Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") seeking:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 01, 2019, pursuant to section 47;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the "*Regulation*") or tenancy agreement pursuant to sections 32, 65, and 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both tenants and the landlord "RS" (the "landlord") attended both the initial hearing and the reconvened hearing. The hearing process was explained and parties were given an opportunity to ask any questions about the process. During both hearings, all parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence presented during both hearings.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on February 25, 2019 was adjourned for a continuation because it did not conclude after 90 minutes of testimony. By way of my interim decision, dated February 26, 2019, I adjourned the application to the reconvened hearing date of April 02, 2019. At the initial hearing, I notified all parties that they were not permitted to serve any further evidence after the first hearing and before the second hearing

because the purpose of adjourning the first hearing was only to continue the hearing, not to adduce additional evidence.

At the first hearing, both parties confirmed receipt of the other party's evidence, and the landlord confirmed receipt of the Tenants' Application for Dispute Resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's evidence, and that the landlord was served with the Tenants' Application for Dispute Resolution hearing package.

After the initial hearing was adjourned, an interim decision was issued, which included a binding settlement agreement whereby the parties agreed that the tenancy would end on March 31, 2019, pursuant to a mutual agreement between the parties. Therefore, the issue of the tenants' application seeking cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 01, 2019, was rendered moot and was not included as an issue to be decided during the reconvened hearing.

Preliminary Issue – Amending the Tenants' application

Following opening remarks during the initial hearing, the tenants clarified that after re-calculating their monetary claim for compensation, the monetary claim sought reflected a higher amount than initially depicted on their application. Therefore, the tenants wished to amend their application to reflect an application of $14,450.00, increased from the original claim of $11,000.00.

The landlord testified that he understood the nature of the recalculation and was in receipt of the evidence used by the tenants to determine the new monetary amount. The landlord further stated that he would be able to provide a response to the tenants' claim despite the amendment. The landlord did not object to the tenants' amended monetary claim amount. As the landlord agreed that he would not be prejudiced by this change, the tenants' application is amended to reflect this higher amount pursuant to section 64(3)(c) of the Act.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act*, Regulation* or tenancy agreement?

Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. While I have considered all documentary evidence and submissions submitted, and all oral testimony of the parties, I will only refer to the evidence and facts which I find relevant in this decision. Not all details of the respective submissions and/or arguments of the parties are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The parties agreed that the tenancy began on July 01, 2018. The monthly rent was determined to be due on the first day of each month. The monthly rent due each month under the tenancy was set at $2,250.00. The parties agreed that the tenants provided a security deposit in the amount of $1,125.00, and a pet damage deposit of $100.00.

The parties testified that the tenancy ended on March 31, 2019, pursuant to the binding settlement agreement detailed in the interim decision dated February 26, 2019.

The subject rental unit is a two-bedroom townhouse unit in a multi-unit townhouse complex. The rental unit consist of two floors, with two bedrooms located on the upper floor, and a kitchen, den, and "great room" located on the lower floor.

Both parties supplied significant evidentiary packages. The tenants are seeking monetary compensation in the amount of $14,450.00. The tenants' claim is summarized as follows:

Item	**Amount**
Loss of heat and associated heating issues with the deficient heating system, such as thermostats	$6,000.00
Loss of quiet enjoyment	1,000.00
Reduced value of tenancy	2,000.00
Loss of salary for tenant "CB"	250.00
Reimbursement for excessive electricity bill due to deficient heating system	700.00
Reimbursement of full rent paid in the amount of $2,250.00 for each of January 2019 and February 2019	4,500.00
Total	**$14,450.00**

The parties agreed that the primary heating system in the rental unit consists of electrical baseboard heaters which are connected to thermostats. Each thermostat is linked to one electric baseboard heater. There are a total of six electric baseboard heaters located in the rental unit. The thermostats and electric baseboard heaters located on the upper floor are situated in the master bedroom, the second bedroom, and in each of the two bathrooms on the upper floor. There are thermostats and electric baseboard heaters in the den and the great room on the lower floor.

The tenants testified that in August 2018, they noticed that the heating system in the rental unit was not functioning properly, such that the electric baseboard heaters would not turn on despite setting the thermostats to an "on" position and choosing a temperature setting that should have resulted in the heating system turning on.

The tenants testified that they notified the landlord of the problem with the heating system on September 10, 2018, during which time the landlord responded that he would have an electrician attend the unit to address the issue. The tenants provided that on October 11, 2018, the baseboard heaters in the great room and master bedroom began to function, but only if the thermostats were set at a very high temperature, which the tenants described as the highest setting—nearing approximately 30 degrees Celsius. The other rooms in the unit remained without heat, and the tenants described that their right to comfortably occupy the rental unit was significantly diminished, due to certain rooms being cold due to lack of heat, while other rooms being uncomfortably hot if they decided to turn on the heating system. The tenants stated that they were left with the option of being very cold, or uncomfortably hot, with no ability to have the rooms achieve a comfortable, standard interior room temperature.

The tenants provided that on October 19, 2018, the landlord had an electrician attend the rental unit, at which time the tenants were informed that the heating system had been repaired. However, the tenants noticed that the problems continued to persist. The tenants stated that the den on the lower floor is one of the biggest living spaces in the unit and is used routinely as a place to have their infant child nap. The heating system in the den and the second bedroom on the upper floor (used as their child's room) continued to remain inoperative, and the other thermostats continued to be deficient, such that they would operate only if set at very high temperatures.

The tenants testified that in order to remedy the issue of having no heat in the den and the upper bedroom, they purchased a portable electric heater. As a result of having to

rely on a portable electric heater to heat the second bedroom and the den, the tenants testified that hey incurred significantly greater electricity costs due to prolonged additional usage attributed to the use of the heater. The tenants provided that the increased electricity usage also resulted as an accompanying effect of the deficient electrical heating system—in the rooms in which the heat did function—which would work only when set at very high temperatures, thereby resulting in inordinately high electricity usage to provide heat for a given room, which carried with it the unfortunate effect of rendering the room uncomfortably hot.

The tenants testified that they provided the landlord a subsequent request for repairs on December 01, 2018. The landlord arranged for an electrician to attend the rental unit on December 14, 2018, after which the tenants were told that the matter had been resolved. However, the tenants stated that the heat in the great room became inoperative and subsequent issues with deficient thermostats persisted. The tenants stated that the landlord eventually agreed to have the tenants select their own electrician to attend the rental on January 05, 2019, at which point all thermostats in the rental unit were replaced with digital thermostats and the parties agreed that the issues with the heating system were finally resolved on that date.

With respect to the above-noted heating issues, the tenants are seeking monetary compensation, in the amount of $6,000.00 which is based on a reduction of value in their tenancy of $1,000.00 each month for a period of six months. This $1,000.00 reduction each month represents a 44% reduction in the monthly rent for that period.

The tenants stated that the prolonged heating issues impacted the entire rental unit and curtailed their right to quiet enjoyment of the rental unit, and that, in particular, the inordinately cold bedroom and den diminished their ability to have their child occupy those rooms and gave rise to the need for the use of a portable heater. The tenants also noted that the den and second upper bedroom represent a large portion of the living space of the rental unit. Therefore, the tenants asserted that a rent reduction of $1,000.00 for each month that the heating issue impacted them is a reasonable amount.

The tenants also seek reimbursement in the amount of $700.00 for excessive electricity bills resulting from the improperly-functioning heating system which resulted in increased electricity usage for reasons described above. The tenants have provided a copy of an electrical utility bill, which depicts that over two billing cycles, the tenants incurred hydro costs totaling $784.76. The tenants asserted that the thermostats in the rental unit were deficient, such that the electric baseboard heating system would only initiate if the thermostats were set at an unnecessarily high temperature, resulting in excessive use of electricity.

The tenants are seeking compensation in the amount of $2,000.00 for a reduced value of the tenancy. The tenants have listed a number of items in this section, without providing a value of the purported loss for each item; rather, the entirety of the loss for all items has been set a general value of $2,000.00. The tenants provided that the loss associated for the issues was calculated at $333.00 each month, over a period of six months, which represents a reduced value of 15% of the monthly rent. The issues that comprise the tenants' collective request for compensation as a result of the reduced value of the tenancy are as follows.

The tenants testified that at the onset of the tenancy, the landlord had agreed to install a lock or security gate on the stairways providing access to the underground area such as the parkade. The tenants asserted that the landlord reneged on his promise to do so, which resulted in safety issues when accessing that area of the townhouse complex. The tenants also provided that the landlord had initially agreed to grant them access to security cameras located in the townhouse complex, and that the landlord later failed to provide access to the security cameras.

The parties agreed that the underground portion of the townhouse complex, in which the underground parking is located, is serviced by two staircases—a north staircase and a south staircase. The tenants testified that for a period of time, the north staircase was flooded, such that there was water pooling at the bottom of the stairwell and that if they chose to use that staircase, they would invariably get wet shoes and socks. The tenants testified that the north staircase was much closer to their rental unit, and that due to the location of the south staircase, use of the south staircase resulted in a much longer route from their unit to the underground parking. The tenants asserted that the loss of use of the closer north staircase constitutes a loss and a reduction of the value of their tenancy.

The tenants requested compensation on the basis that the landlord delayed the installation of a door to the den, which would effectively alter the den—which was previously open to the other areas of the lower floor—to become an enclosed room. The tenants asserted that prior to entering into the tenancy, the landlord had agreed that this was an alteration that would be undertaken to accommodate the tenants' request for an additional enclosed room on the lower floor of the unit. The tenants provided that this was a significant term of the tenancy that, although not put in writing, was an implied term agreed upon by the parties. The tenants asserted that the landlord did not complete the installation of the den door until January 05, 2019, and that the delay altered their intended use of the den which resulted in a diminished value of their tenancy.

The tenants testified that the rental unit is situated such that the second bedroom upstairs has a sliding patio door that permits for access to the street level and exterior of the unit. The tenants provided that they asked the landlord to install a keyed lock on the patio door and that the landlord promised to install a lock that would permit the operation of the lock with a key from the exterior, thereby permitting the sliding patio door to be utilized a secondary door to the rental unit. The tenants provided that the landlord failed to install the lock as had been initially agreed. The tenants provided that this was a significant term of the tenancy that, although not put in writing, was an implied term agreed upon by the parties. The tenants asserted that the landlord did not install a lock on the patio door, and that his failure to do so prevented their intended use of the patio door as secondary entry which resulted in a diminished value of their tenancy.

The tenants testified to request compensation arising from not having an adequately-functioning electrical outlet which prevented the microwave from properly operating for a period of six months. The tenants testified that the electrical issues were not finally resolved until January 05, 2019, and that they endured a lengthy period of loss of use of the microwave. The tenants asserted that the issue related to the microwave was brought to the attention at the same time—in September 2018, October 2018, and December 2018—the landlord was notified of the issues with the heating system. The tenants stated that the microwave issue was included as part of the verbal communication and text message correspondence related to the heating system, as both matters concerned electrical issues which required the services of an electrician.

The tenant CB has requested compensation in the amount of $250.00 for loss of salary resulting from taking time off from work to remain at the rental unit while personnel were attending the rental unit to undertake repairs. The tenant CB contended that there were total absences of three days, during which she decided to be present during occasions on which the landlord scheduled personnel to be at the rental unit. The tenant CB did not provide any evidence or documentation to prove these absences or the value of the loss incurred.

The tenants testified to request compensation, in the amount of $1,000.00, for loss of quiet enjoyment. The tenants asserted that there was noise emanating from other units in the vicinity of their own unit—particularly from the occupants of the unit directly above their own unit. The tenants provided text message correspondence in August 2018, September 2018, and October 2018 which details their concerns with occupants of other units and the conduct of the landlord’s agent, which will be described below.

The tenants also asserted that there was an incident whereby the landlord's agent was conducting himself in a manner that resulted in causing a disturbance, whereby the agent was yelling at the tenants. The tenants asserted that this resulted in a toxic environment and the degradation in the relationship between the tenants and the landlord, as well as between the tenants and occupants of neighbouring units in the townhouse complex.

The tenants provided testimony and evidentiary material, such as text message and email correspondence with the landlord, to highlight their claim for loss of quiet enjoyment, as the tenants contend that the content of the text and email correspondence depicts that the landlord's agent conducted himself in a manner that was unprofessional and gave rise to conflict, which included vulgar language and pushing one of the tenants. The tenants testified that the landlord's agent additionally impugned the tenants' integrity and character while speaking to other occupants of the townhouse complex.

The tenants requested reimbursement for the rent paid for January 2019 and February 2019 due to the issues described in the earlier sections of this decision, such as, but not limited to, loss of heating and loss of quiet enjoyment. The tenants testified that they paid the full amount of rent owed, in the amount of $2,250.00 for each of January 2019 and February 2019 and request compensation of that rent, which totals $4,500.00.

The landlord testified that all units in the townhouse complex are fitted with the same thermostats and that other units did not present with the same issues as the tenants' unit. The landlord provided that drywall dust might have been present on the thermostats that impacted their proper functioning. The landlord provided that after being notified of the heating issues, he reacted in an appropriate manner by having an electrician attend the rental unit on numerous occasions— the exact dates were provided earlier by the tenants. The landlord also testified that after his electrician attended the rental unit, the issue with the thermostats and the heating system was thought to have been resolved.

The landlord further provided that after being alerted to the ongoing heating issues, he ensured that the electrician attended the rental unit again in December 2018, and that he subsequently permitted the tenants to choose their own electrician to fix the heating system on January 05, 2019 after the tenants complained that the heating system and thermostats were not adequately fixed in December 2018. The landlord also provided that he permitted the tenants to install digital thermostats and that he bore the cost of all repairs and thermostats replacements.

In response to the tenants' request for compensation arising from loss of quiet enjoyment, the landlord testified that after being notified of the tenants' complaints concerning the occupant of the unit above the tenants' unit, he and his agent followed-up by speaking to the other occupant to instruct that occupant to vary her behaviour. The landlord testified that although the tenants complained about noise emanating from other units, the tenants were also the subjects of noise complaints brought forth by other occupants. The landlord provided that he received conflicting reports concerning noise complaints and that the reports of noise suggest that the source of the noise was not simply the unit above the tenants' unit, and that the tenants themselves may have disturbed other occupants.

The landlord also testified that to the extent he could, he and his agent spoke with other occupants of the townhouse complex to ensure that they did not cause inappropriate noise or disturbance, but that he felt the matter did not rise to the level of needing to issue notices to end tenancy.

The landlord testified that he acknowledges that there was an unusual incident described by the tenants whereby his agent had an altercation with the tenants resulting in vulgar language being used, but that the incident can be described as arising from a degradation in the relationship between the tenants and the landlord's agent and that the conduct of both parties contributed to the nature of the incident that transpired. The landlord asserted that the landlord's agent should not be considered the sole cause of the incident and that the tenants bear some measure of responsibility for contributing to the incident.

The landlord testified that after consultation with the fire department, it was determined that the installation of a gate at the entrance to the stairways posed a safety concern in the event of a fire. The landlord also asserted that it was never agreed that the installation of a gate to the entrance to the stairways was a written or implied term of the tenancy agreement. The landlord testified that the issue was never discussed prior to the tenancy agreement being signed, and that it was only after the tenants had resided in the unit for a couple of months that the tenants approached the landlord to request the installation of a gate or locked gate.

With respect to the issue of the access to the security cameras, the landlord testified that access to the cameras was never discussed prior to the parties entering into a tenancy and that the item was not included as a written or implied term of the tenancy agreement. The landlord testified that the tenants were not promised this access as a provision of their tenancy. Additionally, the landlord cited that the strata did not approve

providing security camera access to any occupants of the townhouse complex due to privacy concerns.

With respect to the issue of the tenants being unable to use the north stairway due to water pooling at the bottom of the stairwell, the landlord testified that the townhouse complex was built according to code and passed all municipal inspections. The landlord testified that the underground portion of the townhouse complex is serviced by two stairways—a north staircase and a south staircase. The landlord cited that the building code and strata bylaws required at least one set of stairs to be provided for occupants to access the parkade, and that the south staircase satisfied this requirement as they did not present with any issues of water pooling. The landlord testified that all occupants, including the tenants, have the ability to access the underground parkade using the south staircase, but that the tenants did not wish to do so because the south staircase represents a longer, inconvenient route to their unit.

The landlord testified that the parties never agreed that the installation of a door to the den was a written or implied term of the tenancy agreement, or that the landlord made any verbal affirmation to undertake any structural changes to the unit by installing a door to enclose the den and alter it to an enclosed room. The landlord provided that the rental unit was built to code and that installing a permanent door to the den would require a permit from the city. The landlord testified that he only suggested that he would investigate whether a folding door could be placed to the entrance of the den.

The landlord further provided that after a suitable folding, accordion-style door was procured, the tenants had expressed their displeasure with the rental unit and had conveyed that they might end the tenancy early. Therefore, the landlord expressed apprehension in making significant changes, such as installing a door to the den, for the sole purpose of accommodating the request of tenants who expressed that they might be ending the tenancy. Despite his reservations, the landlord testified that he installed the accordion-style door to the entrance of the den in December 2018 to satisfy the tenants' request. The landlord testified that no concrete timeline was agreed-upon by the parties with respect to making this alteration, and that the tenants' assertion that the installation of the door took too long is unfounded since there was no set timeline.

The landlord testified that the parties never agreed that the installation of keyed patio door lock to the sliding patio door was a written or implied term of the tenancy agreement. The landlord testified that he only discussed with the tenants that he would look into the possibility of having a lock installed on the sliding patio door to satisfy the tenants' request for the lock to be installed. The landlord provided that he made no promise that he would be able to install a lock on the sliding door, and that no timelines

were agreed-to by the parties. The landlord provided that the nature of the door necessitated contacting the distributor of the patio door, and that the process to procure a custom lock that would fit the door took considerable time and effort.

The landlord asserted that the lock for the patio door was purchased in August 2018, but that he had to wait for the distributor to deliver the lock. The landlord provided copies of email correspondence with the distributor of the patio door locks to show that he attempted as early as July 2018 to procure the lock.

The landlord testified that he scheduled for a tradesperson to attend the rental unit on December 21, 2018. However, the lock was not installed on that day due to a disagreement between the tenant CB and a representative of the landlord. The landlord provided that the tradesperson was able to attend the rental unit and was in the vicinity, but that CB took issue with the tradesperson not attending at the exact time the landlord had conveyed that the tradesperson would attend. Therefore, the landlord asserted that CB turned away the tradesperson and prevented the installation of the lock on that date, as doing so, according to CB, would have interfered with her child's nap schedule.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 7 of the Act provides the following:

> ***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.*

Section 67 of the Act establishes that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.

The claimant must prove the existence of the damage/loss, and that it stemmed from a violation of the agreement or a contravention of the Act on the part of the other party.

Once that has been established, the claimant must then provide evidence that can verify the actual monetary value of the loss or damage. In this case, the onus is on the tenants to prove their claim for a monetary award.

Guidelines for compensation are provided for in sections 7 and 67 of the Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, *Regulation* or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss and proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. That the party making the application did what was reasonable to minimize the damage or loss by adhering to section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

In essence, to determine whether compensation is due, the above-noted four-part test outlined in Policy Guideline #16 is applied.

In the application before me, the burden of proof is on the tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, *Regulation*, or tenancy agreement on the part of the landlord.

With respect to types of damages that may be awarded to parties, Residential Tenancy Policy Guideline 16 states that an arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the *Act* deals with tenants' rights to quiet enjoyment:

> ***28*** *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.*

Section 65 of the Act provides, in part, that if the landlord has not complied with the Act, regulation or tenancy agreement the director may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

If a tenant determines that the landlord's non-compliance with the Act reduced the value of their tenancy due to outstanding issues that were not remedied during the course of the tenancy, pursuant to section 7 of the Act, a tenant may request compensation or a rent reduction arising from a reduction in the value of the tenancy agreement. I note that the tenants have applied for compensation and a reduction of rent related to the deficiencies outlined in the earlier sections of this decision. The tenants' request for compensation and a reduction of rent will be addressed in subsequent sections of this decision.

The tenant CB has requested compensation in the amount of $250.00 for loss of salary resulting from taking time off from work to remain at the rental unit while personnel were attending the rental unit to undertake repairs. The tenant CB contended that there were total absences of three days, during which she decided to be present during occasions on which the landlord scheduled personnel to be at the rental unit.

I note that the onus is on the party making the claim to show that, on a balance of probabilities, there has been a loss as a result of the action or negligence of the landlord.

The Act does not provide that a tenant must be present in the rental unit if the landlord, or a person permitted by the landlord, needs to access the rental unit for the purpose of undertaking repairs or maintenance. The tenant CB's decision to remain in the rental unit was solely voluntary, and was not as a result of any request on the part of the landlord to have her attend as a mandatory condition of undertaking the repairs.

Additionally, the tenant has not provided any evidentiary material to substantiate the dates on which she was absent from work and the associated loss in salary. The tenant has not proven that the loss in salary resulting from missing work was due to the

landlord violating the Act, *Regulation* or tenancy agreement, and furthermore, the tenant has not proven the value of the purported loss. Based on the foregoing, the tenant CB's request for compensation due to a purported loss of salary is dismissed without leave to reapply.

With respect to the tenants' request for compensation, in the amount of $1,000.00, for loss of quiet enjoyment, I find as follows. The tenants asserted that there was noise emanating from other units in the vicinity of their own unit—particularly from the occupants of the unit directly above their own unit. The tenants also asserted that there was an incident whereby the landlord's agent was conducting himself in a manner that resulted in causing a disturbance, whereby the agent was yelling at the tenants. The tenants asserted that this resulted in a toxic environment and the degradation in the relationship between the tenants and the landlord, as well as between the tenants and occupants of neighbouring units in the townhouse complex.

Although the tenants provided testimony and evidentiary material, such as text message and email correspondence with the landlord, to highlight their claim for loss of quiet enjoyment, I must also consider and weigh the landlord's testimony on the issue. The landlord asserted that consideration of the issues arising with respect to noise complaints, and the tenants' interaction with other residents and the building manager, must also include the tenants' own behavior. The landlord asserted that other occupants of the townhouse complex complained about the tenants' conduct, which was categorized as being adversarial, and that other occupants also complained that the tenants were the source of the noise complaints in the townhouse complex. The landlord provided that he followed-up with the complaints from different parties and determined that he could not ascertain that other occupants were unreasonably disturbing the tenants.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenants have failed to provide sufficient evidence to corroborate their claim of loss of quiet enjoyment.

I find that, on balance, the tenants have not sufficiently substantiated that their quiet use of the rental unit was diminished due to noise emanating from other occupants in the complex, and have not provided justification that any purported disturbance resulting from noise warrants compensation in the amount of $1,000.00.

Although, the tenants have provided evidence that they had an altercation with the landlord's agent which resulted in a deterioration of the relationship with the landlord and the landlord's representative, I must also consider the landlord's testimony that the respective conduct of both parties contributed to the incident, and that on balance, I cannot determine that the loss of quiet enjoyment that subsequently resulted from the incident, and the strained, deteriorated relationship with the landlord and landlord's agent, was due solely to the conduct of the landlord's agent.

Therefore, based on the foregoing, I dismiss the tenants' claim for compensation, in the amount of $1,000.00, for loss of quiet enjoyment, without leave to reapply.

With respect to the tenants' request to be compensated, in the amount of $700.00, for purportedly excessive hydro bills resulting from an improperly-functioning heating system, I find as follows. The tenants have provided a copy of an electrical utility bill, which depicts that over two billing cycles, the tenants incurred hydro costs totaling $784.76. The tenants asserted that the thermostats in the rental unit were deficient, such that the electric baseboard heating system would only initiate if the thermostats were set at an unreasonably high temperature, resulting in excessive use of electricity.

I am satisfied that the tenants have provided sufficient evidence and submissions to demonstrate that the heating system in the rental unit was deficient, such that there was a prolonged period of time during which some baseboard heating units did not function to provide heat in certain rooms, and that some thermostats did not function properly which resulted in an excessive temperature setting needed in order for the heating system to initiate, thereby resulting in certain rooms becoming inordinately hot, while others remained cold due to lack of heat.

I accept the evidence and submissions from both parties, which depicts that the electric baseboard heating system in the rental unit presented with deficiencies. The issues with the heating system persisted until December 2018 and were not completely remediated unit January 2019, at which time the thermostats were replaced and all electric baseboards functioned properly.

I find that the tenants' testimony, along with their evidence, in the form of the electricity bill, does not sufficiently illustrate that the purportedly excessive hydro usage *stemmed solely from use of the heating system* (emphasis added). That is to say, it remains unproven whether other factors did not contribute to any additional electricity usage during the billing period. While the tenants have provided evidence to demonstrate that the heating system was deficient, the tenants have not proven the value of the portion of

the electricity bill that results from the use of the heating system and portable electric heater.

It is difficult to deconstruct the electricity usage and determine which portion of the usage can be attributed solely to the heating system, and I find that the tenants' testimony and evidence failed to substantiate that the electricity bill over two billing cycles was markedly higher due only to the high heat setting required for the heating system to initiate and for use of a portable electric heater. Therefore, I dismiss the tenants' request to be compensated, in the amount of $700.00, for purportedly excessive hydro bills resulting from an improperly-functioning heating system.

I note that the tenants' evidence and submissions with this portion of their claim overlap with their more general request for compensation and a reduction in rent due to the deficient heating system, and will be revisited in the sections to follow. The nature of the tenants' application is such that many of the issues (and the related evidence, submissions, and testimony) presented in support of their claim for the electricity bill overlap with, and are substantially linked to, the more general claim concerning the heating issues for which the tenants seek a retroactive rent reduction.

Therefore, although the tenants' request for compensation for a purportedly unusually high electricity bill was denied on the grounds that it could not be demonstrated that the bill was high due solely to electricity usage arising from the portable heater and a deficient heating system, as part of any amount granted to the tenants for a reduction in the value of the tenancy arising from a lack of a properly-functioning primary heating system, I will consider that the reduction in the value of the tenancy may have been aggravated due to the tenants having to supply heat to the unit via alternate methods, such as by way of a portable heater, and for also having to bear the cost of nominally increased electricity usage arising from a faulty heating system.

I am satisfied that the deficient heating system had an adverse impact on the tenants' ability to comfortably occupy and utilize the rental unit and that this adverse impact warrants compensation. I am satisfied that there was a reduction in the value of the tenancy as a result of the deficient heating system, as I find that the evidence shows there was an impact to the tenants' right to be provided a rental unit which complied with the requirements of section 32(1) and that the landlord's failure to comply with section 32 of the Act subsequently resulted in a nominal reduction in the value of the tenancy as a result of ongoing heating issues.

Based on the evidence submitted, I find that there was some impact on the tenancy due to the loss of heat and related deficient thermostats. Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances.

Under the circumstances, I will determine an amount by which the value of the tenancy was reduced in order to grant compensation via a retroactive rent reduction which reflects that the tenants did suffer some loss in the value of the tenancy due to the ongoing loss of heat and deficient heating system.

Section 32 of the Act provides, in part, the following:

> ***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, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Additionally, to underscore the importance of ensuring that a rental unit has an adequately functioning primary heating system, I note that section 33 of the Act provides, in part, that emergency repairs are defined as being urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing the primary heating system.

Although I acknowledge that once notified of the problem with respect to the heating system, the landlord did undertake an effort to have personnel attend the rental unit on multiple occasions to fix the heating system, and permitted the tenants to have their own electrician attend the unit to fix the problem, the central issue is that notwithstanding the landlord's efforts, the issues with the heating system were not completely fixed until January 05, 2019. Therefore, I find that the landlord failed to adhere to section 32 of the Act by not ensuring the rental unit had a properly functioning heating system.

The tenants provided that the heating system failed to provide heat to one of the bedrooms on the upper floor of the unit, which was used as a bedroom for the tenants' child, rendering it cold during the fall and winter months. I find that it was a reasonable measure for the tenants to acquire an alternative heat source in the form of a portable electric heater to ensure that the room was adequately heated. The use of the portable electric heater for a prolonged period likely resulted in additional electricity charges, for

which I find the tenants are entitled to monetary compensation in the form of a rent reduction, since the tenants did suffer a loss of value of their tenancy for providing rent despite not receiving services such as a properly-functioning heating system and having to acquire such services via alternate methods. As a result, the tenants experienced increased electricity usage despite not being able to substantiate the empirical value of the additional usage.

Notwithstanding the foregoing, I must also consider that the tenants bear some measure of responsibility for failing to adequately mitigate the heating issue, as required under section 7(2) of the *Act.* The tenants testified that that after the electrician attempted to fix the heating issue in mid-October 2018, the issues persisted after that point throughout November 2018 and into December 2018. It was not until December 01, 2018 that the tenants notified the landlord that the issues with the deficient heating system were not resolved in mid-October 2018.

Therefore, by waiting until December 01, 2018 to notify the landlord, the tenants failed to mitigate the issue by letting the deficient heating issue persist and linger for the entirety of November 2018 without making any efforts to notify the landlord, as doing so would have given the landlord an opportunity to address the problem much sooner, thereby potentially resolving the problem in November 2018 without having it persist and linger until January 05, 2019.

I accept the evidence provided by the tenants that in total, one bedroom, two bathrooms, and the large den were left cold and without heat for a prolonged period of time. The other rooms, such as the great room and master bedroom, did not provide a comfortable range of heat, such that the heat was excessive. I find that the excessive temperature at which the heat began working likely resulted in an increase in electricity charges.

In effect, the loss of heat in the den, which represents a large portion of the living space on the lower floor, as well as loss of heat in one of the two upper bedrooms, resulted in the tenants being unable to comfortably live in a significant portion of the total space which comprises the total area of the rental unit. The use of the rental unit was exacerbated by some rooms being excessively hot if the tenants attempted to turn-on the heating system. Therefore, I find that tenants' ability to comfortably occupy the rental unit, along with their entitlement to quiet enjoyment, was significantly diminished due to the lack of heat in certain rooms, accompanied by a deficient heating system providing only unnecessarily excessive heat in others.

Based on the foregoing, I find that the tenants are entitled to a retroactive reduction in rent pursuant to section 65 of the Act. The tenants have requested monetary compensation in the amount of $6,000.00 which is based on a reduction of value in their tenancy of $1,000.00 each month for a period of six months. This $1,000.00 reduction each month represents a 44% reduction in the monthly rent for that period. After considering the cumulative issues and factors identified above, I find that the 44% reduction in the monthly rent to be an appropriate and reasonable deduction for a significant loss of use of the rental unit for a period of six months.

The tenants effectively lost use of half of the upper portion of the rental unit, since the unit is a two-bedroom townhouse and the lack of heat in one of the bedrooms rendered the use of that room impractical were it not for the tenant's decision to provide alternative heat via a portable electric heater. The tenants lost use of a significant portion of the lower floor of the unit, since the lack of heat in the den represented loss of use of a significant portion of the living space on that floor.

Additionally, the heat did not work in either of the upper bathrooms and the deficient heat in the remaining rooms resulted in heating issues impacting the entire rental unit. Also factored into permitting the rental reduction is the consideration of the likely increase in electricity usage to provide a portable heater and to account for additional electricity usage due to the deficient heating system resulting in it functioning only at very high temperatures. Therefore, in light of the foregoing, a rental reduction of 44% is reasonable.

Despite the foregoing, I find that the tenants have not substantiated that the heating issues encompassed the entirety of a period of six months. Based on the evidence before me, although the tenants noticed a problem with the heating system in August 2018, they did not notify the landlord of the heating issue until September 2018, and the matter was resolved on January 05, 2019. Additionally, I accept that the months encompassing the period of September 2018 to December 2018 are fall and winter months during which a lack of heat can significantly reduce a tenant's use of the rental unit. The tenants did not provide evidence or testimony to sufficiently establish that lack of heat impacted them during the summer month of August 2018 in the same fashion that it did from September 2018 onward, such that their ability to use and occupy the rental unit was diminished such that compensation is warranted for that month.

Therefore, I find that the heating issue impacted the tenants and persisted for the four months encompassing the period of September 2018 to December 2018, and for five days in January 2019.

However, as stated earlier, I find that the tenants failed to mitigate the heating issue by not notifying the landlord until December 01, 2018 after noticing in mid-October 2018 that the issues were not resolved. As a result, by leaving the heating issue unaddressed for the month of November 2018 and not allowing the landlord to remedy the issue during that month, the tenants bear some degree of responsibility for not having mitigated the issue and the accompanying loss, as required under section 7(2) of the Act. As a result, although the heating issue likely impacted the tenants during the period of September 2018 to December 2018, in determining the amount by which the value of the tenancy was reduced, I will not take into account the month of November 2018.

The tenants are therefore entitled to compensation in the amount of $3,000.00 for the months of September 2018, October 2018, and December 2018. Using a 31-day month, a per diem rate of $32.00 is calculated in lieu of $1,000.00 for the entire month of January. Therefore, five days at a rate of $32.00 per day results in compensation in the amount of $160.00 for the heat issue for the month of January 2019.

Based on the foregoing, pursuant to section 65 of the Act, the tenants are granted a monetary award of $3,160.00 in the form a retroactive rent reduction as a representation of a reduction in rent due to a reduction in the value of a tenancy arising from the loss of heat and associated heating issues with the deficient thermostats.

With respect to the tenants request for compensation in the amount of $2,000.00 for a reduced value of the tenancy, I find as follows.

The question of what occurred is not an easy determination to make when weighing conflicting verbal testimony. In the matter before me, I find that, on a balance of probabilities, it is more likely than not that the landlord's testimony represents a factual and likely depiction of events in respect of the issues comprising the tenants' broad request for compensation in the amount of $2,000.00. Overall I find that the landlord's testimony and submissions accord with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable.

The often cited test of credibility is set out in *Faryna v Chorny,* [1952] 2 DLR 354 (BCCA) at p.357:

> The real test of the truth of the story of a witness… must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find that the landlord's testimony accords with the evidentiary material provided to file. I find that the landlord's testimony was logical and reliable. Therefore, in determining the more likely version of events, I find that it is more likely than not that the landlord's testimony provides an accurate and genuine depiction of events which transpired Therefore, I prefer the landlord's testimony in making the findings to follow.

The tenants have listed a number of items in this section, without providing a value of the purported loss for each item; rather, the entirety of the loss for all items has been set a general value of $2,000.00. The tenants provided that the loss associated for the issues was calculated at $333.00 each month, over a period of six months, which represents a reduced value of 15% of the monthly rent.

I dismiss the tenants' request for compensation on the basis that the landlord did not install a lock or security gate on the stairways providing access to the underground area such as the parkade. The tenants have not demonstrated that they suffered a loss as a result of the landlord violating the Act or a term of the tenancy agreement related to this issue. There is no evidence before me that provides that the installation of a lock or gate on the stairways was a term—or a material term—of the tenancy agreement. I accept the landlord's testimony and submissions that the parties did not discuss the issue of a lock or security gate prior to entering into a tenancy. Additionally, I find that the landlord's explanation that after consultation with the fire department, it was determined that the installation of a gate at the entrance to the stairways posed a safety concern in the event of a fire is a reasonable consideration to factor in deciding to not purse the installation. The tenants' request for compensation for this matter is dismissed without leave to reapply.

I dismiss the tenants' request for compensation on the basis that the landlord did not provide them access to security cameras. The tenants have not demonstrated that they suffered a loss as a result of the landlord violating the Act or a term of the tenancy agreement related to this issue. There is no evidence before me that provides that having access to security cameras was a term—or a material term—of the tenancy agreement. I accept the landlord's testimony and submissions that the parties did not discuss the issue of the tenants being provided access to the security cameras prior to entering into a tenancy.

I accept the landlord's testimony that there was no violation of the Act or tenancy agreement, as the tenants were not promised this access as a provision of their tenancy. Additionally, the landlord cited that the strata did not approve providing security camera access to any occupants of the townhouse complex due to privacy concerns, and I accept that the strata's stance provides a reasonable and

understandable barrier to making an exception for the tenants. Therefore, the tenants' request for compensation for this matter is dismissed without leave to reapply.

I dismiss the tenants' request for compensation on the basis that they were unable to use the north staircase due to water pooling at the bottom of the stairwell. Although I sympathize with the tenants that having to use the south staircase added some minor additional time in order to access the underground facilities, such as parking, I find that the tenants were not denied access to the underground portion of the townhouse complex. I accept the landlord's testimony as reasonable that although there was water pooling at the bottom of the north stairwell, all occupants had use of the south staircase, which did not have similar water pooling issues, and that no occupants were denied access to the underground area.

The central argument forwarded by the tenants was that the north staircase was a quicker, more convenient route to take in order to access the underground area. However, it remained open to all occupants, including the tenants, to utilize the south staircase, as that staircase did not present with any issues that prohibited its normal use. Therefore, I find that the tenants were not denied access to the underground area to access parking, as a functioning, viable alternative was available to them in the form of the south staircase. The tenants' request for compensation for this matter is dismissed without leave to reapply.

I dismiss the tenants' request for compensation on the basis that the landlord delayed the installation of a door to the den, which effectively altered the den—which was previously open to the other areas of the lower floor—to become an enclosed room. There is conflicting testimony as to whether the enclosure of the den via installation of a door was a provision promised to the tenants by the landlord, or whether the landlord made no such promise. I find that the installation of a den door was not a provision agreed-to as part of the tenancy agreement. Therefore, I find that the landlord did not violate the terms of the tenancy agreement, or any part of the Act, resulting in the tenants suffering a loss or reduced value of the tenancy.

I further find that based on the testimony, evidence, and submissions provided by both parties, the installation of the den door was an ongoing discussion between the parties, for which no specific timeline was agreed to. I also accept the landlord's testimony that he undertook efforts to acquire a suitable door, but subsequently had reservations about altering the den solely to accommodate the request of the tenants after they expressed that they may wish to end their tenancy. I find that such reservations on the part of the landlord were reasonable, as it would be impractical to significantly alter a rental unit to accommodate the requests of tenants who advised that they may end the tenancy

shortly after it began. Therefore, I find that the landlord cannot be held liable for any delay in installing the den door, if the delay was the result of reasonable apprehension on the part of the landlord arising from comments made by the tenants to end the tenancy.

Despite the comments made by the tenants to end the tenancy, and the landlord's apprehension, the landlord did install the den doors by January 05, 2019. Based on the testimony and submissions before me, I find that the landlord's delay in installing the den doors does not constitute a violation of the *Act*, *Regulation* or tenancy agreement. Therefore, the tenants' request for compensation for this matter is dismissed without leave to reapply.

I find that the findings made with respect to the issue of the den door apply to the issue of the installation of the keyed patio door lock. As stated earlier, the onus is on the party bringing for the claim—the tenants—to demonstrate the landlord violated the *Act*, *Regulation* or tenancy agreement, and I find that with respect to this issue the tenants have not done so. The tenants have not shown that the installation of the patio door lock was a term of the tenancy agreement. The evidence and testimony before me depicts that the parties verbally discussed the installation of the patio door lock, and that such discussions were devoid of any concrete, agreed-upon timelines by which the parties determined the landlord would install the lock.

Notwithstanding the foregoing, I find that the landlord has shown—by way of email correspondence with the distributor of the patio door locks as early as July 2018—that he undertook an effort to acquire a lock suitable to the patio door. Additionally, the landlord scheduled for a tradesperson to attend the rental unit on December 21, 2018. However, the lock was not installed on that day due to a disagreement between the tenant and a representative of the landlord.

Based on the respective testimony, evidence, and submissions provided by both parties, I find that both parties bear some measure of responsibility for the disagreement with respect to the timing of the scheduled installation on December 21, 2018, and that the incident cannot be attributed solely to any purported mishandling on the part of the landlord. I find that the tenant CB bears some degree of responsibility for being unwilling to accommodate the time at which the landlord's representative wished to enter the rental unit to install the lock, since the scheduled installation date and approximate time was previously agreed to by both parties. The email exchange between the parties on December 21, 2018 depicts that CB displayed some measure of inflexibility to accommodate the tradesperson in order to ensure that the lock was installed on that day.

Based on the testimony and submissions before me, I find that the landlord did not violate the *Act*, *Regulation* or tenancy agreement by not installing a lock on the sliding patio door. Therefore, the tenants' request for compensation for this matter is dismissed without leave to reapply.

I grant the tenants' request for compensation arising from not having an adequately functioning electrical outlet which prevented the microwave from properly operating for a period of six months. The evidence and submissions provided with respect to this issue were not disputed by the landlord. The tenants have not provided an exact value of the loss arising from their inability to use the microwave for this period of time. Therefore, I find that it is reasonable to award nominal damages to the tenants for this loss. The tenants have listed six different issues under their broad request for compensation and retroactive reduction in rent in the amount of $2,000.00. As the tenants were successful in only substantiating one of the six issues that comprise this portion of their claim, I find that a nominal damages award calculated at one-sixth of $2,000.00 is appropriate for the loss of use of the microwave. Therefore, the tenants are awarded nominal damages in the amount of $333.33 for the loss of use of the microwave.

The tenants requested compensation, in the form of a reduction in rent equalling the entirety of the rent paid for January 2019 and February 2019, totalling $4,500.00.

Regarding the tenants' claim for compensation for the entirety of the rent paid for these months, when establishing if monetary compensation is warranted, I find it important to note that Residential Tenancy Policy Guideline # 16 (Policy Guideline 16) outlines that 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the four-part test cited earlier in the decision is applied.

The claimant must **prove the existence of the damage/loss** (emphasis added), and that it stemmed from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the **claimant must then provide evidence that can verify the actual monetary value of the loss or damage** (emphasis added). In this case, the onus is on the tenants to prove their claim for a monetary award.

I find that after reviewing the testimony, evidence, and submissions before me, the tenants have not demonstrated the basis on which they seek compensation predicated

on the notion that the value of their tenancy was reduced by a factor equivalent to the complete amount of rent owed for the months of January 2019 and February 2019. The tenants have not provided any particulars to establish whether the landlord failed to comply with the Act, regulation or tenancy agreement during this period. The tenants have not shown that they suffered a loss during this period as a result of any particular non-compliance on the part of the landlord—apart from the issues discussed and already adjudicated in the preceding sections of this decisions.

Based on the foregoing, I find the tenants have submitted a request for monetary compensation equivalent to a rent reduction for the total rent paid for January 2019 and February 2019 without providing any justification as to what this request is based on. Based on the foregoing, I find that tenants have failed to satisfy the four-part test, as outlined in Policy Guideline 16, as they have not proven the amount of, or value of, the purported damage or loss, as the onus to do so rests with the tenants—or the particulars of any purported violation on the part of the landlord on which any such claim can be predicated on. Accordingly, the tenants' request to be compensated, in the form of a reduction in rent equivalent to the rent paid for the months of January 2019 and February 2019 is dismissed without leave to reapply.

As the tenants were partially successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for this application pursuant to section 72(1) of the Act.

Based on the foregoing, the tenants are granted a total monetary award in the amount of $3,593.33.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of $3,593.33 against the landlords, calculated as follows:

Item	**Amount**
Loss of heat and associated heating issues with the deficient thermostats	$3,160.00
Loss of use of microwave	$333.33
Recovery of filing fee	$100.00
Total Monetary Award to Tenants	**$3,593.33**

The tenants are provided with a Monetary Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: May 01, 2019

Residential Tenancy Branch