Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: MND, MNR, MNSD, MNDC, FF
Tenant's Application: MNSD, MNDC, FF

Introduction

This proceeding dealt with cross applications. The landlord applied for a Monetary Order for damage to the rental unit or property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for return of double the security deposit. The hearing was held over several hours involving multiple hearing dates and written submissions. Both parties appeared or were represented at each hearing date and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

At the original hearing date of November 12, 2013 I determined that the tenant had not been served with the landlord's amended application in a manner that complies with the Act. Although the tenant received the amended application he indicated he had insufficient time to prepare a response to the landlord's amended claims. I ordered the hearing adjourned and instructed the tenant to serve his submissions and evidence upon the landlord and the Branch.

During the period of adjournment, on December 31, 2013, the tenant filed his own Application for Dispute Resolution. That application was set to be heard on April 16, 2014 since the scheduler may not join a new application with a proceeding that has already commenced. At the reconvened hearing of January 9, 2014 the tenant requested that his application be joined and heard along with the landlord's application. I granted the request as I was satisfied both applications involved the same parties, the same rental premises, and some of the same facts would have to be determined under both applications.

At the outset of the January 9, 2014 hearing the landlord's agent objected to the tenant's father representing the tenant. The landlord's agent stated that she had felt harassed by the tenant's father when he attended her personal residence and remained on her property for a considerable period of time in an effort to serve her with the tenant's Application for Dispute

Resolution. The landlord's agent found the decision to attend her personal residence especially troubling since the landlord had provided the tenant with a post office box as a service address. I noted that submissions provided by the tenant indicated the tenant's father had not only attended the landlord's personal residence but the landlord's personal residence and remaining at the property for some time rather than using the post office box provided by the landlord for service. In response to the landlord's agent's concerns, I indicated that I would permit the tenant's father to represent the tenant during the hearing on the condition he conduct himself in a professional, respectful, non-intimidating fashion. The tenant's father indicated he would comply with my instructions and he was permitted to represent the tenant throughout the hearing.

After the landlord's agent presented the landlord's case on January 9, 2014, the tenant's representative began questioning of the agent. The representative's questioning was very time consuming and the relevancy of the questions was set out beforehand or obvious. After several hours of hearing time I adjourned the proceeding. I instructed the tenant's representative to prepare to make submissions in the most succinct and concise manner possible at the reconvened hearing.

The hearing reconvened on March 11, 2014 during which time the tenant's representative continued to challenge nearly every facet of the landlord's claim and even attempted to dispute a portion of the claim that the tenant was willing to take responsibility for. Despite another three hours of hearing time, the proceeding was adjourned once again and the parties were instructed to provide any remaining issues or summaries to me by way of brief written submissions, including proof of service upon the other party. The date of May 13, 2014 was set aside for consideration of the final written submissions.

I have accepted and considered all written submissions and evidence provided by both parties, and applied appropriate weight to the evidence in making this decision. It should be noted that the tenant's evidence included documents that were identified as "affidavits". However, the landlord's agent objected to their inclusion since they were not signed by a commissioner for taking affidavits. I noted the "affidavits" provided to me appeared to be signed by a commissioner. The tenant explained that multiple copies were signed by the person making the statements but the commissioner only signed one copy, which was the copy sent to me. The landlord's agent maintained her objection, stating that do so is improper on many fronts.

Although I heard many hours of submissions, testimony and questioning, in addition to considering written submissions, documentary and photographic evidence, this decision reflects the parties' respective positions in summary form where possible.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed, as reflected on the landlord's amended application?

2. Is the tenant entitled to doubling of the security deposit?

Background and Evidence

The landlord's agent and a tenant (referred to be initials JH) entered into a tenancy that commenced May 1, 2011 and was set to expire May 1, 2013. The tenancy agreement indicates that rent of $3,500.00 was payable on the 1st day of every month and receipt of a $1,750.00 security deposit. A move-in inspection report was prepared and given to JH at the start of the tenancy although the format used is non-compliant with the requirements set out in the Residential Tenancy Regulations.

In 2012 JH informed the landlord that he wanted to move out of the rental unit but suggested another occupant residing at the property (the tenant) would take over the tenancy. On October 2, 2012 the tenant signed and initialled the tenancy agreement originally signed by JH. The tenant and the landlord's agent also signed an "addendum" dated October 1, 2012 reflecting 15 additional terms and the statement "I assume the house in good condition". An inspection did not take place, nor was an inspection report prepared on October 1 or 2, 2012 since the house was not vacant. The matter of the security deposit paid by JH was dealt with by JH and the tenant directly

. The tenant resided at the rental unit and paid rent up to and including August 31, 2013.A move-out inspection was performed and an inspection report was prepared by the landlord's agent and the tenant's agent on September 14, 2013. The keys were also returned to the landlord on September 14, 2013.

The tenant submitted that he was prepared to send an agent to participate in the move-out inspection and return the keys to the landlord on August 31, 2013 but the landlord was not agreeable to an agent appearing on behalf of the tenant. Only after the landlord issued a Notice of Final Opportunity to Schedule a Condition Inspection for September 14, 2014 and the tenant pointed out to her that he could be represented by an agent did the landlord did cease resisting his use of an agent. The landlord responded by stating the tenant had informed her that he had collected the keys to the rental unit meaning the proposed agent did not have the keys. A letter written by the landlord's agent on August 28, 2013 and an email written by the landlord's agent on September 2, 2013 show the landlord's agent would only do the "check out" with the tenant.

The parties were in dispute as to whether the tenancy entered into with JH was assigned to the tenant or whether a new tenancy formed in October 2012. The tenant's representative argued that a new tenancy formed as an assignment requires the agreement of all parties, including JH, and JH's signature acknowledging agreement to an assignment is absent from the documentation signed on October 2, 2012. The tenant's representative took the position that JH's tenancy ended by way of abandonment and pointed out that the addendum dated October 1, 2012 indicates the landlord "will rent the premises" to the tenant as opposed to describing an assignment.

The landlord's agent argued the tenancy was assigned and explained that JH indicated the tenant would be taking over the tenancy and in speaking with the tenant, the tenant wanted to take over the tenancy. The landlord's agent submitted that she presented the tenancy agreement and discussed the terms with the tenant before he signed the agreement. The landlord's agent was of the position that JH left town without first meeting with the landlord to sign the documentation; however, all of the affected parties had a meeting of the minds as to assignment of the tenancy.

Landlord's Application

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid and/or Loss of Rent: $10,500.00

The landlord is seeking unpaid and/or loss of rent for September 2013 due to insufficient notice to end tenancy as of August 31, 2013. The landlord began efforts to advertise the rental unit starting August 18, 2013 in recognition of the proper written notice to end tenancy that was mailed to the landlord on August 14, 2013. Despite several showings of the property in August 2013 the landlord was unsuccessful in re-renting the unit for September 2013. The landlord's agent attributed the unkempt condition of the yard and smell of marijuana as the main reasons prospective tenants were not interested in renting the property.

The landlord is also seeking to recover loss of rent for the months of October 2013 and November 2013 as the unit remained vacant due to the condition it was left by the tenant. The landlord's agent submitted that cleaning, repairs, and yard work were underway in September and October 2013. Then, a plumbing leak occurred in November 2013 necessitating further repairs involving the kitchen countertop and laundry room. The landlord's agent was of the position the tenant was negligent in not informing the landlord that there was a plumbing leak. The landlord's agent acknowledged that as at the time of the hearing the house remains vacant.

The tenant submitted he was not obligated to pay for rent for September 2013 as he made several attempts in July 2013 to communicate to the landlord that he intended to end the tenancy as of August 31, 2013. The tenant was of the position that an occupant of the house delivered to the landlord a copy of his signed notice to end tenancy on July 31, 2013 when she delivered the rent for August 2013. Further, the emails show that the parties' were in agreement that the tenancy would end as of August 31, 2013 given the landlord's agent agreed that she would advertise for new tenants and wanted to schedule the move-out inspection for August 31, 2013.

The landlord submitted that the occupant delivered a notice to end tenancy on August 1, 2013 as evidenced by the rent cheque and receipt issued for cash received, both of which are dated August 1, 2013. The landlord also submitted that the document delivered to her on August 1,

2013 did not include an original signature of the tenant but only a copy. As such, the landlord did not accept it as proper notice and required the tenant to give a proper notice. The tenant accommodated the landlord's request and issued another notice to end tenancy on August 8, 2013 with an original signature which was then mailed to the landlord on August 14, 2013 as evidenced by the post-mark on the envelope. The landlord attempted to find new tenants and schedule the move-out inspection for August 31, 2013 in an attempt to mitigate losses.

The tenant submitted that the landlord's agent's allegations that the rental unit required a significant amount of cleaning, repairs, and yard work due to the tenant's actions or neglect are largely unfounded and the landlord does not have sufficient grounds to hold the tenant responsible for loss of rent for October and November 2013. The tenant pointed out that prior to the tenancy entered into by JH the rental unit had been vacant for nearly a year. The current vacant status also points to the vacancy being attributable to the landlord's decision over which the tenant has no control rather than the condition it was left by the tenant.

Cleaning and Damage: $4,658.33

Spraying and removal of weeds: $424.04

The landlord's agent submitted that the tenant permitted weeds, namely morning glory, to grow on the house and throughout the yard. The landlord's agent submitted that allowing morning glory to grow is damaging to the house as it gets into cracks. The morning glory was so extensive that treatment entailed spaying of a herbicide on September 18, 2013 and physical removal on September 26, 2013. The landlord holds the tenant responsible for this cost because the tenant was responsible for mowing the lawn and weeding as reflected in the addendum. Further, the landlord's agent claimed that she asked the tenant on a number of occasions to comply with his obligation to perform yard work after noticing how out of control the weeds were in May or June 2013. In support of her position, the landlord provided several photographs taken August 26, 2013 that depict a significant invasion of morning glory on the house and throughout the yard. The landlord's evidence also included an invoice in the amount of $183.75 for weed spraying on September 18, 2013 and weed removal performed on September 26, 2013; and, an estimate for $375.00 for spraying and removal. The landlord's evidence also included an invoice for "gardening" for 4.5 hours on September 26, 2013 in the amount of $424.04 and copy of the cheque issued for this invoice.

The tenant submitted that the yard was essentially mowed weeds as seen in photographs taken April 27, 2011. The tenant had a gardener look at the yard near the end of the tenancy and determined it would cost approximately $2,000.00 to rectify the weed situation so all he could do was trim the weeds. The tenant pointed to photographs taken August 31, 2013 as evidence as to how the yard looked at the end of the tenancy in contrast to the landlord's photographs that were taken before the yard work was done by the tenant or others.

The landlord's agent acknowledged that the tenant's photographs of August 31, 2013 provide a fair representation of how the property looked on August 31, 2013 and demonstrate that there almost no grass left in the yard. The landlord explained that her photographs demonstrate how

the tenant permitted the weeds to become invasive during the tenancy which in turn necessitated more aggressive treatment to bring the morning glory under control.

The tenant submitted that he was unaware that morning glory was a weed until late in the tenancy. He had considered it a vine and did not cut it earlier, thinking it was a feature of the property.

Cleaning: $150.00

The landlord's agent submitted that the tenant left the rental unit dirty and in particular: the stove, fridge, flooring, kitchen cupboards, and bathroom grout, among other things required cleaning. The landlord paid a cleaner $100.00 for cleaning performed on September 11, 14 and 15, 2013. The receipt for $100.00 indicates that further cleaning was required. The cleaner returned on October 21, 2013 and performed more cleaning to the baseboards, laundry room, among other places for which the landlord paid $50.00. The landlord's agent also submitted that she also cleaned for which she did not claim any compensation. In support of the landlord's position, the landlord provided the cleaning receipts and photographs taken on September 4, 2013.

The tenant submitted that the photographs provided by the landlord were taken before the end of the tenancy, on August 26, 2013; whereas the tenant's photographs were taken on August 31, 2013 and show a "reasonably clean" rental unit. The tenant conceded that the stove required additional cleaning. Further, since the landlord was making repairs, the landlord would have had to perform additional cleaning in October 2013.

The landlord responded by stating the tenant's photographs were blurred and do not show sufficient detail. As an example the landlord pointed to photographs of the damaged pedestal sink taken by her and by the tenant and in the tenant's photographs the damage is hardly noticeable. The landlord also pointed out that in the tenant's photographs the cupboard doors are closed so the dirt and grime inside the cupboards cannot be seen.

Plastering and painting: $722.75

The landlord is seeking compensation for the amount paid for patching nail holes and chips in the walls and gouges on the stairway most likely from moving furniture. In addition, walls were damaged where religious symbols had been installed on doorways, leaving damage when they were removed. Damage also included a crack above a shelf unit installed during the tenancy that had to be patched. After patching, the walls were painted; however, the landlord is only claiming the labour for painting since paint was supplied by the landlord. The landlord's agent submitted that the rental unit was last painted before the tenancy began in 2011.

The tenant submitted that the photographs and move-out inspection report do not indicate damage that would necessitate $722.75 worth of repairs. Further, the landlord's claim includes normal wear and tear that is to be expected from hanging artwork and maintenance issues that would cause cracks in the walls. As an example, the tenant's representative pointed to a

photograph of the crack above the shelf unit installed during the tenancy and suggested that this was the result of the house settling.

The tenant also submitted that the walls at the end of the tenancy were in the same condition as when his tenancy started in October 2012 and that he is not responsible for damage caused during JH's tenancy.

The tenant submitted that the contractor's invoice also includes charges for fixing leaking plumbing fixtures and suggested that it is not possible to split out a value for repairs for which the tenant may be responsible.

Pedestal sink: $112.34
The landlord claimed compensation for a broken pedestal sink damaged during the tenancy. The tenant agreed to compensate the landlord for this damage.

Missing screens: $803.25
The landlord's agent submitted that at the end of the tenancy most of the window screens were missing. The original screen had been made by the landlord in the past but the landlord is not in a position to remake the screens. As such, the landlord acquired new screens from a home improvement retail store. The landlord's agent submitted that when she asked the tenant about removal of the window screens his response was that they were removed because they were removable. The landlord provided a copy of the purchase order and documentation showing the screens were installed October 1, 2013; however, these documents do not indicate how many screens were purchased and installed.

The tenant submitted that there were only three windows that had screens and that the three screens were left in the laundry room at the end of the tenancy. The tenant also pointed out that the move-out inspection report does not indicate there were window screens present. The tenant included photographs of the property taken in 2011 that depict windows without screens.

The landlord stated that only one window screen was found in the laundry room. With respect to the photographs taken in 2011 the landlord stated that window screens are hard to see in photographs.

Kitchen countertop: $622.21
The landlord's agent submitted that a new kitchen countertop had been installed in 2010 with a 25 year limited warranty. At the end of the tenancy the countertop had several knife cuts; was swollen near the sink; and, the edge had been ripped away. The warranty was void due to damage to the countertop, in particular the knife cuts that the supplier considered excessive. The landlord provided a copy of the purchase order dated September 30, 2013 showing the purchase of a new countertop, plus labour to install for the total amount of $622.21.

The tenant submitted that he could not see knife cuts or swelling in the landlord's photographs. The tenant submitted that the countertop was on a slope due to settling of the house and that any water on the countertop ran toward the outer edges. Further, the chipping at the edge of the countertop and other damage was present before his tenancy commenced in October 2012 for which he is not responsible.

The landlord responded by stating the knife cuts are hard to see in the photographs but that they are described on the move-out inspection report. The landlord denied the countertop or the house was sloping and pointed out that the tenant's own photographs show the swelling on the front edge of the countertop. The landlord testified that she had been in the house when JH was the tenant and the countertop damage was not observed by the landlord's agent. The tenant questioned whether the landlord's agent ever went into the kitchen during JH's tenancy. The landlord's agent stated she did. The landlord's agent also pointed to the addendum dated October 1, 2012 whereby the tenant acknowledged receipt of the property in good condition.

Keys cut: $6.70

The landlord had noticed unknown people coming and going from the rental unit in the latter part of August 2013 and the house was found vacant and unlocked on September 4, 2013. Nor, had the tenant returned the keys to the landlord by September 4, 2013. The landlord had a temporary lock installed to secure the property on September 4, 2013. More keys had to be cut for the temporary lock that was installed.

Dumping fees: $26.00

Garbage and abandoned property was found throughout the house and yard at the end of the tenancy. The landlord is seeking to recover this cost from the tenant. The tenant agreed to compensate the landlord for this portion of her claim.

Replacement locks: $206.04

The landlord purchased four new locks for the entry doors on September 26, 2013 because the tenant did not return all keys for the property. The landlord acknowledged that four sets of keys were returned on September 14, 2013 but that there were more than four occupants living at the property and several keys were found about the property. When the landlord enquired about the other keys those other occupants had the tenant's agent responded by saying only four keys were provided by the landlord so that only four keys would be returned to the landlord.

The tenant also stated there were random keys at the residential property but they did not work in the locks so they were left there. The tenant acknowledged that one set of keys were not returned to the landlord as there were five sets of keys at one time. The tenant claimed he knew the locks would be changed anyway so he was not overly concerned about returning the fifth set of keys to the landlord.

The tenant's representative questioned whether the landlord had new locks installed to which the landlord's agent acknowledged they had not yet been installed. The landlord's agent submitted that since all keys were not returned, new tenants would want new locks.

Carpet shampooing and wax removal: $585.00
The landlord had the carpets shampooed in the 10 rooms and two stairways, plus removal of wax in various locations in the rental unit on September 30, 2013. The landlord's agent submitted that the carpets were trampled, dirty and smelled of marijuana. The landlord provided an invoice indicating the carpet cleaner shampooed and deodorized the carpeting and removed candle wax on September 30, 2013.

The tenant acknowledged that wax was spilled on the carpeting and the tenant offered $50.00 as compensation for this. The tenant disputed that the carpets were cleaned by his roommates in late August 2013 while he was away. The tenant did not have receipts to demonstrate that his roommates had the carpets cleaned but stated he accepted their version of events. Further, the tenant took the position that since his tenancy was less than one year the tenant is not obligated to pay for carpet cleaning.

Carpet damage: $1,000.00
The landlord's agent submitted that the carpeting was new in 2010 and that at the end of the tenancy is was heavily worn beyond what would be considered reasonable wear and tear. The landlord's agent submitted the tenant hosted a number of community functions at the property on a frequent basis, resulting in numerous people in the house, as seen in photographs taken off the internet.

The tenant denied that the carpets were damaged beyond normal wear and tear. The tenant submitted that there were not as many gatherings at the rental unit as made out by the landlord since some of the photographs taken off the internet were not of the rental unit. Further, many of the gatherings took place in the yard.

Tenant's Application

The tenant is seeking return of double the security deposit on the basis the landlord extinguished her right to claim against it by failing to prepare condition inspection reports that comply with the requirements of the Act or Regulations or perform an inspection with the tenant when his tenancy formed in October 2012.

The landlord had filed her Application for Dispute Resolution seeking to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing and her claim included loss of rent due to inadequate notice to end tenancy on part of the tenant.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the Applications filed by both parties.

Landlord's Application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

I heard arguments from both parties with respect to October 2, 2012 being the date a tenancy formed with the tenant or an existing tenancy agreement was assigned to the tenant. I find it unnecessary to determine whether a new tenancy formed or there was an assignment as in either circumstance, the tenant is not responsible for damage prior to October 2, 2012.

I was provided disputed verbal testimony by the parties as to whether some of the landlord's claims for compensation involved damage that occurred prior to October 2, 2012.
Other evidence concerning the condition of the rental unit as of October 2, 2012 included the addendum signed by the tenant whereby the tenant acknowledges receiving the property "in good condition". The tenant submitted that he was naive and inexperienced as a tenant in signing that document; however, I found the tenant made intelligent and articulate submissions, and turned to his father, whom was a lawyer, in responding to this dispute. Therefore, I reject the tenant's suggestion that signing that document should not be given consideration.

In support of the tenant's position that some damage already existed as of October 2, 2013 the tenant provided "affidavits" from other occupants. I have give the "affidavits" little weight considering: the "affidavits" sent to the landlord were not signed by a commissioner for taking affidavits and because the persons allegedly making the statements contained in the "affidavits" were not called during the hearing to provide testimony that would be subject to further examination.

In light of the above, I find the addendum signed by the tenant in October 2011 tips the scales in favour of the landlord in finding that, on a balance of probabilities, the tenant acquired the property in good condition and the damage that existed at the end of the tenancy occurred during the period of October 2, 2012 to the end of the tenancy.

Also of consideration are the amounts claimed by the landlord for replacement of certain building components. Since awards for damages are intended to be restorative, where a landlord has to replace a damaged building element due to damage caused by the tenant, it is often appropriate to reduce the replacement cost by the depreciation of the original item. In making an award for a damaged item, I have reduced the claim by depreciation. To determine the estimated depreciation of the item replaced, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

Below, I have analyzed each component of the landlord's claims taking into account all of the above factors and I provide the following findings.

Spraying and removal of weeds

The addendum signed by the tenant on October 2, 2012 provides that the tenant is required to keep weeds off the house and was responsible for mowing of the grass.

The Act provides that "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." With respect to this obligation, Residential Tenancy Policy Guideline 1 provides that where the tenant rents a single family dwelling, or a multi-family dwelling with exclusive use of the yard, the tenant shall is responsible for "routine yard maintenance". Examples of routine yard maintenance include grass cutting, snow clearing, and a reasonable amount of weeding.

The photographs taken in August 2013 show an extreme overgrowth of morning glory and other weeds on both the house and in the yard. Since the yard was for exclusive use by the tenant and persons he permitted on the property, I find the tenant violated the terms of his tenancy agreement and the Act with respect to maintenance of the yard.

I reject the tenant's submission that he was unaware that morning glory was a weed and thought it was a vine as a position a reasonable person would take given its voracious growth rate and tendency to grow on anything in its path, including the handrails and siding of the house, and structures in the yard itself. Certainly, it appears the tenant made no attempt to enquire with the landlord as to what to do with such growth. Whereas, I am satisfied the landlord made efforts to advise the tenant to maintain the yard.

Although much of the weeds were trimmed back by the tenant or others on August 31, 2013 I find the extreme overgrowth of weeds permitted the weeds to take greater hold and choke off the grass that had been there before the weeds were permitted to take hold.

Upon review of the photographs taken earlier in the tenancy and the fact the landlord had included a term in the addendum requiring the tenant to keep the weeds off of the house, I am satisfied the morning glory existed prior to October 2012. Therefore, I find the extensive invasion of morning glory at the end of the tenancy was most likely the result of both the pre-existence of morning glory and the tenant permitting the morning glory to grow unabated for a significant period of time.

Given the likely pre-existence of the morning glory, I limit the tenant's liability for weed spraying and weed removal to 50%. Although the landlord claimed $424.04 against the tenant the invoice that supports this amount merely describes the services performed as "gardening" which I find is vague and may include activities unrelated to weed spraying and removal especially when I consider the same company provided another invoice specifically describing weed spraying and removal. Therefore, I award the landlord $91.88 which is 50% of the invoice for $183.75 that specifically provides for weed spraying and removal.

Cleaning

The Act requires that every tenant must leave a rental unit reasonably clean at the end of the tenancy. The landlord provided photographs that demonstrate a unit that was not left reasonably clean, including the stove which the tenant acknowledged required additional cleaning. I find the landlord's photographs offer greater detail than those provided by the tenant and I prefer the landlord's photographs in determining that additional cleaning was required. I also find the landlord's position is supported by the cleaner's receipt which described the cleaning activity that took place in September 2013. The cleaner's receipt also indicated that further cleaning was required. Finally, I find the landlord's claim of $150.00 is very modest given her photographic evidence and the landlord's agent did not include her own labour. Therefore, I find the landlord is entitled to recover $150.00 from the tenant for cleaning and I award that amount to the landlord.

Plastering and painting

The Act provides that a tenant is responsible for repairing damage to the property caused by the tenant, or a person permitted on the property by the tenant. The Act provides that reasonable wear and tear is not damage.

Upon review of the photographs, I accept that there was some damage to the walls that exceed wear and tear at the end of the tenancy, such as: the crack to the drywall corner bead due to installation of a shelf unit, the numerous hooks and tape applications to the walls, the gouges on the chimney wall and stairwell; and, gouges to the window trim.

Although the tenant argued that some of this damage pre-dated the start of his tenancy in October 2012 for reasons given previously, I find the damage likely occurred after the tenant's tenancy commenced or after the assignment.

I find the difficulty with the landlord's claim is the verification of the loss. I find the invoice provided in support of this claim includes other items that I cannot attribute to damage caused by the tenant, such as removal of caulking and repair of leaking plumbing fixtures.

In these circumstances, I find it appropriate and just to estimate the damage for which the tenant is responsible based upon the landlord's photographs. Considering wall and trim repairs

often require multiple steps to apply filler, sand, prime and paint I award the landlord $400.00 for wall and trim damage.

Pedestal sink
Since the tenant was agreeable to this portion of the landlord's claim I grant the landlord's request for $112.34.

Missing screens
The parties were in dispute as to how many screens were provided at the start of the tenancy. In turning to the move-in inspection report I note the report is silent as to the provision of screens. Nor, did the landlord provide other evidence to demonstrate there were screens on all of the windows or the age of the screens.

I deny the landlord's request for compensation for new screens as I find the landlord did not prove screens were provided on all of the windows and because the claim does not include any allowance for depreciation of the former screens.

Kitchen countertop
Based upon the landlord's photographs, I accept that the countertops were significantly damaged at the end of the tenancy. I reject the tenant's position that the swelling was caused by a slope as a far-reaching theory. I find it reasonable to expect that if the tenant noticed water running toward the edge and swelling of the countertop resulted the tenant would contact the landlord to report the issue as opposed to allow it to worsen.

I accept it as being likely that the landlord attempted to have the countertop replaced under warranty and I find that she provided a reasonable explanation that the supplier refused to honour the warranty given the excessive damage and neglectful use.

With respect to the tenant's argument that the damage at the end of the tenancy was there when his tenancy started, as I have found previously, the damage likely occurred between October 2012 and the end of the tenancy.

For all of the above reasons, I find on the balance of probabilities that the tenant is responsible for damaging the countertop during his tenancy or after the assignment. However, since countertops have a limited useful life of 25 years I find it appropriate to reduce the landlord's award to recognize the three years of use that the former countertops endured. Therefore, I award $547.54 to landlord calculated as $622.21 x 22/25 years.

Temporary keys
I deny this portion of the landlord's claim. If the house was left vacated and unlocked I find it reasonable that the landlord would secure the house by locking the existing locks with her own copy of the key. Alternatively, the landlord could choose to install a temporary lock; however, the need for additional copies of keys I found was unclear.

Dumping fees
As the tenant was agreeable to this portion of the landlord's claim I grant the landlord's request for $26.00.

Replacement locks
The Act requires that a tenant return all keys to the landlord at the end of the tenancy and that includes keys that the tenant or other occupants may have had duplicated. However, failure to return all keys does not automatically entitle the landlord to costs to install new locks. I reject the landlord's argument that new tenants would want new locks as a basis for awarding the landlord compensation for new locks as this position is speculative.

Under the Act, new tenants may request that a landlord change the locks at the start of the tenancy for any reason and is this request must be fulfilled even if the previous tenants returned all keys for the former locks. In other words, changing locks for a new tenant upon request of the new tenant is the cost of doing business of a landlord. Given the landlord had yet to install the new locks, I find I am not satisfied that the purchase related to the tenant's failure to return all keys or an attempt to offset costs that are a normal cost of doing business as a landlord. Therefore, I deny this portion of the landlord's claim.

Carpet shampooing
Although the tenant argued his tenancy was less than one year in duration, this in itself does not exempt a tenant from paying for carpet cleaning. A tenant may still be held responsible for carpet cleaning if the carpets are dirty or where smoking took place in the rental unit, regardless of the length of the tenancy. The landlord submitted that the carpeting was dirty and smelled of marijuana smoke at the end of the tenant. The carpet cleaner's invoice indicated the carpets were deodorized and had candle wax that had to be removed. When I consider the landlord's photographs showing a dirty carpet, the carpet cleaner's invoice, and undisputed evidence that candle wax was left on the carpeting compared to the tenant's failure to provide evidence, such as a receipt for the carpet cleaning rental machine, I find on the balance of probabilities that the carpets were not left in a reasonably clean condition at the end of the tenancy.

Further, as indicated previously, I find the tenant acknowledged that he received the rental unit in good condition. Therefore, I am satisfied the carpets were dirty and marijuana or other herbs were burned in the unit during his tenancy or after the assignment.

In light of the above, I grant the landlord's request for $585.00 for carpet cleaning and wax removal.

Carpet damage
The landlord provided evidence that the carpeting was installed in November 2010 at a cost of $3,850.00. The landlord asserts that the tenant diminished the value of the carpeting by $1,000.00 due to excessive wear. Whether the carpets were excessively worn was under

dispute. I find the photographs taken after the carpets were cleaned due not clearly demonstrate that the carpets were excessively worn especially when I consider that carpeting has a limited useful life of 10 years and the carpeting was nearly three years old at the end of the tenancy.

Carpeting has an average useful life of 10 years and using the straight-line method of depreciation the carpets would depreciate at a rate of $385.00 per year. Given the carpeting was nearly three years old at the end of the tenancy, I find the carpets had depreciated approximately $1,000.00 due to ordinary use and aging of the carpeting.

In light of the above, I find the landlord did not meet her burden to prove that the landlord suffered a loss in value of $1,000.00 due to damage for which the tenant is responsible. Therefore, I dismiss this portion of the landlord's claim.

Unpaid and/or loss of rent

With respect to unpaid rent for September 2013 I find the landlord has satisfied me that the tenant failed to give sufficient notice to end tenancy as of August 31, 2013. Even if I were to accept that a copied signature on a notice to end tenancy is sufficient, I find the document was not received by the landlord until August 1, 2013. The landlord provided verbal testimony, subject to examination, that the occupant delivered the notice and rent to the landlord's agent on august 1, 2013 and the rent receipt dated August 1, 2013 corroborates that position. In contrast, I find the tenant's evidence that the notice was delivered on July 31, 2013 to be less compelling since the person that delivered it did not appear as a witness, so her submission could not be further examined.

I am also satisfied that the landlord made reasonable attempts to mitigate loss of rent for September 2013 by advertising and showing the property during August 2013. Given the photographs of the property taken by the landlord near the end of August 2013 I find it likely that prospective tenants were uninterested in the property given its unkempt appearance rather than lack of effort on the landlord's part. Therefore, I grant the landlord's request for unpaid and/or loss of rent for September 2013 in the amount of $3,500.00.

Upon examination of the invoices for repairs and cleaning showing most of these activities took place in late September 2013, I find it likely that the rental unit was in a rentable condition for October 2013. I find the weakness in the landlord's claim for loss of rent for October 2013 is a lack of evidence showing that she made efforts to advertise and show the rental unit to prospective tenants so as to have a reasonable chance at renting the unit for October 2013. Therefore, I deny the landlord's claim for loss of rent for October 2013 on the basis I was not provided sufficient evidence to show the landlord made reasonable efforts to mitigate the loss of rent for October 2013.

With respect to loss of rent for November 2013 I deny the landlord's claim for the same reasons given for above and because I find there is insufficient evidence pointing to the tenant being

responsible for the leak that occurred at the property in early November 2013. The tenant had not been in possession of the rental unit for approximately two months before the leak occurred and the landlord had other plumbing work performed at the property in September 2013. Therefore, I find the landlord did not provide sufficient evidence that the loss of rent for November 2013 was due to the tenant's breach of the Act and because I was not provided evidence that the landlord made reasonable efforts to mitigate loss of rent for November 2013.

Since the landlord was successful in establishing an entitlement to compensation greater than $5,000.00, I further award the landlord recovery of the $100.00 filing fee she paid for her application.

In summary, the landlord has been awarded the following compensation:

Spraying and weed removal	$	91.88
Cleaning		150.00
Wall damage		400.00
Pedestal sink damage		112.34
Countertop damage		547.54
Dumping fees		26.00
Carpet cleaning and wax removal		585.00
Unpaid rent – September 2013		3,500.00
Filing fee		100.00
Total compensation awarded	$5,512.76	

I authorize the landlord to retain the security deposit of $1,750.00 in partial satisfaction of the unpaid rent and I provide the landlord with a Monetary Order for the net amount of $3,762.76 to serve upon the tenant and enforce as necessary.

Tenant's Application

The Act provides that where a landlord fails to comply with condition inspection report requirements the landlord extinguishes the right to claim against the security deposit for damage to the property. The landlord may claim against the security deposit for other damages such as rent owed to the landlord.

A landlord has the right to file against the security deposit within 15 days of the date the tenancy ended or the date the landlord receives the tenant's forwarding address in writing, whichever date is later. If the landlord fails to file against the security deposit, or refund the security deposit, within 15 days the Act provides that the security deposit will be doubled.

In this case, the landlord filed against the security deposit on September 18, 2013 and her claim included unpaid rent due to the tenant's failure to give sufficient notice to end the tenancy. Thus, I find the landlord's claim was not solely restricted to damage to the property and it is

unnecessary to determine whether the landlord extinguished her right to claim against the security deposit for damage to the property.

The tenant did not provide evidence as to when the landlord was given the tenant's forwarding address, in writing, other than an email dated September 5, 2013. Even if I accepted that sending the email meets the requirements of giving the landlord a forwarding address in writing, the landlord filed within 15 days of the date the tenant sent the email.

In light of the above, I find the tenant has not established an entitlement to doubling of the security deposit and his application is dismissed.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order in the net amount of $3,762.76 to serve and enforce as necessary.

The tenant's application has been dismissed in its entirety.

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: June 17, 2014

Residential Tenancy Branch