Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #310054815: MNDCT, FFT
File #310073734: MNDL, FFL

Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Respondents file their own application seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests; and
- return of the filing fee pursuant to s. 72.

The Applicants' application had been scheduled for hearing on June 17, 2022 but was adjourned to be heard at the same time as the Respondents' application.

A.S. and C.N. appeared as the Applicants. T.C. appeared as the Applicants' advocate. D.C. appeared as the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Respondent advised that he served the Applicants with his application and evidence, which the Applicants acknowledge receiving without objection. Based on its acknowledged receipt without objection, I find that pursuant to s. 71(2) of the *Act* that the Applicants were sufficiently served with the Respondents application materials.

The Applicants advise that their application and evidence were served on the Respondents. The Respondent acknowledges their receipt, though raises issue with

respect to the evidence he says was received on February 6, 2023. The advocate advises that the Respondents were served with the second evidence package by way of registered mail sent on January 25, 2023. The Respondent advises that he was away at work in camp at the time. The Applicants' advocate argues S.C., the co-respondent, could have retrieved the package.

I appreciate that in this instance both parties are technically applicants and respondents such that Rules 3.14 and 3.15 could apply to both. Further, the Applicants' evidence package was uploaded on the Respondent's application, such that it is arguably response evidence. Given the circumstances, I accept that the 7-day deadline for the service set by Rule 3.15 of the Rules of Procedure would apply.

Section 90 of the *Act* permits the deemed receipt of documents by establishing an evidentiary presumption of receipt, which can be rebutted when fairness allows it. Though I accept the Respondent was unavailable to retrieve the package, there is no explanation why the co-Respondent could not have also done so. I find that the presumption set by s. 90 of the *Act* has not been displaced. I find that the Applicants' additional evidence was served in accordance with s. 89 of the *Act* by way of registered mail sent on January 25, 2023. Pursuant to s. 90 of the *Act*, I deem that the Respondents received the Applicants additional evidence on January 30, 2023.

Preliminary Issue – Amendment of Applicants' Claim

At the hearing on June 17, 2022, I was made aware that the Applicants were seeking compensation more than what they had claimed in their application. In my interim reasons on the Applicants' application I granted their request for an adjournment and made specific direction that the Applicants could not amend their application. I did so because the adjournment was made at the Applicants request and it would be prejudicial to the Respondents, in my view, to permit the Applicants several more months to amend their claim when they ought to have done so prior to the June 2022 hearing.

I am told by the Respondent that the Applicants served an amendment seeking to revise their claim, despite the direction given in my interim reasons. Review of the materials show that an amendment signed on January 25, 2023 seeks to revise the claim such that $2,399.00 would be claimed for monetary losses and $511.74 would be

claimed for repayment on emergency repairs. A monetary order worksheet in the same package, signed January 9, 2023, lists the claim as $3,083.74.

To be clear, Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. In this instance, the Applicants sought $500.00 in compensation and set out the claim in their application as follows:

> I have made all the maintenance and repairs that was needed in order to reside in the unit. There was no heat, or running water and the landlord was fully aware of this. I served the landlord with a letter for repairs and had a date for repairs to be completed by the 15th of September which was a fair date in which the landlord could have replaced it. There was a breakdown in communication with the landlord and dispute resolution is my last resort.

The Applicants' advocate indicates the amendment was served on the Respondents via registered mail sent on January 25, 2023 with the additional evidence mentioned above. Also as mentioned above, the Respondent indicates he received the final package on February 6, 2023, though I deemed it to have been received on January 30, 2023.

Rule 4.3 of the Rules of Procedure establishes a time limit for amending applications, indicating that this should be done as soon as possible and in any event early enough to comply with Rule 4.6. I reproduce the relevant portion of Rule 4.6 of the Rules of Procedure:

> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be **received** by the respondent(s) not less than **14 days before the hearing**.
>
> (Emphasis Added)

In this instance, the hearing was on February 9, 2023 such that any amendment would have to have been received no later than January 25, 2023. Even if I were to apply the deemed receipt provision as per s. 90 of the *Act*, the Applicants failed to comply with the relevant service deadline as set by Rule 4.6.

I do not permit the amendment on two basis. Firstly, the amendment is not permitted because it is contrary to my clear directions in the interim reasons. No amendment was permitted. This was done to balance the prejudice to the Respondents by granting the adjournment requested by the Applicants. The Applicants had some 8 months between

filing their application and the June 17, 2022 hearing to file an amendment. They failed to do so.

Second, even if my direction in the interim reasons could somehow be construed as a breach of procedural fairness, the Applicants failed to serve their amendment in compliance with the timelines imposed by Rule 4.3 and 4.6 of the Rules of Procedure. Permitting an amendment that radically changes a claim despite late service contrary to the Rules of Procedure would clearly constitute a breach in the Respondents' right to a procedurally fair process.

I do not permit the Applicants' amendment. The claim is limited to what is stated in the application as per Rule 2.2 of the Rules of Procedure. Further, only those submissions made related to the claim as stated in the application are relevant. Submissions and evidence pertaining to matters not set out in the application are, therefore, not relevant and will not be considered by me or summarized in this decision.

Preliminary Issue - Jurisdiction

As highlighted at the June 17, 2022 hearing, the Respondent argues that the Residential Tenancy Branch does not have jurisdiction to adjudicate this dispute. The Respondent argues that he did not have a landlord-tenant relationship with the Applicant A.S., stating that he came to reside at the property out of kindness as they were led to believe he was terminally ill.

The parties in this matter describe the property as a cabin located on a larger rural parcel adjacent to a lake. The Respondents written submissions indicate they reside in at a property adjacent to the subject property. The Respondents' written submissions indicate that A.S. moved onto the property as a camper.

According to the Applicants, A.S. moved onto the property in July 2019 and had an agreement with the Respondent to live in the cabin for 5-years. I am told by the advocate that A.S. paid a lump sum of $15,000.00 to the Respondent as two-years rent. I am further advised by the advocate that there was no written tenancy agreement and that no security deposit had been paid.

Despite the submissions at the hearing, review of the Applicants written submissions indicate the tenancy was to begin on January 1, 2020. Upon further submissions by the Applicant A.S., he advises that he moved onto the property in his camper in the summer

of 2019 and that there was another occupant in the cabin at that time. The Respondent confirms the cabin was occupied by someone else in the summer of 2019. I was further advised by the Respondent that those tenants were evicted on the basis that the Respondent's son was to move into the cabin. The Respondent also advises his son did not move into the cabin as the Applicant A.S. was to reside there instead. Both parties confirm that A.S. left the property sometime in the fall of 2019 and returned in early 2020. The parties further confirm that the Applicant moved off the property in September 2021.

The Respondent insisted that Applicant was allowed to camp on the property and would work on the cabin while he was there. The Respondents written submissions clarify that the agreement was that Applicant A.S. could camp at the property in exchange for maintaining and repairing the cabin. The written submissions further specify that this was not for a fixed period and was intended to be a flexible arrangement to accommodate A.S.'s declining health. At the hearing, the Respondent denies receiving $15,000.00 as alleged by the Applicants. It was further argued by the Respondent that the Applicant had conned him and that the Applicant has two homes in another community such that he could have always moved back there.

I am directed by the advocate to text messages in the Applicants' evidence between the Applicant and Respondent. It was argued by the advocate that these demonstrate the existence of the tenancy. The Respondent indicates that the Applicant A.S. sent him many messages such that he would simply tell him whatever he wanted to hear to keep the Applicant happy and so that he would stop messaging him.

I have reviewed the text messages provided to me and highlight the following which I find to be relevant to this matter. On July 25, 2019, the Respondent sent the following message to the Applicant:

> Respondent: Morning yes you can rent the cabin not sure what you have in mind but I'd like to get something set up then I can give them notice before the end of the month also so you know I

was raising there rent to 900 this month as it's there anniversary let me know what you think thanks

On September 29, 2019 the Applicant sends the following message to the Respondent:

Applicant: Ok let's do this. I give you my word I comming there with 15 grand cash. And as of January 1 will be your neighbour smiles. I just wanna say ty to you's for comming into my life. I'm scared shitless and so praying I can pull this off without having a serious stoke or worse. Gawd I praying the old lord has my back. Plz just know I'm like you's take pride in my heart. And me asking for help has always been hard for me. I know you's are giving me a break already and I'm so thankful. I feel like I'm starting my life over. And I could not be any more blessed having it with you's in my life. I sit here now and I feel peace knowing that are lives are about to come together. I so looking forward to us sitting down in about a week and making this happin.

Respondent: (Thumbs Up) (Thumbs Up)

Further correspondence dated January 15th and 16th is also included, though it does not mention a year. The Applicants' written submissions indicate these messages were sent in 2021. The messages state as follows:

Respondent: Yes anyways didn't really want to bring it up but was hoping you would I was just wondering where you at with the rest of the rent or what your thoughts are like I said [J.] and [D.] were paying 900 your at 625 just so your aware thanks.

Applicant: Hi I'm confused not sure what ya mean by rest of the rent? I paid the amount of 15 grand up front for 2 years that's what we shook hands on I'm willing to sit down by a fire in the future and discuss with you's and see if we can come up with a agreement to continue renting Last thing I need or

want is bad blood with us. Let me know what your thoughts are on this

Respondent: Same here was just wondering where you were at I thought you had said that was what you had and when you got your houses sorted you'd pay the rest there's no reason I would rent it for less than what I was getting doesn't make sense to me that was the last thing you said to me when you gave me the cash but I'm not fighting over it if you think that's fare than that's the way it is not into drama but I'll tell you you can't even rent a basement sweet for that and we all sorts of people that would rent it for a lot more hands down just wanted you to be aware that's all

Finally, I highlight correspondence from September 17, 2021 that states the following:

Respondent: Hi [A.S.] not sure who gave you the idea you are a renter your a friend of a friend who begged us to live in the cabin because he was dieing and promised all these upgrades to the cabin and we told you numerous times including [C.N.] we weren't spending any money on the cabin if you wanted to live there you were responsible for any maintenance unfortunately that hasn't happened and reall unfortunately if you were a renter you would have got evicted cutting down merchantable timer that a [C.] and [C.] are still waiting to get paid for that also can't twist people's arms top get stuff done that's just the way it is so the best is quit threatening me like

I said you have 2 homes in [another community] just move back home and get on with your life

Applicant: Omfg how can you say I was not renting when I paid you 15 grand cash for 2 years […]

I have redacted personal identifying information from the messages above in the interests of the parties' privacy. The spelling and grammar are kept as they were in the original messages.

Policy Guideline #9 provides guidance with respect to tenancy agreements and licences to occupy and states the following:

> **B. TENANCY AGREEMENTS**
>
> Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:
>
> - the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
> - the tenant pays a fixed amount for rent.

In this instance, the Respondent argues that the Applicant A.S. resided at the property on his good graces. However, the correspondence provided by the Applicants supports that the Applicant A.S. paid $15,000.00 to the Respondent for a two-year lease starting on January 1, 2020. The correspondence from January 15th and 16th, 2021 clearly shows the Respondent enquired about additional rent and acknowledged rent was paid in the amount of $625.00 per month, which I note is monthly rate over the two-year period ($15,000.00 ÷ 24). Though there appears to be some dispute on whether it should have been more, the same messages demonstrate the Applicant A.S. paid the Respondent $15,000.00 and the Respondent acknowledged receipt of this payment.

The Respondent says that he would tell the Applicant whatever he wanted to hear in the messages. This is a stunning argument by the Respondent. Essentially, the Respondent argues that I cannot rely on the text messages he sent to the Applicant as he would lie to the Applicant to keep him happy. However, the correspondence listed above does not support this argument. In particular, the exchange of January 15th and

16th was initiated by the Respondent himself. He enquired about additional rent payment and acknowledged A.S. paid $625.00 in rent per month. It is illogical for the Respondent to argue that the text messages do not demonstrate what they clearly do, which is his acknowledgement of receipt of two years' rent. I find that the Applicant has demonstrated that rent of $15,000.00 was paid for a two-year term and that the Applicant took possession of the cabin on or about January 1, 2020. There is no contention that the Applicant did not have exclusive occupancy of the cabin over this period as the Respondent acknowledges his son was to move in but did not as the Applicant A.S. was to do so instead. I find that the presumption of tenancy has been met.

The Respondent argued that the Applicant had houses in another community such that he did not need to rent his cabin. This argument is irrelevant. Certainly, one may own a home in one community and choose to rent in another for any number of reasons, such as proximity to work or as a vacation property. What is relevant is whether rent has been paid for a term and exclusive occupancy has been established. I find that that has occurred here.

The Respondent further argued that he let the Applicant A.S. reside in the property out of kindness as he was led to believe that A.S. was near death. Whether that is true or not is, again, irrelevant. The Applicant A.S. paid the Respondent $15,000.00. The Respondent took the Applicant's money. The Respondent let the Applicant A.S. reside in the cabin. Though there was no written agreement, there was clearly a meeting of the minds with respect to the basic aspects of a residential tenancy.

I find that there was a tenancy. A.S. was a tenant and D.C. a landlord. I make note that of the correspondence provided it appears the tenancy was between A.S. and the Respondent D.C. as they were the ones who formed the oral agreement. The Applicants list C.N. as a tenant. However, it appears that she came to reside at the property afterwards and was not a party to the agreement. C.N. was merely an occupant within the rental unit. For the remainder of the decision, I refer to A.S. as the Tenant and D.C. as the Landlord.

I accept that the terms of the tenancy are unusual. However, review of the correspondence demonstrates the conduct of the parties in this matter fall outside of what I would characterize as standard conduct between a landlord and tenant in a residential tenancy. Despite this, it does not negate the fact that this was a residential tenancy. The evidence provided to me clearly shows the Tenant gave the Landlord

$15,000.00 cash for a two-year term. This was done without a written tenancy agreement nor is there evidence of a receipt being given either. To say this was foolish of the Tenant is stating the obvious. Having said this, I find that he did do this. The lack of a written tenancy agreement is not material to whether a tenancy exists or not as per the definition of a tenancy agreement set out in s. 1 of the *Act*. Certainly, s. 13(1) of the *Act* requires all residential tenancies to have written tenancy agreement, though s. 5 of the *Act* is also clear that landlords and tenants cannot avoid the *Act*.

I find that the parties had a residential tenancy and that the *Act* applies.

Issues to be Decided

1) Is either party entitled to monetary compensation?
2) Is either party entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

As outlined above, I have found the parties had a residential tenancy along the following terms:

- The tenancy began on January 1, 2020.
- The Tenant paid the Landlord $15,000.00 in rent for a 2-year term.
- No security deposit was paid by the Tenant to the Landlord.
- The Tenant vacated the property in September 2021.

The Tenant's advocate raised a number of maintenance issues respecting the cabin, though only the heating and water were raised by the Tenant in his application. It was suggested by the advocate that Landlord rented the cabin to the Tenant despite knowing of the various maintenance issues.

I reproduce the following portions of the text messages provided to me by the Tenant. The first of which was sent by the Landlord on September 29, 2019:

Landlord: I wouldn't get to worked up about the heat once we get that fireplace hooked see how it works my brother raised 3 kids there and that's all they used heat upstairs isn't a problem it's usually to hot insulation isn't an issue it keeps heat in window covering are probably more important

The following message was sent by the Landlord on November 5, 2019:

Landlord: Got the quote for gas heater installation 4000 looking at some other options

We'll get the heat sorted not a problem like you said it will come one step at a time.

The following message was sent by the Landlord on November 14, 2019:

Landlord: No been busy painting plumbing in the house trying to get these rooms finished i just have to get the permit then [M.] will hook up the heater there called [W.H.] it will go in the middle room beside the water room after we get that hooked up and the inspector is gone he will hook the fireplace up.

The Tenant and the advocate advise that a gas fireplace installed in the cabin exploded on July 25, 2020 after a repairperson retained by the Landlord had come to work on the fireplace some days prior to the explosion. Review of the correspondence provided by the Tenant indicates that this was reported to the Landlord on July 25, 2020. It is unclear from the Tenant's written or oral submissions whether the gas fireplace was repaired, though the Tenant provides utility invoices from July to December 2020, which shows little to no natural gas usage after July 2020. The Tenant's evidence includes a message sent by the Landlord on September 24, 2020 which states the following:

Hi that's good don't think you'll have problems with the water lines [B.] and I talked to gas inspector they figure he turned the pilot down to low he'll come back and look at it if you to…

The Tenant further advises that the cabin had a woodstove though it was decommissioned after it had failed inspection. The Tenant's written submissions

mention this occurred in the spring or summer of 2021. The Tenant's evidence includes a letter dated August 26, 2021 in which the Tenant formally requests the heat be repaired. The Tenant's evidence includes the following message to the Landlord sent on August 22, 2021:

> We got back yesterday and seen no text on when you are planning on putting a source of heat in the cabin. On may 29 You sent a text saying on the 31 you were going to install a furnace in here. Didn't happin then on Tuesday u came and took wood stove away I asked u when you were hooking up something u said u had to ask insurance. What is the plan now as I am stressed out again It's like this gas fireplace in text I have you saying don't worry it will be working lol it blew up I asked last year if wood stove was safe to use you said yes then we find out nope. Now we have no heat and the law says you have to have a safe heat source in rental So if you can let me know as soon as possible

In the Landlord's written submissions, there is specific mention that the Tenant had heat within the cabin throughout his time there, though acknowledges the wood fireplace was decommissioned in the fall of 2021. The Landlord's written submissions further suggest that the Tenant cancelled the account for natural gas on December 7, 2020. At the hearing, the Landlord indicates the fireplace was inspected, with a gas certificate inspection dated July 7, 2020 put into evidence by the Landlord. The Landlord indicates that B., the repairperson who attended the property, is a qualified gas fitter. The Landlord further suggested that he was unaware what the Tenant may have done to the fireplace after it was installed and inspected.

The Tenant further argued that the cabin had insufficient water supply, that the supply that was brought to the cabin was illegal, and that water had to be shut off in cold temperatures due to issues with freezing. The Tenant indicates that he had to melt snow for water.

The Landlord's written submissions indicate that the cabin had water supplied with a well such that water consumption had to be balanced with the recovery rate for the well. As stated in the written submissions:

> In the summer of 2020, [the Landlord] had accessed another well on the property and put that to the dwelling for increased volume, but the well house needed to be insulated in order to use this source of water in winter. [The Tenant] stated that he had brought all kinds of insulation and that he would gladly insulate it and

> he would also install some the vinyl siding he had brought with him on the wellhouse. This never happened but the insulation that was inside the wellhouse had been removed and burned by [the Tenant] and [C.N.] before they left for good.

The Landlord files his own application seeking compensation of $6,529.67. A monetary order worksheet has been provided to me, outlining the claim as follows:

Paint Supplies #1	$202.68
Paint Supplies #2	$397.51
Carpet/Underlay Quote	$4,732.56
Stolen Timber Invoice	$500.00
Replacement Light Bulbs	$151.92
Replacement Stove	$150.00
Replacement Fridge	$395.00

At the hearing, the Landlord made little in the way of submissions on the various claims other than to mention that the Tenant had removed the carpeting and cut down a tree at the property without permission to burn as firewood. The Landlord's written submissions explain the monetary claim as follows:

> [The Tenant] and [C.N.] left [the community] in mid October 2021. Upon inspection, we found that the cabinets that [the Tenant] had purchased and set into the house which he stated he was leaving were gone. The dwelling was horrible with cigarette smoke smell. We used a portable Ozone machine for two months, but the smoke had permeated requiring painting to seal the disgusting odours away. The entire upstairs loft area carpet and upstairs bedroom carpet and underlay were gone. The fridge and stove that were there before he moved in were also gone. We found the remnants of burned appliances and the carpet across the field from the home. An older washing machine was gone. There was one large hole in the drywall of the dining room. There had been a lawn area that had been dug up for a garden spot and the dirt was removed with his truck mounted snow blade leaving a large space now requiring dirt and seeding. The well house fiberglass insulation had been removed and burned in the firepit. We found further evidence of tree cutting on the property. And finally, they removed 29 light bulbs leaving empty sockets throughout the dwelling. Photos are attached with cross-claim.

Receipts are provided by the Landlord for paint supplies in the amounts listed in the monetary order worksheet, in addition to a quote for the flooring replacement. At the hearing, the Tenant's advocate emphasized that the flooring replacement was merely a quote and that there is no evidence the flooring has been replaced.

Analysis

Both parties seek monetary compensation in relation to this tenancy.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Dealing first with the Tenant's claim for $500.00 related to alleged heating and water issues, I note that s. 32(1) of the *Act* imposes an obligation on landlords to maintain a rental unit 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, make it suitable for occupancy.

As a general comment, there was repeated mention by the Landlord, both at the hearing and in the written submissions, that the Tenant's occupancy was premised on the Tenant undertaking certain maintenance at the property. This appears to be supported by the Tenant's explanation of the claim in his application. To be clear, if that could be construed as a term of the tenancy, I would find that it would be unenforceable. Section 32(1) of the *Act* clearly places the obligation of maintaining and repairing a rental unit on landlords. Further, s. 5 of the *Act* specifies that landlords and tenants cannot avoid or contract out of the *Act* and that any attempt to do so is of no effect. A landlord cannot avoid their obligation to maintain and repair the property under s. 32(1)

of the *Act* by saying the tenant knew of certain issues and agreed to take on the work of repairing them. That is the landlord's job.

This circles back to the point I made with respect to jurisdiction. The Landlord took the Tenant's money. He did so on the premise that the Tenant would occupy the cabin over a specified period. That meets the basic requirements for a residential tenancy agreement. It is no excuse to say the Tenant was to undertake certain work and did not do so. The obligation to repair and maintain the property rests with the Landlord. If there was an agreement that the Tenant was to complete certain work, by say renovating the kitchen, that would be an agreement outside the confines of the tenancy and is a separate agreement to the tenancy agreement due to its commercial nature. The Residential Tenancy Branch has jurisdiction to determine landlord-tenant disputes, not disputes regarding commercial agreements where on party provides services to another.

Turning back to the Tenant's claim, the correspondence outlined above is clear and unequivocal. The cabin had heating issues identified in the fall of 2019, the Landlord undertook to install heating for the space and represented the fireplace was in working order, and the gas fireplace passed inspection in July 2020. There is also no dispute that the gas fireplace blew up in July 2020 and the woodstove was decommissioned, which appears to have been sometime in August 2021. Review of the Tenant's natural gas bills confirms that there was no usage in November and December 2020, which would suggest that either the gas fireplace was not working at the time or was not being used by the Tenant. When viewed in the context of subsequent correspondence, in particular the repair demand from August 26, 2021, it appears more likely than not that that the gas fireplace was never repaired after blowing up in July 2020. Coupled with the decommissioning of the woodstove in August 2021, I accept that there was no heating in the cabin after that point in time. It appears likely this is what precipitated the Tenant's departure in September 2021.

I have little difficulty finding the Landlord breached his obligation under s. 32(1) of the *Act* to maintain and provide heating to the cabin. I accept that this is what ultimately ended the tenancy. Though I am not provided with receipts for damages, I take it from the submissions that the amount sought was based on a general claim. I accept that nominal damages, as explained in Policy Guideline #16, are appropriate here and accept that $500.00 is an appropriate figure. I find that the Tenant is entitled to this amount.

Though the Tenant has reached the limit of his claim as per his application, I would also note that I am not satisfied that he has established that water services to the cabin were insufficient. I accept that the cabin has well service that requires conscious consumption and that the Landlord provided additional water service to the cabin in the summer of 2020. I find that the Tenant has failed to establish that the water service was insufficient for the property and this portion of the claim is dismissed.

Looking to the Landlord's claims, I note that s. 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Looking first to the most significant portion of the claim, being the flooring replacement, I find that this portion of the claim is entirely speculative. Without considering the other aspects of the four-part test listed above, the Landlord has failed to properly quantify the loss by demonstrating the cost incurred. Further, there is no consideration of depreciated value of the flooring, which is to say the useful life of the flooring, as I have been given no information on the age of the flooring. For example, asking a tenant to pay for new flooring when the flooring was 30 years old and in poor condition would amount to a form of betterment that is not in keeping with the compensatory principle relevant to claims made under s. 67. I find the Landlord has failed to quantify this portion of his claim and it is dismissed without leave to reapply.

The Landlord also seeks the cost of repainting the cabin at the end of the tenancy, with a combined claim of $600.19. The Landlord's written submissions suggests the walls were repainted due to the persistent smell of cigarette smoke, which was attributed to the Tenant. The Tenant provided no direct response on this allegation, either in his written submissions or at the hearing. The problem I have with this portion of the Landlord's claim is that though in principle the Tenant could be responsible for the cost of repainting the rental unit, I am unable to attribute the damage to the Tenant alone. The correspondence I have reviewed, including the Landlord's submissions, suggests the rental unit was in a state of disrepair at the outset of the tenancy, specifically from the previous tenants. Indeed, according to the Landlord there was an understanding that the Tenant would undertake certain repairs and maintain the property. It is inappropriate for the Landlord to seek the full cost for repainting the rental unit from the Tenant when the damage to the walls likely pre-existed the tenancy. I am unable to find

that Tenant is responsible for the damage and dismiss this portion of the Landlord's claim without leave to reapply.

The Landlord seeks the cost for replacing items at the end of the tenancy, specifically light bulbs, a stove, and a fridge. Dealing first with the fridge and the stove, the Landlord's written submissions suggest these were taken by the Tenant after he moved out. However, the Landlord's own evidence shows pictures of the fridge and stove within the cabin. Based on the Landlord's evidence, it appears the Tenant did not take the fridge and stove, despite the written submissions to the contrary. I find that the Landlord has failed to establish his claim for compensation for the fridge and stove and it is dismissed without leave to reapply. Similarly, the Landlord's written submissions suggest the Tenant took 29 light bulbs from the cabin when he vacated. Despite this, the Landlord's own photographs show light bulbs within the cabin. Based on this, I cannot find that the Landlord is responsible for taking the light bulbs. This part of the claim is also dismissed without leave to reapply.

Finally, the Landlord seeks $500.00 after the Tenant cut down a tree at the property for firewood. I note that in a normal tenancy a landlord is generally responsible for cutting down trees, as per Policy Guideline #1. I believe it goes without saying that a tenant cannot cut down a tree at a property for firewood unless they have the landlord's permission to do so. The correspondence provided indicates this issue was raised in the summer of 2021, with the Tenant denying cutting down any live trees. Given the correspondence provided to me, I find it likely that the Tenant did cut down a tree at the property. Though this is a larger rural property, it was inappropriate for the Tenant to cut down the tree for firewood without the Landlord's consent. I find that doing so was in breach of his obligation under s. 32(3) of the *Act*. The Landlord attributes this cost at $500.00. According to him, the tree was marketable. I have no evidence to support this or what the marketable value of a tree is, though I accept that if it is a large tree its value may be significant. I accept that this is likely best suited as a nominal damages claim and accept that $500.00 is appropriate under the circumstances. The Landlord has established a claim for this amount.

The parties' respective claims offset each other such that no monetary order is granted.

Conclusion

The parties had a residential tenancy. The *Act* applies.

The Tenant has demonstrated a claim for compensation under s. 67 of the *Act* totalling $500.00.

The Landlord has demonstrated a claim for compensation under s. 67 of the *Act* totalling $500.00. All other portions of the Landlord's monetary claim are dismissed without leave to reapply.

Based on the outcomes, I find that neither party should pay the other's costs. Both claims under s. 72 for the filing fee is dismissed without leave to reapply.

No monetary order is granted as the claims offset each other.

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 24, 2023

Residential Tenancy Branch