



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT/ MNDL-S, MNDCL-S, FFL

Introduction

This hearing was originally convened on May 10, 2019 and was adjourned in an Interim Decision dated May 10, 2019. This hearing convened again on June 28, 2019 and was adjourned in an Interim Decision dated July 02, 2019. This decision should be read in conjunction with the May 10, 2019 and July 02, 2019 Interim Decisions.

These hearings were cross application hearings that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

These hearings also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlords testified that they served the tenants with their application for dispute resolution via registered mail on or about March 19, 2019. Tenant S.V. (the "tenant") testified the he received the landlords' application for dispute resolution but could not

recall on what date. I find that the landlords' application for dispute resolution was served on the tenant in accordance with section 89 of the *Act*.

The tenant testified that he served the landlords with his application for dispute resolution via courier but could not recall on what date. The landlords testified that the tenant's application for dispute resolution was left on the ground by their door but could not recall on what date. I find that while courier does not meet the service requirements of section 89 of the *Act*, the landlords were sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*, because they confirmed receipt of the tenant's application for dispute resolution.

The tenant testified that the landlords were served with his amendment package via courier but could not recall on what date. The landlords testified that the tenant's amendment was left on the ground by their door but could not recall on what date. I find that while courier does not meet the service requirements of section 88 of the *Act*, the landlords were sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*, because they confirmed receipt of the tenant's amendment.

Preliminary Issue- Bailiff Report

On August 6, 2019 the landlords uploaded a bailiff report dated November 13, 2018. The landlords testified that they thought this report was already uploaded but I informed them in the second hearing that a copy was not submitted into evidence.

In both my First and Second Interim Decisions I ordered that the adjournment is not an opportunity for either party to submit additional evidence. I therefore find that the bailiff report dated November 13, 2018 is not admitted into evidence and will not be considered in rendering this decision.

Issue to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

4. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Are the landlords entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
6. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
7. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime between November and December of 2017 and ended sometime between October and November of 2018. Monthly rent in the amount of \$2,500.00 was payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a joint move in condition inspection report was completed by both parties on November 22, 2017. Both parties agree that the landlord did not ask the tenant to complete a move out condition inspection report. The tenant applied for dispute resolution on January 22, 2019. The landlords' applied for dispute resolution on March 19, 2019.

Both parties agree on the following facts. On September 28, 2018 a Residential Tenancy Branch hearing between the parties was conducted. A Decision dated October 1, 2018 was drafted following the September 28, 2018 hearing which awarded the landlord an Order of Possession two days after service of the Order on the tenants. The file number for the previous decision was entered into evidence.

The landlords testified that on October 2, 2018 the Order of Possession was posted on the tenants' door. Both parties agreed that on October 2, 2018 the landlord e-mailed the tenant a copy of the Order of Possession. The body of the landlords' email states:

Hello [tenant]

With reference to RTA order which I already served to you today;
I would like to remind that the possession date
Is Oct 4th. Please inform the time to meet in the lobby and to hand over the keys.

In the first hearing both parties agreed that the tenant received the October 2, 2018 e-mail and attached Decision and Order of Possession on October 2, 2018. In the third hearing the tenant changed his testimony and testified that he received the October 1, 2018 Decision but not the Order of Possession in the October 2, 2018 email.

On October 2, 2018 the tenant responded to the landlord's e-mail. The tenant's response states in part:

....Obviously we disagree with the notice and the order and our lawyer will follow up from here.

The tenant testified that he was not sure on October 2, 2018, if the landlords were going to enforce the Order of Possession. The landlords testified that they also posted the Order of Possession on the tenant's door on October 2, 2018. The tenant testified that he was out of town when the Order of Possession was posted to his door and did not receive the physical copy until October 5, 2018.

Landlord D.N. testified that at 10:18 a.m. on October 9, 2018 he called the Residential Tenancy Branch and was informed that the tenant had not yet filed an application for review consideration.

The tenant testified that he filed an application for review consideration of the October 1, 2018 Decision in the afternoon of October 9, 2018. In the tenant's application for review consideration, the tenant submitted that he received the Order of Possession on October 5, 2019. On this basis, the application for review consideration was found to have been made on time.

The landlords testified that on October 9, 2018, they were issued a Writ of Possession by the Supreme Court of British Columbia, based on the effected service date of the

Order of Possession being October 2, 2019. The landlords testified that on October 15, 2018 a bailiff attended at the subject rental property and removed all of the property at the subject rental property.

The tenant testified that after his property was removed from the subject rental property, he received a one week stay of the Writ of Possession from the Supreme Court of British Columbia based on the effected service date of the Order of Possession being October 5, 2019. A copy of the stay was entered into evidence. The tenant testified that the bailiff returned the keys to him on October 15, 2018 but was not able to return his possessions until October 18, 2018 at which time the tenant arranged for the bailiff's truck to move all of his possessions into a moving truck. The tenant testified that he did not live in the subject rental property after October 15, 2018.

On October 16, 2018 the tenants' application for review consideration was dismissed.

The tenant testified that on October 22, 2018 he served the landlords with his forwarding address and the keys to the subject rental property, via courier. A copy of the tenant's letter providing his forwarding address was entered into evidence as was a proof of delivery ticket dated October 22, 2018. The proof of delivery ticket has a signature on it. The landlords testified that they did not receive the tenant's forwarding address or the keys to the subject rental property. The landlords testified that the signature on the proof of delivery ticket was not known to them.

The landlords testified that the tenant did not actually live at the subject rental property but used the subject rental property as a business and rented out rooms in the subject rental property to four adults without the landlords' consent.

The tenant testified that he leases multiple places to different workers including this property but that he also lived in the subject rental property with other people.

Landlord's Claim

The landlords are seeking the following damages arising out of this tenancy:

Item	Amount
Supreme Court Fee for Writ of Possession	\$120.00
Bailiff Fees	\$4,436.32
Junk Removal	\$471.84
Repair of Kitchen Faucet	\$376.95

Cleaning Fee	\$105.00
Handyman Fee	\$413.20
Painting	\$283.50
Washing Machine Replacement	\$618.98
Cleaning Fee	\$350.00
Form K Fine	\$600.00
Fob Fee	\$100.00
Loss of One Months' Rent	\$2,500.00
Filing Fee	\$100.00
Total	\$10,475.79

Bailiff and Court Fees

The landlords testified that they paid a \$120.00 court filing fee to obtain the Writ of Possession. A receipt for same was entered into evidence.

The landlord testified that they paid the bailiff \$4,436.32 to remove the tenants from the subject rental property. An invoice for same was entered into evidence.

The landlords are seeking these costs from the tenant.

Junk Removal

The landlords testified that the bailiff returned to the subject rental property on November 6, 2018 and found that the tenant's belongings were no longer at the subject rental property, but the subject rental property was left very dirty and full of garbage. The landlords testified that the tenant had a storage locker at the subject rental property that was left full of garbage as well. The landlords testified that the total weight of all the garbage left at the subject rental property was over 1000 pounds. The landlords entered into evidence a receipt for junk removal in the amount of \$471.84. The landlords are seeking this amount from the tenants.

The tenant testified that he does not know what all the garbage could be. The tenant testified that he was not permitted to properly clean out the subject rental property as the bailiff removed his property without proper notice.

Kitchen Faucet

Landlord D.N. testified that he replaced the kitchen faucet just before the tenants moved in. Landlord D.N. testified that part of the kitchen faucet was missing after the tenant moved out. A photograph of same was entered into evidence. The landlords entered

into evidence an invoice for the installation of a new faucet in the amount of \$376.95. The landlords testified that they supplied the new faucet to the installer. The landlords are not claiming the cost of the new faucet, just the installation.

The tenant testified that on October 15, 2019, the morning the bailiff first arrived, there was not problem with the faucet and he did not damage the faucet.

Cleaning

The landlords testified that the subject rental property was not cleaned by the tenant after he was evicted. Photographs showing that the subject rental property was not cleaned after the tenants were evicted were entered into evidence. The landlords testified that they hired a cleaner to clean the subject rental property. A receipt in the amount of \$350.00 was entered into evidence.

The landlords testified that after the cleaning company completed their work their real estate agent had to re-clean a few areas. The landlords testified that they paid their real estate agent \$105.00 to clean the subject rental property. An invoice showing same was entered into evidence.

The tenant testified that the subject rental property was clean when the bailiff's attended the subject rental property. The tenant testified that the bailiff attended with four movers and he had no control over the movers dirtying the apartment. The tenant testified that he did not have possession of the subject rental property after October 15, 2019 and so could not clean the subject rental property further.

Handyman Fee

The landlords testified that the tenant scratched and damaged the drywall at the subject rental property and the drywall required repair before the subject rental property could be rented out. The landlords testified that many of the slat blinds were lying on the floor and had to be re-attached to the blinds. Pictures of same were entered into evidence. The landlords testified that the tenant installed a lock on the sunroom door which had to be removed. The move in condition inspection report states that the walls in the subject rental property are in good condition. The landlord entered into evidence an invoice for the above work in the amount of \$413.20.

The tenant testified that he did not damage the subject rental property and that it must have been the bailiff's movers. The tenant testified that the landlords have no way of verifying that he caused the damage.

Painting

The landlords testified that the subject rental property was painted two months before the tenants moved into the subject rental property. The landlords testified that the subject rental property required re-painting after the tenants moved out. An invoice for painting in the amount of \$283.50 was entered into evidence.

The tenant testified that the subject rental property did not require repainting when he moved out.

Washing Machine

The landlords testified that the washing machine at the subject rental property was approximately three years old when the tenants moved in. The landlords testified that the washing machine did not work when the tenants moved out. The landlords testified that they tried to have it repaired but that it was more expensive to repair it than to purchase a new one. The landlords testified that they purchased a new washing machine for \$544.00, paid \$49.98 to have it delivered and \$25.00 to have the old washing machine removed. The total for the above is \$618.98. An invoice stating same was entered into evidence.

The tenant testified that the washing machine was working when he vacated the subject rental property.

Form K Fine

Both parties agree that the tenant signed a Form K Strata document which sets out the tenant's responsibilities. The Form K which was entered into evidence states in part:

If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

The landlords testified that the strata issued the tenant a fine in the amount of \$600.00 on July 4, 2018. The landlords entered into evidence a strata statement of account for the subject rental property which states same.

The tenant testified that he did not breach the strata bylaws and so should not have to pay the strata fine.

Fob Fee

The landlords testified that they provided the tenant with two fobs when he moved into the subject rental property. The landlords testified that the bailiffs retrieved four fobs from the various residents of the subject rental property, two of which were copied, contrary to the strata bylaw. The landlords testified that the strata cancelled all of the fobs because copying is not permitted by the strata bylaws. The landlords testified that they had to pay for two new fobs to be issued by the strata which cost \$100.00. The landlords entered into evidence the fob order form and the cheque paid to the strata for the above.

The tenant testified that he did not copy the fobs. I asked the tenant how the other tenants entered the subject rental property if they didn't each have a fob. The tenant testified that the other tenants had to contact the other tenants through the intercom to be let in. The tenants testimony later changed to state that two new fobs were purchased from concierge to allow the other tenants access.

Loss of One Months' Rent

The landlords testified that due to the dirty and damaged condition of the subject rental property, it took time to clean and repair the property, delaying their ability to rent the subject rental property until December 1, 2018. The landlords are claiming loss of rent for the month of November 2018.

Tenant's Claim

The tenant is seeking the following damages arising out of this tenancy:

Item	Amount
Double Security Deposit	\$2,500.00
Supreme Court Fees	\$200.00
Emergency Accommodation	\$1,590.00
Missing Workday	\$280.00
October 2018 Rent	\$1,250.00
Filing Fee	\$100.00
Total	\$5,920.00

Double Security Deposit

The tenant testified that he is entitled to the return of double his security deposit because the landlord failed to return his security deposit or file for dispute resolution within 15 of receiving his forwarding address in writing. The tenant testified that the

landlords' right to retain his security deposit was extinguished because the landlord did not ask him to complete a move out condition inspection report.

The landlords testified that they did not receive the tenant's forwarding address.

Supreme Court Fees

The tenant testified that he paid a \$200.00 court fee to apply for the stay of the Writ of Possession. The tenant testified that the landlords should not have applied for the Writ of Possession until October 10, 2018 because he received the October 1, 2018 Order of Possession on October 5, 2018 and had until the end of day on October 9, 2018 to make an application for review consideration. The tenant testified that since the landlords filed for the Writ of Possession too early, he had to incur the \$200.00 filing fee for the stay.

The landlords testified that they filed for a Writ of Possession correctly because the tenant received the Order of Possession on October 2, 2018 and therefore had until the end of day on October 4, 2018 to file his application for review consideration.

Emergency Accommodation

The tenant testified that since he was evicted from the subject rental property on October 15, 2018 and his furniture was not returned until October 18, 2018, he had to rent furnished accommodation in the amount of \$735.00. The tenant entered into evidence a receipt which states that the tenant rented a one bedroom furnished rental unit from October 15-18, 2018 in the amount of \$735.00. The same invoice also stated that the tenant rented a furnished one-bedroom rental unit from June 22-June 30, 2018 in the amount of \$855.00.

The tenant's application for dispute resolution claims both rental periods for a total of \$1,590.00. I asked the tenant to explain why he was claiming the rental space for June of 2018. The tenant was unable to provide an explanation and withdrew his claim for the June rental charge in the amount of \$855.00.

The landlords testified that the tenant should have moved out by the time the Writ of Possession was granted and therefore do not owe the tenant for the cost of his accommodation.

Missing Work Day

The tenant testified that he lost a full day of work attending at the Supreme Court of British Columbia applying for the stay of the Writ of Possession. The tenant testified that if he was working he would have earned \$280.00. The tenant did not enter into evidence any documentation regarding his hourly wage or salary or other proof of income.

The landlords testified that the tenant improperly applied for a stay on the Writ of Possession and should not be compensated for this action.

October 2018 Rent

The tenant testified that he paid October 2018's rent in full and was not able to live in the subject rental property after October 15, 2018 and so is seeking ½ of October's rent in the amount of \$1,250.00.

The landlords testified that the tenant did not return the keys to the subject rental property and that they only received the keys to the subject rental property from the bailiff on November 6, 2018. The landlords testified that the tenant overheld the subject rental property and is not entitled to the return of any of October 2018's rent.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case 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 circumstances.

The tenant's testimony regarding when he received the October 1, 2018 Order of Possession is inconsistent. In the first hearing the tenant testified that he received it on October 2, 2018 via e-mail. In the third hearing the tenant testified that he only received the October 1, 2018 Decision, and not the Order of Possession via email on October 2, 2018. I find the tenants shifting testimony is not credible. In addition, the tenant's responding e-mail on October 2, 2018 states that he disagrees with the Order, lending support to the landlords' submissions, that the tenant received the October 1, 2018 Order on October 2, 2018.

I find the tenant's testimony to be out of harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. I find that the tenant received the October 1, 2018 Order of Possession on October 2, 2018 via email. While email does not accord with the service requirements of section 88 of the *Act*, I find that the Order of Possession dated October 1, 2018 was sufficiently served on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

On balance, I find the tenant's testimony frequently does not accord with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances. I find the landlords' testimony to be straight forward and unembellished. Given the above, where the tenant's testimony differs from the landlords', I prefer the landlords' testimony.

Landlords' Monetary Claim

Bailiff and Court Fees

I find that the tenant stated the incorrect day he received the Order of Possession on his application for Review Consideration. I find that this action delayed the proceedings

resulting in costs to both parties. I find that the tenant did not move out of the subject rental property by 1:00 p.m. on October 4, 2018 in accordance with the two-day Order of Possession contrary to section 37(1) of the *Act*.

Based on the above, I find that the tenant is responsible for the court fees in the amount of \$120.00 and the bailiff fees in the amount of \$4,436.32 as these expenses would not have been incurred if the tenant moved out on October 4, 2018.

Junk Removal and Cleaning

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlords' testimony and the photographs entered into evidence, I find that the tenant did not clean the subject rental property when he moved out and left a substantial amount of garbage at the subject rental property and in the storage locker of the subject rental property. I find that the tenant was served with the October 1, 2018 Order of Possession on October 2, 2019 and had ample time to clean the subject rental property and removal all garbage from the subject rental property as the bailiff did not attend until October 15, 2019. I find that the tenant is responsible for the landlords' cleaning fees in the amount of \$455.00 and junk removal fee in the amount of \$471.84.

Kitchen Faucet

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlords' testimony and the photograph entered into evidence, I find it more likely than not that the tenant, or someone permitted on the property by the tenant damaged the kitchen faucet. I therefore find that the tenant is responsible for the cost of installation of a new faucet in the amount of \$376.95.

Handyman Fee

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's testimony, the move in condition inspection report and the photographs entered into evidence, I find it more likely than not that the tenant and or persons permitted on the property by the tenant damaged the blinds and drywall at the subject rental property. I do not find the tenant's submissions that the bailiff's movers damaged the subject rental property to be persuasive or likely.

I find that the tenant is responsible for the handyman fees incurred by the landlords in the amount of \$413.20.

Painting

Based on the landlords' testimony, the move in condition inspection report and the photographs entered into evidence, I find it more likely than not that the subject rental property required repainting after the tenant moved out.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 35 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 13 months, the tenant is required to pay according to the following calculations:

$\$283.50 \text{ (cost of painting)} / 48 \text{ months (useful life of paint)} = \$5.90 \text{ (monthly cost)}$

$\$5.90 \text{ (monthly cost)} * 35 \text{ months (expected useful life of paint after tenant moved out)} = \206.50

Washing Machine

Based on the testimony of the landlords, I find that on a balance of probabilities, the washing machine at the subject rental property was not working at the end of the tenancy. However, I find that the landlords have not proved, on a balance of probabilities, that the tenant's actions, or the actions of persons permitted on the property by the tenants, caused the washing machine to stop working. I therefore dismiss the landlords' claim for the cost of a new washing machine.

Form K Fine

Under the Act, I do not have authority to overturn fines issued by a strata. I find that the strata of the subject rental property issued a fine to the subject rental property, based on the tenants' conduct, on July 4, 2018 in the amount of \$600.00. I find that the tenant signed a Form K, thereby accepting responsibility for fines issued by the strata against

the subject rental property for the duration of the tenancy. I therefore find that the tenant is responsible for the \$600.00 fine issued by the strata.

Fob Fee

The tenant's testimony regarding the fobs changed over the course of the three hearings. The tenant originally testified that he was given two fobs by the landlords and that not all of the people living at the subject rental property had a fob. The tenant testified that some of the people living at the subject rental property could only gain access to the subject rental property by using the intercom. Later the tenant changed his testimony and testified that he purchased two extra fobs from concierge so that all of the people living at the subject rental property had a fob.

I find the tenant's testimony to be unreliable. I prefer and accept the testimony of the landlords who testified that the tenant copied the fobs, contrary to strata bylaws. I accept the landlords' testimony that the strata cancelled all of the fobs and required the landlords to purchase two new fobs.

The Form K signed by the tenant states that the tenant is responsible for bylaw contraventions. I find that the tenant is responsible for the cost of purchasing two new fobs in the amount of \$100.00.

Loss of One Months' Rent

Residential Tenancy Policy Guideline #3 states that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. Based on my above findings and the landlords' testimony, I find that the subject rental property was not rentable for the month of November, due to damage caused by the tenant and or persons permitted on the property by the tenant. I therefore find that the landlord is entitled to recover November 2018's rent in the amount of \$2,500.00 from the tenant.

Filing Fee

As the landlords were successful in their application against the tenant, I find that they are entitled to recover the \$100.00 filing fee against the tenant, pursuant to section 72 of the Act.

Tenant's Monetary Claim

Double Security Deposit

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find that the landlords were not served with the tenant's forwarding address or the keys to the subject rental property in accordance with section 88 of the *Act*. Courier is not a recognized method of service under the *Act*. I accept the landlords' testimony that they did not receive the tenant's forwarding address or the keys to the subject rental property from the tenant.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenant has not provided the landlords with his forwarding address in writing. The landlords' applied to retain the tenant's security deposit on March 19, 2019. I find that the landlords' have applied to retain the tenant's security deposit in accordance with section 38 of the *Act*. The tenant is therefore not entitled to double his security deposit.

Sections 35 and 36 of the *Act* state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, **for damage** to residential property is extinguished if the landlord does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

In this case, the landlords are claiming for both damage to the subject rental property, and other costs such as the loss of rental income and the cost of bailiff fees. The extinction provision in section 36 of the *Act* only applies if the landlord is only seeking to retain the security deposit for damage to the subject rental property. Since some of the landlords' claims are not related to damage to the subject rental property, the extinction provision in section 36 of the *Act* does not apply.

I find that the landlords' right to claim against the security deposit is not extinguished. I find that the tenant is not entitled to double his security deposit.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain the tenant's entire security deposit in the amount of \$1,250.00 in part satisfaction of their monetary claim against the tenant.

Supreme Court Fees/ Missing Workday

Pursuant to my findings earlier in this decision, I find that the tenant received the Order of Possession on October 2, 2018 and incorrectly stated on his application for review consideration that he received the October 1, 2018 Order of Possession on October 5, 2018. I find that the tenant misled the Court when he applied for a stay on the writ of possession by telling the Court that he received the October 1, 2018 Order of Possession on October 5, 2018. I therefore find that all costs associated with the tenant's subterfuge are the responsibility of the tenant, including the court fees and his missed day of work. I also note that the tenant did not supply any proof of lost wages and his monetary claim for lost wages would also fail on this ground.

Emergency Accommodation

I find that the tenant is not entitled to recover the cost of his accommodation from October 15-18, 2018 as he should have moved out of the subject rental property or filed an application for review consideration by October 4, 2018, which he failed to do.

October 2018 Rent

As stated earlier in this decision, I find that the tenant did not return the keys to the subject rental property to the landlords. I find that the landlords did not gain possession of the subject rental property from the tenant until November 6, 2018.

Residential Tenancy Branch Policy Guideline #3 states that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

I find that the tenant over held the subject rental property until November 6, 2018 and is not entitled to receive any of October 2018's rent back from the landlords.

Filing Fee

As the tenant was not successful in his application against the landlords, I find that he is not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Supreme Court Fee for Writ of Possession	\$120.00
Bailiff Fees	\$4,436.32
Junk Removal	\$471.84
Repair of Kitchen Faucet	\$376.95
Cleaning Fee	\$105.00
Handyman Fee	\$413.20
Painting	\$206.50
Cleaning Fee	\$350.00
Form K Fine	\$600.00
Fob Fee	\$100.00
Loss of One Months' Rent	\$2,500.00
Filing Fee	\$100.00
Less security deposit	-\$1,250.00
Total	\$8,529.81

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: August 28, 2019

Residential Tenancy Branch