Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of representatives of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenants by posting to the front door of the rental unit on June 10, 2013. It was also sent to DL by mailing, by registered mail to where she resides. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the tenants reside on July 3, 2013. With respect to each of the applicant's claims I find as follows:

Procedure:

The agent for the tenants stated that he was a solicitor at one time and that he felt that his cross-examination would be prejudiced if he was not permitted to cross-examine the landlord's witnesses immediately after they gave evidence. I ruled that the Rules of Procedure would best be accomplished by having both parties tell their story and then give each party an opportunity to cross examine the witness. Section 74(1) of the Residential Tenancy Act provides as follows:

How the hearing may be conducted

74 (1) Subject to the rules of procedure established under section 9 (3) *[director's powers and duties]*, the director may conduct a hearing under this Division in the manner he or she considers appropriate.

(2) The director may hold a hearing

(a) in person,

(b) in writing,

(c) by telephone, video conference or other electronic means, or

(d) by any combination of the methods under paragraphs (a) to (c).

(3) The director may administer oaths for the purposes of this Act.

(4) A party to a dispute resolution proceeding may be represented by an agent or a lawyer.

Section 1 of the Dispute Resolution Rules of Procedure provide as follows:

1.1 Purpose of the dispute resolution process

The purpose of dispute resolution process is to enable the Director of the Residential Tenancy Branch to:

a.) assist a landlord and a tenant to resolve a dispute without the need for a formal dispute resolution proceeding; or,

b.) in a formal dispute resolution proceeding, have an impartial, independent arbitrator hear the landlord and the tenant explain their separate versions of a dispute, receive the evidence presented by each party and make an impartial and binding decision to resolve the dispute.

1.2 Objective of the Rules of Procedure

The objective of the Rules of Procedure is to ensure a consistent, efficient and just process for resolving disputes.

Both parties were given a full opportunity to present their evidence and to cross examine witnesses on matter relevant to the claims raised in the Application for Dispute Resolution.

It became apparent that there were issues relating to sufficiency of the evidence presented by both parties. Witness #1 for the landlord had limited personal knowledge of the relevant matters. He testified the resident caretakers of the building were no longer employed by the strata corporation and were not available to give evidence. Further, the assistant property manager who was involved in portion of this matter was no longer employed by the landlord and was not available to give evidence. The evidence of these witnesses was limited to documents that were prepared in the ordinary course of business. Witness #2 for the landlord had personal knowledge of some of the events including visiting the residence shortly after the landlord was told the front door was broken. The agent for the Tenant objected to the landlord's sufficiency of evidence. Section 75 of the Residential Tenancy Act provides as follows:

> **Rules of evidence do not apply**
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> **75** The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be
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> (a) necessary and appropriate, and
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> (b) relevant to the dispute resolution proceeding.

The sufficiency of the tenant's evidence is even more difficult. Neither tenants appeared at the hearing to give oral testimony. DL does not live in the rental unit and is the mother of JL. The agent for the tenant introduced evidence from DL based on a statement in the material provided. She did not sign that statement. The person most knowledgeable about the issues is the tenant JL. He did not provide a written statement, an affidavit or testify at the hearing. JL is he son of the agent for the tenants. The agent for the tenants relied on hearsay evidence made to him by his son and a friend of this son. When asked about why his son did not attend he stated that his son was in the interior of British Columbia at the present time and not available. One of the advantages of conference call hearings is that parties and witnesses from around the world can participate.

Both parties have chosen to present limited evidence. It is not unusual for an arbitrator to be asked to make a decision in such a situation. Care must had in weighing the evidence but the Residential Tenancy Act provides that an arbitrator may admit evidence even though it would not be admissible under the laws of evidence. An arbitrator must weight the evidence in light of the totality of the evidence and its consistency with other evidence. The applicant has the burden of proof based on a balance of probabilities.

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the landlord is entitled to A Monetary Order and if so how much?
b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On January 29, 2013 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy was to start on February 1, 2013 and end on January 31, 2014. The rent was $2680 per month including 2 parking stalls payable on the first day of each month. The tenant paid a security deposit of $1300 on January 31, 2013.

On or about May 10, 2013 the landlord was notified that the front door of the rental unit was significantly damaged. The landlord produced the copy of an Incident Accident Report dated May 13, 2013 that was prepared by the resident strata manager of the building employed by that strata corporation. That person is no longer employed by the strata corporation and she did not testify at the hearing. The Incident Report has checked of the box that identifies there has been property damage, theft break and enter, burglary or fire.

It states that she was told two stories as to the cause of the damage. Story #1 – Something left in the oven; they kicked the door to prevent fire; Story #2 Someone broke into their unit last night. The report states that the tenant sent his friend to ask for a door provider to replace the door at their own expense. The name of the friend is identified with a telephone number. "We didn't buy their stories, started asking questions. We asked S to tell JL to call us."

The report further states that JL called and said "someone else" broke in, but he didn't want to call the police cause they can't do anything anyway. The resident managers told the JL that the police would have to called. The incident report states that JL wanted to knowhow to exchange the door and to let him know contact inform for door provider. It states that they saw JL moving his wardrobe out, his cares, motorcycle removed. It states Witness #2 was notified and she came on the site. The police were called.

Witness #2 is the representative of the landlord that is mentioned in the report. She provided evidence confirming the statements made by the resident manager and the damage to the rental unit. She attended at the scene when the police were call and she took photographs of the damage to the door and the condition of the rental unit. There photographs show significant damage to the door. Witness #1 testified that the lock was still operational and that it was necessary to sue the key in order to gains access to the rental unit.

The landlord produced a memo from an assistant property manager employed by the landlord dated May 13, 2013 outlining the events. That person is no longer employed by the landlord and the assistant property manager did not testify at the hearing.

In June the tenant's rent payment was returned due to "not sufficient funds." The landlord stated they were unable to contact JL. A 10 day Notice to End Tenancy was issued on June 10, 2013 and posted on the door. It was also mailed to the address of DL.

On June 21, 2013, following a 24 hour notice to enter the suite, the rental manager performed a suite inspection. Photographs of damage to the suite were taken at that time.

On June 25, 2013 the landlord received a report from the resident strata manager that JL friend and family had been in the building and that his friend denied that JL had moved out of the unit.

The landlord has had a difficult time finding a replacement door. The door is an unusual size and is custom made. The door was not replaced until after the third week in July. The landlord failed to provide evidence of quotations, invoices etc. supporting the claim for damages. The work has not been completed. He stated he could fax it to the Branch.

The tenants have not provided the landlord with written notice ending the tenancy. The tenants have not returned the keys or the FOBs.

The agent for the tenant provided the following:

- He referred to a statement made by DL that is not signed and is undated but states as follows:
    - She received a call from the landlord in the week of May 6/10th telling her about an incident that happened at JL apartment. She was advised the door was smashed and told that a friend of JL broke it because the oven or burner was left on. The representative of the landlord testified that JL has not informed the landlord of his intention to vacate the rental unit. She advised the landlord's representative that JL would pay for the door.
    - On May 11 she was informed by SM who is a friend of her son that JL suite had been broken into and he had lost everything. He had just come to Home Depot to get a door and was told it would take 6 weeks to order

in. She called the landlord the next day thinking the landlord might have more of those doors onsite.

- JL couldn't stay there with no door and had reported to someone in the building. When he moved out on May 30, 13 it was her understand the door had still not been replaced.
- She was not asked to do an inspection.

- An e-mail from KS (the assistance property manager who is no longer employed by the landlord) to the agent for the tenant dated June 10, 2013 that stated the following:
  - Witness #2 had advised her that the agent had been in touch with her with regards to the rental unit.
  - A summary of the events that took place including the two stories told as to the cause of the damage to the door.
  - The resident managers saw JL and his friend moving furniture and clothing into a car later that evening.
  - She has asked the strata corporation to replace the door but the door needs to be ordered specially from the manufacturer
  - Demanding that JL pay the rent for June in the sum of $2705 although he may not be in the unit

- The agent for the landlord further testified that he does not know who the friend is referred to by the landlord and that his son does not know anyone by that name. He also stated that his son agreed to fix the door on a without prejudice basis not agreeing that he was responsible. There is no evidence from his son to support this allegation.

The agent for the tenants made the following submissions:

- The landlord has failed t mitigate their loss

- The landlord failed to provide the respondents with a copy of the tenancy agreement
- The landlord failed to provide the Tenant with a copy of Condition Inspection Report for the pre-tenancy inspection and post tenancy inspection
- The landlord failed to fulfill their statutory obligations by providing a replacement door in a timely manner.
- The landlord constructively evicted the tenant
- The landlord failed to return the security deposit
- The landlord failed to provide full particulars of their claim.
- That he does not know the name of the person referred to by the witnesses for the landlord as being the friend of the tenant.

Finding of Facts:

After carefully considering the evidence that was presented at the hearing I made the following findings of fact:

- On January 29, 2013 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy was to start on February 1, 2013 and end on January 31, 2014. The rent was $2680 per month including 2 parking stalls payable on the first day of each month. The tenant paid a security deposit of $1300 on January 31, 2013
- On or about May 9 and 10 the front door of the tenant's unit was significantly damaged. Given the limited evidence, It is not possible to determine whether the damage was caused by a friend of the tenant breaking into the rental unit at the instructions of the tenant to turn off a stove or whether it was caused by an unrelated person breaking into the rental unit.
- The tenant JL moved out much of his belongings later that evening. I accept the evidence of the resident manager that they witnessed him leaving with furniture and clothing with a friend

- I accept the evidence of the strata resident manager that a friend of the tenant JL contacted her. While the resident manager incorrectly identified him as S, it is the same person identified in the evidence of the tenant DL as SM.
- The tenants failed to advise the landlord in writing that they were terminating the tenancy agreement.
- The tenants have not returned the keys or the FOB.
- The tenants have failed to pay the rent for June and July.
- The landlord was finally able to repair the damage to the door and provide a replacement door on the third week in July.

Analysis

Section 44 of the Residential Tenancy Act provides as follows:

> **How a tenancy ends**
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> **44** (1) A tenancy ends only if one or more of the following applies:
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> (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
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> (i) section 45 *[tenant's notice]*;
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> (ii) section 46 *[landlord's notice: non-payment of rent]*;
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> (iii) section 47 *[landlord's notice: cause]*;
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> (iv) section 48 *[landlord's notice: end of employment]*;
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> (v) section 49 *[landlord's notice: landlord's use of property]*;
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> (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
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> (vii) section 50 *[tenant may end tenancy early]*;
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> (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
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> (c) the landlord and tenant agree in writing to end the tenancy;
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> (d) the tenant vacates or abandons the rental unit;
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> (e) the tenancy agreement is frustrated;
>
> (f) the director orders that the tenancy is ended.
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> (2) [Repealed 2003-81-37.]
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> (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the

landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 45 of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 52 of the Residential Tenancy Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Policy Guideline #30 dealing with fixed term tenancies includes the following paragraph

A tenant may not use the one month notice provisions of the Legislation to end the tenancy prior to the end of the fixed term. Any one month notice will take effect not sooner than the end of the fixed term.

Policy Guideline #6 includes the following:

Ending Tenancy for Breach of a Material Term

A breach of the covenant of quiet enjoyment has been found by the courts to be a breach of a material term of the tenancy agreement. A tenant may elect to treat the tenancy agreement as ended, however the tenant must first so notify the landlord in writing. The standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises. An award for damages may be more appropriate, depending on the circumstances.

Analysis:

The agent for the tenant submits that the landlord has constructively evicted the tenant by failing to repair the door in a timely manner and as a result the tenants are not responsible to pay for the landlords claim for loss of rent.. I do not accept this submission for the following reason:

- Section 44 provides that "A tenancy ends **only if** (my emphasis) one or more of the following applies…." The subsequent sections provide for one or the other party giving notice in writing, a mutual agreement to end the tenancy or abandonment by the tenant. I determined these provisions provide a comprehensive code on how a residential tenancy can come to an under the British Columbia Residential Tenancy Act which does not recognize a constructive eviction.
- The agent for the tenant failed to provide legal authorities to support submission that constructive eviction applies in British Columbia in the residential tenancy context.
- I have not been able to find any legal authorities in British Columbia where the concept of a constructive eviction was applied to a residential Tenancy situation.

I determined if am I am wrong in my determination above that it was appropriate to determine whether such a concept could apply to the facts of this case. The concept of a constructive

eviction was raised in the case Crocker v Wilansky's Estate, 92 Nfld & PEIR 39; 83 DLR (4th) 542, 1991 CanLII 6854 (NL CA) where the following was stated:

> [56] If there is a landlord's covenant to repair and he defaults, the tenant may in some circumstances be deemed to have been constructively evicted. A statement of the law of constructive eviction is to be found in *Maunsel v. R.,* [1925] Ex. C.R. 133, where McLean, J., said at page 143:
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> > "The doctrine of constructive eviction grew out of that class of cases, in which the tenants' were as effectually determined, and his enjoyment of the estate granted as effectually prevented by other means, as through a judgment, or an actual putting out of possession. An eviction is either actual or constructive and in either case whether there has been an eviction, depends on the circumstances of the case. As a rule if the tenant is deprived without his consent of the beneficial use or enjoyment of the demised premises, by some intentional and permanent act of the landlord, that constitutes an eviction. The tenant must be dispossessed, or he must abandon the premises because of the landlord's acts, and for no other reason. It is necessary also in order to constitute a constructive eviction, that the landlord materially interfere with the beneficial enjoyment of the demised premises. There may be some acts of interference by a landlord with the tenant's enjoyment of the premises which do not amount to an eviction, but which may be either merely acts of trespass, or eviction, according to the intention with which they are done. If these acts amount to a clear indication of intention on the landlord's part, that the tenant shall no longer continue to hold the premises, that would constitute an eviction. There would appear to be no reason why a tenant should lose the right to assert a constructive eviction by attempts to remedy the acts complained of, or by an attempted settlement of the controversy. <u>The settled rule seems to be that in order to constitute constructive eviction, the acts of the landlord must indicate an intention on his part that the tenant shall no longer continue to hold and enjoy the demised</u> premises. A man is presumed in law to intend the natural and probable consequences of his acts, and therefore the acts of the landlord calculated to make it necessary for the tenant to remove from the demised premises, constitutes a constructive eviction." (emphasis added)
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> [57] In *Seven Seas Restaurant v. Central and Eastern Trust Co.* (1978), 24 N.B.R.(2d) 491; 48 A.P.R. 491 (Q.B.D.), Stevenson, J., said:
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> > "... Breach of a covenant to repair can constitute a constructive eviction when the breach is an omission resulting in a permanent interference with the tenant's use and possession justifying his abandonment of the premises or where the want of repair is so great as to render the premises untenantable."

There is no evidence that the acts of the landlord indicate an intention that the tenant shall no longer continue to hold and enjoy the demised premises. The landlord acted on the basis that the tenant JL continued to possess the rental unit until such time as the tenant failed to pay the rent for June. The landlord served a 10 day notice as is required under the Act and did not go into the rental unit to inspect until after giving 24 hours notice.

If the tenant was no longer interested in retaining possession of the rental unit it would have been open for the tenant to give the landlord written notice he was terminating the tenancy. Further, if the tenant took the position that the failure of the landlord to fix the door was so serious to amount to a breach of a material term it was open for the tenant to give written notice under section 45(3). A Notice under that section requires the tenant to give the landlord written notice of a breach of a material term and give the landlord a reasonable opportunity to correct the situation. Had the tenant given written notice under this section it would have been open to the tenant to argue that he was not responsible to pay the landlord's claim for loss of rent because the tenancy had come to an end because of the landlord's breach of a material term.

The agent for the landlord submitted JL gave oral notice. There is no evidence to support this allegation. Further, even if he had given oral notice it was not sufficient to satisfy the requirements of section 52 of the Act which requires notice in writing. As a result the tenancy is ongoing. The landlord testified that they are making repairs to the rental unit and the door was finally installed in the third week of July. I determined given these facts that the landlord determined the tenant has abandoned the rental property and that the tenancy ended by abandonment sometime around the middle of July.

In summary the tenants are responsible for paying the rent under the fixed term tenancy agreement for the months of June and July. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant is obliged to pay the rent even where the landlord has failed to comply with the Act unless the tenant has a right under this Act to deduct all or a portion of the rent. The tenant has not established such a right.

Failure to Mitigate:

The agent for the tenant submits the landlord has failed to mitigate their loss by failing to repair the door in a timely manner. .

Section 7(2) of the Residential Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

It is unclear on the facts as to whether the tenant or the landlord bears the legal responsibility to repair the door. Section 32 provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
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> (4) A tenant is not required to make repairs for reasonable wear and tear.
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> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

If the door was damaged by the tenant's friend at his request the tenant would be responsible. If the door was damaged by a thief the landlord would be responsible.

While I accept the submission of the agent for the landlord that 2 ½ months to repair a door is a lengthy time, I do not accept the submission of the agent for the tenant that landlord has failed to mitigate their rental loss by failing to repair the door in a timely manner. On careful analysis the reason the landlord has lost the rent for 2 months is not because of the failure to fix the door but because the tenancy was ongoing and the landlord could not gain access to the rental unit in order to put it in a rentable state so that it could be rented to someone else. Had the tenant given written notice to end the tenancy it would have triggered the obligation on the landlord to take reasonable steps to re-rent the rental unit. However, the tenancy was on going as the tenant failed to give notice. The law prevents the landlord from renting a rental unit to a third party if the tenancy is on-going. I determined the landlord acted reasonably in attempting to end the tenancy when the tenant's cheque for the rent for June was returned NSF. The landlord served a 10 day Notice on June 10, 2013 and filed an Application for Dispute Resolution on July 3, 2013. The landlord subsequently intervened and regained possession some time during the middle of July on the basis that the tenant had abandoned the rental unit. The obligation of the landlord to find another tenant for the rental unit requires the tenancy coming to an end.

It is possible that the tenant may have a monetary claim against the landlord for the delay in fixing the door. This would be dependent on who is responsible for the damage to the door. It would also require the tenant to file an Application for Dispute Resolution. It is not possible for an arbitrator to make a monetary award in favor of the tenant for the

reduced value of the tenancy where the Tenant has failed to file an Application. Perhaps this would be for the better as it would require the tenant JL to give evidence as to whether he or someone on his behalf instructed his friend to break down the door and the issue could better be decided on the merits. It would require him to provide testimony as to why he vacated the rental unit and whether it was necessary given the locking mechanism and key still operated.

Analysis - Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

a. I determined the landlord is entitled to $2680 for loss of rent for June (including parking).
b. I determined the landlord is entitled to $2680 for loss of rent for July (including parking).
c. I determined the landlord is entitled to $200 for the cost of replacing 2 fobs that were not returned by the tenants.
d. I determined the landlord is entitled to $100 for the cost of replacing 2 keys.
e. The landlord claimed the sum of $645.75 for the cost of replacing the broken door, $250 for the cost of cleaning the unit, $1208.78 for the cost of repairs to the interior of the unit. The work has not been completed. The landlord failed to produce invoices or sufficient evidence that the landlord has paid for the work. The contractors did not attend the hearing or give evidence. I determined the landlord failed to prove these claims. The landlord stated he could fax supporting documents. I determined it was not appropriate to allow the landlord to introduce evidence after the hearing had concluded. The agent for the tenants objected. The tenants would be prejudiced as this would prevent the tenant's agent from asking questions on these invoices. These problems could have been easily rectified by providing the appropriate documents in accordance with the Rules of Procedure. These claims are dismissed without liberty to re-apply.

In summary I determined the landlord has established a claim against the tenant in the sum of $5660. I granted the landlord a monetary order in the sum of $5660 plus the sum of $100 in respect of the filing fee for a total of $5760.

Security Deposit

I determined the security deposit plus interest totals the sum of $1300. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of $4460.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Order for Possession:

I have determined the tenant has abandoned the rental unit. However, out of an abundance of caution I determined it was appropriate to give the landlord an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Matters Raised by the Tenant's Materials:

The tenant raised a number of issues in his Written Response. Many of the issues raised were not relevant to the matters in dispute in this hearing. With regard to the relevant matters raised I find as follows:

- The Written Response submits the landlord failed to mitigate its loss. I have not accepted that submission for the reasons set out about.
- The Written Response submits the landlord has failed to provide the tenant with a copy of the tenancy agreement. There is no evidence from the tenants to support this allegation. Even if this was correct, the written tenancy agreement was provided as part of the landlord's materials and it is no a basis for dismissing the landlord's claim.
- The Written Response alleges the tenants were not given an opportunity to participate in a Condition Inspection at the end of the tenancy. The tenancy did not end until the middle of July when it was apparent that JL had abandoned the rental unit. Section 38 prohibits a landlord from keeping the security deposit with regard to damage if the landlord has failed to follow the procedures involves inspection. It does not prohibit the landlord from applying the security deposits to other tenant liability including the loss of rent.
- The Written Response submits the landlord has breached the tenant's right to quiet enjoyment. The tenant must file a claim before that allegation can be heard. In a situation such as this an arbitrator has no authority to give a party a monetary order in the absence of an agreement between the parties unless the party has first made an application.
- The Written Response alleging the landlord failed to meet its obligations for repairs under section 32. That would depend on how the damage occurred. Again the tenant must first file an Application for Dispute Resolution before that issue can be determined.
- The Written Response makes reference to emergency repairs. This section has no application as the tenant failed to make any repairs.

- The Written Response makes reference to the return of the security deposit. This issue has been dealt with above. The tenant JL has failed to give the landlord a forwarding address in writing.
- The Written Response alleges the tenant was constructively evicted. For the reasons set out above there is no basis for this.
- The Written Response alleges the applicant failed to provide full particulars. I disagree. Sufficient particulars of the claim have been provided. The applicant failed to provide sufficient evidence to support its damage claims and those claims have been dismissed.

The Agent for the tenants also filed a document titled Respondent's Reply to Landlord's Evidence in which the representative of the tenant questions the evidence of the applicant. The difficulties with the sufficiency of the evidence presented by both parties have been referenced in this decision and I am cognizant of that the applicant has the burden of proof to establish its clam on a balance of probabilities. I have made determinations based on the totality of the evidence and whether it is consistent with other evidence. It would have been a great benefit if the tenant JL had provided testimony. However, JL did not attend and an arbitrator must do the best one can despite the limitations of the evidence.

Summary:

In summary I determined the landlord has established a claim against the tenants in the sum of for loss of rent, failure to return two keys and two fobs in the sum of $5660 plus $100 for the cost of the filing fee for a total of $5760. I dismissed the landlord's claim for damages to the rental property as the landlord failed to present sufficient proof. I determined the security deposit plus interest totals the sum of $1300. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of $4460.

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: August 09, 2013

Residential Tenancy Branch