Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF; MNDC, MNSD, OLC, ERP, RP, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

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

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the deposits, pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, *Regulation*, or tenancy agreement, pursuant to section 62;
- an order to the landlords to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order to the landlords to make repairs to the rental unit, pursuant to section 33;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two tenants and their agent, TK (collectively "tenants") and the two landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness LR" testified on behalf of the tenants at this hearing and both parties had an opportunity to question the witness. The tenants confirmed that their agent daughter had authority to speak on their behalf at this hearing. This hearing lasted approximately 132 minutes in order to allow both parties to fully present their submissions.

The tenants' application was initially convened on August 20, 2015 ("first hearing") and that hearing lasted approximately 38 minutes. The same parties appeared at that hearing, with the exception of the tenants' witness LR. The landlords' application was initially scheduled for this hearing date, October 20, 2015. I issued an interim decision, dated August 21, 2015, following the first hearing, adjourning the tenants' application so that it could be heard together with the landlords' application at this hearing on October 20, 2015. I advised both parties about this new hearing date at the first hearing, and both parties confirmed their availability. At the first hearing and in my interim decision, both parties were given directions with respect to submission of evidence, which was to be done in accordance with the timelines in the Residential Tenancy Branch ("RTB") *Rules of Procedure*, and both parties confirmed their understanding of same.

During this hearing, both parties confirmed receipt of the other party's application for dispute resolution hearing package in accordance with my directions in the interim decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlords confirmed receipt of 65 pages of written evidence from the tenants on the day before this hearing, October 19, 2015. The tenants confirmed that service was effected by leaving a copy of the written evidence in a hole in the landlords' gate. The landlords confirmed that they had an opportunity to review the written evidence and were agreeable to me considering the evidence at the hearing and in my decision. Although the tenants' 65 pages of written evidence was not submitted in accordance with section 88 of the *Act,* I find that the landlords were sufficiently served with the tenants' 65 pages of written evidence, for the purposes of section 71(2)(c) of the *Act*. Despite the fact that this evidence was late according to the *Rules of Procedure* and my interim decision, I considered this evidence at the hearing and in my decision, based on the landlords' consent.

At the first hearing and in my interim decision, I noted that the tenants' application for an order requiring the landlords to comply with the *Act*, *Regulation*, or tenancy agreement,

an order to the landlords to make emergency repairs for health or safety reasons, and an order to the landlords to make repairs to the rental unit, was withdrawn by the tenants. Accordingly, I have included this information in the "conclusion" section of this decision.

The landlords confirmed that while they initially applied for a monetary order of $19,940.15, they wished to amend their monetary claim to reduce it to $3,400.00 plus the $100.00 filing fee. The landlords' application is amended accordingly and it causes no prejudice to the tenants, as it is a reduction rather than an increase in the monetary amount sought.

Preliminary Issue – Tenants' Adjournment Request

The tenants' agent requested an adjournment of this hearing, due to the fact that she was ill with a viral infection. She stated that she had been ill for the two weeks prior to this hearing and she was unable to visit her mother, one of the tenants named in both applications, to properly prepare for this hearing due to her illness and her fear of spreading the virus. She indicated that she submitted the tenants' 65 pages of evidence late due to her illness. She further noted that she had a "life outside this hearing" and that she was unable to submit the 65 pages of evidence to the RTB and the landlords, prior to contracting her illness. The tenants' agent noted that if the 65 pages of evidence were allowed at this hearing, she may not necessarily require an adjournment, although she was still sick and had difficulty speaking.

The landlords opposed the tenants' adjournment request, indicating that the tenants had enough time to prepare for this hearing, as they were given two months' notice of this hearing from August 20 to October 20, 2015. The landlords indicated that they had waited a long time for this hearing and they wished to have final resolution of this matter.

During the hearing, I advised both parties that I would not be granting the tenants' adjournment request. I did so after taking into consideration the criteria established in Rule 6.4 of the RTB *Rules of Procedure*, which include the following provisions:

> *Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*
>
> *(a) the oral or written submissions of the parties;*

> *(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
> *(c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
> *(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
> *(e) the possible prejudice to each party…*

I note that the tenants had since June 18, 2015, to prepare for their own hearing, as they filed their application on that date. Further, I adjourned the first hearing from August 20 to October 20, 2015, a two month time period, with the tenants' consent regarding the adjournment and the new hearing date. Moreover, I note that the tenants' agent's illness only occurred in the two weeks prior to this hearing, which leaves the additional six weeks prior to that, for the tenants to prepare for this hearing since the first hearing date. The tenants' agent also failed to provide medical documentary evidence regarding her condition and the fact that she was unable to attend the hearing due to an illness. If the tenants' agent was unable to personally visit the tenants to prepare for this hearing in the previous two weeks, she could have telephoned or found another way to communicate with them. She also could have arranged for another agent to attend this hearing, if necessary. I note that this matter had already been adjourned once and that a further delay would be significant and prejudicial for the landlords who have been waiting a long time for resolution of this matter. I also find that a further adjournment, mainly to have the 65 pages of late written evidence admitted into this hearing, when both parties were cautioned as to submitting timely evidence, is not an exceptional reason for requiring an adjournment. In any event, the landlords later consented to the late evidence being admitted at this hearing, which made this a moot issue.

Issues to be Decided

Is either party entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award for the return of their deposits?

Is the either party entitled to recover the filing fee for their application?

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 arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

The landlords confirmed that this tenancy began on September 1, 2008 and ended on July 31, 2015. Monthly rent in the amount of $1,150.00 was payable on the first day of each month. A security deposit of $575.00 and a pet damage deposit of $575.00 were paid by the tenants and the landlords continue to retain both deposits. The rental unit is a full house.

The landlords confirmed that they did not receive a written forwarding address from the tenants after the tenancy ended. The tenants' agent confirmed that the landlords had notice of the tenants' written forwarding address by way of the tenants' application for this hearing. Despite my interim decision putting the tenants on notice to provide a written forwarding address to the landlords after the hearing on August 20, 2015, the landlords confirmed that the tenants failed to do so. The landlords confirmed that no move-in or move-out condition inspection reports were completed for this tenancy.

The landlords seek a loss of one month's rent of $1,150.00 from the tenants. The landlords noted that they forgot to claim for a loss of an additional month of rent and they did not wish to increase their monetary claim at this hearing. The landlords noted that the tenants breached their fixed term tenancy agreement by vacating the rental unit early on July 31, 2015, two months prior to the end of the fixed term on September 30, 2015. The landlords stated that while they initially intended to sell their property, they decided to re-rent it but will do so as of December 2015 or sometime in early 2016. The landlords stated that the tenants left the rental unit in a dirty condition and they had to replace the carpets, repair the walls, and clean the entire unit. The landlords also noted that they are performing renovations to the property as well. The tenants acknowledged that they did not clean the rental unit when they vacated because the landlords told them that they were planning to bulldoze the home. The tenants also noted that cleaning would have posed health hazards, due to the termites, rodents and other harmful substances in the unit. The landlords provided photographs of the condition of the unit when the tenants vacated.

The landlords also seek $500.00 for replacing the carpets with hardwood flooring, $100.00 for carpet disposal when the carpets were replaced, $500.00 for painting the unit, and $500.00 for cleaning supplies. The landlords did not provide receipts for these

amounts. The landlords stated that they installed new carpets and freshly painted the rental unit in 2006, two years before the tenants moved in. The tenants dispute all of the above costs, stating that the carpets were very old and already stained when they moved into the unit and witness LR supported this statement. The tenants indicated that the paint was very old as well when they moved into the unit. Witness LR testified that when she helped the previous tenant clean the rental unit when he was vacating in spring 2008, the carpets were twenty to thirty years old, and the unit was "appalling" and in bad condition with rodent and termite infestations. She indicated that she only recommended this unit, through a mutual friend, to the tenants before they moved in because she thought it would be fixed up before the tenants moved in.

The tenants stated that they vacated the rental unit early due to the landlords' breach of a material term of the tenancy agreement. The tenants indicated that the landlords failed to address the termite problem in the rental unit, such that they had to vacate the unit early due to this problem. The tenants seek a monetary award of $3,450.00, which is equivalent to three months of rent, due to the landlords' refusal to deal with the termite problem and complete the actual process for extermination. The tenants stated that they suffered emotional distress due to this issue, but no work loss as both tenants are retired.

The tenants noted that the termite problem began inside the rental unit around December 2013 and outside the unit about three years before they moved into the unit. The tenants stated that the landlords only repaired one wall of the rental unit and the laundry room floor, when the whole house had to be repaired to rid the termites. The tenants stated that the landlords' letter, dated April 6, 2015, was clear that they refused to do any further termite treatments until the rental unit was cleaned up by the tenants. The tenants explained that they cleaned the rental unit and it was ready for inspection, as it was only the shop area that was not cleaned but that was not the area of termite infestation. The tenants confirmed that the landlords simply told them to use cleaning sprays and the termites would disappear.

The tenants submitted two reports, one was a 47-page property inspection report, for an inspection that occurred on July 30, 2015, and the other was a two-page "wood destroying insect inspection report," for an inspection that occurred on July 31, 2015. The tenants explained that both reports show that there were termites in the rental unit, that recommendations were made to exterminate these termites and that the landlords failed to treat the affected areas, causing the termite problem to continue. The tenants stated that they did not vacate the rental unit earlier because there was a low vacancy rate of places available in the area and they were unable to afford more expensive units due to their income. The tenants indicated that they have now moved to a smaller unit.

The landlords dispute the $3,450.00 compensation being sought by the tenants. The landlords agreed that there were termites in the rental unit but they dealt with the problem adequately. They stated that they dealt with the termite problem immediately when informed and had pest control inspections and spraying treatments completed in January, March and April 2014. The landlords provided invoices for these treatments. They stated that the failure of the tenants to allow access to the unit for inspections and the failure to clean the unit and leaving old wood outside the unit, contributed to the ongoing termite problem. The landlords agreed that they stopped termite treatments from April 2014 to 2015 because the tenants refused to clean the rental unit adequately. The landlords provided photographs of the old wood left outside the unit.

The landlords seek $300.00 for yard cleaning from the tenants. Both parties agreed that the tenants signed an addendum to the tenancy agreement indicating that they are responsible for yard maintenance. The landlords testified that the tenants failed to do yard cleaning when they vacated the rental unit and a company had to be hired to do the cleaning. The landlord provided a business card indicating that $350.00 plus GST taxes were charged for this yard cleaning. The landlords confirmed that they were only seeking $300.00 from this total amount as some cleaning was done prior. The landlords provided photographs of the yard with their application. The tenants dispute the landlords' charges for yard cleaning, indicating that the garden was full of weeds and cornstalks when they moved in and they maintained the lawn throughout the tenancy. They stated that the landlords' photographs of the brown grass were because of a water shortage and the inability to water the grass during that time. The tenants provided an article regarding the water shortage in the area during this time. The tenants further noted that the landlords' photographs showed the compost area and the branches from pruning the cherry trees, articles that the landlords agreed to dispose of themselves. The tenants agreed in their written evidence that "garden area was not weeded in the current year as the Respondents was [sic] moving out."

The landlords seek $350.00 from the tenants to replace a washer, dryer and stove in the rental unit. The landlords stated that they provided these appliances to the tenants when they moved into the unit. The tenants stated that they bought a new stove to replace the old broken stove in the unit and they took the new stove with them when they vacated. The tenants stated that the male landlord disposed of the old stove. The landlords disputed the tenants' claim, denying the fact that they disposed of the stove. The tenants confirmed that they purchased a washer and dryer from the previous tenant who left the rental unit and they provided a receipt confirming that they paid $300.00 for this purchase. Witness LR confirmed that she saw the washer and dryer in the rental unit when the previous tenant was leaving, as she is friends with him, and assisted him with cleaning the unit. Witness LR testified that she was told by the previous tenant that

he sold the washer and dryer to the tenants. The landlords stated that this washer and dryer was their property and provided to the previous tenant, who had no right to sell the appliances and did not sell it to the tenants.

The landlords seek to offset their monetary award with the tenants' deposits totaling $1,150.00. The tenants seek the return of their deposits, stating that they did not cause any damages to the rental unit.

Analysis

Damages Test

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

> *An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

Termites

Section 32 of *Act* states the following with respect to the obligations of both parties during a tenancy:

> *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) 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 tenants' agent made little mention of the contents of both expert reports submitted by the tenants for this hearing. The tenants' agent failed to provide useful and specific references from the reports in her submissions, as it related to the tenants' claims, largely leaving the reports for me to decipher. Neither of the report authors appeared to testify at this hearing to authenticate their reports and to explain the findings made. The tenants' agent confirmed that the author of the two-page report could not testify at this hearing because his corporate lawyer would not allow him to do so, due to liability concerns. I find it concerning that an author refused to testify to support his own report, due to liability issues. The landlords did not have the ability to cross-examine the authors of the reports regarding their findings. Given the above reasons, I attach very little weight to both expert reports.

Both parties agreed that there were termites in the rental unit. The landlords had termites in the unit when they were residing there and saw the termites. The landlords produced notices and invoices for termite treatments in the rental unit. I accept the tenants' testimony that they suffered emotional distress due to the ongoing issues with the termites. I find that the tenants suffered a loss of the value of their rental unit, due to the ongoing issues with the termites.

I find that the landlords failed to fully address the termite problem by refusing to treat the rental unit for an entire year between April 2014 and 2015. In order for the termite problem to be efficiently and appropriately remedied, consistent treatment must be implemented by the landlords. I find that the landlord has failed to ensure that treatments are completed in a timely, efficient and consistent basis such that the termites could be eliminated.

However, I find that the tenants failed to fully mitigate their losses. The tenants filed their Application on June 18, 2015, over 1.5 years after first noticing the problem in December 2013. The tenants failed to file any applications at the RTB for orders requiring the landlords to perform termite treatments or seeking a rent reduction or compensation for failure to complete treatments. The tenants also failed to clean the rental unit appropriately in order for the landlords to gain access to have inspections and treatments completed. While the termites may not be due to uncleanliness but

rather moisture, wood rotting and other issues, pest control professionals need to be able to gain access to the unit in order to inspect and complete treatments. The tenants are required by section 32 of the *Act* to maintain the unit in a state of cleanliness throughout the tenancy. I find that the landlords' photographs of the condition of the rental unit when the tenants vacated, shows some proof of the state of uncleanliness that the tenants lived in during their tenancy. I also find that the tenants admitted in their testimonial and written evidence that they collected and repaired items which they sold, had a shop on the property, and were asked to clean various areas of the house and shop to prepare it for inspection by the landlords.

The tenants' home inspection report also notes rodent droppings, which the landlords and witness LR testified about, that the tenants did not claim for in their application. I make note of this because it appeared to be a large problem for the tenants, according to their written evidence. Witness LR, who is the tenants' witness, raised a huge issue regarding the rodent droppings she noticed when the previous tenant vacated and noted that it was the "second worst home" she had seen for rodents, in her experience in janitorial and cleaning work. She further noted in a written statement, dated April 21, 2015, that was submitted for this hearing, that when she attended at the rental unit on April 16, 2015, "the termites were crawling and flying all over and in the bathroom you couldn't even see the floor. The house is still over run by mice and you can smell the mold." I find that this further attests to the fact that the tenants failed to maintain the rental unit according to the cleanliness standards of section 32 of the *Act*.

I have taken the tenants' partial failure to mitigate into account when awarding compensation to the tenants, as noted above. I award the tenants $500.00 in nominal damages for the termite issue. I find that while the tenants failed to prove a significant loss, they showed an infraction of their legal right to a pest-free rental unit.

Material Breach of Tenancy Agreement and Loss of Rent

Section 45(3) of the Act states that if landlords have breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenants give written notice of the failure, tenants may end a tenancy effective on a date after the date the landlords receives the notice.

I find that the tenants were not entitled to end their fixed term tenancy early as there was no breach of a material term of the tenancy agreement. As noted above, I accept that there were termites in the rental unit and they devalued the tenancy agreement and the tenants' use of the rental unit. However, I find that the tenants' 1.5 year delay in addressing the issue, by way of an application at the RTB for repairs, rent reduction or compensation, demonstrates that a pest-free unit was not a material term of their tenancy agreement.

I also note that witness LR, the tenants' witness, testified that the rental unit was "appalling," noting rodent and insect infestations, when she was assisting the previous tenant in moving out, yet she still recommended the unit to the tenants to live in. Therefore, there is a question as to whether the tenants were aware of the problem when they moved into the unit. Witness LR stated that she thought the unit would be repaired and renovated before the tenants moved in. However, the tenants still moved into the unit and agreed in the addendum tenancy agreement that they were renting the unit "as is." The tenants also voluntarily renewed their initial two-year fixed term tenancy agreement beginning in 2008 for another five years in 2010, with the landlords. This is in conflict with witness LR's statement that the unit was so appalling in 2008 when the previous tenant was vacating and because it was not repaired after that, it was still appalling in 2015, seven years later. Why the tenants would voluntarily subject themselves to these "appalling" conditions, shows a huge failure to mitigate and a lack of "materiality" of living in a pest-free unit.

Further, the tenants did not claim for compensation regarding the rodents and rodent droppings in the rental unit. While the tenants are not required to vacate their rental unit to prove a material breach, as they claimed that they were unable to vacate earlier due to financial reasons, they endured the termite problem without appropriately attempting to find a solution and mitigate their losses. Although I found that the landlords failed to complete appropriate termite treatment in the unit for a lengthy period of time, I find that this was also based on the tenants' failure to clean the unit sufficiently for inspection and treatment to occur.

Section 45 of the *Act* states that tenants cannot give notice to end the tenancy before the end of the fixed term. If the tenants do, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenants vacated the rental unit on July 31, 2015, before the completion of the fixed term on September 30, 2015. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or the tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-

compliance with the *Act* to do whatever is reasonable to minimize that loss. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the *Act*.

I find that the landlords are entitled to $1,150.00 for one month's rental loss for the tenants' breach of the fixed term tenancy agreement. Although the landlords have not yet re-rented the unit and they are still completing renovations regardless of the tenants, I have taken this into account in awarding compensation below and I find that they are not entitled to a full two-month period of rental loss. The landlords testified that they forgot to include two months' rental loss in their application and that they were willing to waive their claim to the second month. I find that the landlords have thus attempted to mitigate their losses in this way. I find that a one month period to clean the unit, complete any repairs and re-advertise the unit is sufficient for the landlords to re-rent the unit.

Landlords' Damage Claims

I dismiss the landlords' claim for $300.00 for a replacement washer and dryer, without leave to reapply. I accept that the tenants purchased the previous tenant's washer and dryer, as they provided a signed receipt for this cost, and witness LR verified that she saw the washer and dryer and was told by the previous tenant that it was sold to the tenants. I find that the tenants were permitted to remove the washer and dryer from the rental unit because they lawfully purchased those items. Although the landlords claimed that the previous tenant had no authority to sell their washer and dryer, the tenants were unaware and uninvolved with this arrangement between the landlords and the previous tenant.

I dismiss the landlords' claims for $500.00 for replacing the carpets with hardwood flooring, $100.00 for carpet disposal when the carpets were replaced, and $500.00 for painting the unit, without leave to reapply. The landlords did not provide receipts for these amounts. The landlords failed to prove the condition of the carpets and walls when the tenants moved in, including by way of a move-in condition inspection report, photographs and receipts to show the last time these items were replaced or maintained. The landlords only provided photographs when the tenants moved out. The tenants disputed the landlords' claims, stating that the carpets and walls were old and in bad condition when they moved in. Witness LR confirmed that she saw the bad condition of the walls and carpets after the previous tenant moved out.

I award the landlords $50.00 for replacement of their stove. Both parties agreed that there was already a stove when the tenants moved in to the rental unit. I find that the

tenants failed to prove that the old stove was broken, such that they were required to dispose of it and buy a new one. The tenants did not provide documentary evidence to show that they bought a new stove or that they requested a repair or a replacement for the old stove from the landlords. The male landlord denied disposing of the old stove with the tenants. There was no stove in the rental unit when the tenants vacated, as noted by both parties. The landlords provided an estimate for the cost of a used stove in the amount of $50.00 and I find that this is a reasonable amount for a replacement stove.

I award the landlords $300.00 for yard maintenance. The landlords provided a receipt for this cost, albeit handwritten on a business card. The landlords provided photographs to show the weeds and lawn condition when the tenants moved out. I find that both tenants signed the addendum to the tenancy agreement indicating that the "weeds must be kept down and cut / per week durring [sic] the summer session." . The tenants agreed that the lawn had weeds, indicating that it was like that when they moved in and they did not maintain it because they were moving out. Although the tenants stated that the lawn was brown due to water restrictions from a water shortage in the area, this does not explain their failure to maintain the weeds, as required. I find that the landlords mitigated their losses by deducting $50.00 plus GST taxes from the total cost.

I award the landlords $500.00 in nominal damages for cleaning the rental unit and for cleaning supplies. Although the landlords did not provide receipts for these costs, I find that they still suffered a loss. The tenants agreed that they did not clean the rental unit when they vacated. Although the tenants stated it was because the landlords were demolishing the house, the landlords denied this fact. As per Residential Tenancy Policy Guideline 1, the tenants are required to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit during the tenancy and the tenant is also "generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard." I find that the tenants did not fully abide by the above guideline at the end of this tenancy and that the above amount is a reasonable amount for cleaning the entire house.

Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits.

However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenants are not entitled to double the value of their deposits. The landlords filed their application on August 10, 2015, within 15 days of the end of this tenancy. However, the landlords' right to claim against the deposits for damage was already extinguished under sections 24 and 36 of the *Act,* as the landlords did not complete move-in or move-out condition inspection reports with the tenants, as required by the *Act*. However, the tenants did not provide their forwarding address in writing in accordance with section 88 of the *Act*. At the first hearing on August 20, 2015, the tenants were notified that their application for dispute resolution was not notice of their forwarding address in writing and they were put on notice at that time to provide a written forwarding address to the landlords as per section 88 of the *Act*. Despite this, the tenants still failed to provide a forwarding address in writing to the landlords after the hearing on August 20, 2015 and before this hearing on October 20, 2015. Providing a written forwarding address as per section 88 triggers section 38 of the *Act*.

In any event, the landlords are permitted to offset the deposits against other losses that are not damage. The landlords have claimed for a loss of rent in the amount of $1,150.00 and they have been awarded this amount in my decision.

The landlords continue to hold the tenants' deposits of $1,150.00. Over the period of this tenancy, $5.75 in interest is payable on the landlords' retention of the deposits since September 1, 2008, the beginning of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' deposits including interest, totalling $1,155.75, in partial satisfaction of the monetary award.

Filing Fees

As both parties were only partially successful in their applications, I find that neither party is entitled to recover their filing fee. The tenants must bear the cost of their $50.00 filing fee and the landlords must bear the cost of their $100.00 filing fee.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $344.25 against the tenants as follows:

Item	Amount
Loss of Rent	$1,150.00
Stove Replacement	50.00
Yard Maintenance	300.00
Cleaning	500.00
Award to Tenants for Termites	-500.00
Offset Security and Pet Damage Deposits	-1,155.75
Total Monetary Award	**$344.25**

The landlords are provided with a monetary order in the amount of $344.25 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.

The landlords' application for $1,400.00 for painting, replacement and disposal of flooring, and replacement of the washer and dryer, are dismissed without leave to reapply.

The tenants' application to recover their deposits is dismissed without leave to reapply, as this amount has been offset against the landlords' monetary award.

Both parties' applications to recover their filing fee are dismissed. Each party must bear the cost of their own filing fee.

The tenants' application for an order requiring the landlords to comply with the *Act*, *Regulation*, or tenancy agreement, an order to the landlords to make emergency repairs for health or safety reasons, and an order to the landlords to make repairs to the rental unit, was withdrawn.

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 19, 2015

Residential Tenancy Branch