

Residential Tenancies Tribunal

Decision 19-0026-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called over multiple sessions as follows:
 - a. 9:30 am on 16-18 October 2019 (3 days)
 - b. 9:30 am on 17-21 February 2020 (5 days)

at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The originating applicant, [REDACTED], hereafter referred to as tenant1, participated in the hearing (*Affirmed*) and was represented by [REDACTED], LLb.
3. The originating applicant, [REDACTED], hereafter referred to as tenant2, participated in the hearing (Day 1 only) (*Affirmed*) and was represented by [REDACTED], LLb.
4. The originating respondent, [REDACTED], hereafter referred to as landlord1, participate in the hearing (*Affirmed*) and was represented by [REDACTED], QC.
5. The originating respondent, [REDACTED], hereafter referred to as landlord2, did not participate in the hearing and was represented by [REDACTED], QC.
6. The details of the claim were presented as a written fixed term rental agreement commencing on 01 August 2018 with rent set at \$1400.00 per month (utilities excluded), due on the 1st of each month and set to expire on 31 July 2019. It was stated that there was a security deposit in the amount of \$1050.00 collected on the tenancy on July 2019. A termination notice was issued by the tenants on 08 March 2019 to terminate on 08 March 2019 under section 21 of the *Residential Tenancies Act, 2018*.

7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. The affidavit submitted by the tenants show that landlord1 was served with the notice of this hearing on the **29 April 2019** by serving the documents to landlord1 by serving the Property Manager, [REDACTED] ([REDACTED]) at [REDACTED].
9. The affidavit submitted by the tenants show that landlord2 was served with the notice of this hearing on the **29 April 2019** by serving the documents to landlord2 by serving the Property Manager, [REDACTED] ([REDACTED]) at [REDACTED].
10. The affidavit submitted by the landlords show that tenant1 was served with the notice of this hearing on the **10 May 2019** by serving the documents to tenant1 personally at [REDACTED].
11. The affidavit submitted by the landlords show that tenant2 was served with the notice of this hearing on the **10 May 2019** by serving the documents to tenant2 personally at [REDACTED].
12. The tenants called the following witnesses during the hearing:
- [REDACTED] ([REDACTED]) (*Affirmed*) – Owner of [REDACTED]
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Environmental Technician (@ CFB Alert), Contracting Company since 2004
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Oil Burner Technician (Tuckie Butt's Heating & Ventilation Ltd.)
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Electrician
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Flooring Installer (Wallace Decker Flooring)
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Taxi Driver (Star Taxi)
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Insurance Adjuster representing Lloyd's of London as the insurer.
13. The landlords called the following witnesses during the hearing:
- [REDACTED] ([REDACTED]) (*Affirmed*) – Project Manager/Estimator with Belfor.
 - [REDACTED] ([REDACTED]) (*Affirmed*) – Oil Burner Technician North Atlantic Petroleum (circa 1997).

Issues before the Tribunal

14. The tenants are seeking the following:
- a) Refund of Rent **\$2800.00**
 - b) Refund of Utilities **\$1539.15**
 - c) Compensation for Work Completed **\$1234.10**
 - d) Refund of Security Deposit **\$1050.00**
 - e) Hearing Expenses

15. The landlords are seeking the following:
- f) Compensation for Damages **\$54,560.07**
 - g) Payment of Utilities **\$620.89**
 - h) Rent in Lieu of Notice **\$7000.00**
 - i) Application of the Security Deposit **\$1050.00**
 - j) Hearing Expenses

Legislation, Definitions, Policy and Case Law

16. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
17. Also relevant and considered in this case are:
- a. Sections 42 of *the Act*;
 - b. Policy 9-3: *Claims for Damages to Rented Premises*;
 - c. Policy 9-5: *Life Expectancy of Property* and;
 - d. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.
18. National Association of Home Builders/ Bank of America Home Equity (February 2007) *Study of Life Expectancy of Home Components*. Dr. David Seiders et al. (Jackie Jackson – editor).
19. Supreme Court of Newfoundland and Labrador (Trial Division) *Metro General Insurance Corporation Ltd. V. Maimie Smallwood*. 2001 01T 1976 Justice Leo J Barry.
20. Alberta Court of Queen’s Bench (Edmonton) *1051385 Alberta Ltd. V. Meunier*, [2012] A.J. No. 306 Docket 0703 02542. D.J. Manderscheid.
21. Ontario Court of Justice (General Division) (Toronto) *Steer v. Sharpe*, [1995] O.J. No. 1133 Docket 94-LT-70545. J. Wilkins.

Preliminary Tribunal Discussion:

22. The format of this decision will take a little different format than normal. The basic decision on most points in both claims put forth will ultimately be determined with the determination of liability.
23. Both parties agree that a freezing event was noticed on or about 31 December 2018 to 01 January 2019 which caused significant damages to the subject property located at [REDACTED].
24. The opinion of both parties differ after this and the hinge of the difference is the question of liability. For this discussion, I will deal primarily with the question of liability for:
 - a. the damages of the freezing event (01 January 2019);
 - b. the responsibility of the rental agreement (up to 31 July 2019);
25. The flow of any award will be based on depreciation and include the repair values and age of the item in question. Any award (if required) will be displayed in easy to follow tables.

Issue 1: Liability (Physical Damages/Contract Responsibility)

Relevant Submissions

Landlord Position

26. The landlords of this property reside in the [REDACTED] area and have engaged the service of [REDACTED] to manage the rental unit in their absence.
27. The landlords are claiming for several areas of damage to the subject property as it relates to the freezing event first noticed on or about 01 January 2019, in addition to the completion of the terms of the associated fixed term rental agreement. The question of liability for both the contractual agreement and the resultant damages of the freezing event is key to any decision from these claims.
28. The landlords' position is that the tenants entered into a fixed term rental agreement on or about 01 August 2018 and on the signing of that agreement, became contractually responsible for the terms of that agreement. It is the landlords contention that the tenants found a property to purchase ([REDACTED] [REDACTED]) shortly after moving into the rental unit (6 weeks approximately) and began the process to close on the purchased property (closing date 26 October 2018).

29. The landlords position is that the property manager notified the tenants that they were contractually responsible for the property to the end of the term and had the option of sublet if they so desired (**Exhibit L # 9**). The property was listed for rent by both the property manager and the tenants to prospective tenants immediately after the tenants found a home in the area. Both parties began to show the property to prospective tenants without success.
30. The landlords' property manager continued to manage the property as if there was a tenant occupying the unit. Landlord1 testified that rent and utilities were paid on the property up to the end of February 2019. It was the contention of the landlords that the property manager was fully aware that the tenants were leaving the property since September 2018 and that the property was vacant since 27 October 2018. Landlord1 testified that they were not made aware of these facts from the property manager until a family member advised them of a for rent sign in the window of the property later in 2018.
31. Landlord1 testified that on or about 01 January 2019, the property manager was notified by a passerby that there was concern at the property as there was an ice waterfall streaming from the second floor of the property to the right side of the property as viewed from [REDACTED]. The property manager testified that once notified of the water event, he contacted the tenants and advised them to attend to the property to mitigate any potential loss. The property manager did not attend to the property until the following day (02 January 2019). Evidence has been led that the tenants attended the property and turned off the city water supply with the assistance of a taxi driver from a nearby Taxi Stand.
32. Landlord1 testified that as a result of a freezing event at the property, a potable water supply line located in the shower area of the upstairs bathroom froze and ruptured as well as four (4) of the cast iron radiators on the second level of the property. The result of all the ruptures was extensive water damage to the second level flooring and bathroom area and extensive damage to the kitchen/stairwell area and flooring on the first level. The resulting damages will be addressed separately below.
33. It was the landlords' position that the freeze event was the result of the tenants leaving the property unattended and setting the heating temperature (10°C) at a setting too low for the climate conditions of the area. It is the contention of the landlords that there wasn't sufficient heat in the property which caused the potable water line to freeze and break which sent a stream of water down to the first level and eventually the basement level where it entered the aqua stat on the furnace for the hot water radiant heating system. The landlords position is the flow of water caused the aqua stat to short and burn out the unit, thereby preventing the circulator to the second level heating zone to function. The lack of heating to the second level thus caused the radiators to freeze and crack, spilling the contents on the floors of the second level.

34. The landlords contend that the tenants were negligent in ensuring that the property was adequately and regularly checked for sufficient heat. They contend that the catastrophic freezing event occurred over several days, which would indicate neglect on the tenants' part in maintaining the property.
35. The landlords support their version of the events by presenting the Oil Burner Mechanic (█) who regularly maintained the unit over the years and attended the property at the time of the event. █ testified that it was his professional opinion that water did make its way into the aqua stat on the furnace and the presence of water could have caused the charring displayed in the aqua stat (**Exhibit L # 16**). █ Indicated that the aqua stat controlled the heating zone of the second floor and when it malfunctioned, would have stopped the flow of water and subsequent freezing and rupturing of the radiators. It was the opinion of █ that 10°C was not an adequate heat setting to prevent freezing of the radiators and water lines. █ testified that it is his professional recommendation that a setting of 16°C is more adequate and is what he recommends to his customers to prevent problems. The witness testified that "*it doesn't take much to freeze, the corner of a radiator especially on the east wall.*" The witness further added that older homes are more susceptible to high and lows in temperature. It was █'s opinion that 10°C was too low of a setting for a January climate in this property. The witness offered his opinion on the events: "*█ stated that he can't say for sure if the thermostat was off but the setting of 10°C would have contributed to freezing. He added that water from a frozen rad or another source made its way to the aqua stat and caused it to burn out*". The witness disputed the opinion of the tenants' witness, █, stating that this opinion was provided two months after the event and stated that █ was not in the property at the time of the event.
36. The landlords added that at the time of the event, both the Property Manager and Project Manager from Belfor attended the property and found water in the basement, on the furnace, on the joists above the furnace and on the hot water tanks. The landlords contend that the water that made its way to the basement was the cause of the failure of the aqua stat.

Tenant Position

37. The tenants dispute the claim of the landlords that they were liable for the damages that ensued from the freezing event noticed on 01 January 2019 and deny any liability for the terms of the lease contract.
38. The tenants failed to secure an insurance policy as a condition of the rental agreement during their occupation of the rented premises.
39. The tenants testified that upon moving into the rental property, they had every intention of remaining in the unit as they did not think they would be able to find a suitable home for their family in the area immediately. They testified that when they found a home, they made the decision to make an offer on the property and were successful. The tenants knew they were in a fixed term rental agreement

and contractually responsible for the terms of the agreement. It was stated that they notified the property manager that a home was secured a home and inquired about the lease and what the options were. The tenants testified that the property manager advised that they could sublet and both would attempt to find a suitable tenant, but ultimately, they would be responsible for the lease until a new tenant could be secured.

40. The tenants testified that they closed on their home on 26 October 2018 and spent the first night there on 27 October 2018. Tenant1 testified that they immediately tried to secure a new tenant and maintained the rental agreement in place. The tenants testified that they regularly visited the property to check on the unit but there was no set schedule for visits and no log kept of the visits or to what degree the visit entailed. The tenants stated that they would check on the property when they checked the mail or visited the downtown core area of town. The tenants stated that they frequented the library and the Rotary Arts Center as a family and would check on the property during these visits.
41. The tenants stated that prior to departing the property they set the temperature of the thermostats in the rented premises at 10°C as their research indicated that this was an adequate temperature. The tenants stated that they continued to pay rent and utilities on the property after October 2018 as a contractual obligation to the lease agreement.
42. The tenants testified that they were notified by the leasing agent on 01 January 2019 that a passerby had advised of water coming from the rental property and that they had to attend to the property to mitigate the damage. Tenant2 attended the property and with the assistance of a taxi driver (████) from a local stand, was able to find the main water shut off and stop the flow of water. They immediately began to start the cleanup process and tenant1 attended the property on 02 January 2019.
43. The tenants acknowledged that they initially believed that the setting of the temperature at 10°C was the cause of the freezing event and therefore continued to pay rent and utilities as well as began to make some repairs to the property in an effort to mitigate losses. They revealed that as time went on, they came to understand and believe that, the temperature was not the cause, but in their opinion, a faulty aqua stat was to blame for the catastrophic freezing event. They testified that once this position was realized, they ceased all work on the property, issued a termination notice (**Exhibit L # 7**) and stopped making payments of rent and utilities on the property.

44. The tenants supported their version of events by calling several expert witnesses. The first was ■■■, a Red Seal Oil Burner Technician. This witness took the professional opinion that the freeze event was the result of an aqua stat that burnt causing the loss of heat and subsequent freezing of pipes and radiators.
45. The witness ■■■ testified that he was first called to the property by the tenants on or about 28 February 2019 (2 months after the event) to provide a cost estimate on the replacement of the hot water radiator units. While at the property, the witness took some time to look through the property including the damaged radiators and furnace unit. It was his professional opinion that the aqua stat burnt as a result of a power surge or an electrical event. ■■■ testified that this would have stopped the circulator for the second floor and the heat to that zone. The result in his opinion would have been a freeze event.
46. The witness ■■■ was sure of his opinion to a degree of 95% stating that for the other 5%, anything is possible. He further testified that it was highly unlikely that water in the aqua stat caused the unit to burn. The witness testified that the aqua stat has a fuse which is only there to protect the built-in alarm system and stated that the unit can function without it. He added that the fuse would blow with some sort of an electric overload. The fuse in the aqua stat was never tested.
47. The witness ■■■ testified that under normal circumstances, it is his opinion that 10°C should be sufficient to prevent freezing. However, he added that the temperature setting is not as important as the location of the pipes (ie: adjacent to cold walls, located in areas of drafts, etc.) which can cause freezing of the pipes in localized areas and in turn cause the system to freeze and fail.
48. The tenants next called ■■■ – a *Red Seal Certified Electrician* to testify. The witness ■■■ testified that he attended to the rented premises on 28 February 2019 and examined the controller from the furnace. The witness identified **Exhibit L # 16** as the controller viewed during the visit in February 2019. The witness ■■■ testified that it was his opinion that arching in the control unit caused the unit to burn. He further indicated that it looks like a loose connection which causes arching and a buildup of heat and a subsequent fire if not addressed.
49. The witness ■■■ testified that power surges are common in the winter and originate from the transformers on the poles outside. The witness stated that he did not check the main panel during his inspection to see if any circuits were tripped. The witness stated that it was his opinion that water did not cause the fire. He added that water could possibly cause arching if the wires were consistently submerged in water.

Analysis

50. The question of liability in this case hinges not only on the originating cause of the freezing event which we are aware is a lack of heat, but also on the actions of the parties involved in this relationship.
51. The landlords in this relationship were required to provide the tenants with a property free of reasonable defects respecting all laws of safety, life and housing. All indications are that the property was provided without defects and was functioning properly at the time the contract was agreed upon by both parties.
52. The tenants were required to maintain the property in a reasonable condition during the tenancy and repair any damages caused by a willful or negligent act of the tenants or someone permitted on the property by the tenants.
53. The tenants were bound to a legally binding contract (the lease) and shortly after signing this lease decided to purchase a property. The cost of the lease and a new purchase would have been financially significant. Saving money would be advantageous at this point. Reducing heat at the rental unit would be one method of cost savings.
54. Separate from the obvious landlord and tenant relationship (owners and renters) is a relationship between the Tenants and the Property Manager. The *Residential Tenancies Act, 2018* defines a landlord as:

2. (c) "landlord" includes

(i) an owner of a residential premises,

(ii) an agent or another person who, on behalf of an owner,

(A) permits the use or occupation of a residential premises under a rental agreement, or

(B) exercises powers and performs duties under this Act or the rental agreement,

(iii) the heirs, assigns and personal representatives of a person referred to in subparagraph (i), and

(iv) a person, other than a tenant using or occupying a residential premises, who

(A) is entitled to use or occupy the residential premises, and

(B) exercises any of the rights of a person referred to in subparagraph (i) or (ii) under this Act or a rental agreement;

55. It is apparent from the testimony of the Property Manager (), that once he was advised that the tenants had purchased a property and would be moving, his only obligation to the tenancy was to manage the rental agreement in place. Once he was made aware that the tenants had vacated the unit at the end of October 2018, the Property Manager did not complete regular inspections of the property but did task the tenants with the responsibility. There was no indication of follow-up by the Manager if regular checks were being conducted. The Property Manager did place a “for rent” sign with the company number in the window of the unit and did show the property to prospective renters.
56. It has been led in evidence that when the passerby notified the Property Management Company of water coming from the unit on the morning of 01 January 2019, the Property Management Company tasked the tenants to mitigate any loss and didn’t visit the property until 02 January 2019. This series of events I find troubling as it relates to responsibilities. The Property Manager has been entrusted with the care of the property on behalf of the owners. *The Act* defines the Agent acting on behalf of the owner as a landlord for the purposes of *the Act*, thus the Property Manager has a duty to act and failed to attend to the property during a catastrophic event.
57. The Property Manager cannot simply walk away from the responsibilities of managing the property once he becomes aware it was vacant and potentially at greater risk. If anything, the duty of The Property Manager, becomes more involved. The Property Manager’s responsibility does not absolve the tenants’ obligations to the property. It would be incumbent on both parties to ensure that the rented premises was safe and secure during the period that it was unoccupied.
58. Reasonable efforts for the arranged viewings and required inspections can be put in place by the person entrusted with the management of the property through the *Residential Tenancies Act, 2018* without recovering the unit as an abandoned unit. A reasonable schedule to check on the property and its crucial mechanical systems is easily put in place with the use of the appropriate Notice to Enter. As indicated above, both the Property Manager and the tenants have a responsibility to the safety and security of the property. Neither the tenants nor the Property Manager put such a schedule in place, and in the coldest months of the year, a catastrophic failure of the heating and water systems occurred.
59. The specific contractual dealings between the Property Manager and the Owners are not of concern for this tribunal.

60. The key phrasing from the *Residential Tenancies Act, 2018* that determines liability is “.....a willful or negligent act...” and reads as follows:

10(1) 2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

61. In this case there are a number of points at which a negligent act could have entered the picture. Did the tenants take reasonable efforts to reduce the risk of loss? Evidence is such that the tenants were aware that the property was an old historic property for the area. By virtue that the tenants actually researched a temperature setting, acknowledges that they were at least aware that cold temperatures in the area were possible. The tenants have acknowledged that they were experienced landlords in their own right.
62. A number of expert witnesses have held to at least three different possible causes for the system failure. The first is (1) water caused the aqua stat to fail/burn resulting in a freezing event, (2) a power surge caused the system to fail/burn resulting in a freezing event and (3) arching from a loose connection in the aqua stat caused it to fail/burn resulting in a freezing event.
63. Evidence does show that there was water in the aqua stat unit. I question the power surge theory and wonder why no other electrical components on the furnace or other systems were not damaged. Lastly, regarding the arching, this is certainly plausible but the loose connection was not pointed out on the actual exhibit during testimony. I do note on my examination of the aqua stat two crossed apparently bare wires in the corner adjacent to the fuse. I question if this could have caused arching and in turn excessive heat in the unit.
64. The tribunal does not need to get to the exact cause of the freezing event to determine liability. To accept a defined number on a thermostat as a defined temperature to prevent freezing across all properties in all climates would be foolish. Similarly, to accept that mechanical mal-functioning of the systems do not happen would also be foolish. The cause is at its basics, freezing because of a lack of heat. Regardless, if the cause was freezing because of a low thermostat temperature setting, or because of the mechanical failure of the heating system, either way the event could have been averted thorough, appropriate and regularly scheduled preventive checks of the unit during its vacant period.
65. I will interject some personal experience with hot water radiation heating systems and state that the cast iron radiators at this property or any property, once heated, do not cool quickly and will sustain radiant heat for a period of time. Hence, the splitting or exploding radiators in this claim did not happen overnight. A simple hand touch to the bottom area of the radiators during a regular check would quickly tell if the radiators were heating and functioning. These sorts of checks did not apparently happen.

66. The tenants could not accurately say when the last time before 01 January 2019 that they visited the property. This with the lack of documented records of visits and what was checked during the visits, adds to the assumptions required in this decision. It is conceivable from the evidence that it was 4 or more days and very likely that the reduction of heat started days before the actual noticing of the water coming from the unit. For this claim the tenants hold a responsibility for the unit, the lease and by extension the responsibility to make reasonable and regular checks on the property.
67. There is no doubt that there has been a series of errors during this tenancy. However, as the adjudicator I must rely on the factual information presented, the first of which is the contract which both parties enter into. The tenants' choice to purchase a home while legally bound to a contract to rent is the choice of the tenants. It is not cause or condition to void a binding rental contract. To that end then, I find that the tenants are responsible for the rental contract until it is legally terminated and vacated by both parties as prescribed in the *Residential Tenancies Act, 2018*, or is determined void by way of other legislation or a legal decision of a court.
68. The tenants then must make reasonable efforts to ensure that the property they opted to vacate is safe and secure and take reasonable precautions against such perils as heating system failures & waterline freezing, etc. The unscheduled and seemingly haphazard nature of the tenants' visits to check on the property did not leave me with a sense that the property was being adequately checked for security against system failures. As an alternative, the tenants could have secured the services of local companies to ensure the safety of the property. With all this in mind, I find that the tenants acted with the idea of cost savings in mind and not taking reasonable and proper precautions to avoid freezing of water lines and heating systems. I find the tenants' actions were negligent. Similarly, I find that the Property Management Company (Landlord) was also negligent in their duties by failing to ensure the safety and security of the property while they knew it was vacant. As such, I find the tenants and the Property Management Company (Landlord) equally liable for any associated damages to the property resulting from the unreasonable and negligent actions. The tenants are hereby required to pay ½ the award amount as their portion of the damages resulting from the freeze event.

Lease Liability Discussion:

69. Evidence is such that the lease was not terminated until 06 March 2019 when the tenants issued a termination notice under section 21 (**Exhibit L # 7**) to be effective (01 January 2019) on a date previous to the issuance of the notice. The validity of this notice will determine the liability of the tenants for the rent/utilities payable for the period.

70. Section 21 of the *Residential Tenancies Act, 2018* reads:

Notice where premises uninhabitable

21. (1) Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the person providing the notice;

(b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

71. The success of this notice depends on the ability of the issuer (Tenants) to show that the landlords violated section 10(1) statutory condition 1 of the *ACT* in addition to the technical requirements of the notice.
72. As can be seen in section 21(3)(b) above the tenants are required to state the date on which the tenants are required to vacate the premises. The date on the notice is 01 January 2019 which is 3 months prior to the issuance of the notice which is not an immediate notice. Additionally, section 21(1) requires the immediate vacating of the premises.
73. In addition to the technical requirements of the notice, the issuer is required to demonstrate a violation of the statutory conditions condition 1. The presentation above, which places liability for the damages equally on the tenants and the landlords. It further establishes that the landlords did not fail in providing a property fit for habitation prior to the freezing event.
74. For the technical issues of the notice noted above and the failure of the tenants to show that the landlords did not provide a property fit for habitation, I find that the notice issued by the tenants under section 21 to be not valid and of no effect in law.
75. Additionally, both the tenants and landlords have been determined equally responsible for the damages as both were negligent in their actions, then similarly, both will hold equal responsibility for the lease and any associated utility charges.

76. Flowing from this then, the tenants are responsible for the ½ the balance of the lease term respecting rent and utilities for the subject property as if they were living there in addition to any damages.

Decision

77. The tenants have been found liable for ½ the damages due to their negligent actions related to maintaining adequate checks on the property. Further, the tenants have been found liable for ½ of the terms of the lease agreement in terms of rent and utilities.

Issue 2: Compensation for Damages - \$56,678.96

Relevant Submissions

Landlord Position

78. The landlords are claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L # 5**) as follows:
- a. Replace Hardwood Floor (*Wallace Decker Flooring*)
 - b. Replace Cast Iron Radiators (*Northwest Plumbing & Heating*)
 - i. Install and Repair Radiator System
 - c. Replace Washer/Dryer
 - d. Complete Emergency Repairs
 - e. Property Re-Build (*Belfor*)
 - i. *Plaster/paint*
 - ii. *Repair Kitchen*
 1. *Remove & reset Fridge, Range & Cabinets*
 2. *Insulate/Vapor Barrier*
 - iii. *Remove Damaged Hardwood flooring*
 - iv. *Remove/Replace Baseboards & ¼ round*
 - v. *Replace Vinyl Flooring*
 - vi. *Replace Hot Water Heater (Electric)*
 - vii. *Clean & Prep Floors for flooring installation*
 - viii. *Clean each level (3) after re-build*
 - ix. *Remove Construction Debris to Landfill*
 - x. *Project Coordination*
79. There was no dispute between parties that the property was damaged as a result of a freezing event. The dispute rests in the liability for the repairs. The liability for the repairs has been determined above to be that of the tenants and the landlord at equal responsibility subject to applicable depreciation for the items involved in the claim.

80. In all claims where damages are sought, depreciation is considered as everything has a useful and functional life span. In this case, there has been no determination that the actions of the tenants was an intentional destructive act with the intentions of setting out to expressly damage the property of the landlords. It has been determined that there was a level of negligence with respect to the actions and thus depreciation will be applied.
81. The award has been outlined in a fashion respective of rooms or areas of the property where possible or as a larger group of items, as in the replacement of hardwood floors, heaters, etc. These will be presented below in separate tables outlined with the following headings:
- a. **Item:** *Damaged Item*
 - b. **Age:** *Approximate age @ time of damage*
 - c. **Invoice:** *Invoiced Repair/Replacement Amount*
 - d. **Upgrade:** *Cost of landlord Upgrade included in the Invoice*
 - e. **Value:** *Repair/Replace value considered in Award*
 - f. **LE:** *Life Expectancy*
 - g. **UL:** *Useful Life Remaining in the item*
 - h. **Dep Value:** *Calculated Depreciated Value ***

**** Repair/Replacement Value ÷ Life Expectancy X Useful Life Remaining = Depreciated Value.**

82. It should be noted that an assumption regarding the number associated to “life” as it relates to life expectancy. In this case “life” is determined to be 80 years which is the socially accepted average human life span currently.

Table # 1: Award for General Large Area Items

| GENERAL | | | | | | | |
|-------------------------------|-----|---------------------|-------------|---------------------|----|-----|-------------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove Construction debris | | \$ 586.22 | | \$ 586.22 | 1 | 1 | \$586.22 |
| Project Management | | \$ 1,013.31 | | \$ 1,013.31 | 1 | 1 | \$1,013.31 |
| Belfor Emergency Repairs | | \$ 4,065.28 | \$ - | \$ 4,065.28 | 1 | 1 | \$4,065.28 |
| Flooring | 100 | \$ 13,869.00 | \$ 2,244.72 | \$ 11,624.28 | 80 | -20 | \$0.00 |
| Radiators | 80 | \$ 12,042.80 | \$ - | \$ 12,042.80 | 20 | -60 | \$0.00 |
| Clean (Main Floor) (12 Hrs) | | \$ 618.52 | | \$ 618.52 | 1 | 1 | \$618.52 |
| Clean (Second Level) (12 Hrs) | | \$ 618.52 | | \$ 618.52 | 1 | 1 | \$618.52 |
| Section Total | | \$ 32,813.65 | | \$ 32,813.65 | | | \$6,901.85 |

83. The landlords engaged the services of Northwest Plumbing and Heating to handle the repairs to the plumbing and heating systems in the property. The

costing of the radiators seen in Table # 1 above and Table # 2 below, shows the services to repair heating system and tub/shower on the second level. There is an indication of a repair to the radiator on the main level. There was no indication that any radiators were damaged on the main level and as such this cost was disallowed as indicated below.

Table # 2: Award for Work Completed By Northwest

| NORTHWEST INVOICES | | | | | | | |
|-------------------------------|-----|--------------------|-----------------|--------------------|----|------|-------------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Replace Aqua Stat (Inv 25704) | 1.5 | \$ 500.24 | | \$ 500.24 | 20 | 18.5 | \$462.72 |
| Furnace Service (Inv 25818) | 1.5 | \$ 812.74 | | \$ 812.74 | 20 | 18.5 | \$751.78 |
| Repair Rad Leaks (Inv 25941) | 80 | \$ 709.47 | | \$ 709.47 | 20 | -60 | \$0.00 |
| Repair Tub/Shower Faucets | 20 | \$ 627.22 | \$ 51.04 | \$ 576.18 | 25 | 5 | \$115.24 |
| Repair Rad Main Floor | 80 | \$ 132.25 | | \$ 132.25 | 20 | -60 | \$0.00 |
| Section Total | | \$ 2,781.92 | \$ 51.04 | \$ 2,730.88 | | | \$1,329.74 |

Table # 3: Award for Damages in the 2nd Floor Hallway

| HALLWAY (2ND FLOOR) | | | | | | | |
|------------------------|-----|--------------------|---------|--------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove/Replace 1/4 rnd | | \$ 188.23 | | \$ 188.23 | 1 | 1 | \$188.23 |
| Paint 1/4 rnd | 4 | \$ 85.01 | | \$ 85.01 | 5 | 1 | \$17.00 |
| Paint Walls | 4 | \$ 662.82 | | \$ 662.82 | 5 | 1 | \$132.56 |
| Paint Base | 4 | \$ 110.30 | | \$ 110.30 | 5 | 1 | \$22.06 |
| Paint door/opening | 4 | \$ 270.15 | | \$ 270.15 | 5 | 1 | \$54.03 |
| Paint door | 4 | \$ 303.14 | | \$ 303.14 | 5 | 1 | \$60.63 |
| Remove Birch Flooring | | \$ 190.66 | | \$ 190.66 | 1 | 1 | \$190.66 |
| Clean/Prep Floors | | \$ 35.82 | | \$ 35.82 | 1 | 1 | \$35.82 |
| Section Total | | \$ 1,846.13 | | \$ 1,846.13 | | | \$700.99 |

Table # 4: Award Associated with the Kitchenette on the 2nd Floor

| KITCHENETTE | | | | | | | |
|------------------------|-----|------------------|---------|------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove/Replace 1/4 rnd | | \$ 82.81 | | \$ 82.81 | 1 | 1 | \$82.81 |
| Paint 1/4 rnd | 4 | \$ 50.05 | | \$ 50.05 | 5 | 1 | \$10.01 |
| Vinyl Flooring | 4 | \$ 557.77 | | \$ 557.77 | 25 | 21 | \$468.53 |
| Section Total | | \$ 690.63 | | \$ 690.63 | | | \$561.35 |

Table # 5: Award for Damages in Bedroom 1

| BEDROOM 1 | | | | | | | |
|------------------------|-----|--------------------|---------|--------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove/Replace 1/4 rnd | | \$ 161.70 | | \$ 161.70 | 1 | 1 | \$161.70 |
| Paint 1/4 rnd | 4 | \$ 73.03 | | \$ 73.03 | 5 | 1 | \$14.61 |
| Paint Walls | 4 | \$ 591.96 | | \$ 591.96 | 5 | 1 | \$118.39 |
| Paint Base | 4 | \$ 94.77 | | \$ 94.77 | 5 | 1 | \$18.95 |
| Paint door/opening | 4 | \$ 135.08 | | \$ 135.08 | 5 | 1 | \$27.02 |
| Paint door | 4 | \$ 86.61 | | \$ 86.61 | 5 | 1 | \$17.32 |
| Remove Birch Flooring | | \$ 418.22 | | \$ 418.22 | 1 | 1 | \$418.22 |
| Clean/Prep Floors | | \$ 78.56 | | \$ 78.56 | 1 | 1 | \$78.56 |
| Section Total | | \$ 1,639.93 | | \$ 1,639.93 | | | \$854.77 |

Table # 6: Award Associated with Bathroom on 2nd Level

| BATHROOM (2ND FLOOR) | | | | | | | |
|------------------------|-----|------------------|---------|------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove/Replace 1/4 rnd | | \$ 54.39 | | \$ 54.39 | 1 | 1 | \$54.39 |
| Paint 1/4 rnd | 4 | \$ 32.86 | | \$ 32.86 | 5 | 1 | \$6.57 |
| Vinyl Flooring | 4 | \$ 315.87 | | \$ 315.87 | 25 | 21 | \$265.33 |
| Clean/Prep Floors | | \$ 23.46 | | \$ 23.46 | 1 | 1 | \$23.46 |
| Section Total | | \$ 426.58 | | \$ 426.58 | | | \$349.75 |

Table # 7: Award Associated with Bedroom 2 on 2nd Floor

| BEDROOM 2 | | | | | | | |
|------------------------|-----|--------------------|---------|--------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove/Replace 1/4 rnd | | \$ 177.95 | | \$ 177.95 | 1 | 1 | \$177.95 |
| Paint 1/4 rnd | 4 | \$ 80.37 | | \$ 80.37 | 5 | 1 | \$16.07 |
| Paint Walls | 4 | \$ 642.96 | | \$ 642.96 | 5 | 1 | \$128.59 |
| Paint Base | 4 | \$ 104.30 | | \$ 104.30 | 5 | 1 | \$20.86 |
| Paint door/opening | 4 | \$ 135.08 | | \$ 135.08 | 5 | 1 | \$27.02 |
| Paint door | 4 | \$ 86.61 | | \$ 86.61 | 5 | 1 | \$17.32 |
| Remove Birch Flooring | | \$ 433.17 | | \$ 433.17 | 1 | 1 | \$433.17 |
| Clean/Prep Floors | | \$ 81.37 | | \$ 81.37 | 1 | 1 | \$81.37 |
| Section Total | | \$ 1,741.81 | | \$ 1,741.81 | | | \$902.35 |

Table # 8: Award Associated with the Kitchen on the Main Level

| KITCHEN | | | | | | | |
|----------------------------|-----|--------------------|---------|--------------------|----|-----|-------------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Underlayment (1/2" Ply) | 100 | \$ 424.47 | | \$ 424.47 | 80 | -20 | \$0.00 |
| Batt Insulation | 1 | \$ 97.15 | | \$ 97.15 | 1 | 0 | \$0.00 |
| Vapor Barrier | 1 | \$ 44.16 | | \$ 44.16 | 1 | 0 | \$0.00 |
| Drywall (1/2") | 0.5 | \$ 1,626.07 | | \$ 1,626.07 | 1 | 0.5 | \$813.04 |
| Trim Board (Pine) | | \$ 339.81 | | \$ 339.81 | 1 | 1 | \$339.81 |
| Baseboard (8") | | \$ 292.53 | | \$ 292.53 | 1 | 1 | \$292.53 |
| Prime Walls/Ceiling | 4 | \$ 316.76 | | \$ 316.76 | 5 | 1 | \$63.35 |
| Paint walls/Ceiling | 4 | \$ 591.30 | | \$ 591.30 | 5 | 1 | \$118.26 |
| Paint Base | 4 | \$ 46.76 | | \$ 46.76 | 5 | 1 | \$9.35 |
| Paint door/Window Opening | 4 | \$ 202.60 | | \$ 202.60 | 5 | 1 | \$40.52 |
| Remove/Re-install Cabinets | | \$ 935.36 | | \$ 935.36 | 1 | 1 | \$935.36 |
| Plinth Block | | \$ 98.79 | | \$ 98.79 | 1 | 1 | \$98.79 |
| Remove/Reset Fridge | | \$ 28.03 | | \$ 28.03 | 1 | 1 | \$28.03 |
| Remove/Reset Range | | \$ 23.86 | | \$ 23.86 | 1 | 1 | \$23.86 |
| Vinyl Flooring | 4 | \$ 891.15 | | \$ 891.15 | 25 | 21 | \$748.57 |
| Clean/Prep Floors | | \$ 66.21 | | \$ 66.21 | 1 | 1 | \$66.21 |
| Section Total | | \$ 6,025.01 | | \$ 6,025.01 | | | \$3,577.68 |

Table # 9: Award Associated with the Master Bedroom on the Main Level

| Master Bedroom | | | | | | | |
|-------------------------|-----|------------------|---------|------------------|----|-----|---------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Underlayment (1/2" Ply) | 100 | \$ 591.58 | | \$ 591.58 | 80 | -20 | \$0.00 |
| Section Total | | \$ 591.58 | | \$ 591.58 | | | \$0.00 |

Table # 10: Award Associated with the Living Room on the Main Level

| LIVING ROOM | | | | | | | |
|-------------------------|-----|--------------------|---------|--------------------|----|-----|-------------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Underlayment (1/2" Ply) | 100 | \$ 1,097.87 | | \$ 1,097.87 | 80 | -20 | \$0.00 |
| Remove Birch Flooring | | \$ 911.52 | | \$ 911.52 | 1 | 1 | \$911.52 |
| Remove/Replace 1/4 rnd | | \$ 230.38 | | \$ 230.38 | 1 | 1 | \$230.38 |
| Clean/Prep Floors | | \$ 171.23 | | \$ 171.23 | 1 | 1 | \$171.23 |
| Paint 1/4 rnd | 4 | \$ 104.04 | | \$ 104.04 | 5 | 1 | \$20.81 |
| Paint Walls | 4 | \$ 845.06 | | \$ 845.06 | 5 | 1 | \$169.01 |
| Paint Base | 4 | \$ 134.99 | | \$ 134.99 | 5 | 1 | \$27.00 |
| Paint door/opening | 4 | \$ 168.85 | | \$ 168.85 | 5 | 1 | \$33.77 |
| Paint door | 4 | \$ 86.61 | | \$ 86.61 | 5 | 1 | \$17.32 |
| Section Total | | \$ 3,750.55 | | \$ 3,750.55 | | | \$1,581.04 |

Table # 11: Award Associated with the Landing from the Main Level to the 2nd Floor

| LANDING | | | | | | | |
|-----------------------|-----|--------------------|---------|--------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Plaster (2 Coats) | | \$ 806.18 | | \$ 806.18 | 1 | 1 | \$806.18 |
| Paint walls & Ceiling | 4 | \$ 309.93 | | \$ 309.93 | 5 | 1 | \$61.99 |
| Section Total | | \$ 1,116.11 | | \$ 1,116.11 | | | \$868.17 |

Table # 12: Award Associated with Hallway on the Main Floor

| HALLWAY (MAIN FLOOR) | | | | | | | |
|------------------------|-----|------------------|---------|------------------|----|-----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove Birch Flooring | | \$ 179.56 | | \$ 179.56 | 1 | 1 | \$179.56 |
| Underlayment | 100 | \$ 216.27 | | \$ 216.27 | 80 | -20 | \$0.00 |
| Remove/Replace 1/4 rnd | | \$ 70.60 | | \$ 70.60 | 1 | 1 | \$70.60 |
| Paint 1/4 rnd | 4 | \$ 31.88 | | \$ 31.88 | 5 | 1 | \$6.38 |
| Paint Walls | 4 | \$ 266.87 | | \$ 266.87 | 5 | 1 | \$53.37 |
| Paint Base | 4 | \$ 41.38 | | \$ 41.38 | 5 | 1 | \$8.28 |
| Paint door/opening | 4 | \$ 67.53 | | \$ 67.53 | 5 | 1 | \$13.51 |
| Paint door | 4 | \$ 86.61 | | \$ 86.61 | 5 | 1 | \$17.32 |
| Clean/Prep Floors | | \$ 33.72 | | \$ 33.72 | 1 | 1 | \$33.72 |
| Section Total | | \$ 994.42 | | \$ 994.42 | | | \$382.73 |

Table # 13: Award Associated with the Entrance on the Main Level

| ENTRANCE | | | | | | | |
|------------------------|-----|------------------|---------|------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| Remove Birch Flooring | | \$ 129.01 | | \$ 129.01 | 1 | 1 | \$129.01 |
| Remove/Replace 1/4 rnd | | \$ 76.17 | | \$ 76.17 | 1 | 1 | \$76.17 |
| Paint 1/4 rnd | 4 | \$ 34.39 | | \$ 34.39 | 5 | 1 | \$6.88 |
| Paint Walls | 4 | \$ 275.12 | | \$ 275.12 | 5 | 1 | \$55.02 |
| Paint Base | 4 | \$ 44.62 | | \$ 44.62 | 5 | 1 | \$8.92 |
| Paint door/opening | 4 | \$ 168.85 | | \$ 168.85 | 5 | 1 | \$33.77 |
| Paint door | 4 | \$ 86.61 | | \$ 86.61 | 5 | 1 | \$17.32 |
| Clean/Prep Floors | | \$ 24.24 | | \$ 24.24 | 1 | 1 | \$24.24 |
| Section Total | | \$ 839.01 | | \$ 839.01 | | | \$351.34 |

Table # 14: Award Associated with the Basement Area of the Property

| BASEMENT | | | | | | | |
|----------------------|-----|--------------------|---------|--------------------|----|----|-----------------|
| Item | Age | Invoice | Upgrade | Value | LE | UL | Dep Value |
| R/R Hot Water Tank | 7 | \$ 1,065.75 | | \$ 1,065.75 | 11 | 4 | \$387.55 |
| Washer | 5 | \$ 757.83 | | \$ 757.83 | 10 | 5 | \$378.92 |
| Dryer | 15 | \$ 654.38 | | \$ 654.38 | 13 | -2 | \$0.00 |
| Clean Basement | | \$ 206.17 | | \$ 206.17 | 1 | 1 | \$206.17 |
| Section Total | | \$ 2,684.13 | | \$ 2,684.13 | | | \$972.63 |

84. There was no specific information presented related to the age of the hot water tank replaced. We only know that one was older than the other. It is apparent from the photos that the older one was there when the property was purchased in 2014 thereby making it at least 5 years old. I would assess the age based on the limited photos and personal knowledge of the units to be at 7 years.

Decision

85. The landlords' claim for damages has been assessed in the amount of **\$19,334.39** as determined in Table # 15 below. It has been determined that both parties are equally liable for the damages due to negligent actions. As such the award to the landlords is ½ of the assessed amount above, which is **\$9667.20**.

Table # 15: Award Summaries

| AWARD SUMMARY | | |
|----------------------|---------|-------------------------|
| Description | Table # | Depreciated Value Award |
| General | 1 | \$6,901.85 |
| Northwest Invoices | 2 | \$1,329.74 |
| Hallway (2nd Floor) | 3 | \$700.99 |
| Kitchenette | 4 | \$561.35 |
| Bedroom 1 | 5 | \$854.77 |
| Bathroom (2nd Floor) | 6 | \$349.75 |
| Bedroom 2 | 7 | \$902.35 |
| Kitchen | 8 | \$3,577.68 |
| Master Bedroom | 9 | \$0.00 |
| Living Room | 10 | \$1,581.04 |
| Landing | 11 | \$868.17 |
| Hallway (Main Floor) | 12 | \$382.73 |
| Entrance | 13 | \$351.34 |
| Basement | 14 | \$972.63 |
| ASSESSED TOTAL | | \$ 19,334.39 |

With regard to the tenants' claim for compensation for work completed (Materials and associated labor), these components would be wrapped up in the finding for compensation for damages. There has been some offset for additional add-ons by the landlords (extra flooring, upgraded insulation, etc). As such, the tenants would not be entitled to a rebate for the work completed in an effort to mitigate the loss.

Issue 3: Payment of Utilities - \$1131.27
Refund of Utilities - \$1539.15

Relevant Submissions

Landlord Position

86. The landlords testified that it is their position that the tenants are responsible for the balance lease agreement and by extension as well any associated utilities for the property for the same period.
87. The landlords submitted into evidence copies of the NL Power Invoices (**Exhibit L # 5**) totaling **\$1125.45** and testified that the tenants are responsible for 21 days of August 2019 billing (both units) for the days up to 31 July 2019 on the invoice:

a. Meter #582519:

- i. $\$6.49 \div 33 \text{ days of billing} = \$0.20/\text{day}$
- ii. $\$0.20/\text{day} \times 21 \text{ days} = \4.20
- iii. $\$4.20 \text{ energy charge} + \$16.01 \text{ Basic Charge} = \20.21
- iv. $\$20.21 - \$0.21 \text{ Credit} = \$20.00$
- v. $\$20.00 + 15\% \text{ HST} = \underline{\underline{\$23.00}}$

b. Meter #582520:

- i. $\$7.06 \div 33 \text{ days of billing} = \$0.21/\text{day}$
- ii. $\$0.21/\text{day} \times 21 \text{ days} = \4.41
- iii. $\$4.41 \text{ energy charge} + \$16.01 \text{ Basic Charge} = \20.42
- iv. $\$20.42 - \$0.22 \text{ Credit} = \$20.20$
- v. $\$20.20 + 15\% \text{ HST} = \underline{\underline{\$23.23}}$

Tenant Position

- 88. The tenants dispute the landlords' claim and counter with their own claim seeking a refund of the utilities paid during the period they were not living in the rented premises in the amount of **\$1539.15**.
- 89. The tenants submitted receipts from NL Power (**Exhibit T # 6**) totaling **\$1371.46** along with a receipt from North Atlantic (**Exhibit T # 6**) totaling **\$164.01** for an oil drop on 21 January 2019.

Analysis

- 90. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The issue of liability to the lease contract has been determined above with both parties being equally responsible for the period of commencing at the freeze event (01 January 2019) to the end of the term.
- 91. As the both landlord and tenants are responsible for the contract, they are also responsible for the associated utilities for the same period. The landlord has demonstrated the cost of the utilities to the property from the time the tenants stopped paying to the end of the lease agreement with the actual invoice from NL Power. Similarly, the tenant have demonstrated the electrical cost for January and February 2019 in the amount of **\$1371.46**.
- 92. As both parties have been found responsible all charges will be equally split at a rate of 50%. I accept this evidence and find the tenants responsible for $\frac{1}{2}$ of the utilities in the amount of **\$562.73**. ($\$1125.45 \div 2$)

Decision

93. The landlords' claim for utilities succeeds in the amount of **\$562.73**. The tenants claim for refund of utilities is successful in the amount of **\$685.73**. The net effect of this portion of the claim is the tenant is entitled to a refund of **\$123.00**.

Issue 4: Payment of Rent - \$7000.00
Refund of Rent - \$2800.00

Relevant Submissions

Landlord Position

94. The landlords testified that it is their position that the tenants are responsible for the balance lease agreement and any associated rent for the property for the same period.
95. The landlords testified that rent for the period of 01 March 2019 to 31 July 2019 has not been paid by the tenants. The landlords calculate the amount of rent owing is **\$7000.00** (*5 months X \$1400.00 = \$7000.00*).

Tenant Position

96. The tenants dispute the landlords claim and counter with their own claim seeking a refund of the rent paid during the period 01 January 2019 to 28 February 2019, in the amount of **\$2800.00**.
97. The tenants testified and acknowledged that they ceased paying rent at the end of February 2019 as they took the position that they were not responsible for the payment of rent any longer.

Analysis

98. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The issue of liability to the lease contract has been determined above and holds both parties to equal responsibility.
99. As both parties have been determined responsible for the contract, both parties are also responsible for the rent on the property from the freeze event to the end of the lease agreement. The landlords have demonstrated that the property was extensively damaged resulting from a freezing event and both parties have been found to contributed and therefore liable. The tenants themselves have acknowledged that they have not paid rent from March 2019 to the end of the

rental agreement.

100. The repairs to the property did take a long time. It is apparent that the first two months of the renovations were seemingly haphazardly happening and amounted to emergency repairs (removal of wet material, etc), awaiting insurance confirmation, and some repairs by the tenants themselves. The repairs moved quicker after this, but still with delays. The landlords reported delays as a result of sourcing and obtaining heating radiators from the supplier in Quebec. The landlords also reported delays on the flooring due to delivery issues and installation as heat had not been restored in the property.
101. As with the claim for utilities above, both parties are equally responsible for ½ the rent owing on the property from January to 31 July 2019 as follows:
 - a. March to 31 July 2019 (\$7000.00) The tenants are liable for \$3500.00
 - b. 01 Jan 2019 to 28 February 2019 (\$2800.00) The Landlords' are responsible for \$1400.00
 - c. The net effect of the above is the tenants are responsible for \$2100.00

Decision

102. The landlords' claim for rent owing succeeds in the amount of **\$2100.00**.

Issue 5: Hearing Expenses

Landlord Position

103. The landlords paid a fee in the amount of \$20.00 as an application filing fee receipt from Service NL (██████████). The landlords are seeking this cost.

Tenant Position

104. The tenants paid a fee in the amount of \$20.00 as an application filing fee receipt from Service NL (██████████). The tenants are seeking this cost.

Analysis

105. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The landlords claim has been successful at least in part. The expenses incurred by the landlords are considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find that both parties shall cover their own hearing expenses.

Decision

106. Both parties shall cover their own hearing expenses for the respective claims.

Issue 6: Application of Security Deposit

Landlord Position

107. The landlords testified that a security deposit in the amount of \$1050.00 was paid on the property on or about 27 August 2018. The landlords are seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

108. Established by undisputed facts above, the tenants did pay a security deposit to the landlords in the amount of \$1050.00. The landlords' claim has been successful and the tenants owe the landlords for rent, damages, utilities and hearing expenses. The interest rate set out by the Minister on security deposits for 2018 - 2020 is set at 0%. The security deposit plus accrued interest then is \$1050.00.

Decision

109. As the landlords' claim above has been successful, the landlords shall apply the security deposit being held against any amount outstanding as directed in the attached order.

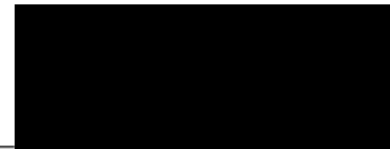
Summary of Decision

110. The landlords are entitled to the following:

| | | |
|----|---------------------------------------|---------------------------|
| a) | Compensation for Damages | \$9,667.20 |
| c) | Payment of Rent | 2,100.00 |
| d) | Hearing Expenses | <u>0.00</u> |
| e) | Sub-total | \$11,767.20 |
| f) | LESS: Security Deposit..... | (\$1050.00) |
| g) | LESS: Refund of Utilities..... | <u>(123.00)</u> |
| g) | Total owing to Landlords | <u>\$10,594.20</u> |

06 October 2020

Date



Michael Greene
Residential Tenancies Tribunal