Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANSON REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, RPP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on March 17, 2019 (the "Application"). The Tenants sought return of their personal property, compensation for monetary loss or other money owed and reimbursement for the filing fee.

This matter came before me July 05, 2019 and an Interim Decision was issued that date. This decision should be read with the Interim Decision.

The Tenants attended the hearing. The Agent for the Landlord attended the hearing. I heard from the witnesses during the hearing. The witnesses were not involved in the conference until required. I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return their personal property?

2. Are the Tenants entitled to compensation for monetary loss or other money owed?

3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 15, 2011 and was for a fixed term of one year and ½ month. The Tenants paid a $675.00 security deposit.

The parties agreed the tenancy became a month-to-month tenancy after the fixed term. The parties agreed rent was $1,497.00 at the end of the tenancy.

The Tenants sought return of the following:

1. 5 oz gold bar;
2. Kate Spade handbag; and
3. Kate Spade handbag.

The Tenants sought the following compensation:

Item	Description	Amount
1	12 months rent based on refusal of Tenants' right of first refusal under section 51.2 of the *Residential Tenancy Act* (the "*Act*") and/or breach of contract to rent renovated unit to Tenants and/or discrimination in renting unit	$17, 964.00
2	5 oz gold bar replacement cost	$8,973.00
3	Kate Spade handbags (2) replacement cost	$462.00
4	Aggravated damages from October 18, 2018 to March 08, 2019	$16,920.00
5	Damages for failure to give notice of renovations	(above)
6	Damages for breach of contract, loss of renovated unit	(above)
	TOTAL	**$44,319.00**

I advised the Tenant at the outset of the $35,000.00 limit for claims made through the RTB and asked the Tenant what portion of the claim he was waiving. The Tenant waived the portion of the $16,920.00 for item 4 that is above the limit. I calculated this

to be $9,319.00 and confirmed with the Tenant that the Tenants are waiving this amount in relation to item 4.

The Tenant took the following position about the end of the tenancy. Mold was discovered in the rental unit in October of 2018. The Tenants vacated the rental unit while the mold issue was being addressed. The tenancy continued during this time. The Tenants removed most of their belongings from the rental unit because the Landlord was going to do renovations. The Tenants and Landlord agreed that the original tenancy agreement would be terminated and the parties would enter into a new tenancy for the renovated rental unit at a higher rent amount. Given this, the Tenants sent the Landlord an email terminating the original tenancy January 11, 2019. The Tenants believed they would be entering into a new tenancy agreement with the Landlord. Instead, the Landlord unlawfully changed the locks on the rental unit on January 31, 2019. Further, the Landlord refused to enter into a new tenancy agreement with the Tenants for the renovated rental unit. The tenancy did not end until March 08, 2019 when the parties did a move-out inspection.

The Agent took the following position about the end of the tenancy. Mold was discovered in the rental unit in October of 2018. The Tenants chose to vacate the rental unit while the mold issue was being addressed. The Tenants ended the tenancy by email January 11, 2019. The Landlord accepted the Tenants' termination notice and followed up with the Tenants about removing their belongings and returning their keys. The Tenants cancelled their hydro account for the rental unit January 18, 2019. The Tenants did not remove their belongings or return their keys and so the Landlord changed the locks January 31, 2019. There was no agreement that the original tenancy would be terminated and the parties would enter into a new tenancy agreement for the renovated rental unit as claimed by the Tenant.

The Landlord submitted the January 11, 2019 email from the Tenant. The Tenant took the position that the intent was to enter into a replacement tenancy agreement. The Tenant submitted that a tenancy cannot be ended by email and therefore the January 11, 2019 did not end the tenancy. The Tenant submitted that his subsequent assertions of a right of first refusal are inconsistent with an intention to end the tenancy. He further submitted that the Tenants had belongings in the rental unit so could not have wanted to end the tenancy.

Return of personal property

The Tenant testified as follows. The Tenants had a 5 oz gold bar and two Kate Spade handbags in the rental unit. The Landlord changed the locks to the rental unit thus locking the Tenants out January 31, 2019. The Tenants were therefore separated from their belongings. The gold bar and handbags disappeared as they were not in the belongings eventually returned to the Tenants. At some point, the Landlord or workers in the rental unit took these items.

The Tenant submitted that the onus is not on the Tenants to provide evidence that the Landlord has the gold bar and handbags. He submitted that the onus is on the Landlord to explain the disappearance of these items as the Landlord had control of them.

The only evidence the Tenant could point to to support his testimony that a gold bar and Kate Spade handbags were in the rental unit when the Landlord changed the locks was a receipt and bank draft for the gold bar from 2014.

The Agent testified as follows. The Landlord does not have a gold bar or Kate Spade handbags of the Tenants' and did not take these items. She does not know if a gold bar was in the rental unit.

12 months rent based on refusal of Tenants' right of first refusal under section 51.2 of the Residential Tenancy Act (the "Act") and/or breach of contract to rent renovated unit to Tenants and/or discrimination in renting unit

The Tenant sought compensation pursuant to section 51.2 of the *Act*. He took the position that the Tenants exercised their right of first refusal and the Landlord failed in their obligations in this regard.

The parties agreed the Landlord never served the Tenants with a notice to end tenancy under section 49 of the *Act*. The Agent testified that the Landlord never did so because the Landlord did not wish to end the tenancy and the renovations did not justify a notice under section 49 of the *Act*.

The Tenant also sought compensation based on a breach of contract. He testified that the parties agreed they would terminate the original tenancy agreement and enter into a new tenancy agreement for the renovated rental unit. He submitted that this was a

contract between the parties and the Landlord breached this contract by failing to enter into a new tenancy agreement with the Tenants for the renovated rental unit.

The Tenant could not point to any documentary evidence in support of his position that the parties agreed they would terminate the original tenancy agreement and enter into a new tenancy agreement for the renovated rental unit. He said nothing regarding this was reduced to writing.

The Tenant further sought compensation based on discrimination. The Tenant testified that the Tenants wanted the renovated rental unit. He said they notified the Landlord of their interest in this regard. The Tenant testified that the Landlord ignored the Tenants and rented the unit to others. The Tenant did not explain what section of the *Act* he was relying on for this aspect of the claim.

The Agent testified as follows. The Tenants are the ones who ended the tenancy. The Landlord accepted the Tenants' notice ending the tenancy. There was never an agreement between the Landlord and Tenants that the Landlord would enter into a new tenancy agreement with the Tenants for the renovated rental unit. There was no discrimination on the part of the Landlord, the Tenants ended the tenancy and the Landlord rented the unit to others.

5 oz gold bar replacement cost and Kate Spade handbags (2) replacement cost

As stated, the Tenant testified that a gold bar and Kate Spade handbags were in the rental unit but have since disappeared. The Tenant relied on section 30 of the *Residential Tenancy Regulation* (the "*Regulations*") for this aspect of the claim. The Tenant reiterated his position that the Landlord unlawfully changed the locks and thus separated the Tenants from their belongings including the gold bar and handbags. The Tenant submitted that the Landlord was therefore responsible for these items. The Tenant testified that these items disappeared when the Landlord had exclusive access to the rental unit. The Tenant testified that the Landlord either took the items or is responsible for their disappearance because the Landlord had exclusive possession of the items when they changed the locks.

The Agent pointed to photos of the rental unit taken January 31, 2019 submitted in evidence. She testified as follows. The photos show the condition of the rental unit when the locks were changed. The Landlord never touched any of the Tenants' belongings. The Tenants had already removed 95% of their belongings when the locks

were changed. The Landlord sent the Tenants an email about what they would do if the Tenants did not remove their belongings. The Tenants would not remove their belongings.

The Agent pointed to photos taken February 26, 2019 of the rental unit showing the condition of it at that point. She submitted that the contents were the same as they were January 31, 2019. The Agent pointed to a copy of a Content Items List submitted as evidence showing the contents of the rental unit when a company attended to remove the Tenants' belongings. She testified that the Tenants belongings were returned to them March 13, 2019 and the Tenants told the moving company to throw some of these items away which is shown in the evidence submitted.

In reply, the Tenant testified that the Tenants did not remove their belongings because they planned to vacate the rental unit. He testified that they removed them because of the renovations.

The Tenant confirmed the following. The Tenants had a key to the rental unit January 11, 2019. His testimony is that the Tenants left a gold bar and handbags in the rental unit from January 11, 2019 to January 31, 2019. These were in a locked bedroom. They did not move these items because they were staying with friends and family. They had nowhere to store these items. The Tenants had removed most of their belongings at this point. The remaining items were of lesser value and not important, except the gold bar and handbags. On January 14, 2019, the Tenants agreed the Landlord could have "unrestricted access to the unit" and that the Landlord could "enter at any time, without any notice" to the Tenants. The Tenants understood workers and tradespeople would be coming and going from the rental unit to do renovations. The Tenant received the Landlord's email about removing their belongings and returning their keys to the rental unit by January 25, 2019. The Tenants still did not go to the rental unit and remove the gold bar or handbags because they did not know the Landlord would change the locks. The Tenants had nowhere to store these items and did not think about removing them.

Aggravated damages from October 18, 2018 to March 08, 2019

- ***Damages for failure to give notice of renovations***
- ***Damages for breach of contract, loss of renovated unit***

The Tenant testified as follows. The Tenants are seniors. The Landlord locked the Tenants out of the rental unit without authority to do so. This was an egregious violation of the Tenants' rights. The Landlord showed extraordinary malice and lack of consideration. The Landlord tricked the Tenants in relation to agreeing to enter into a new tenancy agreement and then refusing to do so. The Landlord deceived the Tenants. The Landlord gave the Tenants no indication they would change the locks to the renal unit.

The Tenant submitted that the Landlord cannot change locks in the case of "holdover" and relied on section 31 of the *Act* in this regard.

The Agent again pointed to the Tenant's email January 11, 2019 ending the tenancy. She pointed out that this says nothing about entering a new tenancy agreement. The Agent again testified that the Landlord accepted the termination as shown in their email submitted. The Agent again denied there was any agreement between the parties to enter into a new tenancy agreement for the renovated rental unit. The Agent took the position that the Tenant is not telling the truth.

The Tenant sought compensation for the Landlord not serving the Tenants with a notice to end tenancy under section 49 of the *Act* based on renovations.

I heard from the witnesses who provided the following relevant testimony.

Witness M.C. testified as follows. He was the assistant to the Property Manager and dealt with the Tenants during the tenancy. He never heard of the parties entering into a new tenancy agreement for the rental unit. The Tenant served notice January 11, 2019 saying the Tenants were vacating. He understood this to be the end of the tenancy. He asked the Tenant about flooring for the rental unit in early January.

Witness L.C. testified that the items in the rental unit were basically the same on January 31, 2019 and February 26, 2019 when they were moved.

Witness P.P. testified as follows. He is a contractor. The renovations done to the rental unit included painting and replacing the carpet. In early January, he thought the Tenants were moving back into the rental unit after the renovations were done. The Tenants were still tenants of the rental unit at the time.

The Tenant submitted that the testimony of witness P.P. supports his position that the Landlord and Tenants had agreed to enter into a new tenancy agreement for the renovated rental unit.

I note the following evidence from the Tenants' package:

- A receipt for a 5 oz gold bar purchased by the Tenant in 2014
- A letter from the Tenant to the Landlord January 17, 2019 raising issues including the absence of a four month notice regarding renovations
- An email dated January 19, 2019 from the Tenant to the Landlord about a right of first refusal among other things. This states, "Due to extenuating factors beyond the control of the Tenants, the Tenants and Landlord's agent mutually agreed to end the old rental agreement."
- RTB form 28 in relation to the Tenants exercising a right of first refusal
- Emails dated January 21, 2019, January 22, 2019 and January 30, 2019 from the Tenant to the Landlord about a right of first refusal.
- An email dated February 02, 2019 from the Landlord. It states that the Tenants belongings are still in the rental unit and storage locker and that the Landlord is waiting for the Tenants to advise when they will come get their belongings.

I note the following evidence from the Landlord's package:

- An email from the Tenant to the Landlord dated January 11, 2019 stating, "Confirmatory of our verbal agreement of this day, you…and we…have mutually agreed to end the tenancy, effective immediately. Any statutory notice requirement is hereby waived. The aforementioned decision is based upon, inter alia, the ongoing displacement of the tenants, as well as problems inherent in the ongoing reparation and restoration of unit…which as of this day, is not yet habitable."
- An email from the Landlord to the Tenant dated January 11, 2019 stating, "we accept your written notice to end the tenancy effective immediately, any statutory notice requirement is herby waived…As advised by you, you will remove your furniture and all personal belongings as soon as possible, once you are ready, please return the keys to us, then we shall arrange to refund the deposit money to you…For your information, we have not received any call from your new landlords re reference checking yet…"
- An email from the Landlord to the Tenant dated January 14, 2019 asking about return of the Tenants' keys

- An email from the Tenant to the Landlord dated January 14, 2019 permitting the Landlord to access the rental unit without notice and stating, “We are exerting all efforts to remove all of the property which remains, ASAP”
- An email from the Tenant to the Landlord dated January 15, 2019 stating that the Tenants have started moving their possessions to a makeshift storage
- An email from the Landlord to the Tenant dated January 15, 2019 asking when the rental unit will be vacant
- An email from the Tenant to the Landlord dated January 16, 2019 about a four month notice for renovations
- An email from the Landlord to the Tenant dated January 17, 2019 stating that a four-month notice is not applicable and asking that the Tenants vacate the suite and return the keys to the office no later than January 25, 2019
- An email from the Tenant to the Landlord January 26, 2019 about a right of first refusal
- A BC Hydro bill showing the Landlord was billed for hydro at the rental unit starting January 19, 2019
- A letter from BC Hydro dated January 25, 2019 indicating there was no BC Hydro account for the rental unit
- An email from the Landlord to the Tenant January 19, 2019 advising that a four month notice is not applicable and stating, “On January 11, you advised that you will remove your furniture ASAP, 1 week has passed, we are now giving you another week’s time and expect you to return all keys to our office on January 25, 2019, then we shall refund the security deposit money to you”
- An email from the Tenant to the Landlord dated January 22, 2019 about a right of first refusal
- An email from the Landlord to the Tenant dated January 28, 2019 stating, “You have not returned the building and suite keys to our office on last Friday, January 25, are you returning them to us today?”
- An email from the Landlord to the Tenant dated January 30, 2019 at 11:40 am stating that the Landlord is still waiting for the Tenants to return their keys and that they will send the items left in the rental unit to storage if they do not hear back from the Tenants by the following day
- An email from the Tenant to the Landlord January 30, 2019 at 1:49 pm about a right of first refusal. It states, “We absolutely forbid that you or any of your agents touch or remove any of the few possession that remain, including some priceless heirlooms and confidential business files”
- Photos of the rental unit taken January 31, 2019 showing the items left in the rental unit

- An email from the Tenant to the Landlord dated February 22, 2019 stating in part, “There is no rental payment due, and the original lease was mutually rescinded”
- Photos of the rental unit taken February 26, 2019 showing the items in the rental unit
- A Content Items List prepared March 04, 2019 listing the items that were in the rental unit

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Return of personal property

Section 65(1)(e) of the *Act* states:

> 65 (1) Without limiting the general authority in section 62 (3)…if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders…
>
> > (e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned;

The Tenants seek return of a gold bar and two Kate Spade handbags. The Tenant testified that these were in the rental unit when the Landlord changed the locks January 31, 2019. The Tenant testified that these were not returned to the Tenants with their other items. The Agent did not agree that a gold bar or two Kate Spade handbags were in the rental unit January 31, 2019.

The Tenants have not submitted compelling evidence to support the testimony that a gold bar and two Kate Spade handbags were in the rental unit January 31, 2019. The receipt and bank draft submitted showing a purchase of a gold bar in 2014 are not compelling evidence that the gold bar was stored in the rental unit five years later.

The Tenant acknowledged the following. The Tenants vacated the rental unit in October of 2018. The Tenants removed most of their belongings from the rental unit prior to January 31, 2019. The items left behind were of lesser value and not important, except the alleged gold bar and handbags. The Tenants agreed to the Landlord accessing the rental unit without notice January 14, 2019 and knew workers and tradespeople would be coming and going from the rental unit. I find it unlikely that the Tenants would have left a gold bar and two Kate Spade handbags in the rental unit in these circumstances.

Further, based on the emails submitted, I find the Landlord emailed the Tenants seven times between January 11, 2019 and January 31, 2019 about removing their belongings and returning their keys. I find it unlikely that the Tenants would have failed to attend the rental unit and remove any valuable items between January 11, 2019 and January 31, 2019 when faced with the seven emails from the Landlord asking them to remove their belongings from the rental unit.

In the absence of compelling evidence to support the Tenant's testimony that a gold bar and two Kate Spade handbags were in the rental unit leading up to January 31, 2019, I do not accept that these items were in the rental unit.

Further, the Tenant has submitted no evidence to support his position that a gold bar and two Kate Spade handbags were taken from the rental unit, either by the Landlord or others. Nor has the Tenant submitted any evidence to support his position that the Landlord currently has a gold bar or two Kate Spade handbags belonging to the Tenants.

In the circumstances, I am not satisfied there was a gold bar or two Kate Spade handbags in the rental unit leading up to January 31, 2019. Nor am I satisfied the Landlord took these or currently has these. Therefore, I decline to order the Landlord to return these items.

I note that the Tenant submitted that the Landlord has the onus to explain the disappearance of the gold bar and two Kate Spade handbags. This may have been the case if the Tenants had met their onus to prove these items were in the rental unit leading up to January 31, 2019. However, the Tenants have not met their onus in this regard and therefore the Landlord does not have an onus to explain the absence of these items.

12 months rent based on refusal of Tenants' right of first refusal under section 51.2 of the Residential Tenancy Act (the "Act") and/or breach of contract to rent renovated unit to Tenants and/or discrimination in renting unit

A right of first refusal is addressed in section 51.2 of the *Act* which states:

> 51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so. [emphasis added]
>
> (2) If a tenant has given a notice under subsection (1), the landlord, at least 45 days before the completion of the renovations or repairs, must give the tenant
>
> (a) a notice of the availability date of the rental unit, and
>
> (b) a tenancy agreement to commence effective on that availability date.

Compensation in relation to a right of first refusal is set out in section 51.3:

> 51.3 (1) Subject to subsection (2) of this section, if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2)…

There is no issue that the Landlord did not serve the Tenants with a notice to end tenancy under section 49(6)(b) of the *Act* as the parties agreed on this. Therefore, the sections outlined above do not apply to this matter. The Tenants did not have a right of first refusal under section 51.2 of the *Act* in relation to the rental unit. Nor are the Tenants entitled to compensation under section 51.3 of the *Act*.

In relation to the claim for breach of contract, the Tenant testified that the parties agreed to enter into a new tenancy agreement for the renovated rental unit. The Agent denied there was ever such an agreement.

The Tenant could not point to any documentary evidence supporting his testimony that the parties agreed to enter into a new tenancy agreement for the renovated rental unit.

The Tenant attempted to rely on the testimony of witness P.P. to support his position about an agreement between the Landlord and Tenants. P.P. is a contractor that worked on the rental unit, not an agent for the Landlord. I do not accept that his view of the situation is relevant or supports the Tenant's testimony. Further, P.P.'s evidence is that he thought in early January that the Tenants were going to move back into the rental unit after renovations. This is not inconsistent with the Landlord's position as the Agent acknowledged that the Landlord thought the Tenants were moving back into the rental unit up until January 11, 2019 when they agreed to end the tenancy.

In the absence of compelling evidence to support the Tenant's testimony about the existence of an agreement between the parties, I do not accept that there was such an agreement. I also find that the correspondence between the parties as submitted and outlined above supports that there was no such agreement. I therefore do not accept that there was a contract between the parties or any breach of a contract by the Landlord. The Tenants are not entitled to compensation on this basis.

I did not find the Tenant's submissions on the discrimination aspect of the claim clear. However, the Tenant submitted an email from him to the Landlord dated January 22, 2019 referencing section 10 of the *BC Human Rights Code* and stating that a landlord may not refuse to rent to a prospective tenant based on a list of factors. If this is the basis for the Tenant's claim, the RTB does not enforce the *BC Human Rights Code*. The RTB enforces the *Act* and *Regulations*, neither of which address discrimination in renting. The Tenants are not entitled to monetary compensation under the *Act* on this basis.

5 oz gold bar replacement cost and Kate Spade handbags (2) replacement cost

Section 7 of the *Act* states:

> 7 (1) If a landlord…does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord…must compensate the [tenant] for damage or loss that results.

> (2) A…tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

As stated above, I do not accept that the Tenants had a gold bar or two Kate Spade handbags stored in the rental unit leading up to January 31, 2019. Nor do I accept that the Landlord or others took these from the rental unit at any point. Therefore, I am not satisfied the Landlord breached the *Act*, *Regulations* or tenancy agreement or that the Landlord is responsible for loss of a gold bar or two Kate Spade handbags. The Tenants are not entitled to compensation for these items.

Aggravated damages from October 18, 2018 to March 08, 2019

- ***Damages for failure to give notice of renovations***
- ***Damages for breach of contract, loss of renovated unit***

Policy Guideline 16 states as follows in relation to aggravated damages:

> “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where <u>significant damage or loss has been caused either deliberately or through negligence.</u>

> Aggravated damages are rarely awarded and must specifically be asked for in the application. [emphasis added]

The Tenant based this aspect of the claim in part on the allegation that the Landlord locked the Tenants out of the rental unit without authority and with malice.

Section 44 of the *Act* states:

> 44 (1) A tenancy ends only if one or more of the following applies…
>
> (c) the landlord and tenant agree in writing to end the tenancy…

Based on the emails between the parties on January 11, 2019, I find the parties mutually agreed to end the tenancy immediately. I acknowledge that email is not necessarily considered "in writing" for the purposes of the *Act*. However, here the email from the Tenant on January 11, 2019 is clear and unambiguous in relation to wishing to end the tenancy. The Landlord replied and explicitly stated that they accepted the "written notice to end the tenancy effective immediately". I find these email exchanges were sufficient to end the tenancy.

I also find subsequent correspondence between the Landlord and Tenants support that the parties mutually agreed to end the tenancy such as the email dated January 19, 2019 from the Tenant to the Landlord and the email from the Tenant to the Landlord dated February 22, 2019.

Further, this is a claim by the Tenants for compensation for the Landlord changing the locks on January 31, 2019. I do not accept that the Tenants can send a clear and unambiguous email stating that the parties have mutually agreed to end the tenancy immediately and then later decide to take the position that this was not an effective notice under the *Act* and seek to gain from the Landlord's reasonable reliance on the email as ending the tenancy.

I acknowledge sections 26, 30 and 31 of the *Act* in relation to changing locks. However, these sections of the *Act* apply during a tenancy, not once the tenancy is over. Here, the tenancy ended with the January 11, 2019 emails. I do not accept that these sections of the *Act* applied on January 31, 2019.

I also acknowledge section 57 of the *Act* which states:

> 57 (1) In this section…
>
> "overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.
>
> (2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

However, the Tenants were not occupying the rental unit January 31, 2019 as they had mutually ended the tenancy agreement with the Landlord on January 11, 2019, had removed most of their belongings prior to January 31, 2019 and had not lived in the rental unit since October of 2018.

Further, I would not have found that the Tenants suffered significant damage or loss as a result of the Landlord changing the locks on January 31, 2019 in any event. The emails between the parties from January 11, 2019 are clear that the tenancy is ending. It was reasonable for the Landlord to rely on these emails as ending the tenancy. The Landlord sent the Tenant seven emails between January 11, 2019 and January 30, 2019 about removing their belongings from the rental unit and returning their keys. The Tenants chose to leave their belongings in the rental unit despite these seven emails, the last of which specifically advised the Tenants what the Landlord would do if they did not remove their belongings by January 31, 2019. I do not accept that the Tenants suffered significant damage or loss by being separated from their belongings on January 31, 2019 when the Tenants did not deem it necessary to attend the rental unit and remove these items despite seven requests over more than two weeks to do so.

I also find based on the testimony of the Tenant, photos submitted and Content Items List, that the Tenants had left a small number of belongings in the rental unit and that these belongings were of lesser value and importance to the Tenants. I do not accept that the Tenants suffered significant damage or loss as a result of being separated from these items.

Further, there is no issue that the Tenants had not been living at the rental unit since October of 2018. Therefore, I do not accept that the changing of the locks forced the Tenants onto the street as claimed in the Tenants' written submissions. Nor do I accept

that the Tenants suffered significant damage or loss in this regard. Nor do I find that changing of the locks was egregious in the circumstances.

I also do not accept that the Landlord gave the Tenants no indication the locks would be changed. The parties agreed to end the tenancy immediately January 11, 2019. The Landlord gave the Tenants more than two weeks to remove their belongings and return their keys. The Landlord sent the Tenants seven emails about removing their belongings and returning their keys. The Landlord gave the Tenants a deadline of January 25, 2019 to return their keys. The Landlord told the Tenants they would send items left in the rental unit to storage if they did not hear from the Tenants by January 31, 2019. I find it disingenuous for the Tenant to state that the Landlord gave the Tenants no indication they would change the locks to the rental unit in the circumstances.

In all of the circumstances, I am not satisfied the Landlord breached the *Act*, regulations or tenancy agreement. Even if I had found a breach, I would not have awarded the Tenants aggravated damages as I am not satisfied the Tenants suffered significant damage or loss as a result of the Landlord changing the locks of the rental unit on January 31, 2019.

I have addressed the issue of an agreement between the parties to enter into a new tenancy agreement for the renovated rental unit above. I do not accept that there was such an agreement. Therefore, I do not accept that the Landlord tricked or deceived the Tenants as alleged.

In relation to the claim for damages for failure of the Landlord to give the Tenants a notice to end tenancy under section 49 of the *Act*, the Tenants are not entitled to compensation for this. The Agent testified that the Landlord did not want to end the tenancy and that the renovations did not justify a notice under section 49 of the *Act*. I am not satisfied that the renovations did justify a notice under section 49 of the *Act* as P.P. testified that the renovations included painting and changing the carpet. In any event, the parties mutually agreed to end the tenancy on January 11, 2019. The Tenants cannot now take issue with not having received a notice to end tenancy under section 49 of the *Act*. The Landlord has not breached the *Act*, *Regulations* or tenancy agreement in this regard.

The claim for breach of contract and loss of renovated unit has been addressed above.

Summary

The Tenants have failed to prove they are entitled to an order regarding return of personal property or to compensation.

Given the Tenants were not successful in this application, I decline to award them reimbursement for the filing fee.

The Tenants' Application is dismissed without leave to re-apply.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 03, 2019

Residential Tenancy Branch