Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF, O

Introduction

This hearing was convened in response to cross applications.

On February 20, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in February of 2014 the Landlord's Application for Dispute Resolution and the Notice of Hearing, were mailed to the Tenant, via registered mail. The female Tenant stated that these documents were received sometime in February of 2014.

On March 17, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for the cost of emergency repairs; for the return of the security deposit; for "other"; and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on March 17, 2014 the Tenant's Application for Dispute Resolution and the Notice of Hearing, were mailed to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

The Landlord submitted documents to the Residential Tenancy Branch on April 08, 2014. He stated that copies of these documents were mailed to the Tenant, via registered mail, on April 08, 2014. The female Tenant stated that these documents were received on April 09, 2014 and they were accepted as evidence for these proceedings.

The Landlord submitted a Canada Post receipt to the Residential Tenancy Branch on April 09, 2014. He stated that he did not serve a copy of this receipt to the Tenant and it is therefore not accepted as evidence for these proceedings.
The Tenant submitted documents to the Residential Tenancy Branch on April 02, 2014. The female Tenant stated that copies of these documents were mailed to the Landlord,

via regular mail, on April 02, 2014. The Landlord stated that he has not received those documents.

I find that I am unable to determine whether the female Tenant is being truthful when she stated that she mailed evidence to the Landlord on April 02, 2014 or whether the Landlord is being truthful when he stated that he did not receive that evidence. I also find it possible that both parties are being truthful and that the evidence was simply not delivered by Canada Post, due to human error.

I therefore determined it was reasonable, in these circumstances, to provide the Tenant with the opportunity to re-serve the aforementioned package of evidence to the Landlord. The Tenant was directed to re-serve this package of evidence to the Landlord, via registered mail, by April 18, 2014.

At the hearing on April 15, 2014 the Landlord objected to my decision to allow the evidence to be re-served because the Landlord contends that the Tenant made similar allegations in a previous hearing. Without evidence to establish which party is being truthful at this hearing or was being truthful in a previous hearing, however, I find this to be the most reasonable course of action.

At the hearing on April 15, 2014 the Landlord provided a mailing address in Kelowna, BC, and asked that the Tenant's evidence package be mailed to that address. At the hearing on June 17, 2014 the female Tenant stated that on April 16, 2014 another copy of the Tenant's evidence package was mailed to the address provided by the Landlord, via registered mail. She stated that on May 06, 2014 this package was returned to the Tenant, with Canada Post markings that indicate it was unclaimed by the recipient. The Landlord stated that he did get notice that he had registered mail but he was unable to pick it up as he was in Calgary.

The Landlord stated that shortly after the hearing on April 15, 2014 he received the evidence package that was mailed by regular mail. At the hearing on June 17, 2014 the Landlord again objected to my decision to allow the Tenant's evidence to be re-served and to accept it as evidence. He contends that the evidence package was not served in accordance with the *Act,* as it was served by regular mail. The Landlord is incorrect. Section 88(c) of the *Act* allows evidence to be served by "ordinary mail". As the evidence was properly served and was received by the Landlord, it was accepted as evidence for these proceedings.

Testimony at the hearing on April 15, 2014 was limited to the Landlord's claims. This hearing was adjourned as there was insufficient time to conclude the matter on April 15, 2014. The hearing was reconvened on June 17, 2014; however there was again insufficient time to conclude the matter on that date. The hearing was reconvened on August 27, 2014; however there was again insufficient time to conclude the matter on that date. The hearing was reconvened on November 04, 2014 and was concluded on that date.

Both parties were represented at all hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damages to the rental unit; is the Tenant entitled to compensation for emergency repairs/maintenance to the rental unit; and should the security deposit be retained by the Landlord or returned to the Tenant?

Evidence presented on April 15, 2014

The Landlord and the Tenant agree that this tenancy began on July 01, 2001 and that it ended on January 31, 2014. The parties agree that when this tenancy began the Landlord and his wife were named on the written tenancy agreement, as were both Tenants. The parties agree that the Landlord's wife was the primary contact regarding the tenancy.

The Landlord and the Tenant agree that sometime during the latter portion of the tenancy the parties began discussing the possibility of purchasing the property.

The Landlord and the Tenant agree that at the end of the tenancy the Tenants were paying monthly rent of $1,514.04. The parties agree that a security deposit of $1,300.00 was paid. The female Tenant believes the deposit was paid in May or June of 2001 and the Landlord cannot recall when it was paid.

The female Tenant stated that a condition inspection report was not completed at the start of the tenancy and the Landlord cannot recall if one was completed.

The parties agree that two condition inspection reports were completed on January 31, 2014; that the parties compared the two reports and agreed the content of the reports was the same; and that each party kept one report. The Tenant submitted a copy of this report in evidence but the Landlord did not.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain the security deposit. The Landlord stated that on February 25, 2014 he mailed the Tenant a cheque, in the amount of $1,367.00, which represented a refund of the security deposit plus interest. The female Tenant stated that this refund was received on March 05, 2014.

The female Tenant stated that a forwarding address was written on both copies of the condition inspection report that was completed on January 31, 2014. The Landlord stated that when the Tenant wrote the forwarding address on his copy of the inspection report the Tenant provided the postal code for the rental unit, rather than the postal

code for the forwarding address. The postal code is correct on the condition inspection report that was submitted in evidence.

The Landlord is seeking compensation, in the amount of $1,685.00, for painting the main floor of the rental unit. The Landlord and the Tenant agree that during the tenancy the Tenant painted the main floor of the rental unit beige and dark brown. The Landlord wants it restored to the original blue colour.

The Landlord and the Tenant agree that the Landlord did not paint the rental unit at any point during this tenancy. The Landlord stated that the rental unit was last painted by the Landlord prior to July of 2001.

The female Tenant stated that the female Landlord gave them verbal permission to paint; that the female Landlord did not offer to compensate the Tenant for the cost of painting; and that the Tenant had the unit professionally painted in 2011. The Landlord stated that the female Landlord told him that she did not give the Tenant permission to paint the rental unit.

The Landlord stated that he is in the process of divorce; that he was not residing with the female Landlord, who is his wife, in 2011; and that she has informed him that she is not willing to provide evidence for these proceedings. He asked that the female Landlord be called as a witness and provided a telephone number for him. I dialed the telephone number provided and was not able to make contact with the female Landlord.

The female Tenant stated that she has attempted to obtain evidence from the female Landlord in regards to these claims but the female Landlord is not returning her telephone calls.

The Landlord is seeking compensation, in the amount of $1,989.00, for replacing the carpet. The Landlord and the Tenant agree that during the tenancy the Tenant removed the carpet in two rooms and replaced it with laminate flooring. The Landlord wants the floor restored to the original condition.

The Landlord does not know when the carpet was originally installed, although he knows it was installed prior to the start of the tenancy. The female Tenant estimates that the carpet was installed when the home was built sometime in the mid-eighties. The male Tenant stated that the carpet was badly stained and that it had an unpleasant odour.

The male Tenant stated that the female Landlord gave them verbal permission to replace the flooring; that the female Landlord did not offer to compensate the Tenant for the cost of replacing the floor; and that the flooring was replaced in 2011. The Landlord stated that the female Landlord told him that she did not give the Tenant permission to replace the flooring.

Evidence presented on June 17, 2014

The Landlord is seeking compensation, in the amount of $2,000.00, for clearing an area where the Tenant authorized Fortis to remove trees from the property.

The Landlord stated that a Fortis contractor approached the male Tenant for permission to cut trees on the residential property; that the male Tenant represented himself as the owner of the property; and that the male Tenant gave the contractor permission to cut down numerous trees, without consulting with the Landlord.

The male Tenant stated that a Fortis contractor did discuss removing trees with him and that he asked him what to do with the trees that had been damaged by pine beetle. He stated that he told the contractor that they were trying to buy the property but that he did not tell him he was the owner of the property. He stated that he told the contractor that they had been trying to discuss the trees with the female Landlord but had received no response.

The Landlord stated that when he served the Tenant with a Notice to End Tenancy in November or December of 2013 he discussed the trees with the Tenant. He stated that during this conversation the male Tenant told him that he did not know anything about the trees being cut and that later in the same conversation he acknowledged that he did not ask Fortis to contact the female Landlord regarding the cutting of the trees.

The male Tenant stated that he discussed the trees with the Landlord when the Landlord served him with a Notice to End Tenancy. He stated that during this conversation he told the Landlord that he had tried to contact the female Landlord about cutting the trees before Fortis spoke with him about the trees; that he told the Landlord that the trees had been cut by Fortis; and that he did not give Fortis permission to cut the trees.

The Witness for the Landlord stated that he was present when the Landlord served the Tenant with the aforementioned Notice to End Tenancy. He stated that the Tenant told the Landlord that he did not know much about the trees being cut and that the Tenant did not inform the Landlord that they had been cut by Fortis. He stated that the Landlord asked the male Tenant why he did not tell Fortis to contact the Landlord for permission to cut the trees and that the Tenant told him that he did not know why Fortis did not contact the owner.

The Landlord stated that he has not yet cleaned up the debris from the trees but he has an estimate of between $2,200.00 and $2,400.00 for clearing the debris. The Landlord stated that the Tenant has milled some of the wood from the trees. The Tenant stated that he has not milled any of the wood, although a neighbour has removed some of the wood for firewood.

The Landlord submitted an email and an unsigned letter from the Fortis BC contractor who cut the trees. In those documents he declared that he spoke with the resident of

the rental unit who represented himself as the property owner and advised him that he was there to remove two trees that were a hazard to the power line. He declared that his work order was for two trees but upon examining the area he determined there were more than 20 trees on the property that had been damaged by pine beetle. He stated that he asked for, and obtained permission from the resident to remove those trees plus "a couple more that he was unsure of".

The Tenant submitted a list of "emergency repairs" (Item B), for which they are seeking compensation. The claim relates to repairs made between July of 2006 and October of 2013. Many of the items listed on this list are not "emergency repairs", as defined by the legislation. The Tenant was advised that the claims for compensation for the items on this list will be limited to items that could be considered "emergency repairs". Items on the list that clearly could not be considered emergency repairs, given that the need for the repair is not "urgent", include:

- a dryer repair
- a vacuum repair
- replacing light sconces
- repairing/replacing the dishwasher
- replacing stove/oven elements
- replacing a mirror.

The male Tenant stated that in July of 2006, March of 2010 and February of 2011 they had to replace the furnace "sequencer", for which they paid a total of $759.64. The male Tenant stated that the furnace would not function without this part. The female Tenant stated that the female Landlord gave them permission to repair the furnace on each occasion, although she cannot recall precisely when the permission was given. Invoices for the aforementioned expenditures were submitted in evidence, which had not previously been provided to either Landlord.

The Landlord stated that the female Landlord told him that she was never contacted regarding the repairs to the furnace and she did not know about the need for repairs until the Tenant initiated these proceedings.

Evidence presented on August 27, 2014:

The Landlord again stated that the female Landlord may be willing to give testimony in regards to this matter. He was initially unable to locate a telephone number for her. He was able to locate a telephone number for her prior to the hearing being adjourned, however there was insufficient time to call her as a witness on this date.

The female Tenant stated that in November of 2007 the hot water tank leaked into the basement and needed to be replaced, for which they paid a total of $662.01. She stated that the female Landlord gave them permission to replace the hot water tank, although she cannot recall precisely when the permission was given. One receipt and one invoice for the hot water tank repair were submitted in evidence, which had not previously been provided to either Landlord.

The Landlord stated that the female Landlord told him that she was never contacted regarding the leaking hot water tank until the Tenant initiated these proceedings.

The female Tenant stated that in July of 2007 a water pipe broke and was leaking into the basement. She stated they paid $187.40 to repair the pipe. She stated that the female Landlord gave them permission to replace the broken pipe, although she cannot recall precisely when the permission was given. An invoice for the repair was submitted in evidence, which had not previously been provided to either Landlord.

The Landlord stated that the female Landlord did not speak with him about this repair.

The female Tenant stated that in September of 2010 the outlet that supplies water to the washing machine, which is sometimes called a "laundry box", was spewing water into the rental unit. She stated they paid $184.80 to repair the outlet, which she called the "w/d box". She stated that the female Landlord gave them permission to replace the outlet, although she cannot recall precisely when the permission was given. An invoice for the repair was submitted in evidence, which had not previously been provided to either Landlord.

The Landlord stated that the female Landlord did not speak with him about this repair. He argued that this should not be considered an emergency repair, as the water could have been stopped by simply turning off the water at the outlet. The male Tenant stated that they could not stop the water by turning it off at this outlet and that the only means of stopping the water was to shut off the main water intake for the rental unit.

The female Tenant stated that in February of 2011 the kitchen faucet started leaking a significant amount of water from the area where the faucet attaches to the counter. She stated they paid $271.29 to replace the faucet. She stated that the female Landlord gave them permission to replace the faucet, although she cannot recall precisely when the permission was given. An invoice for the repair was submitted in evidence, which had not previously been provided to either Landlord.

The Landlord stated that the female Landlord did not speak with him about this repair.

The female Tenant stated that in April of 2011 one of the toilets was leaking and the second toilet did not flush. She stated that they reported the problem to the female Landlord and she authorized them to make repairs, which included replacing one toilet and repairing the second toilet with parts from the toilet that was being replaced. She stated they paid a total of $237.10 for these repairs. One invoice (B18) and one receipt (B17 – shows $125.10 for a toilet) for the repairs were submitted, which had not previously been provided to either Landlord. She stated that the invoices (B18) indicates that two closets were installed, however she stated it is an invoice from a plumbing company and she does not know why he referred to the toilets as closets.

The Landlord stated that the female Landlord did not speak with him about this repair.

The female Tenant stated that in October of 2013 another water pipe broke and was leaking into the basement. She stated they paid $213.15 to repair the pipe. A receipt for the repair was submitted in evidence, which had not previously been provided to either Landlord. She stated that they left at least three messages for the female Landlord regarding this repair however she did not respond to the phone messages.

The Landlord stated that the female Landlord did not speak with him about this repair or the phone messages.

The female Tenant stated that in October of 2013 they paid a water bill of $303.11 after being advised by the water company that the water supply to the residential property was going to be terminated if the bill was not paid. She stated that they left at least two phone messages and sent emails to the Landlord in regards to this bill, however she did not respond until after the bill had been paid. A copy of the bill was submitted in evidence, which had not previously been provided to either Landlord by the Tenant.

The Landlord stated that he had been paying the water bill during the tenancy however he did not pay this particular bill because it was sent to the female Landlord. He acknowledges that it was paid by the Tenant.

The male Tenant stated that in June of 2011 a toilet flange was replaced. He stated that until this repair was complete the toilet could not be used, as the toilet would not sit properly on the floor. The female Tenant stated that they reported the problem to the female Landlord and she authorized them to make repairs. She stated they paid $140.73 for this repair.

The Landlord stated that the female Landlord did not speak with him about this repair.

The male Tenant stated that in February of 2011 the electrical panel was upgraded to increase the electrical capacity in the rental unit. He stated that this repair was completed because several outlets in the rental unit could not be used, although they were not aware that the existing panel was an electrical hazard.

The female Tenant stated that in September of 2012 they paid $380.80 to have the septic tank pumped. She stated that they believed the pump was due to be pumped out because they were noticing a septic smell, although the septic system was not malfunctioning.

The male Tenant stated that in February of 2009 the garage door opener malfunctioned and the garage door could not be closed. He stated that he purchased a garage door opener and replaced it that evening. The Tenant contends that this was an emergency repair because the female Tenant could not close the door without the garage door opener, which compromised the safety of the items they stored in the garage.

The Tenant submitted a list of maintenance and improvements done to the rental unit by the Tenant (Item C), for which they are seeking compensation. The female Tenant stated that the Tenants and the female Landlord had a general understanding that they would maintain and improve the rental unit and that the Tenant would be compensated for the improvements. The male Tenant stated that the understanding was that the Landlord would reimburse them for any improvements made if the Tenants did not purchase the home.

The female Tenant stated that the hot tub pump needed repair in November of 2003 and January of 2004. She stated that the Tenant discussed these repairs with the female Landlord and on both occasions the Landlord told the Tenant to make the repairs and they would reconcile the cost later. She stated that there was an understanding the Tenant would pay for general maintenance of the hot tub, but not repairs. The Tenant submitted invoices for these repairs, which total $316.22.

The Landlord stated that the female Landlord told him the Tenant had requested this reimbursement; that he told the female Landlord that the repairs were the Tenant's responsibility, since they were using the hot tub; and that he told the female Landlord to tell the Tenant they were responsible for the repairs.

The female Tenant stated that the sliding patio door would not lock so the female Landlord told them to replace the door. She stated that they purchased a door at a garage sale for $200.00 and it was installed by the male Landlord. The Tenant created a handwritten note regarding this purchase, as a receipt was not provided.

The Landlord stated that he had a general discussion with the female Landlord regarding the claims for maintenance and improvements and she told him that she had no agreement with the Tenant regarding expenses. He stated that they did not specifically discuss the need to replace the sliding patio door.

The female Tenant stated that in September of 2010 they replaced a stove element that had burned out. She does not recall if she discussed this repair with the Landlord, as she might have simply made the repair as a result of their on-going agreement that the Tenant should make necessary repairs. The Tenant submitted a receipt for this item, to support the claim of $29.53. The Landlord does not recall discussing this repair with the female Landlord.

The female Tenant stated that in October of 2005 they replaced the carpet in the "t.v." room with laminate flooring, including heat register vents, and later replaced a "T strip" on this floor. She stated that the female Landlord promised to pay for the materials, with the understanding that the Tenant would install the flooring. The Landlord stated that he specifically recalls the female Landlord telling him that the Tenant was paying to replace this flooring.

The male Tenant stated that in April of 2011 they had the rental unit painted by a professional painter in various locations. The male Tenant stated that by this time they

were discussing a purchase of the home and the female Landlord told them if they did not purchase the home she would compensate them for the cost of painting.

The Landlord stated that he specifically recalls the female Landlord telling him that the Tenant was paying to repaint.

The male Tenant stated that in March of 2007 they replaced several landscape ties in the yard that were rotting. The female Tenant stated that the female Landlord told them she would pay for the cost of the materials. The Landlord stated that the female Landlord did not discuss this work with him and he is not even aware they were replaced.

The female Tenant stated that in October of 2005 they repainted the "t.v. room", with the permission of the female Landlord. She said that they did not discuss compensation for repainting this room.

Evidence presented on November 04, 2014:

The male Tenant stated that in November of 2010 they replaced a ceiling fan and fan switch, after the existing fan malfunctioned. He stated that they replaced the fan with a used fan they did not pay for and that they paid $66.42 for the switch. The Tenant submitted an invoice for the switch.

The female Tenant stated that the female Landlord told them she would pay for the cost of the materials for replacing the fan. The Landlord stated that the female Landlord did not discuss this repair with him.

The male Tenant stated that in April of 2011 they had they installed flooring in the kitchen/rear entrance. He stated that by this time they were discussing a purchase of the home and the female Landlord told them if they did not purchase the home she would compensate them for the cost of installing the new flooring. The Landlord stated that the female Landlord did not discuss this upgrade with him.

The male Tenant stated that in June of 2011 they had purchased sealant for windows/ doors, which was purchased for the painting claim that has been previously discussed.

The male Tenant stated that in 2011 they had several trees removed from the site, which had been killed by pine beetle. He stated that the female Landlord told them if they did not purchase the home she would compensate them for the cost of removing the trees and repairing the yard as a result of the removal. The Landlord stated that the female Landlord did not discuss the removal of these trees with him.

The male Tenant stated that in 2011 and 2012 they added gravel to the driveway, which had deteriorated as a result of the weather. He stated that the female Landlord told them if they did not purchase the home she would compensate them for the cost of

removing the trees and repairing the yard as a result of the removal. The Landlord stated that the female Landlord did not discuss the driveway repairs with him.

The female Tenant stated that none of the receipts for any of the repairs/improvements made to the rental unit were provided to the Landlord until they were served as evidence for these proceedings. She stated that the receipts were not previously provided to the Landlord because they kept waiting for a time to meet with the female Landlord, for the purposes of reconciling all the expenses. She stated that for a variety of personal reasons, that meeting never occurred.

The male Tenant stated that they were patient with the Landlord and did not discuss the repairs in writing, because they were friends with the female Landlord and they believed the costs would eventually be reconciled.

The Witness for the Landlord stated that he is a barrister who previously represented the Landlord in divorce proceedings. He read out a portion of a statement in regards to the rental unit from the female Landlord, which was provided to him by the female Landlord's legal counsel. The relevant portion of this statement, dated November 20, 2013, reads: "I (female Landlord) confirm there are no agreements or liabilities with the current tenants of the property".

The Landlord again expressed a desire to call the female Landlord as a witness, although he acknowledged that he does not know if she is willing to participate as a witness in these proceedings. He provided two telephone numbers for the female Landlord. I telephoned both of the numbers and was redirected to voice mail on both occasions. As I was unable to contact the female Landlord by telephone and the Landlord did not make arrangements for her to dial into the teleconference, this decision has been rendered without the benefit of her testimony.

At the conclusion of the hearing on November 04, 2014, each party was given the opportunity to present relevant evidence that had not been previously discussed during these proceedings. The Tenant had no additional evidence to present. The Landlord repeatedly attempted to raise issues that had been previously discussed, and was prevented from doing so.

Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on January 31, 2014 and that the Landlord received a forwarding address for the Tenant on that date. Even if I accept the Landlord's testimony that he received an incorrect postal code for the forwarding address on that date, I find that he still received a forwarding address. In reaching this conclusion I was heavily influenced by the fact that mail may be delivered by Canada Post even if a postal code is not provided; by my conclusion that the Landlord knew, or should have known, that the Tenant had inadvertently provided the Landlord with the postal code for the rental unit; and the Landlord could have obtained a correct postal code with minimal effort.

Section 38(1) of the *Residential Tenancy Act (Act*) stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act,* as the Landlord did not mail a refund of the security deposit until February 25, 2014 and he did not file an Application for Dispute Resolution until February 20, 2014. Both of these dates are more than 15 days after the tenancy ended and after the Landlord received a forwarding address for the Tenant.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act,* I find that the Landlord must pay the Tenant double the security deposit that was paid, plus any interest due on the original amount.

Residential Tenancy Branch Policy Guidelines stipulate that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. I concur with the guideline.

I find that there is insufficient evidence to determine whether or not the female Landlord provided the Tenant with verbal permission to paint the rental unit or replace the flooring. Without evidence from the female Landlord in which she denies the Tenants' claim that she gave them permission to paint/replace the flooring, I find that it is entirely possible that permission was granted.

In reaching this conclusion I was influenced, to some degree, by the undisputed evidence that the female Landlord is unwilling to participate in these proceedings. This causes me to believe that there may be animosity between her and the Landlord and that she may not be providing him with accurate information regarding her conversations with the Tenant.

Even if I were to accept that the Tenant repainted the rental unit without permission, I would not, in these circumstances, find that the Landlord is entitled to compensation for repainting the rental unit. In reaching this conclusion, I was heavily influenced by the Landlord's testimony that the unit had not been painted by the Landlord since prior to the start of the tenancy, which is over 11 years.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. I therefore find that the paint in the rental unit had far exceeded its life expectancy and that the Landlord is not left in a worse position as a result of the Tenant painting the rental unit. Even if the Tenant had not repainted the rental unit, it is reasonable to conclude that the Landlord would have needed to repaint the rental unit at the end of this tenancy.

For all of the aforementioned reasons, I dismiss the Landlord's claim for compensation for repainting the rental unit.

Similarly, even if I were to accept that the Tenant replaced the carpet without permission, I would not, in these circumstances, find that the Landlord is entitled to compensation for replacing the carpet. In reaching this conclusion, I was heavily influenced by the undisputed evidence that the carpet in the rental unit was not new. As the Landlord was unable/unwilling to estimate the age of the carpet, I find it reasonable to rely on the Tenant's estimate that the carpet was installed in the mid-eighties.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. I therefore find that the carpet in the rental unit had far exceeded its life expectancy and that the Landlord is not left in a worse position as a result of the Tenant replacing the carpet. Even if the Tenant had not replaced the carpet with laminate flooring, it is reasonable to conclude that the Landlord would have needed to replace the carpet at the end of this tenancy.

For all of the aforementioned reasons, I dismiss the Landlord's claim for compensation for replacing the carpet.

On the basis of the letter from the contractor for Fortis, I find that the contractor understood that the male Tenant was the owner of the property and that he had gave the contractor permission to cut the trees on the property. I find, however, that the Landlord has submitted insufficient evidence to establish that Fortis needed permission from the owner to cut the trees.

In determining this matter I was guided by my understanding that electric companies typically have easements on property that allows them to cut trees/branches that interfere with power lines or that pose a risk to the power lines. In such circumstances an electric company does not typically need permission from the owner to cut trees. In the absence of evidence to show that the electric company did not have authority to cut the trees, I find it entirely possible that they had the right to cut the trees without permission from the owner.

I find that the Landlord has submitted insufficient evidence to show that some of the trees that were cut did not pose a risk to the power lines. I find it highly unlikely that the contractor would have removed any trees that did not pose some risk to the power lines, given that Fortis was paying for the cost of removing the trees, even if the Tenant did ask for them to be removed.

As the Landlord has failed to establish that the trees on the property were <u>primarily</u> cut because the Tenant gave Fortis permission to cut the trees, I find that the Tenant is not obligated to pay for cleaning the resulting debris. I therefore dismiss the Landlord's claim for the cost of clearing the debris.

As the Landlord has failed to establish the merits of his claims for compensation, I dismiss the Landlord's claim to recover the fee for filing an Application for Dispute Resolution.

Section 33 of the *Act* defines "emergency repairs" as repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

I find that replacing a toilet flange in June of 2011 does not constitute an emergency repair, as defined by section 33 of the *Act*. As the toilet was not actually leaking as a result of the deficiency, I cannot conclude that the repair was urgent or necessary for the purposes of preventing damage to the rental unit. As this was not the only toilet in the home, I cannot conclude that the repair was urgent or necessary for the health or safety of the occupants. As I cannot conclude that this repair was an emergency repair, as defined by the *Act*, I dismiss the Tenant's claim for compensation for this "emergency repair".

I find that upgrading an electrical panel in these circumstances does not constitute an emergency repair, as defined by section 33 of the *Act*. As the upgrade was completed for the purposes of increasing the electrical capacity of the unit, rather than in response to a known or perceived danger, I cannot conclude that this upgrade was urgent or necessary for the health or safety of the home or an occupant in the home. As I cannot conclude that this upgrade was an emergency repair, as defined by the *Act*, I dismiss the Tenant's claim for compensation for this "emergency repair".

I find that pumping out a septic tank is routine maintenance and does not constitute an emergency repair, unless the septic system is damaged or blocked as a result of a full tank. In the absence of evidence to show the septic tank at the rental unit was damaged or blocked to the point the septic system was not functional, I cannot conclude this constitutes an emergency repair, as defined by the *Act*. I therefore dismiss the Tenant's claim for compensation for this "emergency repair".

I find that replacing a garage door opener does not constitute an emergency repair, as the repair was not urgent. In my view the garage door could have been manually closed once the male Tenant returned home on the evening of the malfunction and then remained closed until such time as the Landlord either repaired the door or compensated the Tenant for being without use of the door. As I cannot conclude that

the door opener was an emergency repair, as defined by the *Act*, I dismiss the Tenant's claim for compensation for this "emergency repair".

I find that the following repairs meet the need of an emergency repair:

- the furnace sequencer, which needed to be replaced on three occasions, as it was required to provide heat to the rental unit, which is necessary for the health of the occupants
- the hot water tank, as it can be considered a damaged plumbing fixture that is necessary for the purposes of providing hot water , which is necessary for the health of the occupants
- water pipes that broke on two occasions (2007 and 2013), as I consider these major leaks, which could cause serious damage to the rental unit
- repairing the "laundry box", as it was leaking into the rental unit, which could cause serious damage, and shutting off the water source for the entire rental unit is not a feasible solution
- replacing the kitchen faucet as water leaking from the base could reasonably be expected to damage the rental unit
- replacing the leaking toilet in April of 2011 as water leaking from the toilet could reasonably be expected to damage the rental unit

I find that in these unique circumstances, paying the water bill in October of 2013 constitutes an emergency repair in accordance with section 33(c)(vi) of the *Act.* Given that the rental unit would have been without water if the bill was not paid, I find it was reasonable for the Tenant to pay the bill and seek to recover the costs in accordance with section 33 of the *Act.*

Section 33(3) of the *Act* authorizes a tenant to make an emergency repair when they are needed; providing they make at least two attempts to telephone the person identified by the landlord as the emergency contact and the tenant has given the landlord reasonable time to make the repairs.

On the basis of the testimony of the Tenants, I find that the female Landlord gave the Tenant permission to:

- repair the furnace sequencer on each occasion that it malfunctioned.
- repair the hot water tank

As the Tenant was given permission to make the aforementioned emergency repairs, I find that the Tenant has exceeded the requirements of section 33(3) of the *Act.*

I find the female Tenants' testimony in regards to having permission to make the aforementioned repairs to the sequencer and the hot water tank, to be more compelling than the testimony of the Landlord, who simply stated that the female Landlord told him she was never contacted about these repairs. Given that the male Landlord and the female Landlord were/are in the process of separating, and the female Landlord is not assisting the Landlord with this dispute, I find it entirely possible that she did not have a lengthy, detailed discussion about these disputes with the Landlord.

In favouring the Tenant's testimony over the Landlord's testimony regarding the above two repairs, I was also guided by *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, in which the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In my view, it is simply more reasonable to conclude that the Tenant would have reported the need for these emergency repairs and obtained permission to make repairs. I find it highly unlikely that the Tenant would have repaired deficiencies with the rental unit without notifying the landlord and then assumed the responsibility of paying for those repairs when they were under no obligation to do so.

On the basis of the testimony of the Tenants, I find that the female Landlord gave the Tenant permission to:

- repair a broken pipe in 2007
- repair the "laundry box"
- replace the leaking kitchen faucet
- replace a leaking toilet in April of 2011

In determining that permission was granted for the above itemized repairs, I was influenced by the Landlord's testimony that he did not discuss these particular repairs with the female Landlord. In the absence of evidence that contradicts the Tenants' testimony, I find no reason to disregard their testimony.

As the Tenant was given permission to make the aforementioned emergency repairs, I find that the Tenant has exceeded the requirements of section 33(3) of the *Act.*

On the basis of the testimony of the Tenant and in the absence of evidence from the female Landlord, I find that the Tenants left at least two telephone messages for the female Landlord regarding the water pipe that broke in 2013 and regarding the unpaid water bill in October of 2013. I find that this notification meets the requirements of section 33(3) of the *Act.*

Section 33(5) of the *Act* requires landlords to reimburse tenants for the cost of emergency repairs if the tenant claims reimbursement, provides a written account of the emergency repairs, and provides a receipt of the repairs.

As the Landlord has now been provided with receipts/invoices for these emergency repairs, I find that the Tenant has complied with section 33(5) of the *Act*. As the Tenant has complied with section 33 of the *Act*, I find the Tenant is entitled to reimbursement for the following emergency repairs:

- repair the furnace sequencer in 2007 - $303.06
- repair the furnace sequencer in 2010 - $266.18
- repair the furnace sequencer in 2011 - $190.40
- repair the hot water tank - $662.01
- repair a broken pipe in 2007 - $187.40
- repair a broken pipe in 2013 - $213.15
- repair the "laundry box" - $184.80
- replace the leaking kitchen faucet - $271.29
- replace a leaking toilet in April of 2011 - $237.10
- water bill - $303.11

Total - $2,818.50

Section 27 of the *Act* stipulates that a landlord may not terminate a non-essential service unless the rent is reduced to reflect the resulting reduced value of the tenancy.

I accept the female Tenant's testimony that she was told to repair the hot tub when it malfunctioned on two occasions, as it was based on her recollection of conversations she had with the female Landlord. Conversely, the Landlord could only say that he told the female Landlord to tell the Tenant they were responsible for the repairs, although he does not know if that message was relayed. I find it entirely possible that the female Landlord understood her obligations in regards to these repairs and simply neglected to tell the male Landlord of the agreement.

I find that the Landlord had an obligation to either repair the hot tub that was provided with this tenancy when it broke in 2003 and 2004 or to compensate the Tenant for the resulting reduced value of the tenancy, pursuant to section 27 of the *Act*. Even if the female Landlord had not authorized the repairs, I would find that the Tenant was entitled to compensation for making the repairs, as the rent was not reduced when the hot tub malfunctioned. I therefore find that the Tenant is entitled to compensation for the $316.22 they were charged to repair the hot tub.

I find that the Landlord had an obligation to either repair the stove element in 2010 or to compensate the Tenant for the resulting reduced value of the tenancy, pursuant to section 27 of the *Act*. Although the Tenant does not recall if she specifically discussed this repair with the female Landlord, I find that there was implied consent given the pattern of the Tenant maintaining the property. Even if there was not specific consent, I find that the Tenant is entitled to compensation for the $29.53 they paid for the stove element, pursuant to section 27 of the *Act*, as the Landlord did not reduce the rent as a result of the deficiency with the stove.

I find that the Landlord had an obligation to either repair the ceiling fan in 2010 or to compensate the Tenant for the resulting reduced value of the tenancy, pursuant to section 27 of the *Act*. Even if there was not specific consent to complete this repair, I find that the Tenant is entitled to compensation for the $66.42 they paid for this repair, pursuant to section 27 of the *Act*, as the Landlord did not reduce the rent as a result of the deficiency with the ceiling fan.

Section 32 of the *Act* requires a landlord to provide and maintain a rental unit that complies with health, safety, and housing standards and that makes it suitable for occupation. I find that the Landlord had an obligation to provide doors that locked properly and provided the Tenant with reasonable degree of security, pursuant to section 32 of the *Act*.

Even if there was not specific consent, I would find that the Tenant is entitled to compensation for the $200.00 they paid to replace the sliding door that would not lock, as the Landlord was obligated to make the repair in accordance with section 32 of the *Act.* On the basis of the testimony of the female Tenant, I find that the female Landlord did authorize the Tenant to replace the sliding door on her behalf. Given that the Landlord acknowledges that he did not specifically discuss the sliding door with the female Landlord, I find that female Tenant's testimony more compelling. As the door was purchased at a garage sale and receipts are not typically provided at garage sales, I find it reasonable to award compensation for this repair without a proper receipt.

I have jurisdiction to resolve issues relating to a tenancy that are governed by the *Act.* This includes ensuring that a landlord maintains a rental unit in a manner that complies with the *Act*. I do not have authority to resolve all disputes that may arise between a landlord and a tenant, if those disputes relate to issues not contemplated by the *Act*.

I do not, for example, have authority to resolve a labour dispute even if the "employer" is a landlord and the "employee" is a tenant. Even if I were to accept the Tenant's testimony that the female Landlord agreed to compensate the Tenant for replacing flooring in rental unit, painting the unit, removing trees from the property, repairing the driveway, and replacing landscape ties, I could not resolve that dispute for the parties. In my view this alleged agreement is a service/employment contract which exceeds my jurisdiction. I therefore decline to determine these claims. In making this determination I was guided by my conclusion that these "repairs" are essentially cosmetic improvements, which the Landlord was not obligated to make.

In determining all of these matters, I have placed limited weight on the document the Witness for the Landlord read into evidence. Although I accept that the female Landlord provided the Landlord's legal counsel with a written declaration that there are "no agreements or liabilities with the current tenants of the property", I find that the inability to question the female Landlord regarding that declaration significantly restricts the value of the declaration. I find it entirely possible that:

- the female Landlord was only referring to written agreements when she made this declaration
- the female Landlord may have neglected to mention verbal agreements she made with the Tenant in regards to repairs
- the female Landlord may have forgotten verbal agreements made for certain repairs, which she may have remembered when questioned about them.

I have also placed limited weight on the document the Witness for the Landlord read into evidence, in part, because the document is inaccurate. As the Landlord still had a written tenancy agreement with the Tenants when she made this declaration, it is inaccurate to declare that she had no agreement with the Tenants. Given that the Landlord did still have a tenancy agreement with the Tenants, she remained obligated to comply with the obligations of that tenancy agreement, including her obligation to comply with sections 27 and 32 of the *Act.*

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of $6,200.40, which is comprised of double the security deposit ($2,600.00), interest on the security deposit of $69.73, $2,818.50 in emergency repairs from list "B", $612.17 for non-emergency repairs from list "C", and $100.00 in compensation for the fee paid to file the Tenant's Application for Dispute Resolution. This claim must be reduced by the $1,367.00 that was mailed to the Tenant on February 25, 2014, leaving an amount owing of $4,833.40.

Based on these determinations I grant the Tenant a monetary Order for the amount $4,833.40. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: November 08, 2014

Residential Tenancy Branch