Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

A hearing was convened on April 28, 2020 in response to an Application for Dispute Resolution filed by the Tenants, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant with the initials “BT”, hereinafter referred to as BT, stated that on December 17, 2019 the Dispute Resolution Package and evidence the Tenants submitted to the Residential Tenancy Branch on November 25, 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings**.**

On April 18, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on April 18, 2020. Service by email is currently being permitted due to the COVID-19 pandemic. BT acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

There was insufficient time to conclude the hearing on April 28, 2020 so that hearing was adjourned. The hearing was reconvened on June 22, 2020 and was concluded on that date.

At the outset of the each hearing each party affirmed that they would speak the truth, the whole truth, and nothing but the truth during the proceedings. The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

All of the evidence submitted by the parties has been reviewed but is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter #1

The Tenants applied to amend the spelling of the first name of the Tenant with the initials “FK”. With the consent of both parties, the e Application for Dispute Resolution has been amended to reflect the spelling provided at the hearing.

Preliminary Matter #2

In the Application for Dispute Resolution the Tenants do not clearly explain why they are seeking compensation of $19,000.00. In the first five pages of the Tenants’ evidence the Tenants outline various deficiencies with the rental unit. BT stated that the Tenants are seeking compensation for living in a rental unit with the deficiencies noted in those first five pages.

The Landlord stated that he understood the nature of the Tenants’ claims for $19,000.00. It is readily apparent from the Landlord’s written submission that he is aware of the nature of the Tenants’ claims. I therefore find it reasonable to consider whether the Tenants are entitled to compensation for any of the deficiencies mentioned on the first five pages of the Tenants’ evidence package.

At the first hearing the Tenants were advised that any deficiencies not specified on the first five pages of their evidence package would not be considered at these proceedings, even if those deficiencies were mentioned elsewhere in the evidence package. I find that including deficiencies not specified on these first five pages would be unfair to the Landlord, as other deficiencies were not clearly identified as issues in dispute.

The Tenants were asked if they would like to proceed with the hearing with the understanding that their claim would be limited to the deficiencies specified on the first five pages of their evidence package. The Tenants were advised that if their claim included issues not identified in those first five pages, they could withdraw the Application for Dispute Resolution and proceed at a later date. BT stated that they wished to proceed with the hearing, with the understanding that the claim would be limited to deficiencies specified on the first five pages of their evidence package.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?
Are the Tenants entitled to compensation for deficiencies with the rental unit, as described on the first five pages of the Tenants evidence package?

Background and Evidence:

The Landlord and the Tenants agree that:

- this was a fixed term tenancy, the fixed term of which began on July 01, 2018 and ended on June 31, 2019;
- BT was allowed to move into the rental unit early, on June 29, 2018;
- the monthly rent was $3,400.00;
- a condition inspection report was completed with BT on June 29, 2018 when she first took possession of the rental unit;
- a second condition inspection report was completed by both Applicants on August 02, 2018;
- the Landlord nor his agent was present when the second condition inspection report was completed;
- the second condition inspection report was presented to the Landlord, who disagreed with much of the content of the second report;
- the Landlord made notes on the right hand column of the second report to indicate which entries he agreed with;
- the tenancy ended on March 31, 2019, by mutual consent;
- a security deposit of $1,700.00 was paid;
- a pet damage deposit of $500.00 was paid;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit or pet damage deposit;
- the Landlord did not have written permission to retain any portion of the security/pet damage deposit;
- the Landlord returned the entire security/pet damage deposit on April 16, 2020, by e-transfer;
- a final condition inspection report was completed on March 30, 2019; and
- the Landlord was represented by an agent during the final condition inspection.

BT stated that a forwarding address for the Tenants was written on the final condition inspection report on March 30, 2019.

The Landlord stated that the agent he hired to represent him at the final condition inspection did not give him a copy of a final condition inspection report, so he does not know if the Tenant's forwarding address was recorded on that report. He stated that he

has “no record” of a report being completed during the final inspection or of the Tenants providing a forwarding address on that inspection report.

The Tenants submitted a copy of the report they submit was completed on March 30, 2019.

In the Application for Dispute Resolution the Tenants applied for the return of the security/pet damage deposit of $400.00. At the hearing BT clarified that the Tenants were actually seeking double the return of the security/pet damage deposit, less the $2,200.00 that was returned on April 16, 2019.

The Landlord stated that he does not believe he should have to pay double the security deposit, as he was only 22 hours late in returning the deposit.

The Tenants are claiming compensation of $19,000.00, in part, because the rental unit was not provided to them in a reasonably clean condition at the start of the tenancy.

In support of the claim for cleaning BT stated that:

- she was the only Tenant present when the first condition inspection report was completed on June 29, 2018;
- the need for cleaning was not recorded on the report completed on June 29, 2018 because the former occupants had just moved out and the Landlord completing the report assured her the unit would be cleaned;
- the second condition inspection report was completed by the Tenants on August 02, 2018, in the absence of the Landlord;
- the report completed on August 02, 2018 accurately reflects the cleanliness of the rental unit at the start of the tenancy;
- the report completed on August 02, 2018 was given to the Landlord later in the day on August 02, 2018;
- the photographs in the Tenants’ evidence package on pages 71, 72, 75, and 82 were taken during the first week of July of 2018;
- the photographs on pages 71 and 72 are photographs of the master bedroom;
- the photograph on page 75 represents the cleanliness of the laundry room;
- the photograph on page 82 of the Tenants’ evidence package depicts the amount of garbage in the yard of the residential complex at the start of the tenancy;
- the Landlord removed the garbage in the yard sometime in July of 2018;
- she did not take photographs of all the areas in the unit that needed cleaning at the start of the tenancy;

- she and her roommates spent a total of 16 hours cleaning the rental unit at the start of the tenancy;
- the Tenants did not ask for compensation from the Landlord for cleaning the rental unit;
- when the Landlord came to the rental unit on August 02, 2018 the Landlord offered the Tenants dinner vouchers in compensation for cleaning the rental unit, which the Tenants did not accept;
- she did not receive the email the Landlord sent on August 02, 2018, in which the Landlord offered additional cleaning; and
- as the offer for additional cleaning was not received, the Tenants did not ask for additional cleaning.

In response to the claim for cleaning the Landlord stated that:

- the rental unit was provided to the Tenants in reasonably clean condition at the start of the tenancy;
- the condition inspection report that was completed on June 29, 2018 accurately reflects the cleanliness of the rental unit at the start of the tenancy;
- the condition inspection report that was completed on August 02, 2018 does not reflect the cleanliness of the unit at the start of the tenancy, as the rental unit had been occupied by at least one of the Tenants for over one month when that report was completed;
- on August 02, 2018 he was provided with a copy of the condition inspection report after the Tenants completed it on August 02, 2018;
- he did not agree with a significant number of the entries on the report that was completed on August 02, 2018;
- he initialled any of the entries on the August 02, 2018 report that he agreed with;
- he added some comments to the August 02, 2018 report, which appear on the right hand column of the report;
- the photographs on pages 71, 72, and 75 in the Tenants' evidence package do not fairly represent the cleanliness of the unit at the start of the tenancy;
- he does not know when those photographs were taken;
- he thinks the photograph on page 82 of the Tenants' evidence package depicts the amount of garbage in the yard of the residential complex at the start of the tenancy;
- the Landlord removed the garbage in the yard in July and August of 2018;
- in an email sent on August 02, 2018 the Landlord offered the Tenants dinner vouchers in compensation for all of the issues with the rental unit at the start of the tenancy;

- in the email of August 02, 2018, the Landlord offered additional cleaning; and
- the Tenants did not ask the Landlord for additional cleaning.

The Tenants are claiming compensation of $19,000.00, in part, because the front door could not be locked at the start of the tenancy.

In support of the claim for the front door BT stated that:

- the front door could not be locked at the start of the tenancy;
- the front door swung open even when pressure was not applied to it;
- on one occasion one of the Landlords propped a brick against the door to stop it from swinging open;
- the problem was reported to the Landlord on July 01, 2018;
- the door was repaired “one or two weeks” after it was reported;
- she stayed with her parents as she did not want to stay in the rental unit without a properly locking door;
- she did not want to leave her cat in the unit because the door could swing open; and the
- photographs on page 64 and 76 of the Tenant’s evidence show that the door would not close properly and, on one occasion, was held closed by a brick.

In response to the claim for the front door the Landlord stated that:

- the door of the rental unit could be locked with the deadbolt;
- the door of the rental unit was loose at the hinges, which required repairs;
- the door did not swing open when it was locked with the deadbolt;
- the door handle did not work, so the door needed to be secured with the deadbolt;
- the problem with the door was reported on July 01, 2018; and
- the door was repaired on July 05, 2018.

In the Application for Dispute Resolution the Tenants declared that the rental unit could not be occupied for 11 days because the front door could not be properly secured.

The Tenants are claiming compensation of $19,000.00, in part, because holes in the drywall near the front entry were not repaired until July 05, 2018. In regard to this claim the Landlord and the Tenants agree that:

- the holes were present at the start of the tenancy;
- the Tenants were informed the holes would be repaired; and
- the holes were repaired on July 05, 2018.

The Tenants are claiming compensation of $19,000.00, in part, because the bathroom floor was not in good repair at the start of the tenancy. In regard to this claim the Landlord and the Tenants agree that:

- the bathroom floor was not in good repair when BT viewed the rental unit prior to entering into this tenancy agreement;
- the Landlord did not promise to repair the bathroom floor as a term of the tenancy agreement;
- shortly after the tenancy began the Tenants requested that the bathroom floor be replaced because they deemed it to be unsanitary;
- the Landlord agreed to replace the floor; and
- the bathroom floor was replaced shortly after the Tenants made the request.

The Tenants are claiming compensation of $19,000.00, in part, because electrical sockets were hanging from wires in the bedroom. BT stated that the photograph on page 62 of the Tenants' evidence package depicts this deficiency.

BT stated that she expressed concern about the electrical sockets during the initial inspection of the unit on June 29, 2018, which was not repaired until December of 2018.

The Landlord stated that he does not know if BT expressed concern about the electrical sockets to one of the co-owners on June 29, 2018; he is not aware that electrical sockets were hanging from wires; and he does not know if the alleged problem with those electrical sockets was ever rectified.

The Tenants are claiming compensation of $19,000.00, in part, because several electrical outlets in the rental unit did not work; electrical breakers would trip if more than one outlet in any given room was used at the same time; and one outlet in one of the bedrooms sparked when used.

In support of the claim for electrical issues BT stated that:

- the problem with the electrical outlets was reported to the Landlord on several occasions;
- the problems were never fully rectified;
- the breakers continued to trip after the electrician made repairs to the unit in September of 2018; and
- the Landlord continued to attempt to repair the issues in October and November of 2018.

In response to the claim for electrical issues the Landlord stated that:

- he was aware of on-going problems with electrical outlets not working and breakers tripping;
- the Tenants were provided with an extension cords so they could supplement their power from the lower suite (which was vacant);
- on September 21, 2018 an electrician inspected all of the outlets and the electrical panel, at which time he replaced some of the outlets;
- in September of 2018 an electrician upgraded the electrical panel in the lower suite;
- he was aware breakers continued to trip after the repairs made in September of 2018; and
- repairs to the electrical system continued into October of 2018.

In the Landlord's written submission, the Landlord acknowledged that the Tenants were still using an extension cord to provided supplemental power to the rental unit in late November of 2018.

The Landlord submitted a copy of an email, dated November 26, 2018, in which the Tenants informed the Landlord that two outlets in the rental unit were not working, with no mention of any further electrical issues.

The Tenants are claiming compensation of $19,000.00, in part, because the heat in the rental unit was inadequate.

In support of the claim for inadequate heat BT stated that:

- the rental unit has four bedrooms;
- when this tenancy began, she assumed the rental unit had central heating;
- she subsequently learned that the furnace was not functioning;
- there were baseboard heaters in three of the bedrooms;
- there were no baseboard heaters in the living room, kitchen, and one bedroom;
- when the tenancy began the Tenants had four space heaters, which she understood were to be used to supplement the baseboard heating;
- the Tenants subsequently learned the baseboard heating did not work;
- on October 08, 2018 the Landlord was informed that none of the baseboard heaters were not working:
- on October 09, 2018 the Landlord was advised that three of their space heaters were not working;
- on October 15, 2018 three new space heaters were provided to the Tenants;
- they could not use all of the space heaters at the same time without tripping a breaker;

- in an attempt to provide them with an additional source of power, the Landlord ran one extension cord from the lower suite into the rental unit, via a floor vent;
- this allowed them to use three space heaters at one time;
- they did not have access to the lower suite and could not, therefore, use additional extension cords to supplement their power;
- the electrical panel with the breaker that repeatedly tripped was located in their rental unit;
- they did not enter the lower suite to re-set any tripped breakers;
- a furnace was installed and provided some heat sometime in late November of 2018;
- the furnace did not heat all of the rooms, as there are no vents in the kitchen, bathroom, and one bedroom;
- the furnace thermostat is in the lower suite, so the Tenants could not regulate the furnace temperature;
- the Tenants frequently stayed with friends and family in September and October because the rental unit was so cold; and
- all of the Tenants vacated the rental unit on the Thanksgiving long weekend due to the low temperatures.

In response to the claim for inadequate heat the Landlord stated that:

- the rental unit has four bedrooms;
- when this tenancy began the furnace in the residential complex was not being used;
- when this tenancy began the rental unit had baseboard heaters in three of the bedrooms;
- on September 24, 2018 an electrician inspected the electrical system, including the baseboard heaters, and determined they were functioning properly;
- all the baseboard heaters worked for the duration of the tenancy;
- he does not recall being told the baseboard heaters were not working until the Tenants filed this Application for Dispute Resolution;
- there were no baseboard heaters in the living room, kitchen, and one bedroom;
- when the tenancy began the Tenants were provided with four large space heaters, which were to be used to supplement the baseboard heating;
- on October 07, 2018 the Landlord was advised that two of the space heaters were not working;
- on October 09, 2018 two new space heaters were provided to the Tenants;
- on October 24, 2018 he was informed that the space heaters were tripping the breakers;

- he provided the Tenants with several extension cords so they could use power from the lower suite, to prevent the heaters from tripping the breakers;
- the Tenants had access to the lower suite for the purposes of using the additional extensions cords and re-setting any breakers on the electrical panel in the lower suite;
- there was also an electrical panel in the rental unit;
- a furnace was installed to provide a source of heat to supplement the space heaters;
- the furnace was functional on November 15, 2018;
- there are heat vents in all the rooms, although he is not certain there is a vent in the bathroom;
- the furnace thermostat is in the lower suite, so the Tenants could not regulate the furnace temperature;
- the furnace thermostat was set at a reasonable temperature;
- the Tenants could adjust the temperature in the rental unit with the space heaters; and
- the Landlord was never informed the Tenants were not staying in the unit due to the cold temperatures.

The Tenants are claiming compensation of $19,000.00, in part, because they were without a stove until August 02, 2018.

In support of the claim for the stove BT stated that:

- on June 30, 2018 an agent for the Landlord agreed that the stove was very dirty and would be replaced;
- on July 24, 2018 the Tenants reported that the smoke alarm was activated due to smoke from the dirty oven;
- the stove was functional; and
- the stove was replaced on August 02, 2018.

In response to the claim for the stove the Landlord stated that:

- the Landlord initially offered to clean the stove;
- the Landlord did not clean the stove because it was ultimately determined the stove should be replaced due to an “element issue”;
- on July 24, 2018 the Tenants reported that the smoke alarm was activated due to smoke from the dirty oven; and
- the stove was replaced on August 02, 2018.

The Tenants are claiming compensation of $19,000.00, in part, because the refrigerator door did not close properly.

In support of the claim for the refrigerator the Tenants contend that:

- the seal on the fridge door was loose;
- the seal was reported on July 04, 2018;
- the seal was repaired on July 05, 2018; and
- the door did not close properly until October 24, 2018.

In response to the claim for the refrigerator the Landlord contends that:

- the seal on the fridge door was loose;
- the seal was reported on July 04, 2018;
- the seal was repaired on July 05, 2018;
- a faulty hinge prevented the door from closing properly;
- the door could be properly closed by applying force;
- the faulty hinge was replaced on October 24, 2018; and
- the hinge did not prevent the Tenants from using the fridge.

The Tenants are claiming compensation of $19,000.00, in part, because the two windows did not open properly. The Landlord and the Tenants agree that this issue was reported to the Landlord in late June or early July and that it was remedied on July 05, 2018.

The Tenants are claiming compensation of $19,000.00, in part, because they were disturbed by construction between October 15, 2018 and November 15, 2018.

In support of the claim for the construction disturbances, BT stated that:

- between October 15, 2018 and November 15, 2018, they were disturbed by construction sounds, which sometime occurred on Sundays;
- she does not know what type of construction was occurring in the lower suite, but there were banging sounds; and
- on one occasion a construction worker frightened a female Tenant when he accessed the roof via the Tenants' balcony, without prior notice.

In response to the claim for the construction disturbances, the Landlord stated that:

- renovations commenced in the lower suite on September 15, 2018;
- the renovations were completed on November 15, 2018;
- the renovations included painting, replacing flooring, replacing the furnace, and installing ducting;

- he was not aware a construction worker would be accessing the roof via the Tenants' balcony; and
- he believes the Tenants should have been notified of the worker's intent to access the roof via the balcony.

The Tenants are claiming compensation of $19,000.00, in part, because they were potentially exposed to asbestos while the residential property was being renovated.

In support of the asbestos concern, BT stated that:

- the Landlord told them there was asbestos in the residential property;
- they are concerned that asbestos was disturbed during the renovations to the residential property, including when their bathroom floor was replaced; and
- they have no evidence that asbestos was disturbed during any of the renovations.

In response to the asbestos concern, the Landlord stated that:

- he assumes there is asbestos in the property, given the age of the building;
- he was advised by the municipality that he did not need to test for asbestos, providing nothing was removed during the renovations;
- the only thing removed during renovations was flooring; and
- the property was not tested for asbestos.

The Tenants are claiming compensation of $19,000.00, in part, because they were required to pay hydro for the entire residential complex.

BT and the Landlord agree that:

- when the tenancy began the Tenants agreed to pay the hydro bill for the lower and upper levels, given that the lower level was vacant, and they were using the washer and dryer located in the lower level;
- after construction in the lower level began, the Tenants asked the Landlord to compensate them for power used during the construction; and
- the Landlord paid them $75.00 for power used during the construction.

Analysis:

On the basis of the undisputed evidence, I find that this tenancy ended on March 31, 2019, by mutual consent, and that the Tenants' security/pet damage deposit of $2,200.00 was returned to the Tenants on April 16, 2019.

On the basis of the testimony of BT, I find that a forwarding address was provided to an agent for the Landlord on March 30, 2019 when it was written on the final condition inspection report. I find this testimony to be credible, in part, because that is a very common method of providing a forwarding address, given there is a space on the report for a forwarding address. I find that this testimony is credible, in part, because it is corroborated by the condition inspection report that the Tenants contend was completed on March 30, 2019, on which there is a forwarding address for the Tenants.

I find the Landlord's evidence that he has "no record" of a report being completed during the final inspection or of the Tenants providing a forwarding address on that inspection report is not sufficient to refute BT's testimony that one was provided. This testimony simply establishes that he does not know if a forwarding address was provided to the agent he hired to complete the final condition inspection report on his behalf. In the absence of evidence from the agent who represented the Landlord at the final inspection that refutes the Tenants' submission a forwarding address was provided, I find that BT's testimony is sufficient.

I find that when the Tenants provided the agent for the Landlord with a forwarding address, the address was effectively served to the Landlord. In reaching this conclusion I was guided by section 1 of the *Residential Tenancy Act (Act*), which defines a Landlord, in part, as " 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. Although I accept the Landlord's testimony that his agent did not provide him with the Tenants' forwarding address, that is not the fault of the Tenants and it does not establish that the Tenants did not provide a forwarding address to the Landlord's agent.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not file an Application for Dispute Resolution claiming against the security/pet damage deposit and the deposits were not returned until 16 days after the later of the date the tenancy ended, and the forwarding address was received by an agent for the Landlord.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. Section 38(6) of the *Act* does not permit me to award less than double the amount of the deposits, even if the Tenants have applied for less than double the amount. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenants double the security/pet damage deposit, which is $4,400.00.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the burden of proving they are entitled to compensation for deficiencies with the rental unit rests with the Tenants.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I find that

I find that the condition inspection report that was completed in the presence of both parties on June 29, 2018 does not indicate that the rental unit required cleaning at the start of the tenancy.

I find that the condition inspection report that was completed on August 02, 2018 does not have the same evidentiary value as the first report because:

- it was not completed in the presence of both parties;
- the Landlord did not agree with a large portion of the content of the report, particularly as it relates to cleanliness; and
- it was completed more than a month after the start of the tenancy.

On the second condition inspection report the Landlord has initialled a few areas to indicate cleaning was required, which includes:

- the walls and trim in the kitchen;
- that the refrigerator had been cleaned by the Tenants, which I interpret to mean that he agrees it was dirty at the start of the tenancy;
- that the stove was replaced, which I interpret to mean that he agrees it was dirty at the start of the tenancy; and
- that the walls in the master bedroom were filthy.

In his written submission, the Landlord declared that his contractor wiped out the refrigerator when the fridge seal was repaired.

On the basis of the entries the Landlord made on the second condition inspection report, I find that the walls and trim in the kitchen were dirty; the stove and refrigerator were dirty; and the walls in the master bedroom were dirty. As both parties agree that these areas required cleaning, I find that this serves as a preponderance of evidence to refute the information provided in the first condition inspection report, in regard to these four areas. I therefore find that those four areas required cleaning at the start of the tenancy.

Although the Landlord does not agree that the photographs on pages 71 and 72 of the Tenants' evidence package fairly represent the condition of the master bedroom at the start of the tenancy, I find that they support the undisputed evidence that the walls in the master bedroom were dirty at the start of the tenancy.

Although the Landlord does not agree that the photograph on page 75 of the Tenants' evidence package fairly represent the cleanliness of the laundry room, I find that it does. In reaching this conclusion I was heavily influenced by the nature of the dirt in that photograph, which is consistent with an area that has not been cleaned for an extensive period of time and would not have accumulated in a month. I find that this photograph serves as a preponderance of evidence to refute the information provided in the first condition inspection report, in regard to this area. I therefore find that the laundry room required cleaning at the start of the tenancy.

On the basis of the undisputed evidence, I find that garbage was left in the yard of the rental unit at the start of the tenancy. I find that this serves as a preponderance of evidence to refute the information provided in the first condition inspection report, in regard to the yard. I therefore find that the yard required cleaning at the start of the tenancy.

In the Landlord's own written submission that Landlord declares that the day after the second condition inspection report was completed a contractor cleaned the toilet, bathtub, and "mildew & mold on walls & ceiling" in the bathroom. I find that this serves as a preponderance of evidence to refute the information provided in the first condition inspection report, in regard to the cleanliness of the bathroom. I therefore find that the bathroom required cleaning at the start of the tenancy.

As there is insufficient evidence to refute any of the other information provided in the first condition inspection report, I find that the rest of the rental unit was left in reasonably clean condition, as noted on the first condition inspection report.

In considering the claim for cleaning I accept the Landlord's submission that the rental unit had been occupied for over a month by the time the second condition inspection report was completed. I find that submission is not highly relevant, as the need for cleaning in the areas noted above is, for the most part, not the type of cleaning that would be required after occupying a rental unit for a short period of time.

While I am satisfied that the yard, the bathroom, and the stove required cleaning at the start of the tenancy, I am not satisfied that the Tenants are entitled to compensation for cleaning the unit. In reaching this conclusion I was influenced by the undisputed evidence that the Landlord removed the garbage from yard, he cleaned the bathroom, and he replaced the dirty stove on August 02, 2018. As these deficiencies were rectified within a reasonable time, I do not find that compensation is warranted.

While I am satisfied that the refrigerator required cleaning, I find that the Tenants cleaned the refrigerator before the Landlord was made aware of the problem. I find that the Landlord's contractor wiped the fridge again after it was repaired on July 05, 2018. As the Tenants cleaned the fridge before giving the Landlord an opportunity to rectify that deficiency, I find they are not entitled to compensation for their labour.

While I am satisfied that the walls/windows sills in the master bedroom and the laundry room required additional cleaning at the start of the tenancy, I find that the Tenants are not entitled to compensation for cleaning these areas. In reaching this conclusion I was heavily influenced by the Landlord's testimony that the Landlord offered to have the unit cleaned, in an email sent on August 02, 2018. Although BT does not acknowledge receiving this email, I am satisfied it was sent, as a copy of the email was submitted in evidence.

I find that the Landlord made reasonable attempts to address the Tenants' concerns regarding the cleanliness of the house by offering to have the unit cleaned on August 02, 2018. As the Tenants did not accept that offer, I find that they are not entitled to compensation for either cleaning those areas by themselves or living in the rental unit without having those areas cleaned.

On the basis of the undisputed evidence, I find that when this tenancy began the front door of the rental unit could not be securely closed with the use of only the door handle.

I find that the Tenants submitted insufficient evidence to establish that the front door of the rental unit could not be securely locked, with the use of the deadbolt. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates BT's testimony that the door could not be securely locked. Conversely, I find the photograph on page 76 of the Tenants' evidence package and the photograph on page 16 of the Landlords' evidence supports the Landlord's testimony that the door could be locked with the deadbolt, as the deadbolt appears functional in those photographs.

I find that the Tenants submitted insufficient evidence to refute the Landlord's testimony that the front door was repaired on July 05, 2018 or to corroborate the Tenants' written submission that it was not repaired for 11 days. Conversely, I find the text message at page 98 of the Tenants' evidence package serves to corroborate the Landlord's testimony that it was repaired on July 05, 2018. Although the text message does not actually declare that the door was repaired, it certainly infers that the Landlord was at the rental unit on that date for the purpose, in part, of repairing the door.

While I accept that needing to secure the front door with the dead bolt, rather than simply with the door handle, is an inconvenience, I find that the Landlord repaired that problem within a reasonable period of time. I find that the inconvenience was minor, however, and does not warrant compensation.

On the basis of the undisputed evidence, I find that when this tenancy began there were holes in the drywall near the front entry, the Landlord promised to repair those holes, and the holes were repaired on July 05, 2018. While I accept that living around these drywall repairs was an inconvenience for the Tenants, I find that the Landlord repaired the drywall within a reasonable period of time, that the inconvenience was minor, and that the inconvenience does not warrant compensation.

In concluding that the inconveniences related to the repairs made to this rental unit at the start of the tenancy, I was influenced, to some degree, by the undisputed evidence

that the Landlord allowed the Tenant to move into the rental unit on June 29, 2018. I find that this early access to the rental unit compensated the Tenants, to some degree, for inconveniences related to the repairs needed at the start of the tenancy.

On the basis of the undisputed evidence, I find that the Tenants entered into this tenancy agreement after viewing the condition of the floor in the bathroom and that the Landlord replaced the flooring shortly after the Tenants expressed a concern about the condition of the flooring. I find that the Landlord acted quickly and responsibly when he replaced the flooring in the bathroom after the Tenants expressed their concerns about the flooring. I find that the Tenants benefited significantly from the flooring upgrade and that they are not entitled to compensation for any inconveniences related to the Landlord's decision to replace the flooring.

I find that the Tenants submitted insufficient evidence to establish that there was a power socket hanging from a wire in a bedroom. Although the BK testified that the photograph on page 62 of the Tenants' evidence package depicts this deficiency, I find that the photograph does not depict a power socket hanging from a wire. I further note that there is nothing on either condition inspection report that indicates there was a power socket hanging from a wire in any bedroom. As the Tenants have failed to establish that power socket was hanging from a wire in the bedroom, I find that the Tenants are not entitled to any compensation for that alleged deficiency.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find it reasonable to conclude that section 32(1) of the *Act* requires landlords to ensure that the electrical system in the unit is functioning properly.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

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. This includes situations in which the landlord has directly

caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

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.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the failure to make repairs could interfere with a tenant's right to enjoy the rental unit.

On the basis of the undisputed evidence, I find that some of the electrical outlets in the rental unit were not working, circuit breakers were tripping when too many outlets were used at the same time, and an extension cord was being used to provide supplemental power to the rental unit.

Although I accept that the Landlord made continued efforts to rectify the electrical problems, I find that they persisted for several months. I find that these on-going electrical problems breached the Tenants' right to the quiet enjoyment of the rental unit.

Residential Tenancy Branch Policy Guideline #6 stipulates that when considering a claim for compensation as a result of a breach of the right to quiet enjoyment, I should determine the amount be which the value of the tenancy has been reduced, taking into consideration that seriousness of the situation, the degree to which the tenant has been disproved of the right to quiet enjoyment, and the length of time over which the situation has existed. Determining an award for a breach of the right to quiet enjoyment is, by its very nature, subjective.

I find that the electrical problems the Tenants experienced during the reduced the value of this tenancy by $200.00. I therefore find that they are entitled to compensation for loss of quiet enjoyment in regard to the electrical issues, in the amount of $200.00.

I find it reasonable to conclude that section 32(1) of the *Act* requires landlords to provide an adequate source of heat.

On the basis of the undisputed evidence, I find that there was no furnace in the rental unit until November of 2018 and that only three rooms were equipped with baseboard heaters.

I find that the Tenants have submitted insufficient evidence to refute the Landlord's testimony that all of the three baseboard heaters were working. In an email, dated October 08, 2018, a Tenant informs the Landlord they have no central heating and only one working heater. This is consistent with the BT's testimony that there was no central heating in the unit and that the Landlord was informed in October that only one of the space heaters was working. I specifically note that it does not make any mention of the baseboard heaters not working.

In an email, dated October 21, 2018, the Landlord declared that the unit is heated, in part, by baseboard heaters. Given the numerous deficiencies the Tenants have outlined in various emails sent to the Landlord, I find it reasonable to expect that the Tenants would have clearly informed the Landlord if the baseboard heaters were not working.

On the basis of the undisputed evidence, I find that the Landlord supplied the Tenants with four space heaters for the purpose of supplementing the baseboard heating in the rental unit and that the Landlord replaced the space heaters within a reasonable period of being informed some of them were not working.

In the absence of evidence that shows heating with baseboard heaters and space heaters contravenes health, safety, and housing standards, I find that providing four space heaters and three baseboard heaters seem adequate for a four bedroom home.

I find that the space heaters and the baseboard heaters did not heat the rental unit to the satisfaction of the Tenants. This is evidenced by the numerous emails sent to the Landlord by the Tenants, in which they express concern about the temperature.

I find that the baseboard and space heaters did not adequately heat the rental unit, in part, because the electrical breakers would trip if all of the space heaters were used at the same time. On the basis of the undisputed evidence, I find that the Landlord attempted to facilitate the use of the space heaters by providing the Tenants with one extension cord that was plugged into the lower suite, which enabled the Tenants to operate a total of three space heaters at the same time.

I favour BT's testimony that they could not access the lower suite for the purposes of running additional extension cords over the testimony of the Landlord, who stated that the Tenants could access the lower suite for that purpose. In reaching the conclusion I was influenced by the absence of evidence to corroborate the Landlord's testimony. Conversely, I find the email date February 19, 2019, in which a tenant asks for access to the thermostat in the lower suite corroborates the Tenant's testimony that they did not have access to the lower unit.

On the basis of the undisputed evidence, I find that a furnace was installed in November of 2018, which supplemented the heat provided by the baseboard heaters and the space heaters. On the basis of the BT's testimony and the emails submitted in evidence, I find that the Tenants were not able to regulate the temperature of the furnace and that the were still not satisfied with the temperature in the rental unit.

I find that the Landlord took steps to address the concerns of the Tenants, by ensuring they had functioning space heaters and by installing a furnace to supplement the heat provided by the space heaters and baseboard heaters. In spite of those efforts, I find that the Tenant's right to quiet enjoyment was reduced by:

- the fact they were only able to use three of the four space heaters provided at any given time; and
- the fact that one of the heaters was power by an extension cord coming out of a floor vent, which cannot be considered aesthetically pleasing.

I find that being limited to using only three space heaters when there was no furnace to supplement the heat reduced the value of the tenancy for the period between September 01, 2018 and November 15, 2018 by $300.00. I find that the inconvenience of using space heaters to heat the rental unit, particularly when they are plugged into an extension cord coming from a vent in the floor and they frequently tripped breakers, reduced the value of the tenancy by an additional $100.00 for the period between September 01, 2018 and March 31, 2019. I therefore find that the Tenants are entitled to compensation of $400.00 for heat-related issues.

As heat is not typically used during July and August, I decline to award compensation for those months.

In determining the amount of compensation due in regard to heating, I was influenced by the undisputed fact that the residential complex is an older building. As older buildings are typically less energy efficient, I find that the Tenants may have been unable to maintain temperatures that met their needs, regardless of the heat source.

In determining the amount of compensation due in regard to heating, I was also influenced by the absence of evidence, such as temperature readings, which established that the unit was unreasonably cold, rather than simply colder than the Tenants would have liked.

On the basis of the undisputed evidence, I find that the Tenants were without a properly functioning oven for approximately one month at the start of the tenancy, although the stove elements functioned properly. Although I accept that this was a minor inconvenience, I find that the Landlord responded appropriately to the issue and that compensation is not warranted.

On the basis of the undisputed evidence, I find that the refrigerator door did not close properly for the first few months of the tenancy. Although I accept that it was an inconvenience to close the door with additional force, I find there is insufficient evidence to establish that the refrigerator did not function properly. I find that the inconvenience was minor, and that compensation is not warranted.

On the basis of the undisputed evidence, I find that two windows did not open at the start of the tenancy and that the issue was remedied shortly after it was reported to the Landlord. I find that the any inconvenience related to this issue was extremely minor and that compensation is not warranted.

On the basis of the testimony of the Landlord, I find that between September 15, 2018 and November 15, 2018 the lower suite was being painted, the flooring was replaced, a new furnace was installed, and ducting was installed. On the basis of the testimony of BT, I find that the Tenants were disturbed by noises associated to that construction between October 15, 2018 and November 15, 2018. On the basis of the testimony of BT, I find that the Tenants were not disturbed by any noises during the first month of the tenancy.

I find that the Tenants have submitted insufficient evidence to establish that the construction noises they heard caused a significant disturbance. It is my experience that noises associated to painting and replacing floor are not particularly loud and that noises related to replacing a furnace and installing ducting may involve short periods of loud noises.

As outlined in Residential Tenancy Branch Policy Guideline #6, I must balance a tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain

rental properties. While I accept that the Tenants were able to hear some construction noise, I find that the noise level does not warrant compensation.

On one occasion a construction worker frightened one of the Tenants when he accessed the roof via the Tenants' balcony, without prior notice. While I accept that this was only a single incident, I find it was an unreasonable invasion of privacy which reduced the value of the tenancy by $50.00. I therefore find that the Tenants are entitled to compensation of $50.00 for loss of quiet enjoyment related to this single incident.

I find that the Tenants have submitted insufficient evidence to establish that they have been exposed to asbestos. In reaching this conclusion I was heavily influenced by the absence of any evidence from a qualified professional that indicates asbestos was disturbed when flooring was replaced or during any of the renovations to the property. In the absences of such evidence, I find that the Tenants have failed to establish that they are entitled to compensation as a result of being exposed to asbestos.

On the basis of the undisputed evidence, I find that when the tenancy began the Tenants agreed to pay the hydro bill for the lower and upper levels, because they were using the washer and dryer located in the vacant lower level. On the basis of the undisputed evidence I find that the Tenant compensated the Tenants for power used during construction, in the amount of $75.00. In the absence of evidence to show that hydro costs related to the renovation exceeded $75.00, I find that this was reasonable compensation and no additional compensation is due.

I find that the Tenants' Application for Dispute Resolution has some merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $4,950.00, which includes double the security/pet damage deposit; $650.00 for loss of quiet enjoyment; and $100.00 as compensation for the cost of filing this Application for Dispute Resolution. This award must be reduced by the $2,200.00 security/pet damage deposit already returned to the Tenants.

Based on these determinations, I grant the Tenants a monetary Order for $2,750.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims 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: June 23, 2020

Residential Tenancy Branch