Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC RR FF

Preliminary Issues

Upon review of the application the Tenant advised that he was not sure which names to list as the respondents so he listed the Landlord, her spouse, and their legal counsel as respondents to this dispute. After a brief discussion the respondents confirmed who the owner was and they also confirmed that the owner's spouse had full authority to act as her Agent and Landlord in relation to this tenancy. Legal counsel argued that they should not be named as respondent to this dispute as they only acted in the capacity as legal counsel for their clients and did not do business as a landlord.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who [emphasis added]
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

After careful consideration of the above, I amended the application to list the Owner and her Spouse as Landlords and respondents to this dispute and removed legal counsel's name, pursuant to section *64 (3)(c)* of the *Act.*

The Tenant confirmed that the tenancy is still in effect; therefore, he was withdrawing his request for return of the security deposit.

During the February 25, 2013 convening of this proceeding the Tenant clarified his claim as follows:

(1) He is seeking a finding to clarify the length of his lease and argued that it is his opinion that it is for a two year period and not a one year period;
(2) He is seeking to have repairs completed plus reduced rent for repairs not completed as required or in a timely manner
(3) $25,000.00 as compensation for loss of quiet enjoyment

Introduction

This hearing was convened on February 25, 2013, for one hour and reconvened for the April 10, 2013, session for 2 ½ hours, to hear matters pertaining to the Tenant's application for Dispute Resolution.

The Tenant filed his application on January 29, 2013, to obtain a Monetary Order for: cost of emergency repairs; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; reduced rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The Tenant initially submitted four volumes of evidence. He was granted permission to submit a fifth volume of evidence after the first convening of this hearing. The first and third volumes of the Tenant's evidence were not provided to the Landlord as separate volumes. Volumes 1 and 3 were provided to the Landlord in one package along with the items sent to the Residential Tenancy Branch in volume 4. Therefore, the Tenant served both the Landlord and the Residential Tenancy Branch with the same documents.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1) What is the length of this fixed term tenancy?
2) Should the Landlord be ordered to complete repairs to the rental unit?
3) Should the Tenant be awarded monetary compensation?

4) Should the Tenant be allowed to reduce his rent?

Background and Evidence

The Tenant submitted five (5) volumes of documentary evidence which included, among other things, copies of: the Tenant's written submission; the tenancy agreement attached to an e-mail string dated July 12, 2012; a cheque for November 2012 rent; numerous e-mail and text message communications between the Tenant and the Landlord's property manager(s); transcripts of voice messages left by the Landlord's real estate agent; written communications between the Landlords' legal counsel and the Tenant; a chronological summary of events; pictures of the rental unit; and the move in condition inspection report form dated July 15, 2012.

The Landlord submitted documentary evidence which included, among other things, copies of: their written responses submitted February 8, 2013 and March 6, 2013; a photo of three text messages; and an e-mail sent from the Tenant February 28, 2013 indicating outstanding repairs.

The following facts were reviewed during the course of this proceeding and were not in dispute:

- The parties entered into and signed a written lease agreement on July 12, 2012, in the presence of a witness;
- The Tenants and the Landlord's Agent initialled each page of the lease agreement excluding the title page;
- B.A., the applicant to this dispute, initialed the lease agreement title page on July 12/12 and wrote: *"subject attached maintenance repairs to be completed by Aug 6/12 per July 12 e.mail to XXXXX (Agent's name)";*
- The July 11, 2012 e-mail was attached to the lease agreement
- The lease was set to begin on August 1, 2012; however, the Tenant was granted early possession on July 15, 2012 and paid prorated rent for the month of July;
- Rent was payable on the first of each month in the amount of $2,800.00 and on July 12, 2012 the Tenant paid $1,400.00 as the security deposit;
- Schedule "A" , page 1, of the lease agreement includes the following under the heading "Term of Rent":
    - *TO HAVE AND TO HOLD the Premises for a fixed term commencing on the **1st** day of **August, 2012** and ending on the **31st** day of **August, 2013...***
    - ***Pro-rated rent for July 15, 2012 occupancy - $1535.44;***
- On page 2 of the lease agreement 1.1 stipulates:
    - *It is understood that the tenancy ends with the expiry of this lease agreement and the Tenant shall vacate the Premises by 1 p.m. on the **31st** day of **July, 2013;***
- During the February 25, 2013, convening of this proceeding, the terms of the lease agreement were reviewed and both the Tenant and the Landlords confirmed that they understood the end date of the lease would be August 31st

and not July 31st. What is in dispute is if the lease is a one year or two year lease;

- The Landlords do not dispute the Tenant's claim of $60.00 for emergency repairs completed to unlock the master bedroom door.

The Tenant submitted that he had been seeking a long term rental unit in this neighbourhood for a long time. His initial negotiations for this rental property began with a different property manager. When the parties could not reach an agreement for a long term tenancy the Tenant stated he backed away from the negotiations. Then about a week later he saw the same rental property being advertised by a different property manager. He entered into negotiations with the property manager who went back and forth between the Landlords and the Tenant; all the while the Tenant was insisting that he wanted a long term tenancy.

The Tenant argued that the property manager had confirmed with the Landlord that they would be granted a lease for a second year and that they negotiated that rent would not increase more than the legislated amount. He pointed to the property manager's e-mail from 5:07 p.m. on July 11, 2012 which states "... cannot *raise more than the maximum.."* as proof that he was granted a lease for the second year. He said the property manager told him that the Landlords had agreed not to raise their rent more than the allowable amount for the second year which indicates they had agreed to a second year term. He argued that based on all of his verbal negotiations with both property managers and the fact that he insisted on a long term lease he was of the understanding that their current lease would be for a two year period.

The Landlords' Legal Counsel (hereinafter referred to as Legal Counsel) pointed to the property manager's e-mail, as listed above, and noted that the entire sentence states: "*I have been able to get them to agree to $2800.00 July 15th. 1 year lease ... cannot raise more than the maximum.."* He argued that the e-mail clearly states that the lease was a "1 year lease". Legal Counsel then pointed to the actual lease agreement whereby the Tenants initialled every page and signed accepting the terms of the lease which states: *TO HAVE AND TO HOLD the Premises for a fixed term commencing on the 1st day of August 2012 and ending on the 31st day of August, 2013. He* argued that there is no evidence to prove the Tenant corrected the property manager's e-mails where she states the lease was for one year; which is indicative that he knew the signed lease was for a one year period.

The Tenant testified that his e-mail that was sent at 6:44 a.m. on July 12, 2012, formed part of the lease agreement as he noted on the title page of the lease "*subject attached maintenance repairs to be completed by August 1, 2012 per July 12 e.mail to (property manager's name).* This e-mail requested instructions on how to use the house alarm, the hot tub, and the surround sound speaker system, as well as listing the following required repairs:

- Replacement of light bulbs in the kitchen, stairway to the basement, in the walk in closet, and all other burnt out lights

- Door moldings in the main bedroom to be touched up with paint
- Repairs to broken fence
- Broken planks on the 2nd deck to be fixed & replaced
- Broken piece of wood casing of the Jacuzzi to be fixed
- Broken garage door to be repaired.

The Tenant stated that shortly after moving into the unit they advised the property manager of additional repairs. When their repair requests went unanswered they sent their request for repairs by e-mail on November 2, 2012 which listed eleven (11) items that needed repair. An abbreviated list of the required repairs is as follows:

(1) Wobbly deck railing is unsafe;
(2) The washing machine floods the basement every time it is operated; as a result there is mold behind the washer, the baseboards have popped off the walls
(3) Live wiring hanging from wall in basement
(4) Basement built in vacuum outlet broken
(5) Stove top fan does not work
(6) Dishwasher does not drain or dry
(7) Master bedroom door does not close properly after previously being kicked in and caused the lock to stick
(8) Hot Tub pump is broken
(9) Garage car entry door is broken
(10) Landlords refused to change their mailing address and attended the rental unit daily for 5 months
(11) A number of closet door railings are broken.

This list of requested repairs was reviewed briefly when the parties convened on February 25, 2013. At that time I ordered the Landlords to have as many repairs completed, as soon as possible, and before the reconvened hearing, in accordance with section 32 of the Act.

During the reconvened hearing, the Tenant advised that a maintenance person had attended the rental unit on approximately March 3, 2013 and March 24, 2013 to complete some of the repairs. He argued that the repairs were completed in a manner that he would call quick fixes, done at the least amount of expense, which caused him some concern that the repairs will not last. The repair person was scheduled to attend the rental unit April 10, 2013, to continue some of the repair work. The following items were still unrepaired:

2) The washing machine has been repaired; however, the damage caused by the floods has not. The Tenant stated that there was a subsurface of water under the linoleum and carpet because the water leak was continuous. The wall is moldy and soggy, the baseboards are warped and popped off the walls, and although the subsurface water is starting to dry up now that the leak has been repaired, there is still the musty odor and "who knows what" underneath the flooring;

4) Basement built in vacuum outlet remains broken;

5) The stove fan was repaired. There is still an issue with the gas burner ignition which the repair person is to either clean or repair on April 10, 2013;

6) Dishwasher repair was started and he was told parts were to be ordered on March 25, 2013;

8) The hot tub pipe has been patched. Although the patch has been applied the Tenant has not had an opportunity to fill the hot tub to determine if the patch will hold once the pipe is pressurized with water.

The Tenant stated the main floor of the house has three bedrooms, three full bathrooms, kitchen, living room, and is approximately 1200 square feet. The basement is approximately 800 square feet and has the laundry room, laundry sink area/mud room, carpeted family room, and carpeted storage area.

The Tenant testified that he is seeking reduced rent of $2,000.00 per month from the onset of his tenancy until the repairs are completed. He stated this claim is comprised of $1,400.00 for loss of use of the basement plus $600.00 for the loss of use of the appliances, hot tub, and the other miscellaneous repairs.

He argued that he is paying rent for the entire house yet they have only been able to use the main floor due to the subsurface water, mold, and smell in the basement. He stated they agreed to rent the house to have space for his two young children; however, due to the water leak and subsurface water in the basement they have not been able to occupy the basement or allow their children to play in the family room. He argued that when he walked on the floor the stale moldy water would squish up through the cracks in the linoleum and up through the carpet to the point that their socks would get wet. He also pointed out that the wall is soggy and moldy so it is not safe to be in the basement.

The Tenant stated that the loss of use of the washing machine was significant for a family of two small children. This caused his wife an enormous amount of stress having to take the laundry to family members' homes to do. He stated there were times when they had emergencies with the children either being sick or wetting the bed that they had no choice but to use the washer. At those times his wife would create a dam with towels to prevent the spread of the water.

The Tenant has sought $25,000.00 for loss of quiet enjoyment and for the stress put on his family given the circumstances they faced from the start of their tenancy. He stated that they felt misled by the Landlords who told them they were not planning on selling the house and then shortly after they move in the Landlords come with a realtor and tell them they are going to have to move out because they are selling.

The Tenant submitted that they had to endure daily harassment from the Landlords who attended the unit daily to retrieve their mail. He stated the Landlords refused to forward their mail until November 2012, even after they requested they do so in writing.

The Tenant stated that they also had to deal with the Landlords constant attempts to enter the rental unit without proper notice. The Landlords would just show up, unannounced, with short notice, or would say they were bringing a repair person, and would show up with a realtor. The Tenant pointed to his evidence which included e-mails from the property manager who informed the Landlords they were in breach of the Act but that did not stop them from attending without proper notice. The Tenant advised that realtors showed up without notice about six to eight times.

The Tenant advised that at one point the Landlords told them they were going to sell the house and they wanted us out. The Tenant stated that at that point they were contacted by the Landlords legal counsel who attempted to negotiate a price to have us move out.

With respect to being harassed, the Tenant stated that to add insult to injury they felt the Landlords had total disregard to what they consider common decency for this country. He clarified common decency as following through with doing what they say they are going to do without nickel and diming them to death. For the emotional damages he has had to endure; the stress and loss of sleep of having to deal with his wife's upset without having a washing machine; or dealing with the broken dishwasher; and not using the cook top as much because of the steam created by the broken fan.

The Tenant equated the washing machine repair as being like a lottery win for his wife. He stated the emotional strain of having to constantly request repairs to the washing machine, something that was supposed to be included in their rent, and then only being able to use it in emergencies, was almost too much for her to bear. The Tenant argued that they had worked very hard and thought they were being careful to establish a stable environment for their four and six year old children. He advised that he is away at work five days a week while his wife is out of the house two days per week. His children attend school and pre-school.

In the absence of the Landlords during the reconvened hearing on April 10, 2013, their legal counsel asked the Tenant questions which the Tenant confirmed what was written in the lease agreement.

Legal counsel point to the property manager's e-mails and noted that the Tenant did not correct the property manager's comments where she referred to the lease as a one year lease. The Tenant confirmed he did not correct those statements in an e-mail. The Tenant confirmed that there were not any documents signed by the Tenant and Landlords that say it is a two year lease.

Legal counsel confirmed with the Tenant that the property manager told them that the Landlords were harassing them. The Tenant stated that the property manager went

back and forth between the parties but there was one occasion where all three parties were on a telephone conversation to discuss the issues.

Legal counsel clarified that the garage is located in the back yard and the driveway runs from the front of the house, down the side of the house to the garage. He confirmed with the Tenant that there appeared to be flooding issues with the garage and problems with being able to park their car.

Legal counsel argued that the Tenant should have mitigated his loss of use of the basement by not using the washing machine, adding to the water. The Tenant responded stating that the water leak was constant, whether the washer was used or not. He confirmed that the amount of water increased with the use of the washer but they would build a dam and clean up the excess.

In response to the three items being claimed, legal counsel argued that there is nothing in writing that would indicate a two year lease ending in 2014; if the Tenant is entitled to reduced rent for delay in repairs it would not amount to $2,000.00 per month; and certainly the loss of quiet enjoyment is nowhere near the $25,000.00 being claimed.

Legal counsel noted that the Tenant's claim for loss of quiet enjoyment is comprised of the Landlords attending the unit until November 2012 to pick up their mail, six to eight visits without proper notice by the realtors, and damages for the Landlords' conduct of not completing the repairs. He said that while there may be some kind of claim there is no basis for $25,000.00. He pointed to the Landlords written submission of February 8, 2013, where they stated that if I ordered compensation that they thought $980.00 for repeatedly trespassing on the property plus $1,960.00 for neglecting to have the repairs completed would be worthy of this situation.

In closing, the Tenant stated that he hoped I would consider: (a) all the pieces of his negotiation and that they had agreed to a two year lease; (b) all aspects of the harassment they had to endure over time which was completely unreasonable; (c) the emotional issues caused; (d) and the Landlords motivation to squeeze out every penny from us with no regard to our laws. He argued that it was not a case where the Landlords did not know about the law. They were repeatedly told about the law by the Tenant and the Landlords' own property manager. That is why he felt the need to stand up for his rights.

Legal counsel argued that the Tenant is attempting to incorporate an unrelated negotiation that took place prior negotiations with the property manager who arranged for this lease. The Tenant advised that he backed away from that first negotiation and let it fall through. He cannot use those negotiations when he began new negotiations with a new agent and signed a one year lease.

Analysis

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], 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.

Emergency Repairs
The Landlords do not dispute the Tenant's claim of $60.00 for repairs completed to unlock the master bedroom door. Accordingly, I award the Tenant emergency repairs in the amount of **$60.00.**

Length and End Date of Lease
In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, any verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

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

In this case, the Tenant has the burden to prove his claim that the tenancy agreement or fixed term lease is for a two year period ending in 2014. Notwithstanding the Tenant's arguments that he had a verbal understanding with both property managers, the written lease that was entered into, initialed on each page, and signed by both parties clearly states "*TO HAVE AND TO HOLD the Premises for a fixed term commencing on the **1st** day of **August, 2012** and ending on the **31st** day of **August, 2013...".***

Upon further review of the lease agreement, I find the move out date listed on page 2 under section 1.1 as July 31, 2013 to be a clerical error. During the February 25, 2013, convening both parties confirmed the lease agreement states the tenancy will end on August 31, 2013.

After careful consideration of the foregoing, I find the Tenant provided insufficient evidence to prove he entered into a two year lease. Therefore, I find the parties entered into a lease agreement that is for a fixed term ending on August 31, 2013, and the Tenant(s) must vacate the unit no later than **August 31, 2013, at 1:00 p.m.**

Repairs
Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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.

Section 62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

At no time during the course of this proceeding did the Landlords or their counsel dispute that repairs were required and did not dispute that the list of repairs formed part of the lease. The evidence supports that the Tenant added to the lease the agreement, at the time of signing, that the repairs noted in his July 12, 2012 e-mail were to be completed by August 1, 2012; however, the Landlords did not comply.

During the February 25th, 2013, hearing I Ordered the Landlords to attend to the required repairs, as listed in the Tenant's e-mail listing the (11) items, which were to be completed as soon as possible and before we reconvened. When the hearing reconvened on April 10, 2013, the Tenant testified that while some repairs were completed there were still some that were outstanding.

Accordingly**, I HEREBY ORDER** that the Landlord complete the repairs as follows:

A. Repairs to soggy, moldy wall in the basement no later than **June 30, 2013**.

B. The basement built in vacuum outlet is to be repaired no later than **April 30, 2013**;

C. The gas burners/ignition issue is to be repaired no later than **April 30, 2013**;

D) The dishwasher is to be repaired or replaced no later than **April 30, 2013**;

E) If the hot tub pipe repair has not worked, then the Landlord must have the pipe replaced no later than **April 30, 2013**.

I further Order that the above repairs, if not already completed, are to be completed by professional contractors during the week and not on Sundays. The Tenants are ordered to work with the contractors to accommodate access to the rental unit, after proper notice is provided, in order to complete the repairs by the time frames listed above.

Reduced Rent for Not Completing Repairs in a Timely Fashion

The undisputed evidence is that repairs were required and were unattended to by the Landlords. The repairs remained unattended to for the seven month period of July 15, 2012 to the start of this proceeding on February 25, 2013. Even after I issued an Order to have the repairs completed five items remain unrepaired when we reconvened 45 days later.

Upon review of the totality of events and evidence surrounding the Tenant's requests for repairs, I find the Landlords attempted to avoid completing the repairs, in breach of section 32 of the Act. I further find that when considering the Landlords' actions of hiring a maintenance person who only attends on Sundays and their failure to complete

the repairs in a timely fashion, they continued to employ avoidance tactics which I find to be a direct breach of my Order to have repairs completed before the April 10, 2013 reconvening of this proceeding. Furthermore, the Landlords did not appear at the reconvened hearing and therefore were conveniently absent from a cross examination.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenant had applied for a rent reduction based on Section 27, I find he has provided no evidence indicating that the Landlords had breached this section of the *Act*. As a result, I dismiss this portion of the tenant's application.

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.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit 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 continuous breakdown of the building would deteriorate occupant comfort and the long term condition of the building.

Based on the above, I find the Tenant has applied for compensation, which he equated to a claim for reduced rent that was previously paid, for loss of quiet enjoyment and not reduced rent under section 27.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the Arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

I must, for example, consider that a tenant who worked in a job that required them to be absent from the residential property every week day between the hours of 8:00 a.m. and 5:00 p.m. would be impacted less than a tenant who worked out of the home or was a stay at home parent with young children.

I accept the undisputed evidence and testimony that prior to the February 25, 2013 hearing, the Landlords failed to take any steps to make required repairs to the rental unit in breach of section 32 of the Act, which caused a reduction in the value of the tenancy. I find the Tenant's claim of $25,000.00 to be excessive given the circumstances presented to me. As a result, I find a more reasonable evaluation of the loss to be an amount of **$5,175.00** which is comprised of:

- $4,100.00 for the loss of use for a portion of the basement; loss of use of the washer and dryer from July 15, 2012 to March 15, 2013 (8 months x $512.50);
- $400.00 for the Landlord's daily attendance at the rental unit to pick up mail from July 15, 2012 to November 2012 (4 months x $100.00); and
- $675.00 for losses related to all other required repairs from July 15, 2012 to March 15, 2013 plus the realtor's attendance without proper notice to attend, prior to February 25, 2013.

Residential Tenancy Policy Guideline # 16 provides that in addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

Upon review of the volumes of evidence I find the Tenant mitigated his losses by informing the Landlords of the *Residential Tenancy Act* and their requirements for repairs and notice of attendance. I further find the Landlords made a conscious decision to ignore the *Act* and the advice of their property manager causing the Tenant and his family undue stress for a period of over seven (7) months. Accordingly, I award the Tenant aggravated damages in the amount of **$5,000.00.**

The Tenant has been partially successful with their application; therefore I award recovery of the filing fee in the amount of **$100.00.**

Conclusion

I HEREBY FIND the parties entered into a fixed term lease that ends on **August 31, 2013,** at which time the Tenant is required to vacate the property.

The Landlord is HEREBY ORDERED to complete the above noted repairs, pursuant to section 62 of the *Residential Tenancy Act*.

The Tenant may recover the one time award of **$10,335.00** ($60.00 + $5,175.00 + $5,000.00 + $100.00) by reducing his rent payments until the full award amount is recovered. For clarity, this tenancy is scheduled to continue until August 31, 2013 which will require the Tenant to pay $11,200.00 (4 x $2,800.00 in rent from May 1, 2013 to August 1, 2013) in rent. Therefore, the Tenant may cease payment of rent completely until the award is recovered and then resume payment for the balance of rent on August 1, 2013 in the amount of $865.00 ($11,200.00 - $10,335.00).

In the event that the Tenant is not able to recover the full amount of compensation by stop payment of rent the Tenant has been issued a Monetary Order in the amount of **$10,335.00** which will enable him to collect any balance owing after service upon the Landlords. In the event that the Landlords do not 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: April 19, 2013

Residential Tenancy Branch