Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, OPN, FF

Introduction

This was a cross-application hearing.

An initial hearing was held and interim decision issued on October 24, 2017. This final decision should be read in conjunction with the interim decision.

All parties attended each hearing, with one of the tenants absent during the second hearing. Reference to the tenants is in the singular, in relation to submissions made in the absence of both tenants. At the November 16, 2017 hearing the parties were reminded they continue to provide affirmed testimony.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution submitted on July 12, 2017, in which the landlord has requested compensation for loss of rent revenue, damage to the rental unit, an order of possession based on a tenants' notice, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants have applied requesting compensation for damage or loss under the Act, return of the security deposit and to recover the filing fee cost from the landlord.

Preliminary Matters

At the start of the hearing counsel for the landlord pointed out that the landlord evidence set aside at the initial hearing had in fact been submitted on both the landlord application and in response to the tenant's application. The landlord had not made this point during the initial hearing. The evidence cover sheet created by the Residential Tenancy Branch (RTB) staff indicated the evidence was for the landlords' file only. A check of the index page of the evidence indicated that the evidence was also meant as a rebuttal to the tenant's application. In that case the evidence was given to the tenants' as required by the Rules of Procedure, not later than seven days prior to the hearing.

The landlord asked that several sections of the evidence be referenced during the hearing. I explained that the landlord would be at liberty to read any documents in as

evidence; however the tenant did not object to utilization of the evidence during the hearing. The tenant confirmed possession of the evidence.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for loss of rent revenue?

May the landlord retain the security deposit or are the tenants entitled to return of the deposit?

Are the tenants entitled to compensation for the loss of quiet enjoyment and loss of services or facilities?

Background and Evidence

This tenancy commenced on September 1, 2016 as a one year fixed-term ending August 31, 2017. The tenancy could then continue on a month-to-month term. Rent was $1,150.00 per month, due on the first day of each month. The landlord is holding a security deposit in the sum of $575.00. A copy of the tenancy agreement was supplied as evidence.

A move-in condition inspection was completed, with a walk through the unit; an inspection report was not completed or signed by the parties.

There was no dispute that the tenants ended the tenancy effective June 30, 2017, after the tenants issued written notice dated May 2, 2017.

The parties met on June 29, 2017 and walked through the unit together. A condition inspection report was not completed. The landlord received the written forwarding address on June 29, 2017 and claimed against the security deposit on July 12, 2017.

The landlord has made the following claim for compensation:

Cleaning	186.27
Carpet cleaning	128.63
Lawn care	201.60
Stairs and railings	292.68
New crisper	77.45
Washing machine	842.38
July, August 2017 rent	2,300.00
Dishwasher	337.22
TOTAL	**$4,366.23**

The landlord's claim included legal consultation costs and the security deposit and filing fee. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. As a result, the portion of the claim for legal consultation is declined.

"Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act.

A deposit is held in trust and is not part of a claim for compensation. A deposit may be ordered deducted from any sum owed.

When the tenancy ended the landlord pulled out the fridge and said it was very dirty. The landlord supplied a July 2, 2017 invoice for 6.5 hours of cleaning and cleaning supplies. The areas under appliances, cupboards, wall, windows inside and out, vacuuming, shampooing the carpets, wiping down the bathroom, sweeping out the fireplace, wiping the washer and hot water tank were all completed.

The landlord said that the cleaner was unable to adequately clean the carpets. A July 6, 2017 invoice for professional carpet cleaning was supplied.

The tenant said that they did clean the carpets, which were old and stained at the start of the tenancy. Any stains at the end of the tenancy were there when the tenancy had started. The tenant said they left the unit cleaner at the end of the tenancy than when they moved in. The tenants hired two cleaners to assist in cleaning. The tenants took pictures of the rental unit on June 29, 2017; the day they vacated. The tenants supplied photographs of the inside of the fridge, the oven, stove, kitchen, dining room, living room, upstairs bathroom downstairs kitchen and the bedrooms.

The landlord obtained an estimate for equipment rental for lawn maintenance. The landlord provided a mower for the tenants' use and near the end of the tenancy it was not used. The lawn was up to 52 inches tall at the end of the tenancy. The landlord borrowed a lawn mower and cut the lawn.

The tenant agreed that they were to cut the lawn. The addendum signed by the parties indicated the landlord would provide the lawn mower. On May 31, 2017 the landlord removed the lawn mower from the property and never returned it. On June 12, 2017 the tenants emailed the landlord asking the mower be returned; it was not, so the lawn could not be cut at the end of the tenancy.

Just prior to the start of the tenancy the landlord spent a week at the unit. The railings on the deck were in good condition. Soon after the tenants moved in the spindles were destroyed. The landlord gave up trying to repair the railing and to find someone in this rural area to complete the repair would take months. The landlord is not sure of the age of the railings. A photograph of the metal railing and spindles was supplied as evidence.

When the tenants moved in they noticed the railings wobbled and they became concerned as they had two young children. On November 21, 2016 the tenants emailed the landlord requesting repair but nothing was done. The staircase was steep and the tenants wondered if the stairs could have settled, causing the railings to become loose. The spindles began to fall out of the railing. The landlord told them the spindles should not be used as handles. The tenants are baffled as to why they would be expected to pay for deficiencies with the railing. The tenant said the landlord purchased the home without an inspection. The tenants have made a claim in relation to the landlords' failure to repair the railings.

The fridge was brand new at the start of the tenancy. The crisper on the right side was cracked. The landlord obtained an estimate for the replacement cost claimed.

The tenants did not notice the cracked crisper and do not think they caused this damage. The damage was not pointed out at the end of the tenancy.

The landlord purchased the clothes washer just prior to the start of the tenancy. At the end of the tenancy there was a large dent on the top of the machine. The machine functions. The landlord has claimed the cost of a new machine.

The tenants said the dryer was new; the washing machine was not, although it functioned properly. The machines were in a small room in the basement. The tenants said they did not notice the dent and did nothing to cause a dent. The tenants think that, from the picture supplied by the landlord, it was likely dented when moved into the room. The tenant said they would have had to stand on top of the machine to cause the damage.

The landlord said that the rental unit was listed for sale from May to July 31, 2017. There was no attempt to rent the unit prior to the termination of the listing. The unit was then rented effective August 1, 2017. The landlord rented the unit for $800.00 per month as that was all the new tenants could afford. The landlord was attempting to assist the new occupants, who they had known previously. The landlord did not advertise the unit for rent as they thought they could sell. The landlord stated the tenants should pay the loss of rent revenue for July and the loss of August rent revenue in the sum of $350.00.

The landlord made submissions regarding evacuations that occurred in the area as a result of forest fires. The tenants countered that all evacuations occurred on July 6, 2017. The tenants said the landlord was required to make attempts to rent the unit effective July 1, 2017. The tenants said that on May 2, 2017 they gave notice to end the tenancy. The landlord made no attempt to mitigate any loss of rent as the home was listed for sale. They had a neighbour contact the landlord, as their son was desperate for a rental in the area. The tenants became concerned as they did not see any advertisements. The tenants did not think the landlord would list the property for

sale and then claim unpaid rent. The tenants supplied lists of individuals on a social media site, looking for rentals in the area during May, June and July, 2017. The tenants supplied a copy of the rental unit sale listing.

The landlord stated that the dishwasher had been purchased for $300.00 at the time the home was purchased. The tenants were asked to use special cleaners once monthly as the water is hard. The tenants complained that the dishwasher was clogging. The washer then stopped working. The dishwasher was approximately 10 years old. The landlord has claimed the cost of a new dishwasher.

The tenants responded that the dishwasher had never worked very well. The tenants contacted the landlord in November 2016 but were never told about using mineral cleaner. The community water is hard, but the home was not equipped with a softener. The tenants had made a claim for the loss of use of the dishwasher.

The landlord provided photographs of the fireplace that needed cleaning, a window, the carpets, long grass in the yard, and the exterior of the home, washing machine dent and railings. A number of photos were taken prior to the start of the tenancy.

The tenants have made the following claim for compensation;

Loss of use of basement due to heat 55 days	753.00
Loss of use of toilet 25 days	250.00
Loss of use of dishwasher 7 months	350.00
Loss of safe use of stairs for 7 months	700.00
Loss of quiet enjoyment due to septic odour 10 months	2,000.00
Loose, leaky faucet children could not turn on for three months	52.50
TOTAL	$4,105.5

The tenants' claim included the cost of cancelling two rent cheques, after the tenancy had ended and the cost of photograph development. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. "Costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the portion of the claim for cancelled cheques and developing is denied.

The tenants have claimed the loss of use of the basement for a period of 55 days in the sum of $13.69 per day that woodstove was not operational. There was no dispute that at the start of the tenancy the woodstove in the approximately 1200 sq. foot basement could not be used as it had yet to be inspected for insurance purposes. The tenant said that just prior to moving in, but after the tenancy agreement had been signed, they were informed of the need for inspection and that they could not use the woodstove. The tenants raised the loss of a heat source at move-in and emailed the landlord on

September 22, 28 and October, 4, 2017; with no response. The basement space was to be used for guests and was impossible to keep warm. The tenants had to use space heaters when they had guests, which they said was expensive. The tenants could not leave the heat turned up as the upper portion of the home would become hot, while the basement would still not be warm enough. The tenants said that the forced air furnace provided several vents in the ceiling, which were inadequate to heat the basement. The floors were concrete and the walls were not insulated. The space became damp and smelled of mildew very quickly. The tenants did not use the office space or the playroom as it was too cold. The tenants were able to use the woodstove effective October 25, 2016.

The landlord said that the remote location and the lack of people who could carry out the required inspection caused the delay in woodstove use. The landlord had been waiting since August 16, 2016 for the inspector. The landlord said it was eight degrees above freezing on the day the tenants' complained about the lack of heat. The landlord said that it seemed the tenants did not understand what it could be like in the winters, as they were from the Vancouver area. The landlord said there were adequate numbers of heat vents in the ceiling to heat the basement.

The tenants claimed the loss of use of a toilet for 25 days. The rental unit had two full bathrooms; one upstairs and one in the basement. During move-in the tenants realized the downstairs toilet was not working and that the landlord was attempting to make a repair. On September 18 and 22nd, 2016 the tenants emailed the landlord asking when the toilet would be repaired. The tenants were having guests and needed the second toilet. In the September 22, 2016 email the tenants acknowledged that the landlord had tried to repair the toilet on three occasions and that perhaps they should call a plumber. The toilet was not repaired until September 25, 2016. The tenants have claimed $10.00 per day for 25 days that the toilet was not functioning.

The landlord said that he is not a plumber. The landlord tried to repair the toilet. The landlord said he finally called someone to repair the toilet.

The tenants have claimed compensation in the sum of $350.00 for the loss of use of the dishwasher for a period of seven months. The tenant said the dishwasher never really worked. On November 28, 2016 the tenants emailed the landlord as the dishwasher would not drain. On November 30, 2016 the landlord replied, suggesting the only cause could be solid items being poured down the drain or into the dishwasher. The tenants emailed the landlord on December 4, 2016, asking if the appliance would be repaired as it had never worked well and was now flooding. The tenants suggested replacement of the old machine would be advised. The tenants emailed again on December 6 and on December 7, 2016 the landlord replied that their "plumbing guy" would arrive on Friday. The landlord said repeated texts did not speed up the maintenance process; writing "that is just the way things move up here." On December 8, 2016 the tenants wrote the landlord to say the repairperson called and had not been given the address or tenant's number, so he did not arrive.

On December 22, 2016 the landlord emailed to say that they would get back to the tenants regarding the dishwasher issue as soon as possible. The landlord did measure for a new dishwasher but on January 25, 2017 decided not to install a new machine. At this point the landlord said the machine might be full of mineral deposits.

The landlord said the tenants had been told to use calcium tablets, to keep the machine running. The tenants were informed of this requirement when they moved in. The landlord said this is what you have to do when living in a remote area. The landlord said they did not put every direction into an email. When asked why the landlord had not installed a new dishwasher the landlord responded that it took the tenants two months to destroy the dishwasher, so they wondered how many times they would have to replace the appliance within a year.

The tenant said they were not told to use mineral tablets. The tenant stated that the home should have had a water softener, as most of the homes in the area would due to the hard water. The emails send by the landlord in response to the initial complaints did not mention use of tablets.

The tenants have claimed $100.00 per month for seven months, for the loss of safe use of the stairs to the deck. The stairs led to the entrance of the home most easily accessed by the tenants. From the start of the tenancy the railings were always wobbly; the whole railing around the deck was not solid. On November 21, 2016 the spindles were noticeably loose. On November 21, 28, and 30, 2016 the tenants emailed the landlord to ask that the railing be repaired. The tenants explained the railing was falling apart.

On November 30, 2016 the landlord responded stating that the railing was in order when the tenants moved in and that it would be taken care of as soon as possible. On December 7, 2016 the landlord emailed regarding a number of outstanding issues and wrote that the deck railing would be looked at as soon as possible.

The tenant said that the stairs were steep and they had to walk their young children up and down, in order to ensure their safety. At one point the landlord placed a strap over each side of the railings, in an attempt to hold the spindles in place. The tenants provided a picture of the straps. The straps did nothing to improve the safety of the stairs. The tenant was nervous walking on the stairs with the children and while pregnant. The tenant pointed to a picture that showed a large crack in the concrete, near the base of the stairs, suggesting that the stairs may have shifted after the cold weather set in. The tenant said the main issue was that of safety and that the failure to repair the railings was a breach of the landlords' obligations under the Act. The railings were not repaired during the tenancy.

The tenant submitted a video of the spindles; showing them falling out when just brushed. The landlord said the video could not be viewed. Counsel for the landlord

was unable to view the video. The tenant asked if the landlord received an email prior to the hearing, to confirm viewing. The landlord said they had not received an email.

The landlord said the tenants could have used the basement entry, the front door or manually opened the garage door; although the landlord stated they did not have a key to the basement to provide to the tenants. The landlord said the front door should have provided a reasonable alternative entry. The tenant responded that they were never given a key to the basement and that it had a set of steep stairs. The front door required going through a wired gate and was not very convenient with the young children.

The landlord had lived in the unit for a week during the month of August 2016 and said the railings were fine. Counsel for the landlord suggested the children could have yanked on the spindles. The landlord said the concrete footing has not moved since it was poured in the 1980's.

The tenants have claimed the loss of quiet enjoyment in the sum of $200.00 for each of the 10 months of the tenancy, due to the ongoing smell of septic. On September 7, 2016 the tenants informed the landlord of the smell that could be detected on the deck, in the yard and stairwell. The odour of sewage would come in through the doors and windows. The tenants could not use the deck and the children did not use the backyard as the smell was so intense. The tenant said that the smell was not always present, but it was pervasive.

The tenant said the landlord suggested that the tenants were doing something to cause the odour. It took 56 days for the landlord to have someone come to assess the septic. A number of emails were sent regarding the septic.

On September 7, 2016 the tenants sent the first enquiry regarding the smell. The tenants reported the smell came and went and was "pretty awful." The next day the landlord responded that the septic service they had used to empty the tank would be contacted. The tenants emailed again on September 10, 2016, with the landlord responding on September 8 and 10, 2016. The landlord wrote that they had met with a septic expert and would meet with the tenants to explain how a septic system works. The tenants replied they wanted the system checked. On September 18, 2016 the tenants again emailed the landlord regarding the request for septic inspection.

The landlord provided a letter dated August 26, 2016, issued by the septic service that had pumped the tank on that date. A smell had not been noted at that time. The letter indicated there had been another check for smell at a "later date" but none was found. On September 21, 2016 the landlord wrote that the septic company personnel had been to the property and inspected the system, finding it functional. The landlord said that the person who had been back to the property could not recall the date they had carried out the other check for odours.

On October 4, 2016 the tenants wrote that the smell continued and asked who had completed the inspection as they wished to speak with them. On October 31, 2016 the tenants complained again and wrote that the wood stove personnel could smell the septic. The landlord replied on November 1, 2016 indicating a septic expert would be at the house the next morning. The tenants suggested that the flap of the septic tank might be malfunctioning; they provided the contact information for someone who had previously lived in the home who could make the repair.

The landlord supplied a copy of a December 16, 2016 letter from the septic company; setting out the details of an inspection made on December 14, 2016. The person who wrote the letter is identified as a registered onsite wastewater practitioner. No leaks, wet spots, smell or signs of damage were found. A flow test within the house was completed. The letter indicated that "comments had been made concerning smell but this was not noted on this inspection."

The landlord submitted a letter dated January 20, 2017 from the septic service indicating another inspection had occurred on January 9, 2017. Again no leaks, wet spots, smell or signs of damage were found. A flow test within the house was completed. The letter indicated that discussion took place regarding the septic smell. The letter writer noted:

> *"During those discussions I made the observation that the system does vent through the normal house vent and that possibly wind flows may blow that smell across the back of the house. I explained that this was the normal way of venting a house and on observation the roof stack was in place and standard. I also suggested that extending the stack may help dissipate any fumes. At this point it is my opinion that the septic system is functioning as intended and does not present a health hazard."*
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> (Reproduced as written)

During the hearing there was discussion regarding calling the letter writers' in as witnesses. I explained I would accept that the letters would support the testimony to be provided. The tenant declined the opportunity to cross examine the witnesses; as a result efforts were not made to call the witnesses in to the hearing. The landlord chose not to call in their witnesses.

The roof stack vent was extended by the landlord. On November 14, 2016, after the vent was extended the tenants wrote that the smell continued daily. The landlord replied they would speak to the person suggested by the tenants. Again on November 18 and 21, 2016 the tenants enquired about a solution. On November 30, 2016 the tenants wrote that they had been dealing with the smell since the start of the tenancy. The landlord replied that the person the tenants suggested would try to come by the next day; although he knew nothing about a flap.

On December 13, 2016 the tenants asked the landlord to have a plumber investigate the smell, as they understood that faulty traps could be causing the smells. The septic professional was not a plumber, so not in a position to assess the plumbing. The next day the landlord replied, rejecting the request for a plumber. The landlord preferred to have the septic professional assess the system again.

On December 16, 2016 the tenants reported that they discovered the vent was full of ice and not venting. Someone sent by the landlord had made a hole down through the ice, which provided some relief from the septic smell inside the house, but the smell returned. The tenants asked to have this immediately resolved; that they could not wait another day, it was awful. On January 4, 2017 the tenants wrote that they had yet to hear from the septic personnel. On January 25, 2017 the tenants suggested a charcoal filter might work.

On April 30, 2017 the tenants wrote that the smell was now present in the master bathroom and that the treatments suggested were not working. The email explained that the smell had been strong for the past five days and that if not solved they would need to relocate and pursue the issue with the RTB. On the same date the tenants sent the landlord an email, after having a conversation, giving two months' notice to end the tenancy. Notice was given as a result of the septic smell and other maintenance issues that had not been resolved. A letter dated and signed on May 2, 2017 was then issued to the landlord, giving formal notice to end the tenancy.

The tenants submit that the constant smell interfered with their enjoyment of the home and formed an unreasonable disturbance, resulting in a loss of quiet enjoyment. The tenants submit the landlord neglected the obligation to repair and maintain the rental unit as required by policy.

The landlord said that they never noticed anything out of the ordinary with the septic system. When I asked what would be ordinary the landlord responded that you will get some smell, it is normal for a tank to vent. The landlord stated that the reality of septic systems is that you would have some smell and that there was nothing they could have done differently. The vent was extended on the advice sought and there was nothing else they could do. The landlord said the tenants were from the Vancouver area and not used to septic systems. The landlord suggested that the tenants may have planned to end the fixed term tenancy early as they wanted to purchase a home.

The tenant responded to the suggestion that they had created the issued in order to end the tenancy. The tenant said that was not the case; they would have had to have entered the tenancy with a plan to do so; which they did not. The tenant responded that they had used a septic system in the past and that while the smell did not form a health hazard it was a pungent smell that should not have been present most of the time.

In relation to the claim for loss of the use of the fixture in the bathroom; the landlord did not dispute that it had malfunctioned and took three months to repair.

The landlord did not issue notice to restrict or terminate services that were to be provided as part of the tenancy. The dishwasher and woodstove were included with rent.

Copies of all emails referenced were supplied as evidence.

Analysis

After considering each claim against the Act and Regulation I have made findings based on the balance of probabilities. I have considered RTB policy in reaching my findings.

I find that the landlords' submission they were somehow thwarted in making repairs due to the remote and rural location of the rental unit has no weight. The Act does not take into account the location of a rental unit.

Landlords' Claim:

Sections 23 and 25 of the Act set out the landlord responsibility for scheduling a move-in and move-out inspection. The parties may have walked through the rental unit but a landlord is required to complete a condition inspection report, in accordance with the Regulation. That did not occur. The inspection report is meant to provide a record of the state of the rental unit at the start and end of a tenancy.

In the absence of an inspection report the landlord must provide a preponderance of evidence that the tenant has damaged the rental unit.

There was no evidence before me that the landlord chose to pull out appliances at the start of the tenancy; yet they were pulled out at the end of the tenancy. The landlord supplied an invoice for 6.5 hours of cleaning, including cleaning behind appliances and the outside of windows. RTB policy does not require a tenant to clean the outside of windows. The invoice also included carpet cleaning, which the tenants submit they had cleaned. I find the tenants' claim the carpets were stained at the start of tenancy holds as much weight as the landlords' claim that they were not stained. There was no record of the state of the unit at the start of the tenancy or the age of items, such as the carpets.

Section 37(2) of the Act provides:

> *2) When a tenant vacates a rental unit, the tenant must*
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> *(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the evidence before me I find that the landlord has failed to prove that the tenants failed to leave the rental unit reasonably clean. The cleaning invoice included items which I was not convinced had been clean at the start of the tenancy, such as areas behind appliances. The carpets had been cleaned by the tenants. The landlord also claimed exterior window cleaning, which is not the responsibility of the tenants. It is not unusual for a landlord to have some cleaning completed, in preparation for new tenants or in anticipation of a sale of a home. The photographs taken at the end of the tenancy supplied by the tenants showed a rental unit that appeared to be reasonably clean. Therefore, I find that the claim for cleaning is dismissed.

In relation to the carpets, I find that the tenants did attempt to clean the carpets and that any stains were just as likely to have been present at the start of the tenancy. The absence of a condition inspection report providing a record of the age and state of the carpets leads me to dismiss the claim for carpet cleaning.

There was no dispute that the landlord was to provide a lawn mower for the tenant's use. The tenants agreed they were to cut the lawn. When the landlord removed the lawn mower on May 31, 2017 the landlord failed to provide the tenants the agreed-upon equipment to cut the lawn. The state of the lawn prior to the end of the tenancy is not at issue; it is the state at the end of the tenancy. Despite a June 12, 2017 email request sent to the landlord, asking the mower be returned; it was not. Therefore, as the landlord failed to meet the terms of the tenancy addendum, by providing a lawn mower, I find that the claim for lawn care is dismissed.

From the evidence before me I find that the landlord has failed to prove that the issues with the railings were anything more than a deficiency. The landlord purchased the home before the winter months. I find that it is possible that some shifting of the railing, due to freezing winter conditions could have affected the railings. There was no evidence before me that the tenants inflicted any damage to the railings or that they used the railings for anything more that their intended use. In fact the tenants made repeated requests that the railings be repaired. Therefore, in the absence of any evidence that the tenants damaged the railings I find that the claim for railing repair is dismissed.

There was no dispute that the fridge was new at the start of the tenancy. The tenants said the damaged crisper was not pointed out at the end of the tenancy. It is difficult to prove damage by a tenant when the damage is not raised with the tenant during an inspection. There would have been other people in the rental unit after the tenants vacated and I have no confidence that this damage did not occur after the tenancy ended. Therefore, I find that the claim for the crisper drawer is dismissed.

The washing machine was not inspected at the start of the tenancy; there is no record the machine was examined by the parties. There is also no evidence that the dent in the machine was pointed out at the end of the tenancy. Further, the washing machine is fully functional and would not require replacement. In the absence of evidence that

the dent was not in the machine at the start of the tenancy and the fact that the machine is fully functional, I find that the claim for a new washing machine is dismissed.

RTB policy three suggests that when a tenant ends a tenancy prior to the end of a fixed term a landlord can put a tenant on notice that a claim for loss of rent revenue may be pursued. There was no evidence before me that the landlord issued such notice to the tenants.

The landlord confirmed that once notice ending the tenancy was given by the tenants on May 2, 2017 no efforts were made to rent the unit effective July 1, 2017. Instead the rental unit was listed for sale. The landlord was able to rent the unit effective August 1, 2017; to people who were somehow known to the landlord. The reduced rent obtained was provided as the landlord was attempting to assist the new tenants, not due to an absence of potential renters who could pay rent of $1,150.00. The landlord provided no copies of advertisements showing the rent sought or the need to reduce the rent sought.

RTB policy three suggests:

> *In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation,* ***nor will placing the property on the market for sale****.*
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> (Emphasis added)

Therefore, as the landlord listed the property for sale and provided no evidence of any attempt to mitigate the loss of rent revenue following notice given on May 2, 2017 I find that the claim for loss of July and August 2017 rent revenue is dismissed.

RTB policy 40 suggests the useful life of a dishwasher is 10 years. During the initial hearing I asked the landlord the age of the machine and was told it was approximately 10 years old. During the second hearing counsel for the landlord said that it was the arbitrator who had made the comment regarding the age of the dishwasher. A check of my notes showed that in fact the landlord had provided the age of the machine, at which point the suggested useful age of 10 years was provided.

The landlord has claimed that rather than the age of the dishwasher it is the tenants who caused the machine to malfunction. The addendum to the tenancy agreement did not include any special instructions for use of the dishwasher and the tenants deny the landlord directed them to use calcium removal tablets. From the evidence before me I find that the landlord has failed to prove that the malfunctioning dishwasher was anything more than problems that can be expected with an older machine. The landlord did not have the machine inspected so that the cause of the reported problems was never properly established. From the evidence before me I find that the landlord focused on the tenants as the cause of the dishwasher problem rather than taking steps to have the appliance repaired.

Therefore, in the absence of evidence that the dishwasher failure was caused as a direct result of negligence by the tenants I find that the claim for replacement is dismissed.

Therefore, the entirety of the landlord's claim is dismissed.

Tenants' Claim:

I have considered the definitions contained in section 1 of the Act. Appliances and heating are considered a service or facility. I have then considered section 27 in relation to the claim made by the tenants.

I have calculated the per diem rent as $37.81 ($1,150.00 X 12/365.)

Section 27 of the Act provides:

> ***Terminating or restricting services or facilities***
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> ***27*** *(1) A landlord must not terminate or restrict a service or facility if*
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> *(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
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> *(b) providing the service or facility is a material term of the tenancy agreement.*
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> *(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
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> *(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and*
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> *(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

Based on the definition of facilities I find that the wood stove was a heating service provided by the landlord for use of the tenants. There was no dispute that the tenants were denied the use of the fireplace for a period of 55 days while awaiting an inspection for insurance purposes. While the landlord may well have made all reasonable efforts to have the inspection completed as soon as possible, the tenants signed the tenancy agreement expecting to have full use of the woodstove to heat the basement. It was not until after the tenancy agreement was signed that the tenants were told they could not use the woodstove.

I found the tenants' testimony had the ring of truth, that a large concrete floor basement could not be reasonably heated to the same level one would expect from a woodstove

during cold-weather months. I have accepted as logical that forced air heat vents in the ceiling would not have allowed the basement to reach temperatures that would allow the expected use of the basement; when compared to the comfort wood heat would provide. Further, I agree the level of heat required to attempt to heat the basement with the forced air furnace would leave the upper portion of the home excessively heated. If the tenants had known they could not use the woodstove they could have negotiated a contribution to the provision and cost of running space heaters; however, there was no evidence before me that the landlord made any such offer.

Therefore, I find that the tenants were denied the use of a service that was to be provided and are entitled to compensation as claimed for the loss of heat and the use of the woodstove.

There was no dispute that the tenants lost the use of the toilet for a period of 25 days. From the evidence before me I find that the landlords' response to the request for repair was lackluster. The landlord was required to repair and maintain the home, and while the tenants had use of another toilet I find it unreasonable that the tenants had to wait until September 25, 2016, when the landlord had known since the start of the tenancy the toilet was not working. The tenants had made multiple requests for repair. Therefore, I find that the claim for loss of use of the toilet at $5.00 per day is a reasonable sum. I have reduced the sum claimed as more reflective of the loss of a toilet, based on rent of $37.81 per day.

From the evidence before me I find that the landlord was informed of the need to repair the dishwasher not later than November 28, 2016. Despite no less than four emails requesting repair the dishwasher was not repaired. Eventually the tenants abandoned their attempts to have the landlord repair the appliance. Appliances are defined as a service or facility under the Act. Pursuant to section 27 of the Act the landlord could have removed the dishwasher as a facility, by issuing notice in the approved form and providing a rent reduction. That did not occur. The landlord determined the tenants had caused the damage and did not make the repair.

Therefore, I find that the landlord failed to comply with section 32 of the Act, by repairing or replacing the 10 year old dishwasher. As a result I find that the tenants are entitled to compensation in the sum of $50.00 per month from December 2016 to June 2017, inclusive, totaling $350.00. A reasonable rent reduction for the loss of use of the dishwasher would have been $50.00 per month.

From the evidence before me I find that there is no evidence the tenants caused any damage to the railings or spindles. I have dismissed the landlord's claim that suggested the tenants should pay for the repair. Throughout the tenancy the tenants made multiple requests for repair, setting out concerns for safety and ease of access to the rental unit. I found the landlords' response inadequate and that the landlord minimized those concerns, while blaming the tenants.

I find that the tenants did not suffer a loss of the stairs; they were able to utilize them. However, I do accept that the use of the stairs was with trepidation and inconvenience, given the need to walk children up and down and the fear of falls. The suggestion the tenants' use a basement door for which a key was not supplied, was not a solution. The use of a front door that required access through an awkward wired gate was also what I find to be an inadequate solution. It would have been reasonable for the landlord to have the railing properly repaired during the tenancy, in response to the repeated concerns expressed by the tenants. Other than the placement of two straps on the railings there was no evidence before me that the landlord took any steps to repair or replace the railings.

The railings were not a facility that could be removed; they are required for safety. The tenants could have abandoned the use of the stairs; as suggested by the landlord. However, I find that the loss of use of the main entry to the deck and house would have resulted in a loss of value to the tenancy. Therefore, I find that the tenants are entitled to some compensation for the loss of use of the railings which resulted in inconvenience and fear of injury. I have reduced the sum claimed to $450.00. This reduction takes into account the fact that the tenants could have avoided some of the loss and stress by utilizing the front door and the fact that the stairs were still usable; although only with caution. The balance of the claim is dismissed.

I have considered the claim for loss of quiet enjoyment through unreasonable disturbance caused by the smell of septic. The tenants have claimed a loss in the sum of $200.00 per month for the duration of the tenancy.

Section 28 of the Act provides:

> ***Protection of tenant's right to quiet enjoyment***
>
> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

There were no fewer than 12 emails sent to the landlord, commencing September 7, 2016; asking that something be done about what the tenants described as a pungent odour of septic on the deck, coming in the windows and eventually into a bathroom.

Finally on April 30, 2017 the tenants sent an email indicating they would end the tenancy.

From the evidence before me I find that the landlord did take some steps to address the tenants' concerns. The tank had been pumped in August, just prior to the start of the tenancy. The septic professional inspected the system on December 14, 2016 and carried out the same inspection on January 9, 2017. When the January inspection resulted in advice to extend the stack vent, the landlord did so within a reasonable period of time. Yet, despite the two inspections that found no deficiency with the septic system itself, the tenants' continued to suffer from what they described as the fairly constant smell from the septic system.

I found the January 9, 2017 report from the septic professional interesting as it pointed out that smell could have been the result of a vent stack that should be extended and the fact that winds could blow the smell across the back of the house. This would explain why the smell might not be detected on days when the septic professionals were at the home. As a result I accept that the tenants were essentially tormented by an on-going, intermittent smell of septic during this tenancy. I do not accept that the tenants' concocted the problem in order to end the tenancy; as suggested by the landlord. The tenants would have had to enter the tenancy with the sole goal of ending it early. In fact the tenants faced a number of deficiencies, with the septic smell just one.

Of concern is the decision made by the landlord to rely only on the septic system professional and the landlords' refusal to have a plumber examine the plumbing. This request was made by the tenants on December 13, 2016. I find it was not an unreasonable request. The tenants were repeatedly expressing their concern about the smell of septic. If the septic system was deemed to be properly working it would have seemed unreasonable to have the plumbing inspected to ensure the problem did not originate elsewhere. The landlord rejected the suggestion of a plumber. The rejection of plumber leads me to conclude that the landlord did not take all reasonable steps to respond to the tenant's repeated complaints of the smell of septic.

I find that little meaningful response was made from September 7, 2016 and the date the initial septic inspection occurred on December 14, 2016. When the landlord rejected the request for a plumber and chose, instead, to again have the system inspected when it had already been deemed to be working normally, I find that the landlord erred.

I find it is appropriate to conclude that any reasonable person would find the on-going smell of septic an unreasonable disturbance, resulting in a loss of quiet enjoyment that entitles the tenants to compensation.

I have reduced the sum claimed as the tenants continued to have full use of the rental unit and would not have utilized the yard or deck to the same degree in the winter as during the warmer months. The reduction takes into account the efforts made by the landlord to address the problem, while acknowledging those efforts were less than satisfactory. If the landlord had truly wished to resolve this on-going concern it would have been reasonable to have the system inspected more quickly and to hire a plumber to investigate the problem after the system was deemed operational. Clearly a problem continued to exist.

Therefore, I find that the tenants are entitled to compensation for the loss of quiet enjoyment in the sum of $150.00 per month for 10 months. The balance of the claim is dismissed.

The landlord did not dispute that it took three months to repair the bathroom fixture. Therefore, I find that the tenants are entitled to sum claimed, as I find it reasonably reflects the loss of use of that facility for a period of three months.

	Claimed	Accepted
Loss of use of basement due to heat 55 days	753.00	753.00
Loss of use of toilet 25 days	250.00	125.00
Loss of use of dishwasher 7 months	350.00	350.00
Loss of safe use of stairs for 7 months	700.00	450.00
Loss of quiet enjoyment due to septic odour 10 months	2,000.00	1500.00
Loose, leaky faucet children could not turn on for three months	52.50	52.50
TOTAL	$4,455.50	$3230.50

As the landlord is holding a security deposit in the sum of $575.00 and the landlords' claim is dismissed, I order the landlord to return the deposit to the tenants.

As the tenants claim has merit I find that the tenants may recover the filing fee cost in the sum of $100.00 from the landlord.

Based on these determinations I grant the tenants a monetary order in the sum of $3,905.50**.** In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlords' application is dismissed.

The tenants are entitled to compensation in the sum of $3,230.50. The balance of the tenants' claim is dismissed.

The landlord is ordered to return the security deposit to the tenants.

The tenants are entitled to filing fee costs.

This decision is final and binding and 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: November 21, 2017

Residential Tenancy Branch