Dispute Resolution Services

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. The landlord applied for a Monetary Order for compensation for damage to the rental unit; unpaid rent; other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for a Monetary Order for compensation for emergency repairs; damages or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. Both parties appeared or were represented at the hearing and 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 several hours on three different dates. Interim Decisions were issued following the first and second hearing date and should be read in conjunction with this decision.

Although I was provided a significant amount of evidence, by oral and written submissions and documentary and photographic evidence, all of which I have considered in making my decision, with a view to brevity in writing this decision I have only summarized or referred to the most relevant and significant evidence and submissions.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?
2. Has the tenant established an entitlement to compensation form the landlord for the amounts claimed?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on December 1, 2015 on a month to month basis. The tenant paid a security deposit of $590.00. The tenant was required to pay rent of $1,180.00 on the first day of every month. Effective January 1, 2017 the rent increased to $1,223.66. The tenancy ended on April 30, 2017 after the tenant gave the landlord written notice to end tenancy.

The tenant participated in an inspection of the rental unit on December 1, 2015 but a report was not prepared at that time. The parties were in dispute as to whether the move-in inspection was done by the landlord herself or her son. The landlord had pre-completed the move-in inspection report before December 1, 2017 and posted it to the tenant's door on December 8, 2015 for his signature. The tenant signed it on December 14, 2015. Although the move-in inspection report was not completed at the time of the move-in inspection, the tenant confirmed that the move-in inspection report fairly reflects the condition of the unit at the start of the tenancy.

Both parties participated in the move-out inspection together, along with witnesses, and a move-out inspection report was prepared. The landlord made notations that the rental unit required additional cleaning and there were burnt out light bulbs. The tenant indicated that he did not agree with the landlord's assessment on the move-out inspection report. The tenant did not authorize the landlord to make any deductions from his security deposit and provided the landlord with his forwarding address on the move-out inspection report. The landlord filed her Application for Dispute Resolution 15 days later on May 15, 2017.

Below, I have summarized the parties' respective monetary claims against each other and the other party's responses.

Landlord's claims

Cleaning

The landlord had initially sought $350.00 from the tenant for cleaning, based on an estimate; however, the invoice was less and the landlord seeks to recover the lesser amount of $267.75 from the tenant.

The landlord submitted that additional cleaning was required in the rental unit at the end of the tenancy. The landlord pointed to photographs she had taken and photographs the cleaning lady had taken. The landlord submitted that a number of areas required cleaning, as seen in the photographs, the cleaning lady's checklist, the move-out inspection report, and a letter written by the landlord's son. Further, the landlord submitted that there were marks on the walls and the marks were removed by the cleaning lady. The landlord stated the walls had been freshly painted just prior to the start of the tenancy. The landlord explained that a premium had to be paid to the cleaner because April 30, 2017 was a Sunday and a new tenant was moving in the following morning.

The tenant was of the position the rental unit was left very clean, and certainly beyond "reasonably clean". The tenant explained that he made great efforts to clean the unit very well because he anticipated problems with the landlord. The tenant also took pictures of the rental unit and had witnesses present at the move-out inspection. The tenant pointed to his photographs and his witness' statements in support of his position.

The tenant found the presence of the cleaning lady at the move-out inspection to be suspect and claimed the landlord was actually pointing out areas to the cleaner, who appeared visibly uncomfortable. The tenant acknowledged that there were some scuffs on the walls but was of the position they are normal wear and tear.

The landlord explained that the cleaning lady was already at the property performing other cleaning tasks for the landlord and the landlord requested her presence because the tenant had other men with him.

Blind cleaning

The landlord had originally claimed $200.00 for blind cleaning based on an estimate but the actual cost was much less at $89.25. The landlord seeks to recover the actual cost

of $89.25 from the tenant plus $50.00 as compensation for two hours of the landlord's time spent to meet the blind cleaning company at the property to have the blinds removed and then reinstalled.

The landlord also took the position that the tenant was required to professionally clean the blinds as required under the tenancy agreement since they were professionally cleaned at the start of the tenancy. The landlord stated that the blinds were not cleaned at the end of the tenancy and that at the move-out inspection the tenant acknowledged he did not clean the blinds because he had not been provided new blinds.

The tenant stated that the blinds appeared run-down at the start of the tenancy and that he was told by the landlord's son, who showed him the unit initially and did the move-in inspection with him, that new blinds were going to be installed but they never were. The tenant stated he never did raise the blinds because the unit faced a back alley. Nevertheless, the tenant testified that he purchased a brush and cleaning solution and cleaned the blinds himself despite the landlord's insistence that he use a particular company to have the blinds cleaned.

Late fees

The tenancy agreement provides a term that a late fee of $25.00 may be charged where the rent is paid late. The monthly rent was increased to $1,223.66 by way of Notice of Rent Increase that took effect on January 1, 2017.

The landlord submitted that the tenant paid $1,220.00 on January 3, 2017 and the tenant paid only $1,220.00 on February 1, 2017 and March 1, 2017. The landlord submitted that she did not realize there was a $3.66 per month shortfall for these three months until March 6, 2017 and when the tenant raised the issue of the rent increase amount to her attention. The tenant paid the $10.98 shortfall for these three months on March 10, 2017.

The tenant was of the positon the landlord's claim for $75.00 in late fees for a $10.98 shortfall over three months is excessive especially considering neither party appeared to notice the shortfall right away. The tenant stated there was no intention to short the rent payment and that he had misplaced his Notice of Rent Increase when he paid the rent so he estimated it to the best of his recollection. The tenant acknowledged that the January 2017 rent was paid late on January 3, 2017, explaining that his bank was closed due to the holidays until January 3, 2017.

After some discussion regarding the amount of the landlord's claim in comparison to the small shortfall over a number of months and the landlord's failure to notice the shortfall for a long period of time, the landlord was agreeable to reducing her claim to one late fee of $25.00 for the month of January 2017.

Drain cleaning

The tenant reported a slow draining bathtub and sink to the landlord via text message on December 5, 2016 and the landlord sent a plumber to the unit shortly after. The plumber removed a significant amount of long, dark hair from the drains and billed the landlord $79.59. The landlord seeks to recover this cost from the tenant as it is the landlord's position that the long dark hair that was removed from the drains likely belongs to the tenant's girlfriend. The landlord submitted that the plumber had cleared and inspected pipes and drains in the building in August 2016 and there were no issues with drainage in the rental unit then. Further, the move-in inspection report reflects the drains as being in working order. The landlord also submitted that a new bathtub and sink, and the associated plumbing, were installed in the rental unit in 2012. The tenant who occupied the rental unit prior to the tenant had short blonde hair.

The tenant acknowledged that the main drains in the building were snaked in August 2016 but not the drains under the sink or bathtub in his unit; although the tenant acknowledged that there were no issues with the drains in his unit at that time. When the tenant notified the landlord of the slow drains the landlord said she would have the plumber come and clear the drains. The landlord did not advise the tenant that she would charge him for this expenditure and he never agreed to pay for it.

The tenant claims he had rubber stoppers on the drains to prevent hair from going down the drains. The tenant was of the position that the drains had not been cleaned since they were installed in 2012 and that is a long time. The tenant also pointed out that although the previous tenant may have had short blonde hair, the previous tenant could have also had guests that used the shower and sink, and a clog is usually from an accumulation over time.

Cleaning light fixtures and light bulb replacement

The landlord seeks to recover from the tenant $50.00 she paid her son, in cash, to remove and clean six light fixtures in the rental unit after the tenancy ended. The landlord also supplied three new light bulbs to replace three bulbs that were burnt out.

The landlord did not have a receipt for new light bulbs, explaining that she keeps bulbs in stock. The landlord stated that light bulbs cost $5.00 each, approximately.

The tenant stated that the light fixtures were cleaned and there were no burnt out light bulbs that required replacement when the tenancy ended.

Additional occupant

The landlord seeks compensation of $100.00 per month for 17 months, or $1,700.00, from the tenant for having an additional occupant. The landlord submits that the tenant had an additional occupant, his girlfriend, living in the rental unit with him. The landlord pointed out that the tenancy agreement prohibits the tenant from having an additional occupant without the landlord's permission and the tenant did not obtain the landlord's permission to have an additional occupant. The landlord stated that had the tenant been honest with her that his "assistant" as actually his girlfriend when he applied for tenancy the landlord would have discussed charging additional rent of $100.00 per month for an additional occupant. The landlord submitted that she questioned the tenant about having an additional occupant on December 6, 2016 when the tenant used the term "we" in a text message he sent to the landlord. The landlord advised the tenant that she would be "watching" the situation. Afterward, the landlord observed seeing a woman, and her car, at or near the property several times. The landlord believes that this woman is the tenant's girlfriend and that she was residing in the rental unit based on what she saw and what her son told her; however, the tenant denied to the landlord that his girlfriend was residing in the rental unit.

I turned to the tenancy agreement and reviewed the relevant terms of the tenancy agreement that deal with additional occupants. I confirmed that the tenancy agreement does contemplate additional occupants in two clauses. Clause 13: *Additional Occupants* provides, in part, that a tenant must seek the landlord's written approval to have an additional occupant; and, that failure to obtain the landlord's written approval for an authorized occupant is a breach of a material term of the tenancy agreement and the landlord has the right to end the tenancy in such instances. Clause 6: *Rent and Fees* provides, in part, that "subject to clause 13" the tenant agrees that for each additional tenant or occupant the rent will be increased effective from the date of occupancy; however, in the space provided to reflect the amount payable it was left blank.

For reasons provided in the analysis section of this decision, I found the landlord was not entitled to additional rent for an additional occupant under the terms of the tenancy

agreement and I dismissed this portion of her claim without seeking a response from the tenant.

Tenant's Application

Security Deposit

The tenant seeks return of his security deposit. The landlord made a claim against the security deposit within the time permitted. After considering the landlord's claims, I will determine the appropriate disposition of the security deposit.

Emergency repairs (fridge)

The tenant did not make an emergency repair. Rather, the tenant seeks compensation of $450.00 with respect to dealing with a faulty fridge for several months. The tenant's claim was calculated as being $100.00 per month for 4.5 months – the period of time the tenant waited for a replacement fridge. The tenant explained that $100.00 per month represents additional groceries he had to purchase during this time.

The tenant testified that he had reported to the landlord in July 2016 that the fridge was making strange noises and the landlord had a technician inspect the fridge shortly after. The technician determined the noise was coming from the compressor and the compressor needed to be replaced. The tenant claims the landlord told him to refrain from putting too much food in the fridge to avoid spoilage if the fridge stopped working and that the landlord would replace the fridge. A new fridge was not delivered until December 5, 2016.

The landlord testified that after determining the compressor needed replacement the landlord enquired about warranty coverage and found out the fridge was too old to be covered under warranty. The landlord also determined that the fridge was nearing the end of its life and that replacement of the fridge was appropriate; however, the landlord could not afford to do so at the time. The landlord submitted that the fridge never did break down, but that it was only making noises, and the tenant did report any food spoilage.

The tenant acknowledged that he did not repeatedly complain to the landlord as he understood a new fridge was on order and he was trying to be patient with a view to making the tenancy work.

The landlord claims that she only advised the tenant to refrain from purchasing too much food when they were waiting for the technician to inspect the fridge. The landlord also pointed out that the tenant could have had the new fridge a few days earlier but that delivery was delayed a few days at the tenant's request.

Security bars

The tenant submitted that he expected window bars to be installed on the windows of the rental unit and they were not. The tenant seeks compensation of $100.00 per month for 17 months, or $1,700.00, for lack of security bars. The tenant explained he claimed this amount since the landlord claimed the same amount for allegedly having an additional occupant.

The tenant testified that when he viewed the rental unit with the landlord's son, the landlord's son said there were security bars that could be installed on the windows. The window bars were not installed when the tenancy started and the tenant enquired about it with the landlord in December 2015 and January 2016. In February 2016 the landlord had a maintenance man attempt to install security bars but they did not fit. Then the landlord then had the windows measured for security bars and the landlord stated they would be installed but they never were.

The landlord pointed out that when the tenant viewed the rental unit prior to renting it, he viewed with her son but that her son did not have authorization to make representations to the tenant. Furthermore, the tenancy agreement does not indicate that window bars were to be provided as a term of tenancy. The landlord testified that on December 1, 2015 the tenant inspected the unit with the landlord and he mentioned the window bars at that time. The landlord said she had some in storage and would see if they could be installed. The landlord's contractor tried installing them but there not the right size. The landlord then had the windows measured for window bars as she contemplated ordering window bars for the tenant but then she became concerned about egress in the case of an emergency. The landlord decided not to install window bars but she did not inform the tenant of her decision. The landlord pointed out that the tenant did not raise the issue again until October 2016, after she served the tenant with a Notice of Rent Increase, and again in December 2016.

The tenant claims he could not get tenant's insurance due to a lack of security bars and the windows did not have proper locks, only wood dowels in the window tracks.

The landlord doubts the tenant was unable to obtain tenant's insurance due to a lack of security bars as other tenants in the building have obtained insurance and she made enquires with an insurance agent.

The tenant responded by stating that the rental unit faces an alley with dumpsters and recycling bins and that he saw security bars on an adjacent unit. The tenant claims he was told that the rental unit did have security bars but that they had been taken off but that they could be reinstalled for him. The tenant acknowledged he did not raise the issue for some time after the landlord had the windows measured because he assumed they were coming and he was trying to be patient. The tenant explained that he has expensive equipment but that he had to keep the equipment at his girlfriend's house due to concerns about break-ins.

The landlord acknowledged that security bars were installed on an adjacent rental unit due to security concerns regarding a previous tenant; and, there were security bars in storage that were ordered for a different unit when a different tenant was experiencing difficulties with a drug addicted relative. The landlord was of the position there is not an issue with break-ins and that the windows in the rental unit adequately locked.

The tenant provided documents to demonstrate the landlord attempted to have window bars installed on the rental unit windows and when the existing bars did not fit she proceeded to have the windows measured. Then he heard nothing more about it and in December 2016 he received a text message indicating the window bars would be installed. As stated earlier, the landlord forgot to inform the tenant of her decision not to install the window bars after having the windows measured. As for the text message sent in December 2016, the landlord submitted that it contained a typographical error and should have said window bars would "not" be installed.

Loss of privacy and quiet enjoyment

The tenant seeks compensation of $850.00, or $212.50 per month, for loss of privacy and quiet enjoyment in the last four months of tenancy: January – April 2017. In summary, the tenant submitted that the landlord followed him and his girlfriend around the property and on the street, taking pictures of them and yelling at them. The tenant described the landlord's actions as akin to stalking. The landlord had also taken several photographs of the tenant's girlfriend's car, parked in different places at different times on or near the property. The tenant had already notified the landlord, in writing and with documentation, in an attempt to satisfy the landlord that his girlfriend did not live with

him and that she had her own residence but the landlord chose to rely on hearsay and assumptions.

The tenant submitted that the landlord also changed the locks to his rental unit without his permission in March 2017. The landlord has given him a letter indicating the reason for doing so was to improve security at the building yet she refused to install the window bars on his unit despite the tenant's multiple requests for them.

The landlord did not understand how the tenant could describe her actions as being stalking. The landlord acknowledged taking pictures of the tenant's girlfriend's vehicle and of the tenant and his girlfriend together in an effort to gather proof that the tenant's girlfriend was residing in the rental unit. The landlord explained that the tenant had denied that his girlfriend was living in the unit and stated the landlord had no proof to the contrary so she had to gather proof. Further, the landlord cautioned the tenant that she would be watching the situation.

As for changing the locks to the rental unit, the landlord stated that she met her burden to give the tenant advance notice of the change and give him a copy of the new key; however, she did not gain the tenant's consent because she was unaware that she had to. The landlord pointed out that the tenant did not object to the change or request another key. The landlord explained that she changed the lock during the tenancy because she had determined a number of people had access to the building that were not tenants or authorized occupants and that it was more cost effective to have the locksmith change a number of locks at the same time rather than have the locksmith return to the property after this tenancy ended. The landlord indicated that when the tenancy started she had given the tenant two copies of keys because the tenant indicated he wanted an extra key for safekeeping but the landlord suspects the real reason was so that his girlfriend could have a key. When the landlord changed the locks in March 2017 she gave the tenant only one key and the key cannot be copied.

Return of April 2017 rent

The tenant seeks return of rent he paid for April 2017. The tenant acknowledged that he resided in the unit in the month of April 2017 but he takes the position that he would have vacated at the end of March 2017 had the landlord not avoided receiving his notice to end tenancy. The tenant stated that he tried reaching the landlord on February 28, 2017 so that he could meet her and give her is notice to end tenancy. The tenant was unsuccessful in contacting the landlord and left his notice to end tenancy on his door since this was the usual method of delivering rent and documents to the landlord.

The landlord did not collect the notice until days later on or about March 3, 2017 and then the landlord responded on March 5, 2017 to advised the tenant that his notice was received too late to be effective March 31, 2017. The tenant pointed out that he had also sent a text message to the landlord to inform her he had a letter for her and she did not respond. To ensure he gave enough notice to end the tenancy effective April 30, 2017 he sent the landlord another notice to end tenancy on or about March 6, 2017.

The landlord acknowledged receipt of the text message from the tenant indicating there was a letter for her but she thought it was a letter regarding an additional occupant that she was expecting and had already picked up on February 28, 2017. The tenant did not indicate in the text message that it was a notice to end tenancy. The landlord submitted that the tenant chose not to give his notice earlier or by using another acceptable method of service such as mailing the notice or posting the notice days earlier to ensure it was received on time. Further, the tenant had the benefit of use of the rental unit through the month of April 2017.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

I note that much of the submissions provided to me by both parties involve allegations about the other parties' conduct; including but not limited to: acting aggressively toward each other; attempts to deceive; and, harass each other. Soon after the hearing commenced, and throughout the remainder of the hearing process, it was very apparent to me and I accept as fact that these parties had an acrimonious landlord/tenant relationship, especially in the last few months of tenancy. Hopefully the parties achieved some satisfaction in expressing their respective experiences during this process; however, I proceed to make my decision largely upon facts that are relevant and supported by evidence, such as documentation and photographs.

Upon consideration of the relevant facts and evidence, I provide the following findings and reasons with respect to each of the claims before me.

Landlord's application

Cleaning, blind cleaning, light fixture cleaning and light bulb replacement

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. It is important to note that "reasonably clean" is a standard that is less than say perfectly clean; impeccably clean, or spotless and if a landlord incurs costs to bring a rental unit to a standard of cleanliness greater than "reasonably clean" the cost to do so is that of the landlord, not the tenant. With a view to assisting parties understand and fulfill the obligation to leave a rental unit "reasonably clean" the Residential Tenancy Branch provides a policy guideline. I have referred to Residential Tenancy Policy Guideline 1 in making my decision and I refer the parties to the policy guideline for further reference.

The parties were in dispute as to whether the tenant left the rental unit clean. The landlord prepared a move-out inspection report indicating a number of areas were not clean; however, the tenant disagreed with the landlord's assessment on the report and throughout this process. Accordingly, I find the move-out inspection report, in itself, is not overly helpful in determining whether the rental unit was left "reasonably clean".

Both parties also provided letters written by other people who were present for the move-out inspection. Not surprisingly, the letters written in support of the landlord's position indicate further cleaning was required and the letters written in support of the tenant's position indicate the rental unit was very clean at the end of the tenancy. I do take exception to some statements written by the landlord's cleaner which indicate to me that the landlord and/or her cleaner had an expectation that may be greater than "reasonably clean". For instance, the cleaner writes: "…the tenant and his witness claimed the apartment was spotless clean … neither of the men present were qualified to make such statements as they were not professional cleaners and apparently have lower cleaning standards." The cleaning lady also wrote, "Despite the fact that the tenant claimed he cleaned the apartment a whole day, it did not meet [name of landlord] standards, which is the reason she hired me."

Since the standard of cleanliness is one that is "reasonable", I find it appropriate to apply the reasonable person standard. In other words, a person need not be an expert

or professional to assess the level of cleanliness and a typical person acting with average care, skill, and judgment in the circumstances may make the determination. Also of concern to me is that the cleaner points to the landlord's standards of cleanliness. Again, it is not the landlord's standards of cleanliness that the tenant must satisfy, but a level that a reasonable person would consider to be reasonably clean.

Both parties provided photographs of the rental unit at the end of the tenancy for me to consider. The tenant's photographs show a rental unit that appears clean. The landlord's photographs are taken much closer up and there are some areas of the rental unit that appear to need more cleaning; however, in other photographs I have to strain to see anything or I see merely a speck. Based on what I see in the landlord's photographs, and the description that these are photographs of "dirty" areas, I am view that the landlord's standards are in excess of "reasonably clean" for the most part. Nevertheless, I am satisfied that the floor under the fridge and stove was less than reasonably clean and that the window tracks needed some additional cleaning. The tenant did not provide photographs of these areas. The cleaning invoice indicated five hours of cleaning were performed and there was a list of the cleaner's activities that was also provided. I attribute a significant portion of the cleaner's invoice to pertain to the landlord wanting to bring the rental unit to a standard that is beyond "reasonably clean". Therefore, I deny the landlord's request to recover the entire amount of the cleaning invoice from the tenant and I award the landlord a nominal award of $100.00 for cleaning the floor under fridge and stove and window tracks.

As for the blind cleaning, I am satisfied that the landlord sent the blinds out for cleaning shortly after the tenancy ended and that is likely because the tenant did not clean them. I make this finding as the tenant had noted on the move-out inspection report that the landlord's son had told him the blinds would be replaced. This notation indicates to me that the tenant likely did not clean the blinds as he was under the impression the blinds should have been replaced. As such, I award the landlord the amount paid to have the blinds cleaned, or $89.25; however, I make no award for compensation for two hours she claims to have spent to meet the blind cleaning company while they removed and reinstalled the blinds. From what I heard during the hearing, the landlord is frequently at the residential property and it is close to her personal residence, and I consider her actions of letting the blind company in and out of the rental unit to be a landlord's cost of doing business. Therefore, the landlord is awarded a total of $89.25 for blind cleaning.

As for the landlord's claim for light fixture cleaning and light bulb replacement, I find I am not satisfied by the opposing evidence that the landlord is entitled to the amounts she is

seeking. The landlord indicated there were three burnt out light bulbs on the move-out inspection report; however, the tenant refuted that on the report. The landlord did not take photographs of burnt out light bulbs or provide receipts for the purchase of light bulbs and the only corroborating evidence she provided was a letter purportedly written by her son. The tenant maintained no light bulbs were burnt out and I find the landlord's son's letter is not sufficient for me to accept the landlord's version of events over that of the tenant. As for light fixture cleaning, I note that the landlord's cleaner indicated she cleaned the light fixtures on the list of activities she performed. Yet, the landlord produced a letter purportedly written by her son indicating he cleaned the light fixtures and was paid in cash. I find the evidence to be conflicting and payment to the landlord's son not sufficiently supported. Therefore, I make no award for light fixture cleaning or light bulb replacement.

Late fees

Upon review of the tenancy agreement, I am satisfied that it contains a valid and enforceable late fee clause in keeping with section 7 of the Residential Tenancy Regulations. It was undisputed that the tenant was late in paying rent for January 2017 and I find the landlord entitled to a late fee of $25.00 for January 2017. It is upon the tenant to ensure his finances are arranged so that payment is available for the landlord when due and take into account holidays which are foreseeable.

Drain cleaning

It was undisputed that a plumber attended the rental unit to clear the drains of hair in the rental unit bathtub and bathroom sink in December 2016 after the tenant complained to the landlord of slow drains.

Residential Tenancy Policy Guideline 1 does not specifically mention drain cleaning; however, it does address clogged pipes under the section entitled: SEPTIC, WATER AND OIL TANKS. The policy guideline provides that landlords are responsible "for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence." Accordingly, I proceed to consider whether the tenant's negligence resulted in the clogged drains in the rental unit.

The parties provided opposing positions with respect to the source of the hair pulled from the drains. The landlord asserted the hair most likely came from the tenant's girlfriend who has long dark hair. The tenant did not deny that his girlfriend has long dark hair but denied that the clog was from his girlfriend's hair, claiming he placed

stoppers over the drains and pointing out that previous tenants or their guests could have introduced hair into the drains since 2012.

As mentioned earlier in this analysis, these decisions are based on the balance of probabilities. While both parties provided possible explanations for the hair that was introduced into the drains, I find on the balance of probabilities, that the hair was likely introduced during the tenancy. I rely upon the move-in inspection report which indicates the drains were in working order and the plumber's invoice from August 2016 where the plumber indicates that the plumbing lines, including kitchen and lavatories, were snaked and inspected.

I note that when the tenant complained of the issue to the landlord, the landlord did respond to the tenant in a text message by stating "Tenants are not careful with hair and that is the problem. Each time I called the plumber it is always the case and I am not responsible for cost of cleaning the drains." The landlord also informs the tenant that he should not be using draino on a regular basis. The landlord proceeded to get the tenant's permission for the plumber to enter the unit and he agreed.

For the reasons provided above, I find the tenant's actions, or those of persons he permitted on the property, introduced too much hair into the drain system, which is negligent, and the landlord put the tenant on notice that she would hold him responsible for cleaning hair from the drain. Therefore, I award the landlord $79.59 for drain cleaning as requested.

Additional occupant

The tenancy agreement prepared by the landlord has clearly written terms with respect to the tenant's ability to have an additional occupant and the amount of additional rent that would be charged for an additional occupant.

The landlord argued that the tenant misrepresented to her that he would be living there by himself when he applied for tenancy and that had she been aware he had a girlfriend she would have inserted $100.00 in clause 6 of the tenancy agreement. As discussed during the hearing, a tenant's social or marital status is subject to change and additional occupants may arise due to a variety of circumstances, including having children. It would be prudent for a landlord to anticipate that a tenant may wish to change their social or marital status, have children or get a roommate during a tenancy and complete the tenancy agreement accordingly.

The landlord alleged the tenant had an additional occupant reside in the rental unit with the tenant without her permission. If that were the case, the landlord's remedy is clearly laid out in clause 13, which was to pursue ending the tenancy if he did not correct the breach of the material term. The landlord did not employ the remedy available to her before the tenant gave notice to end the tenancy.

Based on the tenancy agreement before me, in order for the landlord to charge the tenant additional rent for an additional occupant, the landlord would have to first give the tenant authorization to have an additional occupant. The landlord never did gave such authorization and if she had there was no additional rent stipulated in clause 6.

Since the wording in the tenancy agreement is clear, in order for the landlord to succeed in receiving additional rent, the tenancy agreement would have to be modified. I decline to modify a contract that is clearly written and otherwise enforceable. Therefore, I deny the landlord's request for additional rent for an additional occupant.

Tenant's application

Fridge

It is undisputed that the tenant complained to the landlord, via text message, that the fridge making strange noises and possibly wearing in July 2016. The landlord had the fridge inspected and determined the compressor was in need of replacement. The landlord also determined it appropriate to replace the fridge rather than just the compressor; however, the new fridge was not installed until early December 2016. The landlord's reasons for the delay were her own financial limitations; however, a landlord's financial limitations do not form an exemption to the landlord's statutory obligation to maintain the property and protect the tenant's right to use and enjoyment of the property.

The landlord had indicated the fridge was "still working just making that noise" before and after the technician inspected the fridge and informed the tenant to refrain from purchasing too much food prior to the inspection by the technician.

The tenant claims that he did refrain from buying a lot of food for the fridge and that this cost him an additional $100.00 per month in grocery costs. However, the tenant did not supply grocery receipts to demonstrate this.

I note that the tenant had described the noise as being a loud sputtering sound that occurred when the compressor shut off. I find it unreasonable to expect the tenant to continue to listen to that for several months and I find that to be a breach of quiet enjoyment due to the landlord's delay supplying a replacement compressor or fridge. I provide the tenant a nominal award of $100.00 for loss of use and quiet enjoyment of the rental unit for four months.

Security bars

As pointed out by the landlord, the tenancy agreement and the move-in inspection report make no mention of security bars being provided or installed. However, it is also clear from the text messages exchanged that the tenant did have an expectation that window bars would be installed. Further aggravating the situation is that the landlord did not inform the tenant of her decision to not install window bars until several months later.

I find it arguable that the tenant had a legal expectation that the landlord would install security bars; however, I proceed to consider the amount of compensation sought by the tenant. The tenant explained that the basis for seeking $100.00 per month for 17 months, or $1,700.00, from the landlord was based on the landlord seeking that amount from him for having an additional occupant. Since I have awarded the landlord no amount for an additional occupant, I provide the tenant the same for lack of window bars. Therefore, I provide the tenant the samedeny the tenant's claim for the same amount.

Loss of quiet enjoyment

Section 28 of the Act provides every tenant the right to quiet enjoyment of the rental unit and residential premises. Section 28 provides as follows:

> **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.

Where a landlord violates a tenant's right to quiet enjoyment, the landlord may be ordered to compensate the tenant.

The tenant asserts that he was deprived a reasonable privacy in the last few months of tenancy as the landlord tried to gather evidence that his girlfriend was living in the rental unit. In the landlord's evidence are several photographs of the tenant's girlfriend's car parked on the residential property and on the street. The landlord also took a number of photographs of the tenant and his girlfriend together near the property. Interestingly, the landlord was taking photographs on March 6, 8, 9, 21, 23 and 24, 2017 based on the time stamps which is after the landlord had already received the tenant's notice to end tenancy. Not only had the tenant provided the landlord with written confirmation and evidence that his girlfriend had her own residence, the tenant had already given the landlord his notice to end tenancy. Accordingly, I do not see a valid reason for her actions on March 6, 2017 and onwards. As I explained earlier, if the landlord rejected the tenant's written confirmation and evidence and remained of the position the tenant had an additional occupant, her remedy was to give the tenant a breach letter, followed by a notice to end tenancy. However, the tenant's notice to end tenancy was set to take effect on or before any notice to end tenancy the landlord may have issued in March 2017. Therefore, I accept the tenant's position that the landlord's actions amounted to a violation of privacy.

In addition, the landlord changed the locks to the rental unit in violation of the Act. Although the landlord gave the tenant advance notice and a copy of the new key, the landlord did not obtain the tenant's consent to change the locks to the rental unit.

Section 31(1.1) of the Act provides:

> (1.1) A landlord must not change locks or other means of access to a rental unit unless
>
> (a) the tenant agrees to the change, and
>
> (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

[Reproduced as written with my emphasis underlined]

The landlord explained that she was changing locks on a number of units because there were people gaining access to the property who were not tenants or authorized occupants and it was more cost effective to have multiple locks changed at once. While that may be the case, the landlord's decision for cost savings or the goings on in other units is not an exemption from her obligation under section 31(1.1)(a). Considering the landlord's actions of taking multiple photographs of the tenant's girlfriend and her vehicle in March 2017 I am view the landlord's decision to change the locks to the rental unit in March 2017 and give the tenant only one key was likely an attempt to restrict access for the tenant's girlfriend.

In light of the above, I find I am satisfied that the landlord violated the tenant's right to reasonable privacy, especially in the month of March 2017, and the right to give consent for a lock change. I find the tenant's request for compensation of $212.50 per month to be within reason when compared to his monthly rent. Therefore, I award the tenant compensation of $212.50 for loss of quiet enjoyment for the month of March 2017.

While the landlord had been making accusations and corresponding with the tenant about an additional occupant prior to March 2017 I find I am not satisfied that the landlord's actions went beyond enquiry or investigative. Further, I do not see much evidence that she continued to take photographs or otherwise violate the tenant's right to reasonable privacy to any level of significance in the month of April 2017. Therefore, I make no further award to the tenant for loss of quiet enjoyment.

April 2017 rent

Section 26 of the Act provides that a tenant is required to pay rent when due under their tenancy agreement. A tenant's obligation to pay rent applies so long as their tenancy is in effect. To end a tenancy that is in a month to month status, the tenant must give the landlord one full month of advance notice in writing. The ways to give a notice are provided in section 88 of the Act.

The tenant's first attempt to give notice to end tenancy was on February 28, 2017 and he wanted to do this by personal delivery since he was giving notice on the last day of the month.

Personal delivery is only one of the various ways a party may serve a document to the other party. Where a landlord or tenant waits to give a notice to end tenancy on the last day of a rental month, the only way to deliver the one month notice is by personal delivery. A party who waits to the last possible day to serve in person runs the risk of

not being able to get the document to the recipient on that date. I am of the view that the tenant took the risk of waiting to try to personally deliver a notice to end tenancy on the last possible day to do so and the consequences of that decision are his.

Although the tenant sent a text message indicating he had a letter for the landlord, the tenant did not indicate it was a notice to end tenancy. Even if he had, the landlord is not obligated to immediately come retrieve the document from the tenant.

Ultimately, the tenant gave sufficient notice to bring the tenancy to an end effective April 30, 2017 and he had use of the rental unit during the month of April 2017. Accordingly, I see no reason under the Act to order the landlord to reimburse the tenant for April 2017 rent and I deny the tenant's request.

Filing fee, Security Deposit and Monetary Order

Both parties had partial success in their respective claims against the other and I make no award for recovery of the filing fee paid to either party.

Based on the amounts awarded to the landlord in this decision, I authorize the landlord to deduct $293.84 from the tenant's security deposit and I order the landlord to return the balance of the security deposit to the tenant, calculated as follows:

Security deposit		$590.00
Less amounts awarded to landlord for:		
Cleaning	$100.00	
Blind cleaning	89.25	
Late fee	25.00	
Drain cleaning	79.59	$293.84
Security Deposit to be repaid to tenant		$296.16

In addition to return of the balance of the security deposit, I order the landlord to compensate the tenant $100.00 due to loss of quiet enjoyment related to the fridge and $212.50 for loss of quiet enjoyment related to loss of privacy and the improper lock change in the month of March 2017.

In accordance with all of the above, the landlord is order to pay to the tenant the following sum:

Balance of security deposit due to tenant		$296.16
Awarded to tenant:		
Loss of quiet enjoyment re: fridge	$100.00	
Loss of privacy and lock change	212.50	$312.50
Total due to tenant		$608.66

Along with a copy of this decision, I provide the tenant with a Monetary Order in the amount of $608.66 to serve and enforce upon the landlord.

Conclusion

Both parties had some success in their respective applications. Taking into account the security deposit held by the landlord and offsetting, the landlord is ordered to pay the tenant the net amount of $608.66. The tenant is provided a Monetary Order in the amount of $608.66 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: March 27, 2018

Residential Tenancy Branch