



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with monetary cross applications, as amended. The tenants applied for monetary compensation for damages or loss under the Act, regulations or tenancy agreement; and, return of the security deposit and pet damage deposit. The landlord applied for monetary compensation for damage to the rental unit; unpaid rent or utilities; and, damages or loss under the Act, regulations or tenancy agreement. The tenants did not appear at the hearing and were represented by their legal counsel. The landlord appeared at the hearing and was accompanied by his daughter. All parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over two dates and an Interim Decision were issued following the first hearing date. The Interim Decision should be read in conjunction with this decision.

While I was provided a considerable amount of oral and written submissions and evidence, with a view to brevity in writing this decision, I have only summarized the parties' positions and most relevant facts and evidence.

### Issue(s) to be Decided

1. Have the tenants established an entitlement to compensation in the amounts claimed against the landlord?
2. Has the landlord established an entitlement to compensation in the amounts claimed against the tenants?
3. Disposition of the security deposit and pet damage deposit.

### Background and Evidence

The tenancy started on May 1, 2013 and the tenants paid a security deposit of \$500.00 and a pet damage deposit of \$250.00. The tenants were required to pay rent of \$1,000.00 at the end

of every month and were required to pay 1/3 of utilities. The tenants vacated the rental unit on December 2, 2016 and notified the landlord of this by way of a text message sent on December 2, 2016. There was no move-in or move-out inspection done together and the landlord did not prepare condition inspection reports.

The residential property is a house constructed in 1989 approximately. The rental unit was described as a large two bedroom basement suite occupied by the tenants and their pet dogs. The landlord and his family resided in the living unit above the rental unit.

The crux of these disputes surrounds the events surrounding two water leaks at the residential property.

On October 30, 2016 water was found leaking into the bedroom and bathroom of the rental unit and the tenants notified the landlord of this via text message. Flooring in the bedroom, bathroom and part of the "landing" became wet. The tenants removed their possessions from the bedroom and placed the items in the living room with the exception of two bookcases which were left in the bedroom. The landlord initially believed the water was coming in through the foundation and the landlord's handyman made efforts to make repairs to the foundation on November 8 or 12, 2016; however, the water still leaked into the unit despite the effort to repair the foundation. The landlord attempted to make an insurance claim but the insurance company was hesitant to provide coverage. The landlord tried suctioning the water soaked carpets with a rented rug cleaning machine but the water continued to enter the rental unit. On November 17, 2016 the landlord determined the water was leaking from a water pipe, not the foundation, and the landlord installed a by-pass to stop the water leak.

On or about November 22, 2016 the radiant heat boiler system malfunctioned and leaked water from the water exchanged. Water flowed onto the landing floor and the living room in the rental unit. A restoration crew attended the property, the wet flooring and drywall was removed, the wet areas were dried with blowers, chemicals were applied to the wet areas, and new flooring was eventually installed. During the period of time the boiler was not working both parties suffered a loss of heat, except that which was provided by electric space heaters. The new boiler was delivered at the end of November 2016 and installed on or about December 7, 2016. The new flooring was installed at the end of December 2016 or early January 2017.

Shortly after the tenants vacated the rental unit, on December 8, 2016 the landlord presented the tenants with a cheque representing the return of their deposits, in full, and a refund equivalent to of one-half of the monthly rent for November 2016. The tenants did not cash the cheque.

### ***Tenants' claim***

The tenants' counsel argued that the landlord violated several sections of the *Residential Tenancy Act* (the Act) and other laws including the *Occupier's Liability Act* in the following ways:

- The rental unit was not permitted or inspected for use as a secondary dwelling;
- Lack of regular maintenance and replacement of building components considering the age of the rental unit (nearly 30 years old);
- Failure to remedy the source of water leaks and wet areas in a timely manner;
- Failure to provide adequate heat;
- Failure to provide safe living unit due to formation of mould.

The landlord submitted that since purchasing the house in 2006 he has repaired elements of the property that required repair or replacement in a timely manner and that he responded to the water leaks and water damage in timely manner. The landlord submitted that the heating system was working well up to the point the water exchanger leaked and that the boiler system was inspected approximately a year prior to the leak. The landlord provided the tenants with two space heaters to use and the landlord was motivated to restore the radiant heating system since he and his family were also without heat from the boiler. The rental unit did not have mould and testing by the restoration company showed the only chemicals evidence was the presence of ordinary household chemicals. The landlord also pointed out that the tenants did not carry tenant's insurance and many of their losses may have been covered had they carried insurance.

Below, I have summarized the tenants' individual claims against the landlord and the landlord's responses.

1. Return of rent for November 2016 – \$1,000.00

The tenants seek return of the rent they paid for November 2016 given their inability to use and enjoy the rental as a result of the two water leaks. During the hearing, the landlord stated he was agreeable to compensating the tenants this amount.

2. Moving costs -- \$950.00

The tenants seek to have the landlord reimburse them the amount they paid for movers to move them from the rental unit. The tenants were of the position the rental unit was not suitable for occupation due to lack of heat and mould. The tenants presented a hand written receipt that indicates payment of \$950.00 for a moving fee.

The tenants' counsel submitted that the tenants had to move quickly due to health concerns related to the smell of mould and lack of heat that resulted in the tenants having breathing difficulties and feeling ill.

The landlord was not agreeable to paying the tenants' moving costs on the basis the tenants decided to move and the costs to do so are not the responsibility of the landlord. The landlord was of the position there was no mould in the rental unit and the tenants did not provide evidence to demonstrate they were sick due to mould or the conditions of the rental unit. Further, the landlord was making repairs, including restoration of the central heating system when the tenants left without giving him any notice.

3. Dry cleaning and laundry \$ 1,650.00 and \$1,350.00

The tenants submit they had all of their clothing and bedding dry-cleaned or laundered due to the water leaks that caused a strong smell of mould. The tenants provided receipts from a coin operated laundry cleaning company.

The landlord submitted that when he attended the rental unit in response to the first leak, everything had been removed from the bedroom, including the clothing, and he only saw a few items of clothing in the bathroom. The landlord submitted that there was a strong smell associated to the tenant's dogs. The landlord submitted that this claim is exaggerated and the receipts lack veracity since they were prepared by the tenants who own the laundry business.

4. Replacement of two bookcases - \$396.00

The tenants submit that their bookcases, which were located in the bedroom, were damaged by the first water leak and they seek compensation equivalent to the cost of two new bookcases. The tenants provided a print-out of from the internet to demonstrate the value of a new bookcase.

The landlord submitted that he told the tenants to remove the bookcases from the bedroom when he first responded to their complaint of a leak and he noticed the bookcases were the only items remaining in the bedroom. The tenants refused to remove the bookcases and told the landlord they were junk and they would be throwing them out.

5. Medication -- \$41.00

The tenants seek compensation for the medication they purchased to deal with their symptoms of fever, cold and cough. The tenants provided a cash register receipt showing the purchase of a prescription medication on December 1, 2016. The prescription receipt provided is only partially visible in the evidence package and indicates some sort of spray was purchased.

The landlord submitted that there is no connection between the condition of the rental unit and the tenants getting a cold or fever and the landlord was not agreeable to paying for their medication.

6. Physical and emotional distress -- \$10,000.00

The tenants seek compensation due to the landlord's breach of his duty to the tenants. The tenants submit they suffered harshly due to the wet conditions and the lack of heat in the winter months, which resulted in them getting sick. The tenants' legal counsel pointed to a court case whereby the tenants were awarded \$25,000.00 due to the landlord's breach of duty of care.

The landlord was of the position he did not breach his duty. He responded to the repair issues promptly in the circumstances. The landlord questioned whether the tenants became sick due to the conditions of the rental unit. The landlord pointed out the tenants did not carry their own insurance which may have minimized their losses.

7. Personal items cleaning -- \$600.00

The tenants claim they spent 30 hours each cleaning their personal items of mould and dust due to changing the boiler and the flooring.

The landlord was of the position there was no mould, the tenants have few personal items in the area affected, the amount claimed is an exaggeration, and any cleaning of the tenants' personal property is not his responsibility.

8. Return of security deposit and pet damage deposit -- \$500.00 and \$250.00

The tenants seek return of their security deposit and pet damage deposit. The landlord pointed out that the deposits were included in the cheque he gave to the tenants on December 8, 2016 and they did not cash the cheque. However, at this point the landlord seeks to retain the deposits in partial satisfaction of his claims against the tenants.

***Landlord's claims***

Below, I have summarized the landlord's individual claims against the tenants and the tenants' responses as provided through their legal counsel.

1. Increased cost to install new boiler -- \$3,000.00

The landlord submitted that he installed a new boiler at a cost in excess of \$6,500.00 because the tenants were complaining they were cold. The landlord submitted he could have purchased a water exchanger at a cost of \$3,500.00; however, the water exchanger was not readily available for purchase and had to be custom ordered which would have taken longer than the purchase of a new boiler.

The tenants' lawyer pointed out that in the landlord's written submission the landlord alleged the tenants delayed the repair process, which was untrue.

I found it unnecessary to further consider this claim as the landlord had provided documentary evidence to support the amount claimed and I dismissed it summarily.

2. Junk removal -- \$150.00

The landlord submitted that the tenants left behind a sofa, the two bookcases and wire around the patio area. The tenants eventually removed the sofa and bookcase in February 2017; however, the landlord had to move these items out of the way a number of times. The landlord also removed the wires from the house himself. The landlord is seeking compensation of \$50/hr for three hours.

The tenant's lawyer submitted that the tenants had left the bookcases behind because they were water damaged. Also, the tenants offered to take the wire down but they needed a ladder, which they did not have. The tenants' lawyer did not know the reason the tenants waited until February 2017 to try to retrieve the remainder of their possessions.

3. Cleaning baseboards - \$500.00

The landlord submitted that the tenants' dog had urinated on the baseboards. The landlord stated the landlord's handyman did the cleaning as part of his "renovation fee". I noted that the landlord had not provided a copy of the handyman's invoice, receipt or other corroborating evidence to substantiate this expenditure and I dismissed it summarily.

4. Cleaning kitchen and bathroom tile -- \$180.00

The landlord submitted that the kitchen was not cleaned and the bathroom tile was very dirty, including the oven and fridge. The landlord submitted that he and his wife did the cleaning over six hours. The landlord seeks \$30.00 per hour for this work.

The tenant's lawyer submitted that the tenants had to move out quickly for their safety and did not have time to clean.

5. Carpet cleaning and window cleaning -- \$180.00

The landlord submitted that he cleaned the carpeting in the second bedroom that was used as storage by the tenants with a rented machine since the tenants did not do it. Further, the window sills were very dirty and required cleaning. The landlord submitted that he did this work over six hours and he seeks \$30.00 per hour.

The tenant's lawyer stated the tenants had to move out quickly for their safety and did not have time to clean. The tenant's lawyer questioned how dirty the rental unit really was.

6. Physical and emotional distress -- \$12,000.00

The landlord submitted that the basis for making this claim is because of the tenants conduct after the tenancy ended, such as:

- The tenant yelling at him and threatened to call the police when the landlord went to the tenants' business to present the December 8, 2016 cheque to them and try to reconcile their differences.
- A few days after the tenancy ended the tenant returned to the property to take pictures and attempted to the wire off the exterior of the house and then in February 2017 the tenant came to take the bookcases and sofa without obtaining the landlords' permission first. The landlord submitted that this scared his family members but they did not call the police.

I dismissed the landlord's claim for physical and emotional distress summarily for reasons provided later in this decision.

7. Stress – dog barking -- \$1,000.00

The landlord also submitted that throughout the three year tenancy the tenants' dog frequently barked. The landlord acknowledged that he did not pursue eviction and just tolerated the noise.

I dismissed the landlord's claim for stress from dog barking summarily for reasons provided later in this decision.

8. Front door damage -- \$600.00

The landlord submitted that the tenants damaged the front door by putting a lot of screws into it. I noted that the landlord did not provide a receipt for replacement or repair of the door. The landlord explained that the repair/replacement was included in the "Renovation fee" his contractor charged him. The landlord had not submitted a copy of the contractor's invoice or receipt or other corroborating evidence to substantiate the amount claimed and I summarily dismissed this claim.

9. Unpaid rent and utilities -- \$140.00 and \$500.00

During the hearing, the landlord withdrew his request to recover unpaid rent and utilities from the tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Since both parties have filed monetary claims against the other, the tenants bear the burden to prove their claims against the landlord and the landlord bears the burden to prove his claim against the tenants. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each application before me.

### ***Tenants' claim***

As provided above, in order for the tenants to succeed in their claims against the landlord they must demonstrate, among other things, that the landlord violated the Act, Regulations or tenancy agreement.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law; and, is suitable for occupation by a tenant, having regard for the its age and character. Tenants are also entitled to use and quiet enjoyment of the rental unit as a term of the tenancy agreement and as provided under section 28 of the Act. A landlord's failure to provide the tenant with use and quiet enjoyment of the rental unit is a breach of contract on part of the landlord and violation of section 28 of the Act.

It is undisputed that the tenants were deprived of use of portions of the rental unit due to water leaking in the bedroom followed by a failure of the boiler's water exchanger a few weeks later and the tenants' enjoyment was significantly diminished by lack of heat. The sequence of events were also largely undisputed sounding the two water leaks; however, the parties were in dispute as to whether the landlord was negligent and the value of the tenants' loss for which the landlord is liable.

Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides, in part:



### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[Reproduced as written with my emphasis underlined]

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the landlord to repair the rental unit and residential property as appropriate. Often, tenant's insurance will cover damages or loss a tenant may suffer as a result of an unforeseen event such as fire or flood. Unfortunately, the tenants in this case did not carry tenant's insurance and it is important to note that the tenants' choice to not carry tenant's insurance does not translate into the landlord becoming the tenants' private insurer.

Damage to a tenant's personal property or other losses due to an unforeseen event, other than the loss of use and enjoyment of the rental unit, are generally not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

In light of the above, I find it is upon the tenants to show that the water leaks in the rental unit occurred because of the landlord's negligence or the landlord failed to take reasonable action to remedy the situation in order to establish an entitlement to compensation for something other than loss of use and enjoyment of the rental unit.

Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenants have demonstrated that the landlord acted unreasonably in preventing or addressing the water leaks. I have considered the submissions of both parties and I find as follows.

The tenants' lawyer pointed to the rental unit being an unauthorized or unpermitted basement suite; however, I find there is insufficient linkage between a basement suite that is not authorized by the municipality to a burst water line such as happened in the in the rental unit bedroom. The tenants' lawyer suggested the landlord did not adequately inspect or maintain the residential property; however, from the photographs provided to me, I note that the water was leaking from behind drywall in the bedroom, meaning the foundation wall and water pipes

were not visible to either party. Accordingly, I find it unreasonable to expect that the landlord would have opened up the walls to look for leaking pipes or a leaking foundation wall without probable cause for doing so. Therefore, I attribute the leak of October 30, 2016 to an unexpected and unforeseen event and I do not find the landlord negligent in failing to prevent the leak.

Shortly after learning of the water ingress of October 30, 2016 the landlord and the landlord's handyman attended the rental unit and commenced efforts to determine the source of the leak. This required the opening up a section of the drywall. The landlord was initially of the position the water was entering through the foundation based on what the handyman's opinion and efforts were made to address the foundation; however, as it turned out it was not the foundation leaking. Considering the rental unit is at or below ground level and the leak occurred in the rainy season, I find it within reason that a leaking foundation was considered a probable cause of the water ingress. After it was determined that the source of the leak was actually a water pipe it appears that the landlord took quick action to install a by-pass around the leaking section to stop the water from coming into the rental unit. Therefore, I find I am unsatisfied the landlord's actions to investigate the source of the leak in the bedroom, which was not readily apparent at first, and then stop the leak once it the source was determined were not outside the realm of reason or negligent.

As for the leak from the boiler's water exchanger, given the lack of documentary evidence and the challenged testimony I find it likely that the landlord did not have the boiler system serviced regularly by a certified technician. The landlord testified that the boiler was inspected approximately one year prior and this may include a casual visual inspection by the landlord or his handyman. The tenants did not present evidence to demonstrate that a residential boiler system requires servicing by a certified technician at certain intervals or that such service calls would have prevented the water exchanger from leaking. As with most pieces of equipment and machinery, they are subject to failure even when they are inspected and maintained regularly. Rather, it would appear that the boiler system was working prior to the break-down on November 22, 2016 since there were no outward signs of an impending breakdown or leak reported by the tenants. Therefore, I am unsatisfied that negligence on part of the landlord resulted in the leak from the boiler's water exchanger and I consider the leak to be an unexpected and unforeseen event.

After water leaked from the boiler's water exchanger the landlord had a restoration company attend the rental unit in order to dry the rental unit and remove wet fixtures, which is customary for water leaks. The landlord proceeded to order a new boiler system and I accept that such a significant appliance is not quickly obtained and installed as submitted by the landlord. I also find it likely that the landlord was motivated to have the heating system restored quickly since he and his family were also without heat from the boiler system. Although there was no heat provided by the boiler system for a period of time the landlord had provided the tenants with some electric sourced heat. While two heaters may have been insufficient given the rental unit

is rather large for a basement suite, the tenants did not present me any evidence to suggest they took action to purchase any electric heaters to mitigate their losses.

In light of the above, I find I am unsatisfied that the landlord was negligent with respect to preventing or responding to the two water leaks and, I proceed to consider the tenants' request for compensation as it pertains to loss of use and enjoyment of the rental unit.

The parties provided differing accounts as to how much area of the rental unit was affected by the water leaks. It is clear from the submissions of both parties, that one of the bedrooms was highly affected; significant portions of the "landing" were wet, and part of the living room became wet after the boiler's water exchanger leaked. However, the second bedroom, the kitchen and a significant portion of the living area were not affected by water. I appreciate that the tenants moved their personal possessions from the affected areas to the unaffected areas creating a more crowded area that remained. The tenants' requested return of all of the rent they paid for November 2016 and the landlord agreed to that request during the hearing. I uphold that agreement and I find it is generous on part of the landlord when I consider:

- the tenants were still able to reside in the rental unit until they moved out on December 2, 2016;
- the landlord apparently waived any entitlement to receiving notice to end tenancy and compensation from the tenants for any part or all of December 2016 despite the tenants' occupation of the rental unit in December 2016; and,
- The tenant's did not carry tenant's insurance they may have provided them relief from their losses.

In keeping with my findings above, I provide the following findings and reasons with respect to the individual claims made by the tenants.

1. Return of rent for November 2016

The tenants requested return of the rent they paid for November 2016 and the landlord agreed to refund it to the tenants. Pursuant to that agreement, I award the tenants \$1,000.00 as requested.

2. Moving costs

Having been unsatisfied the landlord was negligent in preventing or reacting to the water leaks; considering the tenants did not carry tenant's insurance and chose to vacate the rental unit without notice to the landlord rather than seek alternative temporary accommodation; and, considering the landlord's generous offer to reimburse 100% of the rent the tenants' paid for November 2016 I make no award for recovery of moving costs to the tenants.

3. and 4. Laundry and dry-cleaning

The tenants submit that they incurred losses of \$1,650.00 and \$1,350.00 (a sum of \$3,000.00) to launder and dry-clean their clothing and bedding due to smell of mould, chemical sprays and

dust that occurred after the water leaks. The landlord submitted that the receipts lacked veracity since they were produced by the tenant's themselves or their business; there was no clothing or very little clothing he observed when the tenants reported the water leak of October 30, 2016; and, there was no mould or chemicals other than household chemicals in the rental unit as reported by the restoration company.

I find I am not persuaded by the tenants' evidence that they incurred the loss claimed when I consider: the receipts provided are generated by a business that is the tenants' own business; and, the tenants provided a number of photographs of the rental unit after the water leaks and I do not see all of the clothing and bedding that they purportedly paid to have laundered. Further, I find the tenants failed to demonstrate the presence of mould or chemicals to contradict the restoration company. Finally, I have found already that the tenants failed to prove negligence on part of the landlord. Therefore, I dismiss this claim.

#### 5. Bookcases

The tenants had bookcases in the bedroom that became wet after water leaked from behind the wall in the bedroom. As stated previously, a landlord is generally not responsible to compensate the tenant for damage to the tenant's personal property when something unexpected or sudden occurs, such as a burst water line, unless the landlord was negligent. For reasons already provided, I have found I am unsatisfied the landlord was negligent in preventing the water leak into the bedroom. If a tenant seeks insurance for their personal property for unexpected events such as a burst water line it is upon the tenant to seek out and obtain tenant's insurance. The tenants cannot look to the landlord as being their personal insurer. Therefore, I dismiss this claim.

#### 6. Medication

The tenants produced a partial receipt for a prescription medication. The tenants did not produce any evidence from a doctor to indicate the medical reason for prescribing this medication or that it is attributable to the conditions at the rental unit. Rather, the tenants submit that they caught colds (coughing, sore throat, and fever) and had allergies. Common colds are the result of viruses, not being wet and cold. As for allergies, I find there is insufficient evidence to demonstrate they suffered allergies and required prescription medication due to conditions at the rental unit that resulted from the landlord's negligence. Therefore, I dismiss this claim.

#### 7. Physical/emotional distress

Where a party seeks compensation for emotional distress, I find it reasonable to receive corroborating evidence of such from a qualified professional. I have no doubt both parties likely experienced inconvenience and frustration as a result of two water leaks very close together but I am unsatisfied those feelings rise to the level of emotional distress that would warrant an award of \$10,000.00 as requested. As for physical distress, I have no doubt the tenants were cold when the boiler was not working; however, as I indicated previously, additional heat could have been acquired by way of electric heaters so as to minimize discomfort. The tenants did

not avail themselves of that remedy. Therefore, I find I am unsatisfied the tenants are entitled to compensation of \$10,000.00 for emotional or physical distress and I dismiss this claim.

8. Personal items cleaning

The tenants submit they spent several hours cleaning their personal property due to mould and dust. The landlord denied the presence of mould and evidence from the restoration company does not show the presence of mould or chemicals other than household chemicals. In the absence of any further evidence from the tenants, I find they failed to satisfy me that they cleaned their personal possessions due to mould or chemicals. As for dust, it usually occurs naturally over time in most every household and dusting is a routine housekeeping task. I find the lack of evidence, such as photographs, fails to satisfy me that there was excessive dust due to the actions or negligence of the landlord. Therefore, I dismiss this claim.

9. and 10. Security deposit and pet damage deposit

The tenants seek return of the deposits. The landlord had tried to return the deposits to the tenants on December 8, 2016. Further, the landlord did not seek authorization to retain he deposits in filing his Application for Dispute Resolution or Amendment. Accordingly, the deposits are to be disposed of by returning them to the tenants and any awards to the landlord shall offset the sum of the amounts awarded to the tenants later in this decision.

***Landlord's claim***

Below, I provide my findings and reasons with respect to the individual claims made by the landlord.

1., 3. and 8. Boiler, baseboards, and front door

The landlord did not produce evidence to support the amounts claimed for the increased boiler cost, sanitizing the baseboards, or repairing/replacing the front door even though the landlord purported to have paid third parties' for this work. Where an applicant seeks to recover costs for which they have receipts or invoices or the like to support the amounts claimed I find it reasonable to expect that the party would provide the evidence to verify the amount claimed. In this absence of this evidence I find the landlord did not sufficiently prove the value of these claims and I do not consider them further.

2., 4. and 5. Cleaning and junk removal

The landlord's claim for junk removal and cleaning reflect the landlord's time spent to deal with the tenant's possessions and lack of cleaning efforts. Since the landlord did these tasks himself, or with the assistance of his wife, I accept that the landlord would not have receipts or invoices to produce in support of the value claimed. Accordingly, I turn to the landlord's evidence such as photographs and the testimony of both parties in an effort to determine whether the amounts claimed appear reasonable.

Pursuant to section 37 of the Act, a tenant is required to leave a rental unit reasonably clean and vacant, which includes removal of the tenant's personal property, at the end of the tenancy. The tenants relinquished possession of the rental unit on December 2, 2016 which brought the tenancy to an end. Accordingly, the rental unit was to be reasonably clean and devoid of the tenant's personal property by that date. The Act does not provide any exemptions from these requirements and, as I have already found, I am unsatisfied that there was mould in the rental unit that made cleaning and removing the tenant's belongings from the property a health hazard.

It was undisputed that the tenants left personal property behind that the landlord had to deal with after December 2, 2016. If the tenants did no longer want these possessions it was upon them to arrange for disposal of these items on or before December 2, 2016. I accept the landlord spent three hours to deal with the abandoned sofa, bookcases and wire; however, I limit the hourly rate of compensation to \$25.00. Therefore, I award the landlord \$75.00 to deal with the personal property and garbage the tenants left behind.

The landlord provided photographs of several areas of the rental unit that appear dirty, including: several window tracks; kitchen cupboards and walls; bathroom tiles, carpeting, and fridge, including some small amounts of garbage such as food, toothbrushes and cleaning supplies. Based on these photographs, I find the landlord's estimation that six hours were required to clean these areas to be reasonable; however, I limit the hourly rate for cleaning to a more reasonable amount of \$20.00 per hour. Therefore, I award the landlord \$180.00 for cleaning.

#### 6. Physical/emotional distress

In order to succeed in a monetary claim against another party, the applicant must show that the other party violated the Residential Tenancy Act, Regulations or the tenancy agreement. The landlord described incidents that took place after the tenancy ended so the events were not in violation of the tenancy agreement. The landlord did not point to a specific provision in the Act and I am unaware of no provision that would apply in the circumstances described by the landlord. I find the landlord's recourse, had the landlord felt threatened or harassed by the tenants after the tenancy ended would be to take the matter to the police. Therefore, I find there is no basis under the Residential Tenancy Act to award the landlord monetary compensation for the tenants' conduct after the tenancy ended and I dismiss this claim.

#### 7. Dog barking stress

Where an occupant is disturbed by noise coming from the rental unit, the landlord's remedy is to raise the issue with the tenant in an effort to correct the behaviour and if the behaviour is not corrected the landlord may pursue eviction of the tenant. The landlord's remedy does not include monetary compensation for the landlord after choosing to do nothing about the matter for years.

***Filing fees and Monetary Order***

As both parties had marginal success in their respective claims I order both parties to bear the cost of the filing fee they paid for their respective applications.

Pursuant to section 72 of the Act, I order the landlord's awards be offset against the amounts awarded or owed to the tenants and I provide the tenants with a Monetary Order for the net amount calculated as follows:

|   |                 |
|---|-----------------|
| Amounts owed to tenants':               |                 |
| November 2016 rent                      | \$1,000.00      |
| Security deposit and pet damage deposit | <u>750.00</u>   |
| Sub-total                               | \$1,750.00      |
| Less awards to landlord for:            |                 |
| Tenant's abandoned property             | (75.00)         |
| Cleaning of rental unit                 | <u>(180.00)</u> |
| Monetary Order for tenants              | \$1,495.00      |

The landlord is ordered to pay the tenants the net amount calculated above. The tenants may serve and enforce the Monetary Order upon the landlord if the landlord does not make the payment.

Conclusion

Both parties had limited success in their respective applications. The awards have been offset, in part, and a Monetary Order has been provided to the tenants in the net amount of \$1,495.00 to serve and enforce upon the landlord.

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

Dated: October 20, 2017

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Residential Tenancy Branch