Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE REAL ESTATE ACCOMMODATIONS, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The hearing was held over two dates. An agent for the landlord and one of the named tenants appeared at both hearing dates 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 landlord is a corporate property management company represented by various agents. Reference to "landlord" in this decision includes any agent of the property management company that had dealings with the tenants and the residential property. The one tenant who appeared at the hearing confirmed that he was also representing his wife, the co-tenant.

An Interim Decision was issued on May 3, 2018 and should be read in conjunction with this decision.

As seen in the Interim Decision, I authorized and ordered the parties to submit and serve additional evidence during the period of adjournment, namely emails exchanged between the parties. At the outset of the reconvened hearing I confirmed that the parties had exchanged the additional evidence with each other. I noted that both the landlord and the tenant had provided more information in written submissions that I had not authorized. The landlord stated that the additional information was more of a response to the tenant's testimony at the first hearing. I did not admit the additional evidence that was not authorized but both parties were given the full opportunity to provide their responses and final arguments verbally during the reconvened hearing. I also noted that it appeared from the tenant's written submission that he was attempting

to request compensation from the landlord in the amount of $90,000.00 plus return of the security deposit. I informed the tenant that I would deal with the security deposit under the landlord's application but that I would not hear monetary claims of the tenant since he has not made an Application for Dispute Resolution. The tenant was also informed that claims over $35,000.00 are beyond the jurisdictional limit of the Residential Tenancy Branch and claims that large would need to be filed in Supreme Court. The tenant indicated he understood.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants for the amounts claimed?
2. Is the landlord authorized to retain the tenants' security deposit or should it be returned to the tenants?

Background and Evidence

The two year fixed term tenancy started on November 15, 2016 and was set to expire on November 30, 2018. The tenants paid a security deposit of $2,250.00 and were required to pay rent of $4,500.00 on the first day of every month.

On September 1, 2017 the tenants only paid $1,000.00 of the rent that was due with a promise to pay the balance on September 17, 2017. The tenants did not pay the balance and on September 18, 2017 the tenant dropped the keys off to the landlord's office and signed a document notifying the landlord that the tenants had vacated the property.

A move-in inspection report was prepared at the start of the tenancy. The landlord invited the tenant to participate in a move-out inspection on September 19, 2017 but the tenant stated he would not attend. The landlord did the move-out inspection without the tenants on September 19, 2017 and prepared a move-out inspection report. A move-out inspection was done the following day on September 19, 2017.

Although I was provided a considerable amount of submissions and evidence by both parties, with a view to brevity in writing this decision, I have only summarized the landlord's claims against the tenants and the tenants' responses below:

1. Repairs and junk removal -- $1,448.75

The landlord submitted an invoice from a contractor who performed various repairs to the property after the tenancy ended. The landlord stated that the contractor patched and painted walls where shelving, a TV and bike racks had been installed by the tenants; painted the master bedroom to remove soot residue most likely caused by the tenants using the fireplace without the flue or vent open; capped over exposed wires from a light fixture installed and removed by the tenants; reinstalled smoke detectors removed by the tenants; replaced missing window coverings; and, removed junk including construction materials, paint, and garbage cans that were full of garbage.

The tenant was agreeable to compensating the landlord for some of the work performed by the contractor such as: repairing the walls where shelves, the TV and bike racks were installed. The tenant was not agreeable to the other charges, claiming:

- The master bedroom was very large and had no heat even after the tenant complained and the landlord sent a handyman to the property. Since the master bedroom was without sufficient heat the tenants had to leave the fireplace on all the time and when the wind blew smoke would go everywhere.
- The smoke detector fell from the ceiling one date, which the landlord's handyman attended to by installing a new smoke detector on the old base and the new smoke detector fell off after a couple of weeks.
- The tenant spent a lot of money to hire an electrician and have a light fixture installed in a room where there was none before and they took the light fixture they purchased with them at the end of the tenancy.
- An old and dirty blind was removed by the tenant and he stored it in the garage where it remained at the end of the tenancy.
- The construction materials were there at the start of the tenancy and the tenants did not leave anything behind at the end of the tenancy.

The landlord responded by stating:

- The master bedroom has a baseboard heater and the ensuite bathroom had in-floor heating along with the fireplace. The landlord responded to the tenant's complaint regarding the in-floor heating and it was determined that it was just one cold spot near the toilet. The tenant was using the fireplace without opening the flue and that is what caused to the smoke residue.
- The landlord pointed to photographs of the items left behind at the property which the landlord submits belonged to the tenants. Any construction debris that

belonged to the owners of the property was removed by the contractor and invoiced separately. The landlord also pointed out that because the garbage bins cannot be taken to the street ahead of time, the garbage bin contents had to be taken to the dump.

The tenant maintained that there was insufficient heat in the master bedroom and that he spent $1,000.00 per month on gas and electricity.

2. Cleaning -- $735.00

The landlord submitted that four people spent seven hours each cleaning the rental unit at the end of the tenancy including: the windows, floors, four bathrooms, etc. The landlord provided the cleaning invoice.

The tenant was of the position the rental unit was left very clean at the end of the tenancy. The tenant stated the landlord did three inspections during the tenancy and there was no mention it was not clean. The tenant also implied the rental unit was dirty at the start of the tenancy because the tenant claims to have spent $1,400.00 cleaning at the start of the tenancy.

The landlord maintained the rental unit was left dirty and that the rental unit had a thorough cleaning a couple of months before the tenancy started at a cost of over $600.00 and then a touch up cleaning just before the tenancy started at a cost of just over $100.00.

3. Lease break fee -- $420.00

The landlord pointed to term number 7 in the tenancy agreement as a basis for seeking a fee of $420.00 for the tenants ending the tenancy early. The tenant was agreeable to paying the landlord this amount.

4. Dishwasher repair -- $224.65

The landlord submitted that multiple requests for repairs to the dishwasher were made by the tenants and the owners paid $311.78 for a repair in February 2017. The last time the technician responded, on June 22, 2017, it was found that too many seeds were clogging the drain in the dishwasher. The landlord is of the position the tenants are responsible for the June 22, 2017 repair because there is proof the tenants were using the dishwasher inappropriately.

The tenant was not agreeable to paying for the dishwasher repair. The tenant testified that the dishwasher was old, approximately 14 years old, and that it had problems due to its age. The tenant claims the filter was cleaned by them almost daily and the tenant found it hard to believe the drain pump was blocked by seeds.

5. Ozonator rental -- $84.00

The landlord seeks to recover the cost to rent an ozonator to remove the smell of cigarette smoke from the main floor (kitchen and dining room area) of the rental unit.

The tenant acknowledged that he is a smoker but he denied that he smoked in the rental unit. The tenant pointed out that during the three inspections by the landlord there was no mention of a smoke smell.

In response, the landlord described a situation where he was at the rental unit and he observed a woman, who be believed to be a relative visiting the tenants, who he saw smoking at the dining room table. The tenant did not respond to this submission.

6. Unpaid and/or loss of rent -- $15,548.39

The landlord seeks to recover the unpaid rent for the month of September 2017 in the amount of $3,500.00 plus loss of rent for October 2017 through to December 21, 2017 in recognition that the house was re-rented starting on December 22, 2017. The rent claim is calculated as follows:

September 2017 unpaid rent	$ 3,500.00
October 2017 loss of rent	4,500.00
November 2017 loss of rent	4,500.00
December 1 – 21, 2017 rent (pro-rated)	3,048.39
Total	$15,548.39

The landlord submitted evidence to demonstrate the rental unit was advertised and shown to prospective tenants shortly after the tenancy ended. The tenant pointed out that when the rental unit was first advertised for rent the landlord posted the rental rate as being $4,950.00 per month. The landlord acknowledged this and pointed out that the error was corrected within days to advertise the unit at $4,500.00 per month.

The tenant was not agreeable to compensating the landlord for unpaid or loss of rent due to conditions of the rental unit and the landlord's actions, or lack thereof. The tenant submitted that the house was old and not in a condition to rent and that the tenant's requests for the landlord to remedy the situation remained unresolved. Rats were found in the house shortly after the tenancy started and eradicated approximately 2 months later. Further, the backyard was dangerous for his children when tree limbs landing in the back yard and a broken playground that was not repaired. Also, another playground was dismantled and the pieces left in the yard. The tenant explained that having a safe playground was important because he has a 10 year old son.

The landlord disagreed with the tenant's assessment and stated the house was well cleaned and maintained. When the tenant complained of rodents the landlord adequately responded. When the tenant complained of the dishwasher not working the landlord had repairs made. The landlord acknowledged that there as some delays in having contactors attend the property but that any urgent repairs were done in a timely manner. The landlord stated the tree topping was done on by the owner of a neighbouring property without the landlord's prior knowledge. When the landlord learned of the limbs falling on the rental property the landlord arranged for its own gardeners to come to the property to clean it up although some dead branches remained until after the tenancy ended.

The tenant stated that he had communicated to the landlord that he would not pay rent if the landlord did not have outstanding issues resolved and in response the landlord informed the tenant he could not do that. When rent was not paid for June 2017 the landlord served an eviction notice to the tenants' teenage daughter to which the tenant took great offense. The tenant stated the landlord's gardener did "nothing" to remove the tree limbs from the yard. The tenant also gave an example of steps taking six months for the landlord to have repaired.

I heard that the parties had communicated with other by email much of the time and I requested copies of the email exchanges between the parties. The parties provided me with emails to review and consider during the period of adjournment which I have considered in making this decision.

Analysis

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

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:

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

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the Regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The landlord and the tenant participated in a move-in inspection together and the landlord prepared a move-in condition inspection report that was signed by the tenant and I accept the move-in inspection report as being the best evidence as to the condition of the rental unit at the start of the tenancy. The landlord invited the tenant to participate in the move-out inspection but the tenant responded by stating he would not participate. The landlord proceeded to inspect the unit and prepared a move-out inspection report without the tenant present, as well as taking photographs. I accept the move-out inspection report and the photographs are the best evidence as to the condition of the rental unit at the end of the tenancy.

1. Repairs and junk removal

Section 37 requires that a tenant leave a rental unit reasonably clean, undamaged and vacant, which includes removal of all of their possessions and garbage, at the end of the tenancy.

The invoice provided for my consideration provides a list of the services provided by the contractor after the tenancy ended but each task does not have an assigned value. Accordingly, I have considered each component of this particular claim with a view to reasonableness and approximation.

The tenant was agreeable to compensating the landlord for patching walls where various shelves, a TV and bike racks had been mounted by the tenants. Upon review of the condition inspection report, the landlord's photographs and the invoice from the contractor, it would appear to me that the majority of this claim pertains to patching the walls. As such, I find the tenant responsible for related charges and I proceed to consider the components the tenant objected to during the hearing.

The tenant took exception to paying to have the smoke residue on the walls and ceiling in the master bedroom removed by painting. The landlord provided photographs to show the smoke residue and I accept that repainting the ceiling and walls would be an economical way to get rid of the smoke residue as cleaning would be labour intensive. The tenant acknowledged the smoke residue was likely from using the fireplace a lot but claims they had to use it a lot because of insufficient heat in the master bedroom and ensuite and wind blowing smoke into the room. If the wind is blowing smoke into the room, I would expect the tenants would either complain of this issue to the landlord and not use the fireplace when it is windy. I do not see evidence of such complaints in the evidence before me. The parties were in dispute as to whether there was sufficient heat in the master bedroom ensuite and since the tenant presented that as the reason for using the fireplace a lot, I find the tenant would bear the burden to establish that to be the case. I find I do not have sufficient evidence to support the tenant's assertion. While the fireplace was there for the tenants to use and it should be expected that the tenants would use it, the tenants must also take reasonable care to ensure all flues or vents that need to be open to allow the smoke to escape are opened. On the balance of probabilities, I find I prefer the landlord's position that the tneants used the fireplace without opening the flue or vent and their negligence in doing so caused the smoke residue in the master bedroom.

The tenant took exception to paying for missing window coverings, claiming a blind was left removed from the window but that he left it behind at the property at the end of the tenancy. I do not see a blind in the landlord's photographs or noted on the condition inspection report except a notation that a blind was missing from the master bedroom. Since the tenants did remove the blind the tenant should have reinstalled it at the end of the tenancy. Therefore, I find the tenant responsible for the replacement of the blind.

The tenant also took issue to the charge for junk removal, claiming it was mostly items that were there at the start of the tenancy. The landlord provided a description on the move-out inspection report indicating bed parts were left behind and a photograph appears to support that allegation. There is also a notation that various items of junk were found in the yard and left at the curb. I accept as being as being reasonable the landlord's submission that any garbage left in or around the garbage cans would have to be disposed of by the landlord since garbage is not permitted to be left at the curb ahead of time in the municipality. Accordingly, I accept that the tenants are responsible for at least some of the junk removal; however, I note that the photographs show items left on the shelf in the garage appear to be boxes of flooring and I accept the tenant's position that the flooring is likely that of the owners. There are pieces of shelving or lumber under the stairs and I am unable to determine whether those would be items left behind by the tenant or prior to the tenancy. These things considered I find it appropriate to reduce the landlord's claim in recognition of items that are not those of the tenants and I reduce the landlord's claim by $50.00.

The tenant took issue with a charge for installing a cap over exposed wires where the tenant had removed a light fixture. While the tenants were at liberty to take their light fixture at the end of the tenancy, I find the tenants were also obligated to not leave exposed wires hanging from the ceiling since such wires were not there when the tenancy started.

The tenant objected to paying for installation of smoke detectors that had been removed, claiming a smoke detector had fallen off the ceiling during the tenancy. Upon review of the tenant's emails I do not see mention that the tenant had complained of the fallen smoke detector. Accordingly, I accept on the balance of probabilities that the smoke detectors were removed by the tenant, especially having heard there was smoke smell and damage in the rental unit, and I find the tenants responsible for having the smoke detectors reinstalled.

In light of all of the above, I grant the landlord's request to recover the amount paid to the contactor for repairs and junk removal, less $50.00. Therefore, I award the landlord $1,398.78.

2. Cleaning

As stated previously, a tenant is requiring leaving a rental unit "reasonably clean" at the end of the tenancy. This standard is less than perfectly clean or impeccably clean.

Where a landlord seeks to bring the rental unit up to a level of cleanliness that is greater than “reasonably clean” the cost to do so is that of the landlord, not the tenant.

The tenant testified that the rental unit was left clean. When I look at the move-out inspection report I note that the landlord did not indicate the rental unit was left unclean. The inspection report provides a legend for codes to use, including a “C” to indicate an area requires cleaning and a checkmark to indicate the area is satisfactory. The landlord provided checkmarks for the most areas and any deficiencies were denoted with a circled letter on the move-out inspection report. None of the circled letters corresponded to the need for cleaning. Further, when I look at the photographs, I do not see areas that require cleaning.

Although the landlord provided an invoice indicating the rental unit was cleaned shortly after the tenancy ended, and I have no doubt the unit was cleaned after the tenancy ended, I find the landlord’s evidence does not satisfy me that the rental unit was left less than the tenants’ statutory obligation of “reasonably clean”. Therefore, I dismiss the landlord’s claim for cleaning.

3. Lease break fee

Term 7 of the tenancy agreement provides for a liquidated damages clause that applies in the event the tenants end the tenancy before the expiry of the fixed term. Upon review of the term I am satisfied that it is a valid liquidated damages clause. Further, the tenant agreed to pay the landlord this fee during the hearing. Therefore, I award the landlord liquidated damages of $420.00 as requested.

4. Dishwasher repair

The landlord seeks to recover the cost of a second dishwasher repair from the tenants, claiming the tenants were negligent in using it by allowing too many seeds to be introduced to the dishwasher. The tenant denied responsibility for the dishwasher not working, claiming the break downs were due to its age and not too many seeds in the drain pump.

The dishwasher was repaired in February 2017 and, according to the service invoice, the dishwasher was not draining due to a broken lifter that clogged the drain pump with broken pieces. The drain pump was cleared at that time and the dishwasher tested ok.

In June 2017 the dishwasher stopped draining again and, according to the service invoice, the problem was found to be a drain pump and hose clogged with seeds.

I accept the invoice of the service technician is independent evidence and the reason the dishwasher required servicing in June 2017 was due to too many seeds being introduced into the dishwasher. The two invoices presented to me do not indicate the age of the dishwasher; however, I note that there is reference to a display panel with an error code so I am of the view that it is not a very old machine. Further, the photographs taken of the kitchen appear to depict a relatively modern looking kitchen.

Since the drain pump had been cleaned in the few months prior to June 2017, during the tenancy, I find it is most likely that the seeds were introduced by the tenants or persons permitted on the property by the tenants.

A dishwasher does not serve in place of a food disposal machine and reasonable use of a dishwasher would include rinsing or scraping excessive food particles from dishes before they are loaded into the dishwasher. It would appear that reasonable care was not taken by the tenants or persons permitted on the property by the tenants. Therefore, I hold the tenants responsible to pay for the repair made in June 2017 and I grant the landlords request to recover $224.65 from the tenants.

5. Ozonator rental

The move-out inspection report makes no mention of a smoke smell and the landlord did not provide a copy of an ozonator rental receipt. Therefore, I find the landlord did not meet its burden to prove the tenants should compensate the landlord for ozonator rental and I dismiss this portion of the landlord's claim.

6. Unpaid and loss of rent

Under section 26 of the Act, a tenant is required to pay rent when due under the terms of their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very specific and limited circumstances when a tenant may withhold rent, such as: overpaid security deposit or pet damage deposit; overpayment of rent in prior months; the tenant paid for emergency repairs to be made to the property as defined in section 33 of the Act; or, the tenant has obtained an Arbitrator's authorization to withhold or make deductions from rent.

In this case, the tenants paid only $1,000.00 of the $4,500.00 rent obligation that was due on September 1, 2017; the tenants were in possession of the rental unit in September 2017; and, the tenants did not present a legal basis for withholding rent that was due on September 1, 2017. Therefore, I find the landlord entitled to recover the unpaid balance of rent of $3,500.00 for September 2017.

Section 44 provides for the ways a tenancy ends. Section 44(1)(d) provides that a tenancy ends when a tenant vacates or abandons a rental unit, which in this case, occurred on September 18, 2017. The tenants were in a fixed term tenancy agreement that was not set to expire until November 30, 2018 and where a tenant ends a fixed term tenancy early, the tenant may be held responsible to compensate the landlord for loss of rent for the remainder of the fixed term or until such time the unit is re-rented. Since the tenants ended their fixed term tenancy agreement early I proceed to consider whether the tenants had a legal right to end the tenancy early and whether landlord is entitled to recover loss of rent from the tenants while the unit was vacant for the months of October 2017 through to December 21, 2017.

Section 45(3) of the Act provides that a tenant may end a tenancy early in the following circumstances:

> *If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*
>
> [My emphasis underlined]

The tenant had indicated that the landlord's actions, or lack thereof, caused the tenants to end the tenancy early. Considering section 45(3) of the Act, I requested the parties provide me with their written communication, which I heard was largely done by email. Although emails are not "given" in a manner that complies with the Act, I heard from the parties that they most often communicated by email and the landlord took action upon receiving emails from the tenant. As such, I accepted that emails from the tenants may be considered written notice.

The landlord provided me copies of emails exchanged between the parties between the dates of April 28, 2017 and September 18, 2017. The tenant was given the opportunity to provide me with any emails he considered relevant but not provided to me by the landlord. The tenant provided me with a copy of emails exchanged with the landlord

after the tenancy ended, between the dates of September 27, 2017 and October 7, 2017.

In order to establish the right to end the tenancy early under section 45(3) it must be demonstrated that the tenants put the landlord on notice that they would end the tenancy if the landlord did not correct a breach of a material term of the tenancy agreement within a reasonable time. As such, I find the most relevant emails to establish advance written notice was given to the landlord would be those sent before the tenancy ended on September 18, 2017.

Upon review of the emails exchanged on or before September 18, 2017 I note that there were many communications from the tenant with respect to outstanding repairs and repairs not made sufficiently. While the tenant indicated to the landlord he was going to withhold rent until issues were addressed, the tenant does not indicate that he considered these issues to be a breach of a material term of the tenancy agreement or that he would end the tenancy if these issues are not resolved. The landlord's responses to the tenant are that the tenants are to pay rent on time and the landlord would arrange for repairs. The emails exchanged immediately prior to September 18, 2017 were on August 14, 2017 and are as follows:

From the landlord to the tenant:

> this morning I met with the arborist and we looked and the hedge in the front of the house and the trees on the back. One of his guys will need to return in the end of this week or early next week. When I get the quote I will send it to the owners for approval. The arborist says the work can be done in approximately 2 weeks from now. He is suggesting to remove the old branches caught in the trees, and also cut off dead branches on the pine trees on the perimeter of the property, and then haul everything away.
> I attached the invoice for the dishwasher work as we discussed.
> [*Name omitted for privacy*] says there is still $1500 outstanding for rent for the current month. When can we expect this amount?
> Please let me know.
> Thank you.

Response from the tenant to the landlord:

> I will pay everything the day after tomorrow please send me a copy of technician for dishwasher
> Thank you

The next email is sent by the tenant in the afternoon of September 18, 2017, the day the tenant returned the keys to the rental unit to the landlord's office:

> Hello [*name omitted for privacy*], after ten months of lies also you ask me the September rent?
> I can start with rats into the house to finish with steam shower, and I can restart with main washroom.
> But not here.
> I spent over 20000 dollars to upgrade your house and I received only lies.
> See you in front of RTB
> THANK YOU

Given the nature of the emails exchanged, and in particular the last email exchange of August 14, 2017, I am of the view that the tenant did not clearly communicate to the landlord that the tenants were going to end the tenancy for breach of a material term and the landlord would not have a reasonable expectation that the tenants were going to do that. The next email or written communication from the tenant is that he has already vacated the property. Accordingly, I find the tenants did not end the tenancy in a manner that would meet the criteria of section 45(3) of the Act.

While I appreciate the tenants were dissatisfied with the condition of the rental unit, the tenants' had other remedies available to them by making an Application for Dispute Resolution and requesting repair orders, authorization to reduce rent payable, or authorization to end the tenancy early. The tenants did not avail themselves to these remedies before ending the tenancy early.

In ending the tenancy early without having a right to do so under section 45(3), I find the tenants breached their fixed term agreement. Since the rental unit remained vacant for a few months after the tenancy ended, I proceed to consider whether the landlord made reasonable efforts to mitigate losses.

To demonstrate the landlord's efforts to mitigate losses, I was provided copies of the advertisements the landlord placed; excerpts from the landlord's appointment book to demonstrate when prospective tenants were shown the rental unit; and, a copy of the tenancy agreement for the replacement tenants. The replacement tenants were shown the rental unit on December 9, 2017 and executed a written tenancy agreement on December 15, 2017 for a tenancy set to commence December 22, 2017. The landlord's appointment book establishes that other prospective tenants were shown the rental unit fairly often prior to the replacement tenants being secured. The tenant pointed out that the landlord had raised the rent in first advertising the rental unit; however, based on the

email evidence it would appear that the landlord adjusted the advertised rent back to $4,500.00 on or about September 28, 2017. Also based on emails exchanged, it appears that the landlord had photo shopped some of the photographs posted in the advertisement to remove damaged areas that had not yet been repaired to no delay advertising the unit for re-rent. All these things considered, I am satisfied the landlord took reasonable measures to mitigate losses.

In light of the above, I find the landlord has established an entitlement to hold the tenants responsible for loss of rent for the period of October 2017 through to December 21, 2017. I have verified the landlord's calculation of pro-rated rent for December 2017 is accurate. Therefore, I award the landlord loss of rent of $4,500.00 for each of the months of October 2017 and November 2017 and pro-rated loss of rent of $3,048.39 for December 2017 a total award for loss of rent in the amount of $12,048.39.

Although I have held the tenants responsible to pay loss of rent to the landlord because the tenants did not have a legal right to end the tenancy early, the tenants remain at liberty to file their own Application for Dispute Resolution against the landlord for loss of use and enjoyment of the property if the tenants remain of the position they are entitled to compensation from the landlord for lack of sufficient repairs.

7. Filing fee

The landlord was largely successful in its claims against the tenant and I further award the landlord recovery of the $100.00 filing fee.

Security Deposit and Monetary Order

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of the findings and awards provided above, I provide the landlord with a Monetary Order to serve and enforce upon the tenants, as calculated below:

Repairs and junk removal	$ 1,398.78
Liquidated damages	420.00
Second dishwasher repair	224.65
Unpaid rent – September 2017	3,500.00
Loss of Rent – October thru Dec 21, 2017	12,048.39
Filing fee	100.00
Sub-total	$17,691.82
Less: security deposit	(2,250.00)
Monetary Order	$15,441.82

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of $15,441.82 to serve and enforce upon the tenants.

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: July 26, 2018

Residential Tenancy Branch