Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNDL-S, MNSD, FFL, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that on November 02, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail, at the service address noted on the Application. The Tenant stated that the Tenants received these documents and that she is representing the male Tenant at these proceedings. On the basis of the undisputed evidence I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act*).

The Tenants filed an Application for Dispute Resolution, in which the Tenant applied to recover the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that in October of 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail, although she cannot recall the exact date of service. The female Landlord acknowledged receipt of these documents and I therefore find that these documents have been served in accordance with section 89 of the *Act*.

On April 25, 2018 the Tenants submitted 16 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the office of the Landlords' real estate agent on April 25, 2018. The female Landlord stated that these documents were provided to the Landlords by a real estate agent. The female Landlord

stated that the real estate agent was not acting as the Landlords' agent in regards to this tenancy in April of 2018. As the Landlords received this evidence, I find that it was sufficiently served to the Landlords, pursuant to section 71(2)(c) of the *Act*, and it was accepted as evidence for these proceedings.

On April 06, 2018 the Landlords submitted 37 documents to the Residential Tenancy Branch. The female Landlord stated that this evidence was served to the Tenants, via registered mail, on April 06, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 29, 2018 the Landlords submitted 13 pages of evidence to the Residential Tenancy Branch. The female Landlord stated on April 29, 2018 that this evidence was served to the business office of the Tenants' former real estate agent. The Tenant stated that this evidence was not forwarded to her by her former real estate agent and that this individual was not acting as an agent for the Tenants in regards to this tenancy on April 29, 2018.

As the Tenant does not acknowledge receiving the aforementioned 13 pages of evidence, I am unable to conclude I find that it was sufficiently served to the Tenants in accordance with section 71(2)(c) of the *Act*. As there is no evidence that the Tenants' former real estate agent was acting as an agent for the Tenants in regards to this tenancy on April 29, 2018, I cannot conclude that this evidence was served to the Tenants in accordance with section 88 of the *Act.*

The female Landlord stated that the Tenants' former real estate agent informed her, via email, that the 13 pages of evidence had been forwarded to the Tenants. In the absence of evidence from the real estate agent, such as a copy of the email, I find that this testimony is not sufficient to refute the Tenant's testimony that it was not received.

As I cannot conclude that this evidence was served to the Tenants in accordance with sections 88 or 71(2)(c) of the *Act,* it was not accepted as evidence for these proceedings.

To provide the Landlords with a fair and reasonable opportunity to rely on the aforementioned 13 pages of evidence, I asked the Landlords if they wished to adjourn the hearing to provide them with an opportunity to re-serve this evidence to the Tenants. The female Landlord stated that the Landlords do not want the matter adjourned and she understands that the 13 pages of evidence will not be considered.

All of the documents accepted as evidence has been reviewed.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

This hearing commenced at 2:30 p.m. At approximately 3:55 p.m. the parties were advised that there was insufficient time to continue the hearing. Both parties were asked if they would like to have the hearing adjourned to provide them with time to make additional submissions. Both parties were advised that they did not wish an adjournment for the purposes of making additional submissions or providing additional testimony.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid utilities, and to keep all or part of the security deposit?
Are the Tenants entitled to recover their security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- the Tenants sold the rental unit to the Landlords;
- the parties mutually agreed that they would enter into a short term tenancy that would enable the Tenants to remain in the unit after the sale of the property;
- the tenancy began on March 31, 2016;
- the tenancy ended on June 30, 2016;
- the rental unit was vacated on June 30, 2016;
- the Tenants agreed to pay monthly rent of $3,000.00 by the first day of each month;
- the Tenants paid a security deposit of $1,500.00; and
- the Landlords still hold the security deposit**.**

The female Landlord stated that the parties agreed to meet at the rental unit on April 20, 2016 for the purposes of inspecting the condition of the rental unit. She stated that this was the first date the Tenants could meet to inspect the rental unit at the start of the tenancy. She stated that the female Tenant subsequently cancelled this meeting.

The female Landlord stated that the parties agreed to meet at the rental unit on April 27, 2016 for the purposes of inspecting the condition of the rental unit. She stated that the female Tenant subsequently cancelled this meeting.

The female Landlord stated that the parties agreed to meet at the rental unit on April 29, 2016 for the purposes of inspecting the condition of the rental unit. She stated that the female Tenant subsequently cancelled this meeting but informed her that her real estate agent would be attending on her behalf.

The male Landlord stated that the rental unit was inspected on April 29, 2016 but a condition inspection report was not completed because the real estate agent could only stay for 15 minutes and that was insufficient time to properly inspect the rental unit.

The Tenant agrees that the parties agreed to meet on three separate occasions in April of 2016 and she was unable to meet on any of those occasions. She stated that she understood the parties were planning on meeting to discuss conditions of the sale of the property and not for the purposes of inspecting the rental unit at the start of the tenancy. She stated that she did ask her real estate agent to attend the meeting on April 29, 2016 on behalf of the Tenants, but she understood this was in relation to the sale of the rental unit.

The Landlords and the Tenants agree that the Landlords did not serve the Tenants with written notice of a final opportunity to schedule a condition inspection at the start of the tenancy on the form approved by the Residential Tenancy Branch.

The female Landlord stated that the Landlords scheduled a time to meet at the rental unit on June 27, 2016 for the purposes of inspecting the rental unit at the end of the tenancy. She stated that the Landlord(s) went to the rental unit on that date but the Tenants did not attend that meeting.

The Tenant stated that the Landlords informed the Tenants they would be at the rental unit on June 27, 2016 to inspect a water ingress issue. She stated that the Tenants did not understand that the Landlords were intending to complete a final condition inspection report on this date and the Tenants were not at the rental unit at the time of this inspection.

The female Landlord stated that the Landlords scheduled a time to meet at the rental unit on June 29, 2016 for the purposes of inspecting the rental unit at the end of the

tenancy. She stated that the Landlord(s) went to the rental unit on that date but the Tenants did not attend that meeting.

The Tenant stated that the Landlords informed the Tenants they would be at the rental unit on June 29, 2016 to respond to the water ingress issue. She stated that the Tenants did not understand that the Landlords were intending to complete a final condition inspection report on this date and the Tenants were not at the rental unit at the time of this inspection.

The Landlords and the Tenants agree that the Landlords did not serve the Tenants with written notice of a final opportunity to schedule a condition inspection at the end of the tenancy on the form approved by the Residential Tenancy Branch.

The Landlords and the Tenants agree that the Landlords did not complete a final condition inspection report.

The Tenant stated that she sent the Landlords a forwarding address, via text message, on June 27, 2016. This text message was submitted in evidence. In this message the Tenant provides a mail box as a forwarding address.

The female Landlord stated that she received the text message in which the Tenants provided a mail box as a forwarding address. She stated that she did not consider this as a forwarding address, as it was a mailing address rather than a street address. She stated that the Tenant also gave a street address for a personal friend and she was not certain which mailing address should be used.

The female Landlord stated that on July 07, 2016 she sent the Tenants an email in which she asked for a street address, which she believed she needed to file an Application for Dispute Resolution.

The Landlords are seeking compensation for unpaid utilities, in the amount of $413.45. The Landlords and the Tenants agree that the Tenants were required to pay all of the utility charges during the tenancy. The Tenant does not dispute the Landlords' claim for $413.45.

The Landlords and the Tenants agreed that on July 04, 2016 the female Tenant gave the Landlords authority, via text message, to deduct the cost of the utility charges from their security deposit. A copy of this message was submitted in evidence.

The Landlords are seeking compensation, in the amount of $600.00, for painting 6 walls in the walls in the rental unit. The Landlords submitted an invoice that indicates $600.00 was paid to paint several walls.

The female Landlord stated that one wall in one of the bedrooms needed to be painted because a decal had been removed from the wall during the tenancy and the imprint could be seen on the wall. She stated that both her cleaner and the painter tried to clean the wall but the imprint of the decal could not be removed.

The Tenant agrees that the decal was removed during the tenancy and that it left an imprint on the wall. She stated that she understands the imprint could be removed by simply washing the wall.

The female Landlord stated that 2 walls in one bedroom, one wall in a different bedroom, and 2 walls near the fireplace had been touched up during the tenancy. She stated that the Tenants used a paint that did not match the colour on the walls, leaving the repairs highly visible.

The Tenant stated that her husband touched up 1 wall in a bedroom with the incorrect paint during the tenancy and that the repair was highly visible. She stated that the repairs to the other walls were completed prior to the start of the tenancy.

The Landlords submitted photographs of the areas on the wall that were damaged at the end of the tenancy. The Tenant agrees that the photographs fairly represent the condition of the walls at the end of the tenancy.

The Landlords are seeking compensation of $217.18 for replacing the decal on the bedroom wall which was removed by the Tenants during the tenancy. The female Landlord stated that she could not find the identical decal so she replaced it with a similar decal.

The Landlords submitted an internet advertisement that shows a similar decal can be purchased on line for $176.13. The Landlords submitted an estimate for installing the decal, in the amount of $60.03.

The Tenant stated that she paid approximately $30.00 for the decal that was removed from the wall.

The Landlords are seeking compensation of $480.35 for repairing the irrigation system. The Landlords submitted an invoice that indicates they incurred this expense.

The Landlords and the Tenant agree that the irrigation system leaked sometime in June of 2016.

The Landlords speculate that the Tenants caused the leak by damaging the system with the lawn mower.

The Tenant stated that she does not know how the irrigation system was damaged but they did not damage it with the lawn mower. The Tenant stated that the rental unit was re-listed for sale during their tenancy; that potential purchasers were viewing the rental unit during their tenancy; and that one of those purchasers may have damaged a sprinkler head while they were viewing the property.

The male Landlord stated that a potential purchaser could not have damaged the sprinkler head as no potential purchasers were viewing the property in June of 2016.

The Landlords and the Tenant agree that the Tenants agreed to pay for the repair to the irrigation system in a text message. The Tenant stated that she is withdrawing the agreement to pay for the repair as she believes it may have been damaged by a third party.

The Landlords are seeking compensation of $79.96 for replacing raspberry plants.

The Landlords and the Tenant agree that the Tenants were required to maintain and weed the garden during the tenancy. The female Landlord stated that during the tenancy the Tenants removed some raspberry plants which left a “gaping hole” in the yard.

The Tenant stated that they removed some raspberry “runners” and some overgrown raspberry plants during the tenancy which is standard practice when maintaining a raspberry garden. She stated that failure to remove the “runners” would result in the raspberry bushes spreading throughout the yard and failing to thin the bushes would retard their growth She stated that rather than disposing of the “runners” and plants she placed them in pots and that the Landlords subsequently removed them from the pots.

The female Landlord denied removing the “runners” and plants from the Tenants’ pots.

During the hearing the female Landlord withdrew the claim for compensation for damage to the garage door.

Analysis

Section 23(1) of that stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

On the basis of the undisputed evidence I find that the Landlord(s) and a real estate agent acting on behalf of the Tenants in the sale of the property met on April 29, 2016 for the purposes of inspecting the rental unit. I find that there is insufficient evidence to determine whether this inspection was intended to be an inspection of the rental unit for the purposes of the tenancy, as the Landlords contend, or it was an inspection of the rental unit for the purposes of the sale of the property, as the Tenants contend.

I find that the text messages exchanged between the parties confirm that they were attempting to meet in April of 2016. The text messages do not, however, identify the purpose of the meeting. Given that the Landlords had purchased the property from the Tenants, I find that the meeting may have been related to the sale of the property and it may have been related to an inspection of the unit at the start of the tenancy.

I find that there is insufficient evidence to conclude that the Tenants authorized their real estate agent to represent them on April 29, 2016 for the purposes of completing an inspection of the rental unit at the start of the tenancy. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that the Tenants did not authorize the real estate agent to act on their behalf for the purposes of completing a condition inspection report at the start of the tenancy.

In concluding that there was insufficient evidence to conclude that the real estate agent was authorized to represent the Tenants for the purposes of completing a condition inspection report at the start of the tenancy, I was further influenced by the text messages exchanged between the parties on April 29, 2016. In these messages the Tenant informs the Landlord that she cannot attend the meeting on April 29, 2016, she acknowledged that she has cancelled two previous occasions, and she has arranged to have her realtor “let you into the house”. In my view this text cannot be interpreted as the Tenants giving the real estate agent authority to complete a condition inspection report on behalf of the Tenants.

As there is insufficient evidence to conclude that the real estate agent had authority to complete a condition inspection report for the purposes of this tenancy, I cannot conclude that the parties complied with section 23(1) of the *Act.*

Section 23(3) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Section 17(2)(b) of the *Residential Tenancy Regulation* stipulates, in part, that a landlord must propose a second time for an inspection, in the approved form. Section 10(1) of the *Act* stipulates that the director may approve forms for the purposes of this *Act.* RTB-22 (Notice of Final Opportunity to Schedule a Condition Inspection) is the form the director has created for the purposes of scheduling a final inspection.

On the basis of the undisputed evidence I find that the Landlords did not comply with section 23(3) of the *Act* as they did not serve the Tenants with an RTB-22 form.

In the event that the Landlords believed that the rental unit had been inspected with the real estate agent for the purposes of determining the condition of the rental unit at the start of the tenancy on April 29, 2016, I find it would be reasonable for them not to comply with section 23(3) of the *Act*. If they believed the unit had been inspected on April 29, 2016, however, I find that they should have understood that they were required to comply with section 23(4) of the *Act.*

Section 23(4) of the *Act* stipulates that a landlord must complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence, I find that the Landlords did not complete a condition inspection report at the start of the tenancy.

Section 23(5) of the *Act* stipulates that the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. As the Landlords did not complete a condition inspection report at the start of the tenancy, I find that neither party could comply with this section.

Section 23(6) of the *Act* stipulates that the landlord must make the inspection and complete and sign the report without the tenant if the landlord has complied with section 23(3) of the *Act* and the tenant does not participate on either occasion. As the Landlord did not comply with section 23(3) of the *Act* and the rental unit was not abandoned, the

Landlords did not have authority to complete the condition inspection report in the absence of the Tenants.

Section 24(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 23 (3) of the *Act* and the tenant has not participated on either occasion. As the Landlords did not comply with section 23(3) of the *Act*, I find that the Tenants have not extinguished their right to the return of the security deposit.

Section 24(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 (3) of the Act, having complied with section 23 (3) of the *Act,* does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As the Landlords did not complete a condition inspection report, I find that they have extinguished their right to claim against the rental unit for damage to the rental unit.

I find that the Landlords retained the right to claim against the security deposit for unpaid utilities and that they have done so.

Section 35(1) of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

On the basis of the undisputed evidence I find that the Landlord(s) went to the rental unit on June 27, 2016 and June 29, 2016. I cannot conclude, however, that they went to the rental unit on those dates for the purpose of completing a final condition inspection report. On the basis of the testimony of the Tenant, I find that the Landlords went to the rental unit on those dates in response to a water ingress issue. I find that that the text messages exchanged between the parties during that period make reference to a water ingress issue and make no reference to a final inspection. I therefore find that the parties did not comply with section 35(1) of the *Act.*

Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. On the basis of the undisputed evidence I find that the Landlords did not comply with section 35(2) of the *Act* as they did not serve the Tenants with an RTB-22 form.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. On the basis of the undisputed evidence I find that the Landlords did not comply with this section as they did not complete a final condition inspection report.

Section 35(4) of the *Act* stipulates that the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. As no inspection report was completed, I find that neither party complied with section 35(4) of the *Act.*

Section 35(5) of the *Act* stipulates that the landlord may make the inspection and complete and sign the report without the tenant if the landlord has complied with section 35(2) of the *Act* and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit. As the Landlord did not comply with section 35(2) of the *Act* and the rental unit was not abandoned, the Landlords did not have authority to complete the final condition inspection report in the absence of the Tenants.

Section 36(1) of the *Act* stipulates that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 35(2) of the *Act* and the tenant has not participated on either occasion. As the Landlords did not comply with section 35(2) of the *Act*, I find that the Tenants have not extinguished their right to the return of the security deposit.

Section 36(2) of the *Act* stipulates that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, <u>for damage</u> to residential property is extinguished if the landlord does not comply with section 35(2) of the Act, having complied with section 35(2) of the *Act,* does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As the Landlords did not complete a condition inspection report at the end of the tenancy, I find that they have extinguished their right to claim against the rental unit for <u>damage</u> to the rental unit.

I find that the Landlords retained the right to claim against the security deposit for unpaid utilities and that they have done so.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlords received the text message the Tenant sent on July 27, 2016, in which the Tenant provided a post box as a forwarding address. As the Landlords acknowledge receiving this email, I find that the forwarding address was sufficiently served to the Landlords, pursuant to section 71(2)(c) of the *Act.*

In adjudicating this matter I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act.*

In adjudicating this matter I have placed no weight on the female Landlord's testimony that on July 07, 2016 she sent the Tenants an email in which she asked for a street address because she believed she needed to file an Application for Dispute Resolution. I find that this is not relevant to the return of the security deposit, as the Landlords had already been provided with a valid forwarding address.

I find that the Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit and the Landlords did not file an Application for Dispute Resolution claiming against the security deposit until October 28, 2017, which is more 15 days since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act,* I find that the Landlords must pay the Tenants double the security deposit.

On the basis of the undisputed evidence I find that the Tenants were obligated to pay for utilities during the tenancy. As the Tenants do not dispute that they owe the Landlords $413.45 for utilities, I find that the Landlords are entitled to their claim of $413.45.

On the basis of the text message submitted in evidence, dated July 04, 2016, I am satisfied that the Tenants informed the Landlords they would pay a utility bill. In that series of text messages I find that the Landlords provided the Tenants with a screen shot of a portion of a utility bill. I note that the screen shot does not show how much was due for utilities. As there is no specific dollar amount referenced in this series of text messages, I find that the Tenants did not give the Landlords permission to deduct a specific amount from the security deposit in these messages.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy.

On the basis of the undisputed evidence I find that the Tenants removed a decal from a bedroom wall during the tenancy and that the imprint of the decal was visible at the end of the tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they left this imprint on the wall and that the Landlords are entitled to compensation for repairing this wall.

On the basis of the undisputed evidence I find that the Tenants repaired marks on the wall of one bedroom with the incorrect paint, leaving the repairs highly visible. I find that the Tenants failed to comply with section 37(2) of the *Act* when they repaired the wall with the incorrect paint and that the Landlords are entitled to compensation for repairing this wall.
I find that the Landlords submitted insufficient evidence to establish that the Tenants damaged the remaining four walls during the tenancy. I therefore dismiss the Landlords' claim for compensation for repairing these 4 walls.

As the Landlords are claiming compensation for repairing these 4 walls, they bear the bear the burden of proving the damage occurred prior to the start of the tenancy. The Tenants contend that the damage to these 4 walls was present prior to the start of this tenancy and it is not sufficient for the Landlords to simply assert that it was not present prior to the start of the tenancy.

In adjudicating this matter I have placed limited weight on the written statement the real estate agent in which he declared that he visited the home "immediately before the start of the three month tenancy and "again at the end in the beginning of July 2016". In the statement the real estate agent declared that the "paint on the walls was in excellent condition" at the start of the tenancy and that "upon move out" "damage to some walls was patched with different coloured paint leaving unsightly marks". On the basis of the photographs of the damage I find that it is something that might not be noticed by a third party, particularly when the home is furnished.

I have placed limited weight on the real estate agent's written statement because it was contradicted by a written statement from a personal friend of the Tenants. In this statement the friend declared that the marks on the wall in one of the photographs submitted by the Landlord occurred in 2013.

On the basis of the invoice that indicates the Landlords paid $600.00 to repaint walls in the unit and the Landlords contend that 6 walls were painted, I find it reasonable to conclude that it cost approximately $100.00 to paint each wall. I therefore find that the Landlords are entitled to compensation of $200.00 to paint the 2 walls that were damaged during the tenancy.

I find that the Tenants failed to comply with section 37(2) of the Act when they removed a decal from the bedroom wall and I therefore find that the must compensate the Landlords for the cost of replacing it. On the basis of the evidence submitted by the

Landlords I find it will cost the Landlords $217.18 to replace the decal and I find that they are entitled to compensation in that amount.

Although I accept the Tenant's testimony that the decal she removed is less valuable that the internet quote provided by the Landlords, I find the decals to be of reasonably similar quality. The Landlords cannot be expected, in circumstances such as these, to be able to locate the precise decal that was removed.

On the basis of the invoice from the person who repaired the irrigation system, I find that the irrigation leaked as a result of an installation error. In the invoice the technician declared that he "discovered leak due to improper pipe being glued into PVC". As the invoice shows that the irrigation system leaked as a result of an installation error and was unrelated to this tenancy, I cannot conclude that the Tenants were obligated to repair the leak. I therefore dismiss the claim for repairing the irrigation system.

On the basis of the undisputed evidence I find that the Tenants were obligated to maintain and weed the garden during the tenancy.

On the basis of the testimony of the Tenant I find that she removed some raspberry "runners" and overgrown plants from the garden as part of regular yard maintenance. I find that her explanation of this gardening practice is consistent with my knowledge of raspberry bushes.

I find that the Landlords have submitted insufficient evidence to establish that removing the raspberry "runners" and overgrown plants had any significant impact on the garden. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the female Landlord's testimony that there was a "gaping hole" in the yard.

As the Landlords have submitted insufficient evidence to establish that the Tenants failed to comply with section 37(2) of the Act when they removed raspberry "runners" and overgrown plants, I dismiss the claim for compensation for replacing the raspberry bushes.

I find that the Application for Dispute Resolution filed by each party has some merit. I therefore find that each party must pay for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of $830.63, which includes $413.45 for utilities, $200.00 for repainted 2 walls, and $217.18 for replacing a decal.

The Tenants have established a monetary claim, in the amount of $3,000.00, which is double the security deposit.

After offsetting the two claims I find that the Landlords owe the Tenants $2,169.37 and I grant the Tenants a monetary Order for that amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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

Dated: May 09, 2018

Residential Tenancy Branch