Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Key Marketing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, MNSD, RP, FF, O, OPR, MND, MNR

Introduction

This hearing dealt with applications from the first three of the landlords outlined above and the tenant, under the *Residential Tenancy Act* (the *Act*). The tenant identified the first, fourth and fifth landlords as respondents in his application for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The first three landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended and were represented at both hearings of these applications and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

On June 13, 2013, I issued an Interim Decision (the Interim Decision) regarding the initially scheduled teleconference hearing of this matter on June 12, 2013 (the original hearing). In the Interim Decision, I outlined my reasons for adjourning the original

hearing, which I will not repeat in any detail in the current final decision regarding the applications before me. In the Interim Decision, I noted that so much evidence and material was submitted by both parties shortly before this hearing that I was not satisfied that the tenant had been given a proper opportunity to respond to the landlords' application. I also noted that this process of late service of evidence continued until the very morning of the hearing when the tenant attempted to serve additional evidence to the landlords. As I was not satisfied that either party would have had a fair opportunity to meet the case against them had I proceeded with the original hearing, I adjourned the hearing of both applications to a time to be set later, July 18, 2013.

Preliminary Matters

At the commencement of the original hearing and as outlined in the Interim Decision, the landlords' female representative (the landlord) confirmed that the landlords' application for dispute resolution had inadvertently identified the wrong municipality in the dispute address. Both parties agreed to revise the name of the municipality in the landlords' application to that which appears above.

Both parties also confirmed that this tenancy ended on May 31, 2013, when the tenant vacated the rental unit. As such, the landlords withdrew their application for an Order of Possession and the tenant withdrew his application to cancel the landlords' 10 Day Notice. Both of these portions of the applications for dispute resolution are withdrawn. As the tenancy has ended, the tenant's application for an order requiring the landlords to conduct repairs is now a moot point. For this reason, I dismiss this portion of the tenant's application without leave to reapply.

As reported in the Interim Decision, the landlords also amended the amount of the monetary award they were seeking in their application for dispute resolution from $4,650.00 to $3,350.00, to reflect that the tenant was able to vacate the rental unit by June 1, 2013.

During the reconvened hearing, I noted that a 10-page section of the tenant's 33-page evidence package received by the Residential Tenancy Branch (the RTB) by fax on June 4, 2013 was blank. The tenant testified that this evidence appeared to have been copies of photographs which were included in the tenant's digital evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award for his loss in the value of his tenancy? Which of the parties is

entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fees from one another?

Preliminary Issues –Service of Documents

In my Interim Decision, I reviewed the service of documents in considerable detail. I will not repeat this section of my Interim Decision which remains an accurate summary of the dates and methods of service of documents by the parties. By way of summary, I am satisfied that by the time of the reconvened hearing on July 18, 2013, both parties had served one another with all documents and evidence associated with both applications, including but not limited to the following:

- the landlords' 10 Day Notice;
- the tenant's application for dispute resolution;
- the landlords' application for dispute resolution; and
- all written, photographic and digital evidence submitted by the parties.

By July 18, 2013, both parties had been afforded an opportunity to question any of the written and digital evidence, as well as the sworn testimony of the parties.

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, emails, recordings, digital evidence, documents, invoices, and miscellaneous letters and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This one-year fixed term tenancy beginning on June 7, 2012 was scheduled to end on May 31, 2013. As noted above, the tenancy ended when the tenant vacated the rental unit on May 31, 2013, and returned the keys to the landlords the following day. Monthly rent for this rental unit in a new high rise strata building was set at $1,450.00. The landlords continue to hold the tenant's $725.00 security deposit paid on June 7, 2012.

Although the tenant testified that he believed that the landlords owned or managed a number of rental units in this high-rise strata building, he realized that the landlords did not own this entire strata complex nor were many of the units in this strata complex under their control as landlords. Some strata units were rented by other landlords; some strata units were no doubt owner occupied. One property management company, the corporate landlord named in both applications, managed this rental unit for the owners of this strata unit. The strata council has hired another property manager to manage its affairs and to interact with individual strata owners and those seeking action by the strata council.

The landlords' revised application for a monetary award of $3,350.00 included the following:

Item	**Amount**
Unpaid April 2013 Rent	$1,450.00
Unpaid May 2013 Rent	1,450.00
Strata Council Penalties/Fines	400.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award Requested	**$3,350.00**

The tenant's application for a monetary award of $10,875.00 was based on the following calculations:

Item	**Amount**
Loss in Value of Tenancy (50% of Value of Tenancy for 10 Months = $1,450.00 x 50% x 10 Months = $7,250.00)	$7,250.00
Loss in Value of Tenancy for September and October 2012 (100% for 2 Months= $1,450.00 x 2 Months = $2,900.00)	2,900.00
Security Deposit	725.00
Total Monetary Award Requested	**$10,875.00**

The tenant also applied to recover his $100.00 filing fee for his application for dispute resolution from the landlords.

In the tenant's March 31, 2013 notice to the landlord that he was ending his tenancy in one month, the tenant maintained that his right to quiet enjoyment of the rental unit had been disrupted. In that letter, he claimed that the landlord had failed "to take the immediate necessary actions to rectify the situation as the landlord's agent." He claimed that his ability to live in the rental unit had been violated by the landlord's failure "to address the causes of second hand smoke drifting into the ...unit, which continues to disrupt my right to quiet enjoyment." He also claimed that the landlords had breached terms of his Residential Tenancy Agreement (the Agreement) with respect to the alleged:

- failure to conduct repairs within a reasonable period of time;
- failure to exercise landlord's insurance to cover unforeseen damages to the rental unit; and
- failure to ensure that disruption of quiet enjoyment and unreasonable disturbance to the tenant ceases.

The tenant did not identify a specific date when he intended to end his tenancy, changed his mind on this date several times, and eventually vacated the premises on May 31, 2013, the scheduled end date to his fixed term tenancy.

The tenant did not dispute the landlords' claim that he failed to pay monthly rent for April and May 2013. He did not dispute the landlords' claim that he changed the locks on his door after sending the landlords "threatening emails refusing access to his rental unit."

In their written, photographic and the tenant's digital evidence and their sworn oral testimony, the parties presented very different views of the circumstances that gave rise to the tenant's application for dispute resolution.

The tenant contested the landlords' claim for strata council penalties and fines. The strata council fines and penalties were imposed by the strata council for the tenant's alleged failure to abide by the strata council rules regarding moves into and out of the strata building. In some of the landlords' written evidence the strata council fine was listed as a $300.00 penalty imposed by the strata council for an unauthorized move.

The landlords entered into written evidence a chronology of the events of this tenancy supported by extensive email exchanges with the tenant. The landlord entered into written evidence claims that the strata council manager had received complaints about the tenant from the tenants in the units above and below him. The landlord noted that at the November 22, 2012 meeting she convened with the tenant and the tenants in the units above and below him, the tenant "was very aggressive and spoke over the top of the attendees." In her written evidence and in sworn testimony that she provided, the landlord maintained that the tenant who lived in the strata unit above the tenant (the Unit 2305 Tenant) informed her that she felt threatened and intimidated by the tenant who "kept calling her and leaving notes regarding noise." The landlord also noted that another tenant who had attended the November 22, 2012 meeting, with concerns similar to those of the tenant about the marijuana smoke emanating from the unit below the tenant sent the landlord an email after the meeting requesting that the tenant "leave her alone as he was disturbing her."

The landlord testified that she believed that the tenant's actions and behaviours toward her changed significantly for the worse when she refused to sign a tenant reference letter that he had prepared for her signature. She eventually had to transfer responsibility for the management of this rental unit to one of her male colleagues as she found the tenant's behaviours threatening and intimidating.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Analysis – Landlords' Application for a Monetary Order

Based on the undisputed evidence before me, I find that the landlords are entitled to a monetary award for unpaid rent of $1,450.00 for each of April and May 2013, a total of $2,900.00.

I have also considered the landlords' application to recover strata fines and penalties applied by the strata council for the tenant's failure to follow the strata council's rules regarding the tenant's moving to and from this rental unit. There was disputed evidence as to whether the tenant had the building manager's permission to use the elevators in this building outside of the time frame that he had been assigned to perform this task. The tenant also questioned whether the landlords had actually incurred these costs and whether the landlords had paid the strata fine.

The male landlord testified that $150.00 of this fine was for the tenant's move to the rental unit and the remaining $250.00 was for his move-out. The female landlord testified that the strata council or their property manager does not typically issue a receipt for fines paid, but one could be obtained if there remained doubt as to whether the fine had actually been paid. The female landlord said that if the landlords did not pay the fine within two weeks, they would have been subject to further fines. She testified that the landlords paid the fine on July 4, 2013.

Based on the evidence before me, I accept the landlords' undisputed testimony that the landlords incurred a loss of $150.00 for the charge applied when the tenant moved into the rental unit. I issue a monetary award in the landlords' favour in the amount of $150.00 for that item.

I find that the tenant has raised significant concerns as to the accuracy of the $250.00 fine applied by the strata council regarding the move-out charge. Rather than paying this portion of the strata fine, the landlord could have sought the tenant's input and challenged the accuracy of the information that led to the strata council's imposition of

that fine. By failing to do so, the landlords did not fulfill their duty under section 7(2) of the *Act* to mitigate the tenant's losses. I am also not satisfied that the landlords have submitted adequate evidence to demonstrate that there was a basis to the strata council's fine for the tenant's move from the strata complex or that the landlords have entered written evidence to demonstrate that they have paid this portion of the strata fine. I also note that the landlords' claim varied from $300.00 in some documents to $400.00 in other documents and testimony, thus reinforcing the importance of obtaining an actual receipt for the amount paid for this fine. For these reasons, I dismiss the landlords' application for a monetary award to recover the fine imposed by the strata council for the tenant's move from the rental building without leave to reapply.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlords' favour. No interest is payable. I also allow the landlords to recover their $50.00 filing fee from the tenant.

Analysis – Tenant's Application for a Monetary Order

Section 28 of the *Act* establishes a tenant's right to quiet enjoyment of the rental premises under the following terms:

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;...*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Section 32 of the *Act* establishing a landlord's obligation to repair and maintain rental premises. Section 65(1) (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In his written evidence and his sworn testimony, the tenant alleged that the landlords have not taken effective or timely action to address the concerns that he raised about the actions of other tenants in this strata property. He claimed that it took far too long for the landlord to address his concerns about his loss of quiet enjoyment of his tenancy and then did little when the strata manager failed to take effective action.

There is little doubt that the tenant has found some of the behaviours and actions of his former neighbours who lived above and below him objectionable. However, there is also evidence that those neighbours and the landlord found the tenant's behaviours and actions intimidating and even threatening. I find that the email documentation supplied by the landlord and even the tenant does not substantiate the tenant's claim that the landlord was tardy in raising his concerns with the strata council's property manager. For example, both parties entered into written evidence a copy of an October 18, 2012 email from the tenant to her, which included the following:

> *...Thank you for your update.*
> *...regretfully I am continuing to have problems here in terms of other tenants interfering with my right to quiet enjoyment of the property I am renting, and the property management company does not take sufficient and satisfactory actions to address my complaints.*
> *Recall I had informed you on June 15, 2012 that the tenant in suite 2105 was sending up marijuana and cigarette smoke into my suite. But in addition to that, there has been other harassment from the same tenant, after I clearly informed him to cease sending up smoke into my suite...*
> *However I have also been experiencing an excessive noise issue concerning the suite above me, suite 2305, and I have talked to the tenant in this suite, whose name is K. However she continues to make the excessive noise, especially after midnight, despite all my politeness in trying to get it to stop. This has also been totally unexpected, because a concrete structure is supposed to isolate the different floors. But for some reason it appears the builders did not put sufficient sound insulation in my ceiling which should block out excessive noise from people on other floors...*
> *The truth of the matter is that for two months I temporarily re-located to Edmonton, from August 16 – October 7, 2012, due to these problems. But the problems are still here and haven't tone away, and both tenants do not stop, and they are both aware of what they are doing...*

Within 12 hours of receiving the above email from the tenant, the landlord sent an email to the strata council's property manager, requesting action and attaching the tenant's October 18, 2012 email. The landlord's email of October 19, 2012 read in part as follows.

> *...My tenant...is having problems and needs your help in requesting from 2105 and 2305 to be more considerate... Unit 2105 is in fact breaking a bylaw and is smoking this marijuana and cigarette smoke is coming into his suite. The occupant in 2305 is very noisy and is effecting his quiet enjoyment. I was wandering if you can handle these issues at Strata level as I do not want my*

> *tenant to be unhappy. Please can you issue letters of warning to address the situation...*

Although the tenant noted that such speedy responses were not always the case, the written evidence provides numerous examples of similarly quick responses by the landlord to enquiries by the tenant.

The landlord also entered into written evidence a copy an email to the strata council's property manager from the tenant who then lived in the rental unit below the tenant (the Unit 2105 Tenant). This email read in part as follows:

> *...A (the tenant) has started to affect my quality of living in a negative and un-forgivable manner. Last night, A (the tenant) called the police on me for the second time in the past week. I was disturb from my sleep to find police knocking on my door...I have spoken with Constable L of the ...RCMP and Constable has sided with me on the manner... When I woke in the morning coffee was again poured into my window from the suite above. There was liquid on my deck and my railings smelled like urine. I am not going to wash any of the coffee from my window nor am I going to clean my railing I hope a member of Strata or Mr. L (the strata council's property manager) may come to verify my poor living conditions. Constable L. has instructed me how to take further legal against A (the tenant) through a civil complaint. I intend on doing so. My quality of life and sleep schedule are being intruded upon by A (the tenant) and his crazy behaviour. I want strata to act against A (the tenant) in this matter. I want strata to act in accordance to the bylaws and in co-operation with the ..RCMP...*

The landlord entered into written evidence copies of a November 8, 2012 email from the Unit 2305 Tenant. The Unit 2305 tenant referred to two emails she had received from the tenant and provided the following information regarding the tenant's claim that her walking gait resulting from a recent car accident was causing disruptive noise in his rental unit immediately below her.

> *...I was at home with just me and my boyfriend watching movies on Saturday night, and any walking that occurred would have constituted normal, regular walking. I walk on eggshells as it is, and constantly tell my boyfriend to "shhhhh" because I've become so neurotic and crazy worrying that A (the tenant) is being disturbed...Now I have to live with this nightmare living below me on top of my poor health situation. I am not happy living here at all, and am likely going to have to look for a new place... I am once again having to deal with of A's (the tenant's) many unjustified complaints. I do not have time for this and am very sick it...*

The landlord also noted that the Unit 2305 Tenant vacated her strata rental unit at the end of January 2013. After that tenant vacated the strata property, the landlord gave undisputed evidence that the tenant raised no further complaints about noise coming from the strata unit above him. Some of the tenant's own written evidence confirmed that he believed that the tenant above him must have moved out at the end of January, because he was no longer hearing the disruptive noises coming from her walking on the floor above him. Despite his written evidence that seemed to support the landlord's account of the noise issue after February 1, 2013, the tenant gave sworn testimony at the hearing that he still continued to experience problems with noise coming from the strata unit above him until the end of his tenancy. He claimed that by this point in his tenancy he had realized that his landlords were unwilling to do anything about his noise (and other) complaints, and he stopped contacting them about his noise concerns.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. In a multi-unit rental building where a tenant's landlord owns the entire rental property, the landlord can take direct action with respect to complaints lodged by tenants. Even in such circumstances, when concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Under such circumstances, landlords often try to mediate such disputes if they can, but sometimes more formal action is required. If more formal action is required, the landlord who has a direct landlord/tenant relationship with all of the tenants involved in the dispute can take such action and attempt to end a tenancy or tenancies.

In a situation such as a high-rise strata building, the landlord's ability to take action to protect the rights of his or her tenant is much more complex and must out of necessity include the management of the strata complex. While this does not reduce the obligations of a landlord under the *Act*, the landlord in this type of a situation has far less ability to intercede directly in the same way that would be possible if the landlord owned and managed all of the living units in the multi-unit building. I find that the tenant could not help but know when he decided to rent a single strata unit in a multi-level, multi-unit strata building that his landlord would not have the same level of control over the activities of other strata owners in this building or their tenants.

I find little basis for the tenant's claim best expressed in his March 31, 2013 letter ending his tenancy that the landlord was obliged to take "the immediate necessary actions to rectify the situation as the landlord's agent." The tenant has seriously misread or misinterpreted the landlords' obligations to him as established under sections 28 and 32 of the *Act*.

At some point in his tenancy, the tenant became frustrated with the lack of progress achieved by having his emails forwarded to the strata council's property manager without obtaining the results he was hoping to achieve. At that point and following feedback provided by the strata council's property manager, the tenant appears to have redirected his attention to convincing the strata council's property manager to take an escalating series of actions against the tenants in Units 2105 and 2305. In fact, the tenant's actions through both his landlord and the strata council's property manager were successful in having at least two fines for unauthorized smoking applied to the Unit 2105 Tenant. However, the tenant was apparently seeking an immediate cessation of all behaviours that he found offensive and was not happy that the Unit 2105 Tenant's landlord was unwilling to take action to end that tenancy.

The tenant's unrelenting campaign against the tenants in both Units 2105 and 2305 did eventually led to both tenants vacating the strata building. As was outlined above, both tenants in Units 2105 and 2305 maintained that it was the tenant who was threatening, intimidating and harassing them to the extent that they would likely have to vacate their rental units. In the tenant's January 31, 2013 email, the tenant confirmed that the tenant in Unit 2105 appeared to have moved out at the end of December 2012, and the tenant in Unit 2305 vacated by January 31, 2013. In that email, the tenant also admitted that "there has been a significant reduction in noise coming from 2305." Thus, it would seem that the tenant was successful in obtaining an end to the tenancies of those units above and below him, just not as quickly or directly as he would have liked.

The tenant's main reasons for seeking a reduction in rent for the loss in value of his tenancy involved his claim that his quiet enjoyment during this tenancy was disturbed by:

- his exposure to unacceptable levels of noise, primarily from the tenant in Unit 2305 above him;
- his exposure to second hand marijuana and cigarette smoke, primarily but not exclusively as a result of the actions of the tenant in Unit 2105 below him;
- ongoing vandalism and harassment directed at him by other tenants in the strata complex (primarily from the tenants above and below him); and
- the landlords' failure to conduct repairs that he requested during his tenancy.

The tenant's application for a monetary award for a reduction of one-half of his rent extended to ten of the twelve months of his tenancy. For the other two months, he requested a full rebate of his rent because he maintained that he could not remain in the rental unit because of the problems he was encountering with other tenants in this strata building.

As was noted above, the tenant informed the landlord on October 18, 2012, that he was living in Edmonton and not even in this province from August 16, 2012 until October 7, 2012. In his application for a monetary award, he sought a full rebate of his rent for the months of September and October 2012. I find this portion of the tenant's application astonishing and wholly unrealistic. Without warning, the tenant appears to have relocated, not to another nearby community, but to another province where he resided and apparently conducted his affairs for a seven-week period. He has asked for a monetary award for a full rent rebate for September 2012 **and** October 2012, a month when by his own admission he resided in the rental unit from October 8, 2012 until the end of that month. The tenant has requested a full rebate of all rent for a period of time when he was not even in this province. To allow such an application would open the door to applications from tenants who decide to retroactively claim for a rebate in rent for periods when they were out of town on vacation. I find no merit whatsoever to the tenant's claim for a total rebate in rent for the period when he left the province and continued to leave all of his belongings in the rental unit.

In order to make a finding that the tenant is entitled to a monetary award for loss of quiet enjoyment due to noise and disturbance from others, I would need to have evidence that such noise and disturbance exceeded what could normally be anticipated in a multi-unit, multi-level building. In this case, the tenant testified that he lives alone and no one else heard the noises that prompted him to make complaints to the landlord about the person living above him until the end of January 2013. He had placed microphones in his rental unit to attempt to capture the noises and sounds that he found so offensive and submitted some of these as part of his evidence package. However, he gave sworn testimony and written evidence that these sounds are barely audible and could not be effectively captured in his attempts to obtain audio evidence of the extent of the disruption he experienced. In essence, the only evidence that the tenant has provided to substantiate his claim that he is entitled to a monetary award for loss of quiet enjoyment for the sounds and noises caused by the tenant above him until February 1, 2013, was his own sworn testimony and written evidence that these sounds and noises caused him great distress. I have also given regard to the email from the Unit 2305 Tenant who described herself as walking on eggshells to avoid causing noise that would bother the tenant.

When no one else has heard these sounds or noises and the tenant himself admitted as he did at the reconvened hearing that even the sound equipment he used could not register these sounds and noises, I am confronted with one of two possibilities. Either the tenant is correct in claiming that for some unknown reason no one else could hear these noises and even sound equipment could not register these noises, or the tenant is unusually sensitive to such noises and sounds. On a balance of probabilities, I find it

difficult to accept that sound equipment could not pick up noises and sounds that the tenant claims were so disruptive as to prompt him to claim for a monetary award for his loss of quiet enjoyment. I think it far more probable that the tenant became unusually sensitive to sounds and noises that he attributed to the actions of the person living above him or what he considered to be shoddy workmanship in the construction of the building. I find that the evidence suggests that the tenant has become unusually fixated on noises that only he seems able to hear. For the above reasons, I dismiss the tenant's application for a monetary award for loss of quiet enjoyment due to noises and sounds in his rental unit without leave to reapply. I do so as I am not satisfied that he has demonstrated that such noises and sounds were such that he is entitled to any monetary award. I also find that the tenant has not demonstrated that the landlord failed to take adequate and suitable action under the circumstances with respect to his concerns. In dismissing this portion of the tenant's claim, I also note that the tenant was not affected by noise issues for significant portions of his tenancy, including a two month period in September and October 2012, when by his own admission he was in Alberta, and after February 1, 2013, by which time the Unit 2305 Tenant had vacated her rental unit.

At one point in the reconvened hearing, the tenant described his exposure to second-hand marijuana and to a lesser extent cigarette smoke as a purposeful act of terrorism directed at him by the Unit 2105 Tenant. He maintained that smoke appears to have drifted up from the balcony below him. He provided evidence that this effectively prevented him from using his balcony, a key attribute of the rental unit that prompted him to rent the premises. He gave evidence that on one occasion, the Unit 2105 Tenant advised him that he had a licence to use medicinal marijuana.

I accept that the tenant may have an unusual sensitivity to smoke and earnestly believes that the rental units in this strata building were not constructed in a way to prevent smoke from entering the premises of those who reside in that building. However, to equate this to "terrorism" and to claim that he was "terrorized" by the actions of others in this strata complex is quite another matter. Given the emails from the Unit 2105 and 2305 Tenants, I find it just as likely that the tenant has caused equal amounts of grief, disruption and harassment to them.

Living in a multi-level, multi-unit strata building in this province subjects a tenant to all of the potential nuisances and aggravations of living in close proximity to others that are present in modern society. These inconveniences are a tradeoff for the quality of life, amenities and services that are more available in complexes of this type as opposed to more isolated living arrangements at some distance from neighbours.

I find that the landlord has been unusually receptive to the tenant's concerns and has pursued these concerns to the extent required, given the nature of his complaint and her obligations as his landlord. From the copies of her emails entered into written evidence, I accept that she worked closely with the strata council's building manager, even to the point of suggesting and obtaining his agreement to impose strata fines against the Unit 2105 Tenant. Although she fully admitted that she had no authority to require the tenants in other strata units not owned by the landlords to participate in a meeting, she was successful in arranging a meeting in November 2012 to try to resolve the escalating tensions between the tenant and three of the other tenants in this strata complex, including the Unit 2105 and 2305 Tenants. While the landlord's efforts did not lead to the immediate outcome that the tenant was seeking, I find that the landlord's actions in the context of a strata building owned by many different strata owners who had their own tenancies to administer were adequate under the circumstances. I also note that the Unit 2105 Tenant, identified by the tenant as the principal source of the second-hand smoke and vandalism, vacated his rental unit by December 31, 2012. For these reasons, I dismiss the tenant's application for a monetary award for loss of quiet enjoyment due to the presence of marijuana and cigarette smoke without leave to reapply.

For similar reasons as those outlined above, I find little evidence that the tenant is entitled to receive any monetary award for vandalism and harassment that he claims to have been subjected to during this tenancy. Again, I find that the landlord has been exceptionally tolerant and patient with his ongoing complaints and find little merit to issuing any form of monetary award for the tenant's claim that he felt vandalized and harassed. I dismiss these portions of the tenant's claim without leave to reapply.

I have also considered the tenant's claim that the landlord failed to conduct necessary repairs that the tenant believed were necessary. The tenant's evidence in this respect was not very detailed and was directed more at his claim that had repairs been done he would not have been subjected to some of the problems he encountered. He chose to raise many of these items in his May 31, 2013 email to the development company that constructed this building. He also seems to have taken issue with the landlord's failure to follow his advice on how to obtain assistance for him by lodging an insurance claim for repairs. I am not satisfied that the tenant adequately raised many of these issues with the landlord to the extent that would enable the tenant to obtain a monetary award for loss in the value of his tenancy. For example, a claim that the rental unit had some shoddy painting in various areas and that some electrical outlets did not work is not sufficient to entitle a tenant to a retroactive reduction in rent. He also provided some limited written and photographic evidence regarding repairs that he believed should have been conducted to his rental unit. I find that these repairs seem relatively minor

and would not qualify him in any way for a monetary award for a retroactive reduction in rent. I dismiss the tenant's application for a monetary award for loss in value of his tenancy due to a lack of repairs without leave to reapply, with the exception of the issue outlined below.

The tenant gave sworn testimony that his windows remained unclean from the beginning of his tenancy in July 2012 until he vacated the rental unit on May 31, 2013. At the hearing and in his written evidence, the tenant attached great importance to the lack of window cleaning as he maintained he specifically chose this rental unit because of the view it afforded. There is written evidence that the landlord did request window cleaning by the strata, but the landlord's requests were initially rejected by the strata council in early October 2012. Over time, the ongoing requests by the landlord for exterior window washing that could only be done by professional window washers hired by the strata council were delayed many times. The strata council's property manager kept advising the landlord and the tenant that window cleaning would be done, but in accordance with the strata's maintenance schedule. Although the landlord claimed in a March 30, 2013 email to the tenant that "the strata are cleaning the common areas windows which has been confirmed by the manager," the landlord did not dispute the tenant's claim that this cleaning never occurred during the entire course of his tenancy.

Based on the written, oral and photographic evidence, I find on a balance of probabilities that it is more likely than not that adequate measures were not taken to provide the tenant with a level of cleaning to his outside windows that he would have expected when he entered into this Agreement. Although the tenant attributed the mess on the outside of his windows to purposeful acts taken by other tenants in this building to cause him grief, there is written evidence from the Unit 2105 Tenant that he believed the tenant had purposefully vandalized his outside balcony and railings. Based primarily on the photographic evidence provided by the tenant, I accept that the tenant has demonstrated that there was a loss in the value of his tenancy arising out of the landlord's failure to ensure that he had a reasonably clean view from his windows during this tenancy. Although there is evidence that the tenant did take some unauthorized steps to remove some of the objects from his window, this was no substitute for a proper cleaning that should have been done after the tenant reported the damage to the outside of his windows.

While I accept that the landlords' failure to take adequate steps to obtain a cleaning of the tenant's windows did devalue the worth of his tenancy, I do not share the tenant's estimates as to the significance of this element of his Agreement. In a high-rise strata building, a tenant cannot expect that a strata council will provide cleaning in such a way as to co-ordinate with the commencement of any residential tenancy agreement that the

tenant may have entered into with the owner of the strata unit. An extra cleaning of the tenant's windows outside the context of the annual maintenance contract would be an exceptional measure for either the strata council or the landlord to undertake. Owing to the unusual nature of this request, the number of parties and potentially their insurers who would have needed to become involved, and the timing of this request, I find that the tenant could not reasonably have expected action to have been taken to clean his windows before November 1, 2012. As such, I allow the tenant a monetary award of $50.00 for each of the seven months from November 2012 until the end of his tenancy, for the landlord's failure to ensure that materials placed on the windows by unknown parties were removed and the windows cleaned to an acceptable level of maintenance and in accordance with section 32 of the *Act*. I make this retroactive deduction to recognize what I find is a comparatively minor reduction in the value of this tenancy. I find that the tenant has not provided sufficient evidence to warrant the type of reduction that he has been seeking over the entire course of his tenancy.

Reduced to its most basic level, I find that for whatever reason the tenant did not, could not or would not pay his monthly rent for April and May 2013, the last two months of his tenancy. Rather than paying any portion of the $2,900.00 in outstanding rent owing when the landlords served him with the 10 Day Notice, the tenant applied to cancel the 10 Day Notice and requested what I find to have been a grossly overinflated application for a monetary award of $10,875.00 for the alleged loss in the value of his tenancy. He does not appear to have raised the prospect of seeking this massive retroactive reduction in his monthly rent with the landlords until he received their 10 Day Notice after discontinuing the payment of his rent. With the exception of the seven-month reduction for the landlords' inadequate action to ensure that the tenant's windows were cleaned, I find insufficient merit to the tenant's application for a monetary award and dismiss the tenant's application without leave to reapply.

As the tenant has been partially successful in his application, I allow him to recover $50.00 of his application fee from the landlords.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and their filing fee from the tenant and to retain the tenant's security deposit, less the tenant's monetary award for a retroactive reduction in rent and the tenant's partial recovery of his filing fee:

Item	Amount
Unpaid April 2013 Rent	$1,450.00
Unpaid May 2013 Rent	1,450.00
Allowed Portion of Strata Council Penalties/Fines	150.00
Landlords' Filing Fee	50.00
Less Reduction in Value of Tenancy Agreement for Windows (7 months @ $50.00 = $350.00)	-350.00
Less Security Deposit	-725.00
Less Allowed Portion of Tenant's Filing Fee	-50.00
Total Monetary Order	**$1,975.00**

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenant's application to cancel the 10 Day Notice and the landlords' application for an Order of Possession on the basis of that Notice are both withdrawn. The tenant's application for repairs to the rental unit is withdrawn.

This final and binding decision and Order 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: July 23, 2013

Residential Tenancy Branch