



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT
 MNDL-S, FFL

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on January 8, 2019. The Tenants applied for a monetary order for money lost or money owed, and the return of their filing fee. The Landlord’s Application for Dispute Resolution was made on February 7, 2019. The Landlord applied for a monetary order for damages or losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

Both the Landlord, the Landlord’s Agent (the “Landlord”) and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money lost or owed due to the tenancy?
- Are the Tenants entitled to the return for their filing fee for this application?

- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that this tenancy began on January 31, 2017, as a two-year fixed term tenancy. The Parties testified that rent in the amount of \$3,400.00, was to be paid by the first day of each month and that the Tenants paid the Landlord a \$1,700.00 security deposit and a \$100.00 garage door remote deposit at the beginning of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties testified that the Tenants provided written notice to the Landlord on December 24, 2018, that they would be ending their tenancy as of January 31, 2019, in accordance with the tenancy agreement. Both parties also agreed that the Tenants paid the rent in full for January 2019 and that the Tenants moved out of the rental unit as of January 29, 2019, returning all keys to the Landlord.

The Tenants testified that they had arranged with the Landlord to conduct the move-out inspection on January 29, 2019, but that when the Landlord met them at the rental unit, she had refused to conduct the inspection with them unless they signed a document agreeing to forfeit their security deposit. The Tenants testified that they refused to sign the document and the Landlord refused to conduct the inspection with them at that time. The Tenants testified that they eventually left the rental unit, leaving the keys on the kitchen counter. The Tenants submitted a voice recording of a conversation between the Landlord and themselves into evidence.

The Landlord testified that she agreed that she had attended the rental unit on January 29, 2019, as arranged with the Tenants, and that she had required that the Tenants sign a mutual agreement to end the tenancy before she would conduct the move-out inspection. When asked why she required the mutual agreement to end the tenancy document signed, the Landlord testified that she thought it had been required to end the tenancy officially. The Landlord testified that there was no provision in that document that stated the Tenants would be agreeing to sign over their security deposit to the Landlord. The Landlord confirmed that a copy of this document had not been submitted into evidence to these proceedings.

The parties agreed that the Landlord had provided a second opportunity to the Tenants to conduct the move-out inspection on February 1, 2019. Both parties agreed that they attended the rental unit on February 1, 2019, to conduct the move-out inspection.

The Tenants testified that they did not agree with the comments the Landlord wrote on the move-out inspection, stating that they had returned the rental unit to the Landlord in a clean and undamaged state, with only normal wear and tear. The Tenants also testified that they were concerned that there had been someone in the rental unit between the time when they returned the keys to the Landlord on January 29, 2019, and when they had done the inspection on February 1, 2019.

The Landlord testified that no one had been in the rental unit between January 29, 2019, and February 1, 2019, and that the move-out inspection was an accurate account of the condition of the rental unit at the end of the tenancy. The Landlord submitted a copy of the move-in and move-out inspection, and 193 undated pictures of the rental unit into documentary evidence.

Both parties testified that there had been two floods in the rental unit during the tenancy, one on April 1, 2017, and the second on October 31, 2018.

The Tenants testified that the first flood was caused by plumbing issues between the city's outflow pipes and the connection to the house. The Tenants testified that city workers attended the rental unit during the first flood and repaired the problem and covered the cost of the repair. The Tenants testified that they lost the use of the basement during the restoration period after the first flood, between April 1, 2017, to June 14, 2017. The Tenants are requesting a return of a portion of their rent for the loss of the use of the basement, which accounted for 1/3 of their rented living space, for the restoration period of 75 days.

The Landlord agreed that the city did conduct the needed repairs after the first flood and that between the insurance company and the city all cost of the first flood were covered, less the deductible. The Landlord disagreed that the Tenants had lost the use of the full basement during the restoration period, as they could still use the bathroom and laundry facilities during that time. The Landlord testified that the Tenants lost the use of about 12% of the rental space during the restoration period, between April 1, 2017, to June 7, 2017, a period of 68 days.

The Tenants testified that the second flood happened when they were out of town, and when they returned, on October 31, 2019, they had found that the basement was flooded again. The Tenants testified that they were unsure as to the exact day the flood had happened, as they were out of town. The Tenants testified that they notified the Landlord right away and that the Landlord attended the property immediately to attend to the flood. The Tenants testified that they had turned the main water valve off to the house before they went out of town, so that are unsure as to what caused the second flood. The Tenants testified that there had been two other houses on their street that had flooded at the same time and that they believe the second flood may have been caused by whatever caused the floods in those other homes.

The Tenants testified that they lost the use of the basement during the restoration period after the second flood, between October 31, 2018, to January 31, 2019. The Tenants are requesting a return of a portion of their rent for the loss of the use of the basement during the second restoration, which accounts for 1/3 of their rented living space, for the restoration period of 93 days.

The Tenants testified that they are claiming for \$5,626.20 in compensation for the loss of use of the basement in the rental unit during the restoration periods the two floods.

The Landlord agreed that the Tenants had notified them of a second flood in the basement of the rental unit on October 31, 2018, and that they attended the property right away. The Landlord testified that when they had a plumber attend the rental unit during the second flood, the plumber used a scope with a camera on it to, to investigate the cause of the flood. The Landlord testified that the plumber found a blockage caused by rocks and baby wipes in the pipes. The Landlord claimed that the Tenants caused the second flood by flushing baby wipes down the toilet of the rental unit. The Landlord provided four pictures of baby wipes into documentary evidence.

The Landlord claimed that it was safe to assume that the Tenants were flushing the same baby wipes at the time of the first flood and were, therefore, the cause of both floods. The Landlord testified that since the Tenants were the cause of both floods that they were not entitled to the recovery of their rent for either requested periods. The Landlord is requesting to recover her costs associated with the floods; \$368.50 for the Roto-Rooter bill, \$2,000.00 for her insurance deductibles for the first and second flood, and \$3,000.00 to cover the increase in her insurance rates due to the floods.

The Tenants testified that they do not have a baby, that they did not own or use baby wipes and that they did not flush any wipes down the toilet in the rental unit. The Tenants testified that the baby wipes depicted in the Landlord's picture must have belonged to the tradespeople they brought in, as the wipes did not belong to them.

The Landlord testified that she is also claiming for \$852.34 in yard cleaning and \$300.00 to replace dead bushes at the end of this tenancy. The Landlord testified that the Tenants had not done the required weeding or disposal of fallen leaves throughout the tenancy, resulting in the death of several bushes and that the Landlord had to paid to have the overgrown yard cleaned up. The Landlord submitted eleven colour undated pictures of the yard and walkways, four colour pictures of the yard dated January 30, 2019, a receipt for the yard work, and a receipt for the purchase of replacement bushes into documentary evidence.

The Tenants testified that they completed the necessary yard work and returned the yards in good condition at the end of the tenancy. The Tenants testified that they did not do anything to cause the bushes to die and that they should not be responsible for the purchase of outdoor plants that could have just died naturally. The Tenants also testified that it had been January when they moved out and the Landlord waited until April to have the yard work completed, and of course, it would be overgrown three months later.

The Landlord testified that she is claiming for \$100.00 to repair the gate door that was broken during the tenancy. The Landlord testified that the gate was maliciously kicked down from inside outward by the Tenants. The Landlord testified that the requested \$100.00 was a verbal estimate to have the gate repaired and that the gate is currently still broken. The Landlord submitted two undated pictures of the gate into documentary evidence.

The Tenants testified that they had not damaged the gate during the tenancy and that the Landlord had a lot of tradespeople coming and going form the property due to repair work she had done and that perhaps one of them had damaged the gate. The Tenants also testified that the gate had been previously repaired by the Landlord during the tenancy and that the repair work had not been completed properly.

The Landlord testified that she is claiming for \$498.75 in professional carpet cleaning, as the Tenants had returned the carpets to the Landlord dirty. The Landlord submitted two colour pictures of the carpets dated January 29, 2019, three black and white

pictures of the carpets dated April 7, 2019, and a receipt for the carpet cleaning dated April 3, 2019, into documentary evidence.

The Tenants testified that they had cleaned the carpets at the end of the tenancy, themselves. The Tenants also testified that professionally cleaned carpets had not been provided to them at the beginning of the tenancy and that they had not contacted to professional carpet cleaning in their tenancy agreement.

The Landlord testified that she is claiming for \$617.73 in professional cleaning of the rental unit, as the Tenants had returned the rental unit to the Landlord uncleaned. The Landlord submitted three pictures of garbage on roof dated February 1, 2019, two pictures of windows dated April 1, 2019, two pictures of cleaners working dated March 26, 2019, and a receipt for the cleaning services dated March 26, 2019, into documentary evidence.

The Tenants testified that they returned the rental unit to the Landlord cleaned and that they had even returned to the rental unit on February 1, 2019, to do more cleaning that the Landlord had indicated during the move-out inspection had not been completed to her satisfaction. The Tenants testified that the rental unit was reasonably clean at the end the tenancy and that they are not responsible for the Landlord's cleaning cost, two months after they moved out.

The Landlord testified that she is claiming for \$84.00, and \$250.00 for the recovery of two electrical repairs costs of an outlet in one of the bedrooms of the rental unit during the tenancy. The Landlord argued that since the repairs were required during the Tenants tenancy, that the Tenants were responsible for the cost. When asked, the Landlord could not provide an explanation of what had been wrong with the outlet or what the Tenants had done to damage the outlet.

The Tenants testified that they agreed that the outlet required repair twice during their tenancy, but that they had not damaged it in any way nor did they know what had been wrong with the outlet.

The Landlord testified that she is claiming for \$246.75, for the recovery of her costs for professional cleaning of the front porch and rear balcony, and \$147.00 in professional cleaning of the gutters and front walkway at the end of the tenancy. The Landlord testified that the Tenants had returned the front porch, rear balcony, gutters and front walkaway stained, uncleaned and filled with leaves. The Landlord submitted 13 undated

pictures of the yards, porch, balcony and walkways, six pictures of the yards, porch, balcony and walkways dated January 30, 2019, two pictures of the gutters dated February 1, 2019, and two receipt for the completed cleaning services dated March 26, 2019, into documentary evidence.

The Tenants testified that they had returned the rental unit to the Landlord in the same condition in which the Landlord had rented it to them. The Tenants testified that the front porch, rear balcony, gutters and walks ways had not been professionally cleaning before they moved in and that they were not required to return the rental unit in better condition than what they had received it in at the beginning of the tenancy.

The Landlord testified that she is claiming for \$100.00 to repair trim on a kitchen cabinet at the end of this tenancy. The Landlord testified that at the end of the tenancy it had been noted that one of the kitchen cabinet doors had been missing a section of trim. The Landlord testified that the missing trim had not been noticed during the move-out inspection and that it had been found later, after comparing photographs to the move-in inspection report. The Landlord submitted a picture of the kitchen cabinet dated January 29, 2019, into documentary evidence.

The Tenants testified that there was no missing trim for the kitchen cabinet and that the picture submitted into evidence, by the Landlord, is at an angle that the trim cannot be seen.

The Landlord testified that she is claiming for \$546.00 to recover plumbing cost at the end of this tenancy. The Landlord testified that the Tenants had flushed chicken and bones down the toilet, causing it to run slowly. The Landlord submitted three pictures of the plumber working on the toilet and what had been found by the plumber, dated February 1, 2019, into documentary evidence.

The Tenants testified that the toilet in question had always run slowly and that they had not flushed anything down the toilet during the tenancy.

The Landlord testified that she is claiming for \$1,182.19 to recover her replacement cost for a new fridge she purchased for the rental unit in August 2018. The Landlord testified that the Tenants overloaded the fridge, which restricted the air movement inside the fridge, causing the compressor to overwork and malfunction prematurely. The Landlord testified that the refrigerator had been four years old when it stopped working. The Landlord submitted copies of three pictures of the overloaded fridge

into documentary evidence and a copy of the receipt for the purchase of the new fridge.

The Tenants testified that they agreed that the fridge had broken down during their tenancy and that the Landlord had purchased a new fridge as a replacement. The Tenant testified that they had not damaged the fridge in any way and had only used it for normal use.

The Landlord testified that she is claiming for \$400.00 in pest control services conducted in November 2018. The Landlord testified that she received a report of rodents in the rental unit. The Landlord testified that she had the unit inspected and that the inspector she hired had advised her that food had been left out uncovered and that would have attracted the rodents to enter the home. The Landlord testified that she believes the Tenants caused the rodent problem in the rental unit by leaving food out around the rental property. The Landlord submitted five pictures, two of the lawn, one of the kitchen counters, and two of the laundry room into documentary evidence and a copy of the receipt for the pest control services to support her claim.

The Tenants testified that they did not leave food out and that they did not cause the pest problem in the rental unit. The Tenants testified that the Landlord's renovation workers were constantly leaving the doors to the rental unit open while they worked and that there was a rat problem in the neighbourhood, and that the rats got in through the open door.

The Landlord testified that she is claiming for \$122.25 to replace a damaged ceiling fan at the end of this tenancy. Both parties agreed that there had been a piece of tape on an otherwise working ceiling fan at the end of this tenancy. Both parties also agreed that this tape was removed during the February 1, 2019, move-out inspection and that when the tape was removed, it damaged the veneer on one of the blades of the ceiling fan.

The Landlord testified that she was not able to purchase a replacement blade for the damaged ceiling fan, so she had to purchase and install a new fan in the rental unit. The Landlord testified that she rents a nice place and would not rent a damaged product to the next renter.

The Tenants testified that the fan worked fine at the end of tenancy and that a new fan was not required. The Tenants testified that the Landlord could have just patched the one small damaged spot as a repair.

The Landlord testified that she is claiming for \$7.81 in the recovery of her costs to replace a missing timer at the end of this tenancy. The Landlord testified that the timer had been there at the start of the tenancy and was not there at the end. The Landlord submitted a picture of a room with a timer in an outlet into documentary evidence.

The Tenants agreed that the timer had been there at the beginning of the tenancy but that the Landlord's electrician had told the Landlord to remove the timer from the outlet, when he was there fixing the outlet; and the Landlord had removed the timer as instructed. The Tenants testified that they are not responsible for buying the Landlord a new timer as she has the old one.

The Landlord testified that she is claiming for \$59.41 to recover Canada Post mailing cost; consisting of \$19.27 for registered mail of the hearing notification documents to the Tenants, \$11.08 for registered mail of evidence to the Tenants and \$29.06 for registered mail to the residential tenancy branch. The Landlord testified that she feels mailing costs should be recoverable in her hearing costs.

The Tenants disagree that they should have to cover this cost for the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed that tenancy agreement for this tenancy, and I find that these parties entered into a two-year fixed term tenancy that ended in accordance with the *Act* and the tenancy agreement on January 29, 2019, the date the Tenants moved out and returned the keys to the rental unit to the Landlord.

I accept the testimony of both parties that the Landlord had required them to sign a mutual agreement to end the tenancy, and that the Landlord had refused to conduct the move-out inspection on January 29, 2019, the initial date arranged for the move-out inspection, due to the Tenants refusal to sign the Landlord's document.

I see no reason as to why the Landlord had required the Tenants to sign a mutual agreement to end the tenancy on January 29, 2019, as this tenancy was ending in accordance with the tenancy agreement as of January 31, 2019. I do note that the

Tenants had filed a claim against the Landlord with the Residential Tenancy Office on January 8, 2019, and had served the Landlord with notice of that claim before the scheduled move-out inspection on January 29, 2019.

I find it to have been bluntly unreasonable of the Landlord to refused to conduct the move-out inspection on January 29, 2019, because the Tenants had refused to sign is document for the Landlord. As the Landlord failed to submit a copy of this unsigned documentary evidence, it is impossible to know for sure what the document stated. However, on a balance of probabilities, I find that the Landlord was attempting to force a settlement of the Tenants claim against the Landlord, on January 29, 2019, by refusing to conduct the move-out inspection with the Tenants unless they agreed to sign this document.

As both the Landlord and the Tenants attend the rental unit on January 29, 2019, as arranged, I find that the Landlord was obligated to conduct the move-out inspection on January 29, 2019, whether or not the Tenants would agree to sign her document.

Additionally, I do not find the Landlord's testimony to be credible, that no one had been in the rental unit between January 29, 2019, and February 1, 2019. As the Landlord, herself presented photographic evidence in these proceedings dated January 30, 2019, of the inside of the rental unit. I find that the Landlord did enter the rental unit between, January 29, 2019, the date the Tenants surrendered possession and February 1, 2019, the date when the Landlord finally agreed to conduct the move-out inspection. Therefore, I find that the move-out inspection dated February 1, 2019, to be an unreliable account of the state of the rental unit at the end of tenancy, on January 29, 2019. Consequently, I reject the move-out inspection report and will not consider it in my decision.

First, I will address the Landlord's claim that the Tenants were the cause of both the first and the second floods, as this claim is key to both the Landlord's and the Tenants' applications that are before me. The Landlord has claimed that the Tenants flushed baby wipes down the toilet and that those baby wipes clogged in the sewer pipes and that eventually that clog became so large that it prevented the flow and of water, resulting in the April and October floods. I have reviewed the pictures of the blockage removed by the plumber, submitted by the Landlord, which depicts a mass being removed from a pipe. I find that the picture provided by the Landlord to be unclear as to what that mass consisted of, or for how long it had been there. Additionally, I have

reviewed the receipt from the plumber that attended to fix the blockage, and I find that the plumber did not state on that receipt, what had caused the blockage.

Overall, I find that the Landlord has not provided sufficient evidence to support her claim that the Tenants were the cause of either of the floods in the rental unit, that happened during this tenancy. Accordingly, I dismiss all of the Landlord claims for compensation for her costs related to both of these floods in their entirety; consisting of a \$1,000.00 deductible for the first flood, a \$1,000.00 deductible for the second flood, a \$368.50 plumbers bill, and \$3000.00 in future costs due to an increase in the Landlord's insurance premiums.

As of the remainder of the Landlord's claims, normally, an Arbitrator would look to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit. As I have already determined that the Landlord had not conducted the move-out inspection appropriately, and I have found the move-in and move-out inspection report to be unreliable as evidence, in this case. I must rely on the additional documentary evidence submitted by the Landlord to support her claim for compensation.

The Landlord is claiming for \$852.34 in yard cleaning, \$100.00 to repair the gate door, and \$300.00 to replace dead bushes at the end of this tenancy I find that the parties, to this dispute, offered conflicting verbal testimony regarding the condition of the yard, the gate and the bushes at the beginning and end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Landlord. I have reviewed the pictures submitted by the Landlord of the yards and the gate, and I find that there are no pictures of yard and gate at the beginning of this tenancy nor are there date stamps on many the pictures provided into evidence by the Landlord. Overall, I find that there is insufficient evidence, before me, to prove to my satisfaction that the Tenants had damaged the gate or bushes, or that they had returned the yards in a worse condition than they had received them in at the beginning of this tenancy. As such, I dismiss these portions of the Landlord's claim in their entirety.

The Landlord is claiming for \$498.75 in carpet cleaning and \$617.73 to clean the rental unit at the end of this tenancy. I find that the parties, to this dispute, offered conflicting

verbal testimony regarding the need for additional cleaning of the carpets and the rental unit at the end of this tenancy. Again, as the Landlord is the claimant, she must provide sufficient evidence above her testimony to prove her claim. I have reviewed the picture evidence submitted by the Landlord, and I find that the lack of a date stamp on many of these pictures, and the fact that several of these pictures are dated over a month after the tenancy ended, makes them unreliable as evidence of the condition of the rental unit as of January 29, 2019. Additionally, I note that the receipts for the claimed cleaning are dated in March 2019, almost two months after the tenancy had ended. Due to the gap between when this tenancy ended and the date of the cleaning, I find that it is unclear if the Tenants had caused the need for this cleaning the Landlord is claiming. Overall, I find that the Landlord has not provided sufficient evidence to satisfy me that the requested clearing costs are the responsibility of the Tenants. As such, I dismiss these portions of the Landlord's claim in their entirety.

The Landlord is claiming for the recovery of two electrical repairs costs that she had completed during this tenancy; the first for \$84.00, and the \$250.00; both regarding the same outlet. I accept the agreed upon testimony of the parties, that there were two occasions where there was a need of the Landlord to bring in an electrician for a repair during this tenancy. I also accept the upon testimony of the parties that a cause for the needed electrical work had not been clearly determined by the electrician during either of their visits to the rental unit. In the absence of proof that the Tenants had caused damage to the electrical outlet, I find that I am unable to award the Landlord the recovery of her cost for the electrical repair. Therefore, I dismiss these portions of the Landlord's claim in their entirety.

The Landlord is claiming for the recovery of \$246.75, for professional cleaning of the front porch and rear balcony, and \$147.00 in professional cleaning of the gutters and front walkway at the end of the tenancy. I accept the testimony of the Landlord that the front porch, front walk away, rear balcony and gutters of the rental unit, had not been professionally cleaned at the start of this tenancy. I have reviewed the tenancy agreement, and I find that Landlord is claiming for professional cleaning costs that were not contracted to nor had that level of cleaning been provided by the Landlord to these Tenants at the beginning of this tenancy. Additionally, I note that the receipts for the claimed cleaning are dated in March and April 2019, months after this tenancy had ended. Overall, I find that the Tenants were not required to return the rental unit in better condition than how they had received it, nor were they required by their tenancy agreement to provide professional cleaning of these areas at the end of this tenancy. Accordingly, I dismiss the Landlord's claim for \$246.75 for professional cleaning of the

front porch and rear balcony, and \$147.00 in professional cleaning of the gutters and front walkway at the end of the tenancy.

The Landlord is claiming for \$100.00 to replace missing trim in the kitchen at the end of this tenancy. I find that the parties, to this dispute, offered conflicting verbal testimony regarding the need to repair trim in the kitchen at the end of this tenancy. Again, as the Landlord is the claimant, she must provide sufficient evidence above her testimony to prove her claim. I have reviewed the picture evidence submitted by the Landlord I find that the picture provided by the Landlord does not clearly show the area she is claiming for, making these pictures unreliable as evidence of the Landlord's claim. Consequently, I find that the Landlord has not provided sufficient evidence to satisfy me that the requested repair cost is required. As such, I dismiss this portion of the Landlord's claim in its entirety

The Landlord is claiming for \$546.00 in plumbing cost at the end of this tenancy. The Landlord claims that the Tenants had flushed chicken and bones down one of the toilets in the rental unit, causing it to run slowly. The Tenants claimed that the toilet in question had always run slowly. I find that the parties, to this dispute, offered conflicting verbal testimony regarding a slow running toilet in the rental unit. As the Landlord is the claimant in this portion, she must provide sufficient evidence above her testimony to prove her claim. I have reviewed the picture evidence provided by the Landlord, and I find that these pictures were unclear, and I was not able to see what the Landlord claimed was in these photos. Overall, I am not satisfied, with the evidence provided, by the Landlord, to support her claim. Accordingly, I dismiss this portion of the Landlord's claim in its entirety

The Landlord is claiming for \$1,182.19 to recover the replacement cost for a new fridge for the rental unit. The Landlord claims that the Tenants had overloaded the fridge, causing it to overwork and burn out. I have reviewed the pictures of the fridge, submitted by the Landlord, and find that the pictures show a well stocked or full fridge, with some small spaces left of air flow. However, I find that the Landlord has not provided documentary evidence, other than her personal opinion, that a well-stocked or full fridge would cause a fridge to burnout. In the absence of sufficient evidence to support the Landlord's claim, I find that I must dismiss this portion of the Landlord's claim in its entirety.

The Landlord is claiming for \$400.00 in pest control services conducted in November 2018. The Landlord claims that the Tenants had left food out and that the food had

attracted rats to the rental unit. I have reviewed the picture evidence, submitted by the Landlord, and find that the pictures show a lived in and cluttered kitchen. However, I find that the pictures alone are insufficient to prove that the Tenants had caused the rat problem in the rental unit. In the absence of sufficient evidence to support the Landlord's claim, that the Tenants had caused the rat infestation, I find that I must dismiss this portion of the Landlord's claim in its entirety.

The Landlord is also claiming for \$122.25 to replace a damaged ceiling fan at the end of this tenancy. I accept the agreed upon testimony of these parties that there was a piece of tape on the ceiling fan at the end of this tenancy. I also accept the Landlord testimony that when this tape was removed, it damaged the veneer on one of the blades of the ceiling fan. Additionally, I accept the Landlord's testimony that she was not able to purchase a replacement blade for that model of ceiling fan. Although, I can understand that the Landlord wished to rent a fully repaired property to her next renters and that due to this she chose to buy a brand-new ceiling fan instead of doing a patchwork repair of the damaged fan. I find that the Tenants did return a working fan at the end of this tenancy. I acknowledge that the Tenants did put the tape on the blade and that tape did cause damage. However, I find it reasonable that a Landlord should expect to absorb some cost associated to wear and tear during a tenancy. Therefore, I will award the Landlord a nominal **award of \$25.00** for the damage caused by the tape. I grant permission to the Landlord to withhold \$25.00 from the security deposit she is holding for this tenancy in full satisfaction of this award.

The Landlord is claiming for \$7.81 to replace a missing timer at the end of this tenancy. I find that the parties, to this dispute, offered conflicting verbal testimony regarding the timer. As noted before, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the Landlord has not provided sufficient evidence to support her claim for the cost of a new timer. As such, I dismiss this portion of the Landlord's claim in its entirety.

With respect to the Landlord's claims for \$59.41, for the recovery of her costs associated with sending mail through Canada Post for these proceedings. The Landlord was advised in the hearing that there are no provisions in the *Act* which provide compensation for these requested costs. As such, I dismiss this portion of the Landlords' claim in its entirety.

The Tenants have requested \$5,626.20 in compensation for the loss of use of 1/3 the rental space during the restoration periods following the two floods. I accept the agreed upon testimony of the parties to this dispute that there were two floods during this tenancy and that the Tenants lost the use of part of the rental unit due to the required restoration of the flooded area.

I accept the Tenants testimony and documentary evidence and find it to be a creatable account of the timeline for the two floods and their loss of space due to the floods. I find that the Tenants lost the unrestricted use of the basement, in the rental unit, for a total of 168 days; consisting of 75 days for the first restoration period between April 1, 2017 to June 14, 2017, and 93 days for the second restoration period between October 31, 2018 to January 31, 2019.

I also accept the BC assessment as the creatable account of the square footage of this rental unit. I find that the basement consisted of 800 square feet, 27.72% of the total space inside the rental unit. Accordingly, I find that the Tenants are entitled to the recovery of 27.72% of the rent paid during both the restoration periods. I award the Tenants \$5,205.59 in the recovery of their rent during the restoration periods.

Monthly Rent	\$3,400.00
Yearly Rent	\$40,800.00
Per Diem	\$111.78
Per Diem at 27.72%	\$30.99
Days Refunded	168
Rent Refund	\$5,205.59
Awarded to Tenant	\$5,205.59

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application.

As the Landlord has overall, not been successful in her application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

I grant a Monetary Order to the Tenants in the amount of \$7,080.59; consisting of \$5,205.59 in a rent refund, \$1,700.00 in the return of their security deposit, \$100.00 in

the return of the garage door remote deposit, and \$100.00 in the recovery of their filing for these proceedings, less the \$25.00 awarded to the Landlord for the damaged ceiling fan.

Conclusion

I award the Landlord \$25.00 in damages pursuant to section 67 of the *Act*. I grant permission to the Landlord to withhold \$25.00 from the security deposit she is holding for this tenancy in full satisfaction of this award.

I order the Landlord to return the remained of the security deposit and garage remote deposit, she is holding for this tenancy to the Tenants, within 15 days of receiving this decision.

I grant permission to the Tenants to apply for the doubling of their security deposit and garage remote deposit if the Landlord does not comply as ordered.

I find for the Tenants pursuant to sections 38, 67 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$7,080.59**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: July 11, 2019

Residential Tenancy Branch