Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with applications from both Landlord BD (aka BL) and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord BD (aka BL) applied for:

- a monetary order for losses and damage to the rental unit arising out of this tenancy and for other money owed pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

In the tenant's application identifying Landlord EL (the landlord) and Landlord BL (aka BD) as Respondents, the tenant applied for

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their deposits due to the landlords' alleged contravention of section 38 of the Act; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord and the tenant both confirmed receipt of one another's dispute resolution hearing package and written evidence packages by registered mail well in

advance of this hearing, I find that these packages were duly served in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and damage arising out of this tenancy? Are either of the parties entitled to monetary awards for losses arising out of this tenancy? Which of the parties are entitled to the deposits paid by the tenant at the beginning of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters,. documents, estimates, invoice, receipts and e-mails, and the testimony of the parties and a witness called by the tenant who continues to reside on this property, not all details of the respective submissions and arguments are reproduced here. The principal aspects of these claims and my findings around each are set out below.

On May 21, 2018, the parties signed a fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from May 1, 2018 until June 30, 2019. The parties agreed that the tenant did not obtain the keys to gain occupancy of the rental unit until May 21, 2018, when the Agreement was signed. The rental unit is one of three rental units on this acreage property. Monthly rent was set at $2,600.00, discounted to $2,300.00 if the tenant paid their rent in accordance with the Agreement. The parties agreed that $2,300.00 was paid each month by the tenant. The tenant was also responsible for 40% of the hydro costs for this property and $50.00 per month for water. The tenant paid an $1,150.00 security deposit and an $1,150.00 pet damage deposit on May 21, 2018. The landlord provided undisputed written evidence that the pet damage deposit enabled the tenant to keep a dog, a cat and a pig on the premises.

The tenant gave undisputed sworn testimony and written evidence that in mid-July 2018 2018, they sent the landlord an email request to end this tenancy by October 1, 2018. As the landlord was able to arrange for a potential replacement tenant for this rental unit, the parties signed a Mutual Agreement to End Tenancy on August 8, 2018, with

August 31, 2018, the agreed date on which this tenancy would end. The tenant surrendered vacant possession of the rental unit to the landlord on August 31, 2018.

The original claim submitted by Landlord BD (aka BL), the landlord's son, on September 25, 2018, requested the issuance of a monetary award of $3,634.56, in addition to the recovery of the $100.00 filing fee from the tenant. At the hearing, I noted that the Monetary Order Worksheet entered into written evidence by the landlord and dated November 1, 2018 outlined the following request for a monetary award of $2,585.83:

Item	**Amount**
Unpaid Utilities- (Tenant's Portion of Hydro Bill)	$80.99
Various Contractors - Yard Care	1,667.57
Advertising for New Tenants	21.00
Repair of Broken Tiles	185.00
Repair/Replacement of Broken Windows and Screens	456.10
Repair of Broken Appliances (Handle and Shelf, Broken Stove, Broken Fridge)	175.10
Total of Above Items	**$2,585.83**

At the hearing, the landlord could not explain the difference in the amount claimed in the application submitted by their son, Landlord BD (aka BL) and the amount identified in the landlord's Monetary Order Worksheet. Under these circumstances, the landlord reduced the amount of the monetary award sought from $3,634.56 to $2,585.83, plus the recovery of the $100.00 filing fee.

Although the tenant did not submit a properly completed breakdown of their request for a monetary award of $4,768.00, plus their $100.00 filing fee, on a Monetary Order Worksheet, the tenant noted that the original application outlined the following components of their monetary claim:

Item	**Amount**
Return of Double Pet Damage and Security Deposits as per section 38 of the Act ($2,300.00 x 2 = $4,600.00)	$4,600.00
Reimbursement for Cleaning Fees Performed by the Tenant at the	168.00

Commencement of this Tenancy	
Total of Above Items	**$4,768.00**

As noted, this claimed amount was in addition to the tenant's request to obtain a return of their filing fee from the landlords.

The parties provided conflicting accounts of the condition inspections at both the beginning and end of this tenancy. Although the landlord gave the tenant the keys to the rental unit on May 21, 2018, the landlord did not meet to conduct an inspection of the rental unit until the following day. By the time they were to meet to conduct that joint move-in condition inspection, the tenant had already entered the rental unit and had concerns about the extent to which the premises had been cleaned. The landlord maintained that the tenant had already made a mess of the rental unit by the time the landlord arrived for the inspection, and that the tenant initially refused to participate in the scheduled joint move-in condition inspection. The landlord provided written evidence and sworn testimony that the tenant yelled and screamed at the landlord about the lack of cleanliness of the premises. The landlord said that the only areas where they had not yet cleaned were two cupboards that were beyond her reach. The tenant noted that they did eventually sign a joint move-in condition inspection report for the May 22, 2018 inspection, but the premises still needed cleaning. The tenant gave undisputed sworn testimony and written evidence that the landlord signed a document on May 22, 2018, authorizing the payment of $168.00 to the tenant for the tenant's six hours of cleaning of the rental unit at the beginning of this tenancy. Although the landlord agreed that she signed this document, she testified that this was signed under duress, as the tenant intimidated her into signing. The landlord did not dispute the tenant's assertion that the tenant has never been reimbursed for this $168.00 allowance for cleaning.

At the end of this tenancy, the parties agreed that they had scheduled a joint move-out condition inspection at 1:00 p.m. on August 31, 2018. The tenant testified that she was at the rental unit at that time, but the landlord was late. The tenant's written evidence stated that the landlord did not arrive at the premises until after 2 p.m. At the hearing, the tenant initially testified that the landlord did not arrive until "about 1:55 p.m." The tenant later corrected this estimate to 1:47 p.m. The tenant's witness testified that they understood that the landlord was late in arriving for the scheduled inspection, but could provide no estimate of when the landlord arrived. The tenant gave undisputed sworn testimony that the landlord arrived without a copy of the joint move-in condition inspection report, which would have provided a detailed comparison of the condition of

the rental unit at the end of this tenancy with respect to the beginning of the tenancy. The tenant maintained that the landlord delayed the inspection process through forgetting to bring the joint move-in condition inspection report and had to leave the property to retrieve it. Although the tenant maintained that she waited for the landlord to return, the tenant had only rented the moving van for a 24-hour period and had to proceed with her move to accommodations in another city that afternoon. After the new tenants moved into this rental unit that afternoon, the tenant received written requests from the landlord to perform joint move-out condition inspections of the premises. The tenant maintained that these requests were too late, as the condition of the premises after new tenants had moved in would not necessarily provide an accurate reflection of the condition of the rental unit at the end of her tenancy. The tenant maintained that the landlord did not comply with the requirement of the *Act* to conduct a joint move-out condition inspection of the premises, by sending two written requests to conduct this inspection before the tenancy ended.

The landlord provided written evidence and sworn testimony that they arrived at the rental unit by 1:00 p.m. on August 31, 2018 for the scheduled joint move-out condition inspection, but without a copy of the report of the move-in inspection. The landlord said that she asked the tenant to use the tenant's copy of the move-in inspection, but the tenant refused. The landlord said that she offered to write the details of the joint move-out condition inspection on a blank piece of paper, but the tenant also refused. As the tenant provided the landlord with no other options, the landlord called her son, Landlord BL (aka BD), and left the property to try to retrieve the landlord's copy of the report of the joint move-in inspection. The landlord also claimed that Landlord BL spoke with the tenant at 2:00 p.m. and made arrangements on the phone to meet with the tenant at 3:00 p.m. that day. The landlord maintained that the tenant departed the premises before Landlord BL arrived and did not meet with Landlord BL at 3:00 p.m. as arranged. Since the other tenants were expecting to move into the rental unit that afternoon, the landlord conducted her own inspection of the rental unit at 4:00 p.m., and produced a report of that inspection, a copy of which was subsequently sent to the tenant. The landlord provided copies of two subsequent requests to conduct a joint move-out condition inspection with the tenant by registered mail in early September 2018. As noted above, the tenant declined to participate in either of these inspections, noting that the *Act* required her to vacate the premises by 1:00 p.m. on August 31, 2018, the date identified in the Mutual Agreement to End Tenancy.

The landlord's claim for Yard Care costs were based on a section of the Agreement, which read as follows and which was specifically referenced in the landlord's written evidence in support of the claim for $1,667.57 in Yard Care costs:

...TENANT'S DUTY OF PROPERTY MAINTENANCE - Tenant shall pay for, or perform all: watering, lawn cutting, raking of lawn cuttings, hedge trimming, flower beds. weed removal, irrigation spring startup and fall shutdown/blowout, snow removal, etc, at the property from the front street to the fence at the chicken barn, except for the separately fenced yard, approx 25' x 30' directly north of the house, and beside the inlaw suite. At the landlord's sole discretion, if the tenant does all of the work, the landlord will not charge for this. If the work is not done to the landlord's sole satisfaction, the landlord reserves the right to hire a contractor to do the work and to bill the tenant for same. The landlord shall be responsible for maintenance of the fruit trees, chicken barn, and land behind the fences at the barn, except for pig rooting area...

The tenant gave undisputed sworn testimony and written evidence that these same provisions were in all of the Agreements entered into between the landlord and the three tenants of this property. The tenant's witness confirmed that neither she nor the other tenant in this rental property had ever been charged for yard care for the front area, which all of the tenants had some limited access to use. The tenant testified that the first time the landlord made any request to be compensated for any of the yard care costs outlined in the landlord's monetary claim was when the landlord met with the tenant on August 31, 2018 to conduct the joint move-out condition inspection. The tenant testified that the reason stated to the other tenants as to why only the tenant was being charged for yard maintenance was because the landlords did not like the tenant. The landlord denied this claim, stating that the reason the tenant had been charged for this maintenance work was because the tenant's dog and pig were constantly using that part of the property, and the other two tenants were not using this portion of the property.

At the hearing, the landlord said that the tiles had been replaced shortly before this tenancy began and that they were cracked during the course of this tenancy. The landlord said that no repairs or replacement of these tiles had been undertaken because of an illness sustained by the person who does that type of work for the landlord. The landlord testified that once that person recovers, the landlord has every intention of undertaking these repairs of damage that occurred during this tenancy.

The landlord provided a detailed breakdown of the windows and screens that were damaged during the course of this tenancy. Although the landlord confirmed that the fridge and stove in this rental unit were not new, they said that they were in good working order at the start of this tenancy and were damaged during the tenancy. The tenant testified that the fridge and stove were old second-hand items. The tenant also gave sworn testimony supported by the testimony of the tenant's witness that Landlord BL remarked when he did access the premises on the afternoon of August 31, 2018, that the premises looked to be "ok" and that the tenant would be entitled to receive a return of their deposits based on his assessment of the condition of the premises.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The onus is on the Applicants to prove on the balance of probabilities that the Respondent(s) caused the damage or loss and that any claim for damage was beyond reasonable wear and tear that could be expected for a rental unit of this age. Any claim for loss arising out of the Respondent's actions must similarly demonstrate that the Respondent(s) contravened the *Act*, the *Regulation* and/or the Agreement.

Analysis - Landlord's Application

Both parties agreed that the tenant continues to owe the landlord $80.99 in unpaid hydro bills relating to this tenancy. For this reason, I allow the landlord's application for a monetary award in this amount for this item.

I have given careful consideration to the landlord's evidence and, in particular, the wording of the Agreement that places a responsibility on the tenant for yard maintenance charges in the event that the tenant did not undertake these duties.

At the hearing, I noted that that a number of the charges identified in the detailed breakdown of the landlord's claim for $1,667.57 for this item included items that did not

appear to be related to the fundamental purpose of the wording included in this portion of the Agreement. For example, charges of $82.47 on July 4, 2018, and $110.00 on July 26, 2018 were for spraying or spraying products, which I find are not items that would be covered by the wording of the Agreement. Other charges identified in the various bills and invoices supplied referenced repair work and irrigation equipment, which the landlord said were not included in the amounts claimed. Although that may be correct, I find that the wording of the bills and invoices was not clear on these points and without a statement from the issuer of those bills and invoices or sworn testimony from them, it would be difficult to accept that the landlord had met the burden of proof that the items claimed were for purposes included in the wording of this portion of the Agreement, or for that matter, on the area of this property for which the tenant was responsible for maintenance.

I also note, as did the tenant in their written evidence, that $475.00 of this claim for yard care performed between May 9 and May 19, 2018 was undertaken before the tenant signed the Agreement and before the tenant took possession of the rental unit.

Although the landlord maintained that the area identified in the Agreement was in the exclusive possession of the tenant, the tenant, supported by testimony by the tenant's witness, asserted that the landlord's Agreements with the other two tenants in this acreage property were very similar, if not identical. Without copies of these other Agreements, it is difficult to ascertain whether the wording of the portion of the "Tenant's Duty of Property Maintenance" in the Agreement enabled the landlord, as the tenant claimed, to choose which of the tenants would become responsible for all of the yard maintenance for the property, save for those areas where all tenants were not allowed.

I also note that the wording of the Agreement, leaves the landlord with a great deal of discretion to determine whether yard maintenance has been performed to an adequate extent by the tenant for areas for which they committed to provide this service. Terms such as "at the landlord's sole discretion" and "if the work is not done to the landlord's sole satisfaction" leave such an element of discretion to the landlord, that these terms may actually be unconscionable and of no effect, or at the least, present problems with respect to their interpretation.

While I recognize that upkeep and maintenance on a large acreage property is expensive, it does not seem that the terms of the Agreement would have given the tenant any forewarning that the landlord was intending to charge the tenant $1,667.57 for these services for a tenancy which lasted little more than three months. This

monthly charge of over $550.00 per month was not submitted to the tenant until the last day of their tenancy. The failure to provide the tenant with any indication that this large bill was forthcoming until after the parties signed a Mutual Agreement to End Tenancy and the tenancy was about to end lends credence to the tenant's assertion that the landlord has acted arbitrarily in requiring the tenant to pay for all of the yard maintenance costs, based on the landlord's perception that only the tenant was using this area of the property.

For these reasons, I find that the landlord's evidence has not met the burden of proof to establish entitlement to recovery of the expenses for yard care that the landlord has claimed. In coming to this determination, I make special note of the very late timing of the landlord's notification to the tenant on the last day of this tenancy that the landlord was not satisfied with the tenant's maintenance of the grounds and that the landlord was requiring compensation from the tenant for services performed on the landlord's behalf. In so doing, I also note that many portions of this part of the landlord's claim were for items that were either before the tenant took possession of the rental unit or would not have been allowed as per the terms of the Agreement, even had the tenant been notified earlier that the tenant's maintenance of the premises did not meet the landlord's standards. I am also not satisfied that the landlord's testimony that the tenant's dog and pig were using the area in question when the landlord attended the property has a direct bearing on the landlord's determination that the tenant should bear the full maintenance costs claimed.

At the hearing, I advised the parties that the landlord's claim for the recovery of advertising costs from the tenant were costs that were the landlord's to bear when the parties enter into a Mutual Agreement to End Tenancy. For this reason, I dismiss this portion of the landlord's claim.

The landlord has not yet repaired the tiles that the landlord claimed were damaged during the course of this tenancy. There is also evidence from the tenant's witness that Landlord BL commented that the rental premises seemed "OK" at the end of this tenancy and that the tenant would likely be receiving a return of their deposits. As such, and as the landlord gave sworn testimony that they were able to obtain $2,400.00 in monthly rent, an amount higher than the monthly rent the tenant was paying, from the new tenants who took occupancy almost immediately after this tenancy ended, I find that the landlord has not demonstrated any actual losses for which the landlord is entitled to receive a monetary award. I dismiss the landlord's claim for damage to tiles.

The landlord testified that they omitted taking any photos of the damage to windows and screens that occurred during this tenancy. As opposed to the vague references in the yard work invoices, which often failed to clearly note the location of the work performed, I find that there were detailed notes in the inspection reports and the invoices submitted by the landlord to substantiate the landlord's claim for damage to windows and screens in this rental unit. I allow the landlord's claim of $456.10 for these items.

While the parties disagreed as to the age and condition of the fridge and stove at the beginning of this tenancy, I accept that the landlord's claim for $175.10 in repairs to the fridge and stove was far less than would have been submitted had the landlord applied for replacement of these appliances. The joint move-in condition inspection report made specific mention that the tenant agreed that the appliances were in good condition when this tenancy began. On this basis, I allow the landlord's application to recover the $175.10 spent to repair damage to appliances that occurred during this tenancy.

Analysis - Tenant's Application

There is undisputed sworn testimony and written evidence before me that the landlord signed a document enabling the tenant to be reimbursed $168.00 for the tenant's work in cleaning the rental unit at the beginning of this tenancy. Although I have given the landlord's assertion that she signed this document under duress, I find that the landlord was in a position to sign this document or not sign it, and chose to sign it. I allow the tenant's claim for $168.00 for reimbursement of the tenant's cleaning costs.

Section 38 of the *Act* requires the landlord to either return all of a tenant’s deposits or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposits had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposits. As the landlord applied to retain the deposits on September 25, 2018, within 15 days of obtaining the tenant's forwarding address in writing, deemed received on September 16, 2018, I find that the landlord's application was within the 15 day time period specified in section 38 of the *Act*.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, both parties claimed that the other parties' right to claim against the deposits

were extinguished by failures to abide by the provisions of the relevant sections of the *Act* (sections 23 and 24 for joint move-in condition inspections and reports, and sections 35 and 36 for joint move-out condition inspections and reports). These sections of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23(1) of the *Act* reads as follows:

> **23** *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
>
> *(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
>
> *(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
>
> *(b) a previous inspection was not completed under subsection (1).*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(4) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
>
> *(6) The landlord must make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (3), and*
>
> *(b) the tenant does not participate on either occasion...*

In this case, I find that the parties did agree to conduct the joint move-in condition inspection on May 22, 2018, the day after the tenant obtained possession of the rental unit. While the landlord claimed that the tenant refused to participate in this move-in

condition inspection, the tenant's signature of the joint move-in condition inspection report signifies that the tenant did eventually agree to such an inspection and gave their written confirmation on the report as to the condition of the rental unit at the beginning of this tenancy. As such, I do not find that the tenant's ability to claim for a return of the deposits was extinguished by section 24 of the *Act*.

Sections 35 and 36 of the *Act* read in part as follows with respect to the process that is to occur when a tenancy ends

> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
>
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
>
> *(b) on another mutually agreed day.*
>
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
>
> *(5) The landlord may make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
>
> *(b) the tenant has abandoned the rental unit.*
>
> ***36*** *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
>
> *(a) the landlord complied with section 35 (2)* [2 opportunities for inspection]*, and*
>
> *(b) the tenant has not participated on either occasion.*
>
> *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

> *(a) does not comply with section 35 (2)* [2 opportunities for inspection]*,*
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

In this case, there is undisputed written evidence and sworn testimony that the parties did schedule a joint move-out condition inspection for 1:00 p.m. on August 31, 2018, the time at which the tenant was required to surrender vacant possession of the rental unit to the landlord. There is conflicting evidence as to whether the landlord did attend at the premises promptly at 1:00 p.m. Both parties do agree that the tenant remained at the rental unit until some time after 2:00 p.m. that day, and the landlord claimed that a second opportunity to schedule an inspection was offered to the tenant at 1:30 p.m. and a third opportunity that the tenant agreed to was arranged with Landlord BL for 3:00 p.m. There is also undisputed sworn testimony supported by written evidence that the tenant did not remain at the site for the 3:00 p.m. inspection.

Although the landlord sent two written requests to conduct joint move-out condition inspections during the first week of September 2018, in an apparent attempt to comply with the provisions of section 35(2) and to avoid the provisions of paragraph 36(2)(a) of the *Act*, the tenant is correct in noting that section 35(1) of the *Act* requires that any joint move-out condition inspection occur before a new tenant took possession of the rental unit. Since there is evidence that the new tenant took possession of the rental unit late on the afternoon of August 31, 2018, these subsequent written requests for inspections do not meet the requirements of sections 35 and 36 of the *Act*.

In assessing the competing claims by both parties that the other parties did not comply with the joint move-out provisions of the *Act*, I note that there is no requirement under the *Act* that a landlord complete the details of a joint move-out inspection on the same report that was used for the joint move-in condition inspection. While it is helpful to use the same document to chronicle the condition of the rental unit at the end of a tenancy, a landlord may use the other parties' copy of the same report or, as the landlord claims to have offered, even on a blank piece of paper.

I heard conflicting evidence with respect to whether the landlord asked the tenant on August 31, 2018 to use the tenant's copy of the joint move-in condition inspection report to record the details of the joint move-out inspection, and whether the landlord offered to record these details on a piece of paper. As was the case with respect to the tenant's written evidence and sworn testimony regarding the time when the landlord arrived at the property on August 31, 2018, I found the tenant's testimony on this point was somewhat evasive and inconsistent. At one point, the tenant said that they did not remember if the landlord asked to use the tenant's copy of the joint move-in condition inspection report to record the condition of the rental unit at the end of this tenancy. The tenant then stated that the landlord's account of this request "was not clearly like that." Upon further questioning as to whether the landlord made requests to use the tenant's copy of the move-in report, the tenant testified that "I am going to say no, that the landlord did not make a clear request" (of this type). I found statements of this nature by the tenant lacked the ring of truthfulness, and were in stark contrast to the landlord's sworn testimony on this point, which I found to be clear, consistent and forthright. The landlord said that they offered to conduct the inspection using the tenant's copy of the previous report and even offered to record the details of the inspection on a blank piece of paper. The landlord said that the tenant refused both of these very clear requests. As I find the landlord's sworn testimony on this point more credible and consistent than that provided by the tenant, I accept that the landlord was willing to undertake the inspection of the rental unit on August 31, 2018, despite not having a copy of the landlord's joint move-in condition report with her at that time. Thus, I find that the tenant refused the first scheduled opportunity for an inspection of the premises offered by the landlord.

In order to extinguish a tenant's eligibility to claim to obtain the deposits pursuant to section 36(1) of the *Act,* a landlord must demonstrate that there have been two refusals by the tenant to participate in a scheduled inspection of the premises before a new tenant takes possession of the rental unit. In the landlord's written submission, the landlord claimed that a second opportunity was offered at 1:30 p.m. and a third offered and accepted at 3:00 p.m. As it remains unclear as to whether the landlord was even at the premises by 1:30 p.m., and there is no evidence that the tenant ever agreed to a 1:30 p.m. inspection in addition to the 1:00 p.m. inspection, I find no substance to the landlord's assertion that a second opportunity to inspect the premises was provided and rejected by the tenant at 1:30 p.m. To find otherwise, a landlord could merely claim one minute after a first opportunity was rejected that a second opportunity was also rejected, clearly not the intent of the provisions of the *Act* on this issue.

There is some evidence that a second opportunity to inspect the premises was offered by Landlord BL and accepted by the tenant for a 3:00 p.m. inspection of the premises. Whether this constituted a genuine second opportunity to meet the landlord's duty to provide two opportunities to inspect the premises at the end of a tenancy is open to interpretation. However, the tenant referenced in their written evidence and their sworn testimony that they knew that they were supposed to vacate the rental unit by 1:00 p.m. and had to complete a joint move-out condition inspection before the next tenant took possession of the suite.

The RTB's Policy Guidelines recommend that when both parties fail to abide by the provisions of the joint move-in or move-out condition inspections, arbitrators are to take into consideration which of the parties conducted the first breach of these requirements and determine that their rights have been extinguished, even though the other party may have undertaken a subsequent breach. This guidance is of little real assistance in this case as I find that both parties are somewhat at fault in failing to comply with the provisions of section 35 of the *Act*, and may very well have virtually simultaneously extinguished their rights to apply to obtain the deposits. While both parties have submitted evidence that would demonstrate the other party extinguished their rights to claim against the deposits, it appears to me that the Applicants also took actions that extinguished their own rights to obtain a monetary award at essentially the same time.

Under these circumstances, neither party has demonstrated to the extent required that the deficiencies in the other party's behaviours and actions at the end of this tenancy entitled the Applicants to monetary awards resulting from these contraventions of the move-out provisions of the *Act*. What is clear is that the landlord continues to hold the tenant's deposits, a credit in the tenant's favour which I find should be applied to the monetary award issued to the landlord.

While I allow the tenant a credit of $2,300.00, constituting the value of the deposits paid by the tenant, I also find that the tenant's refusal to participate in the joint move-out condition inspection offered by the landlord for the 1:00 p.m. scheduled inspection and the 3:00 p.m. inspection does not entitle the tenant to the doubling of the value of the deposits held by the landlord, which the tenant has requested pursuant to section 38(6) of the *Act*. The tenant has not demonstrated on a balance of probabilities that the landlord's conduct breached the joint move-out provisions of the *Act* to the extent that a doubling of the deposits pursuant to section 38(6) of the *Act* would be in order. Thus, I dismiss the tenant's application for a monetary award of double the value of the

deposits, but do order the landlord to return the difference between the monetary award issued to the landlord for damage and losses and the retained value of the deposits.

As both parties have been partially successful in their applications, I make no order with respect to the recovery of their respective filing fees.

Conclusion

Item	**Amount**
Unpaid Utilities- (Tenant's Portion of Hydro Bill)	$80.99
Repair/Replacement of Broken Windows and Screens	456.10
Repair of Broken Appliances (Handle and Shelf, Broken Stove, Broken Fridge)	175.10
Pet Damage and Security Deposits	-2,300.00
Tenant's Claim for Cleaning Fees Performed by the Tenant at the Commencement of this Tenancy	-168.00
Total Monetary Order in Tenant's Favour	**$1,755.81**

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: January 12, 2019

Residential Tenancy Branch