



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenants – MNSD, MNDC

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; 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 and pet deposit; 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 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 *Act*, regulations or tenancy agreement; for a Monetary Order to recover the security and pet deposit; and to recover the filing fee from the landlord for the cost of this application.

The hearing was originally scheduled on May 31, 2016 and was adjourned to today's date as additional time was required to hear evidence from both parties.

The landlord and tenants attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant 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 or unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security or pet deposits?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?
- Are the tenants entitled to recover the security and pet deposits?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?

### Background and Evidence

The parties agreed that this tenancy started on May 01, 2013 for a fixed term of one year. The tenancy was renewed for another one year fixed term which started on May 01, 2014; thereafter the tenancy continued on a month to month tenancy until it was ended with proper notice on October 31, 2015. Rent for this unit started at \$1,425.00 per month. This increased to \$1,450.00 per month for the second term and was later reduced to \$1,410.00 per month. The tenancy agreement also states that the tenants were required to pay \$100.00 for utilities in the first year; \$115.00 for utilities in the second year and the tenants agreed to pay \$140.00 for utilities from May 01, 2015. The tenants paid a security deposit of \$712.50 on April 18, 2013 and a pet deposit of \$725.00 in February or March, 2015. Both parties attended the move in and the move out inspection of the unit at the start and end of the tenancy.

### **The landlord's application**

*Unpaid utilities*-The landlord testified that the first tenancy agreement stated that Hydro is \$100.00 per month, estimated, as Hydro changes the budget, additional/less will be adjusted. The second tenancy agreement stated that Hydro is \$115.00 per month as estimate subject to adjustment as per changes in usage and rates. The landlord referred to a copy of the first and second tenancy agreements. The second agreement has this clause initialled by the landlord but not by the tenants. The landlord testified that she had discussed verbally with the tenants that they must pay 60 percent of each Hydro bill.

The landlord testified that during the year BC Hydro adjust the payments and any reconciliation between the estimated amounts shown on the bills each month and the actual payments are adjusted. These adjustments are calculated approximately every 100 days and then again annually.

The landlord testified that when the tenancy went to a month to month tenancy in May, 2015 the tenant verbally agreed to pay \$140.00 per month. The tenants also paid a further \$140.00 for the reconciliation of the Hydro bills from January to April, 2015.

The landlord testified that she has calculated each Hydro bill for 2015 for the tenants' 60 percent share and provided a detailed breakdown of each bill to represent what the landlord alleges the tenant paid and owe for each bill based on that 60 percent share. The landlord also referred to the Hydro bill for the period between December 05, 2014 and January 05, 2015 which shows an adjusted amount of \$231.58 was owed for 2014.

The landlord testified to the following amounts for Hydro:

Billing period	Total of bill	Tenants 60% share	Amount paid
Dec 05/14 – Jan 05/15	Reconciliation amount \$231.58	\$138.95	\$115.00
Jan 06 – Feb 04/15	\$313.79	\$188.27	\$115.00
Feb 05 – Mar 04/15	\$389.22	\$233.53	\$115.00
Mar 05 – Mar 31/15	\$369.94	\$221.96	\$115.00
Apr 09 – May 04/15	\$246.25	\$147.75	\$115.00
May 08 – Jun 05/15	\$350.31	\$210.89	\$140.00
Jun 06- Jul 03/15	\$160.07	\$96.04	\$140.00
Jul 04- Aug 06/15	\$155.64	\$93.38	\$140.00
Aug 07- Sept 02/15	\$128.92	\$77.35	\$0.00
Sept 03 – Oct 06/15	\$227.05	\$136.23	\$0.00

The landlord testified that the tenants paid an additional amount in March 2015 of \$140.00. This amount was to reconcile the difference in payments between \$115.00 and \$140.00 from January, 2015 to April, 2015. The landlord testified that although the above figures show \$1,135.00 was paid in 2015 the tenants actually paid \$1,160.00. The landlord therefore seeks to recover the difference between the amounts paid by the tenants and their 60 percent share of the Hydro to an amount of \$384.35. The landlord testified that the tenants had to pay 60 percent of Hydro bills as they occupied 60 percent of the floor space between the two units.

The tenants disputed the landlord's claim for Hydro of \$384.35. The tenants agreed that they failed to pay the amount of \$280.00 for the September and October Hydro payments. The tenants testified that they did not agree to pay 60 percent of Hydro and their understanding was that they pay \$100.00 per month for the first year and no adjustments were made and \$115.00 for the second year which took them to April 30, 2015. This is also stipulated in their tenancy agreement. The tenants testified that they verbally agreed to pay \$140.00 towards their share of the adjustment for 2014 which

was \$138.95 and for which they actually paid \$140.00 but have not been given any adjustment for 2015 for the eight months of their tenancy. The tenants agreed that they verbally agreed to increase their Hydro payments from May, 2015 when they went on a month to month tenancy to \$140.00 for the increased costs of Hydro.

The tenants testified that it appears that the landlord is stating that the additional \$140.00 they paid for the 2014 adjustment of \$140.00 is for a shortfall in their payments for the first four months taking their payments from \$115.00 to \$140.00 from January to April, 2015. The tenants testified that there was no agreement to this effect and the terms of the tenancy agreement stating that the \$115.00 per month as estimate subject to adjustment as per changes in usage and rates was not agreed by them and has not been initialled by them.

The tenants referred to the landlord's calculations and testified that in the months where they paid \$140.00; and by the landlord's calculations when their share of the bills was \$96.04, \$93.38, \$77.35 and \$136.23 then the adjustment for those months should be in the tenants' favor and calculated over the 10 months of the tenancy. The landlord has not provided the tenants with an adjustment from BC Hydro for 2015 calculated for the 10 months of their tenancy and taking into account that bills are generally higher in the winter months and the tenants moved out in October, 2015. The tenants testified that further to this the landlord has provided no calculations to show any adjustment for 2015 taking into account the overpayments for four of the months out of the 10 month tenancy. The tenants testified that in August, 2015 they asked the landlord if they could pay their Hydro bills on a monthly basis.

The tenants testified that when they first agreed to pay a monthly amount for Hydro they were not informed of how much the adjustment could be either more or less each year and therefore did not agree to this.

The landlord testified that the Hydro adjustment figure provided on the January 2016 bill for 2015 was \$257.05.

*Damage to the unit, site or property* – The landlord testified that the tenants caused significant damage to the unit as follows:

- Damage to the walls in the rental unit- The landlord seeks to recover \$315.00 for the painter's labour to repair and paint the walls. There were 187 holes in the walls that had to be repaired because the tenants did not use approved picture hooks and instead used screws, nails, and peel and stick hooks. The landlord referred to item 14 of the tenancy agreement which states that only approved

anchors may be used in the rental unit. The walls were left with holes, gouges and damage from the tenants' dog. The landlord's painter had to fill sand and paint the walls. The unit had been freshly painted in February 2013 and would not have needed to be painted again if not for the damage caused by the tenants and their dog.

- Paint -The landlord also seeks to recover \$126.00 for painting the basement suite also rented by the tenants. There were only two small walls left undamaged in this area and some damage was also caused by peel and stick hooks on the stairwell. The landlord also seeks to recover \$455.30 for the cost of paint, \$168.58 for paint for the basement; \$47.95 for paint for the entrance and \$39.56 for paint for the front bedroom. The landlord also seeks to recover \$200.29 for paint supplies.
- Window screens -The landlord seeks to recover \$40.32 for the costs incurred to replace two window screens damaged by the tenants' dog.
- Laminate flooring - The landlord seeks to recover \$1,506.40 for damage to the laminate flooring in the basement. The landlord testified that an area of the floor was damaged by the dog crate and edges of the laminate flooring has bubbled up caused by the tenants' dog urinating on the floor. The area smelt of dog urine when prospective tenants viewed the unit.
- Closet door -The landlord seeks to recover the cost of \$62.49 to replace a closet door which had been left broken. The door could not be repaired and had to be replaced.
- Bathroom sink – the landlord seeks to recover \$77.28 for the cost of a replacement bathroom sink which was left chipped by the tenants.
- Baseboard, nails and caulking and silicone - The landlord seeks to recover \$39.12 for replacement baseboard which had been damaged by the tenants' dog and the nails and caulking to apply the baseboard. The caulking was also used to go round the replacement bathroom sink.
- Light bulbs – The landlord seeks to recover 81.09 for replacement bulbs which were left burnt out at the end of the tenancy. The landlord testified that most of the bulbs except one were burnt out in the kitchen, one in the bathroom, three in the dining room and some in the hallway. All the bulbs were working at the start of the tenancy.
- Tape and paper holder – The landlord seeks to recover \$26.83 for tape and the toilet paper holder that was missing from the bathroom. A new holder had to be purchased and fitted by the landlord.
- Painter's labour costs – the landlord seeks to recover \$547.50 for her painter's labour costs to help with the cleanup of the unit, to do the painting and repairs and to help install the new laminate flooring and remove the damaged flooring.

The landlord also seeks to recover \$400.00 for her labour of 20 hours spent cleaning the unit, helping with repairs and painting, garbage removal, laying the flooring laminate and repairing the damaged laminate on the kitchen counter.

The landlord referred to her photographic evidence throughout her testimony and her invoices for the goods purchased and labour provided to do the repairs. The landlord testified that some of the photographs were taken before the tenants had vacated, some were taken on the day of the move out inspection and some were taken while the repairs were being completed. The landlord also referred to the condition inspection report's provided in documentary evidence.

*Money owed for compensation for damage or loss* – The landlord testified that due to the level of work required in the unit the landlord was unable to re-rent the unit for November, 2015. The landlord referred to two letters from prospective tenants who viewed the unit and would not rent it due to its condition and smell of pet urine. The landlord seeks to recover a loss of rent for November, 2015 of \$1,410.00.

*Retention of the security and pet deposit* – The landlord seeks an Order to be permitted to keep the security and pet deposits to a total amount of \$1,437.50 and to offset this amount from the landlord's monetary claim.

### **The tenants' rebuttal**

The tenants disputed the landlord's claim that they caused significant damage to the walls of the rental unit. The tenants testified that they did put up some shelves and a TV bracket but there would only have been around 50 holes not the 187 as stated by the landlord. The tenants testified that they did start to repair the holes and bought matching touch up paint; however, the landlord entered their unit without proper notice in October while the tenants had actually vacated and were living elsewhere, although all their belongings remained in the unit and they had paid rent for October. When they returned to collect their mail they saw the landlord had entered the unit and had applied filler to all the walls even though the tenants had no idea about many of these alleged holes. The tenants testified that many of the landlord's photographs were taken of the unit before the tenants had vacated and cleared and cleaned the unit. The tenants had also made repairs to the wall damaged by their dog and had made arrangements for someone to do the repairs and painting and had purchased supplies and paint; however, the landlord wrote to them and asked them not to make any more repairs to the unit. The tenants feel that the most the landlord should be entitled to is \$200.00 to repair the wall where the TV bracket was placed.

The landlord testified that the photographs were taken before and after the tenants moved out. The landlord agreed she did write to the tenants and asked them not to

make any more repairs as the work they had done was not satisfactory and had to be redone. Some of the paint applied by the tenants was the right colour but was not the right finish and this had to be redone. The landlord testified that her photographs show that one wall alone had 50 holes and there were many other holes in nearly all the other walls.

The tenants testified that they did not receive a copy of the move in inspection report at the start of the tenancy and only received a copy of the move out report in April, 2016 with the landlord's evidence for this hearing. The tenants testified that they remembered there being some holes in the walls at the start of the tenancy.

The landlord testified that the tenants were given a copy of the move in inspection report with their tenancy agreement at the start of the tenancy and later asked for a new copy of the tenancy agreement as they had misplaced it. At the end of the tenancy two Move Out reports were completed and one was given to the tenants.

The tenants testified that the window screens fell out and were then damaged by their dog. The tenants do not dispute the landlord's claim for \$40.32.

The tenants testified that the toilet paper holder broke off at the start of the tenancy and they agreed they did not replace it and used a stand up holder during the tenancy.

The tenants disputed the landlord's claim for the bathroom sink and state this was a tiny chip which should be considered as normal wear and tear. The tenants disputed the landlord's claim concerning the kitchen counter top repair and state this is also normal wear and tear.

The landlord testified the sink was put in in 2011 and chips cannot be considered normal wear and tear and were caused as a result of the tenants' actions or neglect.

The tenants testified that their dog was fully house trained and referred to a letter stating this from their dog day care provider. The tenants testified that their dog was only in the basement around five times and did not urinate on the floor. The dog crate was set on a rug and could not have caused holes in the laminate flooring. The tenants testified that the area the landlord claimed was damaged by the crate was actually an area covered by the tenant's bed. The tenants testified that they did not wet mop this flooring and only vacuumed or dry swept it. The tenants asked it to be considered that the laminate flooring was placed on concrete and is therefore subject to dampness which could cause the floor to bubble up on the edges. There is poor insulation in the area which may have resulted in moisture coming up to the flooring.

The tenants testified that they have no knowledge of the closet door being damaged and it was not mentioned at the move out inspection. This closet was only used for storage and was not in daily use.

The tenants testified that the light bulbs were not left burnt out at the end of the tenancy. The tenants referred to their photographic evidence showing all of the light bulbs working in the kitchen at the end of the tenancy. This photograph was taken at the move out inspection and clearly shows all the bulbs working not just one as suggested by the landlord. The tenants testified that all bulbs were in good working order.

The tenants testified that they had the garbage removed from the property at the end of the tenancy and referred to their receipt showing they paid \$240.00 to have the garbage taken away. The tenants testified that the landlord's photographs were taken before this garbage was removed when she accessed the unit in October. The tenants referred to a picture of the pile of garbage that they had removed yet the landlord's picture shows some of the same boxes. The tenants testified that this proves the landlord took her pictures before the tenancy ended.

The landlord testified that her pictures of the garbage were taken at the end of November and this was the garbage left behind. The tenants had thrown garbage over the deck and had left tires and boxes around the house and yard.

The tenants disputed the landlord's claim for a loss of rental income. The tenants referred to their photographic evidence showing the good condition the unit was left in at the end of their tenancy. The tenants also referred to their invoice from their cleaner who cleaned the unit and the carpets at the end of the tenancy. The tenants testified that this clearly shows that the landlord took her pictures prior to the tenants vacating when she entered the unit illegally. The tenants testified that the unit was certainly not uninhabitable. The landlord never asked the tenants to present the house for viewings prior to moving out and if the landlord did show the house without proper notice then she would have to expect some moving mess. The tenants testified that they were fully prepared to make good any damage caused to the unit before the end of the tenancy but the landlord told them not to do anymore work in the unit and prevented the tenants' ability to repair any damage.

The tenants disputed the landlord's claim to keep the security and pet deposit.

### **The tenants' application**



*Return of the security and pet deposits-* the tenants request the return of double the security and pet deposit to the amount of \$2,875.00 as the landlord did not return their deposits within the allowable time frame and did not provide the tenants with copies of the inspections reports and therefore extinguished her right to file a claim to keep either deposit.

*Money owed for compensation for damage or loss –* The tenants testified that after they had vacated the rental unit their belongings remained in the unit as they had still paid rent on the unit for October and remained in possession of the unit. The tenants' belongings remained in the unit as they were packing them up to be moved. The landlord entered the unit illegally and moved some of the tenants' belongings around. Some belongings were also piled on the deck waiting to be removed from the unit. The landlord entered the unit and removed these belongings from the deck to the yard which resulted in damage to the following items:

- Damaged wedding string lights - These had been placed in a safe place and the tenants found them later under a pile of their belongings with the bulbs smashed. The tenants seek the costs to replace these of \$140.40 including shipping and taxes.
- Bicycle – the landlord removed the tenant's bike from the deck and left it in a pile of belongings. This caused some damage to the chain and gears which had to be tuned up at a cost of \$65.00.
- Maul - this was left a flower pot in wet soil which caused it to rust and become blunt. It was only six months old and had to be replaced at a cost of \$43.99.
- Cooler – this was left in the dirt and the tenants did not feel comfortable cleaning it out as it was used for food items. The tenants decided to replace it at a cost of \$46.99.
- Wind chime and rain chain -The landlord removed a wind chime from the front door and a rain chain. These items had been made by the tenant's mother and held sentimental value as well as monetary value. The landlords throw them into the pile of tenants' belongings which smashed the wind chime and rain chain. The tenants seek to recover \$150.00 for these items to be replaced.
- Crate – the landlord damaged a wooden crate causing the bottom of the crate to come apart. The tenants seek to recover \$33.76 to replace this crate.
- Plant pot – the landlord broke a ceramic planter when she removed it from the deck. The tenants seek to recover \$38.76 for a similar plant pot.

The tenants testified that they asked the RTB to do an intervention and ask the landlord not to come into the unit and touch or remove any of the tenants' belongings. The tenants referred to their photographic evidence showing their belongings piled up and

some broken items as described and estimates to replace or repair these items for the same or similar items.

### **The landlord's rebuttal**

The landlord disputed the tenants' claim. The landlord agreed she did remove the tenants' belongings from the deck as she wanted to clean the deck but her intention was to put these belongings back after. The landlord testified that she was not aware of the string lights and she did not take any down that were up. The tenants' receipt shows the charge for 150 lights but the tenants' pictures only show a small bundle of lights.

The tenants testified that they did have other lights strung up which were not removed. The lights in question were in a bag on top of the hot tub safely out of the way. This bag contained string lights off 150 but in the picture most of these are shown buried by their belongings.

The landlord agreed she did move the tenants' bike, maul and cooler but does not believe these items were dirty, damaged or rusty. The landlord testified that she did not remove the wind chime from the front and the rain chain was hanging up. The landlord testified that the wooden crate the tenants are asking to be compensated for had a rotten bottom as shown in the landlord's pictures #64 and #65. This was part of the garbage thrown over the deck by the tenants. Furthermore, the tenants estimated print out does not show the same crate. The landlord testified that she does not know how the planter was broken and the tenants' print out does not show the same planter.

The tenants testified that their photographs show the wind chime and rain chain damaged in a box. The wooden crate that was damaged is square and the piece of wood shown in the landlord's photographs is oblong and was not the bottom of their crate. The estimates for the crate and planter are for similar items as the tenants could not find the exact same items still for sale. These items are of comparable value and appearance.

*Filing fee* – Both parties seek to recover their \$50.00 filing fee.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties with regard to the landlord's application:

*Utility bills* – I have considered the terms written on the first tenancy agreement concerning the monthly payments for Hydro. This term states:

“\$100.00 per month estimate, as Hydro changes the budget, additional/less will be adjusted.”

On the second tenancy agreement it states:

“\$115.00 per month as estimate, subject to adjustments as per changes in usage and rates.”

On both of these tenancy agreements there is a box for both parties to initial these additional clauses. On the first agreement neither party has initialled the boxes and on the second agreement only the landlord has initialed the box. There is no mention in either of these clauses when any additional or less charges will be made or any indication of what these charges are likely to be. I refer the parties to the Residential Tenancy Policy Guidelines # 8 which provides guidance on unconscionable and material terms of a tenancy agreement and states, in part, that:

*Under the Residential Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party.*

I find these terms in the tenancy agreements to be unconscionable terms of the tenancy agreements as they are written in an ambiguous manner and have not been agreed to by the tenants as there are no initials in the tenants' box and I have no indication that the tenants were made aware of this adjustment prior to signing the agreement. The landlord is claiming an adjusted amount for 2015 but has failed to provide Hydro bills for the end of the year adjustments or for any adjustments made during the year with the expectation of the bill dated December 05, 2014 to January 05, 2015 which is clearly an adjustment for 2014 and of which the tenants have sufficient evidence to show that they made a payment towards this 2014 adjustment based on a share of the total bill with the other tenants.

Upon perusal of the bills I am able to see the monthly payments made and the cost of energy. As of the bill dated July 04 to August 08, 2015 the cost of energy used was \$1,830.13 and the total amount of installments made was \$1890.00. Therefore there would be a credit at this time to both sets of tenants. There is insufficient evidence to show the energy costs for the last two months of the tenancy and no further payments were made by the tenants as per the tenancy agreement for these two months.

Furthermore, there is insufficient evidence from the landlord to show that the tenants agreed to pay 60 percent of the Hydro bills. The agreement clearly states that they pay a fixed amount each month. If the landlord wanted to charge the tenants a 60 percent share of each Hydro bill then this must be clearly recorded in the tenancy agreement.

The landlord has claimed an amount of \$384.35 for Hydro which includes \$280.00 for the last two months the tenants failed to pay their Hydro payments. The tenants agreed they did not pay these last two month to a total of \$280.00. I therefore find the landlord is entitled to recover **\$280.00** from the tenants and I dismiss the remainder of the landlords' claim for Hydro without leave to reapply.

*Damage to the unit, site or property* – 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 respondent. 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 this test in mind I have considered all aspects of the landlord's claim for damages as follows:

Painting, baseboards and wall damage – tenants are normally responsible to repair any damage caused during the tenancy and will I concede that there was some damage caused to the walls and baseboards in the unit by using non approved wall anchors to hang pictures, shelves and a TV bracket and by the tenants' dog. However, I also find the landlord did not mitigate the loss by allowing the tenants opportunity to make these repairs up to the time the tenancy legally ended. The tenancy did not end until October 31, 2015 yet the landlord wrote to the tenants on October 20, 2015 and states:

*"I wish to make it clear that I am not giving you permission to do any repairs to the unit as I have made arrangements myself"*

In this letter the landlord also misquotes from the *Act* concerning the landlord's right to enter the unit to carry out repairs when a valid notice of entry has been given, even if

the tenant is capable and willing to make repairs. I refer the parties to s. 29 of the Act which states:

**29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) *the tenant gives permission at the time of the entry or not more than 30 days before the entry;*  
(b) *at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

(i) *the purpose for entering, which must be reasonable;*  
(ii) *the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

(c) *the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

(d) *the landlord has an order of the director authorizing the entry;*

(e) *the tenant has abandoned the rental unit;*

(f) *an emergency exists and the entry is necessary to protect life or property.*

(2) *A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

The parties agreed the landlord did post a Notice of Entry to the door but the landlord may only enter in accordance with s. 29 of the Act and may only enter to make repairs to the unit if they are regarded as emergency repairs under s. 33 of the Act. I do not find any of the repairs listed can be construed as emergency repairs to protect life or property and as the landlord refused the tenants' permission to make good the damage caused during their tenancy I find the landlord did not mitigate the loss by having these repairs to the walls and baseboard completed herself. Consequently, I find the landlord's claim for painting, for the cost of the paint, for the paint supplies, for the baseboards and associated materials for repair and for some of the landlords and her painter's labour costs must be dismissed. The tenants did; however, agree that it would be reasonable for the landlord to be compensated \$200.00 towards some of the wall damage where the tenants' TV was mounted I therefore allow the landlord to retain **\$200.00** from the security deposit.

With regard to the landlord's claim for replacement window screens; the tenants do not dispute that these screens were damaged by their dog and therefore I find the landlord may retain the cost of **\$40.32** from the pet deposit.

With regard to the landlord's claim for replacement laminate flooring in the basement; the landlord has documented pet odour and damage to the floor on the move out report; however, the tenants have signed and disagreed with the finding of the report. The tenants testified that it is also likely the flooring was damaged from moisture coming through the concrete floor. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events and then I must look at other corroborating evidence to satisfy the burden of proof.

The landlord has provided a letter from a prospective tenant complaining of urine smells but did not ask that person to attend the hearing or to provide a sworn statement. Therefore these letters carry little weight especially when disputed; however, the estimates from the contractors also indicate that there is a strong pet urine smell coming from the basement floor. From my experience I find the way the laminate flooring is bubbling up at the edges is consistent with water or urine damage and if the floor suffered from moisture from the concrete below then more of the laminate would be showing the same effects. I therefore find the landlord has sufficient evidence to meet the burden of proof that the tenants' dog caused this damage to the basement floor and I must allow the landlord's claim in part. The landlord has not provided evidence to show the age of the flooring and I am unable to calculate a depreciation value based on the age of the floor. Due to this I must reduce the landlord's claim accordingly and find the landlord is entitled to recover the amount of **\$753.20**. With regard to the labour costs for the landlords contractor to carry out the work on the flooring; the landlord has provided different receipts and invoices for this work; however, these do not appear to be consistent with the amount claimed or the amounts paid out. Accordingly; I find the landlord is entitled to recover labour costs for her contractor to do the flooring including the removal and disposal of the old flooring to a total amount of **\$350.00**.

With regard to the landlord's claim for a replacement closet door; the move out report only notes that the closet hardware is disassembled and does not note that the closet door is damaged beyond repair. Furthermore, I am unable to ascertain from the photograph of the side of the closet door to see if it is damaged beyond repair. The tenants dispute that the door was damaged or that it was noticed during the inspection. Consequently, the landlord has insufficient evidence to meet the burden of proof that this damage was caused by the tenants' actions or neglect and this section of her claim is dismissed.

With regard to the landlord's claim for a replacement sink; the sink was chipped and this is clearly shown in the landlord's photographic evidence. The tenants agreed that there was a chip but testified that this is no more than normal wear and tear. I am satisfied that the sink was chipped and do not consider damage of this nature to be normal wear and tear. Consequently I am satisfied with the landlord's claim for costs to replace the sink of **\$77.28** and **\$84.00** for the labour for this work.

With regard to the landlord's claim for replacement light bulbs; the landlord testified that all but one light bulb was burnt out in the kitchen, yet the tenants' photographic evidence taken at the move out inspection clearly shows the light bulbs all working in the kitchen. I find therefore the landlord's testimony as to the rest of the light bulbs has little merit and I dismiss her claim for \$81.09.

With regard to the landlord's claim for tape and a replacement toilet roll holder. The tenants do not dispute that this came off the wall and they did not replace it. It was not left in the unit at the end of the tenancy and therefore I am satisfied that the landlord incurred a cost of **\$13.98** to replace this holder.

With regard to the landlord's claim for labour costs for her contractor to clean up the unit, replace flooring, painting and repairs, as I have found the landlord's claim for painting to be largely dismissed as opportunity was not given to the tenants to complete this work and I have allowed labour costs for the laminate flooring above I find I must limit this section of the landlord's claim. I am satisfied that the tenants did remove the bulk of the garbage and that the landlord's photographs do not truly reflect the condition of the unit at the end of the tenancy as many were taken prior to October 31, 2015. I do however, find that there is some evidence that the tenants did not remove the entire garage from the yard and therefore I award the landlord a nominal amount of **\$50.00** for garbage removal.

With regard to the landlord's claim for \$400.00 for her labour of 20 hours spent cleaning the unit, helping with repairs and painting, garbage removal, laying the flooring laminate and repairing the damaged laminate on the kitchen counter. I find as much of the landlord's claim has not met the burden of proof I will allow the landlord a nominal amount for her labour to remove some garbage and to repair the laminate on the kitchen counter, to organise repairs to the sink, to assist with the replacement flooring and to replace the toilet roll holder. I am not satisfied that the unit was not left reasonably clean and the tenants' photographic evidence taken at the end of the tenancy clearly shows the unit was left reasonably clean. The landlord may therefore retain the amount of **\$200.00** from the security deposit.

With regard to the landlord's claim for a loss of rent for November, 2015; I have reviewed the evidence before me and find the unit was left reasonably clean by the tenants, if the landlord had not prevented the tenants from painting and repairing the damage in the unit prior to the end of the tenancy then the landlord could have potentially re-rented the unit out. I am not satisfied as earlier indicated that the letters from "prospective tenants" carry any weight as the landlord did not ask them to attend the hearing or provide sworn statements or submit to cross examination. I am not satisfied that the floor replacement in the basement suite would have prevented the landlord re-renting the unit for the entire month of November or that this work could not have been carried out within the first week of that month. Consequently, I am not persuaded by the landlord's arguments that the unit was not able to be re-rented through the tenant's actions or neglect and this section of the landlord's claim is dismissed.

As I have found in partial favour of the landlord's claim I have allowed the landlord to retain a portion of the security and pet deposits as follows:

Utilities for last two months	\$280.00
Nominal amount for all repairs	\$200.00
Window screens	\$40.32
Flooring plus labour	\$1,103.20
Sink plus labour costs to install sink	\$161.28
Toilet roll holder	\$13.98
Labour costs for contractor	\$50.00
Labour costs for landlord	\$200.00
<b>subtotal</b>	<b>\$2,048.78</b>
Less security and pet deposits	(-\$1,437.50)
<b>Total amount due to the landlord</b>	<b>\$611.28</b>

#### **The tenants' application**

With regard to the tenants' claim to recover double the security and pet deposits; the tenants argued that the landlord has extinguished her right to file a claim to keep the security and pet deposits because copies of the reports were not sent to the tenants until April, 2016. The *Act* states that the landlord's right to file an application to keep the security or pet deposits for damages to the unit site or property is extinguished if the landlord does not provide a copy of the move in report or move out report; however, when a landlord also applies to keep the security or pet deposit for unpaid rent or utilities then their rights are not extinguished.

The landlord also filed their claim to keep the security and pet deposits within 15 days of the end of the tenancy and therefore the tenants are not entitled to the doubling



provision under s. 38(6)(b) of the *Act*. As I have allowed the landlord to retain the security and pet deposit, then the tenants' application to recover these deposits is dismissed.

With regard to the tenants' claim for money owed for compensation for damage or loss; I am satisfied from the evidence provided that the landlord did serve the tenants a notice of entry to the rental unit. As this was posted to the door the landlord had to allow an additional three days plus 24 hours before entering. Even if the landlord did enter the unit legally, the landlord is not entitled to start to make any repairs or to clean the unit until the tenancy ends and a move out inspection report has been completed with both parties. In any event the landlord is not entitled to move or remove any of the tenants' belongings while the tenants still have possession of the rental unit for which they have paid rent. I am satisfied from the undisputed evidence before me that the landlord did remove the tenants' belongings in October from the deck and that in the removal of these belongings some items were damaged.

While tenants must meet the same burden of proof regarding damage or loss claims as the landlord, the tenants' claim does not pivot on the inspection report but rather other evidence such as photographs and estimates or receipts for repairs or replacement items.

I have reviewed the tenants' photographic evidence and find their belongings have been placed haphazardly in a pile which leads me to believe the landlord did not take due care when removing all of their belongings. I am satisfied that the lights shown only show a small percentage of the string lights but as the other lights are buried under a mound of belongings it is highly likely that the bulbs have been crushed. I therefore find on a balance of probabilities that these lights were damaged by the landlord's actions and neglect and award the tenants' replacement costs of **\$140.40**.

With regard to the tenant's bike; there is insufficient evidence to meet the burden of proof that the chain and gears were damaged from the landlord's actions or neglect and that this tune up shown on the receipt was not a regular maintenance tune up conducted. There is insufficient evidence from the bike shop to show why the tune up was required and the tenants' photographic evidence does not show the bike was carelessly dumped outside to cause damage to the chain or gears. This section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim for damage to the maul; the tenants' photographic evidence shows the maul was left in a planter; however, it does not show that the maul was rusted to the point it could not be reused and therefore the tenants have failed to

meet the burden of proof in this matter that the maul was damaged to such an extent that it required replacement. This section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim for a replacement cooler; the tenants argued that this cooler was left in the dirt and they were uncomfortable using it for food items. The tenant agreed they did not attempt to clean the cooler. I am not persuaded that a plastic cooler could not be wiped clean and disinfected to make it suitable for food use or that it was necessary to replace it because it was left outside. Coolers are designed for outdoor use and as such I must dismiss the tenants' claim for replacement costs.

With regard to the tenants' claim for damage caused to the wind chime and rain chain. The landlord testified that she did not remove these items yet the tenants' photographic evidence shows these items in a box and clearly damaged. As the landlord did agree she removed belongings from the deck I find on a balance of probability that these items were removed and carelessly placed in a box which damaged the items. I therefore find in favour of the tenants' claim for the replacement costs of **\$150.00**.

With regard to the tenants' claim for damage to a crate; there is insufficient evidence to show the age of the crate or the condition it was in before the landlord removed it from the deck. Consequently, I find that the tenants are entitled to a nominal amount for damage to the sum of **\$15.00**.

With regard to the tenants' claim for damage to the planter; I am satisfied from the evidence before me that the planter was damaged when the landlord removed it from the deck, I therefore find the tenants' claim for **\$38.76** for a similar planter is allowed. The tenants are entitled to a monetary award for the following amount:

String lights	\$140.40
Wind chime and rain chain	\$150.00
Crate	\$15.00
Planter	\$38.76
<b>Total due to tenants for damages</b>	<b>\$344.16</b>

*Filing fee* – As both parties claims have some merit I find both parties must bear the cost of filing their own applications.

As both parties have some monetary award due I have offset the tenants' monetary award against that of the landlords.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord has been awarded the amount of **\$2,048.78**. I have ordered the landlord to retain the security and pet deposits leaving a monetary amount due of **\$611.28**.

I HEREBY FIND in partial favor of the tenants' monetary claim. The tenants have been awarded the amount of **\$344.16**. I have offset the tenants' award against that of the landlords.

A copy of the landlord's decision will be accompanied by a Monetary Order for **\$267.12** pursuant to s. 67 of the *Act*. The Order must be served on the tenants. Should the tenants fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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

Dated: July 06, 2016

---

Residential Tenancy Branch