Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S; MNDCL -S; MNDL -S; FFL; MNDCT; MNSD; FFT

Introduction

This hearing dealt with monetary cross applications. The tenants filed for return of double the security deposit and compensation for other damages or loss under the Act, regulations or tenancy agreement. The landlord applied for compensation for unpaid rent, damage to the rental unit, and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit.

The hearing was held over three dates and two Interim Decisions were issued. The Interim Decisions should be read in conjunction with this decision.

It should be noted that I heard hours of largely disputed oral testimony and a significant volume of documentation, photographs, and video evidence; all of which I have considered in making this decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and referred to the most relevant of evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants, as claimed?
2. Have the tenants established an entitlement to compensation from the landlord, as claimed?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on December 1, 2017 and the tenants paid a security deposit of $600.00. The tenants were required to pay rent of $1,250.00 on the first day of every month. Rent included utilities including electricity, heat, water and internet. The rental unit was described as a lower level suite and the landlord resided in the living unit above the rental unit.

The landlord and the tenant completed a move-in inspection report together.

Shortly after the tenancy started, the tenancy relationship soured quickly and severely. In summary, the tenants started complaining to the landlord about insufficient heat; insufficient internet, issues with the electrical system that resulted in blown electrical breakers and damage to their computer; lack of repairs by the landlord and improper entry by the landlord. The landlord began complaining about the tenants causing too much noise, not cleaning up after their dog, the furnace not working, interruptions in the water supply, issues with the hot water system, and negligently using a space heater. The situation escalated even further with the landlord not giving the tenants sufficient notice of entry for an alleged “emergency repair” which resulted in the female tenant rushing home from work, then the landlord alleging the tenant assaulted her and the police going to see the tenant at her place of work, which is also the same place the landlord worked. Subsequent complaints of noise and the furnace not working resulted in the landlord calling the police on subsequent occasions in an attempt to gather evidence that would support a “criminal harassment” charge. The male tenant also ended up going to the hospital during this turbulent time even though he did not have medical coverage.

The landlord issued three different notices to end tenancy. Shortly after the tenants demanded that the landlord make repairs and compensate them for their damages and losses, by way of a letter dated March 26, 2018, the landlord served the tenants with a 2 Month Notice to end Tenancy for Landlord’s Use of Property dated March 28, 2018 with an effective date of May 31, 2018. The landlord submitted that her daughter was going to move into the rental unit. The tenants did not dispute the 2 Month Notice.

On April 23, 2018 the tenant tried to talk to the landlord to inform her that they would not be paying rent for May 2018 because they had received the 2 Month Notice; however, the landlord refused to communicate with the tenant. The landlord explained that

although the tenant was speaking to her she did not respond since her witness has left and that she would only communicate with the tenants if she had a witness present.

After the landlord and tenant parted ways on April 23, 2018 the landlord telephoned the police and alleged that the tenant had assaulted her. The police spoke with the landlord and then the tenant at her place of work. The tenant denied assaulting the landlord and no charges were laid. On April 25, 2018 the landlord then issued a 1 Month notice to End Tenancy for Cause with an effective date of May 31, 2018. The tenants did not file to dispute the 1 Month Notice.

The tenants did not pay rent for May 2018 and on May 2, 2018 the landlord had the tenants served with a 10 Day notice to End Tenancy for Unpaid Rent with an effective date of May 12, 2019.

The tenants vacated the rental unit on May 12, 2019.

The landlord did not invite the tenants to participate in a move-out inspection and the landlord performed a move-out inspection of the rental unit on May 13, 2019 without the tenants present. The landlord testified that she had a witness with her when she inspected the unit on May 13, 2018; however, the landlord did not call that person as a witness for this proceeding.

As far as the reason for not inviting the tenants to participate in the move-out inspection, the landlord stated she did not have a forwarding address for the tenants and the Residential Tenancy Branch had “advised” her to only communicate with the tenants in writing. The tenants responded by pointing out that they vacated the rental on the effective date the landlord provided on the last notice to end tenancy she served upon them, that the landlord lived above them and she could see that they were moving out, and the landlord had communicated with them throughout the tenancy by way via text message.

Landlord's claims

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

1. Repairs -- $813.00

The landlord seeks $813.00 to repair the front door, the door knob, the bathroom sink hot water hose, the shower components and water damage, and the siding where the tenants had internet service components installed. The landlord presented an invoice in support of the amount claimed.

The landlord submitted the door was scratched by the tenants' dog. The front door knob was loose and twisted, that the landlord attributes to excessive force by the tenants. The landlord states the hot water hose was dripping and it could not be tightened anymore and the dripping water was being caught in a bucket. The landlord submitted that the shower components were loose and there was water damage in the wall that the landlord attributed to the tenants installing their own shower head. The landlord submitted that the tenants did not obtain permission to obtain their own internet service and the internet provider installed wiring and a cable box on the exterior of the house and a hole was drilled into the exterior wall.

The tenants were of the position the door was scratched a little by their dog but that the door was mostly just dirty. The tenants are agreeable to paying a reasonable amount to rectify any scratches from their dog but pointed out that the door needed a new coat of paint.

The tenants denied using excessive force on the door knob. The tenants stated the door knob was always loose and they had requested the landlord repair it months prior.

The tenants denied causing damage to the hot water hose under the sink and stated the hose had been leaking since early on in the tenancy and when they brought it to the landlord's attention it is the landlord who placed a bucket under the drip.

The tenants acknowledged they installed a new shower head but stated they did so with the landlord's consent. The tenants denied causing any damage to the pipes in the walls since the shower head easily screwed on and off. The tenants did not notice any

water leaking from their shower. Rather, it was the landlord's bathroom above that had leaked. The tenants pointed to their video where poorly cut tiles are very visible.

The tenants acknowledge having internet services installed and explained it was necessary since the Wi-Fi service the landlord provided was inadequate and the landlord refused to do anything to improve it when they asked the landlord to relocate the router or pay for the purchase of an extender. The tenants requested that if they are held responsible for removal of the internet hardware that they be given an opportunity to obtain additional estimates.

The tenants questioned whether the landlord actually hired someone to make the repairs as they believe the landlord intends to make the repairs herself as she had done in the past, was evidence by the poor patch jobs they saw when they moved in.

2. Replacement shrubs – $30.47

The landlord submitted that the tenant's dog dug up a shrub on the property and damaged the shrub on the neighbour's property. After the tenancy ended the landlord purchased two replacement shrubs to rectify the damage. The landlord presented a receipt for the purchase of shrubs.

The tenants agreed their dog damaged some shrubs and they agreed to pay the amount claimed.

3. Cleaning of yard and suite -- $250.00

The landlord submitted that the yard was left with holes filled with dog feces and the yard required raking and the sidewalk swept. Also, the rental unit was not left clean and additional cleaning was required in the kitchen, including the cupboards, stove, and walls; in addition to the bathroom, the bedroom wall, blinds, windows and floors.

The landlord presented a receipt indicating she paid a woman $250.00 for cleaning the yard and rental unit. The receipt indicates the cleaner spent two hours cleaning the yard, four hours cleaning the kitchen and four hours cleaning the rest of the rental unit.

The tenants acknowledged that during their tenancy they had placed their dog's feces in the holes the dog dug in the yard as they read that it was a way to deter the dog from digging. The tenants then covered the holes with soil.

The tenants were of the position they left the unit reasonably clean at the end of the tenancy although they acknowledged they had little time to move. The tenants questioned the veracity of the cleaning receipt since the landlord cleaned the unit herself at the start of their tenancy. Also, the tenants questioned the amount claimed and are of the view it is unreasonable considering how clean they left the unit. The tenants point out that the landlord did not provide photographs to demonstrate the unit required the additional cleaning that she claims; whereas, the tenants took videos to demonstrate how they left the unit.

The landlord pointed out the tenants' video is very quick and that she provided a move-out inspection report that was signed by the witness who was present at the move-out inspection and the witness wrote a separate statement.

4. Emergency water issues -- $152.22

The landlord submitted that the water supply started fluctuating greatly on April 21, 2018 and stopped at times. The landlord called the City and learned that there were no issues with the city water supply. The landlord testified that she called a plumber in the morning of April 23, 2018 and the plumber attended the property later that morning. The landlord took the plumber into the rental unit where the water supply valve was located and a lock was placed on the valve so that it could not be turned off unless it was unlocked. The landlord concluded that the tenants must have been tampering with the water supply valve since it is located in the rental unit and no blockages in the water line were found.

The landlord also had the plumber install a "summer switch" on the furnace on April 23, 2018, which was also located in the rental unit.

The landlord presented a receipt for the services of the plumber that included work on both the water valve and the furnace, and the purchase of a part for the furnace.

The tenants admitted to turning the water supply valve off one time in response to a water leak coming from the landlord's bathtub. When they did so it was off for approximately ½ hour and they contacted the landlord right away to inform her. The tenants submitted that the landlord had the plumber attend the property several times, suggesting there were plumbing issues at the property.

The landlord stated the leak from the landlord's bathtub was a drain issue and not a water supply issue and that the leak was in February 2018, not in April 2018.

5. Abandoned property -- $100.00

The landlord submitted that the tenants left a desk and chair behind at the property. The landlord had her contractor remove the desk and chair, store it for three months, and then dispose of it by taking it to the dump. The landlord provided an invoice indicating the contractor charged the landlord $100.00 to remove the property, store it and dispose of it.

The tenants acknowledge that they abandoned the desk and chair at the rental unit. The tenants explained they had little time to move out and they did not have room to take the desk and chair. The tenants stated the landlord did not attempt to communicate with them concerning the desk and chair left behind and that it did not need to be stored. The tenants also questioned the veracity of the receipt provided by the landlord.

6. Rent for May 2018 -- $1,250.00

The landlord seeks payment for rent for May 2018 because the tenants did not pay it.

The tenants stated they did not pay rent for May 2018 because they had received and accepted the 2 Month Notice the landlord served upon them. Further, the tenant tried to tell the landlord that they would not be paying rent for May 2018 on April 23, 2018 but the landlord refused to communicate with her.

The landlord was of the position she had withdrawn the 2 Month Notice by way of a letter and the tenants did not respond to her letter. The landlord did not provide a copy of said letter. The landlord conceded that the tenants never did communicate to her that they would consent to withdrawal of the 2 Month Notice. The tenants stated they did not recall receiving a letter from the landlord seeking withdrawal of the 2 Month Notice. Rather, they received a 1 Month Notice.

7. Security Deposit -- $600.00

The landlord had added the tenants' security deposit to her claim for compensation in preparing the Monetary Order worksheet. I pointed out that the security deposit is not an amount added to a claim but that it may be used to offset the landlord's damages or losses. The landlord clarified that she seeks to retain the security deposit in partial satisfaction of her claims.

Tenants' claims

Below I have summarized the tenants' claims against the landlord and the landlord's responses.

1. Computer damage -- $828.00

The tenants submit that shortly after the tenancy started the motherboard to their computer became "fried". The tenants attribute this to power surges from the inadequate wiring and power supply in the rental unit.

The tenants testified that the breakers would trip if the fridge came on while they were using the microwave. The tenants informed the landlord of the issues and the landlord sent an electrician to inspect the wiring. According to the tenants, the electrician inspected the wiring and told them the existing writing was old and not to code. Also, there were too many outlets on the circuit and that they would have to limit their use to one appliance at a time.

The tenants submitted that on February 28, 2018 they had a second discussion with the landlord about the cost to repair the computer and the landlord told them to get a second opinion and she would pay for the damage. In March 2018 the tenants sent a quote to the landlord and then the landlord refused to pay for the damage.

On April 20, 2018 the tenants had an electrician give them a quote to replace the wiring, although they did not provide the quote to the landlord until they served her with their evidence.

The tenants are of the position the landlord is obligated to rent a safe unit and the tenants should not have the suffer the consequences from the landlord's negligence to do so.

The tenants presented a receipt/quote and it appears to indicate there was a charge for inspecting the computer and diagnosing the problem and various estimates to perform certain tasks in an attempt to repair the computer. The claim appears to be the sum of the highest quote and the cost to inspect/diagnose the computer. The tenants did not repair the computer and claimed they have been without a computer since it was damaged.

The landlord submitted that the wiring in the rental unit is safe. Although it is not up to today's building codes, it was to code when the rental unit was constructed as a "purpose built duplex" in the early 1960's. The landlord acknowledged the breakers do trip but denied there were electrical surges. The landlord submitted that she had an electrician inspect the unit in December 2017 and the electrician found the tenants using a space heater in the kitchen which contributed to the breakers tripping so the landlord offered an extension cord to plug in the heater.

As for damage to the tenants' computer, the landlord submitted that a user is supposed to turn off their computer if the power goes out. Also, a surge protector should be used.

The landlord submitted that the tenants first told her of damage to the computer in February 2018 and that the motherboard was "fried" but that they had claimed it was damaged the week after the electrician was at the property.

As far as instructing the tenants to get a quote to fix the computer damage, the landlord explained that she did not offer to pay for the damage but that she wanted to look at the cause of the damage because she did not think it was electrical.

As far as the tenants' claim for compensation, the landlord pointed out that the tenants' evidence does not reveal the age of the computer and submitted that computers do not last forever. The landlord pointed out the tenants did not have the computer repaired.

2. Hospital bill -- $1,015.00

The male tenant went the emergency department of the hospital and incurred a charge of $1,015 since he was not covered under provincial health care as he is in the country on a study permit.

The tenant described severe pain in his stomach area as being the reason he went to the hospital. The tenant stated his kidneys were inflamed and his stomach filled with gas. According to the tenant the doctors could not diagnose the reason for this condition except to say it could be attributed to extreme stress. The tenant stated he was prescribed medication to reduce gas and pain relievers.

The tenant was of the position that the extreme stress was the result of the landlord having the water supply shut off in the morning of April 23, 2018 while the tenants were showering, followed by the landlord entering the unit unlawfully later that morning along with two men, and then making allegations that the female tenant assaulted her and the police the female tenants' workplace.

The landlord was of the position that the shut-off of the water supply and the entry on April 23, 2018 was lawful as it was an emergency situation. I have described in greater detail the parties' version of events of what transpired on April 23, 2018 under claim number 5. below.

As far as the tenant's claim for recovery of the hospital bill, the landlord submitted that she was unaware that the tenant went to the hospital. The landlord believes the tenant lost his job that same day and if stress caused his illness, the stress could be attributed to job loss; however, there is no documentary evidence such as a doctor's note to demonstrate the cause of the tenant's illness. Also, the drugs the tenant described receiving are not related to anxiety or stress.

3. Internet bills – $240.00

The tenants submitted that internet services were to be provided to them under their tenancy agreement; however, the wi-fi signal or capacity was so poor that the connection would be lost every few minutes and could only be used if they were in a certain area of the rental unit. The tenant stated that having internet was imperative since he was going to school at the time.

Shortly after the tenancy started, the tenants asked the landlord to move the internet router that was located in the landlord's unit in an effort to improve their connection but she refused, telling them that it would interfere with her signal if she did so. The tenants then suggested getting an extender but the landlord was not willing to pay for it and the tenants determined an extender would cost $100.00. The tenants determined the best option was to get their own internet service since the landlord was refusing to provide

them with sufficient wi-fi service. The tenants stated they were paying $60.00 per month for their own internet service.

The landlord acknowledged the tenants had complained about the wi-fi shortly after the tenancy started. The landlord stated that she contacted her internet provider but the internet provider was of the opinion moving the router would not help. The landlord submitted that she does not offer high speed internet and that after the tenancy ended she found a full wi-fi signal in the rental unit.

The landlord stated the tenant requested she purchase another router, but she declined. The tenants then requested an extender and that she was agreeable to that if they paid for it but then they went ahead with obtaining their own internet service in mid-December 2017 without notifying her in advance or getting her permission.

4. Double security deposit -- $1,200.00

The tenants submitted that they provided a forwarding address to the landlord in writing on April 16, 2019, by mail. Prior to that they had requested the landlord refund their security deposit by e-transfer and they provided an email address to use via text message on the day they moved out since that was their ordinary way of communicating.

The landlord acknowledged receiving the text message and an email from the tenant, but pointed out it did not contain a forwarding address. Rather, the text message and email only provided an email address for the tenants. The landlord first received a service address for the tenants when they filed their Application for Dispute Resolution, but she had not received a forwarding address prior to that. The landlord acknowledged that she later received the forwarding address by way of the letter of April 16, 2019 but the landlord had already filed her Application for Dispute Resolution claiming against the security deposit by then.

5., 6. and 7. Loss of quiet enjoyment

The tenants identified three components to this claim:

- Forcible entry by the landlord -- $500.00
- Harassment and Intimidation by the landlord -- $500.00
- Loss of quiet enjoyment -- $500.00

The tenants submitted that from early in the tenancy their ability to use and enjoy the rental unit was diminished due to the landlord's actions or lack thereof. The tenants submit that they were not provided sufficient internet service that was included in their rent; the rental unit was very cold and the tenants had to ask the landlord multiple times to turn up the thermostat located in the landlord's unit and in response the landlord would state that the rental unit, located on the lower level, is expected to be colder and that they should dress warmer; the tenants had to use a space heater but that would cause the electrical breakers to trip and the landlord blamed them for using a space heater. The electrical breakers would trip many other times, including when the fridge was working while the microwave was running. The tenants allege that the landlord would create a lot of noise intentionally by playing loud music and vacuuming for long periods of time. In addition, the landlord attempted to micromanage their activities and often complained about cleaning up dog feces, their use of the space heater, and them playing loud music when it was not that loud.

The tenants submitted that on April 23, 2018 the situation turned drastically worse. In the morning, while showering, the water to their unit was terminated without notice by the city and the landlord was playing loud music. The tenants left for work and at approximately 9:45 a.m. on April 23, 2018 the landlord entered the unit without consent or by giving a proper notice of entry and the reason for entry was not due to an emergency. The tenants determined that the landlord had the city turn off the water in the morning of April 23, 2018 and then brought in a plumber to install a lock and remove a valve from the water supply line. The tenants acknowledged that the water had been turned off temporarily on April 21, 2018 but was flowing on April 22, 2018 and April 23, 2018 so the entry on April 23, 2019 was not an emergency. The landlord sent the tenant a text message at around the time of entry, but the tenant was already at work and rushed home in response to the landlord's text message.

The landlord explained that she feared there may have been a blockage in the water line because the water stopped flowing more than once on April 21, 2018 and she contacted the city to determine if the city had interrupted the water supply, which they had not. The tenants would not respond to her attempts to determine the cause of the water stoppage so after speaking with a friend she feared the line may have a blockage and the line may burst. In the morning of on April 23, 2019 she had the city shut the water off to the property and a plumber come to the property. The landlord considered the entry to be for an emergency situation, but she still sent a text message to the tenant to advise her she was entering.

Considering the landlord had to make arrangements to have the city turn off the water to the property and arrange for a plumber to attend, I pointed out that the landlord must have had some advance notice as to when she would need access to the rental unit. The landlord stated she arranged for the plumber as soon as the plumber's business opened that day which she estimated to be 9:00 a.m. The tenant pointed out that the plumber's business is open at 8:00 a.m. according to the internet.

As to when she sent the text message to the tenant, the landlord responded that it was sent "before" she entered. When pressed for an approximate amount of time "before" she entered she stated that she sent the text message approximately 2 minutes before entering and that she sent the text message in front of the plumber. When pressed for a reason why she did not send a message as soon as she made an appointment with the plumber, the landlord eventually acknowledged that she "didn't want to deal with the tenants".

While the plumber was in the rental unit, along with another man acting as a witness for the landlord, the tenant came home. The landlord proceeded to have the plumber remove a valve from the water supply line and install a lock. Then the landlord asked the tenant if she would consent to the plumber inspecting the furnace, which she did. As seen on the plumber's invoice, the plumber installed a "summer switch" on the furnace. The landlord was going back and forth between her unit and the rental unit while the plumber was working on the furnace when the tenant, allegedly pushed the landlord. The tenant denied pushing the landlord.

The tenant tried to talk to the landlord about withholding rent for May 2018 due to receiving a 2 Month Notice, but the landlord refused to speak with the tenant. The landlord explained that she was standing just outside of the rental unit when the tenant was trying to talk to her and the landlord would not speak with the tenant because her witness had left by that time and she would not speak to the tenant without a witness present. The landlord's witness had not witnessed the alleged assault.

After the plumber finished up work in the rental unit the landlord and tenant parted ways. The landlord then called the police and reported to the police that the tenant had assaulted her. The landlord claims that she showed "documentation" to the police officer and his response was that she needed to gather more evidence to support a criminal harassment charge. The landlord stated that she did not ask the police officer to go speak with the tenant at their workplace but that the police officer made that decision.

The police officer then went to speak with the tenant at her place of work concerning the allegation of assault. The tenant explained her version of events and no charges were laid. The tenant claims the police officer pointed out that their landlord/tenant disputes are resolved by filing an Application for Dispute Resolution through the Residential Tenancy Branch.

Then on April 25, 2018 the landlord served the tenants with the second notice to end tenancy: a 1 Month Notice to End Tenancy for Cause. When the tenants withheld rent for May 2018 as they were entitled to do for receiving the 2 Month Notice, the landlord served the tenants with a third eviction notice: a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2018. The landlord was of the position the tenant's actions warranted the issuance of the 1 Month Notice and that she understood she was entitled to rent for May 2018 because she had unilaterally withdrawn the 2 Month Notice.

In addition to the formal eviction notices, the tenants submitted that the landlord also told the tenants to move out multiple times in response to the requests for services and repair or ignored their requests for repairs or services. Furthermore, the landlord called the police to make complaints against them multiple times starting on April 23, 2019 and thereafter for minor issues: to inspect the furnace and for loud music complaints that the tenants submit was not loud. The tenants were of the view that instead of trying to find solutions in an amicable way the landlord chose to react in an intimidating manner and that she was a bully with an aggressive nature. The landlord's bully tactics continued in the workplace and an investigation was launched by their employer. All of these things resulted in the tenant's inability to enjoy the rental unit.

The landlord denied that she was intentionally loud and explained that the tenants did play loud music and their dog did defecate in the yard which caused her to take these issues up with the tenants. The landlord stated that she felt attacked by the tenants when she went to complaint about their loud music one night in February 2018.

The landlord acknowledged that in response to the tenant's various complaints regarding heat and the internet and demands to repair the wiring she told the tenants they "had options" and that they may be more satisfied elsewhere. However, whenever the tenants complained of a lack of heat, she would turn up the thermostat even if that meant coming home or being too hot in her unit.

The landlord acknowledged that she called the police three more times after April 23, 2018: once to register a complaint that the furnace was not working and two complaints regarding loud music coming from the rental unit although she cancelled the request for assistance one time because the tenants turned the music down. The landlord explained that she called the police in these instances because the police had advised her to gather evidence in support of a criminal harassment charge.

The landlord denied that there was a harassment investigation launched at her workplace although she acknowledged that she was "questioned" by their employer. The landlord was of the view that she is not capable of harassing the tenants as she is physically small. However, to protect her interests she had a witness with her whenever she spoke with the tenants from February 24, 2018 onwards: the date she felt attacked by the tenants in response to her complaint that their music was too loud.

In summary, the tenants were of the position the landlord deprived them of privacy, a safe rental unit, services and repairs they were entitled to, and quiet enjoyment of the rental unit they were paying for. The landlord was of the view she did not violate the tenant's privacy except in an emergency situation, that the rental unit was safe, she provided the services required of her and the tenant's demands were unreasonable as they expected her to re-wire the rental unit.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each claim made by the parties against the other.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Since each party has made a claim against the other, it is important to point out that the parties' have the burden to prove their respective claim. In other words, the landlord has the burden to prove an entitlement to the compensation she claims, and vice versa.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

In hearing from the parties, and upon review of their written submissions and evidence, it is very apparent that the tenancy relationship became very toxic and include allegations of both parties that are consistent with retaliatory actions. As such, I have reviewed the claims, including the evidence, rather critically.

Landlord's claims

1. Repairs

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The tenants did acknowledge their actions or neglect resulted in some of the landlord's claims, namely: some scratches to the front door, and having internet service hardware installed. However, the tenants' dispute the amounts claimed to rectify these matters. First, I consider the actions for which the tenants' acknowledged at least some responsibility.

- Door scratches

The landlord provided a photograph of the door and I do see some slight scratches on the door. The door appears to be an older painted wood door and I also note that at the bottom of the door are signs of weathering and water damage. The landlord seeks

compensation to repaint the door in the amount of $120.00 for 3 hours of labour and $25.00 for materials. I am of the view the door requires sanding and repainting due to the scratches and due to age and weathering. As such, I provide a partial award to the landlord. I limit the landlord's award to $50.00 as an approximation of the tenants' contribution to repairing the door.

- Removal of internet hardware

The tenants acknowledged having internet hardware installed at the property. The landlord seeks $120.00 for three hours of labour she claims to have paid to have the hardware removed. However, I find I strongly doubt the landlord had this hardware removed. The landlord's photograph depicts the internet provider's box and the box installed for the landlord's internet service. The internet box on the outside of the house belongs to the internet provider and the landlord made no submissions as to returning the equipment to the internet provider or storing it. Nor, did she provide photographs to demonstrate the equipment was removed or a copy of the tenancy agreement for the incoming tenants to demonstrate she was providing them with wi-fi instead of the tenants being permitted to have their own internet service. When, I look at the "invoice" the landlord provided, I find it lacks veracity. The invoice does not provide any contact information for the contractor such as a phone number or address. Also, the invoice indicates the invoice was paid but the method of payment was not specified or supported by some other evidence such as a cancelled cheque or credit card slip. These things considered, I find it rather likely that the equipment remains in place since the landlord acknowledged that she re-rented the unit instead of having her daughter move in and incoming tenants are likely to desire a better internet service than the landlord is willing to provide. While I recognize the tenants did not seek permission to install the internet hardware, I find I am unsatisfied that the landlord suffered a loss in the amount she claims. Therefore, I deny this component of her claim.

Next, I turn to the claims for damage and repairs that the tenants denied responsibility. The landlord provided a move-out inspection report that was prepared without the tenants present. Section 35 of the Act provides that a move-out condition inspection is to be performed by the landlord and the tenant together. Obviously, the primary reason for this is so that both parties can see/inspect damage together at the same time and gather evidence in support of their respective position at that time. Section 17 of the Residential Tenancy Regulations provide that it is the landlord is to propose to the tenants a date and time for the move-out inspection.

I am of the view, the landlord failed to meet her obligation to schedule a move-out inspection with the tenants. In the landlord's written submissions, it is apparent that the landlord erroneously took the position that the tenants had the burden to request a move-out inspection with her. Although the landlord claimed she did not know when the tenants were moving out because they did not give her notice, it was the landlord that had served the tenants with notice to end tenancy with the most recent notice had an effective date of May 12, 2018. The landlord also described in great detail in her written submissions that she observed the tenants' moving truck in front of the property on May 12, 2018. Accordingly, I am of the view the landlord had the knowledge and opportunity to schedule a move-out inspection with the tenants before they moved out and she decided not to. I find the landlord's decision on to schedule a move-out inspection with the tenants is consistent with her statement that she did not want to "deal with the tenants" on April 23, 2019 and the tenancy relationship continued to deteriorate even more after that date.

Section 21 of the Regulations provide that a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of the rental unit in a dispute resolution proceeding; however, as I have found above, the landlord did not prepare a condition inspection report with the tenants at the end of the tenancy due to her failure to schedule a move-out inspection with them. Therefore, I find her version of the move-out inspection report does not comply with the Regulations and is not the best evidence as to the condition of the rental unit at the end of the tenancy.

I have considered other evidence provided by the parties in an effort to demonstrate the condition of the rental unit at the end of the tenancy. The landlord also provided a letter written by a person who purportedly inspected the rental unit with the landlord on May 13, 2018; however, I have given little weight to the letter since the person who authored it was not called as a witness and was not subject examination or cross examination.

Both parties have provided photographs and/or video recordings and I have given more weight to that evidence since it is subject to my independent evaluation and conclusions.

- Door knob

Both parties provided consistent submissions that the door knob was loose and twisted; however, the tenants denied responsibility for damaging the door knob. Mechanical components do break down over time due to age and use and a tenant is not

responsible for rectifying that. Considering the door knob includes various mechanical components and I was provided the opposing testimony as to the cause of the damaged knob, I find the reason for the loose knob is unclear. Accordingly, the landlord did not meet her burden of proof and I dismiss this component of the landlord's claim.

- Bathroom sink plumbing and shower plumbing

The parties provided consistent submissions that the plumbing was leaking under the bathroom sink. The tenants denied responsibility for doing anything to damage the plumbing and submitted the landlord was aware of the leak early in the tenancy and she is the one responsible for its repair and that her idea of a repair was to put a bucket under the leak during their tenancy. I note that in a letter the tenants wrote to the landlord on March 26, 2018 they also bring up the fact the sink plumbing is leaking and that the landlord's repair effort was to place a bucket under the leak.

Plumbing components are subject to deterioration with age and use and repairs to rectify such issues are a landlord's obligation. I find the landlord did not produce sufficient evidence to demonstrate the tenants did something deliberate or negligent that resulted in the leak under the bathroom sink.

The tenants acknowledge that they screwed on a new shower head but deny they did anything to cause a leak behind the shower wall. The tenants point to the property having a number of plumbing issues and evidence that the shower wall had been re-tiled in the past. The tenants also raised the issue of the wall tiles not being cut to size in a letter they wrote to the landlord on March 26, 2018. I note that the move-in inspection report indicates that the bathroom ceiling had damage due to a leak upstairs which supports the tenants' version of events and points to another possible cause for water damage in the wall. The invoice provided by the landlord indicates the shower head and hose and water pipe were loose and the looseness caused water to run between the tub surround and the wall. The invoice indicates that the tile and drywall had to be replaced; however, as I found previously in this decision, I have found the contractor's invoice lacks veracity. The landlord provided one photograph of the showerhead installed by the tenants and it is apparent there is water leaking from various joints on the shower head. In the photograph I see water running down the wall tile, but I cannot see that the water going behind the tile since the landlord took the photograph from such an angle that the water pipe is blocking the view of the relevant area of the wall. I also note the landlord did not provide any photographs to demonstrate the tile and drywall was in fact removed and replaced. The landlord did

not call the contractor as a witness for the hearing or the person she purportedly had inspect the unit with her on May 13, 2018.

Given the opposing submissions and the unclear evidence of the landlord, I find I am not satisfied that the tenants are responsible for causing water damage behind the shower wall and I dismiss this component of the landlord's claim.

2. Replacement shrubs

The tenants acknowledged responsibility for their dog damaging shrubs and were agreeable to compensating the amount claimed by the landlord. Therefore, I grant the landlord's request for $30.47 for replacement shrubs.

3. Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Where a landlord brings a rental unit to a level of cleanliness greater than "reasonably clean" that cost is born by the landlord.

The parties provided opposing evidence as to how clean the tenants left the rental unit.

The landlord seeks to recover $250.00 in cleaning costs and the receipt she provided indicates she was charged $250.00 for cleaning the rental unit and the yard. There is no breakdown of the tasks performed by the cleaner with the exception of a description of cleaning dog feces from the yard for 2 hours, 4 hours cleaning the kitchen and 4 hours cleaning the rest of the unit. I note; however, that in the landlord's written submission she states that 8 hours of cleaning was required to bring the rental unit to same level of cleanliness as when the tenancy started, which may be beyond the tenant's statutory duty to leave it "reasonably clean".

As explained previously in this decision, I have also given little weight to the move-out inspection report and the written statement purportedly written by the landlords witness and gave given the greatest amount of weight to photographic and video evidence. When I look at the landlord's photographs, I see a photograph of a used paper towel on the floor but no other photographs of unclean areas of the rental unit. The landlord's photographs depict dog feces on the snow and the sidewalk was dirty.

The tenants acknowledged leaving dog feces in holes in the yard but claimed they covered it with soil. The tenants provided a video of the yard, while it was snowing, and there are no obvious signs of dog feces on the snow.

The tenants provided videos taken on May 12, 2018 and the rental unit appears at least to be reasonably clean.

In light of all of the above, I find I am unsatisfied that the landlord incurred a loss of $250.00 to bring the yard and rental unit to a “reasonably clean” condition. Based on the evidence before me, I award the landlord a nominal amount to sweep the sidewalk and pick up the paper towel in the amount of $10.00 and two hours to remove the dog feces, or $50.00 for a total award of $60.00 for cleaning.

4. Emergency water issues

As stated above, a tenant must not damage a rental unit and a landlord may recover costs incurred to rectify damage caused to the property by the tenant; however, in this claim, the landlord did not demonstrate the tenants damaged the water pipe, water shut off valve or the furnace. Rather, the landlord asserted that the tenants must have been tampering with the water valve, but the tenants denied doing so except for one time when there was a leak upstairs. The landlord proceeded to have the valve removed from the water line and installed a lock on April 23, 2018. The plumber’s invoice also includes a charge the installation of a “summer switch” on the furnace and the landlord did not make any submissions to demonstrate a basis for holding the tenants responsible for installation of a summer switch.

In light of the above, I find the landlord failed to demonstrate the tenant’s damaged the rental unit and that damage resulted in the need for repairs made by the landlord. The landlord did not point to any other provision in the Act that would provide a basis for installing a lock on the water valve located in the rental.

Considering the valve was on a water line that supplies water for the entire building, including the landlord’s unit, and it is located in the rental unit, I am of the view that installing a protective device on the water valve is a reasonable procedure for the landlord of a multiple unit building to make and is a cost of doing business as a landlord.

In light of all of the above, I do no award the landlord recovery of this invoice from the tenants.

5. Abandoned property

It was undisputed that the tenants left a desk and a chair at the rental unit at the end of the tenancy. Section 37 of the Act provides that a tenant is required to leave a rental unit vacant at the end of the tenancy which includes removal of all of their personal possessions, including possessions they no longer want or need. Failure to comply with this requirement is a basis for the landlord to seek compensation for removal of abandoned property or garbage. I find they breached this part of the Act and I hold the tenant's responsible for the removal of the desk and chair.

The landlord's invoice indicated the landlord's contractor not only removed it from the rental unit, but then stored it before taking it to the dump. A landlord is not obligated to store abandoned property if it worth less than $500.00 and may take such property directly to the dump. The landlord did not make any submissions that she estimated the value of the desk and chair as being $500.00 or more. As such, I find the landlord undertook more than she was required to and I do not hold the tenants responsible for her decision to store the property.

The invoice provided by the landlord does not provide a breakdown of costs incurred to remove the property versus storage of the property, and as stated previously, I find the invoice lacks veracity.

In recognition that the landlord had to remove and dispose of the desk and chair, I find it appropriate to award the landlord a reasonable approximation of her loss to remove the property. Since the landlord's claim is for $100.00 for storage and disposal, I award the landlord 50% of her claim, or $50.00.

6. Rent for May 2018

It is undisputed that the tenants did not pay rent for May 2018 and occupied the rental unit until May 12, 2018. At issue is whether the landlord is entitled to recover unpaid rent for the month of May 2018.

The tenants had been served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* in March 2018 with an effective date of May 31, 2018. A *2 Month Notice to End Tenancy for Landlord's Use of Property* is a notice to end tenancy issued by a landlord under section 49 of the Act.

The tenants did not file to dispute the 2 Month Notice and it was not set aside by an Arbitrator as the result of a dispute resolution proceeding. Although the landlord argued that she "withdrew" the 2 Month Notice by way of a letter, which she did not produce, it is important to point out that one party cannot unilaterally withdraw a notice to end tenancy and withdrawal requires the consent of both parties. This information is provided under Residential Tenancy Branch Policy Guideline 11: *Amendment and Withdrawal of Notices*. In this case, the landlord did not obtain the tenants' consent to withdraw the 2 Month Notice. As such, I find that the tenants were entitled to the compensation provisions for tenants in receipt of a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Section 51 of the Act provides that a tenant in receipt of a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to compensation from the landlord. Section 51 provides as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

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

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As provided under subsection 51(1) a tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent, in any circumstance. In other words, there is no excuse or exemption from compensation under subsection (1) like there is for compensation payable under subsection (2). Therefore, I find the tenants entitled to the compensation payable under section 51(1).

As provided under subsection 51(1.1), a tenant may obtain the compensation they are entitled to receive under subsection (1) by withholding rent for the last month of tenancy and occupy the rental unit until May 31, 2018. The tenants withheld the rent for May 2018 as they were entitled to do and I find there is no basis for the landlord to claim unpaid rent for the month of May 2018 and I dismiss this portion of her claim.

While the landlord testified during the hearing that she did not use the rental unit for the purpose stated on the 2 Month Notice and she re-rented the unit after the tenancy ended, which *may* be a basis for the tenants to seek additional compensation under section 51(2) of the Act, I make no finding as to there entitlement for additional compensation under section 51(2) since they did not make such a claim and additional information and arguments may be appropriate. Should the tenants wish to pursue such a claim they may make another Application for Dispute Resolution and both parties would have the opportunity to make relevant submissions concerning additional compensation payable under section 51(2).

7. Security deposit

I authorize the landlord to make the following deductions from the tenants' security deposit pursuant to the awards described above and the landlord is ordered to return the balance of the tenants' security deposit without further delay, as calculated below:

Security deposit		$600.00	
Less: authorized deductions for –			
Door scratches	$50.00		
Replacement shrubs	30.47		
Cleaning	60.00		
Abandoned property	50.00	(190.47)	
Balance of security deposit due to tenants			**$409.53**

Filing fee

Given the landlord's very limited success in her Application for Dispute Resolution I make no award for recovery of the filing fee to the landlord.

Tenants' claim

1. Computer damage

The parties provided opposing submissions concerning the cause of electrical surges in the rental unit and whether the landlord agreed to pay compensation to the tenants for computer damage; however, I find it unnecessary to make such a determination for reasons provided below.

I find the tenants' request for compensation for computer damage is not sufficiently supported.

Awards for compensation are intended to be restorative. With depreciable property, such as electronics, it is reasonable to compare the repair costs to the value of the item at the time of the loss. In other words, it makes no sense to repair an item where the repair cost is greater than the value of the item and an award would be limited to the value of the item at the time of the loss.

While the tenants had a quote prepared for replacement of various parts of the computer, the amounts quoted depended on the work that was needed to repair the computer and the tenants never did proceed to have the computer repaired. The tenants are claiming the greatest amount quoted without knowing whether all of that work was necessary. As such, I find the repair cost was underdetermined.

Also of consideration is that, as with most electronics, they depreciate quickly and the tenants did not provide other information to demonstrate the value of the computer, such as the date it was manufactured and the purchase price at that time, or the cost of a similar product of similar age. As such, I have not been provide the value of the computer, or a reasonable approximation of its value at the time of the loss and I find it entirely likely that the cost to repair the computer is greater than the value of the computer at the time of the loss.

For the reasons above, I find the tenants did not establish their loss with respect to computer damage and I dismiss this component of their claim.

2. Hospital visit

The tenants assert that the male tenant had to attend the hospital due to the stress created by the landlord; however, the tenant did not produce medical records to support such a diagnosis. While I appreciate the tenancy was highly toxic and the landlord made an allegation of assault against the female tenant, which resulted in the police attending the female tenant's place of work, I am of the view that the male tenants' hospital visit is not a reasonably foreseeable consequence of those actions and there is insufficient independent evidence to link the hospital visit to the landlord's actions. Therefore, I dismiss this component of their claim.

3. Internet

The tenancy agreement provides that the landlord was to provide the tenants with internet services as part of their rent. It is also undisputed that shortly after the tenancy started the tenants complained to the landlord of the difficulty accessing internet in areas of the rental unit and/or losing the connection.

In the text messages exchanged between the parties in December 2017 the tenants requested the landlord purchase an extender at a cost of $100.00. In the landlord's response she does not question the cost of an extender. Rather, the landlord

responded by stating the tenants may obtain an extender, at their cost, to reach the back bedroom in the rental unit.

Although the landlord had testified during the hearing that the internet signal reached the back bedroom, and even the back yard, that statement appears to contradict the message she sent in December 2017 when the tenants' raised the issue. In other words, if the landlord is of the position the signal reaches the back bedroom, then why would she authorize the tenants to acquire an extender in order to reach the back bedroom.

I also find it apparent from the text messages that the parties had a different interpretation of what the provision of "internet" in the tenancy agreement meant. The tenancy agreement does not specify any particular speed or data limits, nor does it indicate that the internet would be provided by wi-fi signal or hard-wiring. In the text messages, the parties referred to the advertisement for the rental unit that used the words "unlimited internet". The tenants pointed out that they interpreted "unlimited internet" to mean they would be provided internet by the landlord and the provision was factored into the amount of rent they were paying. The landlord responded in her text message that "unlimited internet" only referred to the amount of data they may use.

Under section 13 of the Act, it is the landlord that is responsible for drafting the tenancy agreement and under section 6 of the Act, a term must be written so that it is clearly communicates the rights and obligations under the term. The tenancy agreement clearly communicates that the landlord was to provide "internet" services to the tenants without any restrictions or limitations. As such, I find that a reasonable person would expect to receive reasonably reliable internet service throughout the rental unit.

Where parties point to an advertisement and offer their interpretations of what the words in the advertisement mean, I find that generally points to a poorly written or incomplete term. Under contract law, where a term is not sufficiently clear or ambiguous the term is interpreted against the drafter, which under tenancy law is the landlord.

Based on the submissions of the tenants and the message sent by the landlord in December 2017, I find I accept that the internet signal that the landlord decided to provide by way of a wi-fi signal instead of hard-wiring was insufficient, and the landlord was obligated to rectify the situation, which may have been accomplished by purchasing an extender as the tenants asked of her.

As far as the tenants' losses that resulted from the inadequate internet service, the tenants claimed $240.00 as being the amount paid to their service provided; however, the tenants did not produce invoices or receipts to substantiate this claim. It is also greater than the cost of their proposed solution which was the acquisition of an extender at a cost of $100.00. Therefore, I limit award to the tenants to the lesser amount of $100.00.

4. Double security deposit

The tenants seek double security deposit which is a provision under section 38 of the Act. In order to establish an entitlement to double security deposit, the tenant must prove they provided the landlord with their forwarding address, in writing, and the landlord failed to administer the security deposit within 15 days of receiving the forwarding address, or the date the tenancy ended, whichever date is later.

The tenancy ended on May 12, 2018; however, the tenants did not provide their forwarding address prior to filing their Application for Dispute Resolution in February 2019. Thus, I find the tenants were not yet entitled to return of their security deposit when they filed and their request was premature.

The tenants did then send a forwarding address to the landlord by way of a letter of April 16, 2019 but that was after the tenants had already filed their Application for Dispute Resolution and after the landlord had already filed her claim against the security deposit.

Where a tenant fails to provide a forwarding address to the landlord in writing before filing an Application for Dispute Resolution seeking its return, it is the practice of the Residential Tenancy Branch to order the landlord to take action with respect to disposition of the security deposit at the hearing. It was not necessary to do so in this case because the landlord had already made a claim against the tenants' security deposit by the time the hearing commenced. Accordingly, I dismiss the tenant's request for doubling the security deposit and I have dealt with the disposition of the security deposit, in the single amount, under the landlord's application.

5. 6. and 7. Loss of quiet enjoyment

Under section 28 of the Act, every tenant is entitled to the right to quiet enjoyment and the landlord has an obligation to provide quiet enjoyment and protect the tenant's right

to quiet enjoyment. As provided under section 28, quiet enjoyment includes, but is not limited to:

> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Below, I analyze the three components of the tenants' claim for loss of quiet enjoyment.

- Unlawful entry

The tenants are of the position the landlord "forcibly" entered the rental unit on April 23, 2018; however, I heard that when the landlord entered the rental unit the tenants were not home and I consider this claim to be better characterized as "unlawful" entry and I refer to it as unlawful entry from hereon in. A landlord's unlawful entry is a violation of section 28(c) of the Act.

The landlord was of the position that the entry was not unlawful as she entered without 24 hour written notice or consent due to an emergency situation and I proceed to analyze that position further.

Section 29 of the Act provides for a landlord's restricted right to enter a rental unit in certain circumstances. Generally, a landlord must obtain a tenant's consent to enter a rental unit or give the tenant a written 24 hour notice of entry. These requirements do no apply, however, if an "emergency exists, and the entry is necessary to protect life or property". I was provided consistent submissions of both parties, that the landlord did not seek the tenant's consent to enter and the landlord did not give the tenants a written 24-hour notice. Rather, she sent a text message to the tenant a few moments before entering.

The landlord points to the water supply being interrupted on April 21, 2018 as being the basis for her conclusion that an emergency existed. However, as pointed out by the tenant, if the landlord was of the position an emergency truly existed, she could have

availed herself of emergency plumbing services, on April 21 or April 22, 2018, which she did not. Rather, her entry and the attendance by the plumber took forethought and planning. The landlord had to arrange for the City to shut off the water supply and to schedule an appointment with a plumber during ordinary business hours. Therefore, I find the landlord did not satisfy me that a true emergency existed when she entered on April 23, 2018 and I find the landlord breached the tenant's right to exclusive possession of the rental unit subject only to the landlord's restricted right to enter the unit in accordance with section 29 of the Act.

The tenants requested compensation of $500.00 for this breach; however, there is little support for the amount claimed. Awards for compensation are intended to be restorative, not punitive. In the absence of another way to determine the loss, I use the per diem rental rate to make an award for loss of privacy for that day, which I calculate to be $42.00 [$1,250.00 / 30 days (rounded to nearest dollar)].

- Intimidation and harassment

It is clear the tenancy relationship began deteriorating quite soon after the tenancy started; however, I note that the most significant and sever behaviour of the landlord, such that may warrant compensation, started on April 23, 2018 when the landlord alleged the female tenant assaulted her which resulted in the police speaking with the tenant at her place of employment. The tenant denied assaulting the landlord.

The landlord and the female tenant provided different version of events as to what took place that day and I find I prefer the tenant's version of events over that of the landlord's version. I found it rather peculiar that the landlord testified that from February 2018 onwards she had a witness with her any time she had dealings with the tenants. Yet, on April 23, 2018 she started out by having a witness with her and only after the witness left did the landlord allege the assault occurred. I found the timing of the allegation rather compelling as well. The tenant testified that she was trying to talk to the landlord about withholding rent for May 2018 due to receiving the 2 Month Notice and it was after that the landlord alleged assault and issued the 1 Month Notice, likely in an attempt to avoid the compensation provision of section 51 of the Act.

In addition to the peculiarities noted above, I also found the tenants to be more credible than the landlord overall. Below, I provide my reasons for making such a finding.

The tenants readily admitted causing or being responsible for certain damage to the rental unit claimed by the landlord, including: scratches to the door, damaged shrubbery; as well as burying dog feces in holes in the yard and having the internet hardware installed at the property. Although they may not have agreed with the amount of compensation claimed by the landlord, I found their admittance to being responsible for these things left me with the impression they were relatively credible and willing to take responsibility for their actions. The tenant also described how the police officer pointed her to the Residential Tenancy Branch as a source for dealing with landlord/tenant disputes which is the appropriate avenue for landlord/tenant disputes and I find her description as to what transpired when the police officer spoke with her to be likely.

On the other hand, I found the landlord had a tendency to be evasive and vague when pressed for more information or details where her actions were called into question. To illustrate, when I asked the landlord when she arranged for the plumber to attend the property on April 23, 2018 she responded with a vague “before entering” the rental unit. The landlord also made reference to showing the police officer her “documents” in stating that he advised her that she may pursue the tenants for criminal harassment without any indication as to what “documents” she showed the police officer. From the documentation provided to me by the landlord, including the correspondence exchanged by the parties, I did not see evidence of criminal harassment on part of the tenants which leads me to believe the “documents” the landlord was referring to would have been documents she created.

As noted earlier under the heading of “Internet” I found the landlord’s oral testimony that internet was found in the back bedroom and her text message to the tenant in December 2017 acknowledging internet signal was insufficient in the back bedroom to be contradictory.

Also of consideration, is that the landlord attempted to argue that she had withdrawn the 2 Month Notice and testified that she had withdrawn it by way of a letter, and the landlord did not produce any such letter as evidence.

Further, the landlord testified that the rental unit was a purpose built duplex unit; however, I find that extremely hard to believe that considering the following. The heat provided to the rental unit was controlled by a thermostat located in the landlord’s unit. The turn off valve for the landlord’s water supply was in the rental unit. The rent included electricity which is typically indicative of a single electricity meter at a property.

I also note that the rental unit does not appear to have a different mailing address than the landlord's unit and I note the landlord distinguished between the two units in making her Application for Dispute Resolution as being "lower suite" and "upper suite". These things considered I find it more likely that the building was originally constructed as a single family dwelling and the rental unit was carved out of the original dwelling at a later date.

Considering I found the tenant more credible than the landlord and considering there was no assault charge laid against the tenant, I find I believe the tenant when she says she did not assault the landlord.

Given the landlord's unlawful entry, alleging an assault by the tenant, which I have rejected, and multiple other calls to the police from April 23, 2018 onwards, I find I accept the tenants' position that the landlord harassed and intimidated them, and I find the severity of her actions warrants compensation from April 23, 2018 until their tenancy ended. The tenants requested compensation of $500.00 and I find that amount to be very reasonable. If I were to apply the per diem rental rate for that period of time I would arrive at an amount in excess of $500.00. Therefore, I award the tenants $500.00 for intimidation and harassment as requested.

- Loss of quiet enjoyment

The tenants asserted multiple issues that lead to their loss of enjoyment of the rental unit during their tenancy; however, I have addressed the unlawful entry and harassment and intimidation above. The other issues raised by the tenants included their assertion that there were not provided sufficient heat and I proceed to consider that position.

The tenancy agreement provides that heat was included in the rent, and the building was heated by a furnace that supplied heat to the rental unit and the landlord's unit, but the thermostat was located in the landlord's unit only. As such, the tenants did not have control over the temperature setting and were reliant on the landlord turning on or adjusting the thermostat.

The tenants submitted that they were frequently cold in the rental unit and had to ask the landlord to turn up the thermostat and the landlord's responses included telling the tenants to expect the lower level rental unit to be colder and to dress warmer. However, the landlord testified that she would turn up the heat whenever the tenants asked her to. When I turn to the text messages provided as evidence, I find they support the tenant's

version of events. The tenants' use of a space heater also supports their position that they were not provided sufficient heat and when the space heater resulted in electrical breakers tripping the landlord appeared to blame the tenants for using a space heater. I accept the tenants' position that the landlord was indifferent to their lack of adequate services, including heat and internet, and was less than willing to rectify the situation other than suggest to they end the tenancy.

The rental unit is located in a cold climate and the tenant's videos demonstrated significant snowfall during their tenancy. I find the lack of sufficient heat is not only a breach of contract (the tenancy agreement) but also constitutes an unreasonable disturbance in their ability to enjoy the rental unit. Considering the tenancy as over 5 months in duration, I find the tenant's request for $500.00 in compensation for insufficient heat, which would amount to a rent reduction of $100.00 per month, is sufficiently warranted. Therefore, I award the tenants $500.00 for loss of quiet enjoyment due to insufficient heat without having to consider the other issues identified by the tenants.

Filing fee

The tenants were more successful in their claims against the landlord and I award the tenants recovery of the filing fee they paid.

Monetary Order

In recognition of all of my findings and awards described above, I provide the tenants with a Monetary Order to serve and enforce upon the landlord, calculated as follows:

Balance of security deposit owed to tenants	$ 409.53
Awards to tenants for:	
o Breach of contract re: internet	100.00
o Loss of quiet enjoyment ($42.00 + $500.00 +$500.00)	1,042.00
o Filing fee	100.00
Monetary Order for tenants	$1,651.53

Conclusion

The landlord was authorized to make some deductions form the tenants' security deposit and the balance of the landlord's claims against the tenants have been dismissed. The tenants were partially successful in their claims against the landlord.

In keeping with all of my findings and awards provided in this decision, the tenants are provided a Monetary Order in the net amount of $1,651.53 to serve and enforce upon the landlord.

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

Dated: November 20, 2019

Residential Tenancy Branch