Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF
CNR RR O MNDC DRI FF

Preliminary Issues

At the outset of the hearing the Tenant submitted that he has since vacated the property and would no longer be disputing the 10 Day eviction Notice. Accordingly, the Tenant withdrew the request to cancel the 10 Day Notice.

The Tenant filed their application for dispute resolution on June 06, 2014, seeking monetary compensation for $7,090.00. In the Tenant's July 18, 2014, evidence submission they included a "compensation summary" indicating they were seeking compensation in the amount of $10,690.00.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Tenant did not file an amended application; he simply listed the additional claim amounts in his evidence. Accordingly, I declined to hear matters which involved an amount not claimed on the original application. The remainder of the Tenant's monetary claim is dismissed, without leave to reapply.

Introduction

This hearing convened on July 31, 2014 for 95 minutes and reconvened on November 17, 2014 for 158 minutes to hear matters pertaining to cross applications for dispute resolution filed by both the Landlord and the Tenant.

The Landlord filed her application on July 10, 2014, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed his application on June 8, 2014, to obtain a Monetary Order of $7,090.00 for: reduced rent for repairs, services or facilities agreed upon but not provided; to dispute an additional rent increase; for other reasons; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and both sessions were attended by the Landlord, her legal counsel (hereinafter referred to as Counsel), and the Tenant. Each party gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On July 31, 2014 I heard testimony relating to the service and receipt of evidence served by both parties. The Landlord confirmed receipt of the Tenant's evidence however the Tenant argued that he had received the initial package which included copies of the Landlord's application and documents but he had not received a copy of the calendars and photographs submitted by the Landlord.

I accepted the Landlord's submission that she had served the Tenant with copies of the calendars in her original package, along with her application for dispute resolution; and that her photographs were sent separately. The Tenant had confirmed receipt of the Landlord's initial package and her application; therefore, I found the Tenant had been sufficiently served with the Calendars and the remaining documents that had been submitted by the Landlord in the initial package.

The Rules of Procedure # 3.17 provides that evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

The Landlord did not submit evidence to support the date or tracking information pertaining to the service of her photographic evidence. Accordingly, I find there to be insufficient evidence to prove the photographs were served in accordance with the Act

and Rules of Procedure. Therefore, I did not consider the Landlord's photographic evidence pursuant to #3.17 of the Residential Tenancy Branch Rules of Procedure; I did however consider her oral testimony regarding the contents of the photographs.

At the closing of the July 31, 2014 session, Counsel submitted that in the event the Tenant was not able to find his copy of the calendars they were seeking leave to serve the Tenant with a second copy of the calendars to ensure that the Tenant would be able to follow along with their submission at the reconvened hearing. Leave was granted to the Landlord to serve the Tenant with only copies of the calendars. At the outset of the November 17, 2014 session, the Tenant confirmed he had received that copy of the calendars.

It was undisputed that the parties attended dispute resolution on May 5, 2014 and each party confirmed receipt of a copy of the May 9, 2014 Decision. During the July 31, 2014 session both parties made references to the May 9, 2014, Decision at which time it was determined that the parties were sent a different copy of the Decision than the copy that was in the Residential Tenancy Branch (RTB) record system. Based on the testimony it appeared that the text was spread differently over the pages with the Landlord being sent a 5 page Decision and the Tenant was sent a 6 page Decision. The RTB system showed a 6 page Decision. In order to ensure all parties had received a decision with the exact same content, the Landlord was ordered to submit to the RTB a copy of the 5 page decision dated May 9, 2014.

A copy of the 5 page Decision was received at the RTB from the Landlord on August 7, 2014. Upon review of both versions of the May 9, 2014, Decision, I note that the five page decision was single spaced and included the exact same text as the six page decision which was printed with 1.15 spacing. The content was exactly the same therefore no further action was required.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a monetary order?
2. Has the Tenant proven entitlement to a monetary Order?

Background and Evidence

Tenant's Application

It was undisputed that the tenancy commenced on February 19, 2011, that the Tenant made a lump sum payment of $7500.00, and the tenancy ended after the Tenant was

served a 2 Month Notice to end tenancy for landlord's use and the Tenant served the Landlord notice of early termination dated June 20, 2014. The Tenant provided the Landlord with his forwarding address on June 20, 2014 and he remained in possession of the rental unit until the evening of July 1, 2014.

During the July 31, 2014 session and upon review of the Tenant's application, the Tenant stated he misunderstood the compensation granted for being issued a 2 Month Notice. Section 51 was read during the hearing after which the Tenant clarified the amounts being claimed. The Tenant submitted his oral evidence and arguments as follows:

The Tenant claimed $1,200.00 compensation equal to one month's rent for being issued the 2 Month Notice. The Tenant pointed to the May 9, 2014 Decision where the Arbitrator wrote "I find that rent of $1,200.00 is currently payable", and argued that was the amount he was seeking.

The Tenant submitted a copy of the 2 Month Notice at page E1 of his evidence and argued he was entitled to the full compensation of $1,200.00. The Tenant stated that he attempted to pay a reduced rent for June 2014, as ordered in the May 9, 2014 Decision, but the Landlord refused to accept it and said she wanted the full $1,200.00. He submitted that despite the order allowing him to pay reduced rent for June 2014, he was entitled to the full $1,200.00 as compensation for being served the 2 Month Notice.

The Tenant seeks $1,250.00 for the return of double the security deposit ($625.00 x 2). The Tenant argued double was payable because the Landlord did not return the deposit within the required 15 days. The Tenant submitted that the previous Arbitrator found that he had paid a security deposit when she wrote the following in the May 9, 2014 Decision:

> *I find that the Landlord's have not proven on a balance of probabilities that the Tenant failed to pay a security deposit or that a further payment was required [sic].*

The Tenant has claimed $1,400.00 for the 14 months that the Tenant paid $100.00 for a rent increase that was implemented without proper notice (14 x $100.00). The Tenant submitted that in the May 2014 hearing, the previous Arbitrator gave him leave to re-apply to recover rent increase amounts that were paid after his rent was increased from $1,100.00 to $1,200.00 without notice. To support his claim the Tenant pointed to the May 9, 2014 Decision where that Arbitrator wrote:

> *<u>Background and Evidence</u>*
> *The tenancy started on February 19, 2011. The Tenant submissions indicate rent of $1,200.00 is currently payable and the Landlord state that $1,250.00 is payable. There is no dispute that the Landlord has never provided a rent increase notice [sic].*

The Tenant relied upon a spreadsheet that he had created as evidence to prove he had paid $1,100.00 rent per month up until March 2013. The spreadsheet indicated the Tenant paid $1,200.00 per month from April 2013 to May 2014, which is the 14 month period for which he is claiming the $1,400.00 for the rent increase.

The Tenant seeks $3,800.00 for 38 months that the Tenant had to deal with a hot water tank that was too small for the rental unit. In the July 31, 2014 hearing the Tenant noted that he had not been compensated for living with the small hot water tank for the period of March 1, 2014 to June 2014 and argued that the previous Arbitrator gave him leave to reapply for compensation for a prior period if the Landlord failed to make the repairs when she wrote the following in her May 9, 2014 Decision:

> *I give the Tenant leave to reapply should the Landlord fail to act as obliged under the Act in relation to the maintenance of the unit and the requirements under the tenancy agreement.*

In the November 17, 2014 session the Tenant clarified that his claim was in fact for the full $3,800.00 which he requested to be reduced to an amount that would bring his total claim to $7,090.00. The Tenant argued that he was entitled to claim compensation for the entire 38 month period based on his interpretation of what the Arbitrator told him in the May 2014 hearing.

The Landlord disputed all four of the items being claimed by the Tenant as follows:

The Landlord testified that the Tenant did not pay rent for the month of June 2014; therefore, he has been compensated for the one month's rent required for being issued the 2 Month Notice.

The Landlord argued that the Tenant did not pay a security deposit and pointed to her evidence which included a copy of the original tenancy agreement which stipulates that rent was payable in the amount of $1,250.00 per month. The Tenant confirmed during this proceeding that he had signed the agreement that was provided in the Landlord's evidence. The Landlord pointed to page 3 of the tenancy agreement which provides that a security deposit of $625.00 was required to be paid. A written notation had been added to the tenancy agreement which states: "not paid".

It was undisputed that the Tenant had given the Landlord a lump sum payment of $7,500.00 at the start of the tenancy. The Landlord argued that this was simple arithmetic that the Tenant had prepaid six month's rent (6 x $1,250.00 = $7,500.00) and therefore it is proof that no security deposit was paid.

The Landlord submitted that the May 9, 2014 Decision did not state that a security deposit was paid and did not list the amount or date it was allegedly paid. Rather, the May 9, 2014 Decision was unclear and simply stated that the Landlord failed to prove a security deposit was paid.

In response to the claim for $1,400.00 for a rent increase, the Landlord argued that there had been no rent increase and that the Tenant had always paid $1,250.00 per month. The Landlord submitted into evidence copies of calendars from January 2012 to June 2014 and noted that she had written the amounts paid by the Tenant on the date of each monthly calendar that the payment had been received.

The Tenant was asked by Legal Counsel to review several monthly calendars during which the Tenant denied making any of the payments as noted on specific dates of the calendars. The Tenant turned the attention to the spreadsheet he had created as proof of the amounts and dates rent was paid. The Tenant responded to the Landlord's calendars by stating "anyone could make a calendar after the fact" and argued a calendar is not evidence that payments were made. When asked why the Tenant had not submitted receipts as proof for rent amounts paid, he argued that the Landlord refused to issue him receipts.

The Landlord submitted that the Tenant had already been compensated for the hot water tank issue in the May 9, 2014 decision; therefore, the Tenant is not entitled to any additional compensation for the period prior to the May 2014 hearing.

In regards to compensation for lack of any repairs after the May 2014 hearing, the Landlord pointed to page six of the tenancy agreement which included a notation at the top which reads: "tenant to pay for repairs under $250 – XXX (tenant's name)". The Landlord argued that the entire statement was written by the Tenant and that his name is written at the end to acknowledge that he agreed and signed the statement. The Tenant denied writing that statement on the tenancy agreement.

In her final submissions the Landlord stated the following: no rent had been paid for June 2014 so no further compensation is required to be paid to the Tenant for issuance of the 2 Month Notice; no security deposit was paid so no amount needs to be returned; no rent increase was implemented and no rent increase was paid as the Tenant simply paid the rent that was owed in accordance with the tenancy agreement which was supported by the Landlord's calendars; the Tenant has already been compensated for the hot water tank up to May 2014; and it was the Tenant who was required to pay for repairs under $250.

In closing, the Tenant submitted that: he is entitled to compensation of $1,200.00 after being served the 2 Month Notice; his security deposit of $625.00 was considered paid as it was part of the payment negotiations of his lease; rent was paid in accordance with his spreadsheet provided in his evidence and therefore he was required to pay a rent increase without proper notice as noted in the May 9, 2014, decision; and the Landlord's letter found at D-1 in the Tenant's evidence is evidence that his payment schedule is correct and a rent increase was implemented without notice.

Landlord's Application

The Landlord submitted documentary evidence to support her monetary claim of $1,665.61 which consisted of, among other things, copies of: photographs of the rental property that were taken July 1, 2014; the tenancy agreement and addendum; receipts; a handwritten statement of cleaning performed by the Landlord; calendars, a spreadsheet outlining rent payments received from the Tenant; and the amount owed by the Tenant.

The Landlord testified that when the Tenant moved out late in the evening on July 1, 2014, he left the property unclean and the kitchen and bathroom faucets were broken. She now seeks $546.89 to cover the cost to purchase and install a kitchen faucet and bathroom faucet, as supported by receipts provided in her evidence. The Landlord submitted that it took her 10.5 hours to complete the cleaning for which she claimed $210.00 for labour which is based on $20.00 per hour plus $32.45 for cleaning supplies.

The Landlord argued that during the tenancy the Tenant had changed the locks to the rental property and had not provided her a set of keys when he moved out, which resulted in her having to have the locks rekeyed. She now claims $96.73 for the rekeying of the locks and for new keys, as supported by the receipt provided in her evidence.

The Landlord stated that she is also seeking $34.04 which is the amount she had previously paid for a radio that the Tenant stole from her patio at her personal residence. She indicated that she had called the police about the theft and that she was issued a file number.

The Landlord testified that rent was to be paid in the amount of $1,250.00 per month, as required by the tenancy agreement. She argued that the Tenant short paid his rent by $50.00 for the months of March, April and May 2014 by paying only $1,200.00 per month. As a result, she now claims the unpaid rent of $150.00 (3 x $50.00).

The Landlord submitted that the Tenant did not dispute the fact that he did not pay anything for June 2014 rent, which supports the Landlord's claim for payment of the reduced amount owed for June 2014 in the amount of $595.50 ($1,200.00 - $50.00 - $554.50), as ordered in the May 9, 2014 Decision.

The Tenant disputed all of the items claimed by the Landlord and stated that he had left the keys inside the rental unit. He argued that they had not changed the locks to the rental property; rather, it was the Landlord who had lost her set of keys, which the Landlord told his wife prior to the end of the tenancy.

The Tenant argued that the Landlord did not have to pay someone to clean the rental property as she had stated she had done the cleaning herself. He questioned how she could claim $20.00 an hour for cleaning and asked if that was the "legal" amount she could charge.

The Tenant disputed the claim for broken faucets on the grounds that he had requested the Landlord fix them and when she failed to do so the faucets formed part of his previous claim for repairs. He noted that he had submitted evidence for requested repairs to the faucets that had been broken for five months. The Landlord did not dispute that she had been previously advised that the faucets had broken; rather, she stated that the Tenant had told her they were broken and that it did not bother him.

The Tenant confirmed that the police had been called about a radio being stolen. He denied taking the radio and noted that no charges had been laid by the police.

The Tenant argued that he did not owe the Landlord an additional $150.00 for rent. The Tenant did not dispute that he had paid $1,200.00 for rent for March, April and June 2014. He argued that $1,200.00 was paid because that was the amount he was supposed to pay for rent as supported by the May 9, 2014 decision; by the 10 Day Notice issued by the Landlord June 4, 2014 listing the amount owed for June 2014 was $1,200.00; the copy of a previous rent cheque; the Landlord's March 6, 2014 letter found at page A in his evidence which states "The full months rent of $1200.00 will be due April 1, 2014 [sic]"; and his spreadsheet displaying payments made.

The Tenant testified that the Landlord's calendar evidence and spreadsheet were not accurate as they do not correctly display the payments he made of $1,100.00 as confirmed in the May 9, 2014, decision or the payments noted in the Landlord's letter found in his evidence at page D1.

The Tenant submitted that he had tried to pay the Landlord the reduced amount of $554.50 for June 2014 rent but the Landlord refused to take the payment. He questioned why he would have to pay the rent now when she had refused to accept it.

In his final submission the Tenant stated that the repair claims were regular maintenance issues that the Landlord should have attended too during the tenancy. He argued the Landlord's records were inaccurate and therefore were not proof of what was actually paid.

In closing the Landlord requested that the tenancy agreement be carefully reviewed as it is evidence that rent was to be paid in the amount of $1,250.00 per month. They noted that rent was not determined to be $1,200.00 until the May 9, 2014 Decision was issued. The Landlord stated that the Tenant was required to pay for repairs that were less than $250.00. The Landlord submitted that she was entitled to be paid for her time when having to clean the rental unit.

Prior to concluding the hearing the parties were given the opportunity to try to settle these matters. Unfortunately the parties were too entrenched in their positions and were not able to reach a settlement agreement.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Tenant's Application

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 64(2) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

In this case the Tenant relied heavily on sections of the May 9, 2014 Decision as evidence to support his monetary claim. In some arguments I found that the Tenant's interpretation was taken out of context while in others I found the May 9, 2014 Decision to be vague and unclear. Specific findings with respect to various sections of the May 9, 2014 Decision are included throughout the remainder of this Decision.

The Tenant had applied for reduced rent under Section 27 of the Act which stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

Although the Tenant had applied for a rent reduction based on Section 27, I find there was no evidence provided that indicated that the landlord had breached this section of the *Act*. Also, this tenancy has ended, therefore, ordering a future rent reduction would be moot. Accordingly, I dismiss the claim for rent reduction, without leave to reapply.

One of the issues in dispute is the amount of rent that was required to be paid by the Tenant. The Arbitrator in the May 9, 2014 hearing heard disputed verbal testimony and favored the Tenant's written submissions when she wrote "*I find that rent of $1,200.00 is currently payable*".

Section 14(2) of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment, in writing.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In the matters before me it was undisputed that the parties executed a written tenancy agreement on February 18, 2011 which stipulated that rent was required to be paid in the amount of $1,250.00. Notwithstanding the fact that the Tenant paid different amounts for rent, ($1,100.00 and $1,200.00) at times during this tenancy, there was no evidence before me that the parties entered into a subsequent written tenancy or that they mutually agreed, in writing, to alter the original terms of the tenancy to reduce the amount of rent payable, as required pursuant to Section 14(2) of the Act.

Based on the above, I favor the undisputed evidence of the original written tenancy agreement and I hereby find that the Tenant was required to pay rent in the amount of $1,250.00 per month.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

It was undisputed that the Tenant was served a 2 Month Notice to end tenancy on May 19, 2014 and the tenancy ended early when the Tenant served the Landlord Notice on June 20, 2014. Accordingly, I find the Tenant is entitled to compensation equal to one month’s rent in the amount of **$1,250.00**.

Section 51 (1.1) of the Act stipulates that a tenant referred to in subsection 51(1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

In this case the Tenant did not pay rent for June 2014, the last month of his tenancy. That being said, in the May 9, 2014 Decision the Tenant was ordered to reduce his rent as follows:

> *I order the Tenant to reduce June 2014 rent by $554.50 in full satisfaction of the claim. I order the Tenant to reduce June 2014 and ongoing rent by a further $100.00 on the conditions set out above.*

Based on the above, I find the Tenant was required to pay $495.00 ($1,250.00 - $554.50 - $100.00) for June 2014 rent; however no rent was paid. The Tenant was entitled to compensation equal to a full month’s rent of $1,250.00, pursuant to section 51(1) of the Act. Accordingly, I find the Tenant is entitled to the difference which is **$755.00** ($1,250.00 - $495.00). I further find that this calculation will constitute that June 2014 rent is considered paid in full, pursuant to section 51(1.1) of the Act.

The Tenant relied upon the May 9, 2014 Decision as evidence that he had paid a security deposit and pointed to the Arbitrator’s analysis where she wrote:

> *Given the undisputed evidence that the Tenant paid a lump sum amount at the outset of the tenancy, the Landlord's lack of accounting records of this payment, and taking into account the amount of time that has passed since the onset of the tenancy, I find that the Landlord's have not proven on a balance of probabilities that the Tenant failed to pay a security deposit or that a further payment was required. As the Landlord has not substantiated either of the reasons for the Notice I find the Notice to be invalid and that the Tenant is entitled to a cancellation of the Notice [sic].*

The above analysis was provided in the context of determining if the reasons for issuing a 1 Month Notice to end tenancy were substantiated. I do not accept that the above noted analysis is definitive evidence that a security deposit had been paid, as argued by the Tenant. Rather, I favor the Landlord's submission that when considering the Tenant made a lump sum payment of $7,500.00 at the outset of the tenancy, the arithmetic based on the monthly rent of $1,250.00 proves that the Tenant prepaid six months' rent (6 x $1,250.00 = $7,500.00), and no security deposit was paid, as noted on the tenancy agreement. Accordingly, I find the Tenant provided insufficient evidence to prove he had paid a security deposit; therefore, I dismiss the Tenant's claim for $1,250.00, double the security deposit, without leave to reapply.

The Tenant has claimed $1,400.00 for 14 months that he alleged he had suffered a rent increase without proper notice. Notwithstanding the undisputed facts that the Tenant had paid different rent amounts throughout this tenancy, I found above that the Tenant was required to pay rent of $1,250.00 per month, in accordance with the tenancy agreement. Therefore, I find there is insufficient evidence to prove that the Tenant suffered a rent increase when he began paying $1,200.00 per month. Accordingly, I dismiss the Tenant's claim for $1,400.00, without leave to reapply.

In the May 5, 2014, hearing the Arbitrator heard evidence relating to an issue that had been in existence since the onset of the tenancy regarding the size of the hot water tank. In the May 9, 2014 Decision the Arbitrator ordered as follows:

> *I therefore accept the Tenant's believable evidence that the Landlord promised a bigger tank and has failed to live up to this agreement. As such I find that the Tenant has substantiated its claim for compensation. I make this compensation in the form of a lump sum of $100.00 and a rent reduction of $100.00 per month commencing June 1, 2014 should the Landlord not provide the Tenant with a water tank with at least the capacity of 80 gallons before this time. This reduction will continue until the Landlord replaces the water tank or the tenancy ends.*

Based on the above, I find the Arbitrator in her May 9, 2014 Decision considered the Tenant's claim from the onset of the tenancy and awarded compensation up to the end of the tenancy. Accordingly, I find the Tenant had already been compensated for the first 38 months of the tenancy as claimed here. Furthermore, the $100.00 reduction was considered in my calculation for June 2014 rent above. Therefore, I dismiss the Tenant's claim for $3,800.00 in its entirety, without leave to reapply.

As noted in the preliminary issues above, all remaining claims for compensation for lack of repairs, are dismissed, without leave to reapply.

The Tenant has partially succeeded with their application; therefore, I award partial recovery of the $100.0 filing fee, in the amount of **$50.00**.

Landlord's Application

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

Section 5 of the Act stipulates that landlords and tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no effect.

The Residential Tenancy Policy Guideline #1 provides that residential tenancy agreements must not include terms that contradict the legislation. For example, the tenant cannot be required, as a condition of the tenancy, to provide maintenance or to conduct repairs that are the landlord's responsibility under the Act.

Based on the above, I find the term on the tenancy agreement that states "tenant to pay for repairs under $250" is a breach of section 32 of the Act, and is therefore, unenforceable.

Upon review of the Landlord's claim for $546.89 to replace the kitchen and bathroom faucets, I accept the undisputed evidence that the Landlord had been advised that the faucets required repair, several months before the tenancy ended. Despite being aware of the issue, the Landlord took no action to have the faucets repaired prior to the end of the tenancy. There was no evidence before me to prove the faucets required repair for any other reason other than normal wear and tear. Therefore, I find there to be insufficient evidence to prove the faucets required replacing due to the Tenant's breach of the Act. Accordingly, I hereby dismiss the claim, without leave to reapply.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant that allow access to and within the residential property.

The Landlord has sought $242.45 ($210.00 labour + $32.45 materials) to clean the rental unit. The Tenant did not dispute the Landlord's submission that he had not cleaned the unit; rather, the Tenant simply questioned if $20.00 was a "legal" amount for

cleaning and argued that the Landlord had not hired someone else to conduct the cleaning; therefore, she had not paid out any money.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the above, I accept the Landlord's submission that the unit had not been cleaned by the Tenant, which was a breach of section 37(2) of the Act. That breach cost the Landlord 10.50 hours of her time, as supported by her written submission detailing the cleaning that she had performed. I find the Landlord's claim to reasonable, given the circumstances presented to me during this hearing. Accordingly, I award the Landlord **$242.45** for cleaning costs.

It was undisputed that the Tenant knew the Landlord did not have a set of keys for the rental unit. That being said, I find the Tenant knowingly locked the rental unit at the end of the tenancy without providing the Landlord the keys, which I find to be a breach of section 37(2) of the Act. Even if the keys were left inside the unit, the Landlord could not have accessed the unit without breaking in or without hiring a locksmith, as she did not have a key. Accordingly, I award the Landlord **$96.73** as claimed for the cost of the locksmith.

The Landlord claimed $34.04 for the cost of a radio that was allegedly stolen from her residence. I find this claim does not fall within the jurisdiction of the *Residential Tenancy Act* as it does not relate to the Tenant's use or occupation of the rental unit. Accordingly, I dismiss the claim for the stolen radio, for want of jurisdiction.

As noted above under the Tenant's Application, I have determined that the Tenant was required to pay rent of $1,250.00 per month, in accordance with the tenancy agreement. The undisputed evidence confirmed that the Tenant paid $1,200.00 rent for March, April, and May 2014. I accept the Landlord's submission that the Tenant had paid a total of $1,250.00 per month for the previous months. Therefore, I find there is sufficient evidence to prove the Landlord's claim that the Tenant short paid his rent by $50.00 for March, April and May 2014. Accordingly, I grant the Landlord's claim for unpaid rent of $**150.00** (3 x $50.00)**.**

As indicated in the Tenant's Application above, when determining compensation for issuance of the 2 Month Notice, I found June 2014 rent was considered paid in full, pursuant to section 51(1.1) of the Act. Accordingly, no further compensation is owed to the Landlord for June 2014 rent.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

Monetary Order – Having found that each party is entitled to monetary compensation, I find these awards meet the criteria to be offset against the other as follows:

Tenant's Award ($755.00 + $50.00)	$805.00
LESS: Landlord's Award (242.45 + 96.73 + $150.00 + 50.00)	-539.18
Offset amount due to the Tenant	**$265.82**

Accordingly, I order the Landlord to pay the offset amount of $265.82 to the Tenant forthwith.

Conclusion

The Tenant was awarded compensation of $805.00 and the Landlord was awarded $539.18. After offsetting the awards the balance of $265.82 is owed to the Tenant.

The Tenant has been issued a Monetary Order for **$265.82**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 27, 2014

Residential Tenancy Branch