Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit in satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.
- or evidence in a different way than required by the *Act* pursuant to section 71;

The tenants applied for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of the remaining portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing 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/Advocate PL (the agent) confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail to the agent for forwarding to the landlord. I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* As Tenant RA (the tenant) confirmed that they received a copy of the landlord's dispute resolution hearing package on or about August 8, 2018, I find that the tenants were duly served with this package in accordance with section 89 of the *Act*.

As the agent testified that the landlord had received copies of the tenants' written evidence, I find that the tenants' written evidence was duly served to the landlord in accordance with section 88 of the *Act*.

The tenant testified that they had not received written evidence from the landlord. The agent provided sworn testimony supported by witnessed statements that the agent and a witness attempted to serve the tenants with the landlord's written evidence on November 13 and 14, 2018. After knocking on the door on one of these days, the agent and the person who provided the witnessed statement maintained that they observed the tenant retrieve the landlord's written evidence and take it into the tenants' home. On the other day, the agent alleged that the tenant refused to accept the landlord's written evidence. Based on this undisputed evidence, I find that the tenants have been served with the landlord's written evidence in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Are the tenants entitled to a monetary award for losses or other money owed by the landlord arising out of this tenancy? Which of the parties are entitled to the remaining portion of the security deposit for this tenancy. Are either of the parties entitled to recover the filing fee for their applications from one another?

Background and Evidence

The parties entered into this fixed term tenancy for a large home on April 12 and 13, 2017, when the parties signed a Residential Tenancy Agreement (the Agreement) that was to cover the rental period from July 12, 2017 until April 30, 2018. This tenancy continued after the expiration of the initial fixed term tenancy until June 30, 2018, when the tenants vacated the rental unit in accordance with their May 31, 2018 emailed notice to end their tenancy by June 30, 2018. Monthly rent was set at $4,995.00, payable in advance on the first of each month, plus hydro and heat. This rent increased to $5,194.80 as of June 1, 2018, after the landlord served the tenants with a legal Notice of Rent Increase, which was in accordance with the requirements of the *Act* and the *Regulations* pursuant to the *Act*. The tenants paid a $2,497.50 security deposit for this tenancy on April 13, 2017, when they entered into this Agreement.
On July 3, 2018, the tenants provided the agent with the tenants' forwarding address, which the agent confirmed having received. The agent returned $1,769.92 of the security deposit to the tenants and retained the remaining $727.58, which the agent and

the landlord considered as damage that should be deducted from the security deposit. The landlord applied for dispute resolution for authorization to retain the $727.58 on July 16, 2018, within 15 days of having confirmed that the tenants' forwarding address had been received. In addition to the $727.58 claimed by the landlord, the landlord requested the recovery of the landlord's $100.00 filing fee from the tenants.

The landlord itemized their monetary claim as follows in the written evidence submitted for this hearing:

Item	**Amount**
Painting and Repair	$157.50
Locksmith	199.50
Cleaning	252.00
Cutting the Lawn	52.50
Missing Garden Hose	66.08
Total Monetary Order Requested	**$727.58**

The tenants' application for a monetary award of $35,000.00, included the tenants' request that the landlord return the $727.58 security deposit still held by the landlord as well as a $34,272.42 claim for "pain and suffering" which the tenants maintained they were entitled to receive. With respect to their application for pain and suffering, the tenant explained that the tenants moved to this country in July 2017, when this tenancy began, and were not familiar with the terms that could be included in an application to the Residential Tenancy Branch (the RTB) for a monetary award. The tenant asked that their application be viewed as an overall request for compensation for all of the problems that happened to the tenants during the course of this tenancy.

The agent testified that painting and repair was needed to two bathroom doors and trim, which had been discoloured during this tenancy. The landlord and the other agent who attended this hearing on the landlord's behalf testified that this home was painted about one year before the renovations were completed, after which time the tenants moved into this home. The tenants' witness testified that there was only minor discolouration to the bathroom door, which the tenant's witness said they could have touched up themselves with a paintbrush in a few minutes.

The parties presented considerable written evidence and sworn testimony with respect to the landlord's application for recovery of the $199.50 in locksmith charges the landlord incurred on June 30, 2018.

The joint move-out inspection meeting to surrender possession of the rental unit occurred at or about 1:00 p.m. and the tenants left the premises without handing over the keys they had installed to the landlord or the agent. Although Tenant OBM returned to the rental home and did leave the keys with the agent upon his return, this happened after the tenants were to have surrendered vacant possession to the landlord or the landlord's agent. The agent estimated that Tenant OBM returned about an hour and a half after they initially left, by which time the agent had assumed that the tenants had chosen to abandon the rental unit without leaving the agent their keys. When this happened, the agent contacted a local locksmith who charged a weekend rate for this Saturday call to change the locks on the rental premises. The agent could not recall whether the locksmith had arrived by the time Tenant OBM returned to provide the keys to the agent. By the time Tenant OBM returned, the landlord and agent had already gained access to the rental home through a worker's accessing an open balcony door upstairs.

Tenant OBM said that they returned shortly after initially leaving the rental home, and were surprised to find the landlord, agent and workmen in the rental home without the tenant's authorization. The tenants' witness estimated that Tenant OBM returned to the rental home within twenty minutes of initially leaving. The tenants' witness speculated that the landlord or the agent had already arranged to have the locksmith attend before the tenants failed to leave their keys with the agent.

The parties also had conflicting views as to who was responsible for problems that occurred at the joint move-out condition inspection on June 30, 2018. The agent and landlord testified that the landlord had become frightened of the tenants during the course of this contentious tenancy. The tenants were only willing to meet with the agent of the landlord to undertake this inspection and insisted that the person conducting that inspection on the landlord's behalf complete the inspection report. The tenants maintained that the landlord would not allow their agent to complete the joint move-out condition inspection report, as the landlord believed they could inspect the rental home themselves after the tenants left and complete and sign the report at that time. The agent said that the tenants refused to allow the landlord to participate in the joint move-out condition inspection, as the landlord's name was not on their Agreement, even though they knew that the landlord owned the property.
The tenants maintained that they offered to return the keys to the agent, but the agent refused to accept them; the agent strenuously denied this allegation.

Although this tenancy began on July 12, 2017, a joint move-in inspection was not conducted by the landlord until August 9, 2017. The tenants entered into written

evidence and provided undisputed sworn testimony that this only occurred as a result of the tenants themselves insisting that the landlord's representatives attend the rental home to participate in this joint move-out condition inspection.

Agent HG, who was looking after interaction with the tenants on the landlord's behalf at that time, gave sworn testimony that they were expecting the tenants to contact them when they arrived in Canada and were ready to take possession of the rental unit. Agent HG said that the tenants arrived about a week sooner than the agent was anticipating and that the premises had been vacant for about three months prior to the tenants' arrival. As there had been renovations undertaken prior to that time, and dust was no doubt still settling, Agent HG said that the rental home likely needed a "good cleaning" before the tenants starting living there, but said that no arrangements were made to ensure that this occurred. This sworn testimony confirmed written evidence submitted by the tenants in which the landlord's representatives at that time admitted that the rental home had not been cleaned prior to the tenants' arrival.

The parties also supplied copies of the joint move-in condition inspection report signed by both of the parties. Although this report did not identify major cleaning deficiencies, this inspection occurred almost a month after the tenants were scheduled to arrive, and after they started cleaning the house to make it habitable. The tenants provided undisputed sworn testimony and written evidence that the rental home required frequent visits by the landlord's contractors over the first part of their tenancy, and that contractors were coming in and out of the home to do work on the home on an ongoing basis. The tenant testified that there was construction dust covering everything in the house when they first moved into the home and that the anticipated renovations and repairs had not been completed.

At the hearing, the agent gave undisputed sworn testimony that the Agreement called for the tenants to mow the lawn and look after the grounds surrounding the rental home.

In their written evidence, the tenants maintained that the hose supplied by the landlord was of a poor quality and that they were frequently raising concerns with the landlord's agents about the quality of appliances, fixtures and items provided for the tenants' use for this property.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails and text messages, receipts, invoices, and the testimony

of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of these claims and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Analysis - Landlord's Application for Damage or Loss Arising out of this Tenancy

I will address the landlord's monetary claim in the order presented by the landlord, as outlined above.

With respect to the landlord's claim for the recovery of costs of repairing and painting bathroom doors and trim, I have taken into account RTB Policy Guideline 40, which identifies the useful life of building elements associated with residential tenancies for the guidance of Arbitrators in determining claims for damage.

> *This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*
>
> ***Damage(s)***
>
> *When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

> *If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement...*

In this case, there is sworn testimony that the rental home was last painted about two years before this tenancy ended. Based on this undisputed testimony, I find that the repainting of this portion of the rental home occurred approximately half way through the last interior paint job's useful life of four years. For this reason, I allow one half of the landlord's claim for a monetary award for this item. This results in a monetary award of $78.75 for painting and repairing ($157.50 x 50% = $78.75).

I find significant deficiencies in the positions taken by both parties with respect to the landlord's claim for recovery of their locksmith costs.

I first note that section 25(1) of the *Act* establishes that it is the responsibility of the landlord to pay all costs associated with altering or rekeying the locks at the end of a tenancy so that a former tenant cannot access their former premises.

Section 31(3) of the *Act* also establishes that "A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change." In this case, the tenant testified that they changed the locks to their rental home without the landlord's permission and refused the request from the landlord's agent(s) to obtain a key to enable the landlord to access the rental home in the case of an emergency. The tenant confirmed that they did not obtain any authorization from the RTB to take this action. I also note that this evidence appears somewhat at odds with the tenants' assertion that the landlord continuously accessed the rental home during the course of this tenancy without the tenants' permission, which would not have been possible for the landlord to accomplish without keys to the changed locks the tenants installed.

Section 37 of the *Act* reads in part as follows:

> ***37*** *(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*
>
> *(2) When a tenant vacates a rental unit, the tenant must...*
>
> *(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property...*

I am concerned that the tenants arbitrarily changed the locks without the landlord's permission and did not provide keys to the landlord or their agent when they first left the rental unit on June 30, 2018. Whether or not the tenants surrendered their keys to the landlord when they first left the rental unit shortly after 1:00 pm on June 30, 2018, the landlord would have been responsible for rekeying costs as per section 25(1) of the *Act*, before they handed over possession of the rental unit to the next tenants. The agent said that the landlord was in a hurry to get the rental home ready for new tenants who were expecting to take possession the following day. Since the agent already had made arrangements to have workers present, those who accessed the balcony when the tenants first left, it seems likely on a balance of probabilities that arrangements would also have been made to have the locksmith attend so as to prevent the tenants from returning to the rental home after they surrendered possession of the premises to the landlord. The agent could not recall whether the locksmith had arrived by the time Tenant OBM returned to deliver the keys.

I accept that the landlord and agent had reasonable grounds to conclude that the tenants had abandoned the rental unit when they first left the rental unit without leaving their keys. This did not seem to deter the landlord in any way from accessing the rental home through the balcony with the assistance of workers they had already retained. Based on the 20-minute estimate provided by the tenant's witness as the time that elapsed before Tenant OBM returned to provide the keys to the agent and the failure of either party to mention any involvement of the locksmith in their lengthy written submissions regarding the June 30 move-out inspection, I find it more likely than not that the locksmith had not yet arrived by the time Tenant OBM returned. By the time the locksmith arrived, the landlord already had access to the rental unit through both the balcony entrance by the workers they had retained and through the tenants' return of their keys. Under these circumstances, I find no reason to find that any of the tenants' actions override the landlord's responsibility pursuant to section 25(1) of the *Act* to assume responsibility for rekeying costs at the end of this tenancy. These costs, including the Saturday call-out fee charged by the locksmith, would have been incurred by the landlord whether or not the tenants had handed over their keys at 1:00 p.m. or shortly thereafter. For these reasons, I dismiss the landlord's application for the recovery of locksmith costs without leave to reapply.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful in assessing claims for cleaning. Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

The parties presented conflicting written, photographic and oral evidence with respect to the condition of the rental unit at the end of this tenancy. The agent provided evidence that the premises were not at all clean when this tenancy ended. The landlord testified that a team of three people was required to clean the premises after the tenants left and that this team was there for three hours. The tenant maintained that the premises were left cleaner than when they first arrived at this rental home. The tenant and the tenants' witness who was present on June 30, 2018, at the end of this tenancy, testified that the cleaning deficiencies noted in the landlord's photographs and written submission were very minor at the end of this tenancy.

Based on the evidence before me with respect to the condition of the rental unit at the beginning and end of this tenancy, I find on a balance of probabilities that the tenants left the rental home at least as clean as they found it when they began their tenancy. Written evidence from the landlord's representatives and sworn testimony by landlord Agent HG confirmed that the premises needed cleaning at the beginning of this tenancy, cleaning that the landlord never undertook. For these reasons, I dismiss the landlord's application for a monetary award for cleaning at the end of this tenancy without leave to reapply.

The agent gave undisputed sworn testimony that the lawn required mowing when the tenants vacated the rental unit and that the landlord incurred a charge of $52.50 have the lawn mowed at the end of this tenancy. Based on this testimony and the landlord's photographic evidence I allow the landlord's claim for the recovery of $52.50 for this item.

I have also considered the landlord's claim for the loss of a garden hose purchased by the landlord on May 20, 2017 before this tenancy ended. As the useful life of a garden hose is dependent on the quality of that product and there is little evidence with respect to this item, I allow only one-half of the landlord's $66.08 claim for the missing garden hose, a monetary award of $33.04 for this item.

Analysis - Tenants' Application for a Monetary Award of $34,272.42 for Pain and Suffering

RTB Guideline 16 provides the following assistance in considering other types of damages or losses, which I have considered with respect to the tenant's $34,272.42 claim for pain and suffering.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

- *"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

As discussed at the hearing, the tenants have not specifically requested aggravated damages in their application. At the hearing, the tenant explained that they were seeking this monetary award as overall compensation for the multiple problems they encountered during this tenancy. These problems included but were not limited to alleged ongoing invasions of their privacy by the landlord, deficiencies in the quality of home, services and facilities provided to them during this tenancy, their concerns about inadequate heating, ineffective management of their concerns, disruptions caused by a series of contractors having to conduct work that the tenants believed should have been satisfactorily completed prior to the commencement of their tenancy, and a host of other problems.

Much of the tenants' disappointment with this home seems to have been that the home as advertised to them did not live up to their expectations. In this regard, it would seem that they entered into this Agreement without the advantage of fully inspecting the premises and the quality of the renovations performed there before they moved into this home.

The tenants maintained in their written evidence and their sworn testimony that the monthly rent charged by the landlord for the quality of home they received was grossly unfair and took advantage of them as newcomers to this country. They expected considerably better accommodations for the monthly rent they were paying, and tried unsuccessfully to renegotiate their rent, which they had committed to pay when they entered into this Agreement.

As this was a fixed term tenancy, scheduled to end on April 30, 2018, the tenants were at liberty to end their tenancy by that date, had they chosen to do so. Despite all of the multiple problems they identified about this home in their written evidence and in their sworn testimony, they chose not to end their tenancy at the end of their fixed term, when they could have done so then without a financial penalty. They continued living in this rental home beyond April 30, 2018, another two months. During the last month of their tenancy, they remained in the rental home despite the landlord having increased their monthly rent to $5,194.80, 4 % more than they had been paying during the course of their tenancy. The agent also noted that this home in a highly desirable area was leased to new tenants for significantly more monthly rent than the tenants were paying, even at the end of their tenancy.

Tenant OBM testified that the tenants were unwilling to apply for dispute resolution to seek a reduction in their monthly rent until they obtained alternate accommodations. They waited until after their tenancy ended to seek a $34,272.42 monetary award. If this claim were granted in its entirety, this would effectively reduce their monthly rent by over $2,800.00 per month for the duration of their tenancy.

As mentioned at the hearing, the *Act* contains provisions to obtain reductions in rent if services and facilities that tenants anticipated receiving as part of their tenancy agreement have not been provided by their landlord. Generally, these applications are made during the course of a tenancy to ensure that services and facilities are provided as set out in their tenancy agreement. The time to raise concerns with landlords, and if dissatisfied with actions taken by landlords with the RTB to obtain a ruling, is generally during the course of a tenancy, and not after a party vacates the premises, or after they agreed to pay even more monthly rent than they were initially paying in their fixed term tenancy.

In support of their claim, the tenants produced no evidence from health care practitioners that would confirm any health issues caused by their tenancy. They provided no detailed breakdown of how they arrived at the $34,272.42 figure for pain and suffering. Combined with their claim for a return of their security deposit, their monetary claim was for the maximum amount allowed under the *Act*.

RTB Policy Guideline 16 specifically states that any amount arrived at for damage or loss "must be for compensation only, and must not include any punitive element." As I find that the tenants failed to identify their claim as one for aggravated damages and that they have provided little evidence to support their request for this type of broad overall monetary award, which they identified as being for pain and suffering in their

application, I dismiss the tenants' application for a monetary award for pain and suffering without leave to reapply.

Analysis - Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

> ***23*** *(1) 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...*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection...*

Of particular note for the purposes of the applications regarding the portion of the tenants' security deposit withheld by the landlord is the requirement pursuant to section 23(1) of the *Act* that the joint move-in condition inspection is to be performed "on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day." In this case, there is undisputed sworn testimony and written evidence that the joint move-in inspection did not occur on the day the tenants took possession of the rental unit, and that the inspection only occurred after the tenants insisted on conducting one almost a month after they moved in. Based on this evidence, I find that there was no mutual agreement to delay the joint move-in inspection until August 9, 2017. In fact, there is no evidence that the landlord or their agent(s) at that time had any intention of complying with the requirement that they conduct a joint move-in inspection until the tenants sent the then agents an email on August 8, 2017.

Section 24(2) of the *Act* reads in part as follows:

> **Consequences for tenant and landlord if report requirements not met**
>
> ***24*** *(2) 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*

> *(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*
>
> *(b) having complied with section 23 (3), does not participate on either occasion, or*
>
> *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

In this case, a joint move-in condition inspection did occur on August 9, 2017, and the landlord (or their agent) did provide a copy of that report to the tenants. On this basis and after carefully reviewing the wording of section 24(2) of the *Act* after this hearing, I find that the landlord's right to apply to retain a portion of the tenants' security deposit had not been extinguished at the beginning of this tenancy, even though the landlord was tardy in completing the joint move-in condition inspection.

Sections 35 and 36 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection.

> ***36*** *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> *(a) the landlord complied with section 35 (2)* [2 opportunities for inspection]*, and*
>
> *(b) the tenant has not participated on either occasion.*
>
> *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> *(a) does not comply with section 35 (2)* [2 opportunities for inspection]*,*
>
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
>
> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

RTB Policy Guideline 17 provides the following guidance to arbitrators when there have been breaches of the right to retain or obtain a security deposit

In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss.

In this case, the tenants may have had legitimate concerns about the process the landlord was proposing following to complete a joint move-out condition inspection report. However, these could only happen after the tenants participated in a joint move-out condition inspection of the premises with whomever the landlord appointed to perform that task.

In this case, I find no reason to conclude that the landlord's right to apply to retain a portion of the tenants' security deposit has been extinguished as a result of anything that happened at the joint move-out condition inspection. The parties did make arrangements to meet for a joint move-out condition inspection on June 30, 2018. I find that the landlord's appointed representative, the agent, was present and willing to conduct the joint move-out condition inspection with the tenants before the tenants decided to leave the rental unit without surrendering their keys. The tenants were correct in maintaining that a landlord cannot refuse to participate in the joint move-out condition inspection, and later draft a report of the inspection themselves without the tenant's participation However, the tenants' abandonment of the rental home without agreeing to conduct the scheduled joint move-out condition inspection with the landlord's agent occurred before any actual contravention of paragraph 38(2)(c) of the *Act* occurred.

Section 38 of the *Act* requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposits had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the deposits, less the amount already returned.

In this case, there is evidence that the landlord filed their application to retain $727.58 from the tenants' security deposit on July 16, 2018, within 15 days of receiving the tenants' forwarding address. They returned the remainder of that deposit in the amount of $1,769.92 by way of a July 13, 2018 cheque to the tenants.

In conclusion, I allow the landlord to retain $164.29 from the tenants' security deposit. I issue a monetary Order in the tenants' favour in the amount of $563.29, the difference between what has been retained $727.58 and $164.29.

As both parties have been partially successful in their applications, I make no order with respect to the recovery of their filing fees for their applications.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which orders the landlord to return a portion of the security deposit the landlord continues to hold less the landlord's recovery of amounts for damage identified in the landlord's application:

Item	**Amount**
Portion of Tenants' Security Deposit Retained by the Landlord	$727.58
Painting and Repair ($157.50 x 50% = $78.75)	-78.75
Cutting the Lawn	-52.50
Missing Garden Hose ($66.08 x 50% = $33.04)	-33.04
Total Monetary Order to Tenants	**$563.29**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: November 23, 2018

Residential Tenancy Branch