Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on September 26, 2019, December 9, 2019, and February 6, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

The Tenants both attended all of the hearings. The Landlord did not attend the first hearing, but he attended the hearings on December 9, 2019, and February 6, 2020. The Tenants testified that they sent the Notice of Hearing and evidence by registered mail on June 8, 2019. A copy of the tracking information was provided into evidence. The Tenants stated that, although the tenancy ended 2 years ago, they confirmed that this is still the Landlord's active address in April of 2019. The Tenants provided proof that they successfully mailed, via registered mail, a letter to the Landlord in April of 2019 for another matter. The Tenants stated that he signed for this package, so they know he still lives there. The Landlord attended the second hearing and was able to confirm that his address was the address the Tenants sent their package to. Although the Landlord never picked up this package, pursuant to section 89 and 90, I find the Landlord is deemed served with the Notice of Hearing and evidence 5 days after it was mailed, on June 13, 2019.

The Landlord stated he was in the hospital and wasn't made aware of the proceedings. When I asked the Landlord to explain this matter, he stated he didn't have the dates he was in the hospital, and he referred me to the documents he submitted supporting his

medical issue. However, I note this document is a one-page document dated May 16, 2019, and is an "angiographic report". It did not specify how long the Landlord was admitted for. The Landlord was vague with respect to when he was in the hospital, and for how long. As such, I am not satisfied he would have been unable to receive the registered mail that was sent to his residence (Notice of Hearing and evidence from the Tenants). Ultimately, I find the Tenants have sufficiently served the Landlord with their application (deemed served on June 13, 2019).

Further, the Tenants stated they sent their evidence package to the Landlord on July 5, 2019, by registered mail to the Landlord's residence. The Landlord denied getting this package. However, as per the tracking information from Canada Post provided by the Tenants, the package was "refused by recipient" on July 10, 2019. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed served with the Tenants evidence on July 10, 2019, the fifth day after it was mailed.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Preliminary Matters – Landlord's evidence

The first hearing was conducted on September 26, 2019. The Landlord did not attend the first hearing, but he attended the second hearing on December 9, 2019. Following the first hearing, I adjourned the proceedings due to time constraints, and sent out an interim decision, which specified and ordered that no further documentary or digital evidence may be submitted by either party and no amendments may be made to the application.

The deadline for submitting evidence for the proceeding was prior to the first hearing. As such, when the Landlord submitted his evidence after this, I find it was done late, not in accordance with the Rules of Procedure, and contrary to my orders. The Landlord submitted a few different packages to our office throughout October and November 2019. The Landlord also submitted another package in January 2020. However, as stated in the interim decision, dated September 26, 2019, and also in the interim decision from December 9, 2019, no further evidence that was not already submitted in time for the *first* hearing would be accepted. I find the Landlord's evidence is not

admissible, and will not be considered any further when determining the issues at hand. The Landlord was given the opportunity to provide oral testimony.

Preliminary Matter #2 – Landlord vs. Owner

The Landlord who was present at the hearing stated he is not the actual owner of the rental unit, but rather just the agent for the owner. He stated that he should not be considered the Landlord and the Tenants should not be allowed to file their application against him. I turn to the following portion of the Act:

> **Definitions**
>
> **1** In this Act:
>
> "landlord", in relation to a rental unit, includes any of the following:
>
> (a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i)permits occupation of the rental unit under a tenancy agreement, or
>
> (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I note the person named as the Landlord for this application is the same as the person who entered into the Tenancy Agreement with the Tenants. The person present for the Landlord confirmed that he was acting as an agent for the owner of the property and he was the one dealing with the Tenants directly while they were living there. As such, I find the person named as the Landlord on this application is considered to be a Landlord for the purposes of this Act.

Preliminary Matter #3 – Landlord missed first hearing and wanted this case dismissed

As stated above, the Landlord missed the first hearing, and attended the second and third hearings. The Tenants spoke to the first 6 items on their monetary order worksheet in the first hearing, and although the Landlord was not present for that hearing, I allowed him the opportunity to speak to all items on the worksheet when he attended the second and third hearings. Despite being given a chance to speak to the items he missed in the first hearing, he did not speak directly to those issues, and instead used the opportunity to state that this case should be dismissed because the Tenants are being fraudulent.

The Landlord also stated that since they have already had previous hearings, that this case should be dismissed.

I have reviewed the previous cases filed with this office, and I find the issues on this application are different in that they are pursuing compensation for different items under different sections of the Act. As such, I find there is insufficient evidence to show that the issues on this application ought to be dismissed because they have already been heard.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

General Background Information

The Tenants stated that they moved into the rental unit on September 1, 2009, and moved out on June 15, 2017. The Tenants stated that monthly rent was initially set at $1,600.00 but had increased to $1,850.00 at the end of the tenancy.

The Tenants stated that they paid a security deposit in the amount of $800.00 at the start of the tenancy and have not received anything back. The Tenants stated that they lived on the upper floor of the house, and there was a separate unit in the basement which the Landlord rented out separately. The Tenants appear to have run into most of their issues when the long term renters in the basement moved out in 2016. The Tenants stated that the Landlord at that point did some renovations, and a new Tenant moved in and caused many issues.

The Tenants provided a copy of a Tenancy Agreement into evidence which is signed by the parties, and corroborated that rent was set at $1,600.00 and was due on the first of the month, and that they paid a security deposit in the amount of $800.00. The Landlord claimed this document was fraudulent, but he did not elaborate on this matter, or provide an alternate tenancy agreement (written or verbal) with different amounts or dates. There is no addendum to the Tenancy Agreement but it lists that utilities are not included in rent, but laundry is. The Tenants stated that the laundry was located in the basement of the house.

The Tenants provided a monetary order worksheet listing the following items:

1) $1,600.00 – Double security deposit (2 x $800.00)

The Tenants are seeking double the security deposit they paid because the Landlord failed to return the deposits at all, let alone in a timely manner. The Tenant stated that they provided their forwarding address in writing by sending the Landlord a registered mail letter on June 16, 2017. Tracking information was provided into evidence. The Tenants stated they never got any money returned to them.

The Landlord did not speak to this item.

2) $847.12 – Utility expenses

The Tenants stated that they paid for 75% of the gas and electricity bills, with the other 25% to be paid by the lower unit. The Tenants stated that they had the bills in their name, and they had to collect the amount from the Tenant of the lower unit each time a bill was issued. The Tenants provided a few different copies of their bills, showing that it was in their name. They also provided a payment history list.

The Tenants have stated that this amount is comprised of 2 different items. The first is for $341.00. The Tenants stated that this is for the period from October 2016 until May of 2017. The Tenants stated that during this period of time, there was no tenant in the lower unit, but the Landlord was doing lots of renovations, leaving heat and lights on, and using power tools. The Tenants are seeking 25% of the amount they paid to BC Hydro over this period, as this is what should have been allocated to the lower unit, and paid by the Landlord, as he was the one occupying for renovation purposes. The Tenants stated that this amount was comprised of a bill for $351.00, $381.00, and $239.00; the Tenants are looking for 25% of this total. The Tenants advised that they initially calculated this as $341.00, but they said it appears it is only $242.00. The Tenants did not provide any written breakdown or explanation of the amounts, and were calculating amounts in the hearing (and changing the amount from $341.00 to $242.00).

The Tenants stated that the second part of this utility item is for $505.00. The Tenants were asked to explain how this was calculated and they presented an unclear explanation involving different estimates, percentages, and amounts. The Tenants stated that this amount is for the period from March 2017 until they moved out, in June of 2017. The Tenants stated that the Tenant who moved in around

March 2017 never paid them any utilities. The Tenants stated that there was a bill of $644.20, and a final bill of $69.91. The Tenants stated that this was much higher than it had ever been before. The Tenants took the bills from the past years and used this to guide what it should have been for 2017. However, it was much more than this, as the Tenant of the lower unit used lots of power.

The Tenants stated they used the same power as they always do, so they feel the extra usage was due to the lower unit. The Tenants attempted to explain how they increased the previous years bills by a certain amount, then took 75% of this to show what they should have had to pay, then deducted this from what they did pay, all based off the assumption that their usage did not change year over year. I asked the Tenants to explain how this was calculated, in detail. However, it was only partially explained. The Tenants confirmed that they did not provide any written breakdown of how this was calculated.

The Landlord did not speak to this item.

3) $225.00 – Loss of Use of Storage shed

The Tenants stated that they had used the outdoor shed for storage for several years, and they had full use of this area until the Tenant of the lower unit moved in in March of 2017. The Tenants had a hearing in the Spring of 2017 where they were awarded $450.00 in compensation for the loss of use of this shed for March and April 2017, but this item is for the month of May 2017. The Tenants provided an estimate from a storage company to show that this amount is reasonable.

The Landlord did not speak to this item.

4) $525.00 – Trailer in back yard

The Tenants stated that the tenants from the lower unit parked a trailer in the back yard when they moved in, in March of 2017. The Tenants stated that the back yard was solely theirs, and the lower unit had a separate space to use. The Tenants stated that this amount is comprised of $150.00 per month for 3.5 months (March - June 15, 2017). The Tenants stated that they calculated this amount by taking what a parking spot would cost at a local storage facility. The Tenants confirmed that they did not actually pay this amount but feel the Tenant should have rather than parking it in their space. The Tenants want this amount because they lost some of their yard space.

The Landlord did not speak to this item.

5) $675.00 – Storage in Basement

The Tenants stated that they had exclusive use of the downstairs storage room for 7 years. The Tenants stated that, on March 1, 2017, when the new downstairs occupant moved into the suite downstairs, they took over the storage area, moved the Tenants belongings out. The Tenants stated that they sent a registered mail letter to the Landlord on March 19, 2017, complaining about the loss of storage. Proof of mailing was provided. The Tenants stated the Landlord did nothing about this issue and ignored them. The Tenants corrected the amount of their initial application from $765.00 to $675.00 for this item and stated that they arrived at that amount by taking $225.00 per month, and multiplying it by the 3 months that they lost use of that area (March, April and May 2017).

The Tenants used the estimate provided by the arbitrator at their previous hearing where the Tenants were awarded $450 dollars for their loss of use of the padlocked storage room/shed for two months leading up to that previous hearing, in May 2017 (compensation was awarded for March/April 2017). The Tenants elaborated and explained that the amount they were awarded at that previous hearing was for the storage shed, and this is for the area in the basement where they had exclusive use of for 7 years, until the new downstairs Tenant took over. The Tenants stated that part of the reason they lived in this house was because it had storage space, so the sudden loss of this space had a significant impact in the value of the tenancy for them.

The Landlord did not speak to this item.

6) $400.00 – Leaking Roof

The Tenants briefly spoke to this item and stated that the roof was leaking, which impacted their “enjoyment” of the rental unit. The Tenants pointed to a letter, dated June 5, 2017, where they raise the issue of the leaking roof to the Landlord. The Tenants stated they sent this letter by registered mail. The Tenants also pointed to a few photos of the water leaking into different areas, including the kitchen. The

Tenants did not explain how they arrived at $400.00 for this item, nor did they explain exactly when the leaks occurred, and for how long the roof was leaking.

The Landlord did not speak to this issue.

7) $350.00 – Loss of Quiet Enjoyment - Parrot

The Tenants stated that when the new downstairs tenant moved in, they had a large parrot, which made loud noises. The Tenants stated that they had to endure the noise made by this bird from March 1, 2017, until June 15, 2017. The Tenants stated that the parrot would make loud calls at random times. The Tenants stated they made the Landlord aware of this issue on March 19, 2017. They provided a copy of the letter they mailed (by registered mail) to the landlord on March 19, 2017. The Tenants stated that the noise continued and the Landlord never did anything about it.

The Landlord was given the chance to respond to this item, and stated that the parrot didn't make any noise. Although he did not elaborate and explain how he knew this to be the case. The landlord also continued to bring up his allegations regarding the small claims court settlement, and the Tenants "grow op" but did not explain how it related to this item.

8) $200.00 – Loss of Quiet Enjoyment - Rats

The Tenants stated that after the downstairs tenant moved in on March 1, 2017, large piles of garbage began to pile up in the back yard and they began to see rats in the back yard as well as in the basement. The Tenants provided photos of the garbage piles as well as photos of several rats they caught in the house. The Tenants stated they informed the Landlord, by registered letter, on April 20, 2017, that the lower tenant was piling up garbage and attracting rats. The Tenants stated that nothing was done to clean this up and the problem continued.

The Landlord was given an opportunity to respond to this item, and again, he repeated his claim that he and the Tenants settled their matters in small claims court, and claimed the Tenants had a grow up. The Landlord did not have any admissible evidence to corroborate the allegations regarding the grow op. The Landlord further stated that the Tenants rented the upstairs and should have stayed up there.

9) $2835.00 – Illegal Rent Increase

The Tenants stated that their rent was increased a couple of times without proper notice and not in accordance with the correct annual increase limits. The Tenants pointed to the rent increase in October 2015, where the Landlord told the Tenants over the phone that their rent was going to move up from $1,600.00 to $1,680.00. The Tenants pointed out that this is a 5% increase which is more than what was allowed that year (which was 2.5%).

The Tenants also pointed to a 2nd illegal rent increase they started paying as of October 1, 2016. The Tenants stated that the Landlord again called them and told them on the phone that rent was being increased from $1,680.00 to $1,850.00 as of October 1, 2019, which is around a 10% increase, annually. The Tenants stated that the Landlord had also attempted to raise the rent in August 2016, verbally, but the Tenants said no, and only started paying that increase in October, which was one year after the last one.

The Tenants are seeking the $80.00 per month overpayment from October 1, 2015, until September 30, 2016, which totals $960.00 for that year. The Tenants are also seeking 7.5 months (from October 2016, until May 2017) times $250.00, totalling $1,875.00. The Tenants stated that since their rent was not increased properly (above the allowable amount, and not on the approved form), they want to recover the rent they paid above and beyond their $1,600.00 base rent.

The Landlord stated that he did not raise rent for 7 years. The Landlord then stated that the police found a grow-operation in the unit, but he did not state the relevance of this point to this issue.

10) $200.00 – Loss of use of back yard

The Tenants stated that there was a hole in the back yard, where a buried tank had been, and this hole opened up around April 2017. The Tenants stated that they notified the Landlord of this issue on April 20, 2017, and he came on April 29, 2017, to fix the hole. The Tenants stated that the Landlord’s fix was only cosmetic, and he just covered it up. The Tenants stated that they had to put posts and flags so that their kids would not fall into the hole. The Tenants stated they lost the use of part of

the back yard for nearly a month, and they want compensation because the Landlord did not fix the hole properly.

The Landlord responded by stating the Tenants had a grow operation. But, again, did not explain how that relates to the Tenant's claim. The Landlord stated the Tenants dug out the hole and he denies that there was any tank. The Landlord stated that it was the Tenant's fault.

11) $3,000.00 – Garden Work

The Tenants stated that their part of the house had full use of the yard, and it was not shared with the lower unit. This is partly why the Tenants were seeking compensation for loss of use of the back yard because the Tenant of the lower unit should not have parked their trailer in the yard.

The Tenants pointed to an email from the Landlord in both 2012 and 2013 where he suggested that he would pay for gardening and upkeep. The Tenants provided copies of emails from 2012 where the Landlord told the Tenants to buy a small gas lawnmower and he would reimburse them. The Tenants also provided an email from April 21, 2013, from the Landlord which stated the following: "please wen ever is possible get some one to trim and clean Taylor way side of the home. I sent some one to clean he only cleaned leaves under the maple tree. No rush. Take your time. I will pay for it. Stay safe […]."

The Tenants provided a response via email on April 23, 2013, stating that they did a yard cleanup.

The Tenants explained that when they moved in, the lawn and hedge cutting was included as part of their rent, although this item is not identified on the tenancy agreement. The Tenants stated that the Landlord paid for a gardener to come until the fall of 2012. The Tenants provided a copy of a gardener service estimate, which shows that basic service costs around $500.00 per month. However, the Tenants are only seeking $500.00 per year for doing the garden maintenance over a period of 6 years (2012- 2017). The Tenants are only seeking $500.00 per year because they are not professional landscapers.

The Landlord was given a chance to respond to this item, but instead reiterated his claims that the Tenants are defrauding him, and that they had a grow operation. The Landlord stated the Tenants are taking advantage of him. The Landlord stated that

the Tenants always had to do some yard maintenance, despite the fact that a landscape company (paid for by the landlord) helped do the maintenance for the first couple years of the multi-year tenancy.

12) $300.00 – loss of use of stairs

The Tenants pointed to a previous decision, where the safety of the interior stairs was discussed as an issue. In that decision, the arbitrator ordered the Landlord to affix and repair the loose carpet on the interior stairs on May 16, 2017. The Tenants stated that one of them fell down the stairs in March of 2017, and they asked the Landlord to fix the tripping hazards but he did not sufficiently do so. The Tenants stated that the stairs were narrow, steep, and had loose carpet.

The Tenants admitted that the Landlord fixed the carpet but the other structural issues remained (low headroom, steep pitch) which the Landlord did not fix. The Tenants stated that the Landlord closed off the interior stairs and asked them to use the back door instead in order to access the basement laundry room. The Tenants stated that the back stairs were also in poor repair (rotting wood), as shown in the photo. The Tenants are seeking $300.00 for the two months they had to live without the interior stairs and with dangerous back stairs.

The Landlord reiterated that the Tenants are defrauding him, and he is being harassed by all these claims. The Landlord did not speak directly to the issue of the stairs.

13) $12,800.00 – Breach of Agreement

The Tenants are looking to be compensated for the extra costs associated with having to rent a different, more expensive, rental unit due for the period from June 15, 2017 (end of this tenancy), until June 30, 2019. The Tenants stated that over the first year alone, they spent an extra $2,300.00 beyond what they had been paying at this unit.

The Tenants stated that they had to move because the Landlord breached a couple of “pre-conditions”. The first precondition was that the Landlord told them they could live there as long as they wanted, and it was disruptive to their family to have to move at the time they did. The Tenants pointed to an email from the Landlord a couple of years into the tenancy where he indicated that they could stay as long as they wanted. The Tenants assert they had to move because of how much their

relationship with the Landlord had degraded. The Tenants feel the Landlord became aggressive and hostile, so they had no choice but to move.

The second precondition is that they would not receive a rent increase as long as they were living there, which was also mentioned in an email. The Tenants stated that the Landlord failed to honour this and instead he gave them a couple of illegal verbal rent increases (as noted above).

The Landlord stated that the Tenants were on a month-to-month tenancy with him, and he was under no obligation to let them live there as long as they wanted. The Landlord stated that towards the end of the tenancy, things became hostile, and litigious. The Landlord stated that the Tenants were the ones to blame for the breakdown, in part due to their separate lawsuit (not under the Act).

14) $6,000.00 – Harassment

The Tenants are seeking this amount because they feel they were “harassed.” The Tenants first pointed out that the new basement tenant who moved in in March of 2017 harassed them “at the request of the Landlord”. The Tenants pointed to their letter from June 5, 2017, where they detailed the actions of the lower tenant. The Tenants noted that the Tenant of the lower unit called the police on them after she accused them of knocking over her motorcycle (she was screaming and yelling). The Tenants stated they called 9-1-1 (around May 28, 2017), as they were afraid of the lower tenant. The Tenants explained that the lower tenant made false allegations against them to make their lives difficult. The Tenants stated that the Landlord was asked to solve the issue, in writing, on June 5, 2017, but nothing was done.

The Tenants also pointed to a couple of emails to show that they had identified the issues with the lower tenant as far back as March 19, 2017, (storage issues, garbage issues, noise issues), but nothing was done. The Tenants stated that because the Landlord made no efforts to help the conflict they had with the lower tenant, they should be entitled to compensation because they did not feel safe in their house any longer.

The Tenants also stated that they are seeking this item because the Landlord kept demanding money from the Tenants for things they didn’t owe. The Tenants stated that toward the end of the tenancy, they had to call the police a couple of times to have the Landlord escorted off the property. The Tenants allege that the Landlord came by and broke the fence and he was often aggressive and hostile. The Tenants

feel the had to move because the Landlord and the lower tenant made them feel unsafe. The Tenants stated that they acknowledge that it is difficult to prove the value of their loss for this item, so they are seeking “nominal damages” in the amount of $6,000.00.

The Landlord stated that the Tenants unnecessarily called the police and are engaged in a campaign to defraud him. The Landlord stated that he had to file a police report against the Tenants for a variety of reasons as well, although he failed to elaborate on this matter further.

The parties acknowledge that they have ongoing litigation in the small claims court for a variety of matters.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the testimony provided during these hearings, I found the Landlord’s statements to be scattered, repetitive, and often not relevant to the issues being discussed. In contrast, I found the Tenants were able to directly address and respond to most issues as they arose during the hearing, and were able to provide more comprehensive, cohesive, and relevant statements. As such, I find I prefer the Tenants statements, in general, and I have placed more weight on them, versus the statements made by the Landlord.

For example, to control the proceeding and step through the Tenants’ application in a logical manner, I had the Tenants speak to each of their monetary items (as listed on their monetary order worksheet). After the Tenants presented their evidence and

provided their relevant statements, the Landlord was given a chance to respond to each item, prior to allowing the Tenant to move to the next item. Despite clear instructions and direction being given to the Landlord to speak to each of these items, he would keep bringing up an unrelated matters. More specifically, the Landlord kept bringing up that he has settled all of these issues in small claims court. He repeated this after the Tenants presented a few of their different monetary items. He also kept saying that the Tenants had a grow op, without speaking to the relevance to each of the monetary items. The Landlord did not fully explain what he meant by his statements with respect to everything being previously settled in small claims court. The Landlord did not appear to understand the questions I was asking him. However, the Tenants were able to elaborate on this matter, and articulate that there was a separate litigation for an insurance/medical claim between the parties where an amount was awarded. The Tenants explained that this has nothing to do with this application, for the differing items.

I note the following relevant portions of the Act and the policy guidelines:

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;
(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

> *Damage or loss is not limited to physical property only, but also includes less tangible impacts such as*:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

[my emphasis]

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

I will address each of the Tenants' monetary items in the same order as above:

1) $1,600.00 – Double security deposit (2 x $800.00)

With respect to the Tenant's application to recover double the security deposit, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the evidence and testimony confirmed the Tenant sent their forwarding address in writing on June 16, 2017, by registered mail. Proof of mailing was provided by the Tenants. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed served with this document on June 21, 2017, the fifth day after it was mailed. The Tenants had already vacated by that time.

Therefore, the Landlord had until July 6, 2017, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. There is no evidence the Landlord did either. Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord (2x$800.00=$1,600.00) pursuant to section 38(6) of the Act.

2) $847.12 – Utility expenses

I have considered the Tenants' testimony and evidence on this matter. I note the Tenants changed the amount of part 1 from $341.00 to $242.00, and also failed to sufficiently lay out the full specifics of how they arrived at this amount in a clear way. They also provided a confusing and unclear explanation as to how they arrived at the remaining amount during the hearing.

I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- ***a detailed calculation of any monetary claim being made;***

Ultimately, I find the Tenants failed to provide a clear written account of how, exactly, they arrived at this amount. I find they have not sufficiently and clearly proven the value of their loss, such that the Landlord should have to repay this amount.

3) $225.00 – Loss of Use of Storage shed

Having reviewed this matter, I find the Tenants have sufficiently demonstrated that they had use of the shed up until the person living in the lower unit took it over in March of 2017. The Tenants were awarded $225.00 per month for the loss of use of this storage for March and April 2017 (at the previous arbitration). I find the Tenants are entitled to compensation for May 2017, as the Tenants were specifically granted leave to reapply if they continued to not have use of the shed after April 2017. I award the Tenants $225.00 for this item for May/June 2017.

4) $525.00 – Trailer in back yard

I have reviewed the evidence and testimony on this matter and I accept that the Tenants had the full use of the yard for many years, and this changed when the new downstairs tenant moved in around March of 2017. At this point it appears the lower tenant parked a trailer in a space and the Tenants feel impacted their use of the yard. However, I do not find the Tenants have sufficiently demonstrated what the impact was on their use of the yard such that I could be satisfied their use of that space was materially impacted. I note the yard is reasonably large, as per the photos. Furthermore, I find that since the Tenants did not actually pay this amount (it was an estimate to show what the lower tenant would have paid, had they parked in a private facility). I find the Tenants did not provide sufficient evidence that they actually suffered a monetary loss or that their use of the yard was materially impacted by this issue. I dismiss this item, in full.

5) $675.00 – Storage in Basement

I have considered the evidence and testimony on this matter, and I find it clear that storage was included as part of the tenancy agreement (the “storage” box is selected on the form), and I accept the Tenants’ version of events regarding losing access to this area in the basement, after having exclusive use for 7 years. I also accept that the storage that was included with their tenancy was of substantial value to them. As such, I find the Tenants suffered a loss of the value of their tenancy, and it appears the Landlord did not take any steps to help mediate this issue between the upper and lower suite, despite being made aware via the letter from the Tenants. I find the Tenants are entitled to some compensation for this matter. However, given they have already been awarded $225.00 per month for the loss of use of the lockable shed, I do not find they are entitled to an additional $225.00 per month for this area as well. I find a more reasonable amount for this item would be 50% of the amount claimed on this item, which amounts to $337.50.

6) $400.00 – Leaking Roof

I note the Tenants have provided photos of water pooling in several locations, and they are seeking compensation for the roof leaks and for “loss of enjoyment”. However, I do not find they have sufficiently elaborated on this item and explained when the leaks occurred, for how long, and how it impacted their use of the rental unit. Ultimately, I find the Tenants statements on this issue were somewhat vague and not sufficiently supported with specific details such that I could find they are entitled to compensation for this item. The Tenants did not meet the burden of proof to substantiate this item. I dismiss their claim for this item in full.

7) $350.00 – Loss of Quiet Enjoyment - Parrot
8) $200.00 – Loss of Quiet Enjoyment - Rats

I have considered the relevant evidence and testimony with regards to the parrot and the rats issues identified above (#7 and #8). I note the following excerpt from the Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment. This guideline deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means* ***substantial interference*** *with the ordinary and lawful enjoyment of the premises.*
>
> *[my emphasis]*

I accept that there were some rats present. However, it appears these were only ever caught or seen either outside or in the unfinished storage/furnace areas. The actual impact on the Tenants day to day life is not sufficiently substantiated based on their testimony and evidence.

With respect to the parrot, I accept that the lower tenant moved in with a parrot, and that some of the noises may have been audible from the Tenants space upstairs. However, the Tenants did not sufficiently explain how prevalent or severe this noise was or how it impacted their use and enjoyment of the space. Ultimately, I do not find the Tenants have sufficiently demonstrated that either of these issues, with the rats or the parrots, amounts to a *substantial interference* with the ordinary and lawful enjoyment of the premises. I do not find the Tenants have sufficiently substantiated either of these items, such that they are entitled to compensation for loss of quiet enjoyment.

9) $2835.00 – Illegal Rent Increase

Rent increases are governed by Part 3 of the Act. Pursuant to section 41, a Landlord must not increase rent except I accordance with this Part.

Section 42(2) provides that a Landlord must give a Tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 42(3) provides that a notice of rent increase must be in the approved form.

Section 43 provides that a Landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the Tenant in writing.

Residential Tenancy Policy Guideline 37. Rent Increases provides that "payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount".

In this case, the Tenants seek compensation for rent paid pursuant to rent increases which were not effected in accordance with the Act. Should the Tenants be successful, they would be entitled to claim compensation for additional rent they paid after the last two verbal rent increases.

I find that both of the verbal rent increases, in October of 2015, and October of 2016, were above the allowable amount, and not in the approved form. I find they are unlawful rent increases. I also note the Tenants stated the Landlord tried to raise their rent on another occasion, verbally, in August of 2016, which only caused the Landlord's verbally requested rent increase to be delayed until October of that year.

In any event, it is clear the rent increases were not done in accordance with the Act, and I find there is some evidence that the Tenants verbally resisted the rent increases but appear to have paid it for a period of time to keep the tenancy going. I do not find the payment of the increased rent amounts to an agreement to the rent increase. There is no evidence the parties had a meeting of the minds regarding the rent increases, and there is insufficient evidence to show that these verbal rent increases were done by the consent of both parties.

Ultimately, I find the Tenants are entitled to recover the amount they paid above and beyond the $1,600.00 base rent amount for the last 19.5 months of the tenancy. This amounts to $960.00 ($80.00 x 12 months) for October 2015 – September 2016, and another $1,875.00 ($250.00 x 7.5 months) for October 2016 until May 2017 (when the tenancy ended). I award $2,835.00.

10) $200.00 – Loss of use of back yard

I have reviewed the testimony and evidence on this matter, and I note the photos of the hole are not consistent with the Landlord's version of events (that the Tenants dug out the hole and that there was no tank buried). The photos show a cavernous hole, in the middle of the yard, that appears to be some buried infrastructure (tank of sorts). I do not find the Landlord's version of events is credible or reliable. However, I accept that he attempted to fix the hole a matter of days after it was brought to his attention, and although it was not to the Tenants' satisfaction, I find he took steps to mitigate the issue and to make the yard sufficiently usable. I do not find the Tenants have sufficiently demonstrated that this issue warrants compensation for loss of use or loss of quiet enjoyment.

11) $3,000.00 – Garden Work

I have considered the totality of the evidence and testimony on this matter. I find the following portion of the policy guideline #1 to be helpful:

PROPERTY MAINTENANCE
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

I note the issue of garden maintenance was not addressed in the initial tenancy agreement. I accept that the Landlord took care of some of the general yard maintenance for the first couple years of the tenancy, but it is not sufficiently clear what, if any, role the Tenants had in maintaining the yard during that time. I do not find any of the emails provided into evidence are sufficiently clear as to show there was any clear agreement or long term arrangement regarding yard maintenance.

At this point, the Tenants feel they should be compensated for yard maintenance from 2012 through to 2017. However, I note the Tenants specifically stated that the yard was largely for their use, and the lower unit had their own smaller contained area. As such, I find the Tenants are responsible, in the absence of a clear written agreement indicating otherwise, for the general yard maintenance they are seeking compensation for. I dismiss this item, in full.

12) $300.00 – loss of use of stairs

Having considered this issue, I accept that there were some safety concerns with the interior stairs (steep grade, low headroom, and loose carpet). However, the Tenants stated that the Landlord fixed the loose carpet. I note the other issues with the headroom and pitch were not fixed, but these are structural realities that would have been present at the time the Tenants chose to rent the unit. It appears the Landlord took some steps to fix the carpet, and prevent another accident from happening (asked the Tenants to use an alternate staircase in the back). Although the Tenants feel the alternate stairs at the back of the house were not sufficiently safe, I find there is insufficient evidence to show they were dangerous to the point where they were not useable as a short term backup. Although it appears the Tenants were not without access to the lower part of the house (still had access through the back exterior stairs), I do accept that the loss of use of the interior stairway would have negatively impacted their use of the residence and their access to laundry.

I note an arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal amount is more appropriate, given the difficulty in ascertaining the value behind the loss of use of the stairs. I award a nominal amount of $100.00 for this item.

13) $12,800.00 – Breach of Agreement

Having reviewed this matter, I note the Tenants are seeking $12,800.00, because they had to move before they wanted to or had initially planned to. The Tenants pointed to a couple of broken promises (“pre-conditions”) and stated they are looking to recover costs associated with having to rent a different more expensive place after things started to go sideways in this tenancy.

I note the relationship became acrimonious towards the end of the tenancy. It appears both parties, at different times, had called the police on each other. It also appears the

parties were involved in other litigation against each other, some of which involved a fall/injury on the property (insurance claim).

It appears the tenancy became too dysfunctional and contentious for a variety of reasons. Each party has made assertions and pointed blame at the other party for the cause of the breakdown. However, for this particular item, I note the Tenants are seeking a large sum of money, $12,800.00. I note the Tenants explained that this was, in part, due to the additional costs that came with having to rent a different more expensive rental unit for the next couple of years. However, I also note the Tenants did not provide any written tenancy agreement indicating what their new rent was, and how much extra they had to pay. Furthermore, I note the Tenants did not provide any written breakdown or clear verbal explanation as to how they arrived at the amount of $12,800.00.

I also note the Tenants provided a copy of the tenancy agreement they initially signed with the Landlord in 2009. I find the parties were under a month-to-month tenancy by the time the tenancy ended. I do not find the email conversations between the Landlord and the Tenants dating back to 2013 are sufficient to show that a new written agreement was made to allow the Tenants to live there “as long as they want” and it does not appear the parties amended the actual tenancy agreement properly (set a new, longer fixed term).

Ultimately, in order to be successful in a monetary claim, there are several elements which must be demonstrated, one of which is to explain, with clarity (preferably in writing), how the amount was calculated (with supporting documentation). It is not sufficiently clear how the Tenants arrived at the amount they have claimed for this item and I find they have not met the burden of proof placed on them to verify the value of their loss. I dismiss this portion of the Tenants’ claim, in full, without leave.

14) $6,000.00 – Harassment

The Tenants are seeking compensation for “harassment”, due to both the actions of the lower tenant, the lack of help from the Landlord in dealing with the lower tenant, as well as the Landlord’s aggressive and hostile behaviour towards them. The Tenants stated they are seeking nominal damages of $6,000.00, as they were not sure how to come up with an amount or prove the amount.

I note the Tenants were having difficulty with the lower tenant for the last couple of months of their tenancy. The Tenants complained, in writing, to the Landlord about

noise, garbage piling up, loss of storage space, and aggressive behaviour. The Tenants complained about the lower tenant in writing more than once, starting as soon as March 19, 2017. I accept that the Tenants suffered some loss of use of storage (already addressed above), and some loss of quiet enjoyment (due to increasingly hostile relations with both the Landlord and the lower tenant).

I find the Landlord appears to have taken very little, if any, steps to mitigate the poor relations between the Tenants and the lower tenant. I find the Landlord should have taken more steps to help the Tenants resolve their disputes, particularly regarding the storage (as this was included in the initial tenancy agreement from 2009). It appears the Landlord also offered this space to the new tenant of the lower unit when she moved in in March 2017. This appears to have contributed significantly to the breakdown, and the following accusations. Not only was the Tenants' relationship with the tenant of lower unit degrading rapidly in the spring of 2017, the relationship between the Landlord and the Tenants was also becoming hostile, litigious, and dysfunctional.

It is somewhat difficult to fully ascertain who is largely responsible for the poor relations, including the alleged harassment. Based on the limited evidence, it is also difficult to determine with any certainty whether or not there was any "harassment" which warrants compensation under the Act. That being said, I find the Tenants have sufficiently demonstrated that they were having issues with the lower tenant, and that they repeatedly informed the Landlord of this in writing. However, it appears very little was done, which ultimately impacted the Tenants quiet enjoyment and use of the premises, as the issues snowballed. I find the Tenants are entitled to some compensation for this matter. However, as they addressed in their own statements, determining a value for this loss is not straightforward.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal amount is more appropriate, given the difficulty in ascertaining the value behind the loss of quiet enjoyment ("harassment"). However, I also note that nominal awards are a minimal award, and the Tenants' request of $6,000.00 for nominal damages exceeds what nominal damages are intended for. I agree that a nominal

amount is appropriate in this case, but I find a lesser amount will be awarded in the amount of $500.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partially successful in this hearing, I also order the Landlord to repay the $100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I grant the monetary order based on the following:

Claim	**Amount**
Double Security Deposit	$1,600.00
Storage Shed	$225.00
Basement Storage	$337.50
Illegal Rent Increase	$2,835.00
Stairs - Nominal	$100.00
Quiet Enjoyment - Nominal	$500.00
PLUS:	
Filing Fee	$100.00
TOTAL:	**$5,697.50**

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **$5,697.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: February 10, 2020

Residential Tenancy Branch