Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, RP, RR, OLC, MNDCT, FFT

Introduction
This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The hearing was originally convened via teleconference on January 16, 2018. I adjourned the hearing pursuant to my Interim Decision dated January 18, 2018 and it was reconvened on February 19, 2018.

The landlords and the tenants attended both hearings and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord's agent (the agent) only attended the first hearing and was given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine during that hearing. The landlords had legal counsel (counsel) attend both hearings to assist with the landlords' oral submissions.

Landlord A.V. (the landlord) and Tenant R.K. (the tenant) indicated that they would be the primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they personally served each landlord with the Application and an evidentiary package on November 02, 2017. The landlord confirmed that they received the Application and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlords were duly served with the Application and an evidentiary package.

The tenants submitted two Amendments to an Application for Dispute Resolution (the Amendments) to the Residential Tenancy Branch. The tenant testified that both Amendments were personally served to an agent of the landlords, on December 05, 2017, to dispute the One Month Notice and on January 02, 2018, to amend the tenants' monetary claim and add other claims to the tenants' Application for reduced rent, repairs to be made and for the landlords to comply with the *Act*, regulations or tenancy agreement. The landlord confirmed receiving both Amendments. In accordance with section 89 of the *Act,* I find the landlords were duly served with both of the tenants' Amendments.

The landlord testified that they personally served their evidence to the tenants on December 19, 2017. The tenant confirmed that they received the landlords' evidence. In accordance with section 88 of the *Act*, I find the tenants were duly served with the landlords' evidence.

The tenant testified that they received a Two Month Notice on October 17, 2017 and a One Month Notice on November 30, 2017. In accordance with section 88 of the *Act,* I find the tenants were duly served with the Two Month Notice and the One Month Notice.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Should the One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlords provided written evidence that this tenancy commenced on May 15, 2015, with a current monthly rent of $1,200.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of $600.00.

A copy of the landlords' signed Two Month Notice dated October 13, 2017, was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by December 31, 2017, the landlord cited the following reason:

> *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

A copy of the landlords' signed November 30, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenants to end this tenancy by December 31, 2017, the landlord cited the following reasons:

> *Tenant or a person permitted on the property by the tenant has:*
> - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
> - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
> - *put the landlord's property at significant risk*
>
> *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:*
> - *damage the landlord's property:*

- *jeopardize a lawful right or interest of another occupant or the landlord*

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants entered into written evidence:

- copies of e-mail correspondence between the tenants and the agent from June 19, 2017, to October 30, 2017, regarding a previous Two Month Notice given to the tenants on June 15, 2017, which was later rescinded by the landlords, discussions surrounding the landlords' notices to enter the premises for inspections and samples to be taken and the tenants denying access to the rental unit for July 05, 2017 and October 14, 2017, as well as discussion about the issuance of another Two Month Notice to the tenants on October 17, 2017, which the tenants have disputed.
- In an e-mail dated October 26, 2017, the tenant lists six occasions when they have permitted access to the residential premises from November 2016 to September 2017 for visits from contractors, an appraiser, showings for prospective buyers in July 2017 and September 2017 as well as a home inspection for a prospective buyer.;
- a copy of a letter addressed to the tenants, from counsel, dated October 17, 2017, in which counsel advises the tenants that the landlords have issued a notice to end the tenancy to the tenants effective as of December 31, 2017, but are open to receiving an offer of purchase for the rental unit;
- pictures of various cleaning products including a product for Mold Control, an overhead stain stealer and a disinfectant and fungicide which "kills bacteria, mould and fungal spores; and
- a Monetary Order Worksheet showing a monetary claim of $2,400.00, equal to two month's rent for the tenants' loss of quiet enjoyment of the rental unit due to the landlords failure to address the mould problem in the rental unit.

The landlords entered into written evidence:

- a copy of a "Details of Causes" which lists the reasons for the landlords issuing the One Month Notice, stating that the tenants denied access to the rental unit for an inspection and for the landlords to show the property on July 05, 2017 and October 14, 2017, the tenants not utilizing bedroom heaters which is contributing to the mould issues, the tenants denying access to the landlords to make repairs to exhaust fans venting into the attic, the tenants

not repairing fire damage that the tenants caused and the tenants' son performing illegal activity in the rental unit by baking bread for commercial purposes which has resulted in the landlords having had to replace the oven;

- a copy of an official notice for entry from the agent to the tenants dated June 30, 2017, for the landlords and a restoration company to attend to the rental unit on July 05, 2017;
- copies of e-mail correspondence between the agent and the tenants from July 03, 2017, to August 29, 2017, regarding the tenants denying access to the rental unit on July 05, 2017, the rescindment of the Two Month Notice issued in June 2017 and discussions surrounding when it is convenient for the landlords to have workers attend the rental unit;
- a copy of an estimate from a contractor for mould remediation in the rental unit with a list of findings including mould on outer edges of room, dehumidifiers in basement not needed, too many air flow vents in attic, lack of insulation in attic space and charcoal filter in hood fan not working. There are also a list of recommendations including but not limited to removal and replacement of air flow vents, replacing charcoal filter and to add additional insulation;
- a copy of a local newspaper article dated August 31, 2016, about the tenants' son selling his baking at local farmer's market every weekend which the son started to do in the summer of 2015;
- a copy of a Home Inspection Report prepared for a prospective buyer dated July 20, 2017, in which it is alluded to the fact that that the kitchen appears to be used for commercial purposes. This report also states that it appears that an electric baseboard heater in the lower bathroom has severe corrosion and that other baseboard heaters in bedrooms are blocked with storage items which has lead the inspector to determine that they are not being used. The report also states that "one or more exhaust fans are venting into the attic because "no duct has been added in the attic, or because the ducting wasn't connected directly to an exhaust outlet at the roof. This is an unsatisfactory condition, as warm-moist air from house exhaust that is vented into attic can result in formation of mold and mildew when it condenses on cool surfaces" The report also mentions water damage under basement bathroom floor which will never dry and which will lead to high moisture levels;
- a copy of a letter from counsel to the tenants dated December 13, 2017, in which counsel submits that the "unhealthy mold problem is 100% due to the tenants refusal to cooperate and that the landlord issued the notice to end tenancy… "if for no other reason than to gain access to the home to make the necessary repairs"; and

- a copy of an Official Notice from the agent to the tenants dated October 05, 2017, for Landlord A.V., the agent and a contractor to enter the rental unit on October 14, 2017, for a general inspection of the entire residential premises, to replace a fan in the upper level bathroom and other maintenance and repairs.

To commence the hearing I accepted testimony from both parties regarding the issuance of the Two Month Notice to the tenants dated October 13, 2017.

Counsel submitted that the landlords used to live in the rental unit for 8 years and moved out of the rental unit in January of 2015. Counsel stated that the landlords moved to another city for the landlords' son to go to private school and that the son will graduate in June of 2018. Counsel testified that the landlords are currently renting a residential premise in the city where their son is attending school and that they intend on moving back to the city where the rental unit is located once their son's schooling is completed.

Counsel submitted that Landlord A.V. has a job offer in a city where Landlord A.V. was previously employed, which is accessible by ferry from the city that the rental unit is located in. Counsel further submitted that Landlord T.V. also has a job offer as an au pair in the city that the rental unit is located.

The tenant submitted that there was a previous Two Month Notice issued to the tenants in June 2017 which was later formally rescinded. The tenant testified that they were surprised to get another Two Month Notice and questioned the good faith of the landlords pertaining to the Two Month Notice served in October of 2017 as they feel it is related to the tenants denying access to the rental unit.

The tenant stated that they received a letter from the landlord with the Two Month Notice of October 2017 which stated that the landlords were prepared to receive an offer from the tenants for the purchase of the rental unit. The tenant submitted that this letter confirms that the landlords have no intention of moving back into the rental unit and are only intending on selling it. The tenant testified that they have been accommodating to the landlords' intention of selling the rental unit by allowing a home inspection for a prospective purchaser of the rental unit in July of 2017.

After testimony was accepted regarding the Two Month Notice, I accepted testimony from both parties concerning the One Month Notice dated November 30, 2017.

Counsel submitted that there is a mould problem in the rental unit which surfaced in October of 2016 when an inspection was done by a contractor. Counsel stated that the landlord has attempted to access the rental unit on numerous occasions to do work on the rental unit to address the mould issue and have been repeatedly denied access by the tenants which has resulted in the mould problem getting worse.

Counsel testified that the landlord attempted to gain access to the unit on June 03, 2017, to paint areas of the rental unit, with a verbal request given to the tenants on June 02, 2017, and that access was denied. Counsel stated that a Two Month Notice was then issued to the tenants on June 15, 2017, to do repairs on the rental unit in a manner that required it to be vacant. Counsel submitted that the agent attempted to gain access again by setting up an appointment with the tenants through e-mail on June 26, 2017, for access on June 29, 2017, to take samples of the mould which was again denied by the tenants. Counsel stated that a legal written notice for entry into the rental unit was given to the tenants on June 30, 2017, for entry into the unit on July 05, 2017, to take samples of the mould, which was also denied.

Counsel submitted that the Two Month Notice dated June 15, 2017, was formally rescinded on July 07, 2017, and the filing fee for the tenants' application for dispute resolution was reimbursed to the tenants. Counsel stated that another formal written notice for entry to the unit was given to the tenants on October 05, 2017, after an informal request for access was denied, for access to the rental unit on October 14, 2017. Counsel stated that that access to the rental unit, after formal written notice was given, was again denied by the tenants.

Counsel submitted that in the home inspection report dated July 20, 2017, it was noted that the tenants are not using baseboard heaters in the basement, which is further contributing to the mould problem in conjunction with the appearance that the kitchen is being used for commercial purposes. Counsel referred to a newspaper article that refers to the tenants' son taking up baking and selling the baking products at a local farmer's market. Counsel submitted that this baking has contributed to a damp environment in the rental unit as noted in the July 20, 2017 home inspection report.

The tenant questioned the landlords on whether the mould problem existed before the tenants lived in the rental unit. The landlord responded that they only had a fist sized stain or shadow appear previously when the rooms were not heated adequately and that they had advised the tenants at the beginning of the tenancy that all the rooms needed to be heated to eliminate dampness in the rental unit.

The tenant denied that such a conversation took place.

The tenant testified that they have allowed access to the rental unit many times, including allowing the landlords' friend access to the garage. The tenant stated that the agent viewed the mould in October 2016 when a contractor attended the rental unit for an estimate of the work to be done in the rental unit for mould remediation. The tenant submitted that the contractor's report indicated that there were air-flow venting issues and that these air-flow venting problems existed before the tenants took possession of the rental unit.

The tenant submitted that the work to be completed in June 2017, to paint certain areas of the rental unit, was going to be done by the owner of the house and maintained that the landlords were not addressing the main problems causing the mould issue which was identified in the report of October 2016. The tenant questioned the landlord's failure to act on the inspection and estimate from the contractor in October of 2016.

The landlord testified that they did not see the contractor's inspection report and estimate for mould remediation as the agent did not provide it to them and had secured the quote from the contractor without the landlords' knowledge.

The tenant stated that the tenants have suffered the consequences for a lack of communication between the landlords, the agent and the tenants. The tenant maintained that the tenants were accommodating in letting numerous parties view the rental unit for the purpose of obtaining quotes for work to be completed as well as visits for prospective buyers and that the agent attended the rental unit during those visits and conducted inspections at the same time. The tenant stated that they only refused access two times after being given formal written notice to enter the rental unit.

The tenant stated that they refused access to the agent on July 05, 2017, for samples of mould to be collected, due to the Two Month Notice that was issued to the tenants at the time and the issues of communication between the tenants, the agent and the landlord regarding health concerns of the tenants. The tenant submitted that the denial of access for July 05, 2017, should not be considered as unreasonable. The tenant maintained that the landlords admitted culpability in not providing clear communication to the tenants regarding what they intended to do on July 05, 2017, when they rescinded the June 15, 2017, Two Month Notice on July 07, 2017, and reimbursed the tenants for the filing fee for their application for dispute resolution that had been filed in response to the June 15, 2017 Two Month Notice.

The tenant stated that the reason that they denied access on October 14, 2017, was for similar reasons as their denial of access on July 05, 2017. The tenant submitted that in September 2017, they had agreed on a time for a contractor to evaluate the work for mould remediation required and set a schedule for this work to be completed. The tenant stated that this appointment for the contractor was cancelled by the agent a couple times and that on September 28, 2017, the agent requested for a home inspector to attend the rental unit on October 14, 2017, to take samples of the mould, spray the mould with a cleaner and paint over it. The tenant testified that they had questions regarding this work, which they communicated by e-mail to the agent on September 29, 2017.

The tenant stated that when the agent responded to the tenants' e-mail, the nature of the work to be completed on October 14, 2017, was changed by the agent and it was communicated by the agent that a person was actually going to take samples of asbestos for testing as well as numerous other repairs to be completed by the owner that were recommended in the July 20, 2017, home inspection report. The tenant stated that they felt their health concerns regarding asbestos testing and mould testing were not being addressed by the agent or the landlords.

The tenant submitted that he does not understand how the home inspection report completed on July 20, 2017, can state that the tenants are not utilizing the lower bedroom baseboard heaters and not heating the house adequately when the home inspection was done in the summer months, a time when it was hot enough outside that the baseboard heaters were not required to heat the house at that time. The tenants questioned the integrity of the July 20, 2017, home inspection report and how the landlords obtained it when it was the prospective buyer who paid for the report.

In response to reason number five that the landlords gave for ending the tenancy for cause, the tenant testified that a small fire got started outside of the rental unit and it was put out quickly. The tenant recounted that the fire department attended the rental unit and determined that there was nothing left to do as the fire was quickly extinguished. The tenant stated that during the visit from the contractor in October of 2016, the agent also attended the rental unit, viewed the damage and stated that he did not have a lot of concern about it and no further discussion ever took place. The tenant maintained that no discussion of a timeline for any repair to the area was discussed between the landlords, agent or the tenants.

In response to the sixth reason that the landlords have given for ending the tenancy for cause, the tenant stated that their son's baking was never a commercial enterprise and only a hobby. The tenant stated that the landlord purchased a new oven in September 2015 and that the oven still works fine. The tenant stated that they have never received any communication from the landlords that they were concerned about the tenants' son baking in the house but that the son has ceased his baking in the rental unit as of December 2017.

The tenant maintained that the mould issue existed prior to the tenants moving into the rental unit and that the landlords have numerous products for cleaning mould in the garage that were present when the tenants moved into the unit. The tenant stated that two different reports have identified venting as the cause of the mould and that this venting problem in the rental unit existed before the tenants took possession. The tenant stated that on page 37 of the July 20, 2017, home inspection report it states that the inspectors are not required to identify the causes, only the observed conditions and deficiencies in the rental unit.

The tenant stated that they have been committed to working with the landlords for mould remediation but after multiple visits from contractors and inspectors to assess the work to be completed, nothing has actually been done. The tenant concluded that they do not believe that the One Month Notice and the Two Month Notice were issued in good faith by the landlords.

In response to the tenants' testimony, counsel submitted that the tenants moved into the rental unit in May of 2015 and that there was no indication of mould on the condition inspection report signed by both parties at the time. Landlord T.V. stated that one of the cleaning products that the tenants have submitted a photo of is a hospital grade disinfectant related to Landlord A.V.'s occupation as a physiotherapist. The landlord stated that they purchased the July 20, 2017, home inspection report from the prospective buyer who had it done. Landlord T.V. stated that she and her husband both have job offers and are they are all packed, ready to move back into the rental unit as soon as possible.

Analysis

Should the Two Month Notice be cancelled?

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit and provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the

notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on October 30, 2017, and since I have found that the Two Month Notice was served to the tenants on October 17, 2017, I find the tenants have applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines “good faith” as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I have reviewed all documentary evidence including the testimony of both parties and I find the landlords have not provided sufficient evidence to prove that they are intending on moving back into the rental unit. I find that although the landlords have provided testimony about having jobs waiting for them, they have not actually provided any written evidence to support their testimony.

I further find that the landlords have not issued the Two Month Notice to the tenants in good faith and I find the landlords have an ulterior motive for seeking to end the tenancy.

I find that the first Two Month Notice which was served to the tenants on June 15, 2017, and later rescinded by the landlords, was issued shortly after the tenants denied access of the rental unit to the landlords after being given verbal notice of the landlords’ intent to attend to the rental unit for painting. I find that, on a balance of probabilities, the issuance of the second Two Month Notice dated October 13, 2017 and served to the tenants on October 17, 2017, was served for the same purpose as the previous June 15, 2017, Two Month Notice as the tenants had just recently denied the landlords’ access to the rental unit on October 02, 2017. I find the landlords have an ulterior

motive in being able to access the rental unit at their own discretion without having to accommodate the tenants who they have entered into a tenancy agreement with.

I further find that the first Two Month Notice given in June 2017 was for the unit to be vacant for the landlords to do repairs which is not consistent with the second Two Month Notice issued in October 2017 for the landlords to move into the rental unit for January 2018. I find that the landlords' son does not graduate from school until June 2018 and that it is not reasonable that the landlords would move back to into the rental unit when their son is still currently finishing schooling in the city where the landlords are currently located.

In addition, I find that the letter written to the tenants by their counsel that accompanied the Two Month Notice on October 17, 2017, indicates that the landlords are open to accepting an offer of purchase of the rental unit from the tenants which further supports that the landlords are more concerned with selling the rental unit as opposed to moving back into it.

For the above reasons, I find the landlords have not issued the October 13, 2017, Two Month Notice to the tenants in good faith and it is set aside.

Should the One Month Notice be cancelled?

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenants disputed this notice on December 06, 2017, and since I have found the One Month Notice was served to the tenants on November 30, 2017, I find the tenants have applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find the landlord has the burden to prove they have grounds to issue the One Month Notice for the tenants denying access to the rental unit on July 05, 2017, and October 14, 2017, for the purposes of inspections, showings for prospective buyers as well as for repairs to be completed by the landlord regarding mould issues. I find the landlords have the burden to prove that the denial of access to the rental unit is a material breach

of the tenancy agreement and has caused damage to the rental unit due to repairs not being completed. I further find that the landlord has the burden to prove that the tenant's actions have significantly interfered with the landlords, seriously jeopardized a lawful right of the landlords and put the landlords' property at significant risk.

Residential Tenancy Branch (RTB) Policy guideline #8 states that a material term of the tenancy is a term that the parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term, the RTB will focus on the importance of the term in the overall scheme of the tenancy agreement as opposed to the consequences of the breach. In order to end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing that there is a problem, that the landlord believes that this problem is a breach of a material term of the tenancy agreement and gives a reasonable timeframe for the problem to be fixed and that if the problem is not fixed by the deadline, the landlord will end the tenancy.

Section 29 (1) (a) and (b) of the *Act* restricts a landlord's right to enter the rental unit and states that, unless given permission for entry by the tenant, a landlord must give a tenant written notice to enter the rental unit which states the purpose for entering, which must be reasonable as well as the date and time of the entry.

I find that the *Act* only allows for a landlord to enter the rental unit without the permission of the tenants, if the grounds for doing so are reasonable, and that when the grounds are not reasonable the tenants have the right to deny access. For this reason, as the *Act* allows a determination to be made by the tenants on the landlords' right to enter the rental unit based on reasonable grounds, I find that the landlords' access to the rental unit is not a material term of the tenancy agreement.

Based on the evidence, affirmed testimony and the above, I find the tenants' denial of the landlords' access to the rental unit on July 05, 2017, and October 14, 2017, are not breaches of a material term of the tenancy agreement. I find the landlords have not provided sufficient evidence of clear communication that the denial of access to the rental unit on these two occasions were considered a material breach of the tenancy agreement and the landlords did not give the tenants time to correct the problem or provide reasonable communication to address the tenants' concerns as to the reasons for the landlords' entry.

I find that in the first instance of July 2017, the landlord, through their agent, gave reasons for entry by e-mail which changed from painting the ceilings, to taking samples

of mould and then when the tenants questioned the impact of taking mould samples, the landlord sent information about a landlord's right to enter the rental unit followed by an Official Notice for entry that was given to conduct an inspection with a restoration company, which was a different reason than the other reasons previously stated.

I find that there were two previous inspections of the rental unit done by contractors within the previous year in October 2016 and May 2017 and that the landlords had possession of the estimate completed in October 2016 which the landlords provided in their own evidence. I find that the estimate and findings in the October 2016 report detailed all the work to be completed and that the landlords had that report in their possession when they had another contractor come to the unit in May of 2017. I find that it is unreasonable that the agent of the landlords had an inspection completed with recommendations and an estimate of the work to be completed in October of 2016 without the landlords' knowledge. I find that a third inspection by a contractor for the same issues within a year is not reasonable in light of the above and has to be considered when determining if the denial of access on July 05, 2017, was reasonable, especially when considering that it was not the original reason for entry communicated to the tenants.

Although tenants do not have the right to deny access of the rental unit to the landlords for reasonable grounds, I find the tenants were within their rights to deny the landlords' access to the rental unit on October 14, 2017. I find the tenants had communicated their approval for a contractor to attend the rental unit in September of 2017, which the agent cancelled on two occasions and then the landlord, through the agent via e-mail, stated that Landlord A.V. and his agent required access to the rental unit to take samples of the mould, to spray cleaner over the mould and then paint over it. Again, when the tenant asked what the impact of taking samples would be on their use of the rental unit, the landlord changed their reason for entry and stated that they were going to do a full inspection of the rental unit, complete repairs with no spraying or painting and their agent would take samples of asbestos. An Official Notice for entry was given to the tenants on October 05, 2017, to conduct an inspection with a general contractor, replace a bathroom fan and other maintenance on October 14, 2017, which again was slightly different than previous communications.

I find that a further inspection of the premises was not reasonable as the landlords, at that time, had two detailed reports from two different professionals fully detailing work to be completed at the rental unit and it was not reasonably explained why a fourth inspection by a professional for the same issues in a year was necessary. In the Official Notice for entry dated October 05, 2017, I find the landlord gave information about the

landlord's right to enter the rental unit but did not state that the tenants denying access at this time would be a breach of a material term of the tenancy agreement and give the tenants a chance to correct the situation.

I further find the landlord has twice indicated their intention to simply paint over the mould as their initial reasons for entry, as well as taking samples of mould, prior to the Official Notices being served to the tenants in both instances which again had different reasons listed on them then previously communicated. I find that having the landlords' grounds for entry constantly changing in every communication to the tenants is not reasonable and raises questions about the landlords' stated purpose for entry into the rental unit and whether they are for a reasonable purpose.

Regarding whether the tenants have significantly interfered with the landlords by refusing access to the rental unit, I find that the tenants had allowed access for a home inspection in October 2016, an appraiser and contractor in May 2017, prospective buyer and home inspection in July of 2017 and allowed access for a prospective buyer in September 2017 with the agent attending to complete inspections at both showings for prospective buyers. I further find the tenants had given permission for a contractor to attend in September 2017 to complete repairs, which the agent cancelled. I find that the tenants have allowed access for three different parties to inspect the rental unit and assess the work to be completed at the rental unit within a year and that the tenants have not interfered with the landlords' ability to have professionals assess the work needed.

Although counsel submits that the tenants have denied access for prospective buyers, I find that neither of the Official Notices for entry are for the purpose of showing the rental unit to prospective buyers and that the landlords have not provided any evidence that the tenants denied access to prospective buyers.

For the above reasons I find the tenants have not significantly interfered with the landlords as they have provided access on numerous occasions and only denied access when their concerns regarding painting over the mould or the collection of samples were not reasonably addressed by the landlords.

Regarding whether the tenants have jeopardized a lawful right of the landlord and put the landlords' property at significant risk, I find that the landlords have provided in evidence two reports from two different professionals which state that venting into the attic and lack of insulation in the attic as being the reasons for mould in the rental unit. I find that painting over the mould without addressing the cause of the mould as indicated

in the two reports is simply a cosmetic solution for the purpose of showing the house to prospective buyers and that the landlord has indicated their intention to do this twice.

I find that the air venting and insulation issues pre-date the tenants taking possession of the rental unit. I further find that Landlord T.V. has admitted to staining of the walls during their time in the rental unit and the presence of mould cleaners in the garage support the fact that mould was an issue prior to the tenancy. Although no mould is noted on the condition inspection report, the landlords have demonstrated a pattern of wanting to paint over the mould which, based on balance of probabilities, might have occurred before they rented the unit out to new tenants or it is possible that the landlords used the cleaners in the garage to clean the staining.

I find that it is unreasonable to indicate that the tenants' use of heaters is the cause of the mould. I find that the home inspection performed in July 2017 had no reasonable grounds for indicating the bedroom heaters not being used as they did not perform the inspection in the fall, winter or spring, when heating of the rental unit may be required. I find that this assertion by the inspector is pure speculation based on conditions in the summer season.

For the above reasons, I find that if a lawful right of the landlord is seriously jeopardized or the landlords' property is a significant risk from the mould issue not being addressed, it is the landlords that have failed to mitigate their damages by not acting on the recommendations that were made in the October 2016 report within a reasonable period of time. I find that, even after the home inspection report was completed on July 20, 2017, the landlord still indicated their intentions to spray the mould and paint over it without addressing the root cause. Only after the tenants questioned the landlords regarding the reason for the October 14, 2017, entry into the rental unit did the landlord state that they were going to replace a fan in the bathroom and that they might address some venting issues.

I find the landlords have the burden to prove that the tenants or a person permitted on the property by the tenants have engaged in illegal activity which has damaged the landlords' property and jeopardized a lawful right of the landlord. The landlord has claimed that the tenants' son is operating a commercial bakery in the rental unit which the landlords claim is illegal and that the landlords had to purchase a new oven for the rental unit due to this activity.

I find the landlord has not provided any evidence that the tenants' son's activity, baking in the rental unit and selling it at a farmer's market once a week, is illegal or requires a

business licence. I further find that the landlord has not proven that the residential premise used for the son's baking is of a commercial nature and is in contravention of the *Act.* I find that the newspaper article states that the son generally only brings enough baking that can be carried on a children's bike trailer and it is unlikely that this activity is supporting the tenants financially. I accept the tenants' testimony that the son's baking is only a hobby and has been ceased as of December 2017 due to the concerns of the landlords.

Regarding the new oven purchased for the rental unit, I find the newspaper article published in August of 2016 states that the tenants' son started to take up baking the previous summer of 2015. I find the landlords did not dispute the tenants' testimony that the new oven was purchased in September of 2015, which would have been shortly after the son decided to take up baking. As the tenancy began in May of 2015, I find that it is unreasonable to conclude that the tenants' son baking caused the failure of the oven and necessitated it to be replaced. I accept the tenant's testimony that the oven is still in fine working condition since the son started to use it for baking.

I find the home inspection report of July 20, 2017, indicates that it appears that the kitchen appears to be used as commercial kitchen but does not give any reasons for how the inspector arrived at the conclusion of a commercial enterprise. The report further states that excess cooking leads to a damp environment but also states that there is water under the basement bathroom floor which will never dry and must be replaced as it will lead to high moisture levels in the house, as well as the already mentioned problems with air flow venting and insulation. I find that it is unreasonable to conclude that the son's baking is leading to a damp environment when numerous other tangible deficiencies have been noted regarding moisture and air flow in the rental unit

Regarding the tenants not having done required repairs to the rental unit, I find that the tenants have not disputed that they caused damage to the property due to their negligence; however, I accept the tenants' testimony that the landlord never addressed these repairs with the tenants. I find the landlords have provided no evidence that they addressed these repairs with the tenants in writing and gave a reasonable time for when they expected the repairs to be completed.

In addition to all of the above I find that counsel, in their letter to the tenants dated December 13, 2017, states that the tenants refused access to allow contractors to assess the work to be completed in June 2017 and October 2017, when the reality is that the tenants had allowed two contractors to assess the work in October 2016 and May 2017 as well as a very detailed home inspection report completed on July 20,

2017. The additional inspections by another contractor were preceded by the landlord initially indicating that they were attending the unit to paint over the mould after taking samples and it was only after the tenants questioned the work to be done that the landlords indicated that another contractor would be assessing the work to be completed, again.

I find the real reasons for the issuance of the One Month Notice to the tenants is brought into light by counsel's assertion that "the landlord decided that they had no option to but to give notice to end the tenancy if for no other reason than to gain access to the home to make the necessary repairs."

I find that if the landlords want the home to be vacant to do repairs, they should have issued the Two Month Notice for that reason and been prepared to present evidence that the nature of the work to be completed requires the unit to be vacant.

Based on all of the above, I find the landlords do not have sufficient grounds to end this tenancy for cause and the One Month Notice dated November 30, 2017, is set aside.

The tenants are seeking compensation in the amount of $2,400.00, equal to the total monthly rent for December 2017 and January 2018, for compensation for damage or loss under the Act or residential tenancy agreement.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Residential Tenancy Regulations (the Regulations)* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants have not provided evidence of any financial loss as a result of the landlords' failure to address the mould problem in the rental unit. I further find that the tenants have not sufficiently demonstrated that their use of the rental unit has been impacted by the repairs not completed and that they have suffered loss in the value of

their tenancy agreement. I further find there is no evidence provided that the mould in the rental unit is adversely affecting the tenants' health and that the tenants have suffered a loss due to the mould being present in the rental unit.

For the above reasons, I dismiss the tenant's monetary claim for damage or loss under the *Act,* without leave to reapply.

The tenants are seeking an order to repair the rental unit and a reduction in rent for repairs agreed upon but not completed

Section 32 (1) (a) (b) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Section 62 of the *Act* allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or a tenant comply with this *Act*, the regulations or tenancy agreement.

Based on the evidence and the affirmed testimony, I find that it is undisputed that repairs are required in the rental unit as there are two reports provided in evidence detailing the work to be completed regarding air flow and moisture issues which are causing staining and have the potential for the mould issues to cause further problems.

I find that the tenants have been open to having qualified professionals attend the rental unit to perform the needed work but have become resistant lately when they were under the impression that the only work to be completed would be another inspection or painting over the mould or samples taken which would potentially impact the tenants' use of the rental unit and the tenants' concerns regarding samples taken not being addressed by the landlords.

For the above reasons, I **order** the landlords to choose a qualified professional to assess the required work that needs to be completed for mould remediation, air flow venting issues and the possible removal of asbestos as well as to set a schedule for when this work will be completed before the June 30, 2018.

I **order** the landlords to communicate with the tenants regarding the schedule for this work to be completed and to make mutually agreeable arrangements with the tenants, taking into account how the repairs will impact the tenants' use of the rental unit during

the required repairs to be completed, possibly including compensation if re-location is necessary.

I **order** the tenants to allow a qualified professional and the landlords to attend the rental unit and assess the required work to be completed, after being given sufficient written notice from the landlord, and to work with the landlords in a reasonable manner on a schedule for the work to be completed.

I **order** that, if the landlords have not obtained a qualified professional and set a schedule for required work to be completed before the June 30, 2018, the tenants may reduce their monthly rent in the amount of $100.00 until such time as a schedule of work to be completed is served to the tenants.

As the tenants have been successful with the majority of their claims in their Application, I find they are entitled to recover the filing fee from the landlords.

Conclusion

The Two Month Notice dated October 13, 2017, is cancelled and of no force or effect.

The One Month Notice dated November 30, 2017, is cancelled and of no force or effect.

This tenancy continues until ended in accordance with the *Act*.

Pursuant to section 72 of the *Act,* I order that the tenants may reduce the amount of rent paid to the landlords from a future rent payment on one occasion, in the amount of $100.00, to recover the filing fee for this application.

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 05, 2018

Residential Tenancy Branch