

Residential Tenancies Tribunal

Application 2024-0839-NL & 2024-0872-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 9-December-2024.
2. The applicant, [REDACTED] (tenant 1), hereinafter referred to as “the tenant” attended by teleconference. The applicant, [REDACTED] (tenant 2), hereinafter referred to as “the tenant” did not attend.
3. Authorized representative for the tenants, [REDACTED] (Legal Counsel) with [REDACTED] attended by teleconference.
4. The respondent and counter applicants, [REDACTED] (landlord 1) and [REDACTED] (Landlord 2), hereinafter referred to as “the landlords” attended by teleconference.
5. Witness for the landlords, [REDACTED] was called into the hearing on 2 occasions.

Preliminary Matters

6. The tenants submitted an affidavit with their application stating that they had the landlords served with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 27-November-2024 (TT#1). The landlords confirmed receipt of the documents on that date. The landlords had submitted their application prior to being served by the tenants and submitted an affidavit stating that they had served the tenants with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 24-September-2024 (LL#1). The tenants confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act 2018*, this is good service.
7. There was a verbal month-to-month rental agreement that commenced on 1-October-2023 whereby the tenants would rent the 2-bedroom apartment in the downstairs unit and the tenant’s daughter would reside in the upstairs unit with the landlords. The tenants vacated the unit on 2-September-2024. Rent was \$1000.00 per month due on the first day of each month. A security deposit of \$500.00 was paid on 30-August-2023 and is in the landlord’s possession.

Issues before the Tribunal

8. The tenants are seeking:
 - Validity of the termination notice

- Hearing expenses \$20.00
9. The landlords are seeking:
- Compensation for damages \$5827.65
 - Compensation for inconvenience \$1000.00
 - Rent paid \$66.66
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$500.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 16: Rent increase, Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 29: Termination for invalid purpose.
12. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*, Section 6-3: Mitigation on abandonment of residential premises, Section 9-3: Claims for damage to rental premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of costs.

Item # 1: Validity of Termination Notice

Relevant Submission

13. The tenants are questioning the validity of a termination notice that was given to them by the landlords on 27-August-2024 under Section 24 of the *Act*: Notice where tenant contravenes peaceful enjoyment and reasonable privacy to vacate the unit on 4-September-2024. The tenants submitted a copy of the termination notice to support the claim (TT#2).

Tenant's Position

14. The tenant's representative stated that the landlord's contacted the tenants on 12-August-2024 advising them that the rent will be increasing effective 1-September by \$75.00 every 2 weeks as a result of an increase in their mortgage payments. The tenant's representative testified that his clients did not accept the illegal rent increase and refused to discuss the issue with the landlords and requested a proper 6-month rent increase in writing as per the *Residential Tenancies Act, 2018*. The tenant's representative stated that the landlords were unhappy with the tenant's reaction to their request to increase the rent on 1-September and he stated that landlord 1 got upset and hostile towards the tenants on 13-August. The tenants submitted a written account of the events that unfolded on 12-August and onwards which led to the *Police* having to be called to the residence on 13-August (TT#3). The tenant's representative stated that when tenant 1 went upstairs to talk to the landlords after they packed up their daughters' belongings in bags, things got out of hand and landlord 1 was acting in an aggressive manner and shouting which led to tenant 2 coming upstairs to see what was going on which eventually resulted in a *Police* presence at the residence. The tenant's position is that the landlords were not happy when asked for a proper 6-month rent increase notice and as a result the daughter had to

move to the downstairs unit, which was a breach of their verbal rental agreement, and the landlords gave the tenants a termination notice on 27-August out of retaliation. The tenants submitted a copy of an email thread on 12-August to support their claim of retaliation (TT#4). The tenant's representative stated that his client's response to the illegal rent increase triggered a series of events which led to the termination notice on the 27-August and he stated that although the notice was given under Section 24 of the *Act*, he stated that the notice was really given out of retaliation when his clients refused to accept the rent increase.

Landlord's Position

15. The landlords disputed that the termination notice was given out of retaliation, and they stated that based on the events that occurred after the 12-August, they had the right to give a termination notice with cause under Section 24 of the *Act*. The landlords stated that the tenants became angry and hostile when asked to sit down and discuss a rental increase. Landlord 1 testified that a series of events occurred after 12-August up to the time they issued the termination notice on 27-August that led to the decision to legally end the tenancy under Section 24 of the *Act*. Landlord 1 described the events as follows:

- On 13-August at 7:07pm, landlord 1 testified that tenant 1 barged into their private residence using profanity and causing a disturbance. Landlord 1 stated that tenant 1 was asked peacefully to leave which eventually led to a call to the *Police* to request to have the tenant removed from the landlord's residence. Landlord 1 testified that shortly after the call to the *Police*, tenant 2 also barged into the landlord's residence in an aggressive manner. Landlord 1 testified that tenant 2 tried to grab him at which point he ended up having to strike tenant 2 to the left side of his head and then he stated that he felt safe as he was able to close and lock his front door. The landlords submitted a copy of a videotape showing that the *Police* were at the residence on that date (LL#2).
- On 23-August at 9:22pm, landlord 1 testified that tenant 1 returned home and started shouting from the steps / driveway of the property using profanity. The landlords submitted a videotape to support the claim (LL#3).
- On 24-August at 2:08pm, landlord 1 testified that both tenants returned home and again were shouting from outside the residence. The landlords submitted a videotape to support the claim (LL#4).
- On 25-August at 6:16pm, landlord 1 testified that tenant 1 returned home shouting once again profanity while the neighbors and their kids were outside playing. The landlords submitted a videotape to support the claim (LL#5).
- On 30-August at 5:29pm, landlord 1 testified that tenant 1 got into her pick-up truck and was shouting from her truck as she drove out of the driveway. The landlords submitted a videotape to support the claim (LL#6).
- On 31-August at 2:22pm, landlord 1 testified that tenant 1 returned home and

was shouting loudly again from the steps / driveway of the premises. The landlords submitted a videotape to support the claim (LL#7).

The landlords called a witness into the hearing to collaborate their testimony with regards to the events that occurred on 13-August as stated above and the witness testified that she was present when the tenants barged into the landlord's residence, and she witnessed the aggressive behavior of tenant 2 at which time she left the room and went to her bedroom. The witness also confirmed that the landlords called the *Police* to try to deescalate the situation.

Analysis

16. Subsection 16(3)(b) of the *Residential Tenancies Act, 2018* states:

Rent Increase

16(3). Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

17. Statutory conditions under Section 10(7)(a) of the *Residential Tenancies Act, 2018* states:

Peaceful Enjoyment and Reasonable Privacy

7(a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

18. Section 29 of the *Residential Tenancies Act, 2018* states:

Termination for Invalid Purpose

29.(1) A landlord shall not

(a) terminate or give notice to terminate a rental agreement; or

(b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.

19. I accept that the tenancy relationship was different than most with respect to how both parties interacted with each other and given that they were family, they spent a lot of time

together and frequently shared meals. The tenant's daughter resided upstairs with the landlords and the tenants had daily access to the upstairs unit and commuting back and forth was a natural occurrence for the tenants.

20. I accept the landlord's testimony that they were not enforcing a rental increase on 1-September but rather they wanted to discuss how the tenants felt about a rental increase and based on the relationship between both parties, it is reasonable to accept that the landlord's would want to sit with the tenants and discuss the issue of their mortgage increasing and get the tenants opinion on a rental increase. With that said, the tenants also had a right to refuse the meeting and ask the landlords to give any notice of a rental increase in accordance with Section 16 of the *Act* as stated above.
21. I accept that on the evening of 13-August things went sour between both parties and the landlord called the *Police*. This tribunal has to decide if the tenant's interfered with the landlord's peaceful enjoyment and reasonable privacy on that date by entering the landlord's unit upstairs and /or if the events that unfolded while they were in the landlord's residence contravened the landlord's peaceful enjoyment and reasonable privacy. I accept the tenant's representative's testimony that entering the upstairs unit was a normal occurrence for his clients especially with their daughter residing up there and given the freedom that they had to enter the upstairs premises on a daily basis. I find that the tenants would not of have viewed their entry to the upstairs unit on 13-August as any type of intrusion on the landlords, and I agree that entering the unit did not interfere with the landlord's peaceful enjoyment or reasonable privacy. I also accept the landlord's testimony that the tenants barged into the unit in an aggressive manner as they were upset at the time. With regards to the events that unfolded while the tenants were in the landlord's residence on 13-August, I accept that the tenants were upset that the landlords packed up their daughter's belongings and I accept that the landlords were also upset that the tenants barged into their home in an aggressive manner. Based on the testimony of both parties, I find that tempers flared causing a level of aggression for both parties which also led to some level of violence whereby the *Police* had to be called. Exhibit (written document - TT#3) entered into evidence by the tenants outlines their view of the sequence of events on 13-August which shows that the incident on that day was not one-sided but rather involved both parties equally. I find that the incident that took place on 13-August in and of itself did not constitute a breach of Section 10(7) of the *Act* as stated above and I find that the landlords did not have a right to give a 5-day termination notice based on what happened on 13-August.
22. Exhibits (videotapes), entered into evidence by the landlords to support their claim that the tenants continued to disrupt their peaceful enjoyment after the 13-August up to the point that the termination notice was given on 27-August, were reviewed and I find that there were 3 videos in that time span, one of which shows tenant 1 shouting profanity from outside the residence (12 seconds in duration) , another where tenant 1 is just talking outside the residence (11 seconds) and in the third video, tenant 1 is also shouting profanity from outside the residence (11 seconds). The landlords were not present in the videos and tenant 1 was not talking to anyone in particular, just walking to or from her unit. Based on the videos, I find that the tenants did not interfere with the peaceful enjoyment or reasonable privacy of the landlords leading up to the date the termination notice was given on 27-August and as such, I find that the landlords did not have a right to give an 5-day termination notice based on what happened in the videos.

23. In conclusion, I find that both parties played an equal part in the breakdown of the relationship, and I accept that the tenant's behavior was aggressive on 13-August and annoying on the days to follow but I also find that the landlord's behavior was also aggressive towards the tenants on 13-August. I find that the actions of the tenants from 13-August to 27-August do not constitute a contravention of the landlord's peaceful enjoyment and reasonable privacy which would warrant a 5-day eviction notice.
24. With regards to the tenant's claim that the termination notice was given out of retaliation, and in accordance with Section 29 of the *Act* as stated above, I find that the tenants failed to show that the landlords directly or indirectly coerced, threatened, intimidated or harassed them in retaliation for not accepting a rent increase. I accept that the landlords wanted to discuss the possibility of a rent increase and not necessarily impose an illegal rent hike. For those reasons, I find that the landlord's did not give a termination notice to the tenants out of retaliation.

Decision

25. The termination notice issued on 27-August-2024 under Section 24 of the *Act* was not a valid notice.
26. The termination notice issued on 27-August-2024 was not given out of retaliation.

Issue # 2: Compensation for Damages \$5827.65

Relevant Submission

27. The landlords testified that there where damages / losses to the rental unit in the amount of \$5827.65 and they submitted a *damages ledger* to support the claim (LL#8). See breakdown of damages ledger below:

Damages Ledger 2024-0839-NL & 2024-0872-NLNL		
Damages / losses	Amount	Total
Replace washer, dryer, fridge & stove	\$3,967.46	\$3,967.46
Paint for exterior door and labor costs	\$95.99	\$4,063.45
Damage to grass and labor to re-seed grass	\$46.44	\$4,109.89
replace kitchen & porch flooring & labor to install	\$349.96	\$4,459.85
Garbage removal	\$200.00	\$4,659.85
Cleaning	\$450.00	\$5,109.85
Replace baseboard in kitchen & labor to install	\$69.49	\$5,179.34
Replace towel bar in bathroom	\$30.92	\$5,210.26
Replace bedroom door & labor to install	\$139.70	\$5,349.96
Paint for bathroom and hallway	\$179.37	\$5,529.33
door jam for interior door	\$23.25	\$5,552.58
weather stripping for exterior door & labor to install	\$69.61	\$5,622.19
New molding for interior porch	\$47.06	\$5,669.25
Install & paint door jam and molding	\$50.00	\$5,719.25
Transition stripping for kitchen & labor to install	\$108.39	\$5,827.64

Landlord's and Tenant's Positions

28. The landlords testified that there were damages / losses to the unit which need to be either repaired or replaced and they are seeking the cost to restore the unit to the way it was prior to the tenancy. The landlord's submitted a copy of a videotape to show the condition of the premises prior to the commencement of the tenancy (LL#9) and a videotape of the condition of the premises at the end of the tenancy (LL#10). The tenant's representative disputed most of the claims on behalf of his clients. Some items are grouped together for simplicity and both the landlord's and the tenant's positions on each item are as follows:

Item # 1: Replace washer, dryer, fridge & stove (\$3967.46) – Landlord 1 testified that when they regained entry to the unit on 4-September they realized that the washer and dryer had been switched out and the fridge and stove were missing from the unit. Landlord 2 stated that *Easy Home* came and took back the washer and dryer due to delinquent payments leaving the unit with no appliances. The landlords are seeking \$804.99 to replace the washer, \$689.99 to replace the dryer, \$1322.49 to replace the refrigerator and \$1149.99 to replace the stove. The landlords submitted a copy of a quote via email from *Smith's Furniture & Appliances* to support the claim (LL#11). The tenants did not dispute that the washer and dryer had been switched out nor did they dispute that the refrigerator and stove were missing, however they disputed the landlord's testimony that they were not aware that new appliances had been purchased for the unit or that they agreed that the tenants could do so. The tenant's representative stated that the landlords were fully aware that the tenants were selling the appliances and upgrading, and he stated that the monies from the sale was given to the mother who resided upstairs with the landlords, and he stated that his clients never received any monies from the sale of the appliances. The tenant's representative submitted a copy of a text message showing that the landlords were aware of the purchase of the new washer, and it shows that landlord 2 responded to a photograph of the new washer saying: "wow that's nice" (TT#5). The tenant's position is that they are not responsible for the cost to replace the appliances when they upgraded the old appliances with the landlord's permission and the landlords received the monies from the sale.

Item # 2: Paint exterior door and labor to paint (\$95.99) – The landlords testified that the paint on the exterior door was scratched due to the tenant's dog, and they are seeking the cost to paint the door. Landlord 1 stated they are seeking \$45.99 for the cost of the paint, and they are seeking 2 hours of self-labor in the amount of \$50.00 to complete the work. The landlords submitted a copy of a video of the exterior door to support the claim (LL#12). The tenant's disputed that they caused the damage to the exterior door and the tenant's representative stated that the damage to the door is due to snow clearing and normal wear and tear.

Item # 3: Damage to grass & labor to re-seed grass (\$46.44) – The landlords testified that the grass was damaged as result of a hot tub that belonged to the tenants and landlord 1 stated that they are seeking \$26.44 for the cost of grass seed to repair the damaged area, and they are seeking 1 hour of self-labor in the amount of \$20.00 to complete the work. The landlords submitted a copy of a videotape showing the grassed area to support the claim (LL#13) and a copy of a quote to show the cost of grass seed to support the claim (LL#14). The tenant's disputed that the hot tub damaged the grass and the tenant's representative stated that the hot tub was put in with the landlord's permission and it was only there since July 2024 which would not destroy the grass in that length of time.

Item # 4: Replace kitchen and porch flooring & labor to install flooring (\$349.96) –

The landlords testified that the flooring in the kitchen and the porch areas were destroyed and needed to be replaced. Landlord 1 stated they are seeking \$137.98 to replace the kitchen flooring and \$91.98 for the porch flooring, and they are seeking 6 hours of self-labor in the amount of \$120.00 to complete the work. The landlords submitted photographs of the damaged flooring to support the claim (LL#15) and a copy of a quote for the flooring to support the claim (LL#16). The tenant's disputed that they caused the damage to the flooring and the tenant's representative stated that there was 1 hole in the canvas which happened when the refrigerator was put in and the stains on the porch floor was caused due to normal wear and tear. The tenant's representative stated that there wasn't a final walk through with the tenants to determine what damage was actually done.

Item # 5: Garbage removal (\$200.00) – The landlords testified that there was garbage left at the unit which needed to be removed and disposed of and they are seeking \$200.00 to remove the garbage and bring it to the landfill. Landlord 1 testified that there were approximately 20 bags of garbage left in the unit which had to be removed and some bags had a horrendous smell seeping from them. The landlords submitted a copy of photographs to support the claim (LL#17). The tenants did not dispute that they left some garbage behind, and the tenant's representative stated that his clients did not have enough time to dispose of the garbage and he also stated that it would not cost \$200.00 to put out some garbage and to make 1 trip to the landfill.

Item # 6: Cleaning (\$450.00) – The landlords testified that the unit needed a deep clean and they are seeking approximately 27 hours of self-labor for 3 people in the amount of \$450.00 to cover the cost to clean the unit. The landlords submitted photographs of the cleanliness of the unit to support the claim (LL#18) and made reference to the final walk-through video as noted earlier (LL#10). The tenants did not dispute that some cleaning was required, however they are disputing that it would take 27 hours to complete the work as it was a small 2-bedroom apartment and the tenant's representative stated that his clients did not have enough time to get everything done with such short notice to vacate the unit.

Item # 7: Replace baseboard in kitchen and labor to install (\$69.49) – The landlords testified that a portion of the baseboard in the kitchen area was missing and needed to be replaced. The landlords are seeking \$44.49 for the materials, and they are seeking 1 hour of self-labor in the amount of \$25.00 to complete the work. The landlords noted that the missing baseboard next to the closet door can be seen in the final walk-through video (LL#10) and the landlords submitted a quote for the cost to replace the baseboard to support the claim (LL#19). The tenants did not dispute that the baseboard had been removed and the tenant's representative stated that the baseboard had been removed either at the direction or with the permission of the landlords in order to install the refrigerator.

Item # 8: Replace towel bar in bathroom (\$30.92) – The landlords testified that the towel bar in the bathroom was missing from the wall with only 1 mounting bracket remaining on the wall and needed to be replaced. The landlords are seeking \$30.92 to replace the towel bar. The landlords noted that the missing towel bar can be seen in the final walk-through video (LL#10) and the landlords submitted a quote for the cost to replace the towel bar to support the claim (LL#20). The tenants did not dispute that the towel bar fell off the wall, however they disputed that they caused it to fall, and the tenant's representative stated that his clients notified the landlords when the towel bar fell from the wall indicating that the drywall holes were too loose, and plastering was required to secure a new towel bar. The tenant's representative stated that his clients purchased a new towel bar, and it was left at the unit next to the hot water boiler when they vacated.

Item # 9: Replace bedroom door & labor to install (\$139.70) – The landlords testified that the bedroom door in the second bedroom was damaged and needs to be replaced. The landlords are seeking \$89.70 to purchase a new interior door and \$50.00 to cover the cost of 2 hours of self-labor. The landlords submitted a photograph of the damaged door to support the claim (LL#21) and a copy of a quote to show the cost to purchase a new interior door to support the claim (LL#22). The tenants disputed that they caused the damage to the bedroom door and the tenant's representative stated that the hole in the door was not there when his clients vacated the unit.

Item # 10: Paint for bathroom and hallway (\$179.38) – The landlords amended their claim for the cost of paint to include the bathroom only in the amount of \$89.69 and omit their claim for the cost of paint for the hallway. Landlord 1 stated that someone had attempted to paint the bathroom walls but did not finish the job as evident in the final walk-through video (LL#10) and he stated that he purchased a specialty paint as there is moisture in a bathroom area. The landlords submitted a copy of a quote to purchase the interior paint to support the claim (LL#23). The tenants did not dispute that they made an attempt to partially paint the bathroom walls, however they disputed that the landlords were not aware that they were painting, and the tenant's representative stated that his clients had permission from the landlords to paint the bathroom walls and they were involved in painting as well.

Item # 11: Door jamb for interior door (\$23.25) – The landlords testified that the door jamb for the interior door was destroyed and needs to be replaced and they are seeking \$23.25 to replace the door jamb. The landlords submitted a photograph of the damaged door jamb to support the claim (LL#24) and a copy of a quote for the cost to replace the door jamb (LL#25). The tenants disputed that they caused any damage to the door jamb and the tenant's representative stated that the tenant's dog did not chew the door jamb and he also stated that there wasn't any damage to the door jamb when the tenants vacated the unit.

Item # 12: Weather stripping for exterior door & labor to install (\$69.61) – The landlords testified that the weather stripping for the exterior door was destroyed by the tenant's animals and need to be replaced and they are seeking \$44.61 to replace the stripping. The landlords are also seeking 1 hour of self-labor in the amount of \$25.00 to complete the work. The landlords submitted a photograph of the weather stripping to support the claim (LL#26) and a copy of a quote to purchase weather stripping (LL#27). The tenants disputed that their animals caused the damage to the weather stripping and the tenant's representative stated that the damage was due to normal wear and tear.

Item # 13: New molding for interior porch (\$47.06) - The landlords testified that the molding for the interior porch was destroyed and needed to be replaced and they are seeking \$47.06 for materials. The landlords submitted a photograph of the molding in the porch to support the claim (LL#28) and a copy of a quote to purchase molding (LL#29). The tenants disputed that they caused the damage to the molding and the tenant's representative stated that the damage was due to normal wear and tear.

Item # 14: Install and paint door jamb and molding (\$50.00) – The landlords testified that it took a little over 2 hours of self-labor to install and paint the door jamb and the molding in the porch and they are seeking \$50.00 to complete the work. The tenants disputed that they caused the damage to the door jamb and to the molding and as such should not be responsible for the cost to install and paint.

Item # 15: Transition stripping for kitchen and Install (\$108.39) - The landlords amended their claim for the cost of the transition strip, and they are seeking \$40.70 to purchase the transition strip. Landlord 1 testified that the transition stripping in the kitchen area was destroyed and needs to be replaced. The landlords are also seeking 1 hour of self-labor in the amount of \$20.00 to complete the work. The landlords submitted a photograph of the damaged transition stripping to support the claim (LL#30) and a copy of a quote to show the cost to purchase the transition stripping (LL#31). The tenants disputed that they caused the damage to the transition stripping and the tenant's representative stated that the damage was due to normal wear and tear.

Analysis

29. In accordance with *Residential Tenancies Policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

30. Based on the testimony of both parties and exhibits entered into evidence, each item is analyzed as follows:

Item # 1: Replace washer, dryer, fridge & stove (\$3967.46) – Based on the videos entered into evidence by the landlords, it is evident that the unit had a washer and a dryer, and a refrigerator and a stove at the commencement of the tenancy. At the end of the tenancy there was a different washer and dryer seen in the video, and the refrigerator and stove were missing. The tenants are not disputing that they sold the appliances and upgraded them and as far as this tribunal is concerned, that would be acceptable if the landlords agreed that they could sell the appliances and if the landlords received the monies from the sale of the old appliances. There is conflicting testimony from both parties. The tenant's representative stated that the landlords knew and approved of the sale of the appliances, and he stated that the landlords received the monies from the sale of the old appliances. The landlords on the other hand testified that they did not know about the sale of the old appliances or the purchase of the new appliances. It is difficult to accept that the landlords did not know about this especially given the close relationship that they had, and I asked the landlords how they would not know that there was a different refrigerator or stove in the unit when they are back and forth all the time and landlord 2 responded that she never went downstairs but rather the tenants always came upstairs. I asked the landlords if they received any monies for the sale of the old appliances and they responded that they did not.

The tenant's representative entered a text message into evidence regarding the landlord's response to a photograph of the tenant's new washer whereby landlord 2 responded saying: "wow that's nice". Landlord 2 testified that she was not aware that the tenant had purchased the washer and was just remarking that it was a nice washer. The landlords called a witness into the hearing to speak on the facts of the sale of the appliances and the delivery of the new appliances and the witness testified that she collected monies for the sale of the old appliances. I asked her what she did with the monies, and she responded that she gave the monies to tenant 1. I asked the witness who resides with the landlords if she mentioned to the landlords that she opened the door to the apartment when people came to purchase the appliances and /or if she mentioned to the landlords when she let the delivery men in the unit to deliver the new appliances and she responded that she never mentioned anything to the landlords as it was none of her concern. Again,

based on the relationship between both parties, I find it hard to accept that the tenants would sell 2 sets of appliances and have 2 sets of new appliances delivered to the premises and the landlords would not be aware of it. I also find it hard to accept that the witness would not mention in general conversation that she accepted the monies for the sale of the appliances or that she would not comment to the landlords on how nice the new appliances were.

When reviewing the quote from *Smith's Furniture* for the cost to replace the missing appliances, the date on the right-hand corner of the email shows that the store manager from *Smith's Furniture* sent that email to landlord 1 on Wednesday, August 28, 2024, at 4:01pm. This would be the day after the termination notice was given to the tenants and it contradicts the landlord's testimony that they did not know that the appliances were sold, and that the unit would need new appliances once the tenants vacated. Landlord 1 had testified earlier that he did not know that the appliances were missing until he regained entry to the unit on 4-September at 7:00pm.

Based on the testimony of both parties and the exhibits entered into evidence, I find that the landlords knew and approved of the sale of the appliances during the early stages of the tenancy, and as such I find that the tenants are not responsible for the cost to replace the appliances.

Item # 2: Paint exterior door and labor to paint (\$95.99) – Based on the video of the exterior door, I find that the scratch marks are consistent with that of a dog, and I asked the landlords if the tenant's had a dog. Landlord 1 responded that the tenants had a German Sheppard. I asked the landlords when the last time was that the exterior door was painted, and landlord 1 responded that the door has been painted every summer since he purchased the house. I do not accept the tenant's testimony that the damages to the door are due to snow clearing or normal wear and tear. In accordance with Section 9-3 of the *Policy* as stated above, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act. They did not show the cost to purchase the paint, however research shows that exterior door paint cost approximately \$38.40 (research taken from www.kent.ca). In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that it would take approximately 2 hours to paint an exterior door included the prep work involved. I find that the tenants are responsible for the cost of the paint at \$38.40 and 2 hours of self-labor at \$23.60 per hour to paint the exterior door for a total of \$85.60.

Item # 3: Damage to grass & labor to re-seed grass (\$46.44) – Based on the video of the grounds, I find that the damage to the grass is consistent with that of having a hot tub located on the grass. I accept the tenant's testimony that the landlords approved of the hot tub but that does not mean that the tenants should not take responsibility for any damage caused by their hot tub. I do not accept the tenant's testimony that the presence of the hot tub would not damage the grass in 6 weeks. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage, and they could show the cost to purchase the grass feed to repair the grass. In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that it will take the landlord 1 hour to seed the grass and re-seed to bring it back to life. I find that the tenants are responsible for the cost of the seed at \$26.44 and 1 hour of self-labor to re-seed the grass for a total of \$46.44.

Item # 4: Replace kitchen and porch flooring & labor to install flooring (\$349.96) – Based on the photographs of the damage to the flooring and the walk-through video at the

commencement of the tenancy, I accept that the damage occurred during the tenancy. I do not accept the tenant's testimony that the tenant's did not cause the damage to the flooring, nor do I accept their testimony that the stains on the floor was due to normal wear and tear. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act, and they could show the cost to purchase the new flooring. I asked the landlords the age of the flooring and landlord 1 responded that the flooring was 3 years old. In accordance with Section 9-5 of the *Residential Tenancies Policy*, vinyl flooring has a life span of 50 years and as 3 years of its life cycle has passed, I find that the tenants are responsible for 94% of the cost of the new flooring in the amount of \$216.16. In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that it took the landlords 6 hours of self-labor to install the new flooring and as such, I find that the tenants are responsible for the cost of the new flooring after appreciation is considered at \$216.16 and \$120.00 for 6 hours of self-labor (amount sought) for a total of \$336.16.

Item # 5: Garbage removal (\$200.00) – I do not accept the testimony of the tenants that they did not have enough time to remove the garbage from the unit. The unit was in perfect condition when the tenants took possession, and it should have been left in the same manner at the end of the tenancy. Based on the photographs entered into evidence by the landlords, there are several bags of garbage visible and a box of onion rings. I asked the landlord how many bags of garbage was there in total, and he responded that there were approximately 20 bags of garbage, some of which smelled horrendous. I asked the landlords if the bags were all full when he discovered them and he responded that approximately $\frac{1}{4}$ of the garbage had been bagged and they had to bag the remainder of the garbage. Landlord 1 testified that the bags with food went to the curbside and the remainder had to be brought to the landfill. I asked the landlords how many trips to the landfill was required and Landlord 1 responded just one trip. Based on the videos entered into evidence showing garbage bags in the unit and the exterior of the unit, I find that there were 4-5 bags and 1 box visible in the video, however I accept the landlord's testimony that there were 20 bags. I also accept the tenant's comment that it would not cost \$200.00 to get rid of the garbage and make one trip to the landfill. I find that it is reasonable to expect that it took the landlords approximately 5 hours to pick up the garbage, bag it, dispose of it and travel to the landfill. In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that the tenants are responsible for the cost of 5 hours of self-labor at \$23.60 per hour to remove the garbage from the unit at a total of \$118.00.

Item # 6: Cleaning (\$450.00) – I do not accept the testimony of the tenants that they did not have enough time to clean the unit. The unit was in perfect condition when the tenants took possession, and it should have been left in the same manner at the end of the tenancy. I do agree with the tenants that it would not take 27 hours to clean the unit and based on the photographs entered into evidence and the final walk-through video of the unit, there was a lot of dirt in the laundry room area behind the appliances and the cabinet drawers showed a few items left behind. The video mostly shows that the flooring and moldings were dirty but compensation to replace most of the flooring has been approved as per item # 4 above. I accept that the bedroom floors and the bathroom floor needed to be cleaned and the moldings washed down, and the porch area was extremely dirty. In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that it would take the landlords a full day to clean the unit (7 hours) and as such, I find that the tenants are responsible for the cost of 7 hours of self-labor at \$23.60 per hour to clean the unit for a total of \$165.20.

Item # 7: Replace baseboard in kitchen and labor to install (\$69.49) – Based on the video entered into evidence, the baseboard in the kitchen was removed from the area, and I accept the landlord's testimony that the baseboard was missing due to negligence on the part of the tenants. I do not accept the tenant's testimony that the landlords gave permission to remove the baseboard. The walk-through video at the commencement of the tenancy shows that all baseboards were in perfect order. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage, and they were able to show the cost to replace the baseboard. Also, in accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that a piece of baseboard could be cut, replaced and painted in 1 hour and for that reason, I find that the tenants are responsible for the cost of the baseboard at \$44.49 and 1 hour of self-labor at \$23.60 per hour for a total of \$68.09.

Item # 8: Replace towel bar in bathroom (\$30.92) - Based on the video entered into evidence, the towel bar in the bathroom is missing, and I accept the landlord's testimony that it was broken by the tenants. I asked the landlords if a new towel bar had been left in the unit when the tenants vacated, and landlord 1 responded that it had not. The walk-through video at the commencement of the tenancy shows that the towel bar was on the bathroom wall in perfect order. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the damage occurred during the tenancy, and they were able to show the cost to replace the towel bar. I find that the tenants are responsible for the cost to replace the towel bar in the amount of \$30.92.

Item # 9: Replace bedroom door & labor to install (\$139.70) – I do not accept the tenant's testimony that the damage to the door did not occur during the tenancy. Based on the photographs entered into evidence, the bedroom door was damaged to the point of no repair and has to be replaced. I accept the landlord's testimony that it was damaged by the tenants as the walk-through video at the commencement of the tenancy supports that there wasn't any damage to the door and the walk-through video at the end of the tenancy shows the damage. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act, and they were able to show the cost to replace the interior door. Also, in accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that an interior door can be removed and replaced in 1 hour and for that reason, I find that the tenants are responsible for the cost of the new door at \$89.70 and 1 hour of self-labor at \$23.60 per hour for a total of \$113.30.

Item # 10: Paint for bathroom and hallway (\$179.38) – Based on the final walk-through video compared to the initial walk-through video, I accept that the walls in the bathroom needed to be painted, and I asked the landlords when the last time was that the walls were painted. Landlord 1 responded that they had been painted 2 years ago. In accordance with Section 9-5 of the *Residential Tenancies Policy*, interior paint has a life span of 15 years and as 2 years of its life cycle has passed, I find that the tenants are responsible for 87% of the cost of the interior paint at \$78.03.

Item # 11: Door jamb for interior door (\$23.25) – I do not accept the tenant's testimony that the damage to the door jamb did not occur during the tenancy. Based on the photographs entered into evidence, the door jamb was damaged and needs to be replaced. I accept the landlord's testimony that it was damaged by the tenants as the walk-through video at the commencement of the tenancy supports that there wasn't any damage to the door jamb and the walk-through video at the end of the tenancy shows the

damage. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act, and they were able to show the cost to replace the door jamb. I find that the tenants are responsible for the cost to replace the door jamb in the amount of \$23.25.

Item # 12: Weather stripping for exterior door & labor to install (\$69.61) – I do not accept the tenant's testimony that the damage to the weather stripping for the exterior door was caused due to normal wear and tear. Based on the video entered into evidence, the weather stripping for the exterior door was destroyed, and I accept the landlord's testimony that the damage was caused by the tenant's animal(s). The walk-through video at the commencement of the tenancy shows that the weather stripping was in perfect order. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage, and they were able to show the cost to replace the weather stripping. Also, in accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that it would take 1 hour to remove the damaged stripping and replace new stripping. I find that the tenants are responsible for the cost to purchase new weather stripping at \$44.61 and 1 hour of self-labor at \$23.60 per hour for a total of \$68.21.

Item # 13: New molding for interior porch (\$47.06) - I do not accept the tenant's testimony that the damage to the molding in the porch area was caused due to normal wear and tear. Based on the photograph entered into evidence, the molding for the interior porch was destroyed and needs to be replaced. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act, and they were able to show the cost to replace the molding. I find that the tenants are responsible for the cost of the molding in the amount of \$47.06.

Item # 14: Install and paint door jamb and molding (\$50.00) – As the landlord's claim for a new door jamb and new molding has been accepted as per items 11 and 13 above, I find that it is acceptable to allow compensation to install and paint. In accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour and it is not unreasonable to expect that the work would take up to 2 hours to complete and for that reason, I find that the tenants are responsible for 2 hours of self-labor at \$23.60 per hour to install and paint the new door jamb and the molding in the amount of \$47.20.

Item # 15: Transition stripping for kitchen and Install (\$108.39) - I do not accept the tenant's testimony that the damage is due to normal wear and tear. Based on the photograph entered into evidence, the transition stripping was damaged and needs to be replaced. The walk-through video at the commencement of the tenancy shows that the transition stripping was in good shape. In accordance with Section 9-3 of the *Policy*, I find that the landlords were able to show that the damage exists, they were able to show that the tenants were responsible for the damage through a negligent act, and they were able to show the cost to replace the weather stripping. Also, in accordance with Section 9-3 of the *Policy*, the fee for self-labor is currently \$23.60 per hour. I find that it is reasonable to expect that the transition stripping could be removed and replaced in 1/2 hour and for that reason, I find that the tenants are responsible for the cost to purchase the new transition stripping at \$40.70 and ½ hour of self-labor at \$11.80 to install the transition stripping for a total of \$52.50.

Decision

31. The landlord's claim for *compensation for damages* succeeds in the amount of \$1279.96.

Issue # 3: Compensation for inconveniences \$1000.00

Landlord's Position

32. The landlord testified that the tenants vacated the unit on 2-September and due to the damages and the work that needed to be completed within the unit, they were inconvenienced and unable to re-rent the unit for the month of September. The landlords are seeking the loss of rental income for the month of September in the amount of \$1000.00.

Tenant's Position

33. The tenants disputed that they should be responsible for any loss of rental income when the landlords gave them a termination notice to vacate the unit in 8 days. The tenant's representative stated that his clients did not have enough time to clean the unit and prepare for their departure.

Analysis

34. Section 6-3 of the *Residential Tenancies Policy* states:

Mitigation on Abandonment of Residential Premises

A tenant is considered to have abandoned residential premises when all 3 of the following conditions are met:

- *The tenant has vacated the residential premises*
- *The tenant's rent is overdue, and*
- *The rental agreement had not been terminated in accordance with the Residential Tenancies Act, 2018*

A landlord has a legal duty to take all reasonable steps to mitigate their damages after a tenant abandons residential premises. As the most obvious sort of damage the landlord would suffer would be a loss of rental income, "mitigation" in these circumstances would entail the landlord taking immediate steps to find the new tenants to move into the property so that the landlord could again collect rent.

35. I accept that the landlords gave the tenants a termination notice on 27-August to vacate the unit on 4-September, and I also accept that the tenants abandoned the unit 2 days earlier on the 2-September. It has been determined that the termination notice was an improper notice as per paragraph 25 above. I accept that the landlords wanted the tenants out by the 4-September, and I accept that they were ready and willing to re-rent the unit immediately. The landlords testified that they regained entry to the unit on 4-September at 7:00pm at which time they learned of the extent of the damages to the unit and the need to clean the unit.

36. In accordance with Section 6-3 of the *Policy* as stated above, landlords are required to show that they mitigated their losses and made every effort to re-rent the unit as soon as possible. I asked the landlords when they started to advertise the unit for rent again and how soon were they successful in securing a new tenant to move in and landlord 1 responded that they advertised immediately, and it took a full month to get the unit ready to re-rent. The landlord testified that they secured a new tenant effective 6-October-2024 and as a result incurred the loss of 1 month's rental income.

37. It has been determined that the landlord did not have a right to give the 8-day termination notice with cause on 27-August and if we were just dealing with the validity of that notice, the landlords inconvenience would not be considered. However, the landlords were faced with damages to the unit and they had to clean the unit which prevented them from re-renting the unit in a timely fashion. Landlords should not incur any financial loss due to the actions of tenants and the *Residential Tenancies Act, 2018* governs all rental agreements, whether they be verbal, in writing or implied. I find that the landlords made every effort to mitigate their losses and based on the extent of the damages as analyzed in paragraph 30 above, I find that the landlords were not in a position to have the unit ready to re-rent prior to 6-October and as such, I find that the tenants are responsible for the loss of rental income for the month of September 2024 in the amount of \$1000.00.

Decision

38. The landlord's claim for *compensation for inconveniences* succeeds in the amount of \$1000.00.

Issue # 4: Rent paid \$66.66

39. This issue has been dealt with in Item # 3 above and will not be analyzed for the purpose of this decision.

Issue # 5: Landlord's Hearing Expenses \$20.00 Tenant's hearing Expenses \$20.00

40. Both the landlords and the tenants paid an application fee of \$20.00 to *Residential Tenancies* and both wish to claim that expense. In accordance with Section 12-1 of the *Residential Tenancies Policy*, claimable costs may include the filing fee and as a general rule, the \$20.00 filing fee, should in most cases be awarded to the successful party. I find that both parties have been successful in some way in this decision, and I find that each party shall be responsible for their own hearing expenses.

Decision

41. The landlord's claim for hearing expenses does not succeed.
42. The tenants claim for hearing expenses does not succeed.

Issue # 6: Security deposit to be applied against monies owed \$500.00 Analysis

43. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

44. The landlord's claim for losses has been successful as per paragraphs 31 and 38 above and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2023 was 0% and is currently 1% for 2024.

Decision

45. The landlord's claim to have the security deposit plus interest applied against monies owed succeeds.

Summary of Decision

46. The termination notice issued on 27-August-2024 under Section 24 of the *Act* was not a valid notice and was not given out of retaliation.

47. The tenants shall pay the landlords \$1775.25 as follows:

Compensation for damages	\$1279.96
Compensation for inconveniences	1000.00
Less security deposit & interest	504.71

Total \$1775.25

January 3, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office