Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. This hearing was held over two dates due to the considerable submissions of the parties.

The landlord had attempted to amend her monetary claim by way of an evidence submission only. While she did not amend the application in accordance with the Rules of Procedure, the tenants indicated that they were prepared to respond to the additional claim against them. Accordingly, I permitted the landlord to amend her claim and I have dealt with the amended claim by way of this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed, as amended?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started August 15, 2013 and ended on August 31, 2014. The tenants paid a security deposit of $725.00 and where required to pay rent of $1,450.00 on the 1st day of every month. The parties participated in a move-in inspection together and the landlord provided the tenants with a move-in inspection report.

A move-out inspection report was prepared by the landlord on August 31, 2014 and the landlord provided a copy of it to the tenants. The landlord asserted that the tenants did not participate in the move-out inspection; however, the parties were in dispute as to whether the landlord had set a date and time for the move-out inspection prior to showing up at the unit on the last day of tenancy. At the first hearing, the landlord stated that she posted a note on the tenants' door to advise them of the date and time for the move-out inspection. The tenants responded by stating

the note was a reminder as to the date and time they were expected to vacate and not an indication that the move-out inspection would take place at that time. The tenants pointed to copies of notes they had included in the tenant's evidence package. At the reconvened hearing, the landlord claimed to have found a copy of a note she posted on the tenants' door advising of the date and time for the move-out inspection. CW read from the note during the hearing. The tenants stated that they did not receive that note.

The landlord also stated that as she was conducting the move-out inspection she verbally requested the tenants participate on three occasions but that the tenants would not. The tenants, however, stated that they tried following the landlord at first but she was being unreasonable so they stopped and they reviewed the move-out inspection report afterward and inspected many of the items the landlord claimed were deficient with the landlord. For example: the landlord and the male tenant went to the bathroom to view the cleanliness of the toilet. Another example given was the landlord pointed out the blinds were not sufficiently clean and the female tenant responded by trying to clean them further.

The tenants acknowledged that they did not sign the move-out inspection report and explained that this was because they did not agree with the landlord's assessment. The tenants were unaware that they could sign the report and indicate they did not agree with it. The tenants explained that they were frustrated with the landlord's unreasonable expectations and after they cleaned the items she claimed were deficient the landlord would not change the report.

The tenants provided the landlord with their forwarding address by way of a letter dated September 10, 2014 and the landlord filed her Application within 15 days as required under the Act.

The landlord continues to hold the tenant's security deposit and seeks compensation totalling $3,006.92 from the tenants. I was presented with a significant quantity of submissions from the parties; however, with a view to brevity in writing this decision I have summarized the landlord's reasons for seeking compensation and the tenants' responses.

Carpet cleaning – $261.45

The landlord seeks to recover $261.45 in carpet cleaning costs from the tenants. The landlord submitted that the tenants were required to professionally clean the carpets as reflected in the addendum to the tenancy agreement.

The landlord stated that the tenants had intended to use a company that she could not find in the phone book and was not listed with the Better Business Bureau. The landlord stated that she would only permit the tenants to use a carpet cleaner that would provide a written guarantee and had a truck mounted cleaning machine. The landlord was of the position that failure to meet these criteria may result in damage to the carpeting.

The tenants testified that the landlord requested the name of the carpet cleaning company they intended to use and they provided it to her. The landlord responded by informing them their choice was inadequate and prohibited them from using their chosen carpet cleaner. The tenants were of the position that they would have cleaned the carpets had it not been for the landlord's interference with their choice and the tenants are not obligated to pay for the carpet cleaners of the landlord's choosing.

The landlord theorized that the carpet cleaners the tenants intended to use were related to the male tenant and the company he worked for. The male tenant denied this allegation and stated that the company they chose for carpet cleaning is unrelated to him or the company he works for. The female tenant stated that she found the carpet cleaners by way of the on-line yellow pages. She testified that she had been provided an estimate of $119.00 plus tax to clean the carpets, apply scotch-guarding, and clean the drapery.

Replace stove-top – $186.91

The landlord submitted that the tenants chipped the stove top during their tenancy and the landlord replaced the stove-top at a cost of $186.91. The landlord testified that the stove-top was new at the start of the tenancy.

The tenants acknowledged responsibility for a small chip at the edge of the stove top. However, the tenants were of the position that it was very small and that it is unreasonable to expect them to pay for an entirely new stove top. The tenants submitted that the small chip could have been covered with enamel paint; however, the landlord would not accept that solution.

Driveway cleaning – $88.06

The landlord submitted that the tenants stored an uninsured and inoperable car on the driveway contrary to the addendum which only permits "parking" of a vehicle on the driveway. The landlord submitted that parking means a person will regularly move the car in and out of the driveway under its own power.

The landlord submitted that driveway cleaning was planned for August 2014. The landlord posted a note on the tenants' door asking the tenants to remove the car but this was not done. As a result, a second driveway cleaning had to be arranged for early September 2014. The landlord seeks compensation of two hours at $20.00 per hour plus $38.06 for cleaning solution and $10.00 for pressure washer fuel. The landlord submitted that as a result of "storing" the car on the driveway since January 2014 the algae grew quite thick which required more cleaning solution and more time.

The tenants submitted that algae grew on the driveway throughout the fall and winter and it is not their obligation to pay for removal of algae. The tenants submitted that even at the end of

the tenancy algae appeared on the driveway around the landlord's car and the area under the tenant's uninsured car looked no different. The tenant claimed that he offered to move his car as he was aware the landlord wanted to clean the driveway as it was on wheels.

The landlord questioned where the car could have been moved to since it was uninsured and inoperable and it could not be put on the street. Further, it was not feasible to move the inoperable car from one spot in the driveway to another.

Cleaning – $300.00

The landlord submitted that the tenants left the rental unit "surface clean" but not thoroughly clean upon close inspection. The landlord submitted that she paid cleaning ladies for six hours each for a total cost of $240.00 to clean the rental unit as it was "filthy" in some areas. In particular: inside cupboard doors, shelves, the tub, under the stove elements, window sills, the fridge, and there was feces on the bathroom floor. Also included in this claim was a further $60.00 for 3 hours spent vacuuming the carpets after they were steam cleaned because of an excessive amount of dust and hair that accumulated.

The landlord testified that the carpeting was 8 – 9 years old and that the excessive amount of dust and hair is attributable to the tenants having an inordinate amount of boxes stored in the rental unit because they were "hoarders".

The tenants were of the position that they left the rental unit very clean and that they exceeded their obligation to leave the rental unit reasonably clean. The tenants attribute the landlord's claims to the landlord having unreasonable expectations and propensity to describe everything as being "filthy". The tenants stated that the landlord pointed out some areas that required additional cleaning, which they cleaned, but the landlord would not change the move-out inspection report. For example: the landlord removed the toilet seat and lid from the toilet and there was some additional cleaning required under the clamps, which the tenants did. The tenants also cleaned the side of the stove after it was pulled away from the cupboards.

The tenants denied that fecal matter was on the bathroom floor.

The tenants did acknowledge that there were a number of boxes stored in the dining room for a number of months as they sorted out their possessions from their two households that had just merged into one. The tenants saw some fibres in the carpet around a hole but that was it. The tenants did not have a pet in the house; only themselves and a young child.

Kitchen blind replacement – $61.59

The landlord submitted that the tenant bent the blind in the kitchen during her vigorous cleaning efforts. The blinds were horizontal metal blinds, approximately 3 years old at the start of the tenancy, and the landlord replaced it with a new one at a cost of $61.59.

The tenants stated that they did not recall seeing bent slats in the kitchen blind although the tenant acknowledged rigorously cleaning it as the landlord had complained it was still dirty. The tenants submitted that the bedroom blind was bent before their tenancy commenced and was not fixed during their tenancy. The tenants suggested the blind replacement could have been for that window.

The landlord acknowledged the bedroom blind was bent before the tenancy began but that the bedroom window and the kitchen window were very different in size. The landlord described the kitchen window as a picture window. The tenants stated that the windows were approximately the same size.

Drapery cleaning – $100.00

The landlord submitted that the tenants were required to clean the draperies at the end of the tenancy pursuant to the addendum and they failed to do so. The landlord did it herself which she described as being a lot of work and took several hours although she limited her claim to $100.00.

The tenants submitted that the draperies were visible clean but that the carpet cleaning company was going to clean the draperies and since the landlord prohibited the tenants from using that carpet cleaning company the blinds were not cleaned.

Repair Labour – $175.00

The landlord had CW perform the labour to make the necessary repairs that are claimed against the tenants. CW estimated that he spent five hours to: fill holes in the walls where artwork and a dartboard were hung. CW also repaired a crack in the master bedroom door jamb. CW also picked up and installed the new range top, trash bag holder and microwave roller.

The male tenant submitted that he is a carpenter and he filled all the holes in the walls before the tenancy ended, including the holes around the dartboard. The tenants stated they were unaware of a crack in the master bedroom door jamb and pointed out no pictures of such a crack were provided. The tenants were of the position that replacement of the stove top was unnecessary and the chip could have been covered with paint. The tenants also denied responsibility for replacement of the trash bag holder and microwave roller.

Microwave roller – $13.66

The landlord submitted that the plastic roller under the microwave plate was broken at the end of the tenancy and she seeks to have the tenants pay for a new one. At the first hearing the landlord testified the microwave was a couple of years old at the start of the tenancy and during the second hearing she stated that it was new at the start of the hearing. CW corrected the landlord by confirming that it was the stove that was new and the microwave was a couple of years old.

The tenants submitted that they first noticed the broken plastic roller when they took it out of the microwave the first time they cleaned under the plate in the microwave and they suspect it was broken before their tenancy commenced. The tenants also stated that when they did the move-in inspection they did not open the microwave and remove the glass plate to inspect the roller. Since the roller still worked they did not report it to the landlord.

Trash bag holder and light bulbs – $21.27

The landlord submitted that the trash bag holder was too dirty to clean so the landlord replaced it with a new one. The landlord withdrew the claim to recover the cost of a light bulb.

The tenants stated that they removed the trash bag holder from the cupboard door as they had a trash can. The bag holder was placed on the floor of the cupboard where it remained at the end of the tenancy.

Late fees – $300.00

The landlord requested late fees of $50.00 for each late payment during the tenancy. The landlord pointed to the addendum as the basis for this claim.

I noted that the term in the addendum that provides for late fees was non-compliant with the Act and Regulations and I dismissed this claim without seeking a response from the tenants.

Damaged kitchen flooring – $1,500.00

The landlord submitted that damage to the flooring was not noticed at the time of the move-out inspection even though the landlord and CW inspected it by looking down at it. Rather, CW claims that he noticed the tiles were not sitting flat a few weeks after the tenancy ended when he went in to repair plumbing in the kitchen.

The flooring was described as being a commercial grade tiles with tongue and groove connection. The outer surface was a very durable arborite type finish with a 25 year guarantee but the inner material was more like a fibre composite. CW testified that the “tongues” were broken.

The landlord and CW attributed the damage to the tenants jumping on the floor with two men one night shortly before the tenancy ended. The landlord described how the light fixture in the bedroom below the kitchen was swinging and the noise was so loud CW could hear it on the other end of the telephone during a phone call with the landlord.

CW testified that he had installed the flooring himself approximately 10 years prior. The flooring cost approximately $8 per sq. ft. and the kitchen flooring is approximately 100 square feet in area. CW stated that the same product is no longer available.

The tenants submitted that the female tenant and her six year old daughter were dancing to a song in the kitchen as they were ecstatic that the tenancy was about to end given the poor tenancy relationship between the parties. That night there had been another couple, a male and female, over visiting them, not two males. The tenants denied that four adults were jumping on the kitchen floor.

Analysis

Claims for damages or loss

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

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

The burden of proof is based on the balance of probabilities. It is also important to note that 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.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements.*

Condition inspection reports

Residential Tenancy Regulations (the Regulations) provide that a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of a rental unit in a dispute resolution proceeding unless there is a preponderance of evidence to the contrary.

The male tenant signed the move-in inspection report indicating that he agreed with the condition as described by the landlord on the report. I was not provided any evidence to suggest it was not prepared in accordance with the Regulations. Therefore, I have accepted that the move-in inspection report accurately reflects the condition of the rental unit at that time and is the best evidence of the unit at the start of the tenancy.

The Act provides that if the landlord offers the tenant two opportunities to participate in a move-out inspection and a tenant fails to participate on either occasion, the tenant's right to return of the security deposit is extinguished.

The landlord asserted, in her written submissions, that the tenants extinguished their right to return of the security deposit because they did not participate in the move-out inspection. In order to succeed in this position, the landlord would have to prove that she met her obligations with respect to two proposals of a date and time for a move-out inspection.

The Regulations provide for the manner in which the move-out inspection is to be scheduled. Below, I have reproduced the relevant sections.

Scheduling of the inspection

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

[reproduced as written with my emphasis added]

The landlord claimed that she made the offer to participate in a move-out inspection by way of a note posted on the tenants' door in August 2014. The tenants denied receiving such a note. Both parties provided copies of notes the landlord served upon the tenants in their respective evidence packages and upon review of the notes before me, I find the landlord merely reminded the tenants of their obligation to vacate the rental unit by a certain date and time. The landlord acknowledged that she did not include a copy of the relevant note to which she relies upon in her evidence package and she did not refer to such a note in her written submissions. Rather, I note that the landlord did make a written submission in filing her Application where she states: "[CW] was with me during the end of tenancy inspection. He witnessed me offering the tenant several opportunities to participate in the inspection."

Where a party alleges that they have served the other party with a document, the party giving the document has the burden to prove it was served. Given the landlord failed to include a copy of the alleged note in her evidence package; the tenants' denial of receiving such a note, and the landlord's written submission that the offer to participate in the move-out inspection was made when she and CW attended the unit when the tenancy was over; I find I am not satisfied by the landlord's evidence that the tenants were served with the note that purportedly set up the date and time for the move-out inspection. Nor, did the landlord serve the tenants with a second opportunity in the approved form which is available from the Residential Tenancy Branch website and is entitled "*Notice of Final Opportunity to Schedule a Condition Inspection*".

Although I was not satisfied that the landlord served the tenants with a note to set up the date and time for the move-out inspection or a *Notice of Final Opportunity to Schedule a Condition Inspection*, it was undisputed that the landlord invited the tenants to participate in the move-out inspection while they were still at the rental unit. Based upon what I heard, I am satisfied the tenants did participate to some degree at the start of the inspection and after the landlord finished her inspection when deficiencies were inspected together and the tenants made further cleaning efforts. Therefore, I am inclined to accept the tenants did participate in the move-out inspection even if it had not been properly pre-arranged by the landlord and I reject the

landlord's position that the tenants extinguished their right to the security deposit for this reason and due to her failing to schedule a move-out inspection in accordance with the Regulations.

It was clear to me that the tenants disagreed with the landlord's assessment of the condition of the rental unit at the end of the tenancy. Therefore, I considered the move-out inspection report as only one form of evidence as to the condition of the rental unit at the end of the tenancy and I have placed more evidentiary weight on other evidence such as photographs and the parties' verbal testimony.

Terms of a tenancy agreement

The Act places the burden to record the tenancy agreement in writing, including certain required information and terms, upon the landlord. The Residential Tenancy Branch provides a tenancy agreement that is considered compliant with the requirements of the Act for landlords to use, although its use is not mandatory. The landlord utilized this form in creating the tenancy agreement but also added additional terms that appear in an addendum.

Additional terms may be agreed upon by the parties; however, section 6 of the Act provides that terms are not enforceable if:

> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In interpreting contracts, where there is any ambiguity in the contractual provision it will be interpreted in the manner least favourable to the maker of the contract. Accordingly, for a term of tenancy to be enforceable the term must: not be inconsistent with the Act or regulations; but, also be clearly expressed so that the other party understands their obligation without additional explanation. If there is any ambiguity in reading the term as it is written, the term will be interpreted in a manner that is more beneficial to the tenant and least beneficial to the landlord as the landlord is the maker of the contract.

Based upon everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Carpet cleaning

The Act requires that a tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit during the tenancy and at the end of the tenancy the tenant is required to leave the rental unit "reasonably clean". The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a

condition that does not comply with that standard. The tenant is not responsible for cleaning to bring the premises to a higher standard than that set out in the Act.

Residential Tenancy Policy Guideline 1 provides that where a tenancy is longer than one year the tenant is expected to have the carpets steam cleaned or shampood to meet the tenant's statutory obligation.

In this case, I find the tenants were obligated to have the carpets steam cleaned or shampood since they occupied the rental unit more than one year. However, the landlord's assertion that the tenants had to use a professional carpet cleaner that may be found by a search of the Better Business Bureau or the internet, and provide a written guarantee, and use only a truck mounted cleaning system goes beyond the tenants' statutory obligation. Therefore, I find that in prohibiting the tenants from using the carpet cleaning company of their choice, the landlord interfered with the tenants' ability to fulfill their statutory obligation.

Despite the foregoing, the tenants submitted that they were prepared to pay $119.00 for carpet cleaning and I award the landlord that amount for carpet cleaning. The landlord shall bear the additional costs she incurred in imposing additional criteria in selecting a carpet cleaner.

Stove-top damage

It was undisputed that the stove-top was chipped during the tenancy and I am satisfied that the chip is greater than wear and tear and constitutes damage. At issue is the amount claimed by the landlord for the loss associated to the damage.

The landlord provided photographs of the stove taken from the right hand side and I see a chip on the edge of the stove-top. The tenants included four photographs where the stove is visible, including: one looking at the stove from the left, another looking at the stove straight on; and, two from an angle. I do not see a chip in the photographs taken from the left or straight on and the two photographs taken from an angle show that a small chip is visible. Based upon all of the photographs before me, I accept that the chip is relatively small and I note that it is in a location that does interfere with its function. Taking this into consideration, I find the landlord's decision to replace the stove top for aesthetic reasons, while within her right to do so, to claim the cost for doing so is unreasonable and excessive in comparison to the damage. Therefore, in recognition of the small chip caused by the tenants, that I accept to have likely diminished the value of the stove, I find it more reasonable and appropriate to award the landlord a nominal award of $40.00.

Driveway cleaning

The landlord is claiming compensation associated to removing algae from the driveway. Algae are naturally growing organisms where conditions are wet and out of direct sunlight for much of

the time. Ordinarily, landlords would be responsible for cleaning algae from the common areas, such as driveways.

The landlord points to the addendum in finding the tenants violated their tenancy agreement. The addendum includes a term that provides "The Tenant(s) is to use the left side of the main driveway for parking of up to two vehicles, and are responsible for cleanup of any oil or gasoline spills or leakage…"

The landlord made submissions that towing an inoperable and uninsured vehicle on to the driveway is not parking but is storage and that the tenants used the driveway for storage which was not permitted in the addendum. I note; however, that the addendum does not preclude them from storing a vehicle on the property either.

In interpreting contracts, words are to be given their ordinary meaning. With respect to the word or "parking", various dictionaries provide meanings of "park", as it relates to a vehicle as: "a space where vehicles, especially automobiles, may be assembled or stationed"; and, "the standing of a vehicle, whether occupied or not".

I accept that the act of keeping the vehicle in one place for a long period of time may also meet the definition of storage, as asserted by the landlord. However, I find the placement of the tenant's vehicle on the driveway does meet the ordinary meaning of parking and I conclude the tenants did not violate the term of their tenancy agreement.

Under the Act, a landlord has the right and obligation to maintain common areas. Where common areas hold tenant's personal possessions it is reasonable that the landlord require the tenant to move their property so as to permit cleaning of the area. The landlord presented testimony that the tenants were asked to move the vehicle in August 2014 and they did not do so. Although the tenant stated that he offered to move the vehicle, in any event, I find the loss associated with the vehicle not being moved in August 2014 to be unclear.

In their verbal submissions, the landlord and CW stated that two hours and more cleaning solution was needed to clean the area under the tenant's vehicle due to the accumulation of algae form January 2014 onwards. However, I was not provided evidence the landlord communicated her intention to clean the driveway other than in August 2014. Therefore, I find that the removal of any accumulation of algae from January 2014 to August 2014 would have been accomplished at the expense of the landlord in any event.

Since algae does not flourish in hot and dry conditions, I find it unlikely the algae grew significantly between August 2014 and September 2, 2014 when the area was finally cleaned. Therefore, I find the landlord did not establish that she suffered a loss associated to the tenant's violation of the Act, regulations or tenancy agreement and I dismiss this portion of the landlord's claim.

Cleaning

Both parties provided me with photographs in an effort to establish the condition of the rental unit at the end of the tenancy. The tenants' photographs depict a very clean rental unit in my opinion. The landlord provided photographs that show more cleaning was required to: the side of the stove and around the soap dispenser in the washing machine. The tenants asserted that the tenants performed additional cleaning but that the landlord would not change the move-out inspection report. The landlord did not deny their assertion. Further, the tenants provided a photograph of the side of the stove after additional cleaning was performed and the food stains are gone. Therefore, I find it likely that the landlord's photographs were taken before the tenants made additional cleaning efforts.

The landlord had asserted that other areas required cleaning, but those assertions were disputed by the tenants and I find the landlord's positon was not supported by other evidence, such as photographs. Nor, does the cleaner's invoice indicate what was cleaned specifically and only notes that a "move-out cleaning" was performed.

The landlord also submitted that the claim included three hours of vacuuming which was needed after the carpets were professionally cleaned. However, the tenants' photographs show carpeting that appears to have been recently vacuumed and void of accumulations of dust and hair. The landlords photographs of the carpeting do not depict accumulations of hair and dust either or the contents of the vacuum bag. Therefore, I find I am uncertain as to the reason three hours was needed to vacuum the carpets after they were cleaned and I question whether this was attributable to the age or quality of the carpets, the cleaning technique, the time between cleanings, or other factors.

Finally, I note that the landlord described the results of the tenants' cleaning efforts as being "surface clean" and I noted that she had a penchant for describing everything that needed additional cleaning as being "filthy". I am inclined to find that the landlord's expectations exceed the tenants' statutory obligation to leave the unit "reasonably clean".

Considering all of the above, I find the landlord did not establish that the tenants failed to leave the rental unit "reasonably clean" and that the landlord expended $300.00 to bring the rental unit up to a standard of "reasonably clean". Therefore, I dismiss the landlord's claim for cleaning costs.

Kitchen blind

The landlord asserted that the tenant damaged the metal slats in the kitchen blind while vigorously cleaning it. The tenant acknowledged that she vigorously cleaned the blinds; however, the tenants pointed out that the bedroom blind was bent throughout their tenancy.

The landlord submitted that the blinds were of different sizes and that she is only claiming for the larger kitchen blind.

I note that the receipt for the replaced blind is listed as being 72x48 on the receipt which is 6' x 4'. While the tenants' photographs do not show the bedroom window in its entirety, I find that the bedroom blind appears to be smaller than 6' x 4'. Also included in the tenants' photographs is a picture of a woman at the kitchen sink with the kitchen window behind her. The kitchen window does appear a lot wider than the bedroom window. Therefore, I am inclined to accept that the damage for which the landlord seeks compensation relates to the larger kitchen blind.

Having heard from the landlord that the blinds were three years old at the start of the tenancy, I find the blinds were four years old at the end of the tenancy and the landlord's claim for replacement cost is to be reduced by depreciation of four years. Residential Tenancy Policy Guideline 40 provides that blinds have an average useful life of 10 years. Therefore, I award the landlord $36.94 [calculated as $61.57 x 6/10 years remaining useful life].

Drapery cleaning

The addendum provides that the tenants would have the draperies professionally cleaned at the end of the tenancy. It was undisputed that the tenants did not have the drapery professionally cleaned. Interestingly, the landlord did not have the draperies professionally cleaned either as she testified that she washed them herself.

Nevertheless, Residential Tenancy Policy Guideline 1 provides that tenants are responsible for cleaning of internal window coverings during the tenancy and at the end. This may or may not require the use of professional cleaners.

The tenants provided photographs that included images of the drapery; however, they are too distant to determine whether they are clean or not. In any event, cleaning would be required to remove dust and odors.

The tenants testified that they did not have the drapery cleaned as they expected this of the carpet cleaners they intended to use had it not been for the landlord's interference. However, I find it highly unlikely that a quote of $119 would include carpet cleaning, scotch guarding and drapery cleaning as such a cost would be unusually low.

I find the landlord's estimate of five hours to wash, dry and iron all of the draperies to be reasonable and I grant her request to recover $100.00 from the tenants for drapery cleaning.

Microwave roller

The landlord asserted that the tenants broke the microwave roller during the tenancy. The move-in inspection report makes no mention of a damaged roller; however, the tenants claim

they did not remove the glass plate and inspect the roller during the move-in inspection and the landlord did not contradict that statement. I find the tenants provided a reasonably probable explanation that the roller was likely broken before they moved in. In any event, given the microwave was a few years old, the roller is plastic and relatively inexpensive, after allowing for depreciation, I note that the landlord's loss would have been very small had the landlord succeeded in establishing the tenant's broke the microwave roller. Therefore, I have not given any further consideration to this claim and it is dismissed.

Trash bag holder

It was undisputed that a trash bag holder was left for the tenants to use during their tenancy and they removed it from the cupboard door and left it in the cupboard at the end of the tenancy. The landlord seeks to recover the cost to replace the trash bag holder from the tenants on the basis it was too dirty to clean. I find the landlord did not support that contention by way of a photograph and I find the landlord did not provide sufficient information for me to accept that it could be so dirty that it could not be cleaned. Therefore, I make no award for the landlord's decision to purchase a new trash bag holder.

Repair labour

The landlord submitted that CW spent five hours to repair wall damage, a cracked door jamb, replace the stove top, replace the trash bag holder, replace the microwave roller and replace the kitchen blind. CW prepared an "invoice" indicating his labour is worth $35.00 per hour.

The tenants submitted that holes in the walls were patched and they denied any knowledge of a cracked door jamb. The landlord did not provide any photographs evidence to support her contentions of wall damage and a cracked door jamb for my review. Therefore, I am not persuaded by the disputed evidence that the tenants are responsible for such damage.

With respect to the damaged stove top, I have already made findings and an award to the landlord for diminished value of this item and I do not further consider the labour associated with the landlord's decision to replace the stove top.

With respect to the trash bag holder and the microwave roller, I have dismissed the landlord's claims for these items. Accordingly, I dismiss the landlord's request to recover the labour associated to replacing these items.

I had awarded the landlord recovery of the depreciated value of the kitchen blind. Therefore, I find it appropriate to award the landlord recovery of the labour associated with its replacement. Unfortunately, CW did not provide a breakdown of his time for each item and I estimate the labour for blind replacement to be 1 hour. Factoring in depreciation of the damaged blind for the reasons indicated under "Kitchen Blind", I award the landlord $21.00 [calculated as $35.00 x 6/10].

In light of the above, I limit the landlord's award for repair labour to $21.00 and I dismiss the remainder.

Late fees

The landlord submitted that the tenants made payments late on six occasions. The landlord pointed to the addendum as the basis for seeking late fees of $50.00 per occurrence. The addendum does provide for the payment of late fees in the amount of $50.00; however, I find the term conflicts with the Regulations.

Section 7 of the Regulations provide that a landlord may charge a tenant a late fee for late payment of rent provided the tenancy agreement provides for such a term and the amount does not exceed $25.00 per occurrence.

As I explained previously in this decision, a term in a tenancy agreement is not enforceable if it conflicts with the Act or Regulations. Since the term in the addendum that provides for late fees violates the Regulations it is not enforceable and I make no award for late fees.

Damaged kitchen flooring

The landlord asserted that the tenants damaged the kitchen flooring by having four adults jumping on the kitchen floor near the end of the tenancy. The tenants denied this, stating that it was the female tenant and her six year old child that were dancing on the kitchen floor.

Although the landlord provided several photographs that depict abutting floor tiles heaving up where they meet and not lying flat, aside from the disputed testimony concerning the jumping or dancing on the floor, I find I am not persuaded that the tenants caused such damage considering these other factors:

1. The damage was not observed by the landlord or CW at the time of the move-out inspection report even though they claim to have heard a great amount of thumbing coming from the area of the kitchen floor in the days prior.
2. The misalignment of the tiles was observed a number of weeks later, after the rental unit was occupied by other tenants.
3. The discovery of the misalignment was only observed when CW was kneeling on the floor and I did not hear any evidence that the landlord or CW had observed the floor from a kneeling position at the time the move-in inspection report was completed meaning the damage may have existed prior to the start of the subject tenancy.
4. The flooring had been installed approximately 10 years ago by CW and I was not provided evidence that he is a professional flooring installer.

5. The amount of flex that would be required to break the tongues, as alleged by CW, would have to be great and I was not provided sufficient evidence that the weight of four adults would have been able to create that amount of flex.

In light of the above, I find the landlord did not meet her burden to prove the tenants caused damage to the kitchen floor tiles and I dismiss this portion of her claim.

Filing fee, security deposit and Monetary Order

As the landlord had very limited success in her Application, I make no award for recovery of the filing fee paid for this Application.

The landlord has been awarded the following amounts by way of this decision:

Carpet cleaning	$119.00
Stove top damage	40.00
Drapery cleaning	100.00
Kitchen blind replacement and labour ($36.94 + $21.00)	57.94
Total	$316.94

As the landlord is holding the tenants' $725.00 security deposit and I have found that the tenants did not extinguish their right to its return, I authorize the landlord to deduct $316.94 and return the balance of $408.06 to the tenants without delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenants with a Monetary Order to ensure the landlord refunds the balance of the security deposit to the tenants.

Conclusion

The landlord had limited success in this Application and was awarded compensation totalling $316.94. The landlord has been authorized to deduct $316.94 from the tenants' security deposit and must refund the balance of $408.06 to the tenants without delay. The tenants have been provided a Monetary Order in the amount of $408.06 to serve and enforce as necessary.

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

Dated: July 2, 2015

Residential Tenancy Branch