in the floor is not large and that it was present at the start of the tenancy, although he acknowledges that this damage was not recorded on the inspection report that was completed at the start of the tenancy.

The Landlord stated that he purchased the rental unit in August of 2015 and he has absolutely no idea how old the linoleum flooring was. The male Tenant speculated that the flooring was 25 to 30 years old, because he believes that style of linoleum is no longer available.

The Landlord submitted receipts that indicate $640.04 was paid to replace the linoleum.

The Landlord is seeking compensation, in the amount of $675.42, for repainting some of the rental unit. The Landlord stated that the walls were in good condition at the start of the tenancy.

The Landlord stated that when he was in the rental unit prior to the end of the tenancy he noticed that items were taped on the walls and doors; that there was writing on the wall; and that the walls were damaged in several places. The Landlord submitted photographs of the condition of the walls during the tenancy (photographs 4-14). The Tenants do not dispute that these photographs depict the condition of the walls during the tenancy.

The Landlord stated that after the tenancy ended the walls were damaged and in need of painting. The Landlord stated that photographs 61 to 83 represent the type of wall damage that was present at the end of the tenancy.

The male Tenant stated that the walls in the unit were cleaned with a magic eraser prior to the end of the tenancy and that photographs 61 to 83 do not represent the condition of the walls at the end of the tenancy. In his written submission the Tenant stated that the damage to the walls shown in photographs 58-71 and 82-85 was all present at the start of the tenancy.

The male Tenant stated that the Tenants' photographs 9, 12, 14, 35 and 36 more accurately represent the condition of the walls at the end of the tenancy.

The Landlord stated that the Tenants did clean some of the marks on the walls but the walls were not adequately cleaned. He stated that photograph 78 is a photograph of the wall after the Tenants attempted to remove the writing that is depicted in photograph 14. The male Tenant denies this submission and says the writing was completely removed by the Tenants.

The Landlord submitted a letter from the person who moved into the rental unit after the Tenants vacated it. In this letter the author declared that there were "various coloured marks and fingerprints on the walls, door, and trims".

The Landlord submitted receipts that indicate $675.42 was paid for painting the rental unit. In the receipt for labour for painting the unit the painter notes that he spent 20 hours painting "badly marked walls, doors, and baseboards".

The Landlord stated that he believes the rental unit was painted shorty before he purchased the unit in August of 2015. The male Tenant speculated that the rental unit was painted approximately 10 years prior to the start of the tenancy. The parties agree that the condition inspection report that was completed at the start of the tenancy indicates there was minor damage to a wall in the bathroom, to baseboards in a bedroom, and some minor damage to the walls in one of the bedroom.

The male Tenant stated that there was originally an entry on the condition inspection report that indicated there were also marks on baseboards in bedroom #2, which the Landlord removed. The Landlord stated that he removed that entry because he inadvertently recorded the damage was in the second bedroom when it was actually in bedroom #1.

The Landlord is seeking compensation, in the amount of $74.93, for replacing landscape ties.

The Landlord stated that the ties were damaged during the tenancy. He submitted a photograph of damaged landscape ties, which he stated was taken on the last day of the tenancy. The photograph, in my view, demonstrates that the ties have been recently damaged.

At the hearing the Tenant stated that he has never noticed the damage in the photograph and it was not brought to his attention at the end of the tenancy. In his

written submission the Tenant stated that the Landlord's photograph reflects the condition of the ties at the start of the tenancy.

The Landlord estimates the landscape ties were 2 or 3 years old at the end of the tenancy and the Tenant estimates they were 40 years old.

The Landlord submitted an invoice that indicates he was charged $50.00 for replacing three landscape ties and a receipt that indicates that he paid $24.93 for three landscape ties.

The Landlord is seeking compensation, in the amount of $5,302.50, for refinishing hardwood floors in the rental unit. The Landlord submitted an estimate for the repair.

The Landlord stated that the hardwood floors were in good condition at the start of the tenancy. He stated that he does not know when the floors were installed or refinished, as he just purchased the unit in August of 2015.

The submitted photographs of the real estate listing, dated June 11, 2015, which he contends represent the condition of the floors at the start of the tenancy.

The Landlord submitted an addendum to the tenancy agreement, which was signed by both Tenants on October 02, 2015, which indicates there are new hardwood floors in the "whole house (except kitchen and bathrooms) in new condition".

The male Tenant stated that the floors in the rental unit were in the same condition at the start of the tenancy as they were at the end of the tenancy.

The Landlord and the Tenant agree that the condition inspection report completed at the start of the tenancy did not record any damage to the floors in the living room or either bedroom. The male Tenant stated that there were scratches on the floor in the living room at the start of the tenancy that were not noted on the condition inspection report because there was no lighting in the living room, as noted on the report.

The Landlord stated that the hardwood floors in the living room, the master bedroom, and the bedroom used by children were scratched in several places at the end of the tenancy. The Landlord submitted numerous photographs of these scratches.

The male Tenant stated that all of the scratches seen in the Landlord's photographs were present at the start of the tenancy. He noted that no scratches appear in the photographs of the floor that the Tenants submitted in evidence. He contends that the only reason the scratches are visible in the Landlord's photographs is because they were taken from a very close range.

The Landlord stated that the scratches on the floor can be seen in the Tenant's photographs #37 and #42.

The Owner of the rental unit (Owner) stated that she believes the scratch on the floor in the Landlord's photograph #19 was caused by the Tenants' child drawing on the floor. She based this opinion on her opinion that the shape of the scratch on the floor is very similar to the shape of a drawing a child drew on the walls of the rental unit.

The Tenants submitted a document, dated November 01, 2016, from an individual who describes himself as a real estate agent. In this letter the author declares that he was at the rental unit at the end of the tenancy and that he noted minor scratches on the floor and some marks on the wall, which he considered to be normal wear and tear.

The Landlord claimed compensation for cleaning the rental unit.

The Landlord stated that the rental unit required cleaning at the end of the tenancy. He contends that the Landlord's photographs #15, 16, 18, 46-50, 53, 84, 85, 88, and 89 demonstrate the need for cleaning.

The male Tenant agreed that the Landlord's photographs #15, 18, 46, 48, 49, 50, 53, and 89 fairly represent the cleanliness of the rental unit at the end of the tenancy, although he contends that they also represent the cleanliness of the rental unit at the start of the tenancy.

The male Tenant stated that he does not recall seeing the dirt depicted in the Landlord's photograph #16.

At the hearing the Tenant stated that they did not pull out the appliances at the end of the tenancy so they did not see the dirt depicted in the Landlord's photograph #45. In his written submission the Tenant stated that this photograph represents the condition of the rental unit at the start and the end of the tenancy.

The male Tenant stated that the Landlord's photographs #84 and 85 were taken before the Tenants had finished cleaning, which the Landlord denies.

The male Tenant stated that the Landlord's photograph #88 was taken before the Tenants had removed their personal property from the deck, which the Landlord denies.

The Landlord submitted invoices to show he spent $160.00 to have the unit cleaned.

The Landlord submitted a receipt from Rona, in the amount of $159.84. He stated that the receipt is, in part, for supplies used to clean the rental unit.

The Landlord submitted a letter from the person who moved into the rental unit after the Tenants vacated it. In this this letter the author declared that the rental unit required a significant amount of cleaning.

The Landlord submitted a copy of a condition inspection report that was completed when the new occupant moved into the unit after this end of this tenancy, which indicates that several areas in the rental unit required cleaning.

The Tenant submitted a document, dated November 05, 2016, in which the author declared that she inspected the rental unit at the start of the tenancy and she noted a variety of deficiencies, which were recorded on the condition inspection report. In the document she declared that she also noted that there was a lot of dust in various locations and there was hair on the light fixtures.

The only dirt noted on the condition inspection report that was completed at the start of the tenancy was hair on the window coverings in the living room.

The Landlord is seeking compensation for photocopying costs. The Landlord stated that these costs were related to submitted evidence for these proceedings.

The Landlord is seeking compensation, in the amount of $6.71, for replacing a door knob on the door that leads from the kitchen to the patio. The Landlord stated that the door knob worked properly at the start of the tenancy and at the end of the tenancy a key could not be inserted into the knob, although he does not know why. The male Tenant stated that the door knob functioned properly at the end of the tenancy.

The Landlord claimed compensation, in the amount of $159.84, for repairing a screen door and for cleaning supplies. The Landlord stated that $25.00 of this claim was for repairing a screen door and the remainder of the claim is for cleaning supplies.

The Landlord and the Tenants agree that the screen door in the living room was torn at the start of the tenancy and that it was torn at the end of the tenancy.

The Owner stated that she personally repaired the door in July of 2016. The Landlord stated that he noted the repair on the condition inspection report after the repair was completed. The Landlord did not submit receipts for materials used for the repair in July of 2016.

The male Tenant stated that the door was never repaired during their tenancy.

The Tenants are claiming compensation of $5,000.00 for a “violation of agreement”, which the male Tenant stated relates to the deficiencies of the rental unit that are outlined in the three-page “dispute details” that is attached to the Application for Dispute Resolution.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that the screen door in the living room that was torn at the start of the tenancy was never repaired.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that the toilet and sinks backed up three or four times during the tenancy and that on each occasion it to three or four days to make repairs. The male Tenant stated that no documentary evidence was submitted that supports this claim.

The Landlord stated that he received one report of a plumbing blockage during the tenancy and that he responded immediately to that report.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that the toilet and sinks backed up three or four times during the tenancy and that on each occasion it to three or four days to make repairs. The male Tenant stated that no documentary evidence was submitted that supports this claim.

The Landlord stated that he received one report of a plumbing blockage during the tenancy and that he responded immediately to that report.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that an exterior tap was leaking. The male Tenant stated that this leak was reported to the Landlord on several occasions and that it was never repairs. The male Tenant stated that no documentary evidence was submitted that supports this claim.

The Landlord stated that a problem with the exterior tap was not reported until it was reported in the Tenants’ Application for Dispute Resolution.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that there were security bars on the windows at the start of the tenancy; that when the tenancy began the Landlord promised to remove the security bars; that the bars were never removed; and that the security bars endangered the safety of his family.

The Landlord stated that he never agreed to remove the security bars from the windows.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that the rental unit was not clean at the start of the tenancy.

The claim for “violation of agreement” relates, in part, to the Tenants allegation that there was a significant amount of dust and allergens in the air because the unit was not properly sealed and the furnace filter was not changed. The male Tenant stated that he reported the problem to the Landlord on several occasions and he is not aware of the Landlord changing the furnace filter or taking any other corrective measures.

The Landlord stated that the Tenants did report a concern about the furnace filter about ½ way through the tenancy and that he changed the furnace filter in response to those concerns

The Tenants submitted a prescription. The male Tenant stated that this was to treat an allergy one of his children developed as a result of the air quality in the rental unit.

The claim for "violation of agreement" relates, in part, to the Tenants allegation that the Landlord entered the rental unit without proper authority. The male Tenant stated that his babysitter told him that on August 06, 2016 the Landlord came to the rental unit without notice and that the Landlord entered the rental unit without permission.

The Landlord stated that he went to the rental unit on August 06, 2016 because he noticed a problem with a lawn sprinkler; he knocked on the front door to discuss the problem with the sprinkler; and he did not enter the rental unit on that day.

The Tenants submitted an email, dated August 24, 2016, which the Tenants sent to the Landlord. In the email the male Tenant refers to the Landlord coming "stroming to my home without permission and any prior notice" (sic); however it does not mention that the Landlord entered the rental unit.

The Tenants are claiming compensation of $5,000.00 for a "overpaid rent". This claim is based on the allegation that the Landlord misrepresented the size of the rental unit.

The male Tenant stated that this rental unit was advertised as being 1,600 square feet in size. The Landlord stated that he cannot recall if his advertisement declared that the rental unit was 1,600 square feet.

The male Tenant stated that the rental unit was only 1,200 square feet in size. He stated that his friend, who is a real estate agent, measured the unit and determined it was only 1,200 sq. feet. The Tenants did not submit evidence from the person who measured the unit.

The Landlord stated that he does not know the size of the rental unit, although he acknowledges that the real estate listing for the property that was submitted in evidence declares that the main floor is 1,205 square feet.

The Owner stated that in addition to the main floor the rental unit included a ground level foyer and the stairs leading to the main floor. She estimates the foyer was approximately 12X12 (144 square feet).

The male Tenant acknowledged that the rental unit included a ground level foyer and the stairs leading to the main floor. He estimates the foyer was between 50 and 100 square feet.

The real estate listing submitted in evidence declared that the foyer is 10'3 x 11'8" (approximately 121 square feet)

Analysis

On the basis of the undisputed evidence I find that the Tenants were required to pay 2/3 of the hydro and gas bills and they did not pay their portion of the gas and hydro bills which total $262.87. I therefore find that the Tenants owe 2/3 of the utility bills, which is $175.25. In adjudicating this claim I have placed no weight on the fact there is a credit of $220.00 on one of the utility bills, as there is no evidence that this credit relates to this tenancy.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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.

In this situation the Landlord bears the burden of proof in regards to his claims for compensation and the Tenants bear the burden of proof in regards to their claims for compensation.

Section 37(2(a)) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I favour the evidence of the Landlord, who stated that the scratch on the kitchen floor was not present at the start of the tenancy, over the evidence of the Tenants, who contend the scratch was present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed at the start of tenancy, which does not indicate there was a scratch on the floor at the start of the tenancy.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As there is no indication the information regarding the kitchen flooring on the condition inspection report that was completed at the start of the tenancy has been altered and the Tenants have not submitted evidence that establishes this portion of the report is inaccurate, I find that this report establishes the condition of the kitchen floor at the start of the tenancy.

On the basis of the photographs submitted in evidence, I find that there was a large scratch in the kitchen floor at the end of the tenancy. I find that the scratch is significant and that it exceeds normal wear and tear. As the scratch was not present at the start of the tenancy I must conclude that the floor was damaged during the tenancy. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to

repair the damaged floor. I therefore find that the Landlord is entitled to compensation for the cost of replacing the linoleum.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of tile and carpet is ten years. The guidelines do not specify the life expectancy of linoleum, but I find a ten year estimate is reasonable.

On the basis of the testimony of the Landlord, I find that the linoleum has not been replaced since the unit was purchased in August of 2015. I therefore find that the linoleum was at least 14 months old at the end of the tenancy. I find that I cannot make a more accurate assessment of the age of the linoleum, as the Landlord simply has no information to provide and I find the Tenant's estimate that it was 25or 30 years old is not realistic, given the condition and style of the linoleum.

On the basis of the information before me I find that the linoleum had depreciated by at least 5.8% by the time this tenancy ended and that the Landlord is entitled to 94.2% of the cost of replacing the flooring, which in these circumstances is $602.87.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the walls in the rental unit were in reasonably good condition at the start of the tenancy, with the exception of a small amount of damage in one of the bedrooms and in a bathroom. Even if I accepted that this condition inspection report was altered to remove an entry regarding damage to baseboards in one of the bedrooms, I find that the report indicates that the baseboards were in reasonably good condition, with the exception of damage to the baseboards in no more than two bedrooms.

In determining that the walls were damaged during the tenancy I was heavily influenced by the Landlord's photographs 4-14, which both parties agree represent the condition of the walls during the tenancy. Given that tape and stickers were attached to the wall and considering the amount of damage that would cause, I find that it would be difficult, if not impossible, to repair this damage by simply cleaning the walls. I note that cleaning damage of this nature, even when a magic eraser is used, typically results in layers of paint being removed, leaving the wall with varying sheens.

I favour the evidence of the Landlord, who contends the walls were not adequately cleaned, over the evidence of the Tenants, who contends the walls were adequately cleaned. In reaching this conclusion I accepted the Landlord's testimony that photographs 61 to 83 represent the type of wall damage that was present at the end of

the tenancy. I found his testimony regarding these damages was forthright and I can find no reason to conclude that they were not taken after the tenancy ended.

In adjudicating the claim for painting I was influenced by photograph 82, which shows a piece of tape still attached to the wall. I find it highly likely that this photograph represents the condition of the walls after the Tenants had removed the artwork and had attempted to clean the walls.

In concluding that the walls were damaged at the end of the tenancy I was further influenced by the receipt for painting, in which the painter notes that he spent 20 hours painting "badly marked walls, doors, and baseboards"'. I find that this receipt corroborates the Landlord's submission that the walls were damaged at the end of the tenancy and refutes the Tenants' submission that the walls were not damaged at the end of the tenancy.

In adjudicating the claim for painting I have placed significant weight on the letter from the person who moved into the rental unit after the Tenants vacated it. I find that this letter strongly corroborates the Landlord's testimony that the unit required painting.

In concluding that the walls were damaged at the end of the tenancy I placed limited weight on the photographs submitted in evidence by the Tenants. I find that the most of the photographs of the wall submitted by the Tenants were not taken at a close range and would not, therefore, show the type of damage depicted in the Landlord's photographs.

I note that the Landlord does not allege that every wall in the rental unit was damaged during the tenancy and I therefore find that it would be entirely possible that the Tenants simply submitted photographs of those walls that were not damaged.

In adjudicating the claim for painting I placed little weight on the Tenant's testimony that photographs 61 to 83 do not represent the condition of the walls at the end of the tenancy, as this is inconsistent with the Tenant's written submission that the damage to the walls shown in photographs 58-71 and 82-85 was all present at the start of the tenancy.

As the walls, baseboards, and doors were in reasonably good condition at the start of the tenancy I must conclude that much of the damage depicted in the Landlord's photographs occurred during the tenancy. I find that this damage exceeds normal wear and tear and that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damaged walls, baseboards, and doors. I therefore find that the Landlord is entitled to compensation for the cost of repainting.

The Residential Tenancy Policy Guidelines show that the life expectancy of paint is 4 years.

On the basis of the testimony of the Landlord, I find that the unit has not been painted since the unit was purchased in August of 2015. I therefore find that the paint was at least 14 months old at the end of the tenancy. I find the Landlord's testimony that the unit was painted shortly before he purchased the rental unit is credible, as that testimony is corroborated by photographs submitted with the real estate listing. I find the Tenant's estimate that the rental unit was painted approximately 10 years prior to the tenancy was not reliable, given the condition of the walls as indicated by the condition inspection report that was completed at the start of the tenancy.

On the basis of the information before me I find that the paint had depreciated by at least 29% by the time this tenancy ended and that the Landlord is entitled to 71% of the cost of repainting, which in these circumstances is $479.55.

On the basis of the photograph of damaged landscape ties, I find that some landscape ties were damaged at the end of the tenancy. As the damage in the photograph appears to be very recent, I find there is insufficient evidence to conclude that the damage was caused by the Tenants. While I find it possible that the Tenants damaged the ties when they were moving out of the rental unit, I find it equally possible that the Landlord, or someone acting on behalf of the Landlord, damaged the ties when they were on the property inspecting the rental unit.

In adjudicating the claim for compensation for replacing the landscape ties I placed little weight on the evidence submitted by the Tenant, as the male Tenant's testimony that he did not notice the damaged ties is inconsistent with the written submission that the Landlord's photograph reflects the condition of the ties at the start of the tenancy.

As the Landlord has submitted insufficient evidence to establish that the Tenants damaged the landscape ties, I dismiss the claim for replacing the damaged ties.

I find that the hardwood floors in the rental unit were not damaged at the start of the tenancy. This decision was heavily influenced by section 21 of the *Residential Tenancy Regulation* and the condition inspection report that was completed at the start of the tenancy, which does not record any damage to the hardwood floors. I note that this was a very detailed inspection report, which included entries such as sink stopper being hard to move, and I find it highly unlikely that the scratches on the floor would not have been noted if they were present at the start of the tenancy.

My decision that the hardwood floors were not damaged at the start of the tenancy was further influenced by the addendum to the tenancy agreement, that was signed by both Tenants on October 02, 2015, which indicates there are new hardwood floors in the "whole house (except kitchen and bathrooms) in new condition".

As the Tenant has not submitted a preponderance of evidence to show that the floors were scratched at the start of the tenancy, I accept that the condition inspection report is evidence of the state of repair and condition of the rental unit at the start of the tenancy.

On the basis of the undisputed evidence and the photographs submitted in evidence by the Landlord, I find that the hardwood floors in the living room, the master bedroom, and the bedroom used by children were scratched in several places at the end of the tenancy.

As the hardwood floors were in good condition at the start of the tenancy I must conclude that much of the damage to the floors occurred during the tenancy. I find that this damage exceeds normal wear and tear and that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damaged floors. I therefore find that the Landlord is entitled to compensation for the cost of repairing the hardwood floors.

In adjudicating the claim for repairing the hardwood floors I have placed no weight on the Tenants' submission that the only reason the scratches are visible in the Landlord's photographs is because they were taken from a very close range. I do not concur with this submission. Rather, I find that the photographs taken by the Landlord are taken from a range that adequately demonstrates the nature of the damage.

In concluding that the hardwood floors were damaged at the end of the tenancy I placed limited weight on the photographs submitted in evidence by the Tenants. I find that the most of the photographs of the floors submitted by the Tenants were taken from a distance and would not, therefore, clearly display the type of damage depicted in the Landlord's photographs. I also find it entirely possible that the Tenants simply submitted photographs of the floors areas that were not damaged.

The Residential Tenancy Policy Guidelines show that the life expectancy of hardwood floors is 20 years.

On the basis of the testimony of the Landlord, I find that the hardwood floors have not been refinished since the unit was purchased in August of 2015. I therefore find that the floors were at least 14 months old at the end of the tenancy.

On the basis of the information before me I find that the hardwood floors had depreciated by at least 5.8% by the time this tenancy ended and that the Landlord is entitled to 94.2% of the cost of repairing the hardwood floors, which in these circumstances is $4,994.95.

In adjudicating the claim for damage to the walls and hardwood floor I have placed little weight on the document from the real estate agent who declared that he believes the damage to the walls and floor constitutes normal wear and tear. On the basis of the photographs submitted in evidence, I simply do not concur with his opinion.

On the basis of the photographs submitted in evidence by the Landlord and the testimony of the Landlord, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end

of the tenancy. I find that these photographs clearly demonstrate that some additional cleaning was required.

In adjudicating the claim for cleaning I have placed significant weight on the Tenants' submission that the Landlord's photographs #15, 46, 49, 50, 53, and 89 represent the cleanliness of the rental unit at both the start and the end of the tenancy. In my view this testimony clearly establishes that those photographs accurately reflect the condition of the rental unit at the end of the tenancy.

In adjudicating the claim for cleaning I have placed significant weight on the letter from the person who moved into the rental unit after the Tenants vacated it and on the condition inspection report completed with that person. I find that these documents strongly corroborate the Landlord's testimony that the unit required cleaning.

I find that there is insufficient evidence to conclude that the rental unit was not reasonably clean at the start of the tenancy. This decision was heavily influenced by section 21 of the *Residential Tenancy Regulation* and the condition inspection report that was completed at the start of the tenancy, which does not record a need for cleaning with the exception of hair on windows/screens in the living room. I note that this was a very detailed inspection report, which included entries such as a burnt out bulb in the entry, and I find it highly unlikely the cleanliness of the unit would not have been noted if this was an issue.

As the Tenant has not submitted a preponderance of evidence to show that the rental unit was dirty at the start of the tenancy, I accept that the condition inspection report is evidence of the cleanliness of the rental unit at the start of the tenancy. I find that the document from the individual who inspected the rental unit at the start of the tenancy, dated November 05, 2016, is not sufficient to refute the information on the report, as she had the opportunity to record her observations on the report at the time of the inspection.

I find that the male Tenant's testimony that they did not pull out the appliances at the end of the tenancy so they did not see the dirt depicted in the Landlord's photograph #45, serves to corroborate the Landlord's claim that the rental unit required additional cleaning at the end of the tenancy.

In adjudicating the claim for cleaning I have placed little weight on the Tenants' submission that the Landlord's photographs #84, 85, and 88 were taken before the Tenants had finished cleaning. I placed little weight on this submission because the Landlord denies the allegation; the Tenants submitted no evidence to corroborate the submission; and I find the submission is unlikely.

As the rental unit was not left in reasonably clean condition, I find that the Tenants must compensate the Landlord for the $160.00 he paid to have the unit cleaned and the cost of cleaning supplies. On the basis of the Rona receipt I find that the Landlord spent $105.45 on cleaning supplies and that he is entitled to compensation in that amount.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for photocopying costs, as those were costs associated to participating in the hearing process.

I find that the Landlord submitted insufficient evidence to establish that the door knob on the door between the kitchen and the patio was damaged at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the knob was broken or that refutes the male Tenant's testimony that the door knob was fully functional at the end of the tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. In regards to the claim for repairing the door knob, the burden of proof rests with the Landlord.

In regards to the Landlord's claim for repairing the screen door, the Landlord bears the burden of proving the Tenants damaged the screen during the tenancy.

On the basis of the undisputed evidence I find that the screen door in the living room was torn at the start of the tenancy and at the end of the tenancy. I find that the Landlord submitted insufficient evidence to corroborate the Landlord's submission that this screen was repaired in July of 2016. In reaching this conclusion I was heavily influenced by the absence of independent evidence, such as a receipt for supplies, which corroborates the Landlord's submission that this screen was repaired in July of 2016 or that refutes the Tenants' submission that the screen was not repaired during the tenancy.

In adjudicating the claim for repairing the screen door I placed no weight on the notation on the condition inspection report that indicates the screen was repaired in July of 2016. I find this notation is of limited evidentiary value, as it could have been added to the report at any time and does not, necessarily, establish that the repair was actually completed.

As the Landlord has failed to establish that the screen was repaired during the tenancy, I find that he has submitted to insufficient evidence to establish that the screen was damaged during the tenancy. I therefore dismiss the Landlord's claim for repairing the screen.

In regards to the Tenants' claim for compensation because the Landlord did not comply with his promise the repair the screen door that was damaged at the start of the tenancy, the burden of proof switches to the Tenants.

I find that the Tenants submitted insufficient evidence to corroborate their submission that this screen door was never repaired. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email reminding the Landlord of the promise to repair the screen, which corroborates the Tenants' submission that the screen was never repaired or that refutes the Landlord's submission that the screen was repaired in July of 2016. As the Tenants have failed to establish the screen was not repaired, I am unable to award any compensation for this alleged deficiency.

I find that the Tenants submitted insufficient evidence to corroborate their submission that there were three or four plumbing blockages during the tenancy and that it took three or four days to make repairs on each occasion. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email, which corroborates the Tenants' submission that there was more than one blockage and that there was a delay in removing the blockage or that refutes the Landlord's submission that the only blockage reported was repaired in a timely manner. As the Tenants have failed to establish there were a number of blockages or that there was any significant delay in responding to reported blockages, I am unable to award any compensation for this alleged deficiency.

I find that the Tenants submitted insufficient evidence to corroborate their submission that they reported a leaking exterior tap to the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email or text message, which corroborates the Tenants' submission that the problem was reported or that refutes the Landlord's submission that the problem was never reported during the tenancy. As the Tenants have failed to establish that the problem was reported during the tenancy, I am unable to award any compensation for this alleged deficiency.

I find that the Tenants submitted insufficient evidence to corroborate their submission that the Landlord promised to remove security bars from the windows. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an entry on the condition inspection report, which corroborates the Tenants' submission that the Landlord agreed to remove the security bars or that refutes the Landlord's submission that he never agreed to remove the bars. As the Tenants have failed to establish that the Landlord promised to remove the bars, I am unable to award any compensation for this alleged deficiency.

In adjudicating the claim relating to the security bars, I note that the Tenants submitted no documentary evidence to support their submission the security bars were a safety risk.

I find that the Tenants submitted insufficient evidence to establish the air quality in the rental unit did not comply with industry standards. In reaching this conclusion I was

heavily influenced by the absence of evidence, such as a report from an air quality expert, that corroborates this submission.

I find that the Tenants submitted insufficient evidence to establish the Landlord did not change the furnace filter during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence which corroborates the Tenants' submission that the filter was not replaced or that refutes the Landlord's submission that it was replaced mid-way through the tenancy. As the Tenants have failed to establish that the Landlord promised to remove the bars, I am unable to award any compensation for this alleged deficiency.

In adjudicating the claim relating to air quality I have placed no weight on the prescription submitted in evidence that the male Tenant stated was for treating an allergy one of his children developed as a result of the air quality in the rental unit. I find there is no medical evidence that correlates the child's medical condition to the air quality in the house and I find it entirely possible that the child was allergic to something unrelated to the rental unit.

As has been previously stated, I find that there is insufficient evidence to conclude that the rental unit was not in reasonably clean condition at the start of the tenancy. As the Tenants have failed to establish the rental unit required significant cleaning at the start of the tenancy, I am unable to award any compensation for this alleged deficiency.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord entered the rental unit without permission on August 06, 2016. In reaching this conclusion I was influenced by the email submitted in evidence, dated August 24, 2016. As the Tenant does not mention that the Landlord entered the rental unit on August 06, 2016, I find that the email corroborates the Landlord's testimony that he did not enter the unit. As the Tenants have failed to establish that the Landlord entered the rental unit without authority, I am unable to award any compensation for that allegation.

In adjudicating the claim relating to the incident on August 06, 2016 I have placed no weight on the undisputed evidence that the Landlord came to the rental unit on that date without prior notice. There is nothing in the *Act* that prevents a landlord from knocking on the front door of a rental unit for the purposes of speaking with a tenant regarding the tenancy.

On the basis of the undisputed evidence I accept the male Tenant's testimony that the rental unit was advertised as being 1600 square feet in size.

On the basis of the real estate listing for the property that was submitted in evidence, I find that the foyer and the main portion of the rental unit are approximately 1,326 square feet in size. After factoring in the stairs between the main floor and the foyer, I find it reasonable to conclude that the rental unit was between 1,350 and 1,400 square feet in size.

Although the advertisement for this rental unit may have misrepresented the size of the rental unit, I find that the Tenants had the opportunity to inspect the rental unit and deem it suitable for their purposes. I find that the size and condition of the rental unit at the time the unit was inspected by the Tenants or their agent was the most reliable representation of the rental unit. In the event the Tenants were not satisfied with the size or condition of the rental unit after it was inspected by the Tenants or their agent, they were under no obligation to enter into a tenancy agreement.

As the Tenants were not obligated to enter into a tenancy agreement after the rental unit was inspected, I find that they are not entitled to a rent reduction based on the advertised size of the unit.

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 or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on September 30, 2016 and the Landlord filed his Application for Dispute Resolution on October 11, 2016, I find that the Landlord complied with section 38(1) of the *Act.* As the Landlord complied with section 38(1) of the *Act,* I cannot conclude that the Tenants are entitled to double the return of the security deposit pursuant to section 38(6) of the *Act.*

A landlord's right to claim against the security deposit or pet damage deposit for damage to the rental unit is extinguished if the landlord does not comply with various requirements regarding completing a condition inspection report at the end of the tenancy. A landlord retains the right to claim against the security deposit or pet damage deposit for other losses, such as unpaid rent or utilities, even if the landlord does not properly complete a condition inspection report at the end of the tenancy. As the Landlord has claimed compensation for unpaid utilities, I find that his right to claim against the security deposit/pet damage deposit was not extinguished.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants' have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $6,618.07, which includes $175.25 for utilities; $602.87 for replacing the linoleum; $479.55 for painting; $4,994.95 for repairing hardwood floors, $265.45 for cleaning, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to

section 72(2) of the *Act,* I authorize the Landlord to retain the Tenants' security deposit of $800.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance $5,818.07. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenants have failed to establish their claims and their Application for Dispute Resolution is dismissed.

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: July 28, 2017

Residential Tenancy Branch