Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF
MNSD FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution he confirmed his intent on seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, by listing the items he was claiming for return of November rent, return of double the security deposit, relocation costs, and repair costs for the toilet.

Based on the aforementioned, I find the Tenant's application contains a clerical error as he did not put a check mark beside his request for money owed or compensation for damage or loss under the act regulation or tenancy agreement. I find this error to be an oversight and/or clerical error as the request is clearly stated in the details of the dispute on his application. Therefore, I amend the application, to include his request for money owed or compensation for damage or loss under the act regulation or tenancy agreement pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant and convened on April 4, 2013 for 90 minutes and again on May 16, 2013 for 160 minutes.

The Landlord filed on January 11, 2013 and amended the Application on March 15, 2013 seeking a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for his application.

The Tenant filed on March 13, 2013, to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for

the return of double his security deposit; and to recover the cost of the filing fee from the Landlord for his application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. 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. Should the Landlord be granted a Monetary Order?
2. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence of 3 CD's and 103 pages which included, among other things, copies of: photos on two CD's created by Landlord; a monetary order worksheet; his written submission; communication from the fire department; the fire department incident report and photos on CD; communications from the strata council; the form K which the Tenant signed; the tenancy agreement and addendums; move in and move out condition inspection report form; strata form completed June 9, 2012 to assume responsibility for planned renovations; strata invoice for damages and strata insurance claim; receipts for repairs; and after hour labour charges for building manager.

The Tenant submitted documentary evidence which included, among other things, copies of: 2 CD's with photos and videos of rental unit; communications by e-mail, letter, and SMS between Tenant and Landlord; affidavits from Tenant and two witnesses; the tenancy agreement and addendums; move out inspection report form; and his written arguments.

The parties confirmed they entered into a fixed term tenancy that began on June 4, 2012, and was set to end December 1, 2012. The Tenant vacated the property as of

December 1, 2012. Rent was payable on the first of each month in the amount of $1,520.00 and on June 4, 2012 the Tenant paid $760.00 as the security deposit. The move in condition inspection report was completed June 5, 2012 and the move out report was completed on December 2, 2012.

The parties advised that each of their claims stem from an incident which occurred during the early evening on November 11, 2012 which caused extensive damage to the rental unit and other units in the strata complex.

The Landlord testified that on November 11, 2012 around 6:00 p.m. the Tenant left an urgent message on his voicemail advising there was an incident in the apartment. He received the message a few minutes after it was left. He attended the unit with his friend and they arrived at the rental unit approximately 45 minutes after receiving the message. When they arrived the fired department and the building manager had already been there and had cleaned up a lot of the water already. The building manager and his wife were coming in and out of the rental unit along with fire department staff when he arrived.

The Landlord stated that the Tenant had told him that he came home and was changing his clothes when the sprinkler system in the kitchen went off. There was extreme water damage requiring extensive restoration.

The Tenant testified that on November 11, 2012, he left the rental unit around 2:00 p.m. to do some grocery shopping. He returned to the apartment around 5:30 p.m. and was alone. As soon as he got home he took off his coat and went into his bedroom to change his clothes. He heard something like water running, which was similar to the water leak that occurred in his bathroom ceiling the week before, so he opened his door to check out the noise and he smelled smoke and saw the sprinklers going off in his kitchen.

He stated that he called the building superintendent (herein after referred to as the building manager) and left him a message then called the Landlord and left him a message advising them what was happening with the sprinkler. He then went into the kitchen and started removing everything off the cabinets and in other areas so they would be out of the water and not get damaged.

After rephrasing the Tenant's testimony he advised that he had to change his clothes because he was very sweaty after carrying up all of his groceries. He stated that he had to make several trips back and forth to his car to carry in the heavy stuff such as stacked groceries, a case of soup, and several bags of fruits and vegetables. He

confirmed that he placed all of the groceries in the kitchen on the counter and it was after the last load that he took off his jacket and went to change his clothes.

At this point the Tenant was very concerned about my rephrasing of his testimony and argued that he did not say he was removing things from the kitchen; rather, he claimed he stated that he only moved things away that were close to the kitchen. Specifically he stated that he moved his USB drive and computer so they would not be damaged. Then he began to pick up other items in other rooms off of the floor. He was in his dining room picking up the chairs and placing them on the table when the fire department arrived with the building manager. He stated that all they saw was water everywhere so they took off the toilet and everyone began mopping the water towards the bathroom and down the toilet drain.

The Tenant advised that the fire department arrived within a few minutes of the sprinklers going off. There were anywhere from 3 to 5 firemen coming in and out of the rental unit and the fire investigator arrived later. After the initial mopping up was completed most of the crew left but the investigator remained. The Tenant said that he told the fire investigator that he was not cooking anything in the oven or on the stove and he did not have matches or lit candles going at the time the sprinklers went off. The investigator asked him what happened and left him with two business cards with the incident number. The Tenant said he gave one of the cards to the Landlord and retained the other for his records.

The Tenant argued that the Landlord took more than 45 minutes to show up at the apartment because the firemen and fire inspector had left by the time the Landlord had arrived. He described to the Landlord what had happened and the Landlord went into the kitchen and started taking pictures. They had a discussion relating to a possible electrical issue at which time the Tenant told the Landlord that the fire investigator told him that he did not think that was the cause.

The Tenant submitted that the building manager came back shortly after the Landlord arrived and told them that the emergency restoration team had been called. When the emergency team arrived they told him that they would need 24 hour access to the unit so the Tenant gave them his spare key. He said they also recommended that he not stay the evening, because they would be working all night long, and that he should remove all of his valuable possessions. He said he gathered his valuables and placed them in his car and spent the evening at the hotel next door. The Tenant clarified that prior to the arrival of the fire department he did smell smoke but he did not see any fire.

At this point the hearing time was about to expire. I advised both parties that no additional documentary evidence would be accepted and explained the processes of adjourning and reconvening a hearing. Each party confirmed they were available to reconvene this proceeding in mid May 2013.

At the outset of the reconvened proceeding I reviewed the aforementioned with the participants and then continued with their oral submissions.

The Tenant advised that after he stayed in the hotel for three nights he decided to move back into the rental unit and live in and amongst the restoration / construction until the end of November. On November 14, 2012 he sent the Landlord an e-mail advising that he would be ending his tenancy effective December 1, 2012. Rent was paid in full for November 2012; however, no rent was paid for December 2012. He had access to his new unit on November 30, 2012, and remained in possession of this rental unit until December 1, 2012. The move out inspection took place on December 2, 2012, at which time he returned the keys to the Landlord.

The Landlord confirmed receipt of the aforementioned e-mail and stated that he informed the Tenant that he is required to provide thirty days notice. He said he explained to the Tenant that he could end his tenancy effective December 31, 2012 as he would be required to pay for December rent but the Tenant refused to pay the rent and moved out by December 1, 2012.

The Tenant confirmed that he did not tenant insurance to cover his loss and stated that the Landlord suggested he did not need insurance. He filed his claim seeking the following monetary compensation:

1. **$1013.33** Rent refund for November 11 – 30, 2012. He did not reside in the unit the evening of November 11 to 13, 2012 and returned to live in a construction zone late in the day November 14, 2012. He only had partial use of his bedroom and bathroom while the rest of the apartment was completely ripped apart and was being dried out by huge fans and a dehumidifier. He had to request the restoration company put the toilet back in, after he purchased the wax seal, on the 14th before he could return to living there.
2. **$3,040.00** Return of double his security deposit (2 x $1,520.00) as the Landlord failed to disburse the deposit or file for dispute resolution within the required 15 day period. In addition, the Landlord did not send him a copy of the move out inspection within the required 15 day period. He provided the Landlord with his forwarding address on December 2, 2012.

3. **$500.00** Accommodation fee that the Landlord had agreed to pay in the addendum when renovations were to being done. The Tenant stated that he is of the opinion that he was entitled to this fee as soon as the Landlord removed the kitchen floor tiles as this was the start of the required renovations that were supposed to be completed within the first sixty days of the tenancy. When renovations were not started the Tenant claims that he had several conversations with the Landlord, in person, by phone, or by text, and the Landlord kept delaying.
4. **$10.63** Toilet wax seal which he submitted had to be purchased before the restoration company would agree to install the toilet.

The Landlord disputes all of the items claimed by the Tenant and argued that the Tenant's loss is the result of his own negligence by starting the fire in the kitchen. He responded to each item claimed as follows:

1. Had the Tenant had insurance he would have had all his hotel expenses covered. The Tenant was insistent on staying in the rental unit during the restoration and he told the Tenant it would be at his own risk. The Landlord argued that he should not be responsible to refund the rent as the Tenant continued to occupy the rental unit and his hotel costs would have been covered had he had insurance.
2. The Landlord confirmed that he did not have the Tenant's permission to keep the security deposit; however, he did verbally agree to pay some money. He stated that he delayed in filing his claim to keep the deposit because he was in negotiations with the Tenant. About four or five days after the Tenant moved out he received an e-mail from the Tenant stating he wanted his security deposit returned.
3. The Landlord advised that the tenancy agreement and addendum were constructed by the Tenant. He said that the Tenant was older than him and advised him that he was a lawyer. The Tenant told him he could create a better tenancy agreement. He met with the Tenant and signed the agreement and went home to review it with his father. He realized then that he should not have signed the agreement and met with the Tenant the next day and said he wanted to rip up the agreement and suggested that the Tenant find another place to live. The Tenant refused to cancel the agreement. After further discussion with the Tenant he finally agreed to amend the addendum and continue with the agreement.

   The Landlord submitted that he attempted on several occasions to start the renovations; however, the Tenant insisted on being present. The Tenant worked

long hours leaving at six in the morning and not returning until after 6:00 p.m. which made it impossible to hire contractors as they do not working evenings. The Tenant had continually refused the contractors access and just before the fire on November 11, 2012, the Tenant informed him that he would be going away for two weeks at Christmas and requested that the renovations be completed then. The Tenant did not provide proof that he was requesting the renovations because he was the cause of the delay and he knew it.

The Landlord disputes the Tenant's claim for $500.00 as the work was not being performed for the renovations as listed in the tenancy agreement. Rather, the work that was being performed was emergency restoration to repair the damages caused by the fire started by the Tenant.

4. The restoration company was responsible for putting the toilet back in place. The Tenant purchased the wax seal on his own, without prior permission, and begged the restoration company to put the toilet back on earlier than they normally would have so he could move back into the rental unit. This was an expense that normally would have been covered by the restoration company.

The Landlord denies all of the allegations and defamatory comments against his character which were provided in the Tenant's written submissions. He questioned how the Tenant could provide such detailed oral testimony about what happened on the day of November 11, 2012, yet he neglected to explain how his friend could have allegedly heard their 45 minute telephone conversation while dialed into the Tenant's cell phone that was located in the Tenant's pocket. The Landlord argues that this was not possible because they were standing on one of the busiest, noisiest corners in the city at that time. He is of the opinion that the statements provided by the Tenant are unproven or falsified; while his evidence is supported by facts which included invoices and the fire department report.

The Landlord testified that he was seeking monetary compensation for the losses incurred as a result of the fire caused by the Tenant burning oil on the stove and the resulting losses from the Tenant cancelling his tenancy without proper notice. The Landlord confirmed that he had let his home owner's insurance expire without renewing it and argued that many of these items would be not covered by such insurance. The Landlord is seeking the following monetary compensation:

1. $1,520.00 December 2012 loss of rent because the Tenant vacated the rental unit without providing proper 30 days notice and because he had to end the tenancy due to his own negligence in starting the fire by leaving cooking oil on the stove.

2. $760.00 Change over fee for breaking the lease as provided for in the addendum. The Tenant wrote the addendum and the Landlord agreed that because he was a lawyer he would be able to use the proper words. It was the Tenant who chose December 1st as the end date of the tenancy as he created all the tenancy agreement documents.
3. $5,000.00 Strata insurance deductible. Other rental units and equipment on the two floors below the Tenant's floor were damaged by the water from the sprinkler system that was activated by the fire. The Landlord submitted that because the fire was the result of the Tenant's negligence, as supported by the fire department findings, the deductible on the Strata Insurance to fix the other units is charged to the Landlord/owner. Therefore, the Landlord is seeking to recover that amount from the Tenant. Even if he had insurance it would not pay another insurance deductible.
4. $1,333.58 Comprised of $402.58 sprinkler repair; $616.00 electrical security camera repair; and $315.00 for after hour wages of the building manager who had to attend the rental unit on a statutory holiday after his regular working hours. The Landlord submitted that the Strata insurance only covers damages to the building structures and not the three items being claimed here. As the damages were the result of the Tenant's negligence in starting the fire these charges are collected from the Landlord / owner. So he in turn is seeking to recover them from the Tenant. His building insurance, if valid, would not cover these items as they are not structural in nature.
5. $200.00 Move in and move out fees for the elevator. The Landlord argued that the Tenant signed the Strata Form "k" which clearly indicates the requirement for a move in and move out fee. The Tenant did not pay these fees and now they are being charged against the Landlord.
6. $3,096.00 Purchase of supplies to repair and install the flooring ($817.00 measure and purchase laminate flooring + $479.00 underlay + $1,800.00 installation of flooring). The Landlord argued that the floor had to be replaced as a result of the water damage caused by the sprinklers. The laminate was not going to be replaced as part of the renovations and therefore the Tenant should have to pay for the cost.
7. $224.00 For the cost of obtaining the full report from the fire department and submitting one as evidence for this dispute.
8. $766.49 Comprised of $14.03 Canada Post fees + $36.07 for copying and digital CD creation + $716.39 for the Landlord's time in restoring the unit and preparing for this dispute.

The Tenant disputed all of the items claimed by the Landlord for the following reasons:

1. The Tenant confirmed he did not provide thirty days notice to end the tenancy and argued that he could not provide a long notice due to the condition of the rental unit.
2. The change over fee was for breaking the lease. He did not break the lease as the term of the lease expired on December 1, 2012 which is when he ended the tenancy. He chose December 4, 2012 as the end date and after meeting with the Landlord they mutually agreed to change it to December 1, 2012. The change is visible on the tenancy agreement.
3. The Tenant argued that he is not responsible to pay the Strata insurance deductible because the Landlord did not mitigate this loss. The Landlord ought to have had his own insurance to cover this deductible and the Landlord should have had legal representation at the Strata meetings to fight this charge. The Tenant pointed out that he offered to attend the meetings with the Landlord and that he could provide representation as a lawyer for him but the Landlord chose for him not to attend; therefore, the Landlord did not mitigate so the Tenant should not be responsible for this charge.
4. The Tenant continued his argument of mitigation for the charges incurred by the Strata to repair the sprinklers, security camera, and after hour wages, because the Landlord did not have insurance or legal representation. He argued that only one sprinkler was damaged and questioned why there were charges for two sprinklers.
5. The Tenant confirmed signing the form K but argued that he did not receive a copy of the Strata by-laws. He also claimed that the Landlord told him that he did not have to pay these fees. That is why there is a check mark beside “no” on the form.
6. The Tenant stated he is not responsible for the cost of materials and labour to install the new floor because the Landlord ought to have had insurance coverage. He also questioned the validity of the receipts because the date of when the underlay was purchased is after the date of the installation.
7. The Tenant argued that he should not have to pay for a copy of the fire department report when the Landlord was provided a copy by the Strata for free.
8. The Tenant stated the remaining costs are not recoverable as they are costs of doing business. Also, service is a choice; therefore, he is not responsible for costs incurred by that choice.

In closing the Tenant confirmed he is a practising lawyer in B.C. and argued that the tenancy agreement was written based on agreements made between him and the Landlord. He simply put those agreements into words on the paper. He submitted that he always allowed the Landlord access to his unit and only requested that either he or the Landlord be present. He is not seeking relocation costs; rather the money is for loss

of quiet enjoyment and hotel costs which he is entitled to receive. He is of the opinion that the renovations were started when the Landlord removed the kitchen tiles; therefore, he is entitled to the compensation listed in the tenancy agreement addendum. He does not accept and has never acknowledged responsibility for the events which occurred on November 11, 2012. He argued that the fire report is not sufficient evidence to prove that the fire was caused by him.

The Landlord argued that he had mitigated his losses by attending the Strata meetings but there are no arguments to be made when the fire department report clearly states *"Area of origin is the kitchen of #407. Evidence suggests the tenant (name) was cooking something which ignited and was moved to the sink area".* The Landlord pointed out that the report also stated that there was soot and ash in the sink. The fire department photos show a pot and two burnt sponges in the sink; however, the pictures taken by the Landlord upon his arrival shortly afterward show an empty sink that was very clean and what appears to be a brand new sponge. The Landlord argued that this shows that the Tenant was responsible for the fire as he cleaned the sink in attempts to hide the evidence. The Landlord stated that he understands that accidents happen but at the end of the day someone is responsible.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Upon careful consideration of the evidence before me, I favor the evidence of the Landlord who argued that the fire and damage which occurred November 11, 2012, resulted from the Tenant leaving something cooking on the stove, unattended, while he was in another room in the apartment. I favored the Landlord's evidence over the Tenant's, in part, because the Landlord's argument was forthright, credible, and supported by a fire expert's report while the Tenant's argument was, simply put, unsupported oral testimony which claimed there was no proof that he started the fire.

Also, the Landlord readily acknowledged that he had let his home owner insurance lapse. In my view the fireman's report and the Landlord's willingness to admit that he did not have insurance lends credibility to all of the Landlord's evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanation of the events that unfolded on the day of November 11, 2012, to be improbable. I make this finding in part because the Tennant initially claimed that he arrived home, placed his keys on the bench, went straight into his room to change, and when he came out he saw the sprinklers going off. He argued several times that he went straight into his bedroom and then upon further questioning he admitted that he had arrived home around 5:30 p.m., around dinner time, and made several trips in and out of the rental unit bringing groceries up from his car and into the kitchen. It was because of those several trips to his car that he became sweaty which caused him to have to change his cloths. He confirmed that he lived alone and that he was the only one in the apartment on that day. In the presence of the Tenant's contradicting testimony, I find the Tenant's explanations to be improbable. Rather, I find the Landlord's submission that the fire was caused by the Tenant leaving a pot cooking on the stove unattended while he was either (a) making another trip to his car or (b) in another room cleaning up or changing, to be plausible given the circumstances presented to me during the hearing, as supported by the fire inspector's report.

At the outset of this proceeding each party checked in and was given the opportunity to ask questions and submit preliminary issues. At no time during the first convening of this proceeding did the Tenant disclose that he was a lawyer practicing law in B.C. The Tenant's position was not brought forward until the Landlord argued that the Tenant was placed in a position of trust because he was older than him and because he was a lawyer. He stated the Tenant offered to compose the tenancy agreement and addendum because he was a lawyer and knew the correct terminology and that he felt

pressured by the Tenant to sign the agreement. He also attempted to cancel that agreement the next day but the Tenant refused to let him out of the agreement.

In common law there is a doctrine of contra proferentem which means giving the benefit of any doubt in favor of the party upon whom the contract was foisted. In plain language this means that the benefit of doubt goes to the person who did not construct the contract.

For all the aforementioned reasons, I find as follows:

Tenant's Claim

1.$1013.33 Rent refund for November 11 – 30, 2013 - I find that the Tenant's loss of quiet enjoyment of the rental unit was a direct result of his own negligence in leaving a pot cooking on the stove unattended. He would not have had to live in those conditions had he mitigated his loss by staying in attendance while cooking or if he had tenant's insurance to cover hotel costs. Accordingly, I find the Tenant has not met the test for damage or loss as listed above and I dismiss this claim, without leave to reapply.

2.$3,040.00 return of double his security deposit (2 x $1,520.00) - Based on the evidence before me, the Tenant paid $760.00 as the security deposit and not $1,520.00 as claimed. Upon review of the evidence I find this tenancy ended on December 1, 2012, in accordance with section 44 (d) of the Act, when the Tenant vacated the unit. The Landlord was provided the Tenant's forwarding address on December 2, 2012. The Landlord did not file his application for dispute resolution until January 11, 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than December 17, 2012.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double his security deposit plus interest in the amount of **$1,520.00** (2 x $760.00 + $0.00 interest).

3.$500.00 accommodation fee, provided in the tenancy agreement addendum, and payable to the Tenant at the time he is required to vacate the unit during the pre-agreed upon renovations. Notwithstanding the Tenant's argument that the Landlord started renovations when he removed the tiles, I find that at the time the Tenant was staying outside the rental unit at the hotel, the renovations that were written into the tenancy agreement by the Tenant had not commenced. Rather, I find that during the Tenant's stay at the hotel from November 11th, 2012, the rental unit was undergoing emergency restoration due to damages incurred by the Tenant's negligent act of leaving an unattended pot cooking on the stove. Accordingly, I dismiss this claim, without leave to reapply.

4.$10.63 toilet wax. Section 33 (6) (d) of the Act stipulates that the requirement for reimbursement for emergency repairs does not apply if the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. This claim is directly related to the damages caused by the Tenant's action of leaving a pot unattended on the stove; therefore, I dismiss this claim, without leave to reapply.

The Tenant has partially been successful with their application; therefore I award partial recovery of the filing fee in the amount of **$25.00.**

Landlord's Claim

1.$1,520.00 December 2012 loss of rent - Section 45 of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the Landlord with thirty days written notice to end the tenancy effective on a date that is not prior to the end of the fixed term. In this case the Tenant provided notice on November 14, 2012, to end his tenancy effective December 1, 2012. Based on the evidence before me I find the Landlord lost December 2012 rent due to late notice and due to the condition of the rental unit that resulted from the Tenant's negligence. Accordingly, I find there to be sufficient evidence to meet the burden of proof for damage or loss, and I award the Landlord loss of rent for December 2012 in the amount of **$1,520.00**.

2.$760.00 Change over fee for breaking the lease - The Tenant ended this tenancy effective December 1, 2012, the date listed in the tenancy agreement as the end date of this tenancy. Therefore, he did not break the lease prior to the end of the fixed term and there is no merit to this claim. Accordingly, I dismiss this claim, without leave to reapply.

3.$5,000.00 Strata insurance deductible – Notwithstanding the Tenant's argument that the Landlord ought to have had insurance and representation, insurance deductibles are not covered by home owner policies and there is no stipulation in the Act that requires a landlord to be represented by legal counsel to meet mitigation requirements. I find the charges of the strata insurance deductible to be the direct result of the Tenant's negligence; therefore, I award the cost of the deductible in the amount of **$5,000.00**.

4.$1,333.58 for repairs and overtime labour charges that were not covered by the building insurance. I accept the Landlord's argument that if his home owner insurance policy was renewed, it would not have covered these costs as they are not structural or building costs. The evidence supports these costs were incurred as a result of the fire which was caused by the Tenant's negligence, therefore, I award the Landlord his claim for electronic repairs and overtime labour costs for the building manager in the amount of **$1,333.58**.

5.$200.00 for strata move in and move out fees – The Tenant acknowledged that he signed the Form "K" which was provided in evidence. This form "K" stipulates the following:

> ***Please enclose any required Move-in/Move-out fees along with this Form "K". Please see your Strata Corporation Bylaws for Move-in/Move-out Fee amounts, if applicable.***
>
> Move-in/Move-out Fee Enclosed: ____Yes _<__ No Amount $_____
>
> ***IMPORTANT NOTICE TO TENANTS:***
>
> 1. *Under the Strata Property Act, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).*

I do not accept the Tenant's argument that he did not receive a copy of the by-laws as he signed this form acknowledging that a copy of the bylaw(s) was attached. Furthermore, the check mark beside the word No does not mean move in and move out fees were not required, as argued by the Tenant. Rather, it means the payment was not enclosed with the form. Therefore, I find there to be sufficient evidence to support the Landlord's claim that the Tenant ought to have known he was required to pay move in and move out fees which were later charged to the Landlord. Accordingly, I award the Landlord move in and move out Strata fees in the amount of **$200.00.**

6.$3,096.00 purchase of supplies to repair and install the flooring – I accept the Tenant's argument that these repair costs would have been covered had the Landlord renewed his home owner's insurance. Accordingly, I find the Landlord failed to mitigate

this loss by renewing his insurance, and this claim is dismissed, without leave to reapply.

7.$224.00 for the cost of obtaining the full report from the fire department. I accept the Landlord's argument that this was a required cost to obtain the fire report with the CD of pictures in order to prove the merits of his claim. Therefore, in accordance with section 67 of the Act I award the Landlord the cost of obtaining this report in the amount of **$224.00**.

8.$766.49 for Canada Post fees, copying and digital CD creation, and the Landlord's time in preparing for this dispute- I find that the Landlord has chosen to incur most of these costs while others are simply the cost of being a landlord and are costs which cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Accordingly, I find that the Landlord may not claim these costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and are therefore dismissed, without leave to reapply.

The amounts charged for the Landlord's labour for repairing the unit are also not covered by the Act as any of his time spent in relation to the fire would have been covered under insurance, had he renewed it. Therefore, that claim is dismissed, without leave to reapply.

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

Monetary Order – I find that the above monetary claims meet the criteria under section 72(of the *Act* to be offset against each other as follows:

Landlord's Monetary Award:	
($1,520.00 + $5,000.00 +$1333.58 + $200.00 + $224.00 + $100.00)	$8,377.58
LESS: Tenant's Award: ($1,520.00 + $25.00)	-1,545.00
TOTAL OFFSET AMOUNT DUE TO THE LANDLORD	**$6,832.58**

Conclusion

The Landlord has been issued a Monetary Order in the amount of **$6,832.58**. This Order is legally binding and must be served upon the Tenant. In the event that the

Tenant does 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: May 23, 2013

Residential Tenancy Branch