Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 682020 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, MNDC, ERP, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to file an application to cancel a Notice to End Tenancy; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; and to recover the filing fee from the landlord for the cost of this application. The hearing was adjourned and reconvened on today's date to allow extra time to hear all the evidence.

The tenants, the landlord's agents and legal Counsel for the landlord attended the conference call hearing. The hearing was adjourned as more time was required to hear evidence. The parties were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenants provided a significant amount of 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.

Preliminary Issues

The tenants stated at the outset of the hearing that they had inadvertently not applied to cancel the Notice to End Tenancy. A discussion took place concerning this omission. Legal Counsel for the landlord objected to the tenants' application being amended. I find the tenants did not check the box on their application to indicate that they seek action to cancel the Two Month Notice. Further to this the tenants have not made mention of his request in the details of the dispute. The respondent has a right to know what the applicants have applied for when the hearing documents are served upon them. As there is no indication that the tenants wanted to cancel the Two Month Notice then this jeopardizes the landlord as the landlord is not able to prepare any documentary evidence to rely on to uphold the Two Month Notice. Consequently, I have not allowed the tenants to amend their application.

The tenants applied for more time to file an application to cancel a Notice to End Tenancy; however, as they have not applied to cancel any such Notice then this section of their claim is not required and is therefore dismissed.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for emergency repairs?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2014 for an initial term of one year, thereafter reverting to a month to month tenancy. The tenancy ended on August 31, 2016. Rent for this unit is $1,900.00 per month due on the 1st of each month. The tenants paid a security deposit of $950.00 at the start of the tenancy.

The tenants testified that on June 20, 2016 shortly after they received a notice to show the unit they found they had some kind of a mite infestation emanating from the bathroom of the rental unit.

The tenants made arrangements to relocate to a motel due to the severity of the infestation. The tenants also installed a plastic barrier in the area to prevent further spread of this infestation into other areas of the unit. They emailed the landlord to inform him and left to stay in a motel. The landlord sent a pest control company in to look at the infestation on June 23, 2016. The technician did not know what the mites were and did not take a sample of them and simply sprayed the baseboard. The technician said that these mites may be feeding off mould.

The tenants testified that CD returned to the unit on June 24 to meet a mould technician and found that the infestation had bloomed and migrated upwards and outwards. The mould technician took one air quality sample from the common bathroom where the infestation began. The landlord had the house up for sale and his realtor requested that the tenants take down the plastic barrier; however, due to the blooming infestation the tenants refused as neither the mites nor the possible mould problems had been identified or remedied.

On June 24, 2016 the tenants found they could no longer afford to stay in a motel and they returned home. The landlord’s realtor informed them that a contractor was due to arrive on June 27, 2016 for renovation work in the unit. The tenants elected not to return to live inside their unit but erected tents outside for them and their children until the landlord identified the infestation and mould issues. The contractors arrived on June 27 and took measurements for windows and walls and to check for installation. The landlord’s realtor did not make any mention of plans to remediate the mould.

The tenants testified that the pest technician did not return two weeks later for further treatments and the areas remained sealed off. The tenants continued to live in their tents outside for over 30 days while the landlord ignored their situation. CD testified that

she is a micro biologist and she looked at the mites under a microscope and they appeared to be some kind of mould mite. The landlord's mould company had recommended further investigation after their sampling showed a slightly elevated spore count and remediation and then for additional air samples to be collected to determine the effectiveness of any remediation. The landlord failed to do further investigations or any remediation. If the landlord had done so and pulled drywall out he would have found the rodent carcass in the walls and any mould.

The tenants testified that they appointed a mould company to go into the unit and take samples as the landlord's mould company had only done an air quality test. The tenants could then determine if there was mould in the unit so precautions could be taken when they moved back into the unit. The tenants testified that they also engaged a new pest control company as the landlord did not do a follow up treatment. Two rat carcasses were found in the walls. The landlord had been made aware a year ago of rodent problems in the home. The tenants testified that as the landlord had done nothing to remediate the mite and mould issues, AP sprayed the area with a product that encapsulated the mould spores and mites and then crushed the mites. The poly wall was then reduced to just cover and seal over the door to the bathroom. At that time the tenants could also smell some kind of dead body. At this time, 57 days later, there has still been no remedy and the bathroom remains sealed.

The tenants testified that they also had issues with the well which supplied the home with water the first year of the tenancy the landlord asked AP to replace the UV bulb on the well and the landlord paid for the new bulb and AP installed it in the pump house. The following year AP replaced the bulb again. AP testified that he did not have an arrangement with the landlord for payment to do this work. AP testified that there is also an error on the invoice for this work provided in documentary evidence. AP wrote 12 hours in error when it should be four hours at $280.00.

AP testified that the pump froze solid at the well and the landlord knew AP was an engineer so AP had to repair this as an emergency repair as they had no water. The

landlord had only left them with a hose pipe to fill the cistern to supply drinking water. AP had to go out every day for three months to fill the tank with water from the garden hose so they could have water in the house. The landlord kept saying he would send someone to make this repair but failed to do so. As this is unhealthy to drink water from a hose pipe, AP made this repair. AP testified that the landlord said if AP provided the labour the landlord would provide the materials and that he would pay up to $500.00 so the tenants could have water. AP testified that he spent all weekend putting in new water lines and had told the landlord he bills at $45.00 an hour. The tenant testified that the landlord accused the tenants of using well water to fill their pool; however, this is untrue and the tenants referred to their documentary evidence showing an invoice for water their brought onto the property for their pool.

AP testified that he removed hazardous waste from the landlord's property next door. This waste was only 20 feet from the tenants' door and could have been hazardous for their children. The landlord had said it was not his waste but the area was filled with garbage which the landlord had ignored despite the tenants' verbal requests that he remove it. AP testified that they removed this waste and it took six dump bins.

AP testified that at the start of the tenancy the landlord said he would give the tenants the opportunity to purchase the property. Due to this the tenants did not mind doing work on the property for their future use. The landlord then put the property up for sale and did not offer it to the tenants. AP testified that when they moved in, the kitchen was not in a safe condition. The tenants did work to make the kitchen safe, and installed a new hood fan and painted. AP testified that he did not get anything in writing from the landlord to do this work as they assumed they would benefit in the long term. As the landlord is now selling the home to someone else the tenants seek reimbursement for their work on the property.

AP testified that there was a broken window he repaired. He had a deal with the landlord to take the old washer/ dryer to recycling and that the money gained could pay towards the new window. AP measured the window, picked it up and installed it;

however, he only received $93.00 from recycling the old washer and dryer and the cost of the window and labour to install was higher. The tenant agreed he did not have an agreement with the landlord to take any balance for the window costs from his rent but states it is also not is responsibility to pay for a new window.

The tenants testified that the septic tank failed and backed up into the house. The landlord was notified straight away but the tenants had to live with this for many days before the landlord sent anyone in to remediate this problem. The tenants had to clean up the flood. The landlord did put a claim through his insurance and they sent someone to drain the sceptic field and remediate the area inside by replacing the carpets and drywall. Another company emptied the sceptic tank and put a warning light up. The remediation company did not clean the infected area outside and the tenant referred to their photographic evidence showing how the area was left with raw sewage from the septic system. AP spoke to the landlord about this and the landlord said it was done. AP then had to make this area safe.

The tenants seek to recover the following amounts:
Tenants' actions to remediate the pests and mould issues - $2,330.61
Tenants' actions to repair the well pump - $2,240.00 amended to $1,680.00
Tenants' actions to remove hazardous waste - $2,278.25
Tenants' costs to manage infestation including costs to serve the landlord hearing documents, time off work, complying paper work, days of work to manage children and time to gather evidence – 4,698.75
Displacement - $4,842.66
Work completed on the kitchen - $3,590.00
Window repair - $988.88
Repairs for well freezing - $669.80
Septic back up - $1,750.00
Well dried up - $7,975.00.

The landlord disputed the tenants' claims. Counsel for the landlord gave submissions on behalf of the landlord and stated that with regard to the tenants' alleged actions to remediate pests and mould issues; on June 26, 2016 the tenants had ABM labs conduct a mould report. The finds of this report show that no mould spores were present and the findings were normal. This mould assessment was conducted on June 27, 2016. The report shows that only algae, dirt and dust were found from the surface samples taken. The red substance found coming from behind the bathroom cabinet was caused by moisture possibly by the tenants or the pest control company spraying Raid in the area and the report states that this red or orange substance is not mould. The air samples taken from the indoor and outdoor area shows that the indoor sampling is considered to be within the normal range and that there were lower mould spores found in the indoor samples to the outdoor samples.

Counsel stated that the tenants test was done unnecessarily and the tenants disregarded the results of their own testing. Counsel stated that in terms of the pest issues on June 22, 2016 the tenants had Pest Detective attend the property, the landlord actually paid for and organised this work after the tenants complained about pests. On the work order from the pest company it suggested that the pests were grain mites and the Pest Detective treated the pests accordingly. Furthermore, the tenants had a large dog in the unit which could have also contributed towards there being mites. The cause of the mites in the home has therefore not been proven. The tenants' claim to recover $2,330.61 to deal with mould spores and mites is fabricated.

Counsel for the landlord stated that with regard to the tenants' claim for actions to repair the well pump. The invoice provided has been created by the AP's own company and there has never been any contract in place between the landlord and tenants for these repairs. Furthermore, the tenants never presented the landlord with a copy of this invoice until it was included in the tenants' evidence package. Some of the costs are for the tenant's time to drive to pick up a UV bulb and other supplies. This was never agreed by the landlord and the landlord did pay for the supplies needed to do the work.

Counsel stated that the landlord used a company AJ pumps to do his work and that company has attended multiple times. Counsel referred to the statement from the owner of that company who attests that he has done work for the landlord for many years. Since this tenancy started his company has attended at the property multiple times at the request of the landlord; in 2014 they attended to deal with a backup of sewage into the property and preformed repair work on the pump and installed an alarm so if the pump failed the tenants would be alerted. In 2015 they attended to make improvements to the well and that summer was particularly hot and dry and it was common place throughout the area for wells to run dry. A cistern was installed to help create a reserve of water for low capacity wells; they replaced the well lid and installed a UV light. In June or July, 2016 the tenant attended at the office and demanded that they perform a water sample test on the well water. They advised the tenant that they did not work for him and it was the landlord who gave them instructions. The landlord did grant approval to do a water sample testing and it was confirmed that the sample provided by the tenant was potable and absolutely safe for human consumption. The statement goes on to talk about how the landlord has never shied away from making any and every repair required to the property.

Counsel submits that the tenants' invoices are dated late 2014, they do not describe what labour the tenant allegedly carried out or when he allegedly made repairs to the well or what repairs he made. The tenants have provided no receipts for anything they purchased to make any repairs and have provided no evidence to show that there was anything wrong or that the landlord did not in fact make a repair if it was required. The tenant appears to be claiming costs for his driving time to pick up supplies.

Counsel submits that the alleged hazardous waste removed by the tenants was on a neighbour's property and belonged to that neighbour. The tenants had no right to go onto that property to remove anything. Furthermore, the tenants have provided no evidence to show that there was hazardous waste; no lab testing was done to show it was hazardous. The tenants actually trespassed onto the neighbour's land and

removed waste that did not belong to them or to the landlord. Counsel stated that the tenants agreed with this and provided photos showing some items on the neighbour's land.

Counsel submitted that with regard to the tenants' claim for $4,698.75 to manage an infestation. The tenants' own lab report shows there was no mould on the property. It was the tenant's unilateral decision to vacate the property and stay in a motel and in tents outside the property. There was no hazard to human health proven by the tenants. The landlord did not do a follow up on recommendations after his mould testing showed some elevated areas of mould because the tenants had a mould test done after and no mould was determined to be in the unit. Counsel submitted that the tenants are not entitled to make a claim for serving the landlord, for taking time off work, to do paperwork for their claim, for time to gather evidence or for childcare costs when their children are on school holidays as they would need childcare regardless of this claim.

Counsel submitted that with regard to the tenants' claim for $4,842.66 for the tenants' displacement. Counsel again referred to the tenants' own mould lab report which demonstrates that no mould was found in the unit at the time of the testing and any moisture found was as a result of the tenants' use of repellents. The tenants made a decision to displace themselves by going to stay at a motel and then erecting tents outside the property. There is no evidence to show that there was a danger to the tenants' health from mould or mites. The tenants used the local media to support their actions when they gave interviews and stood outside the house with gas masks on, on July 18, 2016. At the time this article was published the tenants were in receipt of their mould report that stated that no mould spores were found in the unit.

Counsel submitted that the tenants' claim to recover costs to do work on the kitchen is unfounded. The invoice provided is from the AP's own company and is dated August and October, 2014. All of this work was done in 2014 and the tenants' claim was not advanced until 2016 after they were given an eviction notice. It is the landlord's position that the tenants were not contracted to do any work in the kitchen and any work they have done is merely cosmetic work that the tenants wanted to do for themselves.

Counsel submitted that the invoices provided are for paint and sealers. Counsel submitted that the tenants testified that the landlord discussed offering the tenants the right to purchase the property if the landlord sold it, but no offer or right to purchase was entered into with the tenants and landlord disputed that he ever said he would offer the home first to the tenants if he decided to sell. This was purely a residential tenancy agreement between the parties.

The landlord testified that with regard to the tenants' claim to recover $988.88 for the window repair. This window was not broken at the start of the tenancy. The landlord was notified of this when the tenants offered to take the old washer/dryer to recycling after the appliances broke down and the landlord purchased new ones. At that time the landlord told AP that he could use any money gained from recycling the old washer/dryer to put against the cost to replace the window. Nothing was agreed upon that the landlord would provide any further money for the window replacement as any damage to the window was done during the tenancy and is therefore the tenants' responsibility. The invoice provided by the tenant shows that most of the cost is for labour, no hourly rate was discussed and no agreement was made with AP.

Counsel submitted that with regard to the tenants' claim for the well freezing of $669.80. The tenants' invoice provided is again from AP's own company. This invoice shows the landlord paid $520.20 for the materials to repair the well. The tenant is also charging the landlord for seven hours labour to gather materials and to thaw the hose and 10 hours labour to install a new line from the well to the pump. Counsel referred to the landlord's documentary evidence which shows an email from the tenant AP to the landlord concerning health hazards of drinking water from a garden hose and that AP had sourced a cheaper version and bought and installed this. The tenant stated that he fixed it for the rest of the winter but that he can't keep working for free and that he charges out at $45.00 an hour; however, on the tenant's invoice he has charged the landlord $70.00 an hour. No agreement was made for the tenant to do any work and he fixed the line himself. The only agreement was for the landlord to pay for materials but not to pay the tenant to do any work.

The landlord testified that he always used AJ Pumps as he wanted any work done to be professionally done. When the tenant agreed to pick up the materials the landlord agreed to pay him for these but AJ pumps was going to do the work. At this time the tenant offered to do the work because AJ pumps could not get there on a day required by the tenant. The first time the landlord heard the tenant was charging him for this work was when he received the invoice in the tenants' evidence package.

Counsel submitted that the invoice provided for the tenants' claim to deal with the septic back up is an invoice again from AP's own company for $1,750.00. Counsel submitted that the landlord acknowledged that there was a septic back up into the unit within months of the tenants moving into the unit. The landlord had the required work completed by a remediation company and this was paid for by the landlord. The landlord testified that as soon as he was notified about the sewage back up by the tenants he immediately called AJ Pumps and they attended at the unit the same day. The tenants' invoice shows a date of August, 2014. The landlord referred to the tenants' photographic evidence showing the outdoor area and the dates on these photographs are all different. Some are shown to be taken in July and some in August, 2014. Repairs for this sort of issue cannot be done overnight and they take time to resolve. AJ Pumps did complete the outdoor work. This was not put through as an insurance claim as the landlord had to pay a deductible of $5,000.00. The sewage backed up on August 14, 2014 and the restoration company finished the indoor work on August 20, 2014. Valley services came out and swept out the tank and cleaned up the area after AJ Pumps completed their work. Valley Services pumped out the tanks; serviced the tanks and cleaned the area. They also had to dig a trench to a secondary tank to service both tanks. The landlord testified that the tenants have provided no evidence to show they cleaned up any sewage in the area other than their invoice.

Counsel submitted that on the tenants' invoice for work completed when the well dried up the tenant has again charged the landlord $70.00 an hour. His claim is for labour costs of $7,975.00, yet he claims earlier to the landlord that his hourly rate is $45.00 an

hour. There was no agreement between the landlord and tenants for the tenants to provide labour to the landlord. Counsel referred to the statement from the owner of AJ Pumps who stated that 2015 was a hot and dry year and many wells dried up. AJ Pumps invoice explains that from August 17, 2015 to September 01, 2015 they did a call out because there was no water. The water levels were very low at that time. The well was recovering but could not keep up with the usage. AJ Pumps added a second tank and a sump pump. The tenants' invoice shows billing for the same work; however, the tenants have provided no evidence to show they needed to do this work. AJ Pumps invoice details that the cistern they added automatically filled from the well. Counsel referred to the Invoice from AJ Pumps which demonstrates that manual switching values did not work so a sump pump was added so the cistern automatically filled from the well and then shuts off. This was fitted on September 01, 2015, yet the tenants' invoice for the work is dated August 31, 2015 to November 28, 2015.

Counsel referred to the documentary evidence of the tenants' text message sent on August 17, 2015 informing the landlord they had run out of water. AJ Pumps invoice shows they were sent in straight away. At the end of August, 2015 there was no longer a problem with water as the system fitted by AJ Pumps filled and shut off the system. If there was a continuing problem then why did the tenants not notify the landlord so he could have remedied it as before?

The tenant testified that they had to use a garden hose to fill the tank. There was no water in the well to fill the system. The water table got so low it sucked air and the tenant had to break the flow or the pump would burn out. The tenant then had to unplug the pump and re-prime the line, refilling the line from the tank to the pump by re-purging the line. AJ Pumps by passed the system as shown on their invoice. They put a pump into the well attached to a garden hose which went into the cistern. This is not an automatic system as the pump is on a higher elevation and would keep draining. You have to stop the flow of water to prevent the cistern overflowing or the well would have been sucked dry. The tenant testified that every day they had to stop and restart the pump.

The tenant asked the landlord why they left out 10 pages of the mould report in their documentary evidence. Counsel responded that this was left out because it had already been provided by the tenants in their evidence. The tenant asked the landlord if it says in the landlord's mould report that the indoor sample is higher than the outdoor sample for Penicillium/Apergillus. Counsel responded it states they cannot be differentiated by non-visible sampling methods. The ABM report commissioned by the tenants says no mould was found. The landlords report shows his testing was done on June 23 and did show a higher amount of Penicillium/Apergillus in the bathroom but the air was stagnant. The tenants' testing was done on both air born and sample testing. The report does not say or conclude that there were any water intrusions, there was no wet dry wall or mould growth.

The tenant testified that based on the lab data a rating of less than 150 is low and low probability of spores inside. The score was 165 showing an elevated count. The data also indicated elevated moisture indicator organisms present and that further investigation is recommended. The landlord went into the bathroom and took down the plastic sheeting the tenants had put up when the tenants were living outside in tents on June 24, 2016. The landlord then put this sheeting back up again after their mould company went in to do their test. When the tenants' testing was done on June 27, 2016 they entered with the mould company and the plastic sheeting was in place. The tenant responded that their report says it was higher for Penicillium/Apergillus but it would be lower as they had not been in the home for a few days and the air would not have been moving around.

The landlord testified that they only took down the plastic sheeting when prospective purchasers came through the unit. The landlord agreed that he did not do any further investigation as recommended as the tenants did a mould test after the landlord test and the indoor samples came back lower than the outdoor samples. No mould spores were also found in the tenants' tape lift testing.

The tenant referred to their photographic evidence showing the concentration of mites in the bathroom area. These are also a health hazard in large numbers such as these. The Pest Detective report indicated that the baseboards only were sprayed yet the mites also went up the walls and ceiling. The Pest Detective company was supposed to come back two weeks later for a follow up treatment but failed to return, so the tenants dealt with the mites themselves.

AP asked the landlord if they have evidence that the tenants' dog brought in the mites. Counsel responded no just evidence that a dog was present. The tenant asked the landlord if he followed up with treatments for mould or mites. The landlord responded that they attempted to send in an electrician to replace the bathroom fan to circulate the air as recommended to get rid of any humidity; however, the tenants denied access to the electrician. AP responded that they have provided text messages between the tenant and the electrician in which he said he was coming the following day at 8.00 a.m. but he did not arrive. The tenant testified that they emailed the landlord about this and asked what his plans were for the ongoing infestation. The tenant asked the landlord about his reference to a move in report concerning the window as no move in report was done with the tenants. The landlord responded that he does not have one.

AP asked the landlord if it was AP who picked up the UV bulb and was it not the landlord's expectation that AP would install this. The landlord responded that AP said he would pick up the bulb and it was not a big deal to install it, so the landlord said fair enough. AP asked the landlord why he left them drinking out of a garden hose for three months. The landlord responded that this did not happen. The tenant asked the landlord about the comments on the AJ Pump invoice showing they left a garden hose. The landlord responded that the invoice explains the measures and states they installed a sump pump in the well. AP asked where it says the garden hose was replaced and why was it left like that as the invoice says it was a temporary measure. The landlord responded it says they added a sump pump and they did a water test which came out clear. The water went into the cistern tank and there is a UV light there. Two water tests were done in two years.

AP asked the landlord if he recalls the conversation where the landlord asked AP to take care of the kitchen work. The landlord responded no there was no contract for AP to do work on the kitchen. AP asked the landlord if he can provide evidence that the company he used did the clean up outside on the raw sewage. The landlord responded no. AP asked the landlord why there was a three day or more delay on the work to clean up after the sewage back up inside the home yet the landlord claims the outdoor work was done. The landlord responded that he had to discuss the work with his insurance company first and could only do the indoor work after the outdoor work had been remedied. The landlord obtained an assessment, a quote and then gave permission for the company to proceed with the work as he decided not to go through his insurance company.

AP asked the landlord if on November 29, 2015 did the landlord ask AP to remove the pump and did he request AP to repair the pump when it was frozen. Did they have a conversation in which the landlord said he understood that AP was a mechanical engineer and if so why did he not say he was going to call AJ Pumps to do the work. The landlord responded that he did understand the tenant was a mechanical engineer and just wanted the tenant's input as to how to remedy the problem not to do any work. When the tenant called the landlord the landlord was overseas but he still called AJ Pumps the next day.

Counsel asked the tenant if they had any written contracts between them and the landlord to do any work for labour, services, painting or remediation. AP responded no everything was done verbally. Counsel asked AP if he instructed ABM to do a mould report and did he review that report. AP responded yes he did. Counsel asked if there was any agreement with the landlord for him to pay for the tenants' motel costs or for tents. AP responded no but they seek compensation now for these costs. Counsel asked the tenant why they did not present any invoices to the landlord since 2014 for work done in the kitchen prior to being issued with the eviction notice. AP responded that the landlord had told them they could have the option to buy the property or at least

rent it for the next 10 years. They were hoping to live there while there children grew up. Counsel asked AP if they had a lease for 10 years or a right to purchase agreement. AP responded no it was a verbal agreement.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I refer the parties to s. 33 of the *Act* which deals with emergency repairs and states:

> **33** (1) In this section, **"emergency repairs"** means repairs that are
>
> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) made for the purpose of repairing
>
> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.
>
> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
> (3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

With this section of the *Act* in mind I have considered the tenants' request to recover $2,330.61 for their actions to remediate the pests and mould. I find the tenants did notify the landlord about an issue they thought they had with mould and pests, the landlord acted in a timely manner and sent in a pest control company and a mould company to determine what was at fault. The mould company did compile a report which did show slightly elevated levels of Penicillium/Apergillus in this bathroom area. The landlord was recommended to further investigate this mould. I am satisfied that not long after the landlord did his mould testing the tenants also had a mould test done which showed that the levels of Penicillium/Apergillus in the same area were of a normal level. I conclude that from this investigation carried out by the tenants that there was no longer any need for the landlord to conduct further investigation.

I also find the landlord did send in a pest control company who carried out some remedial work to deal with the pests. While this may not have eradicated this problem to the satisfaction of the tenants and clearly there did remain a problem with these mites then the tenants' recourse should have been to ask the landlord in writing to deal with the issue again and if that failed the tenants were at liberty to file an application seeking an Order for the landlord to deal with the problem. These measures are in place to protect both parties and ensure both parties follow the procedures outlined in the *Act*. Consequently, as the tenants took it upon themselves to remedy this issue and to pay for their own mould report to be carried out prior to any further investigation by the landlord then the tenants must bear any costs associated with this work. This section of the tenants' claim is dismissed.

With regard to the tenants' claim regarding the repair to the well pump of $1,680.00. If this was an emergency repair the tenants should have followed s. 33 of the *Act*. This repair occurred in 2014 and at that time it appears as if the tenant was willing to do small jobs to assist the landlord without having anything in writing or to have a written agreement for AP to do this work. Furthermore, I find the amounts claimed are in excessive of what the repair should cost given that the tenant has written that his

normal hourly rate is $45.99 per hour. As the tenants have not complied with s. 33 of the *Act* I must dismiss this section of their claim.

With regard to the tenants' claim to recover $2,278.25 for the removal of hazardous waste; the tenants agreed that they removed this waste from the neighbour's property. As this waste did not belong to the landlord and the tenants in effect not only trespassed onto a neighbour's property without that neighbour's express permission but removed items that were located on that neighbour's property. Consequently, the tenants are not entitled to recover any amounts from the landlord to remove and dispose of this waste. This section of the tenants' claim is dismissed.

With regard to the tenants' claim to recover $4,698.75 for their time to manage the infestation which according to their invoice included time spent serving the landlord, taking time off work, doing paperwork for this application, gathering evidence for their application and managing their children while they did this work. There is no provision under the *Act* for costs of this nature to be awarded to an applicant or a respondent. If the applicant decided to file an application and to gather evidence against the respondent then they must do so at their own cost. In so far as the tenants' claim to recover costs to manage their own children there is no provision under the *Act* for costs such as these to be awarded. This section of the tenants' claim is dismissed.

With regard to the tenants' claim to recover $4,842.66 for the costs incurred when they we displaced from the rental unit. Upon consideration of the evidence before me I find the tenants took it upon themselves to leave the home and book in to a motel when they felt they could no longer live in the home due to mites and mould. The tenants had already cordoned off the area that they suspected would cause issues to their health and then instead of returning to the unit they remained outside the unit living in tents. The tenants are now seeking to recover amounts from the landlord for the tents, for replacement tents when a wind storm damaged the tents and for food. I find the tenants have insufficient evidence to show that the landlord is responsible for their displacement. The landlord did act in a timely manner to determine if there was an issue

with mould and to deal with the mites. There is insufficient evidence to show that this slightly higher than normal mould count for a few weeks could be so harmful to the tenants' health or more so then living outside in a tent where mould spores are higher. I find these was an extreme measure taken by the tenants to possibly garner attention from the local media to strengthen a case against the landlord after they were served an eviction notice. Based on the above I find I must dismiss the tenants' application to recover the costs claimed.

With regard to the tenants' claim to recover costs associated with work done on the kitchen of $3,590.00; the tenants did not have a contract with the landlord to carry out any work to enhance the kitchen of the property. It is my understanding that because the tenants were hoping to purchase the property or to stay there for a long term rental that they wanted to enhance the kitchen for their own use. There is insufficient evidence from the tenants to show that the kitchen posed a danger to life or property that would require them to make upgrades in accordance with s. 33 of the *Act*. The tenants have insufficient evidence to show that they had a right to buy contract with the landlord either verbal or in writing and certainly their tenancy agreement shows the tenancy was only for a one year fixed term not a long term tenancy. Consequently, due to the above I must dismiss the tenants' application for these costs.

With regard to the tenants' claim to recover costs of $988.88 for the window repair; I am satisfied from the evidence before me that the landlord agreed the tenants could apply the money they were given for the recycling of the washer/dryer towards the window repair. I also find this repair was higher than the money received from recycling. The tenants received $93.00 for the washer/dryer but have charged the landlord $910.00 in labour costs and $78.99 for materials. I am satisfied on a balance of probabilities that the landlord agreed the tenants could replace this window. There is insufficient evidence from the landlord that this window was broken during the tenancy as the landlord has not provided a move in condition inspection report showing the condition of the unit at the start of the tenancy; however, in the evidence it shows the tenant's normal hourly rate is $45.00, yet he is charging the landlord $70.00 an hour for this work including

time to return the metal waste to the recycling. Had the landlord paid to have a glass company do this work the landlord would not have suffered such a loss. The tenant did not have an agreement with the landlord prior to doing this work that the costs would be so high or that the tenant would charge the landlord all these additional costs. I therefore limit the tenants' claim to the cost of the window of $166.88 and the foam tape of $5.00. I also award the tenants a nominal amount of $200.00 to fit the window to a total amount of $371.88 less the amount recovered by the tenants of $93.00 from recycling. The tenants are therefore entitled to recover **$278.88**.

With regard to the tenants' claim for work completed when the well froze of $669.80; The tenants have provided an invoice from their own company which states that on November 28 and 29, 2015 they spent a total of 17 hours obtaining quotes, gathering materials, thawing the hose for temporary water, installing a line from the well to the pump and attaching a heat wire. The total cost shown on the invoice is $1,190.00.The landlord paid $520.20 for materials. AP has testified that the landlord said if AP provided the labour the landlord would provide the materials and that he would pay up to $500.00 so the tenants could have water. If the tenant decided to undertake this work it would certainly fall under s. 33 of the *Act* and as such the tenant must follow the requirements as set out under that section. I am satisfied that the tenants did notify the landlord that they had no water due to the well freezing; the tenants have since provided the landlord with an invoice pursuant to s. 33(5)(b) of the *Act* for the tenant's labour costs. The landlord cannot expect the tenants to work for free again repairing the landlord's property when the landlord has been notified of the repair required and it is a repair that is necessary to ensure the tenants have water. I have taken into consideration that AP previously informed the landlord that he charges out at $45.00 an hour for his labour yet the invoice shows AP is claiming $70.00 an hour. I therefore find that pursuant to s. 33(6)(c) of the *Act* the amounts represent more than a reasonable cost for the repairs. I therefore limit the tenants' claim to **$765.00.**

With regard to the tenants' claim to recover $1,750.00 for their labour in dealing with the septic back up. I am satisfied from the evidence before me that there was a septic back

up at the property not long after the tenants moved into the unit. The landlord testified that as soon as he was notified on August 14, 2014 he sent in AJ Pumps to assess the problem. They determined that the sewer pump had failed and they remedied this issue on August 14, 2014. On August 19, 2014 another company came and pumped out the septic tanks. On August 20, 2014 the remediation company came into the unit to do the interior work. From the evidence presented I am satisfied that it took the landlord seven days to send in the remediation company to do the interior clean up and work to remedy the sewage back up. I find therefore on a balance of probabilities that the tenants did spend time doing part of this interior cleanup of sewage water which had to be done to safeguard the tenants' health.

I have reviewed the landlord's invoices and find there is insufficient evidence to show that the company he engaged did any cleanup of sewage waste from the outdoor area. This would be of some concern to the tenants with young children playing in the area. I am therefore satisfied that the tenants did complete work to make this area safe and although they did not provide an invoice to the landlord at the time, they have provided one in their evidence package. I do; however, find the amount claimed by the tenants far exceed AP's normal hourly rate of $45.00. I therefore find I must limit the tenants' claim to six hours at $45.00 an hour = $270.00 for the interior cleanup and 15 hours for the exterior clean up at $45.00 an hour =$675.00. The tenants have insufficient evidence as to why they had to take time off work to meet a contractor on site when they should have contacted the landlord to arrange this. The tenants' claim for four hours for this is therefore denied. The tenants are therefore entitled to a total amount for this section of their claim of **$945.00**

With regard to the tenants' claim for $7,975.00 for work completed when the well dried up; the tenants' invoice indicates that they spent a number of hours between August 31 and November 28, 2015 opening the lid and valve, plugging in the pump, monitoring the reservoir, unplugging the pump and closing the lid and valve. The tenants have provided insufficient evidence to show that they were required to do this work and the evidence from the landlord shows that AJ Pumps were contacted and came to the

property to do the work to ensure the tenants had water. When tenants rent a property that has the water supplied from a well then it is the landlord's obligation to ensure the tenants have water. I find from the evidence presented that at that particular time it was a very hot and dry period and the well did dry up. The landlord acted in a timely manner to contact AJ Pumps who came out and installed a cistern to help create a reserve of water for low capacity wells. It was not until the summer of 2016 that the tenants asked for a water test to be conducted and this confirmed that the sample provided by the tenants showed the water in the well was potable and absolutely safe for human consumption. If the tenants had concerns about the cistern filling from a garden hose they should have asked the landlord to conduct a water test on the water from the cistern and not the well.

Further to this as the tenants have the burden of proof to show the landlord did not act in a timely manner to ensure the tenants had water; or that the work done by AJ pumps was not sufficient; and that the tenants followed s. 33 of the *Act* with regard to making emergency repairs, I find the tenants have insufficient evidence to show the work they completed was necessary or that they has informed the landlord that any work done by AJ Pumps was not sufficient. Consequently, due to the above I must dismiss the tenants' application for these costs.

As this tenancy has since ended I am not required to deal with the tenants' application for an Order for the landlord to make emergency repairs for health or safety reasons.

As the tenants' claim has some merit I find the tenants are entitled to recover the filing fee of **$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Window repair	$278.88
Well freezing	$765.00
Sewage clean up	$945.00
Filing fee	$100.00

Total amount due to the tenants	$2,088.88

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$2,088.88**. The Order must be served on the landlord. Should the landlord 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: October 26, 2016

Residential Tenancy Branch