



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with a review hearing of the landlord's original Application for Dispute Resolution (the "Application"), seeking a monetary order for damages to the unit, site or property, for unpaid rent or utilities, to keep all or part of the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

On December 3, 2013 an Arbitrator issued a Decision finding that the landlord had proven a claim totalling \$9,365.60, and after ordering the landlord to retain the tenant's security deposit and pet damage deposit, plus interest, totalling \$1,950.00, granted a Monetary Order for the balance owing by the tenant in the amount of \$7,515.60. The tenant did not attend the teleconference hearing on December 3, 2013 and applied for a Review Consideration of the December 3, 2013 Decision and Order citing that she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control. On December 19, 2013, a different Arbitrator suspended the Decision and Order dated December 3, 2013, pending the outcome of this review hearing which was ordered as a new hearing. At the review hearing, and in accordance with section 82(3) of the *Act*, I may confirm, vary or set aside the original Decision and Order which will be described later in this Decision.

The tenant and the landlord attended the review hearing which began on February 11, 2014. The hearing was adjourned due to evidence issues, and at that time the landlord was ordered to re-serve specific pages that the tenant had testified she had not received in evidence. Also on February 11, 2014, the tenant was ordered to re-serve the Review Consideration Decision as the landlord testified that she had not been served with a copy of the Review Consideration Decision dated December 19, 2013. As the review hearing had commenced, both parties were advised that additional evidence other than what was ordered above, would not be admitted. The hearing was adjourned after 50 minutes.

On April 7, 2014, the review hearing reconvened and in addition to the tenant and landlord, witness K.S. for the landlord, and witness S.B. for the tenant appeared. After 90 minutes, the hearing was adjourned to allow for additional time to hear testimony and present documentary evidence. The landlord was ordered to re-serve specific pages related to the condition inspection report and specific receipts on the tenant as the tenant testified that she did not have those specific documents in evidence. The hearing was adjourned after 90 minutes.

On July 24, 2014, the review hearing reconvened and in addition to the tenant and landlord, witnesses C.C. and J.F. for the witness appeared. After an additional 165 minutes, the hearing concluded.

At the outset of the hearing, the review hearing process was explained to the parties, and the parties were provided the opportunity to ask questions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the issues and findings below.

The tenant's documentary evidence package dated February 4, 2014, which included two DVD's, was excluded in full as it was not served in accordance with the Rules of Procedure. The remainder of the documentary evidence the parties confirmed having received and that they had the opportunity to review the documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the parties were advised of the review hearing process and that certain conduct would not be tolerated, such as interruptions or the leading or berating of witnesses. The tenant was cautioned several times during the course of the review hearing for multiple interruptions, leading witnesses and berating a witness.

Issues to be Decided

- Should the original decision dated December 3, 2013 be confirmed, varied or set aside?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy agreement began on May 15, 2013 and was scheduled to end on May 15, 2014, which required the tenant to provide vacant possession of the rental unit to the landlord. A copy of the tenancy agreement was submitted in evidence. The parties agreed that monthly rent was originally \$1,975.00 per month plus ½ of utilities, and was subsequently reduced by mutual agreement of the parties by \$5.00 to \$1,970.00 as of September 1, 2013. The tenant paid a security deposit of \$987.50 and a pet damage deposit of \$987.50 on May 5, 2013, which the landlord continues to hold.

The landlord obtained an Order of Possession on August 23, 2013 and agreed for the effective vacancy date to be September 30, 2013. The parties agreed that the tenant vacated the rental unit on September 23, 2013. A copy of the incoming and outgoing condition inspection report was submitted in evidence.

Although the landlord has claimed \$8,870.47 in her Application dated September 23, 2013, in the landlord's documentary evidence package, the amount listed is \$8,528.10. In addition, the landlord has also claimed for the recovery of the \$100.00 filing fee which will be addressed later in this Decision. The landlord's monetary claim of \$8,528.10 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Half of August rent (unpaid rent)	\$987.50
2. September rent (unpaid rent)	\$1,970.00
3. October rent (loss of rent revenue)	\$1,970.00
4. Half of November rent (loss of rent revenue)	\$985.00
5. Difference in rental income to May 15, 2014 (November 2013 to May 15, 2014)	\$120.00
6. Late rent fees for August and September	\$50.00
7. Utility costs from May 15 to September 23 (2013)	\$320.49
8. Cost to repair damage	\$2,125.11
TOTAL	\$8,528.10

Regarding item #1, the landlord has claimed for half of August 2013 rent, which was \$1,975.00 prior to the mutually agreed upon rent reduction to \$1,970.00 effective September 1, 2013. As a result, the landlord is seeking the amount of \$987.50 for

August 15-31, 2013 in unpaid rent. The tenant stated that she figured the landlord would use her security deposit and pet damage deposit towards the unpaid rent for August 2013. The parties agreed that the tenant paid May 2013 rent which covered the period of May 15 to June 15, 2013. The parties also agreed that June 2013 rent was paid which covered the period of June 15 to July 15, 2013, and that July 2013 rent was paid which covered the period of July 15 to August 15, 2013, which is why the landlord is only claiming half of August 2013 rent, which covers the period of August 15 to 31, 2013. As the tenancy agreement indicates that rent is due on or before the first day of each month the remainder of the rent amounts claimed below, will be calculated from the first of the month to the last day of the month to ensure clarity.

Regarding item #2, the landlord testified that the tenant failed to pay September 2013 rent in the amount of \$1,970.00, even though the landlord had agreed to an Order of Possession date effective September 30, 2013. The tenant did not provide evidence that rent for September 2013 as paid to the landlord.

Regarding items #3 and #4, the landlord testified that she suffered a loss of October 2013 rent revenue in the amount of \$1,970.00 and loss of half of November 2013 rent in the amount of \$985.00, as the landlord was not able to secure new renters until November 15, 2013. The landlord referred to several ads submitted in evidence that were posted on a popular online website. The first ad was posted August 30, 2014 and was renewed on October 1, 2013. The second ad was posted September 6, 2013. The third ad was posted on October 5, 2013, and was renewed on October 20, 2013. The third ad posted on October 5, 2013 reflected a lower monthly rent amount of \$1,950.00 per month. One of the e-mails received in response to the October 5, 2013 posting that was updated on October 20, 2013, resulted in new renters agreeing to and being approved to rent the rental unit effective November 15, 2013.

The landlord stated that the new renters began paying rent on November 15, 2013 and paid \$1,950.00 per month with the first month being from November 15, 2013 to December 15, 2013. The landlord is seeking \$985.00 for loss of the first half of November 2013 rent revenue as a result.

The tenant responded to the landlord's attempts to advertise the rental unit by stating that if you don't update your ads every day you go to the bottom of the list. The tenant also stated that she proposed a friend, W.B. to rent the rental unit. The landlord stated that she was concerned about someone being referred to her by the tenant who was vacating for failing to pay rent. Ultimately, the landlord did not approve prospective tenant, W.B.

Witness S.B. testified that he heard back from the landlord that he was not successful in getting the rental unit. The tenant asked witness S.B. if he recalled anything being mentioned about pets in the rental unit. The witness said there was nothing about pets but knew that the tenant has a dog. The tenant asked if S.B. if the ad said anything about no pets or no smoking and the witness responded by stating he "didn't recall". The tenant said that although when she originally applied for the rental unit it was advertised as no pets, the landlord made an exception which the landlord agreed that indeed she had made an exception for the tenant.

Regarding item #5, the landlord testified that she is seeking the rent differential from November 2013 to the end of the fixed term tenancy, May 15, 2014. The landlord testified that she had to reduce rent to \$1,950.00 to secure a new renter. The new renter began renting the rental unit at \$1,950.00 per month effective November 15, 2013. As a result, the landlord is seeking the rent differential as a loss of rent revenue at \$20.00 per month for a total of six months, which comes to \$120.00 comprised as follows:

- \$20.00 rent differential for November 15, 2013 to December 15, 2013
- \$20.00 rent differential for December 15, 2013 to January 15, 2014
- \$20.00 rent differential for January 15, 2014 to February 15, 2014.
- \$20.00 rent differential for February 15, 2014 to March 15, 2014
- \$20.00 rent differential for March 15, 2014 to April 15, 2014
- \$20.00 rent differential for April 15, 2014 to May 15, 2014

Regarding item #6, the landlord is claiming late rent fees of \$25.00 each for the months of August 2013 and September 2013 inclusive. Section 10 of the tenancy agreement submitted in evidence indicates that late payments are subject to a \$25.00 administrative fee for each late payment.

Regarding item #7, the landlord has claimed \$320.49 for unpaid utilities from May 15, 2013 to September 23, 2013 when the tenant vacated the rental unit. The tenant stated that she does not deny that the unpaid utilities total was \$320.49 but claims she paid the landlord's husband K.S. \$300.00 in cash at the start of the tenancy and only owes \$20.49 as a result. The landlord denies that K.S. or the landlord received any cash payments for utilities in advance and owes the entire amount of \$320.49. The landlord stated that she would not charge the tenant for utilities in advance as she would not know the amount owed in advance and would not have a utility bill to support such a request.

Witness K.S., the landlord's husband, testified that he did not receive any cash payments from the tenant and that there were no offers to pay cash or to pay utilities in cash. The tenant cross-examined K.S. by asking if he attended her apartment in Marpole and K.S. confirmed that he did. The tenant asked if he received two bank drafts from her and K.S. replied that he did not recall. The tenant asked if he recalled giving her any change, and K.S. replied that he did not recall.

The tenant called her daughter as a witness "J.F." Witness J.F. was asked by the tenant if she ever witnessed any payments to the landlord and J.F. replied yes in May 2013. The tenant asked if she saw how much the payments were and J.F. replied no. J.F. stated that there were two payments made, the first time was for three months of rent plus the deposits, and the second time was "\$300.00 and something for electricity bill in advance". J.F. was asked if a receipt was provided and she replied no. When J.F. was asked if the landlord was present, she replied that the landlord was present.

Under cross-examination, the landlord asked J.F. how many times the landlord met with her mother at her apartment to which J.F. replied once. The landlord asked J.F. what the purpose of that visit was, to which J.F. replied to pay electricity three months in advance. The landlords asked if there were any e-mails to support that utilities were paid in advance or were requested by the landlord, to which J.F. replied that she was not sure. The landlord asked J.F. how she knew of the amount for the electricity, and she replied that her mother told her that. The landlord asked J.F. if there was a possibility that the payment was in relation to a security deposit or pet damage deposit, to which J.F. replied that it was not nearly enough for the deposits. The landlord asked where the two meetings were to which J.F. replied the first meeting was at the rental unit and the second meeting was at the tenant's apartment. After witness J.F. was excused, the landlord stated that there was only one meeting and not two.

The landlord asked the tenant why she would pre-pay utilities without a receipt for utilities to support the amount, without a request in writing, and why would she pay cash without receiving a receipt for the cash? The tenant replied that she trusted the landlord.

Regarding item #8, the landlord has claimed \$2,125.11 in damages to the rental unit comprised of the following, to which sub-item numbers have been assigned for ease of reference:

SUB-ITEM DESCRIPTION	AMOUNT CLAIMED
1. Laminate floor repair 1 plank, rubbish removal, transportation and storage of tenant's items left behind in garage, and	\$280.00

installation of kitchen pendant light with new shade cover	
2. Filing fee	\$100.00
3. Garage door remote control	\$44.79
4. Service call for plumber to check dishwasher, found nothing @ \$85/hour (30 minutes)	\$42.50
5. One 50 watt halogen light bulb for ensuite bathroom	\$6.84
6. Garbage bags to remove rubbish in garage	\$8.97
7. Paper towels, disinfectant wipes, magic erasers, cleaning cloths, cleaning solution	\$68.92
8. Baking soda, garbage bags, oven cleaner, steam mop, steam mop cloths	\$93.09
9. Weather stripping for door bottom, 4 stove burners, polyfilla brush, 4-70 watt light bulbs for 2 bedrooms, polyfilla	\$116.09
10. Sandpaper sponge, paint brushes, green tape, paint, eco fee	\$75.61
11. Flashlight to inspect main bathroom because all the light bulbs were out and other rooms where lighting was dim	\$9.34
12. 5 – 70 watt light bulbs for 2 bedrooms and kitchen, 3-100 watt light bulbs for main bathroom, eco fee, shelf pins for cupboards plus tax	\$69.07
13. Credit checks (two @ \$22.66) and rental forms (\$1.79 plus \$7.16)	\$54.27
14. Dumping fee for glass shower doors	\$26.00
15. Rekey front, back, and garage locks after move-out inspection	\$120.75
16. Open lock and rekey front and back locks after tenant refuses to provide key to the rental unit	\$152.25
17. Cleaning floor(3X) dry sweep, wet mop, and steam clean to remove odour, pet hair and straw – 2 hours	\$40.00
18. Washing walls to remove odour, pet hair and straw – 1 hour	\$20.00
19. Test, purchase and install light bulbs that were missing or not functioning – 21 bulbs total in eight areas – 3 hours	\$60.00
20. Clean door trims, molding, baseboards, window sills and blinds – 2 hours	\$40.00
21. Fill, sand, touch up/paint holes and marks on walls – 4 hours	\$80.00
22. Scrub and disinfect inside microwave and fan underneath it – 30 minutes	\$10.00
23. Clean oven (3X), oven door, oven racks, stove top, scrubbed stove burners but ended up having to purchase new	\$40.00

burners – 2 hours	
24. Wipe granite countertops, sink, tiles, electrical outlets, and light switches – 30 minutes	\$10.00
25. Clean inside, wipe outside, and remove items from cupboards and drawers – 30 minutes	\$10.00
26. Clean and empty refrigerator and freezer – 30 minutes	\$10.00
27. Remove tv cables and repair screw holes on baseboards – 1 hour	\$20.00
28. Install shelving unit back in closet that was removed by the tenant – 15 minutes	\$5.00
29. Purchase weather stripping and replacing damaged weather stripping on front door – 1 hour	\$20.00
30. Transporting pressure washer unit from landlord's house in North Vancouver and pressure wash back deck – 90 minutes	\$30.00
31. Service call for contractor to repair railing – 1 hour	\$50.00
32. Clean glass on French doors – 15 minutes	\$5.00
33. Clean and disinfect countertop, mirror, faucets, bathtub, toilet, and plug holes in bathtub wall – 1 hour	\$20.00
34. Clean and remove items from cupboards – 30 minutes	\$10.00
35. Transporting lawn mower from landlord's house in North Vancouver and cutting and weeding front, back lawn, and bushes – 4 hours	\$80.00
36. Test, inspection, and installation of a new remote garage door opener and cleaning garage – 1 hour	\$20.00
37. Liquidated damages – mileage for driving from landlord's home to rental unit to show it to prospective tenants for 6 showings - \$7,27 for one round trip measuring 40.8 km	\$43.62
38. Liquidated damages – cost of 12 two-zone fares from designated agent's workplace to rental unit and back to show it to prospective tenants for 6 showings	\$33.00
39. Liquidated damages – landlord's time spent advertising, replying to emails/phone calls, showing rental unit, interviewing, credit/reference checks, and conducting move-in inspection – total of 10 hours	\$200.00

Settlement Agreement

During the hearing, the parties mutually agreed to settle on some of the sub-items described above related to the landlord's claim for damages. As a result, the sub-items

resolved by way of a mutually settled agreement will not be analyzed further in this Decision. The sub-items agreed upon and the amount the tenant has agreed to compensate the landlord are comprised of the following:

SUB-ITEM DESCRIPTION RESOLVED BY MUTUAL AGREEMENT BETWEEN THE PARTIES	AMOUNT AGREED UPON FOR TENANT TO COMPENSATE THE LANDLORD
Sub-item #3 – garage remote control	\$44.79
Sub-item #36 – test and inspect and installation of new remote garage door opener and cleaning garage	\$10.00
Sub-items #37, 38, and 39 – liquidated damages	\$276.62
TOTAL OF ITEMS RESOLVED BY MUTUAL AGREEMENT	\$331.41

Evidence regarding remainder of sub-items

Other than the sub-items agreed to by way of a mutually settled agreement described above, the tenant testified that she disputed the remainder of the sub-items being claimed for damages and for cleaning related costs.

Regarding sub-item #1, the landlord has claimed \$280.00 for laminate floor repair - 1 plank, rubbish removal, transportation and storage of tenant's items left behind in garage. The landlord referred to the condition inspection report which indicates marks and scratches on the floor section of the living room and family room, and that there were marks on the floor, scratches, in the bedrooms. The landlord referred to a receipt dated 11/10/2013 in the amount of \$280.00 from a contractor T.C. The receipt indicates 1.25 hours for a laminate floor repair – 1 plank in the amount of \$75.00, 2 hours for rubbish and furniture removal and transportation (including mileage) in the amount of \$100.00, and 1.5 hours for installation of kitchen pendant light in the amount of \$75.00 for a total with taxes of \$280.00.

The tenant confirmed that she did not re-install the pendant light at the end of the tenancy. The landlord referred to a photo of the pendant light in a sink, and the tenant stated that she left it in a box and not the sink.

Regarding sub-item #2, the landlord has requested the recovery of the \$100.00 filing fee paid to file the landlord's application for dispute resolution. The filing fee will be discussed later in this Decision.

Regarding sub-item #4, the landlord has claimed \$42.50 for a service call to a plumber to investigate a dishwasher leak reported by the tenant to the landlord. The landlord testified referred to an invoice submitted from a plumbing and heating company where it reads in part, "...Checked for the cause of leak from dishwasher. There were no leaks detected. The leak was caused by the user." The tenant called her father as a witness, C.C., who testified that he attended the rental unit and inspected the dishwasher in May or June of 2013 and that the dishwasher had leaked out of the bottom and that the kitchen sink also leaked. Witness C.C. testified that he is a home inspector by trade.

Regarding sub-item #5, the landlord is claiming \$6.84 for one 50 watt halogen light bulb for the ensuite bathroom. The landlord confirmed that this is not listed on the outgoing condition inspection report; however, they did refer to a photo which the landlord indicates supported that all three bulbs were burned out at the end of the tenancy. The landlord stated that the three bulbs totalled \$6.84 and a receipt was submitted in evidence to support this portion of the landlord's claim.

Regarding sub-item #6, the landlord is claiming \$8.97 for garbage bags to remove rubbish from the rental unit left by the tenant at the end of the tenancy. The landlord referred to several photos submitted in evidence which the landlord indicates shows rubbish. A receipt in the amount of \$8.97 was submitted in evidence to support this portion of the landlord's claim.

Regarding sub-item #7, the landlord has claimed \$68.92 for paper towels, disinfectant wipes, magic erasers, cleaning cloths, and cleaning solution to clean the rental unit which the landlord testified was left dirty by the tenant. The landlord referred to several photos submitted in evidence showing a rental unit which was not left clean by the tenant. A receipt in the amount of \$68.92 was submitted in evidence to support this portion of the landlord's claim.

Regarding sub-item #8, the landlord has claimed \$93.09 for baking soda, additional garbage bags, oven cleaner, steam mop, and steam mop cloths to clean the rental unit which the landlord testified was left dirty by the tenant. The landlord referred to several photos submitted in evidence showing a rental unit which was not left clean by the tenant. The tenant testified that she was cleaning during the outgoing move out inspection and that the landlord was checking off items as she cleaned them. The landlord disputed this statement from the tenant and stated that the outgoing condition inspection was an inspection of the condition of the rental unit at the end of the tenancy.

Regarding sub-item #9, the landlord has claimed \$116.09 for weather stripping for the back door bottom, 4 stove burners, polyfilla brush, 4-70 watt light bulbs for 2 bedrooms, and polyfilla. The landlord stated that she tried to clean the stove burners; however, they were so caked on and dirty that she could not clean them and eventually it was cheaper to replace them than to try to get them clean. The landlord referred to the condition inspection report submitted in evidence which supports this portion of her claim. The tenant claimed that the weather stripping was old and not her responsibility. A receipt in the amount of \$116.09 was submitted in evidence to support this portion of the landlord's claim.

Regarding sub-item #10, the landlord has claimed \$75.61 for sandpaper sponge, paint brushes, green tape, paint, and eco fee. The landlord described this portion of her claim as paint supplies. A receipt in the amount of \$75.61 was submitted in evidence to support this portion of the landlord's claim. The landlord stated that the age of the interior paint was new at the start of the tenancy. The tenant denies that the paint was new at the start of the tenancy. The condition inspection report does indicate freshly painted, no marks in the dining room, living rooms, family room at the start of tenancy, and at the end of the tenancy indicates scratched entry, halls and stairs, living room and family room, and den by kitchen. The landlord referred to five photos in support of this portion of her claim.

Regarding sub-item #11, the landlord has claimed \$9.34 for a flashlight and submitted a receipt in evidence. The landlord writes that she is claiming for a flashlight to inspect main bathroom because all the light bulbs were out and other rooms where lighting was dim. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #12, the landlord has claimed \$69.07 for five 70 watt light bulbs for two bedrooms and kitchen, three 100 watt light bulbs for main bathroom, eco fee, shelf pins for cupboards, plus tax. A receipt in the amount of \$95.70 was submitted in evidence and the landlord clarified that she was not claiming for the entire amount of the receipt as a fan was part of the receipt and she is not claiming for the fan, resulting in the amount of \$69.07 after deducting the cost of the fan.

Regarding sub-item #13, the landlord has claimed \$54.27 in total for two credit checks (two @ \$22.66 each) and rental forms (\$1.79 plus \$7.16). This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #14, the landlord has claimed \$26.00 for a dumping fee for glass shower doors. The landlord confirmed that there was no receipt to support this portion of the landlord's claim. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #15, the landlord has claimed \$120.75 to rekey the front, back, and garage locks after move-out inspection. The landlord testified that she had to change the locks based on the tenant not returning the rental unit keys earlier in the tenancy after an earlier dispute resolution hearing. The landlord stated that at an earlier dispute resolution hearing that the tenant was ordered to return the rental unit keys to the landlord as the tenant had changed the rental unit locks without her permission and that the tenant failed to return the keys on time, prompting the need to spend \$120.75 to change the locks to the rental unit.

Neither party submitted documentary evidence to support that an order had been made ordering the tenant to return rental unit keys during the tenancy to the landlord by a specified date. The landlord referred to a receipt submitted in evidence in the amount of \$120.75. The tenant did confirm that she did not have permission to change the locks from the landlord. The tenant did not provide any supporting evidence that she returned the rental unit keys to the landlord to prevent the landlord from suffering a loss in having the rental unit locks changed due to the tenant changing the locks without permission during the tenancy.

Regarding sub-item #16, the landlord has claimed \$152.25 to "open lock" and rekey front and back locks after the tenant refused to provide these at the end of the tenancy. A copy of a receipt in the amount of \$152.25 was submitted in evidence to support this portion of the landlord's claim. The landlord stated that she had to change the locks at the end of the tenancy as she was not given all of the rental unit lock keys, including the garage lock key, and that she was threatened by the tenant that she would come back to the rental unit. The tenant denies that she threatened the landlord.

Regarding sub-item #17, the landlord has claimed \$40.00 for cleaning the floor three times, dry sweep, wet mop, and steam clean to remove odour, pet hair and straw from the rental unit. The landlord referred to seven photos in evidence to support this portion of her claim.

Regarding sub-item #18, the landlord has claimed \$20.00 for one hour to wash the rental unit walls that were left dirty by the tenant at the end of the tenancy. The landlord testified that she charged \$20.00 per hour for her cleaning labour and referred to five photos submitted in evidence in support of this portion of her claim.

Regarding sub-item #19, the landlord has claimed \$60.00 for three hours to test, purchase and install light bulbs that were missing or not functioning for a total of 21 light bulbs in eight areas of the rental unit.

Regarding sub-item #20, the landlord has claimed \$40.00 for two hours to clean door trims, molding, baseboards, window sills and blinds. The landlord referred to four photos submitted in evidence to support this portion of her claim. The tenant claims that photo 47 showed "mould" in the rental unit.

Regarding sub-item #21, the landlord has claimed \$80.00 for four hours to fill, sand, touch up/paint holes and marks on the rental unit walls. The landlord referred to 8 photos submitted in evidence in support of this portion of her claim. The landlord stated that she had to remove bolts installed by the tenant, which the tenant confirmed that she installed during the tenancy. The tenant claims that she left paint for the landlord, which the landlord denies.

Regarding sub-item #22, the landlord has claimed \$10.00 for 30 minutes of cleaning of the microwave. The tenant stated that the microwave did not belong to her, to which the landlord replied that she still was required to clean the microwave. The tenant testified that the microwave was clean at the end of the tenancy. The landlord referred to two photos in evidence, which the landlord stated shows a microwave that was not cleaned.

Regarding sub-item #23, the landlord has claimed \$40.00 for two hours to clean the oven three times, plus the oven door, oven racks, stove top. As explained above, the landlord testified that she scrubbed the stove burners multiple times but ended up having to purchase new burners as she could not get the burners clean. The tenant stated that the burners were like that when she moved in. The landlord indicated that this portion of her claim relates to the labour required to clean the rest of the oven, including the oven racks and stove top. The landlord referred to three photos submitted in evidence.

Regarding sub-item #24, the landlord has claimed \$10.00 for 30 minutes to wipe the granite countertops, sink, tiles, electrical outlets, and light switches which were dirty. The landlord referred to four photos in evidence, in support of this portion of her claim.

Regarding sub-item #25, the landlord has claimed \$10.00 for 30 minutes to clean inside, wipe outside, and remove items from cupboards and drawers. The landlord referred to eleven photos submitted in evidence to support this portion of her claim. The tenant responded to one photo by stating that those items belonged to the landlord and were therefore not removed, which the landlord disputed.

Regarding sub-item #26, the landlord has claimed for \$10.00 for 30 minutes to clean and empty the rental unit refrigerator and freezer. The landlord referred to three photos submitted in evidence.

Regarding sub-item #27, the landlord has claimed for \$20.00 for one hour to remove television cables and repair screw holes on baseboards. The landlord referred to three photos submitted in evidence. The tenant claims that the television cables were there when she moved in, which the landlord disputed. The landlord confirmed that there were no before photos and these items are not listed on the condition inspection report. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #28, the landlord has claimed \$5.00 for 15 minutes to re-install a shelving unit. The landlord confirmed that there is no photo showing a before photo of the shelving unit being installed in the rental unit at the start of the tenancy. The tenant claims that the shelving unit was not installed as claimed by the landlord. This item was not listed on the condition inspection report. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #29, the landlord has claimed for \$20.00 for one hour to install the weather-stripping referred to in sub-item 9. The landlord clarified that this portion of her claim is only for the labour to install the weather-stripping and not the cost of purchasing the weather-stripping, which was listed in sub-item 9. The condition inspection report lists that the weather stripping was damaged at the end of the tenancy.

Regarding sub-item #30, the landlord has claimed \$30.00 for 90 minutes to transport a pressure washer from the landlord's house to the rental unit. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #31, the landlord has claimed \$50.00 for a service call but failed to submit a copy of a receipt to support this portion of her claim. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #32, the landlord has claimed \$5.00 for 15 minutes to clean glass on the French doors of the rental unit between the kitchen and the living room. The landlord confirmed that there was no photo submitted; however, the condition inspection

report indicates that the mirrors and windows were dirty and not wiped. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Regarding sub-item #33, the landlord has claimed \$20.00 for one hour to clean and disinfect the countertop, mirror, faucets, bathtub, toilet, and plug holes in the bathtub wall. The landlord referred to six photos submitted in evidence in support of this portion of her claim.

Regarding sub-item #34, the landlord has claimed \$10.00 for 30 minutes to remove items from the cupboards left behind by the tenant. The landlord referred to three photos submitted in evidence to support this portion of her claim.

Regarding sub-item #35, the landlord has claimed \$80.00 for four hours to transport the lawn mower from landlord's house in North Vancouver and to cut and weed the front and back lawn, and bushes. No photos were referred to by the landlord to support this portion of her claim, and no specific agreement was provided regarding lawn cutting, weeding or bush/shrub maintenance. This portion of the landlord's claim was dismissed during the hearing, the reason for which will be described later in this Decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

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

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding item #1, as the tenant has failed to provide evidence that she paid August 2013 rent, I find the tenant breached section 26 of the *Act* which states that a tenant must pay rent under the tenancy agreement whether or not the landlord complies with the *Act*. As a result, I find the landlord has met the burden of proof and **I grant** the landlord **\$987.50** for half of August 2013 rent as claimed by the landlord.

Regarding item #2, as the tenant failed to provide evidence that rent for September 2013 was paid to the landlord, I find the landlord has met the burden of proof and **I grant** the landlord **\$1,970.00** for September 2013 rent as claimed by the landlord as the tenant remained in the rental unit until September 23, 2013.

Regarding items #3 and #4, the landlord testified that she suffered a loss of October 2013 rent revenue in the amount of \$1,970.00 and loss of half of November 2013 rent in the amount of \$985.00, as the landlord was not able to secure new renters until November 15, 2013. The tenant breached the fixed term tenancy by failing to pay rent for August 2013 resulting in the landlord having to advertise the rental unit and attempt to minimize their loss. I find that the landlord has provided sufficient evidence to support that she complied with section 7 of the *Act*, and did what was reasonable under the *Act* to secure new renters effective November 15, 2013. The landlord posted the rental unit ad on a regular basis and reduced the rent to attract a new renter for the rental unit. Therefore, I find the landlord has met the burden of proof and **I grant** the landlord **\$1,970.00** for loss of October 2013 rent revenue and **\$985.00** for loss of November 2013 rent revenue as claimed.

Regarding item #5, and consistent with my finding regarding items #3 and #4 above, I find the landlord has met the burden of proof and is entitled under the *Act* to the rent differential from November 2013 to the end of the fixed term tenancy, May 15, 2014. Therefore, **I grant** the landlord the amount of **\$120.00** as claimed. The landlord reduced rent by \$20.00 for six months to attract a new renter, which resulted in a new renter agreeing to rent the rental unit effective November 15, 2013.

Regarding item #6, I find that section 10 of the tenancy agreement is clearly written and supports that the landlord is entitled to two \$25.00 late payment fees for August 2013 rent that was not paid and is therefore late, and September 2013 rent that was not paid

and is therefore late. Therefore, I find the landlord has met the burden of proof and I **grant** the landlord **\$50.00** for two \$25.00 late fees as claimed.

Regarding item #7, the landlord has claimed \$320.49 for unpaid utilities from May 15, 2013 to September 23, 2013 when the tenant vacated the rental unit. Although the tenant agrees to owing \$20.49 I do not find the tenant or the tenant's witness, J.F. to be credible as I find it more likely than not that a tenant would not pay for utilities in advance, and without a utility bill being presented. Furthermore, I find that by witness J.F. indicating that her "mother told her that", raises a concern that the witness was coached or prompted by her mother regarding her testimony prior to the hearing. Therefore, I prefer the testimony of the landlord and the landlord's witness, K.S. that \$320.49 for utilities was not paid by the tenant at any time and remains owing by the tenant. As the amount of the utilities, \$320.49 was never in dispute, I find the landlord has met the burden of proof and I **grant** the landlord **\$320.49** for unpaid utilities as claimed.

Regarding item #8, there were a total of 39 sub-items in relation to damages to the rental unit and for cleaning related costs. My analysis will address those sub-items that were not resolved by way of a mutually settled agreement as described above. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[my emphasis added]

Regarding sub-item #1, I find the landlord has provided sufficient evidence to support this portion of her claim and that the tenant breached section 37 of the *Act*. Therefore, I **grant** the landlord the amount of **\$280.00** as claimed for this portion of the landlord's claim.

Regarding sub-item #2, as the landlord's application has merit, I find the landlord has is entitled to recover the cost of the filing fee. Therefore, **I grant** the landlord the amount of **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Regarding sub-item #4, I find that the landlord's evidence is contradictory as the receipt submitted in evidence indicates there was no leak and then says the leak was caused by the user. As a result, **I dismiss** this portion of the landlord's claim due to contradictory evidence, **without leave to reapply**.

Regarding sub-items #5 to #10 inclusive, Residential Tenancy Branch Policy Guideline #1 indicates that the tenant is responsible to replace light bulbs in his or her premises during the tenancy. I find the landlord has provided sufficient evidence to support these portions of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord the total amount of **\$369.52** as claimed for sub-items #4 to #10.

Regarding sub-item #11, **I dismiss** this portion of the landlord's claim as the landlord has not met the burden of proof. I find that it is reasonable to expect that the landlord would have a flashlight when conducting business as a landlord and that the tenant is not responsible for such an expense.

Regarding sub-items #12, I find the landlord has provided sufficient evidence to support this portion of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$69.07** as claimed for this portion of her claim.

Regarding sub-item #13, **I dismiss** this portion of the landlord's claim as the landlord has not met the burden of proof. I find that conducting credit checks and obtaining rental forms are an expense that the landlord can reasonably expect when conducting business as a landlord and that the tenant is not responsible for such expenses.

Regarding sub-item #14, the landlord failed to provide a receipt to support this portion of her claim. As a result, I find the landlord failed to meet part three of the four-part test described above. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

Regarding sub-item #15, as the tenant confirmed that she changed the rental unit locks without permission, I find the landlord has met the burden of proof as the tenant had no right under the *Act* to change the rental unit locks and has provided sufficient evidence to support this portion of her claim that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$120.75** as claimed.

Regarding sub-item #16, I accept that the tenant failed to return all of the rental unit keys and that regardless of any threats, which I make no finding on, the landlord had to rekey the rental unit locks as a result, and suffered a financial loss. I find the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$152.25** as claimed.

Regarding sub-items #17 to #26 inclusive, I find the landlord has provided sufficient evidence to support these portions of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord the total amount of **\$320.00** as claimed for sub-items #17 to #26.

Regarding sub-item #27, the landlord failed to provide any photos of the rental unit supporting that the television cables were not there at the start of the tenancy, and the television cables are not listed on the outgoing condition inspection report. In addition the tenant stated that the television cables were there when she moved in. As a result, I find the landlord failed to meet part one and part two of the four-part test described above. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

Regarding sub-item #28, the landlord failed to provide any photos of the rental unit supporting that the shelving unit was installed at the start of the tenancy, and the shelving unit was not listed on the outgoing condition inspection report. In addition the tenant stated that the shelving unit was not installed when she moved in. As a result, I find the landlord failed to meet part one and part two of the four-part test described above. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

Regarding sub-item #29, I find the landlord has provided sufficient evidence to support this portion of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$20.00** as claimed for this portion of her claim.

Regarding sub-item #30, **I dismiss** this portion of the landlord's claim as the landlord has not met the burden of proof. I find that it is reasonable to expect that the landlord may need to transport a pressure washer as part of ongoing maintenance of a rental unit from time to time and that the transport time is not the responsibility of the tenant.

Regarding sub-item #31, the landlord failed to provide a receipt to support this portion of her claim. As a result, I find the landlord failed to meet part three of the four-part test described above. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

Regarding sub-item #32, **I dismiss** this portion of the landlord's claim as the landlord has not met the burden of proof. The landlord has failed to prove part one and part two of the four-part test described above.

Regarding sub-item #33, I find the landlord has provided sufficient evidence to support this portion of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$20.00** as claimed for this portion of her claim.

Regarding sub-item #34, I find the landlord has provided sufficient evidence to support this portion of her claim and that the tenant breached section 37 of the *Act*. Therefore, **I grant** the landlord **\$10.00** as claimed for this portion of her claim.

Regarding sub-item #35, **I dismiss** this portion of the landlord's claim as the landlord has not met the burden of proof. The landlord has failed to prove part one and part two of the four-part test described above.

Given the above, and taking into account the amounts agreed upon between the parties by way of a mutually settled agreement, **I find** the landlord has established a monetary claim in the total amount of **\$8,195.99**.

The landlord continues to hold the tenant's security deposit of \$987.50 and pet damage deposit of \$987.50, which has accrued \$0.00 in interest since the start of the tenancy. **I ORDER** the landlord to retain the tenant's combined security deposit and pet damage deposit which total **\$1,975.00** in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$6,220.99**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As a result of the above, and pursuant to section 82(3) of the *Act*, **I set aside** the original Decision and Monetary Order dated December 3, 2013, with this Review Hearing Decision.

Conclusion

The landlord's application has merit. The landlord has established a monetary claim in the total amount of \$8,195.99. The landlord has been ordered to retain the tenant's combined security deposit and pet damage deposit which total \$1,975.00 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$6,220.99. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The original Decision and Monetary Order dated December 3, 2013, have been set aside pursuant to section 82(3) of the *Act*, and this Review Hearing Decision now stands as the Decision for this matter.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 7, 2014

Residential Tenancy Branch

