Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, MNDCL, FFL // MNDCT

Introduction

This hearing originally convened on January 20, 2020 and was adjourned to March 27, 2020 due to time constraints. This Decision should be read in conjunction with the Interim Decision dated January 20, 2020.

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

This hearing also dealt with the landlord's 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;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant K.K. (the "tenant") testified that she served the landlord with her application for dispute resolution by putting it in the landlord's mailbox. The tenant could not recall on what date her application was served. The landlord testified that she received the tenant's application for dispute resolution in person but could not recall on what date. I find that the tenant's application for dispute resolution was sufficiently served on the landlord, for the purposes of this *Act*, pursuant to section 71 of the *Act.*

Both parties agree that the tenant served the landlord with her second evidence package less than 14 days before the hearing. The landlord testified that she had the opportunity to review and respond to the tenant's second evidence package.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondence at least 14 days before the hearing. Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlord testified that she had time to review and respond to the evidence contained in the tenant's second evidence package. I find that the landlord was informed of the case against her and was able to review and respond to the evidence provided by the tenant. I accept the tenant's second evidence package into evidence and find that the landlord was served with the tenant's evidence package in accordance with section 88 of the *Act.*

Both parties agreed that the landlord served the tenant with her application for dispute resolution and amendment via registered mail; however, neither party could recall the dates the packages were sent or received. I find that the tenant was served with the landlord's application for dispute resolution package and amendment in accordance with section 89 of the *Act.*

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?

4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
5. Is the landlord 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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. Tenant J.W. rented the subject rental property which is a single-family house with an upper and lower suite, from the landlord. Tenant J.W. told the tenant that he owned the house and made a verbal tenancy agreement with her to rent out the lower suite while he resided in the upper suite. The tenant moved into the subject rental property on July 10, 2019. Monthly rent in the amount of $1,700.00 was payable on the first day of each month. The tenant moved out of the subject rental property on September 30, 2019.

Tenant's Claim

The tenant testified to the following facts. The subject rental property was not habitable when she moved in due to deficient electrical work and the presence of construction materials. The tenant didn't know the severity of the issues with the subject rental property when she moved in.

The tenant testified that she first learned that tenant J.W. was not the owner of the house when he received a 10 Day Notice to End Tenancy for Unpaid Rent, from the landlord which was on or around August 12, 2019. After the tenant learned that tenant J.W. was not the landlord she contacted the landlord via email and asked to stay on as the tenant in the basement suite, the landlord agreed. A tenancy agreement was not signed by the parties. The landlord agreed to the above testimony.

The tenant testified to the following facts. The subject rental property had lives wires that were exposed, presenting a danger to herself and her three children. Three weeks

after moving into the subject rental property tenant J.W. put up lights to cover wires which were exposed. At some point the landlord started to get involved but the tenant didn't know who she was or why she was trying to arrange an electrician for her. The landlord did hire an electrician and the problem was fixed.

The landlord submitted that the exposed wires were the result of tenant J.W. adding additional lighting to the kitchen, which was done without her knowledge. The landlord submitted that even though the lighting and wiring were the responsibility of tenant J.W., who was the tenant's landlord at the time of the wiring issues, the landlord arranged for an electrician to attend and fix the problem while she was away on holidays. The landlord testified that the wiring problem was fixed while tenant J.W. was still the tenant's landlord.

The tenant testified that the landlord put her in an uncomfortable position by having heated conversations with tenant J.W. outside the subject rental property and that this was disturbing to herself and her children. The tenant testified that she and her children have sought counseling as a result of all the issues arising out of this tenancy and that she would like to recover the cost of counselling from the landlord. No receipts or proof of counselling were entered into evidence. The tenant did not quantify the cost of the counselling.

The landlord testified that she was having a difficult time with tenant J.W. and the police attended on two occasion as tenant J.W. was aggressive. The landlord submitted that the tenant has not proved that the arguments between herself and tenant J.W. were serious enough to cause psychological harm.

Both parties agreed that tenant J.W. was evicted from the subject rental property due to nonpayment of rent on August 22, 2019.

Both parties agree that the tenant provided the landlord with written notice to end tenancy on September 9, 2020 effective October 1, 2020. The September 9, 2020 letter was entered into evidence and states in part:

> I, [tenant], give my Notice for October 1, 2019. I do not feel safe in the residence and it is not a suitable environment for my children.

The landlord testified that the tenant had not previously shared any concerns with her about the subject rental property. The landlord testified that the tenant did not provide

her with an opportunity to address the tenant's concerns. The tenant did not enter any previous correspondence putting the landlord on notice that the tenant believed the landlord had breached a material term of the tenancy agreement.

The tenant testified to the following facts. The landlord asked her for a copy of her key to the subject rental property because tenant J.W. had changed the locks to the lower suite and did not provide the landlord with a copy. The tenant testified that she made three separate appointments with the landlord to provide her with the key, but the landlord did not attend any of the agreed appointments. The landlord testified that she had a difficult time getting the tenant to agree on a time in which the key would be provided but the tenant eventually agreed to provide the key to the landlord on September 13, 2019. The landlord testified that she had car trouble on September 13, 2019 and was unable to meet the tenant. The landlord testified that she informed the tenant of same via text.

The landlord testified that she advised the tenant via text on September 10, 2019 of a rental showing of the subject rental property at a set time during the day on September 14, 2019. The tenant testified that she didn't think she received the text four days before the showing but did receive it more than 24 hours before the proposed September 14, 2019 showing.

Both parties agreed that the tenant left a note taped to her front door on September 13, 2019 which states:

> Dear [landlord],
>
> It pains me to say that I came home and was home till 5 pm Friday an no one was here.
>
> So you don't have keys.
>
> Thanks, [tenant]

The tenant testified that she left the subject rental property on Friday September 13, 2019 for a weekend getaway with her husband. Both parties agree to the following facts. The tenant received a text from the landlord around 6:20 p.m. on September 13, 2019 informing the tenant that the landlord was going to change the locks on September 14, 2019 to gain access to the subject rental property to complete the September 14, 2019 showing. The text stated that the tenant would have to come and

get the new key from the landlord.

The tenant testified to the following facts. The tenant asked her friend, witness K.K. to attend at the subject rental property to check on it and to feed her rabbits. Witness K.K. attended at the subject rental property on Saturday September 14, 2019 around 4:00 p.m.

Witness K.K. testified to the following facts. The landlord approached witness K.K. and her four-year-old daughter in an aggressive manner when witness K.K. walked down the tenant's driveway. The landlord yelled at witness K.K. to get off the property. Witness K.K. diffused the landlord's hostility by calmly telling her who she was and why she was there. The door knob and lock of the subject rental property were removed, and the door was secured shut by a bungee cord. All the lights in the subject rental property were on and all the curtains were open. The tenant would not have gone away for the weekend and left all the lights on and the curtains open, so the landlord must have improperly entered the subject rental property.

The tenant testified that she closed all the curtains and turned off the lights before she left for the weekend.

The landlord testified that she was not hostile to witness K.K. and recalled a pleasant conversation she had with witness K.K.'s daughter about rain boots. The landlord testified that she remained at the subject rental property from the time the door knob and lock were removed until a new doorknob and lock were installed to ensure the safety of the tenant's property.

Both parties agree that the police attended at the subject rental property on September 14, 2019 and declined to get involved in the residential tenancy matter. The landlord entered into evidence a copy of the police report dated September 14, 2019 which states in part:

> RCMP to report that [redacted] [landlord], was in her home without permission. [A constable] attended observed the basement units doorknob removed and held closed by a bungee cord. [The constable] cleared the residence which appeared neat and in order. [The constable spoke with [the landlord] outside who stated that she had removed a doorknob as her previous tenant changed the locks without providing a key for access. [The landlord] had been trying to liase with [redacted] and informed her that there would be showings for the residence on

> 2019-09-14 and 15 via text message on 2019-09-11. The two were unable to liase [redacted] which led [the landlord] to remove the door knob with intentions to replace it with a new one. [The landlord] stated that she would insert the new door knob at the end of the day and would pass the key onto [redacted]. Both parties were unhappy with one another and were informed by [the constable] to contact the tenancy branch regarding their displeasure which both parties stated that they would.

Witness C.J. testified to the following facts. Witness C.J. attended at the subject rental property in the evening of September 14, 2019, after the RCMP constable left. The landlord provided witness C.J. with a new doorknob lock and key set in a sealed package. The sealed set came with two keys. Witness C.J. installed the new doorknob and lock and confirmed that both keys worked. Witness K.K. attended outside witness C.J.'s residence later that evening and witness C.J. met witness K.K. on the street and provided her with one of the new keys.

The tenant testified that she returned home in the evening of September 15, 2019 and picked up the key left with witness K.K. When she got back to the subject rental property, she used the key to open the door and then put the key on her keychain. The next day, September 16, 2019, she locked the door and left the house. On her return to the subject rental property, the key to open the door did not work. The tenant asked a neighbour to help her and he too was unable to open the door. The neighbour helped the tenant slide open a side window and the tenant's 10-year-old daughter crawled inside, giving her access to the subject rental property.

Both parties agreed to the following facts. The tenant called the landlord on September 16, 2019 to inform her that they key she had been provided with did not work. The landlord's husband, witness C.J., attended the same day and could not get the key to work and hypothesized that the tenant must have lost her key and confused it with the key she was trying to open the door with. The tenant disagreed. A heated series of text messages between the landlord and the tenant were exchanged, these text messages were entered into evidence. The text messages resulted in the landlord arranging for the tenant to pick up a new copy of the key from a local hardware store on September 17, 2019.

The tenant testified that the hardware store clerk told her the original key did not work because it was cut on the wrong key template.

The tenant testified that the landlord started to renovate the upper suite after tenant J.W. was evicted and that the landlord left dangerous construction materials around the subject rental property. The materials included wood with nails sticking out of it. Photographs of same were entered into evidence. The tenant testified she believes the materials left outside contained asbestos or other hazardous materials because her children got sick shortly after construction began. Photographs of construction materials were entered into evidence. No medical records were entered into evidence.

The tenant testified that she messaged the landlord about the construction materials and asked her to remove them, but the landlord did nothing. The alleged text messages were not entered into evidence. The tenant testified that she provided the landlord with a letter dated September 11, 2019 asking the landlord to clean up the construction materials. The September 11, 2019 letter was entered into evidence.

The landlord testified that the debris from the renovation did not impede the tenant's access to her subject rental property and was not significant.

Witness C.H. testified that the subject rental property was a mess when the tenant moved in and tenant J.W. told her that he was the owner of the subject rental property. Witness C.H. described the subject rental property, when the tenant first moved in, as a junk yard. Witness C.H. testified that she attended at the subject rental property on September 14, 2019 and saw that the door knob was removed.

In the first hearing the tenant testified that on September 20, 2019 she first noticed that the heat at the subject rental property was not working and messaged the landlord that day. The landlord provided the tenant with the code to go to the upper unit and turn on the heat, but the tenant could not get the heat turned on. The landlord's husband attended at the subject rental property on September 20, 2019 but could not get the heat to work. The landlord notified the tenant on September 23, 2019 that an electrician would attend at the subject rental property on September 24, 2019 to fix the heat. The heat was fixed on September 24, 2019.

In the second hearing witness C.J. testified that the landlord informed him that the heat at the subject rental property was not working and he attended at the subject rental property the same day. Witness C.J. testified that he could not recall the date he attended at the subject rental property. Witness C.J. testified that he fixed the problem the same day he attended. In the second hearing the tenant agreed with witness C.J.'s above testimony.

The tenant testified that she is seeking the landlord to refund her September 2019's rent in the amount of $1,700.00 due to the disturbances she suffered, as outlined in the tenant's testimony. The tenant's application for dispute resolution states a total claim of $1,700.00. In the hearing the tenant testified that she is also seeking to recover her moving expenses totalling $603.00. No receipts were entered into evidence.

The landlord testified that she did not receive proper notice of the tenant's claim for moving expenses and that the tenant did not amend her application to properly make this claim.

Landlord's Claim

The landlord testified that she is seeking October 2019's rent in the amount of $1,700.00 from the tenant because the tenant provided her with less than one month's notice to end tenancy. The landlord testified that she was not able to find a new renter for October 2019.

The landlord testified that the tenant kept rabbits at the subject rental property and the rabbits, and their excrement, damaged the lawn at the subject rental property. The landlord testified that based on her own research, she estimated the cost to repair the lawn to be $430.66.

The tenant testified that the lawn of the subject rental property was a mess when she moved in. The tenant testified that the damage caused by her rabbits was minimal and could be fixed with a handful of grass seeds. Both parties agree that move in and out condition inspection reports were not completed by the parties. The landlord entered into evidence photographs of the lawn showing a brown area where the rabbit cage used to be.

The landlord testified that the tenant left piles of overflowing garbage on the curb of the subject rental property when she moved out. Photographs of same were entered into evidence. The landlord testified that she did not want to get in trouble from the city so she re-bagged all of the tenant's garbage so that it would be acceptable for roadside pick up. The landlord testified that she is seeking $100.00 for this added clean up.

The tenant made no submissions regarding the garbage.

Analysis

Tenant's Claim - Access

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the tenant's claim fails.

Section 29(1) of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Residential Tenancy Policy Guideline #7 states that where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

I find that the landlord provided the tenant with at least 24 hours notice of entry, not more than 30 days before September 14, 2019. While the text message was not entered into evidence, based on the testimony of both parties I find that, on a balance of probabilities, it contained the date and time of entry which was between 8 a.m. and 9 p.m. Based on the testimony of both parties, I find that the purposes of showing the rental property to prospective tenants was a reasonable purpose.

While text message is not a form of service permitted under section 88 of the *Act,* I find that the tenant was sufficiently served, for the purposes of this Act, pursuant to section 71 of the Act, with the landlord's notice of entry more than 24 hours before the proposed entry because the tenant testified as such. I therefore find that the landlord was permitted to enter the subject rental property on September 14, 2019, pursuant to section 29 of the *Act.*

Based on the testimony of both parties, I find that the key provided by witness C.J. to the tenant via tenant K.K. was a functional working key because the key worked to open the door on the evening of September 15, 2019 when the tenant returned home and it functioned to lock the front door when the tenant departed in the morning of September 16, 2019. I make no finding on why the key stopped working as it is not relevant. I find that the tenant notified the landlord that her key did not work in the evening of September 16, 2019 and that the landlord made a replacement key available in the afternoon of September 17, 2019.

The tenant testified that she is owed damages because the landlord changed the lock at the subject rental property without her permission and she did not have a functional key to the subject rental property from September 14-17, 2019.

Section 31(1.1) of the *Act* states that a landlord must not change locks or other means of access to a rental unit unless

> (a)the tenant agrees to the change, and
>
> (b)the landlord provides the tenant with new keys or other means of access to the rental unit.

Based on the testimony of both parties I find that the landlord breached section 31(1.1) of the *Act* because she changed the locks at the subject rental property without the tenant's agreement. Nonetheless, I find that the tenant has not proved that she suffered a loss as the result of the landlord's breach as the tenant was provided with a functional key on September 15, 2019, when she returned to the subject rental city. I also find that the tenant was aware that the landlord required access to the subject rental property while the tenant was going to be out of town and the tenant could easily have left a copy of the key hidden at the subject rental property for the landlord. Had the tenant done so, the landlord would not have changed the lock.

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 *[landlord's right to enter rental unit restricted]*;
>
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline #6 states that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment under section 28 of the *Act.* In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that tenant J.W. changed the lock of the subject rental property contrary to section 31(2) of the *Act*, and the landlord needed to either get a copy of the new key or replace the lock to fulfill her obligations as a landlord under the *Act.* I find that both parties are responsible for their inability to find a mutually agreeable time to exchange keys or install a new lock set.

Based on my above findings, I dismiss the tenant's claims for damages arising out of the change of the lock.

Tenant's Claim- Heating

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that

> (a)complies with the health, safety and housing standards required by law, and
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the first hearing the tenant testified that she notified the landlord that the heat was not working on September 20, 2019 and that witness C.J. attended at the subject rental property on September 20, 2019 to fix the issue; however, the problem was not fixed until September 24, 2019 by an electrician. In the second hearing the tenant agreed with witness C.J.'s testimony that he was able to fix the heating problem the same day he attended.

I find that the tenant's testimony changed between the first hearing and the second hearing and that she has therefore not proved, on a balance of probabilities, the amount of time she was without heat. In any event, I find, based on the testimony both parties and witness C.J., the landlord responded immediately to the tenant's complaint of her heat not working. I find that the landlord took reasonable steps to return heat to the subject rental property and did not breach section 32 of the *Act.* I therefore dismiss the tenant's claims arising out of the time to repair the heating system.

Tenant's Claim- Construction Material

Both parties agree that the landlord began renovating the upper suite at the end of August 2019, after tenant J.W. was evicted for non-payment of rent. Both parties agree that construction/renovation materials were present at the subject rental site; however, the parties disagree on the disruptive nature of those materials. Both parties agree that

the tenant provided the landlord with a letter dated September 11, 2019 which requests that the landlord remove the construction materials. Both parties agree that the construction/renovation materials were not removed.

The tenant testified that the construction/renovation material were full of sharp nails and she was concerned for the safety of her children. Photographs of the construction/renovation materials were entered into evidence and show nails protruding from boards. The tenant testified that she believed that the construction/renovation material contained hazardous materials which made her children sick.

Section 32(1) of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that

> (a)complies with the health, safety and housing standards required by law, and
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

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 *[landlord's right to enter rental unit restricted]*;
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the landlord breached section 32(1) of the *Act* by leaving construction/renovation materials in piles around the subject rental property which contained sharp nails and other jagged materials. I find that the tenant has not proved that the materials caused illness to her or her family as no medical records indicating same were entered into evidence.

I note that under Residential Tenancy Policy Guideline #6 the landlord’s right to maintain the subject rental property must be taken into consideration. I find that the landlord could have mitigated the potential harm caused by piles of construction/renovation materials by putting them in receptacles built for construction/renovation materials. I find that the tenant’s right to quiet enjoyment under

section 28 of the *Act* was breached by the presence of the construction/renovation materials.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

I find that the value of the tenancy was reduced once renovations on the upper unit began. Based on the testimony of both parties I find that the renovations began on or around August 26, 2019. I find that the tenant is entitled to a rental reduction of 20% from August 26, 2019 to September 30, 2019 (36 days). I find that the average daily rent rate for the subject rental property is $55.74. $55.74 x 36 (days) = $2,006.64. 20% of $2,006.64 is $401.33. I find that the tenant is entitled to a rent reduction of **$401.33.**

Tenant's Claim- Faulty Wiring

Residential Tenancy Policy Guideline #19 states that when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant…. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant…There is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement…. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

The landlord provided undisputed testimony that the wiring issues resulted from tenant J.W. changing lights at the subject rental property without her permission. The landlord provided undisputed testimony that the wiring issue was resolved while tenant J.W. was still the tenant's landlord under the sublease agreement between the tenant and tenant J.W.

Based on the landlord's undisputed testimony and Residential Tenancy Policy Guideline #19, the tenant is not permitted to claim against the landlord for breaches of the tenancy agreement between the tenant and tenant J.W. I therefore dismiss the tenant's claim for damages arising out of the electrical issues.

Tenant's Claim- Mental Distress

The tenant did not enter into evidence documentary proof that she and her children suffered mental distress from the conduct of the landlord and the landlord's interactions with tenant J.W. The tenant did not enter into evidence a statement from a medical professional making a finding regarding the tenant or her children's mental state and did not provide proof of any medical expenses. Based on the above, I find that the tenant has failed to prove her claim and it is therefore dismissed.

Landlord's Claim- Loss of Rental Income and Tenant's Claim- Moving Expenses

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

> (a)is not earlier than one month after the date the landlord receives the notice, and
>
> (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the tenant did not provide the landlord with written notice that she considered the state of subject rental property to be a material breach of the tenancy agreement before she provided the landlord with her notice to end tenancy. I find that the tenant did not provide the landlord with a reasonable period of time to correct the deficiencies before the tenant elected to end the tenancy. Therefore, the tenant was not permitted to end the tenancy under section 45(3) of the *Act* and was required to provide the landlord with at least one month's notice to end tenancy, pursuant to section 45(1) of

the *Act.*

Residential Tenancy Policy Guideline #5 states that where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act,* less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenant was permitted to end the tenancy was October 31, 2019. I therefore find that the tenant owes the landlord $1,700.00 in unpaid rent for the month of October 2019. As the tenant chose to end the tenancy, the tenant is not entitled to recover the cost of her move. I also find that the tenant's claim for damages is dismissed because she did not prove the value of her loss as no receipts were entered into evidence.

Landlord's Claim- Grass

I find that the landlord failed to prove the quantification of her damages to the lawn of the subject rental property as no estimates from third parties such as landscapers were entered into evidence. The landlord testified that her estimate was based on research she completed; however, this research was not entered into evidence.

Residential Tenancy Policy Guideline 16 states that 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. While the landlord has failed to prove the value of her loss, based on the testimony of both parties, I find that the tenant's rabbits damaged the lawn to some extent. I therefore award the landlord $100.00 in nominal damages.

Landlord's Claim- Garbage

Based on the landlord's undisputed testimony and the photographs entered into evidence, I find that the tenant left heaps of overflowing garbage in the garbage bin at the subject rental property. I accept the landlord's testimony that she had to re-bag the garbage and clean the surrounding area. The landlord testified that she is claiming

$100.00 but did not explain how she arrived at that sum. I find that the landlord has failed to prove the quantification of her loss; nonetheless I find that she has proved that a loss was suffered. I find that the landlord is entitled to nominal damages in the amount of $50.00.

As the landlord was successful in her application for dispute resolution, I find that she is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Conclusion

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

Item	**Amount**
October 2019's rent	$1,700.00
Lawn damage- nominal damages	$100.00
Garbage clean up- nominal damages	$50.00
Filing fee	$100.00
Less tenant's loss in value of tenancy agreement	-$401.33
TOTAL	**$1,548.67**

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: March 30, 2020

Residential Tenancy Branch