



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 18, 2019 by conference call. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit;
- A monetary order for compensation for loss or other money owed.

The Tenant, A.P., attended the hearing. However, the Landlord did not appear. The Tenant testified that she mailed her application package and evidence to the Landlord on January 2, 2019, by registered mail. The Tenant provided proof of mailing. The Tenant stated that she lives a couple blocks away, and still sees the Landlord's car parked out front his house. The Tenant stated that the Landlord still lives in the basement suite of the house they used to rent, and she has seen him there recently. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package on January 7, 2019, the fifth day after its registered mailing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord wrote a letter and mailed it to our office around January 7, 2019, (letter dated January 5, 2019) and stated that he was going to be out of the country with no

communications during the scheduled hearing time. The Landlord asked our office to reschedule the hearing and inform him of the new date.

According to the notes contained in this file, our office replied to the Landlord's request by stating the following:

*"We can only reschedule the hearing if both parties agree in writing with the rescheduling. However, the arbitrator can decide to adjourn the hearing but that will only happen on the day of the hearing. Please upload more information like a copy of plane tix or itinerary if you want to arbitrator to look at the adjournment, to your file."*

Then, on April 16, 2019, the Landlord emailed our office to request an adjournment again. Our office once again responded and advised the Landlord that he has to call into the hearing to request an adjournment or have someone call in for him at the time of the hearing. The Landlord was provided with relevant portions of the Rules of Procedure and the Policy Guidelines.

During the hearing, the Landlord did not attend and he did not have anyone attend the hearing on his behalf to elaborate or further explain why an adjournment would be warranted.

I note the following relevant portions of the Rules of Procedure and the Policy Guidelines:

Under rule 5.2 (If agreement to reschedule the dispute resolution hearing cannot be obtained), if signed written agreement to reschedule the dispute resolution cannot be obtained from both the applicant and the respondent, either the applicant or the respondent or their agent may request at the hearing that it be adjourned under rule 7.8 (Adjournment after the dispute resolution hearing begins). The party should be prepared to proceed in the event that the director determines the circumstances do not warrant adjourning the hearing.

Rule 7.9 (Criteria for granting an adjournment) provides guidance when considering applications to adjourn a hearing. It states:

*Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

[Reproduced as written.]

Further, under rule 7.11 (Refusing a request for adjournment), the hearing will proceed if the director determines that an adjournment should not be granted. The director will provide reasons for refusing the request for an adjournment in the written decision.

Having considered the totality of the case before me, I deny the Landlord's written request to adjourn the hearing. In making this determination, I note the Tenants served their Notice of Hearing and evidence forthwith, after making their application. The Landlord was served with this package over 4 months ago. The Landlord also contacted our office on multiple occasions, and was informed of the need to attend the hearing, and/or provide further details supporting his request for an adjournment. I note the only documentation I have from the Landlord is a written letter dated January 5, 2019, stating he would be out of the country. Despite being made aware of the rules surrounding the adjournment process, his need to call into the hearing (or have someone call on his behalf), and to provide further documentation showing why he would be unable to attend the hearing, the Landlord provided no further evidence or submissions.

I note the Landlord wrote one sentence asking for an adjournment, and did not elaborate any further. The Landlord did not explain why he would be unable to have an agent, advocate or friend call in on his behalf and explain why an adjournment was necessary. The Landlord had over 4 months to either make arrangements to call in, even briefly to explain his situation, or to have someone else call in on his behalf. The Landlord also failed to provide any corroborating evidence (plane tickets, explanations, etc) showing that he would be out of the country, and why this would make him unavailable to call in.

The Tenant stated that she is not surprised the Landlord did not call in, as he had a history (during the tenancy) of ignoring and not attending to their complaints and requests. Overall, I find the Landlord's unsubstantiated and uncorroborated one-line

written request for an adjournment is not sufficient in this case and the Landlord has failed to establish why an adjournment is warranted.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed?

#### Background and Evidence

The Tenant provided hundreds of pages of documentary evidence. During the hearing, it was explained to her that she would have to explain and present her evidence such that I could understand how it all relates to her monetary worksheet and the items she is seeking. The Tenant understood this, and did not refer or speak to the majority of her documentary evidence. In the Tenants' written submission, there were items and issues that were not presented, explained or addressed in the hearing. As such it was not clear how all of her documentary submission, and written statements related to her monetary claim. Some of the statements appear to be more contextual.

The Tenant did speak to a few critical emails and invoices to substantiate her claim. In this review, I will only address the facts and evidence which were presented and explained in the hearing, and those which underpin my findings. I will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

#### *General Background Information*

The Tenants stated that monthly rent was \$3,400.00 and was due on the first of the month. The Tenants stated that they paid a security deposit of \$1,500.00. A copy of the Tenancy Agreement was provided into evidence and it shows that included in this rent, was utilities such as cable, heat, electricity, water. The Tenants stated that they moved into the rental unit in late July 2016, and the tenancy started on August 1, 2016. The Tenants stated that they viewed the rental unit in May of 2016, and at the time they viewed the unit, all the windows were open, and there wasn't much evidence at the time of the issues and smells they came up against after moving in.

The Tenants stated that they lived in this 3 bedroom unit, and the Landlord lived down below in his own suite. However, the Landlord controlled the utilities, including heat, cable, and internet. The Tenants stated that the whole house was serviced by a forced air furnace, which circulated the air between the two units, which proved to be very problematic, due to the smells produced by the Landlord's dog breeding and boarding business.

The Tenants stated that after they moved in, there were so many issues (as laid out below), which lead to them leaving 5 months after they moved in. The Tenants are seeking compensation for several items that occurred over this period of time.

The Tenants have claimed the following items:

General Monetary Items

- 1) \$1,500.00 – Double the security deposit pursuant to section 38 of the Act

The Tenants stated that they served the Landlord with their forwarding address in writing prior to the end of December 2016, and they moved out on December 31, 2016, and the Landlord failed to return the deposit, or make an application against the deposit within 15 days. The Tenants provided a copy of a letter they personally delivered to the Landlord on December 30, 2016, which contained their forwarding address for the return of the security deposit. The Tenants stated that the Landlord only returned \$1,330.00 of the \$1,500.00. The Tenants provided a copy of the cheque, which was mailed on February 4, 2017.

- 2) \$114.00 – Illegal deduction from security deposit

The Tenants stated that the Landlord kept \$170.00 of their security deposit, and returned \$1,330.00. The Tenants stated that \$56.00 of this amount was for pay-per-view movies they used, and they authorized the Landlord to withhold this amount, but the \$114.00 in addition to this was not agreed upon, and the Landlord arbitrarily kept this amount without filing an application to authorize this. The Tenants are seeking to recover this \$114.00, as it was unlawfully withheld.

- 3) \$683.00 – Move-in deep cleaning

The Tenants stated that when they went to view the rental unit, prior to moving in, the windows were all open, and it was not possible to understand how bad the

smells were. The Tenants stated that they also had a conversation with the Landlord about some items that needed cleaning, and stated she was told it would be cleaned prior to moving in. The Tenants stated that the rental unit was not cleaned before they moved in, and within days, they realized there were significant odours that needed attending to. The Tenants provided a copy of the cleaning services invoice, and stated that this mainly to treat and deep clean the urine stains on the flooring, and to remove the odours. The Tenants also stated this company cleaned some of the blinds, walls, and surfaces. The Tenants stated that these services were contracted on August 4, 2016, and a receipt was provided. The Tenants stated the Landlord promised to have the unit cleaned before they moved in, but he never did.

The Tenants also stated that there were dead rodents in the utility room and pet urine everywhere. The Tenants sent several emails to the Landlord but he would usually ignore most of them, and hope the problems would go away. The Tenants stated that they did as much cleaning as they could to make it livable, but some of the odours, stains and dead rodents required special professional treatment, as detailed on the invoice for this item.

4) \$100.00 – Compensation for services agreed to but not provided

The Tenants stated that, as per the Tenancy Agreement, cable and heat was to be included in the rent. However, the Landlord failed to give them cable for 2 weeks at the start of the tenancy. The Tenants acknowledges that they don't really know what this service is worth, so they tried to be reasonable.

The Tenants also stated that despite being promised heat, as per the tenancy agreement, they were without heat for over a month at the start of the tenancy, because the Landlord refused to light the pilot light in the furnace. The Tenants stated that the Landlord retained control over when the furnace could be used.

Loss of Quiet Enjoyment

5) \$1,500.00 – compensation for lack of security from August –December 2016

The Tenants stated that the lock to the rental unit was a digital security code, and the Landlord refused to change the code after they moved in. The Tenants stated

that kids from the neighbourhood knew the code to their door and would let themselves in, and they never felt secure. The Tenants stated that they always had an uneasy feeling because they never knew who would be entering the unit and when, and they did not feel secure, although they never noticed anything being stolen. The Tenants provided a copy of the email they sent on July 26, 2016, asking the Landlord to change the code, but he did not. The Tenants are seeking \$300.00 per month x 5 months for her loss of security.

6) \$600.00 – Compensation because Landlord illegally entered unit 5 times

The Tenants stated that the Landlord was very unprofessional, and lived directly below the rental unit. The Tenants stated that whenever he decided he wanted to come in, or investigate something within the rental unit, he would just let himself in, unannounced. The Tenants stated that the Landlord entered the unit on August 10, 12, September 5, October 9, and December 29, 2016, without any warning.

7) \$500.00 – Compensation for psychological impact of living above a dog breeding and boarding business

The Tenants stated that the Landlord had a couple of dogs of his own, but he would also board several other dogs. The Tenants stated that there were times where their daughter could not go out in the back yard because of the Landlord's dogs, and it was difficult to take garbage out to the trash can among other things. The Tenants stated that they lost the use of the back yard because they would be afraid of what the dogs would do to their kids if left unattended.

The Tenants stated that the Landlord would deny that he was breeding and boarding dogs but she found ads and information online showing that he had multiple dogs. The Tenants provided copies of the birth listings for the dogs the Landlord had, many of which dated back several years.

The Tenants stated that the Landlord had around 6 dogs and despite them asking the Landlord to be more mindful of letting his dogs roam in the yard, he refused to change.

Silverfish Infestation Related Items:

8) \$783.46 – Storage Locker from August – December of 2016

- 9) \$3,500.00 – Loss of use of 1 Bedroom (August to December 2016) due to infestation
- 10) \$300.00 – compensation for having to vacate rental unit 3 times so Landlord could treat silverfish infestation
- 11) \$500.00 – Compensation for the psychological impact of the silverfish over 5 months
- 12) \$525.00 – Silverfish infestation steam treatment of beds/furniture – December 2016

The Tenants stated that during their tenancy, right from the start, it was apparent there was a significant infestation of silverfish. The Tenants stated that this issue in itself represents a significant portion of their problems with the tenancy, and the infestation was such that they could see silverfish scatter as the lights were turned on. The Tenants stated that the silverfish are known to come out at night, and they did not realize the magnitude of the problem until after they had slept in the rental unit. The Tenants stated that the entire unit was infected but their daughter's bedroom was the most impacted.

The Tenants stated that the whole family lost many nights sleep due to the perceived silverfish issue. The Tenants stated that within days, they had to move their daughter out of the bedroom, and she slept on the couch for 4 months, while they tried unsuccessfully to rid the rental unit of the silverfish. The Tenants stated that the Landlord had a pest control company come on 3 different occasions for a full day. These dates were September 1, 15, and November 1, 2016. The Tenants stated that each time the Landlord brought in the pest control company, they would have to move all their furniture away from the walls, empty their closets, and remain out of the rental unit for the whole day. The Tenants are seeking \$100.00 in compensation for each of these 3 treatments due to the significant disruption and their loss of use. (Silverfish item #3 above)

The Tenants also stated that after they realized the magnitude of the infestation, they had to rent storage lockers to keep their belongings off-site. The Tenants stated that silverfish feed on organic fibres (paper, clothing, cardboard, wood), so in order to preserve some of their belongings (art, bedding, clothing, books, and toys) they had to rent 2 storage lockers nearby. The Tenants stated that they notified the Landlord of this, in writing, on August 1, 2016, but he refused to pay for the storage costs. The Tenants stated that this storage was necessary to prevent their personal items from being destroyed by the feeding silverfish (Silverfish item #1 above). This item cost \$783.46.



The Tenants also stated that the Landlord refused to allow the pest control company to enter or treat his unit (in the basement). The Tenants stated that silverfish can easily transfer between two units in a building and the Landlord contributed to the ineffectiveness of the 3 treatments that were done within the Tenant's unit. The Tenants confirmed with the pest control company who opined that unless the whole house was treated, it would not be as effective. The Tenant provided a report (November 1, 2016) from the pest control company which corroborated that the Landlord did not allow his unit to be treated. The report also indicated that silverfish often live outside, and cannot be treated until the weather improves. The report also indicates that the Tenants did not empty all of the closets, and cabinets. The report further indicates that there were no sightings on silverfish and only the upper unit (the Tenant's unit) had reported issues with silverfish. The technician reported "no activity" in either the upper unit, or the Landlord's unit, below.

The Tenants provided a couple of photos of some dead silverfish they located in different rooms upon moving into the rental unit (one photo showed about 15 dead bugs).

As previously stated, the Tenants stated that her daughter had to move her belongings out of the bedroom for the duration of the tenancy (August – December 2016) because this is where the silverfish were most active and populous. The Tenants stated that their daughter had to sleep on the couch for 5 months, and they completely lost the use of that bedroom (1 of the 3 bedrooms total). As per silverfish item #2, the Tenants stated that they are looking for \$700.00 per month x 5 months, totalling \$3,500.00 (this represents approximately 20% of the value of the monthly rent).

The Tenants stated that just prior to moving out, on December 27, 2016, they hired a professional contractor (receipt provided) to try to rid their belongings of silverfish, so that they would not bring the infestation with them when they moved. This involved steam cleaning mattresses and furniture. This represents silverfish item #5 above in the amount of \$525.00.

The Tenants are also seeking \$100.00 per month x 5 months for the psychological impact and loss of quiet enjoyment from dealing with the silverfish, as per silverfish item #4 above.

### Analysis

## Overview

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

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.

In this case, the Tenants have not specifically sought aggravated damages, as such, their claimed items will not be assessed from this perspective. In the hearing, the Tenants largely referred to their loss of use and loss of quiet enjoyment. The Tenants are seeking several monetary items, some of which are tangible (storage costs, cleaning costs, etc). However, the Tenants are also seeking compensatory damages for loss of quiet enjoyment and a reduction in the value of the tenancy, while it lasted.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the Act. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The Tenant's claim will be addressed in 3 main categories as follows:

- *General Monetary items*
- *Loss of Quiet Enjoyment*
- *Silverfish Infestation Related Items*

Based on the undisputed testimony and evidence, I find as follows:

*General Monetary items*

I first turn to the Tenants' requests surrounding the security deposit, and the alleged illegal deductions (item #1 and 2 above).

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants confirmed that they moved out of the rental unit on December 31, 2016, which I find reflects the end of the tenancy. The Tenants stated they had already served the Landlord with her forwarding address (on December 30, 2016) prior to moving out. Furthermore, the Tenants stated that they only authorized the deduction from the security deposit in the amount of \$56.00, for the pay-per-view shows they watched and the Landlord should have returned \$1,444.00 by January 15, 2017, or filed an application against this deposit.

I note the Landlord had until January 15, 2017, to either repay the security deposit (\$1,444.00) to the Tenants or make a claim against it by filing an application for dispute resolution. The Tenants stated the Landlord returned \$1,330.00 at the end of January 2017, which was beyond the allowable 15 day window. As such, I find the Landlord breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the remaining security deposit (\$1,444.00 x 2), previously held by the Landlord, less the amount the Landlord has already given back, \$1,330.00. I find the Tenants are entitled to monetary compensation in the amount of \$1,558.00, as laid out above, for items #1, and #2 of her claim.

Next, I turn to item #3 which is for \$683.00 for move-in deep cleaning. I note the Tenants stated that there were significant hygiene issues which were not remedied prior to them moving in. I find it important to note that the Landlord is responsible for ensuring that rental units and property meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In this case, I find the evidence indicates that there were dead rodents, numerous pet urine stains and substantial aromas associated with these issues. The Tenants also stated that Landlord promised to remedy and clean up before they moved in, but he never did. I find the evidence sufficiently demonstrates that it was reasonable to have a professional cleaner come in to assist with some of the issues (dead rodents, and stubborn pet urine smells). However, I find the cleaning invoice was for much more than this, and included general ceiling, wall, and bathroom cleaning. I find there is insufficient evidence that some of the more general items warranted professional remediation. In this case, I find there were issues that should have been addressed by the Landlord prior to the tenancy starting, as the unit did not meet reasonable health and safety standards, but I decline to award the full cleaning costs incurred. I award the Tenants a nominal amount of \$150.00, rather than the \$683.00 they have claimed.

With respect to item #4, I note the Tenants are seeking \$100.00 because the Landlord failed to provide cable TV for 2 weeks at the start of the tenancy, and also failed to provide the Tenants with heat (furnace) for the first month of the tenancy. I note these two items were supposed to be provided as per the tenancy agreement but there is no evidence as to what the value of the cable services are, or would be for that period, and it is difficult to determine the value associated with being able to use the furnace (in the summer months). As the Tenants have little to no evidence to establish the value of the loss, I find a nominal amount is more appropriate. I award the Tenants \$50.00 for this item.

### Loss of Quiet Enjoyment

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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*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.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment **even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*** [my emphasis]

With respect to item #5, the Tenant is seeking \$1,500.00 (\$300.00x 5 months) in compensation for lack of security and loss of quiet enjoyment from August –December 2016. The Tenant stated that the lock to the rental unit was a digital security code, and the Landlord refused to change the code after they moved in. As a result, the Tenants stated that some neighbourhood kids knew the code and would enter the rental unit on occasion.

I note the following portion of the Act:

#### **Rekeying locks for new tenants**

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
  - (b) pay all costs associated with the changes under paragraph (a).

I find the Landlord breached section 25 of the Act for failing to change the locks, and I find the Tenants are entitled to some compensation. I also note the Tenants lost some privacy as a result of this lock issue. However, I do not find the evidence sufficiently demonstrates that there was a substantial interference with the ordinary and lawful enjoyment of the premises. I find a nominal amount is more appropriate for this item, in the amount of \$100.00.

With respect to item #6, I note the Tenants are looking for \$600.00 in compensation because the Landlord illegally entered unit 5 times. I turn to the following portion of the Act:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The Tenants stated that whenever the Landlord decided he wanted to come in, or investigate something within the rental unit, he would just let himself in, unannounced. The Tenants stated that the Landlord entered the unit on August 10, 12, September 5, October 9, and December 29, 2016, without any warning or any notice.

I find the Landlord breached section 29 of the Act for failing to give proper notice, prior to entering. As a result, I find the Tenants are entitled to some compensation. However, I do not find the evidence sufficiently demonstrates that there was a substantial interference with the ordinary and lawful enjoyment of the premises such that the Tenants could fully establish a claim for loss of quiet enjoyment. I also find there is insufficient evidence showing how each of these incidents materially impacted the Tenants. That being said, I find a nominal amount is more appropriate for this item, in the amount of \$100.00.

With respect to item #7, I note the Tenants are seeking \$500.00 in compensation for the stress and impact of living above a dog breeding and boarding business and for the loss of quiet enjoyment of the back yard. I note the Tenants were aware the Landlord had a couple of dogs prior to moving in. However, I also note the Tenants were unaware the Landlord would have 6 dogs, some very large, that would show aggression towards their children in the yard. The Tenants stated that their children were impacted the most because the dogs would nip at them in the yard, and would make them unable to take out the garbage during daylight (the dogs were frequently outside). I note the Tenants, including the children, were somewhat fearful of entering their own back yard. Section 28 of the Act states that the Tenants are protected from unreasonable disturbance and are entitled to the use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, I find the Landlord's dogs significantly interfered with the Tenants use of the back yard. As such, I find the Tenants are entitled to some compensation. I award the full amount of their claim on this item \$500.00, which represents about 3% of all rent paid over the 5 month tenancy.

#### Silverfish Infestation Related Items

The Tenants are seeking the following items, which all relate to the alleged silverfish infestation.

- 8) \$783.46 – Storage Locker from August – December of 2016
- 9) \$3,500.00 – Loss of use of 1 Bedroom (August to December 2016) due to infestation
- 10) \$300.00 – compensation for having to vacate rental unit 3 times so Landlord could treat silverfish infestation
- 11) \$500.00 – Compensation for the psychological impact of the silverfish over 5 months
- 12) \$525.00 – Silverfish infestation steam treatment of beds/furniture – December 2016

The Tenants stated that during their tenancy, right from the start, it was apparent there was a silverfish issue. I note the Tenants provided a couple of photos, showing some dead silverfish they found in the rental unit upon moving in. However, I find there is insufficient evidence that the infestation was as bad as they have alleged. I acknowledge that silverfish are small, elusive creatures. However, the burden of proof rests on the applicant to establish their claim and to establish that the infestation was

such that the Landlord ought to be responsible for these items. In this case, I acknowledge there is evidence that silverfish have lived in the rental unit at some point (photos of dead bugs at the start of the tenancy). However, I note the pest control report specifically notes that there were no sightings of silverfish when he visited and only the upper unit (the Tenant's unit) had reported issues with silverfish. Notably, the technician reported "no activity" in either the upper unit, or the Landlord's unit, below.

With respect to items #8, #9, #11, and #12 (above) I find there is insufficient evidence to establish that there was an active, ongoing silverfish issue, such that the Tenants would have had to store their belongings offsite in a storage locker, completely vacate the bedroom, or treat their belongings with a specialized steam process, prior to moving out. I decline to award the costs for these items.

With respect to item #10, I find it important to note the following portion of the Act:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law,

In other words, a Landlord is required to maintain the property and although it was not to the Tenants' satisfaction, and the Tenants believed there was still a silverfish infestation, I note the Landlord was taking some steps to address the Tenants concerns regarding the silverfish issue. I do not find the 3 site visits from the pest control company were excessive, unreasonable or unwarranted. I dismiss this portion of the Tenants' application.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partially successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I grant the monetary order based on the following:

**Claim**

**Amount**

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Double Security Deposit award, less amount returned	\$1,558.00
Nominal award for cleaning	\$150.00
Nominal award for services agreed to but not provided by the Landlord	\$50.00
Nominal award for breach of section 25 of the Act (changing locks)	\$100.00
Nominal award for breach of section 29 (landlord's access to unit)	\$100.00
Loss of Quiet Enjoyment (backyard/dog issues)	\$500.00
Filing Fee	\$100.00
<b>TOTAL:</b>	<b>\$2,558.00</b>

### Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,558.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: April 24, 2019

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Residential Tenancy Branch