



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPL, MND, MNSD, FF

For the tenant – MNDC, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for landlords use of the property, but withdrew this at the outset of the hearing; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenants, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to keep all or part of the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on May 15, 2013 although the tenants were permitted to move in a few days earlier. Rent for this unit was \$1,275.00 at the end of the tenancy. This started as a fixed term tenancy for the first year and then reverted to a month to month tenancy. The tenancy ended on October 01, 2014. The tenants paid a security deposit of \$625.00 on April 10, 2013. Both parties attended a move in and a move out condition inspection of the rental unit. The tenants provided a forwarding address in writing on October 01, 2014.

The landlord's application

The landlord's agent testified that at the end of the tenancy the tenants and landlord attended the move out condition inspection of the rental unit. The landlord referred to the inspection report. The landlord's agent testified that items of damage were recorded on the inspection report and the tenants signed off and agreed the report fairly represented the condition of the rental unit. The landlord's agent testified that later on the landlord noticed other areas of damage and cleaning which was required so documented these on the inspection report after the tenants had signed it.

The landlord's agent testified that the oven, the shower, the fireplace, the walls and carpets all required cleaning. The landlord obtained three quotes for this work and picked the cheapest company. The carpets were dealt with separately. The landlord's agent agreed that the inspection report documents that the shower is good, the fireplace is good, the walls are good with the exception of the bathroom and the carpets are fair.

However, the landlord seeks to recover \$63.00 for cleaning and an invoice has been provided in documentary evidence

The landlord's agent testified that the tenants were given two working fobs at the start of the tenancy. One Fob was replaced during the tenancy. Both fobs were returned in poor condition and did not work. One of the fobs does not appear to be for the building. The landlord seeks to recover \$100.00 to replace these fobs and an invoice has been provided in documentary evidence.

The landlord's agent testified that the tenants were provided with a vacuum cleaner which was two and a half years old. At the end of the tenancy the vacuum was left broken and dirty. The landlord seeks to recover \$69.87 to replace the vacuum.

The landlord's agent testified that the tenants had not cleaned mould present on the caulking and shower door. The shower was in an excellent condition at the start of their tenancy. The landlord seeks to recover \$8.97 for a product purchased to control the mould. The receipt has been provided in documentary evidence.

The landlord's agent testified that the blinds had to be taken down for cleaning or replacement. The strata rules state that window coverings must be in place at all times so the landlord purchased paper window shades to comply with strata rules. The landlord seeks to recover the cost of these shades of \$12.99 and has provided a receipt in documentary evidence.

The landlord's agent testified that the shower head was left broken. Water sprayed everywhere and this was not noticed during the move out inspection. The shower head was three to four years old and the landlord seeks to recover \$43.33 for a replacement head. A receipt has been provided in documentary evidence.

The landlord's agent testified that this was rented as a furnished unit. The inventory of furnishings indicated that there were two Ikea lamps in the unit. At the end of the

tenancy one lamp was missing and one had a missing plug. The landlord had to replace both lamps and seeks to recover \$89.58. A receipt has been provided in documentary evidence.

The landlord's agent testified that the thermostat was left damaged at the end of the tenancy. This was not noticed during the inspection. The landlord has replaced the thermostat and seeks to recover the cost of \$18.24. A receipt has been provided in documentary evidence.

The landlord's agent testified that one of blind cleaning companies recommended that the blinds could not be successfully cleaned. The landlords removed the metal tracks and took these and the blinds to the dump. The landlord seeks to recover the dump fees of \$20.00 and has provided a receipt in documentary evidence.

The landlord seeks to recover the costs for sending evidence by registered mail of \$11.34; for gas to get to and from the unit of \$76.67, and costs incurred in preparing digital evidence of \$25.25. The receipts have been provided in documentary evidence.

The landlord's agent testified that the tenants caused extensive damage to the tiled flooring in the entrance. Tiles were chipped back to the concrete in places and the tenants did not inform the landlord of this damage during the tenancy. If the tenants had informed the landlord, the landlord could have taken steps to prevent further damage. The tenants did not look after the carpet in the unit and this was left dirty and stained. The carpet was cleaned prior to the tenants moving in and there were no stains present at that time. The landlord's agent testified that the carpets had to be replaced and the landlord has provided a quote showing the cost for replacement in documentary evidence. The landlord testified that the carpet was eight years old. The landlord seeks to recover the replacement costs for the carpet which was \$2,879.88 and will except some reduction for depreciation.

The landlord's agent testified that the right front element on the stove was damaged by some kind of a substance burnt onto the element. The element had to be replaced and the landlord seeks to recover the costs incurred of \$266.50. The landlord has provided a quote in documentary evidence.

The landlord's agent testified that the tenants had left the blinds stained. The landlord obtained three quotes to have the blinds cleaned. These quotes have been provided in documentary evidence and show that the landlord was quoted \$582.75, \$377.19 and \$548.38 for cleaning and repairing any broken chains. The landlord's agent testified that as one cleaning company recommended that the blinds may not be successfully cleaned then the blinds should be replaced. The landlord obtained two quotes for replacement costs for \$910.00 and for \$1,277.92. The landlord seeks to recover \$1,198.73 from the tenants.

The landlord testified that they tried to resolve these issues with the tenants prior to filing for arbitration. The tenants would not agree to cover any of the damage costs and so the landlord seeks an Order to keep the security deposit of \$625.00 and a Monetary Order for the balance.

The tenants disputed the landlord's claim. The female tenant provided testimony on behalf of both tenants. The tenant testified that they did forget to clean inside the oven and the tenant apologised to the landlord during the move out inspection and offered to clean it during the inspection; however, the landlord refused this offer. The tenant testified that the walls, the shower and the carpets were all cleaned at the end of the tenancy. The tenant testified that the walls did have some staining when they moved in and this was noted by email to the landlord who responded and said not to worry about it as it had been noticed before she settled with the previous tenants. The shower did have some minor mould on the caulking at the start of the tenancy but it was so minor it was not documented. The tenant testified that the vacuum provided by the landlord did not work efficiently and so the tenants borrowed an industrial vacuum from the male

tenant's work place at least once a month to give the carpets a good cleaning. At the end of the tenancy the tenants hired a rug doctor cleaner and shampooed the carpets.

The tenant testified that they were given two functioning fobs at the start of the tenancy; however, one was held together with duct tape. When these fobs were returned to the landlord one did not work but they were given back in the same condition. Both fobs were for the building and the landlord actually used one to get into the garage during the inspection so it shows that one did work. The tenants agreed that the landlord can deduct \$50.00 for the fob that did not work from the tenants' security deposit.

The tenant disputed the landlord's claim for a replacement vacuum. The vacuum was already in poor shape and was a cheap model. The tenant referred to a letter from the previous tenants who state that the vacuum was in poor shape during their tenancy.

The tenant disputed the landlord's claim for the cost of mould products. The tenant testified that the shower was in a fair condition when they moved from the unit and the landlord should be responsible to remedy any mould issues.

The tenant testified that as the windows had to be covered at all times that they do not dispute the landlord's claim for paper shades of \$12.99.

The tenants disputed the landlord's claim for the cost of a new shower head. The tenant testified that the shower head was fully functioning at the end of the tenancy and the landlord had turned it on during the inspection.

The tenant disputed the landlord's claim that there were two Ikea lamps in the unit at the start of the tenancy. The tenant testified that there was only one lamp there. The tenant referred to the inventory list which was completed on April 08, 2013 prior to the tenants moving into the unit. The list has been typed but the section concerning the lamps X 2 has been hand written on the list. The tenant testified that between the list being compiled and the tenancy starting the other lamp could have been removed by the

landlord. The tenants do agree that the one lamp was broken during the tenancy and they agreed the landlord may deduct \$50.00 from their security deposit to replace it.

The tenant disputed the landlord's claim that they damaged the thermostat. The tenant testified that the thermostat was always working; nothing was missing from it the day they moved from the unit and it was not documented on the move out report.

The tenants disputed the landlord's claim for dump fees and testified that they are not responsible for damage to the blinds.

The tenants disputed the landlord's claim for damage to the floor and carpets. The tenant testified that the tiled floor was already damaged at the start of their tenancy as mentioned in the letter from the previous tenants. The tenants had mentioned it to the landlord informing the landlord that it needed to be repaired. The tenant agreed the carpet suffered from a little wear and tear; however, the carpet was stained when they took over the tenancy. The tenant referred to an email sent to the landlord identifying the staining on the carpet outside the bathroom. The landlord responded and said not to worry about it as she had seen the stains before she settled with the previous tenants.

The tenants disputed the landlord's claim for the replacement stove element. The tenant testified that this element always had something on it but it always worked. It was left in the same condition at the end of the tenancy as it was in at the beginning of the tenancy.

The tenants disputed the landlord's claim for replacement blinds. The tenant testified that there was some staining on the blinds at the start of the tenancy and this was also referred to in the email sent to the landlord. The tenants do not believe they should be held responsible for replacement of the blinds as they were left in the same condition. Some of the chains on the blinds were also broken at the start of the tenancy but this was not noted on the move in report but was confirmed in the letter from the previous tenants.

The tenants agreed the landlord may keep \$112.99 from the security deposit for one fob, one lamp and the paper shades. The tenants seek to have the balance of the security deposit returned to them.

The landlord's agent testified that the tenants neglected the unit and the damages are caused either through their deliberate actions or neglect. The tenants never reported any repairs with the exception of the oven glass door. Had the tenants informed the landlord, the landlord could have made necessary repairs. The move in report shows the blinds were in a good condition and not stained.

The landlord called their first witness DT. DT is a friend of the landlords who carried out some of the repairs in the unit. DT testified that after the tenants left the unit he saw that a piece of furniture was damaged, a cupboard door and a closet door needed repair; the carpet was stained. The garburator had a spoon in it, the stone floor had some damage, a mattress was damaged, the blinds were damaged and the vacuum was broken. The witness testified that this was the first time the landlord has had to apply to keep the security deposit from any of the three tenants who have rented the unit. DT testified that he did much of the repair work in the unit and saved the landlord thousands of dollars in labour costs and DT spent many hours installing the new blinds.

The tenants asked DT if DT was in the unit when the previous tenants lived there. DT testified that he has been in the unit many times since the landlord purchased the unit.

The landlord calls their second witness DP. DP testified that he holds a red seal carpentry qualification and he carried out some kitchen repairs in the unit. DP testified that the landlord informed him that they had planned to do a kitchen and bathroom renovation but it got scaled back due to the cost of making repairs to the unit after the tenants vacated. DP testified that he did clean mould in the shower and took the shower door apart to clean. DP testified that he understood that the landlord intended to use the unit for personal use after the renovations were completed and not to sell the unit.

The tenant asked DP if there was more work. DP testified that there was additional work and he had been scheduled to paint the unit, do spot repairs, repair or install blinds and do general maintenance although the site was unseen at that time. DP testified that he was contracted to replace the blinds and did replace a few of them. He was going to do an estimate for extensive renovations and that idea had been tossed around by the landlord.

The tenants asked the landlord's agent if the carpet man flew to Canada to do the carpets. The landlord's agent responded that the carpet man runs a business in the States and was in Canada on business. The tenants asked the landlord's agent if it was his company that replaced the carpets. The landlord's agent responded no, he went into the unit between two tenants and prepared a quote. The tenants asked the landlord's agent if the landlord has new tenants now. The landlord's agent responded that no they have sold the property. They did not intend to sell it but as the repairs cost a lot of money they could not afford to get the renovations fully done. An individual contacted the landlord looking for a rental but the landlord declined and the property was later sold to that individual in a private sale. The tenants asked the landlord when they did the move in inspection did the landlord answer when the tenants pointed out some damages and state that they were just wear and tear. The landlord responded that the tenants pointed out a couple of spots on the carpet by the bathroom and mentioned a broken tile. All the blinds were functional and the tenants signed off on the report agreeing to the condition of the unit. The tenants asked the landlord if the garburator was fully functional. The landlord responded that it was but the tenants were asked not to use it. The tenants asked if it had previous problems. The landlord responded that she had just anticipated problems with it and there was a spoon found in it at the end of the tenancy. The tenant testified that it had been cleaned out at the end of the tenancy and there was not a spoon in it prior to the tenants vacating. The previous tenants had indicated that they had had problems with it.

The landlord's agent asked the tenants why they did not report the broken vacuum. The tenant responded that it was not broken it just did not work efficiently. The landlord's

agent asked the tenants if there was masking tape on the fob. The tenant responded yes and one fob was replaced during the tenancy. The previous tenants also confirmed that the fobs were not in good shape at the end of their tenancy. The landlord's agent asked the tenants why they did not meet the landlord's agent to return the lamp. The tenant responded that there was never a second lamp. The landlord's agent asked the tenants when they rented a steam cleaner. The tenant responded that they rented the cleaner the day before and cleaned the carpet that evening and again the morning they moved out. The landlord's agent asked why the carpets did not smell as if they had just been cleaned and why was the furniture not moved. The tenant responded that the furniture was put back after the carpets were cleaned. The landlord's agent asked why the tenants did not contact the landlord about mould. The tenants responded that there was very little mould and what was there is normal wear and tear in a bathroom in constant use. The landlord's agent asked what is the dirt shown on the pictures of the vacuum. The tenant responded that the dirt is on the inside of the vacuum after it was used. The landlord asked how often the tenants left the windows open in the winter. The tenant responded that the windows were not opened for any length of time. The previous tenants have written to state that snow piled up outside the windows which created moisture inside and this dripped down onto the sills and was cleaned up regularly by the tenants.

The tenants' application

The tenant testified that the landlord served the tenants with a Two Month Notice to End Tenancy for landlord's use of the property. The Notice had an effective date of October 31, 2014; the tenant testified that they provided the landlord with 10 days' notice to end the tenancy before the effective date of the Notice and vacated the unit on October 01, 2014. The tenants had paid rent for September but did not receive compensation equal to one month's rent from the landlord as specified under s. 51 of the *Act*. The tenants therefore seek to recover \$1,275.00 from the landlord in compensation for the Notice.

The tenant testified that the Notice provided one reason to end the tenancy that the landlord has all permits and approvals in place to demolish or renovate the unit in a

manner that requires vacant possession. The tenant testified that in April, 2015 they met a member of the buildings strata council. He notified the tenants that the landlord had sold the unit and that he thought this had happened sometime in the fall of 2014. The tenant then sought out other proof of this sale and spoke to the manager of the strata and found the landlord's title deeds which confirmed that the property title was transferred to a new owner on January 05, 2015.

The tenant testified that she had also called the City to enquire if the landlord had applied for any permits or approvals after the tenants had been served with the Two Month Notice. The City confirmed that no permits or approvals had been applied for.

The tenant testified that she frequently asked the landlord what renovations they were intending to do and the tenant referred to the e-mail thread provided in evidence. The landlord did not confirm what the renovations were going to be that required vacant possession. The tenant testified that they accepted the Notice in good faith and vacated the unit after new accommodation was found. The tenant testified that the landlord did not use the rental unit for the purpose provided on the Two Month Notice and instead sold the unit shortly after the tenants vacated. The tenants call the landlords' good faith into question when they served the tenants with the Two Month Notice. The tenants therefore seek to recover the equivalent of Two Month's rent in compensation to the amount of \$2,550.00.

The landlord's agent did not dispute the tenants' claim for compensation equal to one month's rent. The landlord's agent testified that they were not aware of this section of the *Act* when they gave the Two Month Notice to the tenants.

The landlord's agent disputed the tenants' claim for compensation equal to two month's rent. The landlord's agent testified that when they served the tenants with the Two Month Notice it reflected the landlord's intentions at the time. Renovations were going to be started straight away and conversations had been had with DP about doing complete renovations in the kitchen and bathroom. This level of work would have involved putting

in a new kitchen, counter tops, back splash, sink, new appliances, and new drywall, switching the stove to a gas stove, doing a kitchen island and renovating the bathroom. This would have required vacant possession. The landlord's agent testified that after they saw the damage to the rental unit and the costs required to remedy these damages the landlord had to pull out of doing the major renovation project. Subsequent to that the landlord had spent time sorting out their options as to what to do with the unit and consequently their contractor DP only did some minor repairs after the landlord considered what was left in the budget.

The tenant asked the landlord's agent if they have photographs showing the renovations done in the unit. The landlord's agent responded that she did not go back to the unit. The tenant asked when the new carpet went in. The landlord's agent responded on November 19, 2014 and testified that they would not have done any repairs if they had planned to sell the unit. The tenant asked if the landlord had tried to sell the unit before the tenants took possession. The landlord's agent responded no the landlord had not. The tenant asked if the landlord had tried to sell the unit previously; the landlord's agent responded that before the previous tenants moved in they had a renter in the unit and had tried to sell it then but they had no success so it was taken off the market. The tenant asked the landlord had the landlord said when the tenants had visited that she had tried to sell the unit but the market was not good. Did the landlord watch the market to see if it was improving? The landlord responded that with the decreasing dollar the Canadian economy got stronger but the landlord sold the unit at a \$40,000.00 loss and would not have planned to do that after the cost of the repairs and after the family had bought ski passes for the session.

The landlord's agent testified that it was not their intention to rent the unit again and after the major renovations the family intended to use the unit. Someone contacted the landlord who knew someone else who wanted to rent the unit and when the landlord declined they asked if the landlord would consider selling the unit. That deal was finalised in November 2014 while the landlord was still doing the repairs to the unit. The sale completed on January 06, 2015. Prior to the sale going through the landlord's son

and family used the unit for three weeks in the winter and the family had all purchased ski passes for the winter session. The landlord acted in good faith when the Notice was served and it was the tenants' actions or neglect in causing damage to the unit which resulted in the major renovations not going ahead.

The tenant calls her witness PF. PF testified that he is a member of the strata council and he had met the new owner of the unit about two months ago. The new owner mentioned that he had said he had a private deal to buy the unit from the landlord. PF testified that in April, 2015 he had taken pictures of the inside of the unit and he would say that the carpet was the original carpet and it looked like it had been down for a long time. The unit did not look like it had had any work done on it.

The landlord's agent asked PF if the new owner told him his mother drove the deal and it was accelerated because the new owner needed somewhere to live. PF testified that the new owner told him that he had been working on the deal for a while and that he had made a good deal. The landlord asked PF if PF was aware that the landlord had put new carpet into the unit in November, 2014. PF testified that he has no idea it looked like the same carpet as was there when he was at the unit visiting the tenants.

The tenants call there witness RR. RR is the strata agent for the property. RR testified that he was aware of the sale of the unit when he received a request for a Form B which the owner must have to sell a strata property.

The landlord's agent asked RR if he has ever met her on the property. RR responded that he did not know. The landlord's agent asked RR if the landlord or landlord's agent has ever invited RR to the unit. RR responded not that he was aware of. The landlord's agent asked RR if the landlord had ever requested a form B. RR responded that he does not know without looking at the records but it is usually requested by the buyer.

Analysis

The landlord's application

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondents. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With regard to the landlord's claim for damages; the landlord has provided a copy of the move in and move out condition inspection reports. These reports have been completed using two different forms. The move in report states that everything is 'OK' and the only damage indicated on the move in report is a broken tile in the bathroom. Later the tenants sent an email to the landlord indicating that there was bleach like stain on the carpet outside the bathroom door, a stain on the blinds in the living room, stains on the counter and stains on the walls. The landlord responded to that email and said that as far as the stains go not worry about them as the landlord saw them before she settled with the previous tenants. My concern is to the validity of the move in report if these stained areas were not recorded on the move in report. I also have concerns about the

move out condition inspection report. The report indicated that the only dirty areas were the oven, the blinds and one windowsill in the master bedroom. The rest of the report shows that the unit was primarily left in a good condition with some areas indicated as fair.

The purpose of completing a detailed move in and move out inspection report is to provide evidence as to the condition of the unit at the start and end of the tenancy to show if there is any cleaning or damages caused during the tenancy. A landlord is not entitled to alter or add things to the move out report once the tenants have signed to agree that the report fairly represents the condition of the unit.

With this in mind I refer the parties to s. 32(2) of the *Act* which states 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. The key word here is reasonable cleanliness and I am not satisfied from the evidence presented that the tenants did not leave the rental unit reasonable clean with the exception of the oven. I therefore limit the landlord's claim for cleaning to an amount of **\$25.00** for the oven clean.

With regard to the landlord's claim for two replacement fobs; the tenant argued that one fob was held together with duct tape at the start of the tenancy and this has been confirmed in a letter from the previous tenants that the fobs were not in a good condition. The parties agreed that one fob was replaced during the tenancy. The landlord has the burden of proof to show that both fobs were damaged through the tenants' actions or neglect. The move out report shows that one fob was broken; however, access worked and the other fob did not work at all. The tenants have agreed to pay \$50.00 for the replacement of one fob but as the other fob was not in a good condition at the start of the tenancy I find the landlord has not met the burden of proof that this was damaged through the tenants' actions or neglect. I therefore limit the landlord's claim for replacement fobs to **\$50.00**.

With regard to the landlord's claim for a replacement vacuum; the tenant argued that the vacuum was not broken and still worked but was inefficient for the job. The landlord has the burden of proof to show that the vacuum was damaged through the actions or neglect of the tenants. The vacuum was already two and a half years old and it is my decision that without corroborating evidence to show that the vacuum was damaged through the tenants' actions or neglect and not through its limited useful life then I am not prepared to find in favour of the landlord's claims for replacement costs. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim for mould cleaning products. I find from the evidence presented that there was some mould buildup in the shower. Tenants have an obligation to clean the caulking regularly to prevent mould build up in this area. I find therefore that had the tenants purchased something similar to prevent or clean mould during their tenancy that the cost would be the same. I therefore uphold the landlord's claim for **\$8.97**.

With regard to the landlord's claim for temporary shades; the tenants did not dispute this section of the landlord's claim. I therefore find in favour of the landlord's claim to recover **\$12.99**.

With regard to the landlord's claim to recover the replacement costs for the shower head; there is no indication on the move out report that the shower head was malfunctioning. The tenant testified that the landlord tested the shower head during the move out inspection. Without further corroborating evidence to show the tenants caused damage to the shower head I am not satisfied that the landlord has met the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for two replacement lamps; the landlord has provided a typed inventory of items in the unit as of April 08, 2013. This inventory has had X 2 hand written against the lamps. The tenant argued that when they took possession of the unit there was only one of the Ikea lamps in the unit and suggests that between the

time the inventory was taken and the tenants moving into the unit the other lamp was removed. In this matter the landlord has the burden of proof to show that both lamps were in the unit at the start of the tenancy. Without corroborating evidence I must limit the landlord's claim to recover the cost of one lamp that was damaged by the tenants. The tenants have agreed to pay **\$50.00** for the damaged lamp.

With regard to the landlord's claim for the thermostat; the landlord has not indicated on the move out inspection that the thermostat was found damaged at the end of the tenancy, the landlord must ensure that all damage is recorded on the move out report or provide corroborating evidence that any damage later found was caused by the tenants' action or neglect. I find the landlord has not met the burden of proof that the tenants caused this damage and I must therefore dismiss this section of the landlord's claim.

With regard to the landlords' claim for dump fee to dispose of the blinds and tracks; the landlord must first meet the burden of proof that the tenants' actions or neglect caused the staining to the blinds and that this staining could not be removed through professional cleaning. I am not satisfied that the landlord has met the burden of proof and therefore the landlord's claim to recover the costs to dump the blinds and tracks is dismissed.

With regard to the landlord's claim to recover costs for registered mail, processing evidence and gas to get to and from the unit; there is no provision under the *Act* for costs of this nature to be awarded. These sections of the landlord's claim are therefore dismissed.

With regard to the landlord's claim for replacement carpets; I am not satisfied that the landlord has had the carpets replaced. The landlord has only provided a carpet quote and not an invoice in documentary evidence. Furthermore, the move out inspection report indicates that the carpets are all in a good condition and that only the entrance tiles are broken. If the carpets were left in such a stained condition that warranted replacement of the entire carpets rather than having them professionally cleaned then I

am sure the landlord would have noticed the staining and documented it on the move out report. The landlord's witness has stated that the carpets were stained; however, the tenants' witness has stated that it does not appear that the landlord replaced the carpets as they still appeared to be the same carpets in the unit after the unit was sold in January, 2015. When one party's evidence contradicts that of the other and both party's claims are plausible then it is one person's word against that of the other and the burden of proof is not met. Consequently, I must dismiss the landlord's claim without leave to reapply.

With regard to the landlord's claim for the stove element; this was not mentioned on the move out report. While I accept that something such as this could have been missed during the move out inspection the landlord should have tested each element to ensure it was working correctly. When there is an issue with one of the appliances the landlord has the burden of proof to show that any damage caused was done through the tenants' actions or neglect and not as a result of previous tenants' actions. The tenant testified that whatever was on the element was there at the start of their tenancy. As the move in condition inspection is limited in its value I cannot say whether or not this element was damaged previously or by these tenants. In this matter each party's explanation is plausible and it becomes one person's word against that of the other. Therefore the burden of prove has not been met and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for replacement blinds; the move out inspection report clearly states that the blinds are dirty and stained and the blinds in the master bedroom have broken heading and chains. The tenants argued that the living room blinds already had a stain at the start of the tenancy. I have reviewed the photographic evidence in conjunction with the move out report and find the blinds are clearly stained and that this likely occurred during the tenancy. However, I am not satisfied that the blinds could not have been professional cleaned. The landlord has provided three quotes from companies for cleaning the blinds. Only one quote recommended that the blinds be replaced. The landlord did not specify if any of these companies came out to view the blinds before providing their quotes and recommendations. I therefore find

without corroborating evidence to show that the blinds could not be cleaned to a reasonable standard that the landlord's claim for damage to the blinds must be limited to cleaning. As there are three quotes for cleaning and repair. I have taken an average cost of the three quotes and find the landlord is therefore entitled to recover the amount of **\$502.00**.

As the landlord's claim has merit, I find the landlord is entitled to keep the security deposit of \$625.00 pursuant to s. 38(4)(b) of the *Act*. This will be offset against the landlord's monetary award.

The tenants' application

With regard to the tenant's claim for one month's compensation for the Two Month Notice to End Tenancy; I refer the parties to s. 51 (1) (1.1) (1.2) of the *Act* which states:

51 (1) 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.

(1.1) A tenant referred to in subsection (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.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The landlord did not dispute the tenants claim for compensation allowed for the Two Month Notice. I therefore find the tenants' claim to recover one month's compensation is upheld. The tenants are entitled to recover **\$1,275.00** from the landlord pursuant to s. 51(1) of the *Act*.

With regard to the tenants' claim for compensation equal to two month's rent; I refer the parties to s. 51(2) of the Act which states:

(2) In addition to the amount payable under subsection (1), if

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

With this in mind I find the landlord did not use the rental unit for the purpose stated on the Notice and instead sold the rental unit shortly after the tenants vacated. This sale completed on January 06, 2015. The tenants have called the landlord's good faith into question when serving them with the Two Month Notice.

When the landlord's good faith is called into question the landlord must establish an honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through in this case a local government document allowing a change to the rental unit (e.g. building permit) and a contract for the work. While I accept that for renovations of this nature permits or approvals may not be required; however, when there is a strata council then some notification to the strata for renovations of this nature may have to have been sought. I would certainly expect some sort of contract between the landlord and the person engaged to do the work. The contractor attending as the landlords witness was vague as to the scope of work he was going to do in the unit and spoke about repairs and painting rather than major renovation work that would require vacate possession. For a project of this nature I would reasonably expect the landlord to

have obtained quotes for the work or at least some kind of documentation between the landlord and a contractor engaged to do the work and including a list of the renovations expected prior to serving the tenants with the Two Month Notice to End Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

In this matter the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy. The landlord 's agent testified that they did not intend to sell the unit and this only came about because the cost of repairs left the landlord's budget lacking for the major renovation and so the unit was subsequently sold in a private sale. The landlord has insufficient evidence for example from the purchaser of the unit that the negotiations occurred suddenly and were instigated by the purchaser and not the landlord.

I am not satisfied that the landlord has met the burden of proof that they did not have an ulterior motive for ending the tenancy which may have been to sell the unit rather than do any renovations. I therefore find in favor of the tenants' claim to recover the equivalent of two months' rent to the amount of **\$2,550.00** pursuant to s. 51(2) of the *Act*.

With regard to the filing fees paid by each party; as the party's claims each have some merit I find the parties must bear the cost of filing their own applications. A monetary award has been issued to the tenants for the following amount:

Landlords claim for damages	\$648.96
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Security deposit	(\$625.00)
Total amount due to the landlord	\$23.96
Compensation to the tenants	\$3,825.00
Less landlords monetary award	(\$23.96)
Total amount due to the tenants	\$3,801.04

Conclusion

For the reasons set out above, I grant the landlord the amount of \$648.96. I have deducted the security deposit held in trust by the landlord from the landlord's monetary award. The landlord's monetary award of \$23.96 has been offset against the tenants' monetary award.

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,801.04**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 01, 2015

Residential Tenancy Branch

