Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 2, 2013 and amended on October 8, 2013, by the Landlords, to obtain a Monetary Order for: unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

At the outset of the hearing I noted that there was only one Landlord listed as applicant to this dispute. The male Landlord, R.P., testified that he is the applicant's spouse and that he was also a Landlord. He indicated that he would be submitting the testimony and that his wife, C.P., would testify if required. Throughout the remainder of this proceeding both Landlords were given opportunity to present evidence; however, the male Landlord provided the majority of their testimony.

The parties appeared at the teleconference hearings convened on October 25, 2013, January 9, 2014, and January 17, 2014, and gave affirmed testimony. 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.

The Tenant affirmed that she received all evidence submitted by the Landlord.

The Landlords stated they received the Tenant's evidence late, on January 6, 2014, and requested that it not be considered because the Tenant was instructed to have her evidence submitted no later than five days before the reconvened hearing. The Landlords confirmed they had a chance to read the Tenant's evidence, prior to the January 9, 2014, reconvened hearing.

The Tenant confirmed that her evidence was served late, despite my Order during the October 25, 2013 proceeding. She requested that I consider the evidence but in the

event that I did not, she said she would be providing oral testimony regarding her evidence.

During the course of the hearing the Tenant's legal counsel requested "in the interest of time", that the Landlords read #48 written in the Tenant's affidavit and provide an oral response to each item listed (a) through (y). The Landlord complied with the request and read #48 items (a) through(y) and provided oral testimony in response to each item.

Based on the foregoing, I find the Tenant did not provide copies of her evidence in accordance with my Order. Therefore, I find the Tenant's documentary evidence will not be considered in my decision, pursuant to section 62 of the *Residential Tenancy Act*. I did however consider the Tenant's testimony and the Landlords' testimony which was provided in direct response to the Tenant's written affidavit # 48 (a) through (y).

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

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlords submitted evidence which included a copy of the month to month tenancy agreement that began on April 1, 2012. Rent was payable on the first of each month in the amount of $1,500.00. On March 26, 2012 the Tenant paid $750.00 as the security deposit and on April 19, 2012 the Tenant paid $750.00 as the pet deposit. A move in condition inspection report form was completed on March 26, 2012 after the Tenant had moved into the unit on March 24, 2012.

The Landlords testified that on July 18, 2013, the Tenant told them verbally that she would be moving out and ending her tenancy. The Tenant did not provide written notice to end her tenancy so on July 25, 2013, the Landlord wrote out a note to end the tenancy on behalf of the Tenant and had her sign it when she attended his office that day. A copy of this note was provided in the Landlords' evidence. No discussions took place that day to arrange a move out inspection or delivery of the keys. The Landlord met with the Tenant to pick up the keys to the rental unit on August 3, 2013, at which time the Tenant refused to provide the Landlord with her forwarding address.

The Landlords left town for a vacation on August 5, 2013, and left their assistant to contact the Tenant to arrange for the move out inspection. Their assistant testified that she first attempted to contact the Tenant on August 12, 2013 to schedule an inspection but was not able to reach her. She conducted the inspection in the Tenant's absence on August 14, 2013, which is also the date she took the photographs that were submitted in the Landlords' evidence.

The Landlords submitted a claim for unpaid rent of $4,500.00 (3 x $1,500.00). They argued that the Tenant occupied the unit until August 3, 2013; however, she did not pay rent for June, July, or August. They were not able to re-rent the unit right away due to the short notice to end and because of the condition the property was left in.

Witness #1 testified that she worked as a house cleaner at this property for three years prior to the start of the tenancy. During that time she cleaned the house regularly and it was in good shape. She was hired to clean up the house after this tenancy ended and "it was terrible". She stated the upstairs carpet had been scratched by the dogs and was not cleaned; the drapes were ripped; there was mold in the cracks in the upper bathroom; the shower curtain rod or hanger was pushed through the wall; shrubs were gone; the fridge handle was broken off; there was the presence of sewage back up as high as 3 inches up the wall in the basement and in other areas the sewage appeared to be smeared up to 2 feet up the walls; and there was dog drool all over windows and doors on the inside of the unit.

The Tenant was granted an opportunity to question Witness #2 during which the Witness clarified that she had not attended the unit during the tenancy and was not present during any of the times the septic backed up. The Witness argued that the damage and dirt she found upstairs in the bathroom or around where the shrubs used to be was nowhere near the areas where the septic back up occurred or where the field or tank were repaired. The Witness stated that she has knowledge that the upstairs carpets were cleaned prior to the Tenant taking occupancy and that there was no snow around the house in March of 2012 when the Tenant moved in. The last time she cleaned the house prior to the start of the tenancy was Friday March 23, 2012.

The Landlords are also seeking compensation of $9,805.24 for damages which consist of $9,093.68 of damage to the home resulting from sewage back up; $180.00 for the cost of shrubs; $120.00 for torn drapery sheers; and $411.56 for the cost to replace propane that was in the tank at the onset of the tenancy. They pointed to their evidence which included the tenancy agreement and addendum. Item #7 of the tenancy

agreement addendum states the Tenant is responsible for the cost of the propane remaining in the tank (35%).

The Landlords stated that the rental property is a log home that was built in approximately 1984 and sits on approximately 43 acres of land. The Landlords purchased the property in 2001 and spent over $100,000.00 and one year renovating it before moving in. They occupied the property in 2002 and stayed there until the Tenant moved in at the end of March 2012. In fact, they were still in the process of removing their possessions when the Tenant called and asked to move in early. The Landlords pointed to the move-in condition inspection report form which indicates there was a broken window in the master bedroom; a two pain window with a crack in one of the pains. There are no other deficiencies listed on the move in report.

The Landlords are claiming $180.00 for the cost to replace two shrubs which were damaged by the Tenant's dogs and for the cost to replace ripped drapery sheers worth $120.00. The Landlords did not submit receipts for these two items and confirmed these items have not yet been replaced. They determined the value of these two items based on costs they incurred when they initially purchased them. They pointed to their evidence which included pictures showing the area where the shrubs used to be located and argued that the Tenant used to tie up her two large dogs close to these shrubs and that the dogs damaged the shrubs to the point they were destroyed and removed by the Tenant or her family, during the tenancy.

The Landlords are seeking costs to clean the debris up from the yard, mow the lawn, and clean and repair damage caused to the upstairs of the house. They argued that the Tenant was required to cut and maintain approximately one acre of lawn area, as provided for in the tenancy agreement. They pointed to photos in their evidence to support their claim that the upstairs carpet was not properly cleaned at the end of the tenancy, the upstairs carpet was torn or frayed, the fridge door handle was not attached, there was dog slobber on the windows, the oven was dirty, and the remainder of the house required some minor repairs and a good cleaning.

The remainder of the Landlords' claim pertains to damage caused to the basement by a septic back up. The Landlords argued that the Tenant is liable for causing the septic system to become blocked and therefore is liable for the resulting damage. The male Landlord presented himself as being very knowledgeable and experienced with the installation and operation of septic systems as he has installed and repaired many septic systems. He argued that there are only two problems that could happen with the septic which are (1) the tank becomes full of sewage solids or (2) there is a blockage in the lines either leading to the tank or away from the tank and out to the field. He

indicated that when a septic tank is operating normally there will be a large amount of liquid in the tank as high up as 8" from the top of the tank.

The Landlords argued that they had no problems with the septic system during the time they resided in the house. They clarified by saying there were some repairs required to the septic system when they first occupied the property. The male Landlord stated that they had determined there was a problem when they heard gurgling sounds coming from the system. They had the tank pumped out and then had R.R. investigate and snake the pipe. They determined that the line running from the house into the tank was not installed with a proper downward slope and that the last 8 to 10 feet of the pipe was sloped up hill. The Landlord stated that he repaired the problem himself by digging up the pipe, cutting a new hole into the septic tank, lower than the existing one, and by lowering the pipe at the end where it hooked into the tank, and placed it into the newly cut hole. He argued that he used a level to ensure the pipe was now sitting at a downgrade slope and that this resolved the problems that were pre-existing with the system. He indicated that he solved the problem because he and his wife had no additional problems with the system for the remainder of the time they lived there. They knew when it was time to have the system pumped out when they heard gurgling sounds and by doing so the system never backed up again during their occupancy.

The Landlords testified that the Tenant was provided proper written instructions on how to use the septic and water system. They pointed to the written tenancy addendum that was signed by the Tenant on March 26, 2012, and which states at #5 that

> *Tenant is responsible for insuring [sic] that items that may cause obstruction are not flushed into the system. Tenant is responsible for any damage caused by articles flushed into the system.*

The Landlords argued that they spent over $1,000.00 to rectify the situation each time the Tenant called to say the septic was backing up. When she first called in March 2012 the Landlords arranged to have the septic tank pumped out. When the Tenant reported that the problem was not rectified they told her not to use the water and they would bring in R.R. to get it fixed. The Landlords said that as per the R.R. invoices dated March 29, 2012 and April 10, 2013, each time R.R. attended they found a plugged sewer line. The Landlords were of the opinion that the Tenant or one of her family members flushed something into the system other than toilet paper or human waste which caused the sewer line to plug.

The Landlords submitted that this septic system was inspected and approved as being adequate size for this three bedroom home. Therefore, if it was utilized properly it would

not cause a problem. The Landlords stated that this family of six or seven put a strain on the septic field. After realizing that, they decided to augment the field to add more drain lines and a sump pump, which was done in April 2013. When they dug up the field they found the existing lines to be clean with no sign of damage or failure so obviously this proves the tank and field were not at fault for the system back up and it was simply due to a blockage in the lines. They have not had any problems with the system since. They re-rented the unit in September 2013, to a couple.

The Landlords argued that they had no idea the extent of the damage caused when the sewer backed up in the spring of 2013. The Tenant advised them that the sewage had flooded into the basement and despite the Landlord's initial request to inspect the unit, the Tenant never made an appointment for the Landlord to come and inspect the damage. The Landlords said they had no idea the extent of the sewage damage which was left in the basement from March to August 2013. They recall the Tenant asking permission to remove the carpet but did not consider there was damage up the walls or that sewage remained in the basement.

The Landlords confirmed that the carpet and underlay were not re-installed in the basement because they decided to paint the basement floor. The amount claimed for damages included an estimated amount of $3,181.03 for carpet and underlay. The Landlords argued they were still entitled to this amount because once the carpet and underlay were removed it reduced the overall value of the home. There were many other items that required repair, such as the deck railing that they are not claiming compensation for. They are seeking recovery of costs to remove debris and furniture left by the Tenant, costs to clean up and maintain the yard to bring it back to an acceptable condition, and repairs to the walls that were damaged due to the sewage being left un-remediated in the basement.

The Tenant began her testimony by reviewing the photos provided in evidence by the Landlords. Through this review the Landlords confirmed they gave the Tenant permission to have a burn pile and not all of the furniture left behind, as shown in their photos, belonged to the Tenant. Rather, there were items left behind by the Landlords displayed in some of these photos. The Tenant confirmed that the oven was not as dirty at move in as it was at move out, as shown in the Landlord's photos. The condition of the toilet shown in these photos is the result of the sewage back up in the basement. The Tenant pointed to a photo which showed tall grass and argued that there were rocks displayed in the grass, which were left there from the septic field repair. The Landlords denied that those were rocks and argued that area was not disturbed by the field augmentation. The Landlord confirmed that the skylights leak when the snow melts

but that the stains shown on the carpet could not be from the skylights leaking and running down the track and across the roof, as argued by the Tenant.

As noted above, the Landlord, R.P., read section #48 (a) through (y) of the Tenant's written affidavit and provided oral testimony to each item as a direct response. Relevant information provided in the Landlord's responses are as follows:

(a) The Landlord disputes that the septic tank was full in March 2012 and pointed to the R.R. invoice of March 29, 2012 which indicates a blockage. The Tenant argued that the invoice says "plugged sewer line" and that the plugged line was caused by the sewage having to run uphill.
(b) The Landlord argued the invoice says "blockage"
(c) The Landlord does not remember receiving three telephone calls from the Tenant in April 2013; the R.R. invoice indicates the Landlords had someone attend to the problem right away; and the statement that the field was repaired is false, it was augmented or enlarged, not repaired.
(d) The Landlord agreed that most of the damage was caused by the last sewer backup and argued that he told the Tenant he would attend to see the problem but that she told him it was not a good time. He said he requested that the Tenant call him on his cell phone but she never did. He did not realize the extent of the damage or the amount of sewage in his basement. He confirmed he gave the Tenant permission to remove the soiled carpet if it was damaged. He argued again that the Tenant did not make an appointment for him to see the damage.
(e) He agrees he gave permission to remove the carpet.
(f) The Landlord stated that this item was straight forward, that the Tenant states she did not pay her rent.
(g) The Landlord said he saw dogs inside the unit many times and in fact the dogs were put inside when he attended to control them and to prevent them from biting him as they had done in the past.
(h) The Landlord agreed that the majority of the damages in the basement were caused by sewage back up but argued it was by sewer blockages and not a problem with the sewer.
(i) The Landlord claims the Tenant was not co-operative because she did not return his calls.
(j) The Landlord agreed he gave the Tenant permission to have a fire pit.
(k) The Landlord argued that there was very little damage done to the lawn during the septic augmentation yet ¾ of the lawn area which was approximately 1 acre in size was not maintained or cut and was left in very poor condition.

(l) The Landlord believes the Tenant was required to remove her own furniture, regardless of how it became damaged. The deck had rotted out but he was not aware of this problem until the Tenant called and told him. The Landlord said he asked the Tenant to stay away from the damage after it happened. When he saw the damage he felt it appeared that someone took action to explore the rot and caused additional damage. The Landlord argued that it was very hard to communicate with the Tenant and he was not able to get access because of the dogs.

(m)The Landlord confirmed his photos show furniture that had been damaged.

(n) The Landlord agrees that the oven was not cleaned at the beginning of the tenancy; however, it was never in as dirty condition as the Tenant left it at the end of the tenancy.

(o) The Landlord confirmed that the Tenant had called him about the loose fridge handle. He did not see this as a major concern as it was put back on after the tenancy ended.

(p) The Landlord states that he feels the deck railing was removed by force and not by someone simply leaning against it. They have not replaced the railing and are not claiming for that damage.

(q) and (r)The Landlord indicated that he had already confirmed those pictures show damaged furniture.

(s) The Lanldord acknowledged again that this picture shows some of the Landlord's furniture.

(t),(u),(v) The Landlord agrees that the damage in the bathroom was the result of the flooding / sewage back up.

(w)The Landlord contends the stains are not from the skylight.

(x) The Landlord does not deny that the damaged drywall may have occurred when the Tenant was attempting to remove the drywall, but it is still damage.

(y) The Landlord argued that there was no scuff marks noted on the move in report.

The Landlord testified that there was no back flow valve installed on the sewer pipe and argued that it would be of no benefit for this system because the damage was not caused by water flowing into the house from the tank. Rather, he contends that the flood was the result of sewage that the Tenant attempted to flush after they had caused a blockage in the pipe leading from the house to the septic tank. He argued that the Tank did not back up.

The Landlord indicated that while living there he and his wife had to get the tank pumped every 5 or six years and it had been pumped just a few years prior to the start of this tenancy and again in March of 2012. The system was working properly when

R.R. left in March 2012 so he believes it is possible that use of the system by the large family of seven people caused over use of the system. He noted again that this system was the appropriate size for the number of bedrooms so it should have been sufficient. He stated that he warned the Tenant not to over use the system.

C.P. concluded their submission by stating they arranged to have the septic tank pumped out immediately when the Tenant called the second day of occupancy in 2012, and also arranged to have R.R. use their snake on the drain.

The Tenant testified that she has grown up around septic tanks and has taught her children not to flush other items down the toilet. She questioned why the Landlords decided to send the "vac" truck right away in 2012, along with R.R. until she was told by the "vac" truck operator that the tank was installed backwards and he has to pump the system out every spring after spring runoff. She was also told from R.R. that the pipe was not sloped properly, which causes a blockage because the sewage has to go up hill.

The Tenant clarified that there were in fact four times the septic caused problems in the basement. Once in March 2012, and three times in April 2013, once when the vac truck came, another time when RR came and the Landlord decided to have the field checked, and a third time when they began to dig up the field. The problem in March 2012 was resolved after the tank was pumped and R.R. put their snake through to clear the blockage.

When the septic backed up in the spring of 2013 she could not get a hold of the Landlord, so after speaking with the Residential Tenancy Branch she called the "vac" truck and he came and emptied the tank and billed the Landlord directly. Then when the problem persisted the Landlord had R.R. attend on April 10, 2013, to use the snake. Shortly afterwards they returned home after a day of skiing and found that the entire basement had been flooded yet again. They called the Landlord and he told them not to use the system until he checked it out. The Landlord sent his worker over with a shop vacuum and instructed the Tenant to suck up the solids and said the liquid would subside once the system was repaired.

The Tenant said that this time the Landlord decided to check out the field so he hired someone who came and poked holes in the field. That is when the Landlord told them that he would be having work done to the field and that the repairs would only take three days; but they took over two weeks. The Landlord had his contractors dig up the field for repairs, during which more fluid pumped into the basement, and although the Landlord attended the property to check on the field repairs he never went inside the unit. The

Tenant argued that there was standing sewage and feces in the basement for 10 days and the Landlord was fully aware of the situation. During these repairs there was no lid on the septic tank and there was a trench dug that was filled with raw sewage which was dangerous for her children and dogs to be around.

The Tenant stated that they did not use the water or drain system during the repairs, as instructed by the Landlord. They went to the neighbours to shower and do laundry and used the bush as their toilet. She argued that it was not a mere coincidence that problems only happened in the spring. She noted that there was a large stream on the property and that each spring there was a large amount of water on top of the septic field as the snow melted. Every time she saw inside the septic tank if was full and water was coming into the tank from the field side.

The Tenant acknowledges that they did not clean up the sewage and stated that after speaking with the Residential Tenancy Branch she called the health unit and confirmed that sewage clean up required a specialist to do the work. She knows for certain that she told the Landlord about the sewage in the basement and that is why she asked for permission to remove the carpet, which he already confirmed.

The Tenant denies that her dogs damaged the shrubs. She said the shrubs were torn down by the equipment that repaired the septic field. She pointed to photos in evidence and pointed out the tree that her dog was tied to, which is not near the shrubs that were damaged. She also confirmed that her dogs would go inside when they were trying to prevent them from biting the Landlord.

The Tenant confirmed that they needed to know when the Landlord was coming because her dog did not like him. This did not mean the Tenant had to be home, as anyone else in her family could have tied the dog up if they knew the Landlord was coming.

The Tenant confirmed that she did not pay rent for June, July, or August 2013 and argued that she withheld the rent because the sewage problems were not fixed and she only had use of half the house from April 2013 onward. She confirmed leaving possessions behind because they were contaminated by sewage and needed to be removed by a specialist. They did attempt to burn some contaminated furniture but that did not work so they left it at the burn pile.

The Tenant testified that she did not have the upstairs carpets cleaned when she moved out because they were not cleaned at the beginning of her tenancy. She argued

that the unit could not be rented in its damaged condition and that is why the Landlord did not re-rent the unit until September, so she should not have to pay for August rent.

The Tenant argued that R.R. never said what the plug consisted of that had blocked the sewage line. When the work was being done on the field they saw work being done on the pipe that ran from the tank to the field. The repair person told her that there were pieces of PVC pipe and boulders in the line which made him think that the line had been cracked.

The Tenant stated that the Landlord testified that the septic system was large enough to accommodate a 3 bedroom home; however at the time the Tenant had rented the unit it had been turned into a 5 bedroom home because the Landlord had constructed two bedrooms in the basement. The Tenant argued that the Landlord knew how many people were in their family so he knew how many people would be using the system.

On the day that the trench was dug to repair the field the Tenant said she saw water bubbling up the sewer lines and into the house. She said they told the Landlord about that and that was when the Landlord told them not to use the system until the repairs were completed and not to worry because the liquid would subside.

During the Landlord's cross examination of the Tenant, the Tenant confirmed that the vacuum truck emptied the septic tank two or three days before R.R. attended in March 2012. She also confirmed that the Landlord had attended the property one day and asked her son to tell her to call him and her son did not give her that message. The Tenant claims she cut the lawn to the best of her ability, in areas where her lawnmower would go without causing it damage. The Tenant confirmed that the propane tank was empty when they moved out.

In closing, the Landlord confirmed sending over the ShopVac for the Tenant and told her that "maybe it could be of use". He denies telling her to clean up the septic solids and argued that he "does not micro manage people". He stated that the Tenant told him that they were vacating because they could no longer afford to pay for the rental unit and at no time did they say they were moving out because of the sewage damage.

The Tenant's legal counsel summarized their arguments as follows: the Landlord rented the property with a defective sewage system and that defect caused the system to plug. As a result of the defective system and field the sewage back flowed into the basement causing damage to the property. There was no check valve on the septic system to prevent back flow. The drainage lines or field were insufficient which caused the Landlord to have to repair or "augment" them. The septic system was designed for a 3

bedroom home not a 5 bedroom home, which is what the Tenant rented. The system could not keep up with the normal demands of a large family or with spring runoff. The system backed up into the tank and into the house in the spring of 2013 when no one was home, which means the system was not being used at the time of the flooding. The Tenant took action to resolve the situation. The Tenant did her due diligence by informing the Landlord of the sewage flooding into the basement. The Landlord did not meet his duty to clean up the mess. It is a reasonable inference that the Landlord had concerns that the system could not handle the spring runoff which caused him to augment the system. There is no evidence of negligence on the part of the Tenant. They are requesting that the Tenant's verbal notice to end tenancy be adequate in this situation, based on the Landlord's fundamental breach of the tenancy agreement which was caused by his failure to remediate the sewage backup.

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.

Section 32 (1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32 (5) provides that 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.

Section 45 (3) of the Act stipulates that 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 [emphasis added].

Section 45 (1) of the Act stipulates that a tenant may end a periodic 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, and (b) 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.

Notwithstanding the Tenant's argument that she gave verbal notice to end the tenancy due to the Landlord's breach of a material term, there is no evidence before me that the Tenant gave the Landlord written notice of his failure to comply with the Act or the tenancy agreement. Accordingly, I find there is insufficient evidence to prove this tenancy ended in accordance with section 45(3) of the Act, as listed above.

The evidence supports that on July 25, 2013, the Tenant signed the written notice to end her tenancy effective August 3, 2013; which I find to be in breach of section 45(1) of the Act, as listed above. In order to be compliant with Section 45(1) of the Act, the Tenant's notice to end her tenancy, if provided on July 25, 2013, would not be effective until August 31, 2013.

Section 44(1)(d) of the Act stipulates that a tenancy ends on the date that the tenant vacates or abandons the rental unit. However, that does not excuse a tenant from their legal obligations to pay rent in accordance with the Act.

Accordingly, I find this tenancy ended on August 3, 2013, in breach of section 45(1) of the Act.

Section 26 of the Act stipulates that a tenant ***must*** pay rent when it is due in accordance with the tenancy agreement [emphasis added], despite any disputes with the landlord.

In this case rent is payable on the first of each month. The undisputed testimony was the Tenant continued to occupy the rental unit until August 3, 2013 and she did not pay rent for June, July or August 2013. Accordingly, I find the Landlord has met the burden of proof to establish his claim for unpaid rent for June, July, August 3, 2013, and I award him unpaid rent of **$4,500.00** (3 x $1,500.00).

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 (3) of the Act provides that 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.

The Landlord has claimed compensation for damage and loss and has grouped the amounts claimed as $9,093.68 for repairs to the home; $180.00 for cost to replace two shrubs; $120.00 for cost to replace sheers; and $411.56 as the cost to replace propane that was left in the tank at the beginning of the tenancy.

The Landlord has advised that the shrubs and sheers have not yet been replaced but the propane tank has been refilled. The Tenant did not dispute that she was required to refill the propane tank, as provided for in her tenancy agreement, and she did not dispute that the sheers had been damaged during the tenancy. The Tenant did however, dispute being responsible for damage caused to the shrubs. She argued that they were destroyed when the septic system was being repaired.

Upon review of the evidence before me I find there to be insufficient evidence to prove the exact location of the damaged shrubs in proximity to the location of the septic tank and field and the path used to access these areas of the property. Therefore, there is insufficient evidence to prove the Landlords' claim that the shrubs were damaged by the Tenant or her dogs. Accordingly, I dismiss the claim of $120.00 for damage to the shrubs, without leave to reapply.

Regarding the claims for damage to the shrubs and the window sheers I find the Landlord has insufficient evidence to prove or verify the actual value of these claims. The Landlord indicated that the amounts claimed for the sheers and propane were based on their initial costs when these items were first purchased. If that was the case, I would expect to see the original receipts or estimates from a third party supplier.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right.

Based on the aforementioned, I find that the Landlord is entitled to compensation for the cost of propane and for damage caused to the window sheers. In the absence of prove of the exact cost of the loss I award the Landlord nominal damages in the amount of **$50.00.**

The Landlord has grouped the remainder of his claim and submitted receipts totalling $9,093.68. These receipts can be grouped as follows:

1) $663.70 Eleven receipts from a lumber supply company (A.L. & B. S. C. L.) for wood, paint, and painting materials and supplies for products used to repair the basement, deck handrail, hose nozzle, a key, and a deadbolt lock.
2) $3,181.03 An estimate for new underlay and carpet for the basement, which was not purchased and not installed.
3) $1,320.00 Debris removal, yard cleaning, and grass cutting of over 1 ½ acres
4) 582.75 Consisting of $261.75 for basement floor cleaning and upstairs carpet cleaning of $321.00
5) $75.00 Repair of damage to upstairs carpet
6) $420.00 Cleaning and repairs to upper floor plus cleaning of downstairs bathroom was not purchased or installed.
7) $2,175.00 Repairs and cleaning of sewage damage in basement; main floor window; patio doors; washing of exterior of the house and deck; re-staining deck
8) $676.20 R.R. receipts from 2012 and 2013 to snake and clean drainage line running from the house to the septic tank.

The Landlords argued that the basement damage was caused by the Tenant or someone in her family flushing something into the septic system causing a blockage in the pipe running from the house to the septic tank. They argued that it was the result of that blockage that resulted in sewage backing up into the house. They have also alleged that the damage was exacerbated by the Tenant's failure to "make an appointment" for the Landlord to attend and inspect the basement between April 2013 and August 3, 2013.

The undisputed evidence was that there was a pre-existing flaw with the installation of the septic system and the Landlord made alterations to the system to resolve the issue. The Landlords admit that they took action to repair the pipe elevation issue by cutting a new hole lower in the septic tank and by lowering the pipe running from the house and into the tank. Septic system designs and installations require specific engineering and must be inspected by health authorities. There is no evidence before me that suggests the Landlords had the system re-inspected and/or recertified for operation by an engineer or proper authorities, after they altered the septic tank and installation.

I do not find it a mere coincidence that the septic system displayed problems at the same time each year of this tenancy, during the spring thaw and runoff. Nor do I find it a coincidence that the Landlords failed to claim costs for pumping out the tank each time or that they failed to provide copies of invoices from the vacuum pumper truck company.

The Tenant argued that the problem of the drain pipe running up hill before entering the tank caused sewage to settle in the pipe and eventually cause a blockage. She also argued that the problem was also caused by excessive water on the field due to spring runoff, as supported by the fact the problem occurred at the same time each spring.

Upon review of the foregoing, I find the Landlord submitted insufficient evidence to prove the Tenant, or someone allowed on the property by the Tenant, was negligent and caused a blockage in the septic system which resulted in sewage backing up into the basement.

The evidence supports that the Tenant called the Landlords and informed them when the septic system backed up in 2012 and again in 2013. In 2013, the Landlord responded by having R.R. snake the lines, arranged to have the septic field augmented and had a ShopVac delivered to the Tenant for her to clean up the sewage in the house. The Landlord himself had attended the property during the field augmentation which was done in April 2013; however he did not enter the house at that time.

I accept the Tenant's submission that, given the health hazards presented from raw sewage, any sewage backup requires professional remediation and cleaning.

In response to the Landlords' argument that the Tenant did not contact him to "make an appointment" for him to inspect the basement, I considered the following case law:

In Klajch (Guardian ad Litem of) v. Jongeneel (2002), 286 W.a.C. 184 sub nom. Klajch v. Jongeneelr, 47 R.P.R. (3d) 180 (B.C.C.A.)

> *The duty to inspect is part of a landlord's duty under s. 10 [s. 32] to provide and repair premises. It is also part of the landlord's duty under s. 6 of the Occupiers Liability Act. The Occupiers Liability Act imposes a duty of reasonable inspection on both the landlord and tenant of the premises. The landlord also has the legal responsibility for maintaining the premises. The standard of reasonable inspection imposed on a landlord generally will be greater than that on a tenant particularly where the inspection relates to a structural defect that existed prior to the current tenancy. The tenant's duty under this particular tenancy agreement was to report defects or damages discoverable by reasonable inspection and did not extend to structural defects not apparent on ordinary visual observation. In this case, periodic "drive by" inspections by the landlord were found to be inadequate.*

In Zavaglia v. Maq Holdings Ltd. (1983), 50 B.C.L.R. 204 (Co. Ct.), affd 6 B.C.L.R. (2d) 286 (C.A.)

> *The requirement [s. 10(1)(a)][S. 32] that the landlord maintain the premises in a state of repair, when read together with s.6(s)(c) of the Occupiers Liability Act, "impose[s] upon a landlord of a residential premises the duty to ensure that the premises are safe within the limits as prescribed by the Occupiers Liability Act, s. 3(1), for he is, in the yes of the law an 'occupier' not only vis-a-vis his tenant, but in regard to persons who visit his tenant, and may be found liable to such a visitor for damages arising from injuries suffered by the visitor on the rented premises when it is concluded that the cause of the injury was the 'unsafe condition of the premises, a condition which the landlord should (even in the absence of any complaint by his tenant) have been aware.*

In Cart v. Randall (1983) 145 D.L.R. (3d) 572 (B.c. Co. Ct.):

> *A tenant is not responsible for repairs to premises except those repairs required as a result of the Tenant's negligence or willful conduct, or the negligence or willful conduct of someone permitted on the premises by the tenant.*

Based on the above, I find the Landlords provided insufficient evidence to prove their argument that the Tenant is somehow responsible for any loss that may have been exacerbated due to the failure of the Landlords to inspect the basement between April 2013 and August 3, 2013.

Based on the above, I dismiss all claims related to repair or maintenance of the septic system or clean up or repairs in the basement of the house related to the sewage back up, without leave to reapply.

Although the above mentioned receipts included charges for repairs to the main floor bedroom window (pre-existing damage as noted on the condition inspection report form), patio doors, washing of exterior of the house and deck, re-staining deck, a new handrail, hose nozzle, a key, and a new deadbolt lock, the Landlords made no claim of these items in their testimony or their written submission. Accordingly, receipts submitted for the aforementioned items, are dismissed, without leave to reapply.

The tenancy agreement "Conditions of Tenancy" # 6 states:

> *The tenant is responsible for maintaining their lot including general maintenance of the lawn, garden and shrubs including weed eating. Management reserves the right to perform this maintenance, if neglected, and bill the tenant accordingly for this service.*

The tenancy agreement addendum #1 states:

> *The home is rented with only the grassed area around the home (approximately 1 acre) and does not include the balance of the acreage (43 Acres).*

Residential Tenancy Policy Guideline # 1 provides that generally, a tenant living in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow.

Upon review of the photos provided in evidence, there is a section of lawn that appears to be well maintained and cut. That being said there are other photos which display

areas of lawn that have not been properly maintained and were littered with sewage damaged debris. The invoice submitted by the Landlord lists $585.00 charged for picking up and hauling garbage and cleaning yard separately from the $735.00 charged for grass cutting of 24.5 hours of over 1 ½ acres of extremely long grass.

Based on the above, and in the absence of a clear description on the invoice of what was cleaned up from the yard, I find the Landlord has proven their claim for lawn cutting and not cleaning, in the amount of **$735.00.**

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline # 1 provides that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets.

Upon review of the evidence before me, I accept that the Tenant left the main floor/upstairs of the unit requiring cleaning and with some damage, at the end of her tenancy. I noted that the cleaner's invoice of $420.00 included some work that was performed cleaning up sewage damage in the bathroom in the basement. Accordingly, I award the Landlord **$375.00** for cleaning and minor repairs of the main floor/upper level of the home.

Notwithstanding the Tenant's argument that the carpets were not cleaned at the outset of this tenancy, I find the Tenant was required to have the carpets professionally cleaned at the end of her tenancy. Accordingly, I award the Landlord **$321.00** for carpet cleaning.

I accept the evidence that the upstairs carpet was damaged during the course of this tenancy. Accordingly, I award the Landlord **$75.00** for carpet repairs.

The Landlords have been partially successful with their application; therefore I award partial recovery of the $100.00 filing fee in the amount of **$50.00**.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid & Loss of Rent up to August 31, 2013	$ 4,500.00
Nominal damages (propane & sheers)	50.00
Lawn cutting	735.00
Cleaning and minor repairs to main floor/upper level	375.00
Carpet cleaning	321.00
Carpet repairs	75.00
Filing Fee	50.00
SUBTOTAL	$6,106.00
LESS: Pet Deposit $750.00 + Interest 0.00	-750.00
LESS: Security Deposit $750.00 + Interest 0.00	-750.00
Offset amount due to the Landlord	**$4,606.00**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$4,606.00**. 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: January 24, 2014

Residential Tenancy Branch