Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF; MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application (filed 4 December 2014) pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing dealt with the tenants' application (filed 30 June 2015) pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both tenants appeared. Both landlords appeared. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Procedural History

The evidence for this hearing was heard over two days. The hearing dates were over two months apart. This decision should be read in conjunction with the decision dated 16 July 2015.

At the beginning of the second hearing date, I reviewed the landlords' evidence received at the first hearing date. For some reason the tenant DC objected. I am unclear on what basis the tenant DC felt it was necessary to object to a review of the landlords' evidence as it benefits all present.

Preliminary Issue – Service

The landlord EH testified that she sent the notices of reconvened hearing by registered mail to the tenants. The landlord EH admitted that she used an old address for service. The tenants did not receive the documents; however, as the tenants' cross application was scheduled to be heard at the same time as the landlords' application, the tenants had notice of the date, time and access information for the hearing.

The tenant DC took issue with this and asked that I hold the landlords to strict adherence with the procedures. I explained to the tenant DC that the purpose of the provisions regarding service was to allow for parties to have notice of proceedings. I explained to the tenant DC that where the parties have notice through other means paragraph 71(2)(b) allows me to find that there has been service. As the tenants received notice of this hearing through the Residential Tenancy Branch, I find that the tenants were sufficiently served for the purposes of the Act.

Preliminary Issue – No Evidence Received from Tenants

The tenant DC stated that there was evidence that he wanted to provide. The tenant DC stated that he understood that the tenants were not permitted to provide additional evidence. I read to the parties a portion of the interim decision:

> *It is necessary that the tenants have the opportunity to respond to the evidence. The tenants may provide evidence that responds to the landlords' evidence only. This evidence should be filed and served in accordance with the Rules to avoid any further delay. No other evidence will be accepted from either party.*

This decision is unequivocal. The tenants were entitled to provide evidence in response to the landlords' evidence.

Preliminary Issue – Scope of Landlords' Application

The landlords asked to amend their application to remove the claimed rent loss for March. Paragraph 64(3)(c) allows me to amend an application for dispute resolution. As there is no prejudice to the tenants in allowing the landlords to reduce the amount of their claim, the amendment was allowed.

The landlords' monetary order worksheet submitted in July 2015 includes a claim for cleaning in the amount of $210.00 that was not included in the landlords' original application. On the basis that the amendment was not obvious and was not sufficiently set out in the landlords' application, I find that the tenants did not have sufficient notice of this claim. I have not considered the landlords' claim for cleaning in this application.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Are the tenants entitled to a monetary award for the return of a portion of her pet damage and security deposits? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlords' claim and the tenants' cross claim and my findings around each are set out below.

The landlords and tenants entered into a fixed-term tenancy beginning 1 September 2014 and ending 28 February 2015. Monthly rent of $1,000.00 was due on the first. The tenant DC initially testified that he paid a security deposit and pet damage deposit totalling $1,200.00. When reminded that his application set out that he paid a security deposit of $600.00 and a pet damage deposit of $300.00, the tenant DC retreated from his earlier stated position. Over the course of the tenancy, the landlords and tenants would enter into service agreements where the tenants would be compensated with an amount offset against their rent payable.

The tenant DC testified that the landlords did not supply a copy of the condition move out inspection report to the tenants. The landlord EH testified that she left a copy of the report on the stairs to the rental unit. The landlord EH testified that this is where the landlord would leave mail for the tenants. The tenant DC testified that he expects this information to be given by hand as it is an important legal document. I asked the tenant DC if he considered the move inspection report accurate. The tenant DC submitted that the landlords have had six months to change the report.

The tenant DC testified that there were missing doors in the rental unit and dirty dishes in the dishwasher at the beginning of the tenancy. The tenant DC testified that the landlord HH's tools were in the rental unit.

The tenancy agreement sets out that a stove and oven was to be provided as part of the tenancy. The tenant DC testified that he assisted the landlord HH with installing the stove. The landlord EH testified that the stove had to be converted from natural gas to propane and that this involved changing the jets. The tenant DC admitted that he did drop a part into the stove. The landlord EH testified that this part had to be replaced before the stove could be returned. The landlord EH testified that she provided the tenants with a hot plate and stove until the stove was replaced with an electric stove.

The landlord HH testified that he told the tenants not to use the stove on 1 September 2014. The tenant DC testified that the tenants were not told this and that they used the stove until 11 September 2014. The tenant DC testified that the tenants suffered from carbon monoxide poisoning as a result of the improperly installed stove. The tenant DC testified that the tenants went to the emergency room for a couple of hours. The tenant DC does not know what stove deficiency caused the poisoning. The tenant DC testified that the emergency room doctor told the tenants that their symptoms were consistent with carbon monoxide poisoning. The tenants did not provide any medical documentation to corroborate their medical diagnoses.

The tenant DC testified that he did not have anything to cook with for seven to ten days. The tenant DC testified that on or about 20 September 2014, the landlords supplied the tenants with an electric stove.

The tenant DC testified that the propane tank ran dry. The tenant DC testified that he spoke to the landlord HH. The tenant DC testified that the landlord HH told the tenant to fill it. The tenant DC testified that he was unable to fill the propane tank as there was a "no fill" order on the tank. The tenant DC testified that the no fill order was in place because the system was overloaded. The tenant DC testified that he emailed the

landlords expressing concern about the lack of propane. I was not provided with this email.

The tenant DC testified that there was a provision in the tenancy provision that made the agreement void if the landlords failed to provide heat. I asked the tenant DC to take me to that provision in the tenancy agreement. The tenant DC stated that he expected that I would know this information. I informed the tenant DC that I was asking for this information as I had not seen any provision in his tenancy agreement that supported his position. The tenant DC did not identify any such provision.

The landlord EH acknowledged receiving the tenants' notice to end tenancy on 7 November 2014 and acknowledged that it set out that the tenants were leaving because of the issue with propane. The landlord HH testified that he received the tenants' notice on 7 November 2014, but was confused when he received it because of its timing. The landlord HH testified that on 7 November 2014 he received the tenants' notice to vacate the rental unit. The tenants both testified that their notice to end tenancy was delivered on 1 November 2014. The notice was posted to the landlords' door. That notice set out that the tenants was vacating the rental unit as the landlords had failed to supply propane that provided heat and hot water. The notice set out an effective date of 30 November 2014. I was not provided with a copy of this notice. The tenant DC admitted that the tenants did not provide any written notice of a material breach prior to providing their notice to end tenancy on 1 November 2014.

The tenant JG testified that she saw the rental unit advertised for rent on 4 November 2014. The landlord EH testified that the rental unit was advertised on 4 November 2014 as available for 1 March 2015, after the expiration of the fixed-term tenancy. The tenants could not recall what date was set out in the advertisement, if any.

The tenant DC testified that he attempted to coordinate a condition move out inspection with the landlords. The tenant DC testified that he made these attempts by telephone. The tenant DC testified that he provided the landlords with the tenants' forwarding address by email on 7 December 2014. The landlords provided me with a copy of this email. The tenant DC denies that this is a true copy of the email. The tenant DC testified that the landlords have changed the wording and omitted parts. The tenants did not provide me with a copy of this email. The tenant DC testified that he did not provide a copy of this because he deleted his email correspondence with the landlords.

The landlords testified that they attempted to organize a condition move out inspection. The landlords testified that the tenant refused to participate. In the copy provided by the landlords the tenant DC sets out:

There will be no move out inspection as you did not supply me with a copy of the conditional inspection report therefor forfeiting the entire amount. Also any walk out inspection would have had to be organized for Nov 30th on the move out date and it was not. I will expect the return of my damage and pet deposit within 15 days.

[as written]

The landlords seek compensation for the tenants' use of propane over the course of the tenancy. The tenant DC testified that he was never provided with any invoices for utilities including the last time the tank was refilled. The landlords refilled the propane tank on 9 December 2014. I was provided with a copy of the invoice.

The landlord HH testified that the tenants left furniture behind. The tenant DC admits that he left a large computer desk at the rental unit. The tenant DC testified that the other items that were left behind belonged to the landlords.

The landlord HH testified that extensive cleaning was required to bring the rental unit into compliance with the Act. The landlords testified that there was extensive damage done to the rental unit by the tenants. The landlord HH testified that he was not provided with receipts by the labourers he hired to complete the work.

The landlord HH testified that the landlord EH advertised the rental unit on or about 9 December 2014. The landlord HH testified that the repair work was completed by the end of December, but that it was hard to rent at that time. The landlords testified that they secured new tenants for 1 February 2015.

The landlords provided me with photographs in support of their claim. The landlord EH testified that the photographs were taken three or four days after the end of the tenancy. The landlord EH testified that no one else could have caused the damage depicted. The photographs show the door pulled off its hinges, missing slats in a closet door, a broken light shade, scratches on the floor, large holes in the walls, a dirty oven, belongings left in the rental unit, and general grime.

The tenant DC denies that the tenants did any damage to the rental unit. The tenant DC argues that it was either the landlords themselves that caused the damage or the "parkies" that the landlords hired. The tenant DC testified that he cleaned the rental unit to the standard that the suite was provided at the beginning of the tenancy.

The tenant DC testified that the landlords owe him $90.00 for carpentry work that the he performed.

The landlords filed for dispute resolution on 4 December 2015 claiming for $2,658.00 in compensation from the tenants:

Item	**Amount**
December Rent Loss	$1,000.00
January Rent Loss	1,000.00
Propane	231.00
Stove Part	27.00
Bedroom Door and Wall Repair	150.00
Repair Floors and Walls	100.00
Transfer Station Fees	100.00
Filing Fee	50.00
Total Monetary Order Sought	**$2,658.00**

The tenants claim for $2,940.00:

Item	**Amount**
September Rent Abatement	$500.00
November Rent Refund	500.00
Security Deposit	600.00
Pet Damage Deposit	300.00
Subsection 38(6) Compensation	900.00
Carpentry	90.00
Filing Fee	50.00
Total Monetary Order Sought	**$2,940.00**

Analysis

Landlords' Claim

The landlords claim for a rent loss for December and January in the amount of $2,000.00.

Subsection 45(3) of the Act allows a tenant to end a tenancy for breach of a material term:

> If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Despite the tenant DC's assertion, there is no provision in the tenancy agreement that permits the tenants to treat the tenancy agreement as at an end for failing to provide heat. The tenant DC acknowledged that the tenants did not provide written notice of the material breach in advance of providing their notice to end tenancy. Accordingly, the tenants cannot rely on subsection 45(3) of the Act to end the tenancy.

I find that the landlords and tenants entered into a fixed term tenancy for the period 1 September 2014 to 28 February 2015.

Subsection 45(2) of the Act sets out how a tenant may end a fixed-term tenancy:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) is not earlier than one month after the date the landlord receives the notice,
>
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
>
> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The effect of subsection 45(2) is that a tenant cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenants vacated the rental unit before the completion of the fixed term. The tenants have breached the Act and as a result the landlords experienced a loss.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

In this case, the landlords experienced a rental loss for both December and January; however, despite receiving notice from the tenants of their intent to breach the fixed-term tenancy agreement the landlords did not advertise the rental unit as available until 9 December 2014. I find that by delaying the advertisement, the landlords failed to mitigate their losses. On this basis, I find that the landlords are only entitled to recover for one month of rent loss: $1,000.00.

The landlords seek $231.00 for the tenants' share of the propane utility. The landlords provided a receipt for filling the propane tank in the amount of $370.09. The landlords did not provide a receipt indicating when the tank was last filled. Accordingly, the landlords have failed to show what propane use occurred in the course of the tenancy. As the landlords have failed to show what amount the tenants are liable to pay, I dismiss this portion of the landlords' claim.

The landlords claim for the cost of replacing a part to the stove that the tenant lost. Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

The tenant DC admits that he dropped the part for the stove thereby losing it. I find that the tenant DC caused damage to the stove, which was provided as part of the rental unit, by losing a part through his own actions or neglect. I accept the landlords' testimony that this part cost $27.00 to replace. I find that the tenants are responsible for paying compensation to the landlords for this missing part.

The landlords claim for scratches to the flooring. The photograph provided by the landlords does not show any obvious damage. I find that the landlords have failed to show, on a balance of probabilities, that the tenants caused damage to the floor in excess of regular wear and tear. The landlords are not entitled to recover the cost of the floor repairs.

The landlords claim for various damage to the rental unit's door and walls. The tenants deny this damage.

The often cited test of credibility is set out in *Faryna v Chorny,* [1952] 2 DLR 354 (BCCA) at 357:

> The real test of the truth of the story of a witness… 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.

I do not find plausible the tenant DC's suggestion that the landlords either caused the damage to the rental unit themselves or allowed "parkies" into the rental unit that then caused this damage. This version of events is not reasonable or supported by any evidence. I find that the landlords' version of events is more plausible. On the basis of this credibility finding I find that the damage to the rental unit occurred in the course of the tenants' tenancy. The nature of the damage is severe. It appears that there are

holes punched or bashed into the walls. The door is clearly seen pulled from its hinges. This is not the sort of damage that occurs as a result of wear and tear. I find, on a balance of probabilities, that this damage was caused through the intentional actions of the tenants. I find that the tenants are responsible for the cost of repairs to the door and walls. The landlords have estimated these costs at $150.00 for the cost of the door and wall repair and $100.00 for the cost of the floor and wall repair. I cannot apportion the cost of the floor and wall repair between floor and wall as I have not been provided with receipts. I find that the landlords have proven their entitlement to $150.00 their sworn costs of repairing the door and wall. The landlords are entitled to this amount.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Pursuant to *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" sets out the responsibility for garbage removal from a rental unit:

> Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The landlords testified that the tenants left garbage and belongings in the rental unit. The tenants deny this with the exception of a large metal table, which the tenant DC admits he left behind. By leaving the large table behind, the tenants breached the Act. In doing so the landlords incurred costs. I find that the landlords are entitled to recover the cost of the landlords disposing of the large metal table. As the remainder of the belongings alleged to have been left behind were relatively small when compared to a large piece of furniture, I find that the marginal cost of disposing of these contested items is negligible and the landlords are entitled to the full amount they testified they expended disposing of the tenants' belongings left behind: $100.00

The landlords have applied to retain the tenants' security deposit and pet damage deposit. Pursuant to subsection 38(4)(b) a landlord may retain amounts from a pet damage or security deposit as ordered by an arbitrator; however pursuant to subsection 38(7), a pet damage deposit may only be offset against damage alleged to be caused by a pet. The landlords have not alleged any specific pet damage. As such, I order that the landlords are entitled to retain the tenants' security deposit in partial satisfaction of the monetary award.

As the landlords have been successful in their claim, they are entitled to recover their filing fee from the tenants.

The landlords have proven their entitlement to a monetary award in the amount of $727.00:

Item	**Amount**
December Rent Loss	$1,000.00
Stove Part	27.00
Bedroom Door and Wall Repair	150.00
Transfer Station Fees	100.00
Offset Security Deposit	-600.00
Filing Fee	50.00
Total Monetary Award	**$727.00**

Tenants' Claim

The tenants claim for compensation in relation to events surrounding the stove pursuant to section 67 of the Act. The tenants claim that they were not instructed to not use the gas stove. The tenants also claim that they were not provided with any alternative cooking devices. The landlords refute this. The landlord HH testified that he instructed the tenant not to use the stove as it was missing a part on 1 September 2014. The landlords both testified that they provided a hot plate and toaster oven to the tenants until an electric stove was installed mid-month.

With consideration of the instructions from the Court set out in *Faryna v Chorny,* in this instance I prefer the testimony of the landlords over that of the tenants. The landlords' version of events was more plausible than the tenants. On this basis, I find that the tenants were instructed not to use the stove and that they were provided with a hot plate and toaster oven in the interim. In any event, it would have been wholly unreasonable of the tenants to begin using a gas stove that was missing a part.

The tenancy agreement sets out that a stove and oven was provided as part of this tenancy. For the period 1 September 2014 to 20 September 2014 the tenants did not have use of a stove, but instead had use of a toaster oven and hot plate. I find that the substituted hot plate and toaster oven does not satisfy the landlord's obligations under the tenancy agreement. As such, the landlords have breached the tenancy agreement.

Pursuant to section 67 the tenants must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. In this case, I have not been shown that there is a significant loss as a result of substitution. Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this, I award the tenants nominal damages of $50.00 for the cooking appliance substitution.

The tenants seek compensation in the amount of $500.00 for the lack of heat in November. The tenants allege that the rental unit became unlivable as a result of the lack of heat on or about 14 November 2014.

Subsection 32(1) 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 the tenant. Maintaining the heating system is part of the landlords' obligations pursuant to subsection 32(1) of the Act. The landlords were solely responsible for the upkeep of the propane tank. The landlords failed in this responsibility causing the "no fill" order to be placed on the tank. This resulted in a breach of subsection 32(1) of the Act.

I accept that the lack of heat devalued the tenancy and in turn caused the tenants a loss; however, the tenants did not provide me with any evidence that they sought to mitigate their loss by taking interim measures that would have been less costly such as purchasing or borrowing electric heaters. In this situation, the impact of the tenants' failure to mitigate on damages and the calculation of damages itself is not a precise science and cannot be accurately reduced to a calculation. With consideration of the seriousness of the problem of lack of heat, the duration of the incident (two weeks), and the tenants' failure to mitigate, I value the diminishment of the tenancy as 30%. I find that the tenancy was devalued over the month of November. The tenants are entitled to compensation in the amount of $300.00. I consider this amount reasonable given the impact that the lack of heat had on the tenants.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, the tenant provided his forwarding address by email on 7 December 2014. Pursuant to section 88 of the Act, email is not an accepted method of service; however, paragraph 71(2)(c) of the Act allows me to order that a document not served in accordance with the Act is sufficiently served. In this case, I order that the tenants' forwarding address was sufficiently served despite being served incorrectly.

The landlords filed their dispute resolution claim to retain the tenants' security deposit on 4 December 2014. As such, the landlords filed within the fifteen-day time limit prescribed by subsection 38(1) of the Act.

The tenant DC's email of 7 December 2014 appears to allude to the extinguishment provisions contained in section 24 of the Act. The tenant DC has misapprehended the provision. The extinguishment provisions contained in sections 24 and 36 of the Act function to extinguish the landlords' right to claim against the security deposit for damage to the rental unit; however, the landlords' right to claim against the security deposit in relation to other losses survives this extinguishment. As the landlords have claimed against the security deposit in relation to rental losses, the landlords were entitled to file an application as they have done. By filing this application, the landlords have complied with subsection 38(1) of the Act and are thus not subject to the doubling provisions in subsection 38(6) of the Act with respect to the security deposit. The tenants claim for compensation pursuant to subsection 38(6) in respect of the security deposit is dismissed.

Pursuant to subsection 38(7), a pet damage deposit may only be offset against damage alleged to be caused by a pet. There was no pet damage alleged in the landlords' claim. Accordingly, the landlords had fifteen days from receipt of the tenants' forwarding address in writing to return the tenants' pet damage deposit; however, this does not apply if the tenants' right to the pet damage deposit has been extinguished.

The tenants allege that landlords extinguished their right to claim against the pet damage deposit by failing to provide a copy of the condition move in inspection report to the tenants. The landlords allege the tenants' extinguished their right to return of the pet damage deposit by failing to participate in a condition move out inspection.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" (Guideline 17) helpfully summarized the rules regarding extinguishment as set out in sections 24, 36, and 38 of the Act:

6. The right of a tenant to the return of a security deposit is extinguished if the landlord has offered the tenant at least two opportunities for a condition inspection as required by the Act and the tenant has not participated on either occasion.
7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:
   ▪ the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or

▪ having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

In this case, the landlord EH testified that she left the tenants' copy of the condition inspection report on the stairs where she would leave the tenants' mail. Paragraphs 88(f) and (g) allow service by leaving a copy in a mail box or mail slot for the address at which the person resides or by attaching a copy to a door or other conspicuous place at the address at which the person resides. While the staircase does not fall within either of these categories, I find that the stairs are sufficiently analogous to the methods set out in paragraphs 88(f) and (g) such that I make an order pursuant to paragraph 71(2)(c) that the condition move in inspection report was sufficiently served for the purpose of the Act. I find it more likely than not that the tenants received this report and simply misplaced it. In particular, the landlord EH would have noticed the condition inspection report remaining on the stairs if the tenants had not retrieved it. Accordingly, I find that the landlords' right to claim against the pet damage deposit was not extinguished by way of section 24 of the Act.

The landlords testified that they attempted to arrange a condition move out inspection report. The landlords provided me with a copy of the email provided by the tenant DC in response to their invitations for a condition move out inspection. The tenant DC denies that this is a true copy of the email; however he did not provide me with a copy of the email he says he sent as he claims to have deleted all email correspondence with the landlords. I find this assertion convenient. On balance, I find the landlords to be credible on this topic. I find that there was no material alterations made to the email provided to me by the landlords. As such, I find that the tenants rejected outright participation in the condition move out inspection. I find that by rejecting participation in the condition move out inspection, the tenants' extinguished their right to return of the pet damage deposit pursuant to section 36 of the Act.

Although the tenants' right to the pet damage deposit has been extinguished Guideline 17 sets out that this amount should be offset against any award in favour of the landlords:

> In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished.

On the basis of Guideline 17, I order the tenants' pet damage deposit offset against the landlords' award.

The tenants seek the compensation for carpentry work provided by the tenant DC in the tenancy that remained unpaid. The scope of the Act, and in turn my jurisdiction, is established in subsection 2(1) of the Act:

> Despite any other enactment…, this Act applies to tenancy agreements, rental units and other residential property.

Residential Tenancy Policy Guideline, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

> The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

Pursuant to subsection 2(1) and Guideline 1, I find that I do not have jurisdiction to consider the tenants' claim pursuant to a services contract. As such, I decline to consider it.

As the tenants have been successful in their application, they are entitled to recover their filing fee from the landlords.

The tenants have proven their entitlement to a monetary award in the amount of $400.00:

Item	**Amount**
September Rent Abatement	$50.00
November Rent Refund	300.00
Filing Fee	50.00
Total Monetary Award	**$400.00**

Conclusion

I issue a net monetary order in the landlords' favour in the amount of $27.00 under the following terms:

Item	**Amount**

Landlords' Monetary Award	$727.00
Offset Pet Damage Deposit	-300.00
Offset Tenants' Monetary Award	-400.00
Total Monetary Order	**$27.00**

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: October 26, 2015

Residential Tenancy Branch