Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 16, 2018 (the "Application"). The Tenants applied for the return of the security and pet deposits as well as compensation for monetary loss or other money owed.

The Tenants appeared at the hearing with the Articling Students. The Witness was called into the hearing when required. Nobody appeared at the hearing for the Landlords.

I explained the hearing process to the Tenants who did not have questions when asked. The Tenants and Witness provided affirmed testimony.

The Tenants advised that P.J.F. is the son of J.F. and S.F. who own the rental unit. The Tenants testified that P.J.F. acted as agent for J.F. and S.F. throughout the tenancy. I was satisfied all three respondents were "landlords" as that term is defined in section 1 of the *Residential Tenancy Act* (the "*Act*").

The Tenants had submitted evidence prior to the hearing. The Landlords had not. I addressed service of the hearing package and Tenant's evidence.

Tenant S.H. testified as follows. The hearing packages and evidence were sent by registered mail November 21, 2018 to all three respondents. A receipt was submitted with the three tracking numbers noted on the front page of this decision.

Tenant S.H. further testified as follows. The Tenants knew where J.F. and S.F. lived as they had attended the address and confirmed this. The package for P.J.F. was sent to

the address on the notice to end tenancy served on them in March of 2017. The packages sent to J.F. and S.F. were delivered and signed for. The package sent to P.J.F. was unclaimed and returned.

I looked the tracking numbers up on the Canada Post website. In relation to the package sent to P.J.F., notice cards in relation to this were left November 22nd and November 26th. The package was unclaimed and returned to the sender. The packages sent to J.F. and S.F. were delivered and signed for by S.F. November 22, 2018.

Based on the undisputed testimony of Tenant S.H., evidence submitted and Canada Post Website information, I find J.F. and S.F. were served with the hearing packages and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. Based on the Canada Post website information, I find J.F. and S.F. received the packages November 22, 2018. I find the packages were served in ample time for J.F. and S.F. to prepare for, and appear at, the hearing.

In relation to P.J.F., the address used for service was an address provided in March of 2017 and used during the tenancy which ended May 31, 2017. This is more than a year prior to the hearing packages and evidence being sent to the address. I do not see any evidence submitted that shows this continues to be P.J.F.'s address, nor did the Tenants point to any further evidence in relation to this.

Pursuant to section 89(1) of the *Act*, I must be satisfied that the hearing package was sent to P.J.F.'s residence or an address at which he carries on business as a landlord. I am not satisfied based on the evidence submitted that the address used continues to be P.J.F.'s residence or place of business given the passage of time between when this tenancy ended and when the hearing package and evidence were sent. There would be no reason for P.J.F. to update the Tenants in relation to his address during this time. There is insufficient evidence before me showing this continues to be P.J.F.'s address. There is no evidence before me that P.J.F. received the hearing package and evidence and in fact the Canada Post website information indicates P.J.F. did not receive these.

It is the Tenants who have the onus to prove service in accordance with the *Act*. I am not satisfied that the Tenants have done so. I have therefore removed P.J.F. from the style of cause and will only proceed against J.F. and S.F.

The Tenants were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of the security and pet deposits?

2. Are the Tenants entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenants sought compensation based on the following:

1. $2,400.00 for bad faith eviction;
2. $1,200.00 for return of double the security deposit;
3. $1,200.00 for return of double the pet damage deposit;
4. $4,500.00 for loss of quiet enjoyment; and
5. $1,200.00 for aggravated damages.

The following information and submissions were included in the written material and provided by S.H. on behalf of the Tenants.

There was a verbal tenancy agreement made between P.J.F. and the Tenants in relation to the rental unit. The tenancy started March 01, 2016 and was a month-to-month tenancy. Rent at the end of the tenancy was $1,200.00 per month due on the first day of each month. The Tenants paid a $600.00 security deposit and $600.00 pet damage deposit.

The tenancy ended May 31, 2017.

The Tenants provided their forwarding address to P.J.F. in a letter dated May 19, 2017 sent by registered mail. This was submitted as evidence. A copy of the Xpresspost receipt was also submitted showing this was sent to P.J.F. A second letter was sent by registered mail December 29, 2017. This was submitted as evidence. A copy of the envelope returned to the Tenants was submitted as evidence showing the tracking

number for this. A copy of the tracking details was submitted. A text message was also sent to P.J.F. with the forwarding address. This was submitted as evidence.

The landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the landlords could keep some or all of the security deposit or pet damage deposit. The landlords did not apply to keep the security or pet damage deposit.

No move-in inspection was done and the Tenants were not provided two opportunities to do a move-in inspection.

No move-out inspection was done and the Tenants were not provided two opportunities to do a move-out inspection.

Bad faith eviction

The Tenants were served with a notice to end tenancy for landlord's use of property on March 11, 2017 in person. The notice stated that the landlords or a close family member intended to move into the rental unit.

The landlords never intended to have a close family member moved into the rental unit. P.J.F. sent a text message stating his uncle was going to move into the rental unit. This is in evidence. P.J.F. also claimed he was moving into the rental unit. Text messages submitted show this. P.J.F. said he was moving in after it was pointed out to him that an uncle is not a close family member as defined in the *Act*.

Neither P.J.F. nor a close family member of the landlords' move into the rental unit. P.J.F. intended to sell the rental unit which is shown in the evidence. The evidence includes text messages about this, a notice about a realtor having an open house and online real estate ads. The ads are from March 14, 2017 through to December 02, 2017.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property was submitted (the "Two Month Notice"). The effective date is May 31, 2017. The grounds for the Two Month Notice are that the rental unit will be occupied by the landlord or the landlord's close family member.

The text messages show P.J.F. told the Tenants his uncle may be moving to town and may need a place to stay and that the Tenants would be given three months notice to leave. The Tenants inform P.J.F. that he cannot evict them on this basis.

The text messages show P.J.F. told the Tenants there would be an open house. This was on March 7th. The Tenants tell P.J.F. he cannot evict them because he is selling the house. P.J.F. then responds that he is going to move into the rental unit and will give the Tenants 60 days notice. P.J.F. then sent the Tenants a text message about a viewing.

The text messages show P.J.F. told the Tenants he was selling the house that the rental unit is in.

The Tenants submitted the notice from the realtor dated March 11, 2017 stating there will be an open house March 11th.

The ads submitted show the rental unit was listed for sale on March 14, 2017, June 10, 2017 and December 02, 2017.

Loss of quiet enjoyment and aggravated damages

The Tenants are seeking a 25% rent reduction for each month that they resided in the rental unit. The Tenants are seeking aggravated damages given P.J.F.'s deliberate conduct and harm it caused.

The Tenants raise the following issues:

- Noise from the tenants in the upper rental unit
- Refusal by P.J.F. to have the well water tested
- Refusal by P.J.F. to address an insect problem in the rental unit
- Unsafe walkway and entrance due to unsecured paving stones and lack of gutters
- Being asked to vacate so P.J.F. could show the rental unit

The Tenants submit that a 15% rent reduction would be appropriate to address the above issues.

The Tenants raise the following further issues:

- P.J.F. harassed them starting February 2017 until they vacated
- P.J.F. did not install a smoke detector until February 25, 2017

The Tenants submit that a 10% rent reduction would be appropriate to address the above issues.

Tenant S.H. had a baby February 13, 2017 and the Tenants were caring for a new born in the rental unit from February 18, 2017 onwards.

Noise from the upstairs tenants started in April of 2016. The upstairs tenants had three children and the Tenants could hear all their movements throughout the day. P.J.F. was aware of this issue. The Tenants tried to address this with the upstairs tenants. P.J.F. aggravated the problem by installing hard wood floors upstairs. The installation of these interfered with the Tenants' right to quiet enjoyment. The Tenants sent P.J.F. a letter about this March 11, 2017.

The Tenants asked P.J.F. to test the water for the rental unit on April 30, 2016. The Tenants were concerned because of what a neighbour told them about not drinking the water, the metallic taste of the water and brown color. Tenant S.H. became ill and experienced vomiting. Her doctor told her to request that the well water be tested. P.J.F. was informed of the issue but did not have the water tested. The Tenants had to purchase water filters because of this. The Tenants lost water for three days in June of 2016. The Tenants sent P.J.F. a letter about this March 22, 2017.

The Tenants submitted a letter dated March 22, 2017 to P.J.F. asking that the well water be tested.

There were a significant number of carpenter ants, wood bugs and sugar ants in the rental unit. A photo of insects in the dishwasher was submitted. The Tenants sent P.J.F. a letter about this March 11, 2017. Tenant S.H. also sent P.J.F. a text about this and he replied that he did not have time to deal with this.

The Tenants submitted one photo of one insect in the dishwasher. The Tenants submitted a letter dated March 10, 2017 to P.J.F. about the insect issue. The Tenants submitted a text dated March 31st following up about the insect issue.

Paving stones from the driveway to the entrance of the rental unit were not secured and shifted when stepped on. P.J.F. was informed of this by text December 07, 2017. P.J.F. did not secure the stones.

The Tenants submitted photos of the paving stones.

Water would accumulate on the steps to the rental unit which was a safety issue. The Tenants told P.J.F. this and believed the problem would be solved by installing gutters. P.J.F. did not install gutters.

The Tenants submitted a text message asking P.J.F. to address the slippery walkway. P.J.F. replied that the Tenants could fix it and he would pay for it.

The Tenants were asked to vacate the rental unit so that it could be shown at least five times. On several occasions, P.J.F. failed to provide 24 hours written notice that he would be entering the rental unit.

The Tenants submitted texts dated March 7th and March 8th showing P.J.F. asked them to vacate for showings.

P.J.F. harassed the Tenants. For example, one day he ran down the steps, banged on the glass repeatedly, screamed and swore at the Tenants. P.J.F. was verbally abusive when he did install the smoke detector. Tenant S.H. testified that P.J.F. was always aggressive.

P.J.F. reported the Tenants to child protective services and made false allegations about the Tenants. P.J.F. texted the Tenants after being asked not to. A copy of a report by the Ministry of Children and Family Development was submitted. It states that the social worker believed the allegations were malicious. P.J.F. did this as an intimidation tactic and as retaliation for the Tenants attempting to assert their rights as tenants.

The Tenants submitted a text from P.J.F. April 4th about Tenant S.H. using drugs. Tenant S.H. asked P.J.F. to stop texting them and send correspondence by registered mail.

The aggravated damages are sought because P.J.F. called the Ministry on the Tenants and made a malicious claim which resulted in significant suffering for the Tenants.

P.J.F. sent a text to Tenant J.B. threatening to sue the Tenants.

There was no smoke detector in the rental unit when the Tenants moved in. P.J.F. provided one in packaging in May of 2016. This was a breach of section 32 of the *Act*. When it was installed, it was battery operated and not wired in. I asked about this issue and how it resulted in loss to the Tenants; the parties were not able to provide a compelling answer and chose to move on from this issue without answering further questions I had.

The Tenants called the Witness who testified as follows. P.J.F. attended the rental unit to install a fire alarm. He spoke in a rude tone. He was in an angry mood. He changed his tone when he realised she was present. P.J.F.'s wife was antagonizing Tenant S.H. about the mess in the rental unit. P.J.F. called Tenant S.H. names. He had a bad attitude the entire time.

The Tenants submitted a letter dated March 10, 2017 to P.J.F. outlining their concerns about him running down their stairs and banging on their door. The letter also addresses installation of hardwood floors upstairs and noise from upstairs. The letter outlines previous complaints about the noise. The noise complained of includes children running and stomping, furniture being dragged across the floor, a phone ringing in the night and someone walking around.

The Tenants submitted texts showing the following. They raised the fire alarm and water issue with P.J.F. on April 30, 2016.

The Tenants submitted a letter dated March 10, 2017 to P.J.F. asking him to install gutters above the staircase and the fire alarm.

The Tenants submitted a text dated February 19th sent to P.J.F. about the gutters and fire alarm.

Analysis

Security Deposit

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits and pet damage deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit and pet damage deposit or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed submission that no move-in or move-out inspections were done and the Tenants were not offered two opportunities to do these. I find the Tenants did not extinguish their rights in relation to the security deposit or pet damage deposit under sections 24 or 36 of the *Act*.

I accept the undisputed submission that the tenancy ended May 31, 2017. I accept based on the evidence submitted that the Tenants provided P.J.F. with their forwarding address May 19, 2017 and December 29, 2017. Based on the evidence provided, I accept that P.J.F. was served with the forwarding address in accordance with section 88(c) of the *Act*. P.J.F. is not permitted to avoid service by failing to pick up the registered mail. Pursuant to section 90(a) of the *Act*, I find P.J.F. is deemed to have received the forwarding address May 24, 2017 and January 03, 2018 at the latest. The landlords had 15 days from May 31, 2017, or January 03, 2018 at the latest, to repay the security deposit and pet damage deposit or claim against them.

I accept the undisputed submission that the landlords never repaid the deposits or claimed against them. Therefore, I find the landlords failed to comply with section 38(1) of the *Act*.

Based on the undisputed submissions, and my findings above, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply.

Given the landlords failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the landlords are not permitted to claim against the security deposit or pet damage deposit and must return double the deposits to the Tenants pursuant to section 38(6) of the *Act*. Therefore, the landlords must return $2,400.00 to the Tenants. There is no interest owed on the security deposit or pet damage deposit as the amount of interest owed has been 0% since 2009.

Bad faith eviction

Based on the undisputed submissions, and Two Month Notice, I accept that the Tenants were served with the Two Month Notice March 11, 2017. The Two Month Notice was

issued pursuant to section 49(3) of the *Act*. The legislation in force at the time applies. Section 51 of the *Act* stated:

> 51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> …
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> (2) In addition to the amount payable under subsection (1), if
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> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on the texts, notice from the realtor and real estate ads, I find the landlords failed to follow through with the stated purpose of the Two Month Notice. Based on the real estate ads, I accept that the rental unit was listed for sale in June of 2017. Listing the rental unit for sale is inconsistent with an intention to have the landlords or a close family member occupy the rental unit. Pursuant to section 51 of the *Act*, the landlords must pay the Tenants double the monthly rent. The landlords must pay the Tenants $2,400.00.

Loss of quiet enjoyment and aggravated damages

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
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> - 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.
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> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
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> …
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> - "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.

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

Section 28 of the *Act* outlines tenants' rights to quiet enjoyment and states:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;
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> (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.

Policy Guideline 6 deals with the right to quiet enjoyment and states:

> 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.

I note at the outset that it is clear from the evidence that the parties did not have a good tenancy relationship. However, the purpose of compensation under the *Act* is not to punish the other party but to compensate the party making the claim for loss or damage.

I find the following in relation to noise from the upstairs tenants. The noise complained of is the type of noise one would expect to hear when living below a family. There is no compelling evidence that the noise amounted to an unreasonable disturbance.

I do not find the March 10th letter to be compelling evidence of the noise from upstairs or the impact it had on the Tenants throughout the tenancy. The Tenants had lived at the rental unit for more than a year when this letter was sent and only lived at the rental unit for approximately two further months. The Tenants sent the letter to P.J.F. within days of him telling them he was going to move into the rental unit and evict them. The letter refers to prior communications between the parties about this issue, yet there is no evidence of these prior communications. Nor is there evidence of communications between the upstairs tenants and the Tenants about this issue.

I am not satisfied the Tenants have proven that the noise amounted to an unreasonable disturbance or significant interference given the lack of evidence to support this.

I find the following in relation to the water issue. The Tenants have provided no basis to show P.J.F. was required to have the well water tested based on their concerns. I am not satisfied the Tenants have proven P.J.F. breached the *Act*, *Regulations* or tenancy agreement. The Tenants have submitted no evidence that there was actually an issue with the water. The Tenants have submitted no evidence that any sickness experienced was a result of the water. The Tenants have submitted no documentary evidence that their doctor suggested the water be tested. Even if they had done so, I do not find this to be sufficient evidence that any sickness was caused by the water in the absence of further evidence of this. The Tenants have failed to prove a breach by P.J.F. and failed to prove any loss or damage in relation to the water issue.

In relation to losing water for three days, the Tenants have not provided details about this such as why it happened, what they did in response and what P.J.F. did in response. In the absence of these details, I do not accept that there has been a breach of the *Act*, *Regulations* or tenancy agreement.

I find the following in relation to the insect issue. The Tenants submitted one photo of one insect in their dish washer in support of this issue. The Tenants have not submitted any further evidence of an insect problem in the rental unit such as further photos or a witness statement or report from someone qualified to asses the issue. I also note that the evidence shows this issue was raised March 10th and March 31st with P.J.F. I make the same comments about the March 10th letter as made above in relation to timing. In the absence of evidence showing there was an insect problem in the rental unit, I do not accept that there was or that P.J.F. breached the *Act*, *Regulations* or tenancy agreement in this regard.

In relation to the paving stones, the evidence shows the parties agreed the Tenants would take care of this and P.J.F. would reimburse them for it. I find this to have been a reasonable solution. The Tenants should have addressed the issue if it was impacting them in some way. I would expect the Tenants to have done so to mitigate their alleged loss. I do not accept that the Tenants are now entitled to compensation for this issue because they chose not to address it themselves as agreed.

In relation to the gutters, the Tenants have provided no basis showing P.J.F. was required to install gutters. I am unable to find P.J.F. breached the *Act*, *Regulations* or

tenancy agreement by failing to install gutters. Nor do I accept that the Tenants experienced loss or damage from rain falling on their stairs as this is a normal occurrence that individuals should expect. There is no evidence before me that the water falling on the stairs or conditions of the stairs amounted to a breach of the *Act*, *Regulations* or tenancy agreement or was anything out of the ordinary.

I find the following in relation to the Tenants having to vacate the rental unit. The evidence only supports that this occurred twice. I am not satisfied based on the evidence provided that this issue amounted to a significant interference. Nor am I satisfied the Tenants suffered any loss from the entries whether they were provided 24 hours notice or not. I find this to be a very minor issue. Further, the necessity to vacate seems to have been based on a misunderstanding by the parties that this was a requirement. The Tenants are expected to know their rights and responsibilities or to seek assistance in this regard. The evidence shows the Tenants did call the RTB for information during the tenancy. If vacating was in fact an issue for the Tenants, they should have called the RTB and asked about whether this was required. I do not accept that the Tenants are now entitled to compensation because they were unaware of their rights.

The Tenants have claimed that P.J.F. harassed them. In my view, this is only an issue for which the Tenants can seek compensation under the *Act* if it related to the tenancy and affected their right to quiet enjoyment. Harassment that does not amount to a breach of section 28 of the *Act* is not an issue I have jurisdiction to address. I accept based on the evidence submitted that P.J.F. acted inappropriately and said inappropriate things at times during the tenancy. I do not find that the evidence shows a pattern of behaviour that would amount to a breach of section 28 of the *Act*. I do not find that several negative interactions between P.J.F. and the Tenants, which is all the evidence supports, is a breach of the Tenants' right to quiet enjoyment.

In relation to the report made by P.J.F. to the Ministry, I do not find this to be an issue properly addressed through the RTB or under the *Act*. Again, it is not all negative interactions between parties to a tenancy that result in entitlement to compensation under the *Act*. I do not find this to be the appropriate forum to address this issue.
In relation to the smoke detector, I do not accept that this resulted in loss or damage to the Tenants. The Tenants state that this issue caused them stress and concern. I do not accept this given the Tenants were provided with a smoke detector in May of 2016 but chose not to install it. Whether it was P.J.F.'s responsibility or not, one would expect the Tenants to have installed the smoke detector provided if it was a significant

issue for them. I do not accept that the lack of a smoke detector resulted in loss or damage such that the Tenants are entitled to compensation for this.

In summary, I do not find that the Tenants have proven that they suffered a loss of quiet enjoyment such that they are entitled to compensation.

In total, the Tenants are entitled to $4,800.00 for return of double the security deposit and pet damage deposit as well as compensation under section 51 of the *Act*. I award the Tenants a Monetary Order in this amount.

Conclusion

The Tenants are entitled to $4,800.00 for return of double the security deposit and pet damage deposit as well as compensation under section 51 of the *Act*. I award the Tenants a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail to comply with this Order, the 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 *Act*.

Dated: April 12, 2019

Residential Tenancy Branch