

DECISION

Dispute Codes MNDL, FFL, MNDCT, FFT

Introduction

This hearing originally convened on November 5, 2018 and was adjourned to March 1, 2019 due to time constraints. This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the November 5, 2018 and March 1, 2019 hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants personally served their dispute resolution application on the landlords on May 1, 2018. I find that the landlords were served with this package on May 1, 2018, in accordance with section 89 of the *Act*.

Both parties agree that the landlords personally served their dispute resolution application on the tenants on July 11, 2018. Both parties agree that the landlords personally served their first amendment to their application for dispute resolution on the tenants on July 12, 2018.

Landlord K.P. testified that the tenants were personally served with the landlords' second amendment to their application for dispute resolution on October 11, 2018. The tenants testified that they received the second amendment package but could not recall on what date and could not confirm that it was personally served.

I find that the tenants application for dispute resolution and first amendment packages were served on the tenants in accordance with section 89 of the *Act*. I find that the

landlords' second amendment package was sufficiently served on the tenants for the purposes of this *Act*, in accordance with section 71 of the *Act* as the tenants confirmed receipt of the second amendment package.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?
3. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 and ended in the beginning of July 2018. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants to the landlords and was returned to the tenants at the end of this tenancy. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a house with a lower and upper rental suite. The tenants rented the upper rental suite from the landlords. The lower rental suite was rented to different tenants. The upper and lower suites have shared laundry.

Tenants' Application

Both parties agree that they had a previous dispute resolution hearing on April 29, 2018, in part on the tenants' application for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65.

A Decision on the above hearing dated April 29, 2018 (the “April 2018 Decision”) was entered into evidence. The April 2018 Decision found the following:

1. “The tenants seek an order directing the landlord to eliminate the disturbances they are suffering as a result of the occupants living downstairs. In this regard the tenants’ evidence, including their log of incidents went unchallenged by the landlord and I accept it as a statement of the facts of the frequency and type of disturbances they have been met with after the landlord’s relatives became the basement occupants.

The tenants’ log paints a picture of a serious problem coming from the occupants below. Had the tenants requested monetary compensation for loss of amenity of their rental unit, it would have been granted on these facts.

It is clear that the tenants have been repeatedly and unreasonably disturbed by the conduct of the persons the landlord has permitted to occupy the basement suite. It is clear that the landlord has had repeated notice of the problem. There is no evidence that the landlord has conducted an investigation to confirm the tenants’ complaints nor taken any steps to bring the downstairs occupants into line.

It is not clear whether the people living below are true tenants or merely relations being allowed to live there. In either case the landlord has fallen far short of her duty, imposed by s. 28 of the *Residential Tenancy Act* (the “Act”), to keep her tenants free from unreasonable disturbance.

I direct that the landlord take immediate steps to prevent those occupying the basement suite of this residence from creating or emitting excessive noise, whether by voice or by TV or other method after the hour of 8:00 p.m. or before the hour of 7:00 a.m. each day.

2. The evidence shows that the laundry and the storage facility were a facility included with this tenant, whether noted in the tenancy agreement or not and so it must be continued or the landlord must pay the tenants compensation to discontinue it, as per s. 27 of the *Act*.

I direct that the landlord take any steps necessary to ensure the tenants have access to and use of the laundry facility between the hours of 7:00 a.m. and 8:00 p.m. each day.

The tenant testified that in today's application they are seeking a monetary order for loss of quiet enjoyment they suffered as a result of the landlord's breach of section 28 of the from October 1, 2017 to April 30, 2018.

The tenants testified when they moved into the subject rental property in May of 2017 they did not experience any problems with the tenants in the lower suite; however, when the landlords' relations moved into the lower suite on October 1, 2017, things changed.

The tenants testified that as of October 1, 2017 the tenants in the lower suite constantly created excessive noise levels which negatively affected their sleep and performance at work and at school. The tenants testified that they frequently requested the landlord to address their concerns and stop the tenants in the lower suite from creating excessive noise; however, the landlord did not intervene.

The tenants testified that they kept a log of noise disturbances emanating from the lower suite and their response to the noise. The noise disturbance log was entered into evidence and states the following:

October 8, 2017 – Lower tenants had a loud party with loud music. At midnight the tenants asked the lower tenants to turn off the music, the lower tenants did not comply. The tenants asked again at 12:30 a.m. and the lower tenants complied.

October 8, 2017- The tenants called the landlord and advised of the party the night before. Landlord advised that she would speak to the tenants and agreed that noise should not be made after 10 p.m.

October 14, 2017- At 10:25 p.m. the lower tenants were noisy and playing loud music. The landlords were called and said they would take care of it.

October 15, 2017- At 3:45 a.m. the lower tenants argued very loudly waking the tenants up. Tenant G.T. went to the tenants' door and asked them to stop arguing to which the lower tenants refused.

October 16, 2017- The tenants called the landlords to advise of the ongoing noise problem. The landlord advised that she would speak to the lower tenants.

October 16, 2017- The lower tenants were doing laundry past 10:00 p.m. The laundry is directly below the tenants' bedroom making it difficult to sleep. At 11:45 p.m. the tenants asked the lower tenants to stop doing laundry. The lower tenants refused. The tenants called the landlord who agreed that doing laundry at 11:45 p.m. was not acceptable and that she would speak to the tenants.

October 25, 2017- The lower tenants were arguing and speaking loudly. At 11:30 p.m. the tenants called the landlord about the noise. The landlords were asleep at that time and told the tenants that they should deal with the problem themselves. The noise stopped at 11:39 p.m. but started up again at 3:55 a.m.

October 26, 2017- The tenants personally provided the landlords with a loss of quiet enjoyment letter. The landlord did not respond to the tenants in any way about their letter and the concerns stated therein.

November 20-23, 2017- The lower tenants were loud until 12 a.m.- 1 a.m. every night.

November 24, 2017- The lower tenants played loud t.v. at 2 p.m.

November 26, 2017- The lower tenants played loud music at 10:20 p.m.

December 3, 2017- The lower tenants turned on the bathroom fan at 12:23 a.m. and left it on until morning.

December 4, 2017- The lower tenants turned on the bathroom fan at 2 a.m. which woke up the tenants.

December 4, 2017- The tenants spoke with the landlords in person and advised that the noise disturbances from the lower tenants were ongoing. The tenants gave the landlord a second loss of quiet enjoyment letter. The landlord did not respond to the letter or give the tenants any indication or notification of steps taken to investigate or remediate the problem.

December 8, 2017- The lower tenants turned the dryer on at 10:15 p.m.

December 18, 2017- The lower tenants made loud noises and turned on the bathroom fan at 11 p.m. The landlord was called at 11 p.m.

December 21, 2017- The lower tenants were loud at 1:30 a.m. The landlord was advised of same on December 22, 2017.

December 30, 2017- The lower tenants were arguing loudly at 12:30 a.m.

December 30, 2017- The lower tenants were blasting music at 2:20 p.m. and refused to turn it off.

December 31, 2017- The lower tenants were arguing at fighting at 2:15 a.m. The tenants called the police. The police attended and the noise stopped; however, the noise started up again after the police left and continued until after 5 a.m.

January 1, 2018- The lower tenants woke the tenants up at 2:30 a.m.

January 1, 2018- The lower tenants turned off the electricity for the laundry machine. The landlord was called and informed of the issue.

January 2, 2018- The lower tenants were arguing loudly at 1:30 a.m.

January 4, 2018- The lower tenants turned of the electricity to the upper suite. The landlord was called four times but did not attend to turn on the electricity until January 5, 2018.

January 5, 2018- The lower tenants were loud until 1:30 a.m.

January 14, 2018- The lower tenants had their t.v. on loudly at 11:30 p.m.

January 15, 2018- The lower tenants turned on the dryer at 12:20 a.m. The tenants turned it off.

February 3, 2018- The lower tenants had a loud party and music from midnight until 4:30 a.m. The tenants asked the lower tenants to keep the music down but the lower tenants did not comply. The police were called at 12:22 a.m. and again 30 minutes later.

February 3, 2018- The tenants called the landlord at 3:45 p.m. about the party the night before.

February 3, 2018- The lower tenants played loud music and t.v. at 11:15 p.m. The tenants called the police.

March 19, 2018- The lower tenants turned on the dryer at 12:45 p.m. The tenants turned it off. The lower tenants then turned it back on 10 minutes later and locked the tenants out of the laundry room. When the tenants gained access to the laundry room one of the lower tenants pushed tenants G.Z. to prevent him from getting to the dryer. The police were called.

March 19, 2018- The lower tenants turned off the tenants' electricity to the living room and mater bedroom at 6:50 p.m. The landlords were called and advised of same.

March 21, 2018- The lower tenant turned of the tenants' electricity to the living room and mater bedroom at 8:05 p.m. The landlords were called and advised of same.

March 23, 2018- The lower tenants were loud at 12:30 a.m.

March 24, 2018- The lower tenants left the bathroom fan on all day and night.

March 24, 2018- The lower tenants were loud starting at 1:10 a.m.

March 25, 2018- The landlords changed the lock to the laundry room. On March 26, 2018 the tenants called the landlord and asked for the key, the landlord refused.

March 26, 2018- The lower tenants refused to allow the tenants access to the laundry room.

March 27, 2018- The tenants provided the landlord with a letter advising that the lower tenants were locking the laundry room at 5:30 p.m. and requested a key for the new lock.

March 27, 2018- The landlord left a One Month Notice to end tenancy in the tenants' mailbox. This notice was disputed with the Residential Tenancy Branch and subsequently cancelled.

March 27, 2018- The lower tenants were noisy at 11:58 a.m. and left the bathroom fan on for 24 hours.

March 30, 2018- The lower tenants were loud at 12:15 a.m. and the dryer was on from 10:30 p.m. until 11:17 p.m.

March 31, 2018- The lower tenants played loud music starting at 10:15 a.m. and continued throughout the day. The laundry room door remained locked since March 30, 2018.

April 1, 2018- The lower tenants were loud from 12:30 a.m. until 12:45 a.m.

April 3, 2018- The lower tenants started playing music at 7:45 a.m.

April 4, 2018- The lower tenants were loud from 7:15 a.m. until 7:35 a.m.

April 5, 2018- The lower tenants locked the laundry room door while the tenants were doing laundry and so the tenants could not pick up their clothes. The landlord unlocked the door.

April 6, 2018- The tenants were woken up by loud music at 7:38 a.m. At 10 p.m. the lower tenants started doing laundry and at 11:15 p.m. a loud party started. The landlord was called at 11:20 p.m. and advised of above. The party did not stop, the landlord was called again at 11:32 p.m. but did not answer the phone. The police were then called. The lower tenants left the suite at 12:15 a.m. and returned and were loud at 2:38 a.m.

April 7, 2018- The lower tenants were very loud at 11:45 p.m. The landlord was called at 11:50 p.m. but did not answer. The police were called but did not arrive until 3:15 am. The noise continued until 3:00 a.m.

April 8, 2018- The tenants called the landlord about the April 7, 2018 noise.

April 12, 2018- The tenants were woken up on multiple occasions from noise emanating from the lower suite.

April 13, 2018- The lower tenants were loud at 8:15 a.m.

April 14, 2018- The laundry room was locked all day. Loud noises were heard from the lower tenants at 11:45 p.m.

April 15, 2018- The lower tenants turned on the dryer at 10:15 p.m. Loud noises were heard from the lower tenants at 11:35 p.m.

April 18, 2018- The lower tenants were loud at 11:30 p.m. The bathroom fan was on all night.

April 19, 2018- The lower tenants were loud from 11:00 – 11:49 p.m.

April 20, 2018-The lower tenants were loud at 12:08 a.m.

April 21, 2018- The lower tenants were loud at 3:08 a.m.

April 23, 2018- The lower tenants were loud at 12:33 a.m. The bathroom fan was on all day and night.

April 24, 2018- The lower tenants were loud at 5:15 a.m.

April 25, 2018- The lower tenants were loud at 12:20 a.m.

April 27, 2018- The lower tenants turned on the dryer at 10:56 p.m. until 11:29 p.m. The tenants were woken up by the lower tenants at 12:43 a.m.

April 27, 2018- The tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

April 29, 2018- The lower tenants were loud at 12:15 a.m. and 1:18 a.m. The laundry room door was locked at 12:30 p.m.

The loss of quiet enjoyment letter mentioned in the October 26, 2017 and December 4, 2017 entries were entered into evidence. The landlord's agent confirmed receipt of both letters.

The tenants testified that on May 2, 2018 the landlords dug a large hole in their yard and provided them with no notice that any work was going to be completed. The tenants testified that on May 12, 2018 they sent the landlords a letter asking that the April Decision be complied with.

The tenants testified that in May 2018 they continued to be denied access to the laundry room; however, the lower tenants did not have any parties in May 2018. The tenants testified that they had no access to laundry until the second week of June 2018 when the lower tenants moved out. The tenants testified that the bathroom fan in the lower tenants suite was loud and disruptive and that the lower tenants turned it on to bother them.

The tenants testified that they are seeking 30% of their rent from October 2017 to April 2018 for their loss of quiet enjoyment of their home. The tenants testified that they are also seeking a monetary order for failure of the landlord to comply with the April 2018 Decision directing the landlord to ensure the tenants had access to and use of the laundry facilities between 7:00 a.m. and 8:00 p.m. each day. The tenants stated that they did not know what they would be entitled to for failure of the landlord to comply with the *Act* and so left it at my discretion. This claim was not stated in the tenants' application for dispute resolution.

Landlord K.P. submitted the following. She never agreed that the noise was constant and excessive as she has never heard the noise. She did not receive all of the phone calls listed in the tenant's log of events and the tenants did not make all of the complaints listed in the log of events. Her relatives (the lower tenants) only became verbally aggressive towards the tenants when the tenants were racist. She has attended at the subject rental property at times when the tenants complained of excessive noise but heard nothing.

Landlord K.P. submitted the following. Her relatives (the lower tenants) were given verbal warnings about their noise level but she did not inform the tenants of this as her relatives "never had a contract or a tenancy agreement written therefore there was never a breach in the agreement where the [tenants] have to know about it."

Landlord K.P. submitted that "landlords cannot be held responsible for other people's action on how loud a person can talk".

Landlord K.P. submitted that the tenants were given a key to the laundry room the day the lock was changed. At the hearing the landlord's agent confirmed receipt of the March 27, 2018 letter from the tenants requesting a copy of the laundry room key.

Landlord K.P. submitted the following. The laundry room is under the tenants' kitchen and not their bedrooms and that they are new machines and not very loud. The lower tenants have naturally loud voices and that it may have sounded like they were yelling

when they were not. The lower tenants did not own a t.v. The noise from a bathroom fan is everyday noise and can not be controlled.

Landlord K.P. submitted that after she received the tenants December 4, 2017 loss of quiet enjoyment letter she told her relatives that they had three months to move out. The lower tenants were fully moved out of the subject rental property by April 9, 2018 and so could not have been loud or interfered with the tenants' use of the laundry room after that date.

Landlords' Application

Both parties agree that the landlord did not request a move in or out condition inspection or inspection report to be completed and that these reports were not completed by either party.

The landlord's agent testified that tenants damaged the subject rental property and the landlords are seeking recovery for the following items:

Item	Amount
Front door	\$3,810.22
Painting (labour)	\$2,625.00
New sinks/faucets	\$1,260.00
Paint	\$ 240.46
Paint	\$17.95
Drywall repair materials	\$111.98
Tub repair kit	\$198.97
Cement and tub lift	\$32.46
Deadbolt/screws	\$21.75
Mold tough	\$71.06
Wall tile	\$100.53
Mold tough	\$57.65
Hardwood floor refinishing	\$4,378.50
Total:	\$14,501.53

Front Door

The landlord's agent testified that the tenants drilled holes in the entrance door. The landlord's agent testified that the landlord tried to fill the holes with glue but this did not work and that the door requires replacement. The landlord entered into evidence

photographs of the holes in the front door and an estimate for a new door in the amount of \$3,810.22. The landlord's agent testified that the door was approximately 10 years old.

The tenants testified that the door was in the same condition on move in as move out and that the holes in the door were there when the tenants moved in. The tenants testified that they believed the quote for the door to be excessive.

Painting

The landlord's agent testified that prior to the tenant's moving in they had the subject rental property painted on March 28, 2017. A receipt evidencing same was entered into evidence.

The landlord's agent testified that during the tenancy the tenants repainted the subject rental property but did a poor job leaving blobs of paint throughout the property. The landlord's agent testified that the tenants left splatter marks all over the floors, vents, light switches, door knobs and plugs. The landlord entered into evidence photographs of the aforementioned paint splatters.

The landlord's agent testified that the subject rental property was completely repainted in July of 2018. The landlords entered into evidence a painting contract dated July 6, 2018, in the amount of \$2,625.00. The landlord's agent testified that the agreement with the painter was that the landlords would supply the paint and the contract was for labour alone. The landlords entered into evidence two receipts for paint in the amount of \$240.46 and \$17.95. The receipt for \$240.46 is dated August 26, 2018. The receipt for \$17.95 is dated July 17, 2018.

The tenants testified that condition of the paint was the same on move in as move out and that they did not cause the paint blobs or splatters. The tenants testified that the paint splatters were there when they moved in and that they informed the landlords when they moved in that the person who painted did a very poor job. The tenants argued that the receipt for \$240.46 is for a date after when the landlord's agent testified the painting was completed and that the landlords are trying to recoup costs not associated with their tenancy. The landlord's agent then changed her testimony and testified that the subject rental property was painted in August 2018.

New Sinks/Faucets

The landlord's agent testified that the tenants put contact paper on the counter in the bathroom and some of it also got on the bathroom sink. The landlord's agent testified

that they could not get the contact paper off of the sink and so had to replace it. The landlord entered into evidence photographs of the contact paper on the countertop and sink. The landlord's agent testified that the bathroom sink was 3-4 years old. The landlord's agent testified that the faucet had paint splattered on it that would not come off so it had to be replaced.

The tenants testified that they did put the contact paper on the counter top and that some of it touched the sink but that this should have been easily removed. The tenants testified that the paint splatters on the faucet were there since they moved in.

The landlord's agent testified that the bathtub faucet was ruined because it was covered in paint which prevented it from turning properly. The tenants testified that the tub faucet was old and paint splattered when they move in.

The landlord's agent testified that the kitchen faucet also had paint splatters on it and needed to be replaced. The tenants testified that the kitchen faucet was in the same condition on move in as move out. The tenants testified that the kitchen facet did not have any paint splatters on it. No photographs of the kitchen faucet were entered into evidence.

The landlord entered into evidence an invoice in the amount of \$1,260.00 for the following:

1. One tub faucet installation;
2. One kitchen faucet installed; and
3. One washroom sink facet installed.

The invoice was not broken down, each item did not have it's own price, only the total sum of all three jobs is listed on the invoice.

Drywall Repair

The landlord's agent testified that tenants damaged the drywall in the bathroom of the subject rental property and that this drywall required repair. The landlord entered into evidence a receipt for a "trim kit" in the amount of \$111.98. The receipt is dated September 17, 2018.

The landlord's agent testified that the product "Mould Tough" was also used to repair the drywall in the bathroom. The landlord's agent entered into evidence two receipts in the amount of \$71.06 and \$57.65 for the aforementioned product. The receipt in the

amount of \$71.06 is dated September 22, 2018 and the receipt in the amount of \$57.65 is dated September 29, 2018.

The tenants testified that they did not damage the wall in the bathroom but did cover up existing damage with some contact paper so that it looked nicer. The tenants argued that if the landlord had the entire property re-painted in July or August 2018, the drywall repairs would have had to been made prior to painting. The tenants alleged the landlords are attempting to recover funds spend to renovate a different property.

Bathtub

The landlord testified that the tenants broke tiles in the bathroom and dented the bottom of the bathtub. No photographs evidencing same were entered into evidence. The landlord's agent testified that the bathtub was approximately 10 years old. The landlord's agent testified that the following of the costs outlined above were required to fix the bathtub and tiles:

Item	Amount
Tub repair kit	\$198.97
Cement and tub lift	\$32.46
Deadbolt/screws	\$21.75
Wall tile	\$100.53

Receipts for the above were entered into evidence. The landlord testified that some of the screws were used in the bathroom and some were used to replace outlet covers throughout the rest of the house.

The tenants testified that they did not damage the bathtub or tiles and that they were in the same condition on move in as move out.

Hardwood Floor

The landlord's agent testified that the tenants damaged the hardwood floors by splattering them with paint, therefore requiring the floor to be refinished. The landlord's agent testified that the floors were original to the house which was build in the 1950's and that they had never been refinished. The landlord entered into evidence photographs showing that the floors had paint on them. The landlord entered into evidence a receipt for floor refinishing in the amount of \$4,378.50.

The tenants testified that the floors were in the same condition on move in as move out. The tenants testified that the floors were paint splattered when they moved in and were in poor condition.

Analysis

Tenants' Application

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The log of events entered into evidence by the tenants shows a consistent pattern of unreasonable disruption of the tenants right to quiet enjoyment by the conduct of the lower tenants.

Landlord K.P.'s submissions contests the accuracy of the log and seeks to justify the actions of the lower tenants. I find that certain portions of landlord K.P.'s submissions are contradictory and therefore lack credibility. Landlord K.P. submitted that landlords

cannot be held responsible for how loud a person can talk and yet she submitted that she verbally warned the lower tenants about their noise levels and ultimately evicted them due to their noise level.

In addition, landlord K.P.'s submissions attempted to justify and defend the actions of the lower tenants and denied the severity of the tenants' complaints, yet somehow the conduct which the landlords deny, resulted in the lower tenants' eviction. Due to these inconsistencies, when the testimony of the tenants and the landlords differs, I prefer the testimony of the tenants over that of the landlords.

Upon review of all of the evidence and the testimony heard at the hearing, I find that I have no reason to disagree with the finding of fact made in the April 2018 Decision. The April 2018 Decision found that: (1) the landlord had repeated notice of the noise problems and failed to conduct an investigation to confirm the tenants' complaints and (2) the landlord failed to take any steps to bring the lower tenants into line. None of the evidence or testimony heard in today's hearing have shown that adequate steps were taken to investigate or resolve the tenants' complaints. I therefore find that the landlords have breached section 28 of the *Act* by failing to take reasonable steps to correct the unreasonable noise disturbance caused by the lower tenants.

Section 7 of the Residential Tenancy Act states:

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the circumstances, I am issuing a monetary award which reflects that the tenants suffered a loss in the value of the tenancy agreement. Based on the evidence I find that the loss was significant and of significant duration.

I find that a monetary award of \$2,380.00, which is the equivalent of approximately 20% reduction of the monthly rent from October 2017 to April 2018 to be appropriate.

As the tenants were successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application, in accordance with section 72 of the *Act*.

At the hearing the tenants also sought compensation for the landlord not complying with the April 2018 Order to allow them access to the laundry room. This claim was not made in the tenants' application for dispute resolution nor was it included in a subsequent amendment. As the landlord did not have notice of this claim prior to today's hearing, I decline to make a determination or award damages for this claim.

Landlords' Application

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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 tenants. 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. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case, a move in condition inspection report was not completed. A properly completed move in condition inspection report would have provided evidence as to the condition of the subject rental property when the tenants moved in. Since a move in condition inspection report was not completed, the burden of proof is on the landlord to prove the condition of the subject rental property when the tenants moved in.

In this case, the testimony on the condition of the rental property on move in and move out differs markedly between the landlords and the tenants. I find that the landlords have not proved, on a balance of probabilities, that the subject rental property required repainting due to the actions of the tenants. I also find that the landlord has failed to prove that the following items were in a poorer state on move out than they were on move in: front door, bathroom drywall, bathtub, tiles, outlet covers, and hardwood floor. I therefore dismiss the landlord's monetary claim for the following items:

Item	Amount
Front door	\$3,810.22

Painting (labour)	\$2,625.00
Paint	\$ 240.46
Paint	\$17.95
Drywall repair materials	\$111.98
Tub repair kit	\$198.97
Cement and tub lift	\$32.46
Deadbolt/screws	\$21.75
Mold tough	\$71.06
Wall tile	\$100.53
Mold tough	\$57.65
Hardwood floor refinishing	\$4,378.50

In regard to the landlords' claim damages for the bathroom sink, I find that the tenants damaged the sink in the bathroom by putting down contact paper. While the tenants testified that they believed the contact paper should have been removed easily, I find that since the tenants did not remove the paper themselves, damage was done to the landlord.

In regard to the landlords' claim for damages to the kitchen faucet, bathroom sink faucet and tub faucet, I find that the landlord has failed to prove, on a balance of probabilities, that any of the faucets were in a worse condition on move out than move in. I therefore dismiss the landlord's claims for damages for the kitchen, bathroom sink and tub faucets.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Since the receipt entered into evidence by the landlord was for the replacement of the bathroom, bathtub and kitchen faucet, and not for the bathroom sink and countertop, I find that the landlord has failed to prove the amount of or value of the damage to the

counter or sink. I therefore dismiss the landlord's claim for damage to the counter and or sink.

Since the landlords were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants, in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$2,480.00.

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

Dated: March 08, 2019

Residential Tenancy Branch