Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDL –S; FFL, MNSD, MNDCT, FFT

Introduction

This review hearing dealt with monetary cross applications. The landlord applied for a Monetary Order for damage to the rental unit and authorization to retain the tenants' security deposit. The tenants applied for return of their security deposit and damages or loss under the Act, regulations or tenancy agreement.

A hearing was originally held on February 25, 2019; however, the landlord did not appear for that hearing and a decision was issued based on the submissions of the tenants only. The landlord applied for review consideration and a new hearing was ordered.

This review hearing commenced on April 2, 2019 and was held over two dates. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

An Interim Decision was issued on April 2, 2019 and should be read in conjunction with this decision.

At the outset of the reconvened review hearing, the landlord pointed out a typographical error in the style of cause. I have amended the style of cause on this final decision to reflect the correct spelling of names of the parties.

Issue(s) to be Decided

1. Should the original decision and Monetary Order issued on February 25, 2019 be upheld, varied or set aside?
2. Has the landlord established an entitlement to compensation in the amounts claimed against the tenants for damage to the property?
3. Have the tenants established an entitlement to compensation in the amounts claimed against the landlord for utilities and return of rent?
4. Disposition of the security deposit.

Background and Evidence

The tenancy started in 2015 although the parties provided different submissions as to which month it started. The landlord testified the tenancy started on September 1, 2015. The tenants submitted the tenancy started on December 1, 2015. The parties were in agreement that the tenants paid a security deposit of $600.00. The parties also provided consistent testimony that they executed fixed term tenancy agreement every six months. The first tenancy agreement required the tenants to pay rent of $1,200.00 on the first day of every month. In addition to rent, the landlord required the tenants to pay him 100% of the electricity and natural gas bills for the property even though this was not expressly stated in the written tenancy agreement. The landlord occupied one floor of the three floor building, or approximately 1/3 of the floor space and the landlord had shared use of the laundry facilities and use of the garage. The last tenancy agreement executed by the parties had an expiry date of August 31, 2018. The tenants vacated the rental unit on August 15, 2019 and returned possession of the rental unit to the landlord on August 16, 2018. The tenants provided their forwarding address to the landlord in an email dated September 2, 2018.

The parties provided opposing submissions concerning the move-in inspection. The landlord testified that he was not present for the move-in inspection and the tenant gave the landlord a copy of a move-in inspection report. The tenant had signed the inspection report and the landlord stated he did not know why he did not sign the inspection report. The tenants testified that the landlord was present for the move-in inspection and he provided the tenants with a blank inspection report. The tenants proceeded to complete the inspection report and sign it and gave a copy to the landlord. The tenants did not know why the landlord was not completing the move-in inspection report.

As for a move-out inspection, the parties met at the property when the tenants returned possession to the landlord and inspected the property; however, the landlord did not prepare a move-out inspection report. The tenants stated the landlord had the condition inspection report with him but did not write anything down on the report.

Landlord's application

On September 15, 2018 the landlord made a claim to seek compensation from the tenants in the sum of $5,925.23. Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Yard work -- $60.00 + $140.00

The landlord submitted that after the tenancy ended the lawn needed to be mowed, the garden weeded; pruning; removal of weeds and dead vegetation; and, pressure washing. The landlord hired a person to do this work at a total cost of $200.00 that he seeks to recover this sum from the tenants. The landlord described how the tenants are responsible for yard work pursuant to their tenancy agreement. The landlord acknowledged that there were no areas of the yard designated for exclusive use by the tenants or the landlord.

The tenants submitted they left the yard tidy and clean at the end of the tenancy. The tenant testified that he had mowed the lawn the week prior to moving out and when they were moving out the landscaper was already at the property. The tenants acknowledged they did the vast majority of the yard work during their tenancy even though they did not have exclusive use of the yard, except for a back patio area they did have exclusive use of, but claim they did so as a courtesy.

The tenants pointed out that the receipts submitted by the landlord included pressure washing and they are not responsible for that in any event.

Painting -- $2,725.00

The landlord submitted that he had the entire rental unit repainted after the tenancy ended at a cost of $2,725.00 that he seeks to recover that amount from the tenants. The landlord testified that he did not know when the unit was last painted but claims the tenants are responsible for repainting the unit because the unit smelled of cigarette smoke from the tenants smoking in the unit.

The tenants denied smoking in the rental unit during their tenancy and stated they smoked outside. The tenants stated the landlord never complained to them about smoking in the rental unit during their tenancy even though he was in the rental unit a number of times.

The landlord responded by stating he was in the downstairs area to do laundry and access the electrical panel but he was not upstairs where the smoke damage was and he did not notice the unit was damaged by smoke until the carpet cleaners came. The landlord submitted that the contractors he hired also commented on the strong smell of smoke.

The tenants were of the position the paint job was old and they could see stains from where photographs used to hang on the wall when their tenancy started which is why they asked for permission to paint when they moved in which is noted on the move-in inspection report. The tenants did not paint the unit during their tenancy.

The tenants also stated that there was water damage to the ceiling and around the windows. The landlord testified that he fixed the rook leak. The tenants acknowledged the landlord fixed the roof leak but stated the water damage was still evident.

Living room drapery replacement -- $761.60

The landlord submitted that the living room drapery was damaged by cigarette smoke from the tenants smoking in the unit and the drapery could not be cleaned without damaging the drapes according to the cleaners he consulted. The landlord obtained a quote to have the drapery replaced at a cost of $761.00 and he seeks to recover that amount from the tenants. The landlord stated the drapery was new in 2014.

The tenants submitted that the drapery was already frayed and falling apart when they moved in because it was very old. The drapery also had water stains due to moisture by the windows.

Carpet replacement -- $2,724.52

The landlord submitted that he intends to replace the carpeting in the living room and dining room due to smoke damage caused by the tenants, at a cost of $2,724.00, and he seeks to recover this anticipated cost from the tenants. The landlord also stated that the carpeting had holes and stains at the end of the tenancy. The landlord testified that he rented an ozinator in an attempt to remove the smoke smell but the result was not

satisfactory. The landlord acknowledged the unit was re-rented with the existing carpet in place because the new tenants were willing to accept the unit without new carpets. The landlord claims the carpeting was new in 2014.

The tenants submitted that the carpeting was much older than what the landlord is claiming it to be as demonstrated by worn nap in some areas, stretched carpeting, and yellow stains that they believe to be urine from the landlord's elderly mother when she lived in the unit.

The tenants acknowledge that they caused a stain by the kitchen but claimed they had it cleaned.

Drapery cleaning -- $114.11

The landlord seeks to recover the cost to clean the kitchen and dining room drapes in the amount of $114.00. The landlord submitted receipts to show he cleaned two draperies.

The tenants agreed that they owe for cleaning the dining room drapes but claim they had washed and folded the kitchen drapes at the end of the tenancy.

Tenants' application

Below, I summarize the tenants' claims against the landlord and the landlord's responses.

Return of security deposit -- $600.00

The tenants seek return of their security deposit in the amount of $600.00. The landlord made a request to retain the tenant's security deposit within 15 days of receiving a forwarding address from the tenants and I shall make a determination as to whether the landlord may make deductions or retain the tenants' security deposit under the landlord's application. In the event the landlord is unsuccessful in establishing an entitlement to compensation in an amount that exceeds the security deposit, the security deposit, or balance remaining after authorized deductions, shall be ordered to be returned to the tenants.

Refund of rent -- $670.00

The tenants seek a refund of rent paid for August 16 – 31, 2018 on the basis they did not occupy the rental unit during those days, even though they paid rent for the month, and the landlord and his contractors accessed the rental unit. The tenants acknowledged that they returned possession of the rental unit to the landlord on their own free will and were not forced out of the property.

The landlord pointed out that the tenancy agreement was set to expire August 31, 2018 and that access to the rental unit during the last half of August 2018 mitigated losses the landlord suffered due to the condition the tenants left the rental unit.

Refund of utilities paid to the landlord -- $3,414.40

The parties provided consistent testimony that the electricity and the natural gas accounts for the subject residential property were in the landlord's name and the landlord required the tenants to pay 100% of the electricity and natural gas bills to him throughout all their tenancies. The parties also provided consistent testimony that the electricity paid for by the tenants included electricity consumed in the landlord's unit, the common laundry facilities and the garage; and, the natural gas fueled the central furnace that provided heat to both units.

The tenants provided a spreadsheet detailing the payments they made to the landlord throughout their tenancies in support of their claims. The landlord argued the tenants' claim should be dismissed because they did not provide copies of the actual utility bills before the original hearing date; however, the landlord confirmed the bills were in his name, that he informed the tenants as to how much they had to pay him for utilities, and the landlord did not dispute the accuracy of the amounts appearing on the tenants' spreadsheet.

The tenants were of the position that paying for the landlord's consumption of electricity and natural gas was unconscionable. The tenants are of the position they should be refunded 40% of the electricity they paid to the landlord. The tenants estimated 40% taking into account that 1/3 of the floor space of the building was dedicated to the landlord's living accommodation, plus the landlord used the common laundry facilities in the basement and used the garage. In addition, the tenants seek return 100% of the natural gas they paid to the landlord as their tenancy agreement provides that natural gas is included in rent, with the exception of the tenancy agreement for the period of

September 2017 through February 2018 since the tenancy agreement does not indicate natural gas is included in rent. For the period of September 2017 through February 2018 the tenants seek a refund of 40% of the natural gas they paid to the landlord as an approximation of the natural gas consumed by the landlord.

The tenants testified that when they entered into the first tenancy there was no discussion that they would be paying for the landlord's share of utilities and it was not until he presented them with the first utility bill did they discover the landlord wanted them to pay for his utilities. The tenants claim they did pay the utilities as demanded by the landlord as they found him to be aggressive and if they did not pay what he wanted he would harass them through emails. The tenants provided the landlord with the Tenant Survival Guide with a view resolving the conflict but the landlord responded by taking the position that it did not apply to their agreement.

The tenants stated that they complained about the fairness of the arrangement to the landlord periodically, to no avail, and they continued to enter into subsequent fixed term tenancy agreements because there was almost no rental accommodation available in the area. The tenants stated they did not apply for dispute resolution sooner because they wanted to avoid confrontation and because they were unfamiliar with the dispute resolution process.

The landlord submitted that when the first tenancy formed he explained to the tenants that they would have to pay for all of the utilities at the property, including utilities consumed by him and in his living unit and the tenants agreed to the arrangement. The landlord explained that he is away two months every year and that during the week he stays at his girlfriend's house often so he is only occupying the residential property 50 – 60% of the time. The landlord was of the position it would be too difficult to try to apportion the utility bills especially since there is only one meter for the two living units and the amount of time he spends at the property varies. The landlord also pointed out that the thermostat for the furnace was located in the tenant's unit so they were free to set the temperature they desired.

The landlord acknowledged that the tenants "grumbled" about having to pay all of the utilities but denied that he acted aggressively toward them. The landlord was also of the position that they tenants continued to enter into successive fixed term tenancy agreements because the rent was a good deal.

The landlord claimed that the tenants were compensated for the utilities incurred by the landlord in setting the monthly rent below market. The landlord testified that when he

first considered renting the unit he saw advertisements for other rental units going for $1,800 to $2,500 per month and he set the rent for the rental unit at $1,200.00 to attract tenants who would maintain the property as their own. The tenants disputed that the rent was below market. The tenants testified that rental units were going for $1,100 to $1,300 per month and that in the past they have had to pay only a portion of the utilities where utilities are shared and they had expected the same for this rental unit.

The landlord was of the potion the tenants are only making this claim because he made a claim against them for damage to the rental unit and it is retaliatory in nature.

With respect to the requirement for the tenants to pay all utilities as being unconscionable, the landlord argued that the Shared Utility Service section of Residential Tenancy Policy Guideline 1 does not apply since he did not require the tenants to put the utility accounts in their names.

The section to which the landlord referred states as follows:

> **SHARED UTILITY SERVICE**
> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable[5] as defined in the Regulations.
>
> 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

The landlord was of the position that leaving the accounts in the landlord's name and having the tenants pay him 100% of the utility bill is distinct from the circumstance described in the policy guideline and, as such, the policy guideline does not apply in this case.

Analysis

Pursuant to section 82(3) of the Act, after a review hearing is conducted, the reviewing Arbitrator may either: uphold, vary or set aside the original decision. The decision and Order issued on February 25, 2019 was made based on the submissions of one party only whereas this review hearing decision has been made after both parties have had the full opportunity to be heard and make submissions in support of their respective claims and in response to the claims against them. Accordingly, I find it most

appropriate that the original decision and Monetary Order of February 25, 2019 be set aside and replaced by this decision, and the Monetary Order that accompanies it.

Upon consideration of everything before me, I provide the following findings and reasons with respect to both of the monetary applications before me.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, 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,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a different version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Landlord's application

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Monetary awards are intended to be restorative, and not an enrichment or betterment for the applicant. Where a party claims that an item is so damaged that it requires replacement, it is often appropriate to reduce the replacement cost by depreciation of the item replaced. Residential Tenancy Policy guideline 40 provides that average useful life of building elements and, where appropriate to estimate depreciation, I shall refer to the policy guideline.

Section 23 and 35 of the Act provide that condition inspection reports are required to be prepared by the landlord at the start and end of every tenancy. One of the primary purposes for preparing a condition inspection report is to document the condition of the rental unit at the start and end of the tenancy with a view to avoiding disputes. This is consistent with section 21 of the Residential Tenancy Regulations which provides for the evidentiary weight of a condition inspection report in a dispute resolution proceeding. Section 21 provides as follows:

> **Evidentiary weight of a condition inspection report**
>
> **21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, I find the landlord failed to meet his burden to prepare condition inspection reports at the start and end of the tenancy. Not surprisingly, the parties are now in dispute as to the condition of the rental unit at the start and end of the tenancy.

The landlord provided receipts and quotes in support of his claims, the move-in condition inspection report prepared by the tenant at the start of the tenancy, but no photographs.

Taking into account all of the above, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

Yard work

The Addendum to the last tenancy agreement provides the following additional term regarding yard work:

> 3. Tenants agree to maintain the yard, lawn and garden in a neat, clean and workmanlike manner in accordance with the standards of the neighborhood.

Parties are at liberty to enter into additional terms of tenancy that are not specifically provided for in the Act; however, a term may be found to be unenforceable. Section 6(3) of the Act provides for unenforceable terms as follows:

> (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it

Section 32 of the Act places obligations upon a landlord and a tenant to repair and maintain a property. Residential Tenancy Policy Guideline 1 was developed as an aid to help clarify the responsibilities of a landlord and a tenant regarding maintenance, cleaning and repairs of residential property.

Residential Tenancy Policy Guideline 1 provides the following policy statements, in part, with respect to property maintenance:

> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
>
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
>
> 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
>
> 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

In this case, the tenants occupied one of two living accommodation units on the property, and I find the subject property to be a multi-family dwelling. I heard the tenants did not have exclusive use of the yard, with the exception of a back patio. In keeping with policy guideline 1 I find the landlord responsible for pruning, pressure washing, weeding and mowing.

While the addendum appears to place obligation on the tenants to maintain the property I find that term exceeds the obligation placed on tenants to maintain a multi-family property and I decline to enforce the term in the addendum. Therefore, I dismiss the landlord's claim for property maintenance against the tenants.

Painting

Residential Tenancy Policy Guideline 40 provides that interior paint has an average life of four years.

In this case, the tenants occupied the rental unit for approximately three years and in that time the landlord did not paint the unit. In fact, the landlord could not recall the last time the unit was painted.

While the landlord maintained the unit smelled of smoke, I find the unit was most likely in need of repainting in any event due to its age and wear and tear over several years. Therefore, I dismiss the landlord's claim for repainting the unit.

Living room drapery

Residential Tenancy Policy Guideline 40 provides that drapery has an average useful life of 10 years.

The parties were in disputes as to the age and condition of the drapery at the start of the tenancy.

The landlord claimed the drapery was new in 2014 and the tenants asserted that it was much older than that. The move-in inspection report provided to me by the landlord does not include any description or notation regarding the living room drapery.
The landlord did not provide evidence to support the purchase of drapery in 2014 as he claimed. Nor, did he provide photographs of the drapery for my review. Accordingly, I find the landlord has not met his burden to substantiate his claim that the living room drapery was nearly new at the start of the tenancy.

While the landlord was of the position the drapery smelled of smoke at the end of the tenancy, the landlord claims to have rented an ozonator but I note that he did not provide a receipt to corroborate that or request compensation from the tenants for rental

of an ozonator. I find that peculiar since he provided various other receipts and invoices for this case and I have significant doubts he did rent an ozonator.

The landlord also claims to have taken the drapery to the cleaners but that the cleaners indicated the drapery could not be cleaned without damaging the drapery. I find this submission is consistent with the drapery being old and frayed as described by the tenants.

I find I am unpersuaded that the living room drapery was new in 2014, as claimed by the landlord, and I find it more likely than not that it was old and frayed, as described by the tenants based on the all of the evidence before me. I find it considerably likely the drapery was in need in replacing due to age and wear and tear and I deny the landlord's request to recover the cost of new drapery from the tenants.

Carpeting

Residential Tenancy Policy Guideline 40 provides that carpeting has an average useful life of 10 years.

The parties were in disputes as to the age and condition of the carpets at the start of the tenancy. The landlord claimed the carpeting was new in 2014 and the tenants asserted that it was much older than that and stained at the start of the tenancy.

The move-in inspection report provides space to describe the "floor" in the living room and the only thing written is: "carpet". The condition of the carpet was not described. Nor, was there any space to describe the floor in the dining room. Ultimately, it was the landlord's obligation to accurately and sufficiently describe the condition of the flooring in the rental unit on a condition inspection report and he failed to do so. The landlord did not provide other evidence to corroborate his position that it was installed in 2014 as he claimed such as an invoice or photographs.

While the landlord was of the position the carpeting smelled of smoke at the end of the tenancy, the landlord claims to have rented an ozonator but did not provide a receipt to corroborate that and did not make a claim against the tenants for recovery of the rental cost. As I stated in the previous section that dealt with the drapery claim, I find that peculiar given the landlord provided various other receipts and invoices and I have significant doubts he rented an ozonator as he claims.

Given the above, I find I am unpersuaded that the carpeting was new in 2014, as claimed by the landlord, and I find it more likely than not that it was old, worn and stained, as described by the tenants, based on the evidence before me. I find it considerably likely the carpeting was in need in replacing due to age, pre-existing stains, and wear and tear and I deny the landlord's request to recover the cost of new carpeting from the tenants.

Drapery cleaning

The tenants agreed that they owe for cleaning of the dining room drapery and I award the landlord $64.50 based on the receipt he produced for drapery cleaning.

The tenants opposed the landlord's request to recover the cost to clean the kitchen drapes. I find the lack of a move-out inspection report, photographs, or other evidence fails to persuade me that the kitchen drapery required cleaning and I deny that portion of the landlord's claim.

Filing fee

Given the landlord's minimal success in his application, I make no award to the landlord for recovery of the filing fee he paid.

Security deposit

The landlord is authorized to deduct $64.50 from the tenants' security deposit and is ordered to return the balance of the security deposit, or $535.50 to the tenants without further delay.

Tenant's application

Security Deposit

The security deposit has been disposed of under the landlord's Application as seen above. The Monetary Order provided to the tenants with this decision includes the balance of the security deposit owed to the tenants in the amount of $535.50.

Return of rent

The tenants had a fixed term tenancy agreement set to end on August 31, 2018. The tenants paid rent for the month of August 2018 but vacated the rental unit and returned possession of the unit to the landlord on their own free will on August 16, 2018. In order to establish an entitlement to receive a rent refund, the tenants need to demonstrate the landlord violated the Act, regulations or their tenancy agreement and they suffered loss of use of the rental unit due to such a violation. The tenants did not demonstrate that they returned possession of the rental unit before the expiry date of their fixed term tenancy agreement due to a violation on part of the landlord. Nor, did they establish an entitlement to a refund of rent for a portion of August 2018 due to any other provision in the Act. Therefore, I dismiss this portion of the tenants' claim.

Refund of utilities

The first tenancy agreement before indicates the term of the tenancy was from December 1, 2015 to February 28, 2016. The tenants submit that the first tenancy agreement was extended to August 31, 2016 before being replaced with a new six month tenancy agreement. The tenants' submission appears consistent with the tenancy agreements they submitted for my review.

The first tenancy agreement indicates rent is $1,200.00 and natural gas was included in the rent, but electricity was not included. I do not see any indication in the tenancy agreement that the tenants would have to pay natural gas to the landlord or electricity for the entire property, yet it was undisputed that the landlord required the tenants to do so and they did.

The tenants stated that in entering in the tenancy they had expected to pay a portion of the electricity bill since they were using a portion of the property. The landlord claims to have explained to the tenants that they would pay 100% of the utilities prior to entering into the first tenancy agreement and that as an offset the rent was set at below market; however, such an agreement with offsetting compensation is not detailed in the tenancy agreement that the landlord prepared. I find the consistent testimony that the tenants expressed disagreement or "grumbled" about having to pay all the utilities consistent with their position that they had not agreed to pay 100% of the utilities when they entered into the first tenancy agreement. Accordingly, I find it appropriate to enforce the tenancy agreement as it was written.

Based on the first tenancy agreement, as it was written, I find the landlord was not entitled to collect natural gas from the tenants since it was included in their monthly rent payment of $1,200.00. Although electricity is not included in rent, the tenancy agreement does not stipulate the portion of the electricity bill the tenants would have to pay. Where a tenant is required to pay for electricity and there is one utility meter and multiple units, it is customary for the tenants to pay a portion of the utility bill and that portion is stipulated in the tenancy agreement. However, the tenants' portion was not specified in this case and I find the tenants' expectation that they would pay a portion of the electricity bill to be reasonable. I do not see in the tenancy agreement that the tenant were required to pay 100% of the electricity bill but had an offsetting compensation by way of below market rent, as submitted by the landlord, and I find the landlord's demand that they pay 100% of the electricity bill is not supported by the tenancy agreement and is unconscionable.

While I appreciate it is difficult to apportion the electricity usage since there was only one electricity meter, I find a reasonable allocation to be based on square footage and/or the number of occupants, which in this case would be a 2/3 and 1/3 split with 2/3 being payable by the tenants. While the landlord also had use of the laundry facilities and the garage, I also heard consistent testimony that the landlord was away a considerable amount of time so I find it reasonable to leave the split at 2/3 and 1/3.

In light of the above, I find the tenants are entitled to recovery of the natural gas bill they paid and 1/3 of the electricity bills they paid during their first tenancy agreement, including the extension of the first agreement. However, I make no award for recovery of utilities beyond the first agreement, as extended, since an applicant must take reasonable action to mitigate their losses. I find it reasonable to expect that the tenants would have either filed an Application for Dispute Resolution much sooner or not have enter into another fixed term tenancy agreement requiring them to pay utilities again. The tenants did not file for dispute resolution and I am of the view that they entered into the next fixed term tenancy agreement with their eyes wide open.

In keeping with my findings and reasons above, I award the tenants recovery of the utilities based on their spreadsheet of payments they made to the landlord since the landlord since there was no dispute that the tenants paid these amounts to the landlord.

Below, I have reproduced the tenants' spreadsheet for the relevant period for the parties' reference.

	paid	**Fortis**		**Hydro**	total
Due			Due		
Jan 15,2016	01-Jan	**104.90**	Jan 20,2016	**131.20**	236.10
Feb 19,2016	01-Feb	**128.97**			128.97
March 18,2016	01-Mar	**75.84**	March 21,2016	**225.91**	301.75
April 20,2016	01-Apr	**84.35**			84.35
May 18,2016	01-May	**44.07**	May 20,2016	**199.56**	243.63
June 17,2016	01-Jun	**24.25**			24.25
July, 2016	01-Jul	**47.67**	July 19,2016	**154.54**	202.21
Aug 18,2016	01-Aug	**24.71**			24.71
Sept 20,2016	01-Sep	**23.89**	Sept. 19,2016	**162.79**	186.68

I award the tenants recovery of the first nine payments for natural gas to represent payments for natural gas for December 2015 through August 2016. The first nine payments for natural gas amount to $558.65 and I award the tenants that amount.

Since electricity bills cover two months of consumption, I award the tenants recovery of 1/3 of the first four payments they made to the landlord to represent the landlord's consumption of electricity for December 2015 through July 2016 and I award the tenants 1/3 of 50% of $162.79 to represent the landlord's consumption for August 2016. The first four payments for electricity total $711.21 and 50% of the fifth hydro bill is $81.40. One-third of these amounts equals $264.20 [($711.21 + $81.40) x 1/3].

Based on the above, I award the tenants recovery of utilities paid to the landlord in the sum of $822.85 [$558.65 for natural gas and $264.20 for electricity].

Filing fee

The tenants were partially successful in their claims against the landlord and I award the tenants a partial recovery of their filing fee. I award the tenants recovery of one-third, or $33.33 of the filing fee they paid for their application.

Monetary Order

Pursuant to section 72 of the Act, I provide the tenants with a Monetary Order to serve and enforce upon the landlord, after off-setting, in the net amount calculated below:

Security deposit	$ 600.00
Less: drapery cleaning awarded to landlord	- 64.50
Balance of security deposit due to tenants	$ 535.50
Plus: Award to tenants for over-paid utilities	822.85
Plus: Partial award to tenants for filing fee	33.33
Monetary Order for tenants	$1,391.68

Conclusion

Upon concluding a review hearing, the original decision and Monetary Order issued on February 25, 2019 are set aside and replaced with this decision and the Monetary Order that accompanies this decision.

The landlord had very limited success in his claims against the tenants and was authorized to deduct $64.50 from the tenants' security deposit for drapery cleaning.

The landlord is ordered to return the balance of the security deposit to the tenants in the amount of $535.50 without delay. The landlord is also ordered to compensate the tenants a $822.85 for utilities and a portion of the filing fee they paid. The tenants are provided a Monetary Order in the net amount of $1,391.68 to serve and enforce upon the landlord.

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 30, 2019

Residential Tenancy Branch