Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: DRI, CNR, FF
Landlord's Application: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled for October 16, 2013 to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and, to dispute an additional rent increase. The landlord had applied for an Order of Possession for Unpaid Rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the security deposit. The landlord subsequently filed an amended application to increase her monetary claim from $1,200.00 to $10,903.48 on October 4, 2013. All parties appeared at the hearing on October 16, 2013.

Preliminary and Procedural Matters

Tenant's Application
The tenants served their Application and written submission to the landlord by registered mail sent on September 5, 2013.

At the initial hearing, I determined that the tenants had already vacated the rental unit and that it was no longer necessary to consider whether the 10 Day Notice to End Tenancy for Unpaid Rent should be cancelled. However, I have considered whether the landlord was in a legal position to issue the 10 Day Notice so as to consider the tenant's request for recovery of the filing fee their paid for their Application.

With respect to the tenant's request to dispute an additional rent increase, I determined that the tenants had not paid a rent increase and that the landlord included in her monetary claim compensation for the additional rent that was in dispute. Therefore, I determined this matter should be dealt with under the landlord's Application.

Landlord's Application

As the tenants had already vacated the rental unit I found it was unnecessary to consider the landlord's request for an Order of Possession.

After the landlord amended her application the landlord had a third party attempt to serve the tenants. The landlord was initially uncertain as to who served the amended application and evidence binders, who received the landlord's hearing documents and on what date. The landlord was asked to present the third party that served the amended applications and evidence binders. The correct person was eventually presented and the witness testified that he took three binders to the work place of tenant (MHJ) on October 4, 2013 and left them at MHJ's workstation.

MHJ acknowledged finding three binders at her workstation when she returned to work on October 10, 2013. MHJ acknowledged that she had shared the two other binders with her co-tenants. In an attempt to respond to the landlord's claims, the tenant served the Branch with a written response but did not serve it upon the landlord. The landlord objected to inclusion of the tenant's written submission.

Upon discussion of service requirements and procedural fairness, the tenants indicated that they were willing to accept service of the landlord's amended application and evidence binders in order to deal with the landlord's claim rather than face the possibility of the landlord's Application for Dispute Resolution being dismissed with leave to reapply. However, given the little time they had to review and respond to the landlord's amended monetary claim the tenant's requested an adjournment.

Since the landlord had failed to sufficiently serve the tenants in a manner that complies with the Act; and, considering the tenants received the landlord's evidence only days before the hearing, I granted the tenant's request for adjournment. The tenants were given authorization to submit a written response and evidence by serving it upon the Branch and the landlord.

During the period of adjournment the tenants served the Branch with a written response and photographic evidence. When the hearing reconvened on November 28, 2013 the landlord object to inclusion of the tenants' written submission and evidence, claiming it was not properly served upon her. I determined that the tenants had used a courier service and that the landlord did not pick up the package from the courier. The landlord claimed that she did not receive any notification from a courier. Since the tenants did not use a permissible method of service and the landlord claimed to have not been in receipt of notification of the couriered package, I excluded the tenant's submission and evidence.

Also during the period of adjournment, the landlord served the Branch with another written submission in an attempt to increase her monetary claim and additional evidence. I did not permit the landlord to amend her claim further as the hearing had already commenced and because she did not do so in a manner that complies with the Rules of Procedure. Nor, did I permit the landlord's additional evidence to be included as the adjournment was permitted so that the tenants had an opportunity to respond to the landlord's claims and evidence served upon them in early October 2013. Therefore, I have only dealt with the landlord's monetary claims and considered the evidence as set out in the amended application and evidence binder served in October 2013.

After more than three hours of hearing time November 28, 2013 I indicated the proceeding would have to be adjourned as it was the end of the day. The tenants were in favour of adjourning the proceeding; however, the landlord strongly requested that she be permitted the opportunity to present her witness (GC), claiming his testimony would not be lengthy. I permitted to call her witness. After the witness gave testimony, the tenants were permitted an opportunity to ask question the witness. Shortly thereafter, the witness became argumentative and I determined it appropriate to end the teleconference call for the day. I cautioned the landlord that upon recalling the witness at the next hearing date the witness would be expected to conduct himself in an appropriate manner.

The hearing was set to be reconvened on January 29, 2014 but was rescheduled pursuant to a request made by the tenants due to serious and significant medical reasons. The Branch proceeded to reschedule the hearing as provided under the Rules of Procedure and notified the parties of such.

The hearing reconvened on February 25, 2014 and all parties were in attendance; however, the landlord's witness (GC) was not present. The landlord advised that GC decided not to participate. As the tenants had not had an opportunity to finish cross-examining GC, I informed the parties that I would not give further consideration to GC's testimony and I have disregarded it. The landlord did have another witness (CB) present on February 25, 2014 and he was permitted to give testimony subject to examination. I have considered CB's testimony in making this decision.

On a procedural note, the landlord was cautioned numerous times about using antagonistic and inflammatory comments, remarks and opinions, especially opinions concerning the tenants' race and/or culture. The landlord was also asked to refrain from providing extraneous or superfluous details. The landlord did not exhibit the restraint requested of her making for a lengthy and contentious hearing.

Issue(s) to be Decided

Has the landlord established an entitlement to compensation in the amount reflected in the amended monetary claim filed in October 2013?

Background and Evidence

The parties executed a tenancy agreement for a tenancy set to commence February 1, 2013 for a fixed term set to expire February 1, 2014. The tenants were permitted occupancy of the rental unit on or about January 21, 2013. The tenants did not pay a security deposit. The tenancy agreement provides that the tenants were required to pay rent of $1,000.00 on "the 31st day" of every month. The landlord did not prepare a move-in inspection report. The tenants moved out of the rental unit on September 29, 2013.

On the landlord's amended application, she indicated she was seeking compensation totalling $10,903.48; however, her itemized list of claims did not add to that amount. Therefore, I have recorded each item she claimed below.

Item	Reason	Amount claimed
Unpaid rent	Additional occupant	$1,400.00
Keys	Keys not returned	27.96
Range hood and smoke detectors	Black range hood provided was missing and replaced with white one by tenants; tenants disconnected smoke detectors	214.05
Cleaning	Unit not left clean	300.00
Carpet cleaning	Stairs filthy	183.75
Damage to sink and bathtub	Acid that eats stainless steel was dumped into sink and bathtub	4,900.00
Landscaping	Tenants failed to perform yard work	300.00
Loss of rent for October 2013	Unit damaged, filthy and un-rentable	1,000.00
Loss of rent for October 2013	Tenants did not give one month's notice to end tenancy	1,400.00
Loss of rent October 2013 through to February 1, 2014	Breach of fixed term tenancy	4,000.00

Swiffer replacement	Landlord provided new Swiffer to tenants which was left broken	30.00
Weed Eater replacement	Landlord provided tenants with new Weed Eater that was left damaged	60.00
Plants and grass seed	Plants and grass died	60.25
Sum of individual amounts claimed		$13,876.01

Below, I have summarized the parties' respective submissions concerning each item claimed by the landlord.

Unpaid Rent: $1,400.00 for additional occupant

The landlord submitted than in August 2013 she "had proof" that an "illegal" occupant was residing at the rental unit and that under the terms of the tenancy agreement, as reflected in the addendum, she was entitled to charge additional rent in the amount of $200.00 per month. The landlord calculated $1,400.00 as $200.00 due to her for the seven months of February 2013 through August 2013.

The landlord pointed to a term in an addendum in support of her position that she is entitled to rent of $1,400.00. The term in the addendum provided in the landlord's evidence package states, in part:

> The contract allows only the person/s named on the contract to be living at the rental residence. If any other unauthorized person/s are found/discovered to be living at the rental residence immediate eviction for all tenants is immediate and no damage deposit will be returned. If an agreement between all tenant and the Land Lord is reached an additional automatic $200.00 per person/s per month will be charged and back dated from the day the unauthorized person/s moved into the rental unit. A new one year contract will be drawn up.
>
> [reproduced as written]

The landlord testified that tenant FP informed the landlord August 11, 2013 that the tenants would enter into another tenancy agreement to include the additional occupant as a tenant. The landlord stated that she prepared a new tenancy agreement but then the tenants reneged on the agreement and would not sign it. The landlord testified that in response to the tenants' refusal to enter into a new tenancy agreement, she served the tenants with a 1 Month Notice to End Tenancy for Cause on August 15, 2013 due to

the tenants having an additional occupant which was in breach of the tenancy agreement.

The landlord then issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated August 1, 2013 with a stated effective date of September 15, 2013. The Notice indicates the tenants failed to pay rent of $1,400.00 on August 1, 2013 with a notation added by the landlord stating: “Illegal tenant – non payment of rent”. Both parties provided consistent testimony that this Notice was given to the tenants at the end of August 2013.

The above described 10 Day Notice was the Notice the tenants filed to dispute by way of their Application for Dispute Resolution. The tenants also indicated they wished to dispute most of the landlord’s testimony and stated that their copy of the addendum is different than that put forth by the landlord. The landlord acknowledged that it was possible there were two different versions of the addendum.

I determined it was not necessary to hear further from the tenants with respect to this matter as, based upon the landlord’s own submissions, I found the landlord was not entitled to the unpaid rent for an unauthorized occupant, as she was claiming. I orally gave my reasons for this finding during the hearing and have provided my reasons in the analysis section of the decision.

Keys: $27.96

In her written submission, the landlord claimed that “the tenant’s stole the house keys”. The landlord testified that three sets of keys were given to the tenants including keys for the front door and the back door. At the end of the tenancy only two front door keys were returned. The landlord provided a receipt from Home Depot showing the purchase of two deadbolts for $27.96 on September 29, 2013.

The tenants acknowledged that at the time of moving out one key for the front door was not returned. The tenants claimed that calls to the landlord were made in an attempt to return the key at a later time but those calls went unanswered. The tenants testified that the keys for the back door did not work and that they had given those keys to GC who was acting on behalf of the landlord.

The landlord acknowledged that GC acted on her behalf at the end of the tenancy while she waited in GC’s vehicle.

Range hood and smoke detectors: $214.05

The landlord submitted that the tenants were provided with a new black range hood at the beginning of the tenancy (to match the new black range) and that at the end of the tenancy the black hood range was missing and in its place was a white one that was poorly installed. The landlord also submitted that the tenants removed the smoke detectors and that her electrician would have to come to re-install the smoke detectors.

The landlord testified that the same electrical company that installed the new black range hood had sold the range hood to her. However, the invoice presented to me did not indicate the sale of a range hood to the landlord, only the labour to install a new range hood. The invoice does not describe the make, model, colour or serial number of the range hood installed. The landlord did not present a copy of any other receipt or invoice showing the purchase of a range hood.

The tenants denied removing a range hood and submitted that the one they were provided at the start of the tenancy was white. The tenants acknowledged that the smoke detectors were disconnected during the tenancy but that they reconnected them by the end of the tenancy.

During the hearing, the landlord acknowledged that on October 20, 2013 the electrician returned to the property and made sure the smoke detectors were working for which she was not charged anything.

Cleaning: $300.00

In her written submissions, the landlord submitted that the tenants left the unit filthy and that it took three days to clean the house. The landlord stated that she had photographs to show that the tenants left the unit a “disgusting disaster”. The landlord also pointed to a document that she states is a bill from a cleaning lady in the amount of $300.00. Upon review of that document I note that it is entitled “Estimate” and indicates a total of 10 hours on specific dates of September 29, 2013, September 30, 2013 and October 1, 2013 at $30.00 per hour. The document is not dated and it was uncertain as to whether the cleaning lady was providing an estimate or had done the work. The landlord did not present any proof of payment of $300.00.

In one picture of the bathroom sink faucet, the landlord alleged there is evidence of paint or acid on the faucet. The tenant responded by stating it was toothpaste. The tenant also stated that the landlord took photographs during the tenancy, after a flood, and that the photographs do not depict how the rental unit looked at the end of the tenancy.

The tenants submitted that they left the house tidy but acknowledged that they did not thoroughly clean the bathroom or window sills since the landlord insisted they be out on September 29, 2013 despite paying rent for the month of September 2013. The tenants were of the position they were entitled to possession of the unit until September 30, 2013; however, the landlord was threatening to call the police and child protective services if they did not leave by September 29, 2013. The landlord responded by stating she was entitled to regain possession of the rental unit on September 29, 2013 since the tenants' rent payments were due on the "last day of the month".

The tenants questioned the thoroughness of the landlord's cleaner since the window sills were not cleaned when they moved in.

Carpet cleaning: $183.75

The landlord submitted that new carpeting was installed on the stairs in March 2013 and that during the tenancy the carpet was not vacuumed since the tenant's "did not even own a vacuum cleaner so they left it all stained and filthy." The landlord pointed to an invoice dated October 2, 2013 from a carpet cleaning company in the amount of $183.75.

The tenants submitted that they do own a vacuum and that the stairs were vacuumed regularly. The tenant acknowledged there was one spot on the carpeting at the end of the tenancy.

Upon review of the carpet cleaning invoice I note that the charge for carpet cleaning was $32.50 plus tax and that the balance was for cleaning of laminate flooring.

Damage to sink and bathtub: $4,900.00

In her written submissions, the landlord asserted that "the tenants dumped some kind of acid that eats stainless steel and it destroyed the kitchen sink and the bathtub". The landlord asserted that the sink and bathtub would have to be replaced and obtained an estimate of $4,900.00.

During the hearing of November 28, 2013 the landlord stated that paint thinner was likely poured down the sink and bathtub since a container of paint thinner was found under the sink and tenant FP paints cultural art. The landlord asserted that the substance took the "enamel" off the bathtub and that the caulking was "shredded".

During the hearing of November 28, 2013 the landlord indicated that the replacement of the bathtub was underway but not yet completed.

During the hearing of February 25, 2014 the landlord stated the bathtub had been replaced and she called the plumber (CB) to testify. The plumber testified that his plumbing company removed the “one-piece” bathtub and surround and cleared the drains in the kitchen and bathroom sink.

The plumber testified that he took apart the pipes under the kitchen sink and found them partially plugged with usual things found in a sink drain: bits of food and hair but that in this debris were signs of paint going into the drains. The plumber stated that the drain pipes were not plugged by paint. The cost of this work was $390.48

The plumber testified that the old fibreglass bathtub and surround was removed and replaced with a new gel coat acrylic tub at a cost of $2,269.10 including a new P-trap. While removing the old P-trap the plumber found a whitish material that could be paint. The plumber estimated the age of the fibreglass bathtub as being approximately 5 years old and testified that it was discoloured by the drain. The plumber attributed the staining due to lack of cleaning, abuse, and lack of maintenance.

The plumber acknowledged that he had never seen the bathtub before he was called to replace it in November 2013 and that he could not attest to when the staining occurred.

The landlord testified that in addition to the plumber’s invoice, the landlord had to pay for new drywall where the fibreglass surround had been and that this cost $1,200.00.

The tenants denied pouring acid or paint thinner down the drains since the tenant FP does not use paint thinner for his acrylic paint brushes, explaining they are cleaned with water only. FP testified that he paints native art approximately once every 3 weeks. The tenants were aware of a container of paint thinner in the rental unit but stated that it was there when they were given possession of the unit. Shortly before the tenancy began the unit had been painted so the tenants assumed it was left over from the painting project.

The pictures provided with the landlord’s evidence binder showed several images of a bathtub, where the bathtub and matching wall surround meet, including caulking that appeared to be white caulking with pink water stains. The pictures provided to me did not include the bottom of the bathtub and do not depict “shredded” caulking.

Landscaping: $300.00

The landlord submitted that during the tenancy, in May and June 2013, the landlord paid to have landscaping done at the property. The tenants were obligated to maintain the landscaping and they neglected to do so resulting in overgrown grass and dead plants.

The landlord pointed to the “estimate” prepared by GC as proof of the landlord’s loss. Under the title “Lawns and Gardens” the estimate provides for a charge of “$300.00 weed and feed included.” The estimate also states “You will have to buy your own trees and shrubs to be replanted in the gardens.”

The landlord also pointed to the addendum as a description of the tenants’ obligations with respect to yard maintenance. The tenants stated that the term was different than the addendum they were provided but nevertheless their addendum did require the tenants to perform yard maintenance.

The tenants submitted that during the tenancy the landlord verbally informed them that she would have a woman come periodically to maintain the yard; however, the woman wanted to enter the unit to access the backyard without advance notice to the tenants. The landlord acknowledged that she did ask a woman to maintain the yard but claims the tenants denied her access.

Loss of Rent: $1,000.00, $1,400.00 and $4,000.00 claimed

The landlord requested three different amounts for loss of rent but in doing so the month of October 2013 was triple counted. During the hearing, the landlord testified that she was able to re-rent the unit starting November 1, 2013 but that she gave the new tenant a rent reduction of $300.00 to reflect the state of the bathroom since it was undergoing repairs. Therefore, I considered the landlord’s claim for loss of rent for the month of October 2013 in the amount $1,000.00 and $300.00 for the month of November 2013.

Although the landlord repeatedly referred to the tenants as having “abandoned” the rental unit, I heard from the landlord that she served them with two Notices to End Tenancy, and tenant MJ had provided the landlord with a letter in September 2013 confirming they would be leaving the rental unit. The landlord submitted that shortly after receiving the tenant’s letter of September 10, 2013 she placed an advertisement for an open house for purposes of re-renting the unit, to be held on September 29, 2013. However, the landlord cancelled the open house. By way of her written submissions, the landlord attributes the loss of rent to the tenants leaving the unit damaged, in a “filthy state” and that it was un-rentable.

The tenants denied that the rental unit was left damaged, filthy and disgusting as alleged by the landlord and that they moved out because the landlord kept telling them to get out. As such, the tenants do not accept responsibility for loss of rent for October 2013. The tenants also denied responsibility for the bathtub replacement meaning they do not accept responsibility to pay for loss of rent for November 2013.

Swiffer replacement: $30.00
The landlord submitted that she gave the tenants a new swiffer to use to clean the laminate floors and that she found the handle broken when she regained possession of the rental unit. The landlord testified that she would expect a swiffer to last at least one year.

The tenants denied breaking the handle of the Swiffer.

Weed Eater: $60.00
The landlord submitted that she gave the tenants a "brand new" Weed Eater to use to cut the grass but then changed her testimony to say it had been used once before. At the end of the tenancy the landlord found the weed eater with broken or bent blades.

The tenants testified that the Weed Eater they were provided was not new and that it was still working at the end of their tenancy.

Plants and grass seed: $60.25
The landlord submitted that the cost to replace dead plants and grass to be $60.25. the landlord is of the position the tenants are responsible for paying for replacement of these items since they neglected their yard maintenance obligations.

The tenants were of the position that plants and grass die as a normal part of their life cycle and they are not responsible for this expense.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the landlord bears the burden in this case. The burden of proof is based on the balance of probabilities. Where one party provides a version of events in

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

Upon consideration of the submissions presented to me and evidence that was accepted, as described earlier in this decision, I provide the following findings and reasons with respect to each of the landlord's claims.

Unpaid Rent: $1,400.00 for additional occupant

Under the Act, a landlord may require tenants to pay additional rent if the tenancy agreement provides for additional rent due to additional occupants. If I were to accept the addendum that the landlord presented as evidence, the tenants were expressly prohibited from having another occupant. The landlord's version of the addendum provides two remedies where there is an additional occupant: 1) eviction or 2) acceptance of the additional occupant and the creation of a new tenancy agreement to include the additional occupant as a tenant and an increase in rent by $200.00 per month. Based upon the landlord's submission, the tenants refused to enter into a new tenancy agreement and the landlord issued a 1 Month Notice to End Tenancy for Cause on August 15, 2013 due to a breach of this term. Based upon the landlord's own submission, I find she utilized a remedy available to her, which was eviction, since the tenants did not agree to execute a new tenancy agreement. Since the landlord proceeded to evict, she is not entitled to additional rent. Therefore, this portion of the landlord's claim is dismissed.

Since I have found the landlord was not entitled to additional rent of $1,400.00, I find the landlord was not legally entitled to issue the 10 Day Notice to End Tenancy for Unpaid Rent that was served upon the tenants and disputed by the tenants. Therefore, I order the landlord to compensate the tenants the $50.00 they paid for their Application for Dispute Resolution to dispute the 10 Day Notice.

Keys: $27.96

The Act requires tenants to return all keys or means of access to the landlord at the end of the tenancy. In this case, the tenants acknowledged failure to return one key when they returned possession of the rental unit to the landlord. I found the disputed testimony insufficient to conclude keys for the other door were not returned to GC as submitted by the tenants. Therefore, I grant the landlord's claim, in part, to reflect the cost of one of the new deadbolts she purchased on September 29, 2013. The landlord is awarded $13.98.

Range hood and smoke detectors: $214.05

The parties were in dispute as to whether the tenants were provided a black or a white range hood at the beginning of the tenancy. The invoice for installation of a range hood does not provide any indication as to the make, model, serial number or colour of the range hood installed. The landlord did not provide a receipt or invoice for purchase of the range hood. Nor, was there a move-in inspection report or photographs showing the range hood supplied at the beginning of the tenancy in the evidence binder. Thus, I have been left with disputed verbal testimony to decide this matter and since the landlord has the burden of proof I find this burden has not been met.

I also note that the amount claimed by the landlord includes other labour provided by the electrician that was unrelated to the range hood. Furthermore, the landlord acknowledged during the hearing that the electrician did not charge for making sure the smoke detectors were functional after this tenancy ended. Therefore, I find the invoice provided does not verify her loss, if any.

Therefore, I find the landlord failed to prove all of the criteria for establishing an entitlement to a monetary award and I dismiss this portion of her claim.

Cleaning: $300.00

Tenants are required to leave a rental unit “reasonably clean” at the end of the tenancy. This requirement is not dependent upon the level of cleanliness at the beginning of the tenancy. Rather, if there are issues with the state of cleanliness at the start of the tenancy, the tenant should raise those issues with the landlord at that time.

Upon review of the landlord’s photographs, and the tenants’ admission that further cleaning was required in some areas, I find the landlord entitled to compensation for cleaning: the window sill, the oven, and the bathroom. I find the “estimate” provided by the cleaning lady lacking sufficient detail and the hourly rate of $30.00 for cleaning services to be excessive. Therefore, I find it reasonable to provide the landlord with an award of $150.00 based upon based upon the photographs provided.

Carpet cleaning: $183.75

I accept that the stairs required cleaning at the end of the tenancy based upon the tenant’s admission that there was a spot on the carpet. However, I limit the award to the amount reflected on the invoice for carpet cleaning which was $32.50 plus tax, or $34.13

Damage to sink and bathtub: $4,900.00

I was provided disputed submissions that the tenant's actions resulted in the need to replace the bathtub and surround. In considering this claim I have noted that the landlord provided various and inconsistent submissions regarding the damage to the bathtub, such as:

- In her written submission, the landlord claims the tenants poured acid "that eats stainless steel" as being the reason for the bathtub replacement.
- During the hearing, the landlord claimed the calking was "shredded"; yet, the photographs provided in the binder do not depict shredding. Rather, I see evidence of poorly applied or old caulking.
- During the hearing, the landlord claimed that a corrosive substance took the "enamel" off the bathtub even though the bathtub was fibreglass according to the plumber.
- The plumber testified that he removed a one-piece bathtub and surround; whereas, the photographs provided by the landlord depict a two-piece bathtub and surround with caulking between the two pieces.
- The plumber testified that when he viewed the bathtub in November 2013 the bottom of the bathtub near the drain was stained; yet, the landlord did not include photographs of the bottom of the bathtub and the rental unit had been re-rented to another tenant by the time the plumber saw the bathtub.

Given the above described inconsistencies in the landlord's submissions and the lack of condition inspection reports, I find the landlord did not satisfy me that the tenants are responsible for damaging the bathtub. Nor, did the landlord present sufficient evidence that the sink was damaged by the tenants or that the landlord incurred a loss as a result. Therefore, I dismiss this portion of the landlord's claim.

Landscaping: $300.00

The parties provided different versions of events with respect to landscaping requirements as the parties had two different versions of the addendum. Therefore, I have applied the yard maintenance requirements as provided in Residential Tenancy Policy Guideline 1. Under the policy guidelines, a tenant is responsible for a reasonable level of basic maintenance where the tenant has exclusive use of the area. Therefore, I find the tenants were obligated to perform some basic maintenance of the backyard.

The photographs provide in the evidence binder depict the presence of many weeds in the grass and some over-grown shrubs. A tenant is not responsible for removing weeds from grass or trimming shrubs.

The landlord pointed to an estimate to substantiate her claim to recover landscaping costs from the tenants; however, I find the estimate she relied upon provides insufficient particulars to conclude the estimate relates to damage or neglect for which the tenants are responsible as opposed to maintenance that a landlord is responsible for performing. Given the very vague statement on the estimate that GC would provide "Lawns and Gardens" services, "including weed and feed", I find the landlord has failed to show an entitlement to recovery $300.00 from the tenants. Therefore, I dismiss this portion of the landlord's claim.

Loss of Rent

Despite the landlord's repeated assertions that the tenants abandoned the rental unit, I find her position inconsistent with her own testimony. The landlord had testified that she served two Notices to End Tenancy upon the tenants and had received a letter from tenant MJ confirming the tenants were leaving and the landlord was at the property when the tenants moved out. The landlord even posted an advertisement shortly after receiving the letter from MJ. Therefore, I found the landlord's position regarding abandonment baffling.

With respect to the landlord's assertion that she suffered a loss of rent for the month of October 2013 and November 2013 due to the tenant's leaving the rental unit damaged and "in a filthy state" I find the landlord's evidence has not supported that position. Rather, the landlord merely established that the tenants left the unit in need of some cleaning and I find this cleaning could have been performed in a few hours. Therefore, I deny the landlord's claim for loss of rent.

Swiffer and Weed Eater: $30.00 and $60.00

The parties provided disputed verbal testimony as to whether the tenants damaged these items. The landlord did not provide evidence as to the value of these items or date of purchase. The landlord did not indicate the landlord was providing the tenants with use of these items in the tenancy agreement; thus, the landlord has not established a violation of the tenancy agreement. For all of these reasons, I dismiss these portions of the landlord's claim.

Plants and grass seed: $60.25

I find the tenants provided a reasonable position that plants and grass die from time to time as part of their life cycle. I find the landlord failed to provide sufficient evidence that

the need to purchase grass seed and plants is due to damage or negligent actions of the tenants. Therefore, this portion of the landlord's claim is dismissed.

Filing fee

Given the very limit success in the landlord's monetary claim, I make no award for recovery of the filing fee she paid. I have awarded recovery of the filing fee the tenants paid for this Application for Dispute Resolution as indicated earlier in this decision since I found the landlord was not in a position to require payment of $1,400.00 in rent.

Monetary Order

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Keys	$ 13.98
Cleaning	150.00
Carpet cleaning	34.13
Sub-total	$198.11
Less: filing fee awarded to tenants	(50.00)
Monetary Order	$148.11

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided a Monetary Order in the net amount of $148.11 to serve upon the tenants and enforce as necessary.

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: March 25, 2014

Residential Tenancy Branch