Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on April 12, 2018, the Landlords requested monetary compensation from the Tenant; authority to retain her security deposit; and, to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on September 27, 2018, the Tenant requested monetary compensation from the Landlord; return of her security deposit; and, to recover the filing fee.

The hearing was conducted by teleconference on October 22, 2018, December 3, 2018, January 22, 2019 and March 11, 2019. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

On the final day of hearing, March 11, 2019, each party attempted to reiterate testimony which had already been provided. As we had already had over six hours of testimony, I informed both parties that I had taken notes during all days of the hearing, and that it was not necessary that either party restate their testimony. The Tenant became very upset, raised her voice and alleged that she had not been heard and that the Landlord was given more time than she to provide her testimony. I confirm that both parties were given equal time to speak and provide their testimony and submissions.

Although earlier in the proceedings both parties raised issues with the delivery and receipt of the other parties' evidence, those matters were resolved (by virtue of the numerous hearing dates) to the extent that each party had the opportunity to respond to the other's evidence. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?

2. Is the Tenant entitled to monetary compensation from the Landlord?

3. What should happen with the Tenant's security deposit?

4. Should either party recover the filing fee?

Background and Evidence

The Landlord, S.V., testified as follows.

He confirmed that this tenancy began June 1, 2015. The Tenant then entered into serial tenancies, the last starting on January 1, 2018. Copies of the tenancy agreements were provided in evidence for my consideration; the most recent tenancy agreement was signed on December 2, 2017 and provided that at the time the tenancy ended rent was payable in the amount of $2,050.00 per month. S.V. further confirmed that the Tenant initially paid $800.00 as a security deposit; the amount was increased as the tenancy continued and the Landlord confirmed they hold $1,025.00.

S.V. stated that the parties met on May 30, 2015 to do the move in condition inspection. He further stated that he and his spouse live in another community and forgot to bring the move in condition inspection report form with them at the time. The Landlord stated that the Tenant did not take issue with the inspection not being done on the proper form until she brought these proceedings.

The Landlords filed in evidence a Monetary Orders worksheet wherein they claimed compensation for the following:

Cleaning of the rental unit	$260.00
Painting	$2,000.00

Carpet cleaning	$300.00
Sliding door blinds	$152.15
Outstanding electricity invoice	$141.97
Outstanding gas invoice	$68.93
Doorbell repair	$150.00
April 2018 Outstanding rent	$2,050.00
Kitchen cabinet painting	$100.00
TOTAL CLAIMED	**$5,223.00**

S.V. testified that the Tenant gave notice to end her tenancy on March 15, 2018 for a move out date of April 15, 2018 (a copy of her notice was provided in evidence). The Landlord confirmed that the Tenant in fact moved out at the end of March 2018.

S.V. stated that the Tenant posted her notice to end tenancy on the door of the ground floor suite, rather than at the Landlord's residence (which was the address for service on the residential tenancy agreement), such that she did not serve the Landlords in accordance with the *Act*. Further, the Landlords submitted that as rent was payable on the 1st of the month, the effective date of the Tenant's notice was April 30, 2018. S.V. confirmed that this was communicated to the Tenant by letter (a copy of which was provided in evidence by the Landlords) upon receipt of her notice. As such the Landlord sought the sum of $2,050.00 representing the April 2018 rent.

In terms of the $2,200.00 amount claimed for painting, S.V. testified that there were an excessive number of holes and pictures in the rental unit such that the entire unit required repainting. He also stated that the Tenant had four children and it appeared as though they were using their toys along the baseboards and the walls and door casings. The Landlords noted the amount claimed only included labour, not the actual paint. On the invoice the painter wrote that there were extensive repairs to the drywall and trim required. Notably, he was the same painter who painted at the end of 2014.

S.V. testified that the entire main floor/rental unit was painted at the end of 2014 shortly before the tenancy began. This was confirmed by documentary evidence submitted by the Landlords.

In terms of the Landlords' claim for cleaning costs, S.V. testified that the house was filthy at the end of the tenancy. He alleged the Tenant did not clean the kitchen, the walls, the window sills, the blinds, the carpets, the freezer, or the oven. He further stated that she left baby proof items all over the kitchen, including items which were

stuck on the stainless steel appliances as well as oil stains in the garage floor. The Landlords also alleged the Tenant failed to replace the blinds in the family room.

The Landlords hired professional cleaners to clean the rental unit who charged $376.69 for their services.

Introduced in evidence were numerous photos submitted by the Landlord. The Landlords noted that they took close up photos of the damage as opposed to the photos submitted by the Tenant which were taken from a distance.

The Landlords submitted in evidence a quote from a professional carpet cleaning company in the amount of $268.00 plus tax. The Landlord noted that they ended up having the carpet replaced as the damage was too extensive. S.V. stated that they purchased the house in June of 2014 and were not sure when the carpet was installed, however he believed the house was built in 2011 such that it was 7 years old when the tenancy ended. S.V. submitted that at the very least the Tenant should have cleaned the carpet as per the *Act* and as such they are seeking compensation for the estimated cost to clean the carpet.

The Landlords also sought the amount of $140.00 for the cost to replace the blinds on the sliding door which the Tenant removed and then broke. He noted that when they tried to put the blinds back up they discovered they were broken.

The residential tenancy agreement provided in evidence confirmed that the Tenant was to pay 75% of the utilities. In the claim before me the Landlords sought compensation for the outstanding electrical invoice to March 23 in the amount $141.97. Copies of the invoice were also provided in evidence for my consideration. S.V. confirmed that although the Tenant was in fact in the rental unit until the end of March, the Landlords are not seeking compensation for the balance of March.

The Landlords also sought compensation for the outstanding gas utility in the amount of $68.93; again copies of the invoice were provided in evidence. S.V. clarified that he calculated this amount based on the charges, not the invoice balance itself as sometimes the Landlord has mistakenly paid twice resulting in a credit position.

The Landlords also initially claimed compensation for an electrician related to the doorbell repair as the Tenant disconnected the doorbell because she claimed it disrupted the children's sleep. S.V. stated that he reconnected the doorbell himself and was therefore no longer claiming compensation for this amount. Similarly, S.V. also

confirmed that he did not repaint the kitchen cabinets such that he was no longer seeking $100.00.

S.V. stated that it was his understanding (based on a letter, dated March 29, 2018 provided by the Tenant to the Landlords) that the Tenant was alleging they materially breached the tenancy agreement such that the Tenant should not be responsible for the April 2018 rent. The Landlords submit that the Tenant alleges a material breach, yet she failed to indicate what the alleged breach is, as well as failed to provide the Landlords with a reasonable time to correct the alleged breach.

S.V. confirmed that the property was for sale near the end of the tenancy and they informed the Tenant that they wanted her to stay as they were selling the property as a revenue property. He stated that one time their real estate agent did not give her proper notice and the Landlord apologized and informed the agent that he must comply with the *Residential Tenancy Act.*

S.V. provided testimony regarding difficulties which arose during the move out condition inspection, culminating in the police attending. This incident is not relevant to the issues I have to decide and I therefore decline to reproduce the Landlords' testimony or the Tenant's response to this incident.

The Landlords alleged that the Tenant gave a false forwarding address on the move out condition inspection. This was disputed by the Tenant as she stated she used a post office box in the same building as the restaurant.

The Landlords provided 37 pages of photos of the condition of the rental unit; those photos included:

- a photo of the attempt to remove the child protection devices from the stove;
- baby proof plugs;
- large holes in the walls in the master bedroom to the hallway;
- the garage floor oil stain;
- damage to the walls;
- the freezer not cleaned;
- the oven not cleaned;
- the condition of the insides of the cabinets; and,
- the sliding blinds which were removed.

In response to the Landlords' submissions the Tenant testified as follows.

The Tenant disputed the Landlord's claim for rent for April 2018 alleging the Landlord breached a material term of the tenancy agreement. She stated that the last few months of the tenancy things became very "tense" and volatile in their home. She stated that the Landlords were at the house every day from the middle of January until the day she moved out doing renovations which resulted in constant disturbance. The Tenant further alleged that the Landlords harassed her, played loud music, swore at her and her children, and also disturbed her and her family with the construction noise. She also claimed that the Landlord, M.D., screamed and yelled at her when she refused to allow the realtor to enter the rental unit. The Tenant stated that she felt "threatened and picked on" by the Landlords. She said she didn't feel safe anymore and she needed to get her children out of the house.

The Tenant conceded that she should have given the Landlord's notice of the breach of a material term of the tenancy sooner and that she did not give them an opportunity to correct the situation.

The Tenant stated that she did not give a restaurant as her forwarding address as alleged by the Landlord; rather she gave a postal box address. She claimed that she did not feel safe giving them her home address. She testified that she later gave them her home address after she found out that there was an upcoming hearing from the Residential Tenancy Branch.

In terms of the Landlord's claim for unpaid utilities the Tenant stated that the utilities were an issue during the entirety of her tenancy. That said, the Tenant confirmed that she agreed she was responsible for paying the **$141.97** for the electrical utility and **$68.93** for the gas utility.

In response to the Landlord's claim that the Tenant did not clean the rental unit as required the Tenant stated that she did clean to what she believed was a reasonable standard. She stated that she missed the middle of the freezer, one cabinet over the microwave, and did not clean the oven.

The Tenant alleged that there were white clips on the cabinets when she moved in and some of them she did not remove as she did not want to damage the walls/cabinets or appliances. She stated that she didn't know what to do about these clips.

The Tenant also claimed that the Landlords' photo showing a sticker on the bottom of the stove was not accurate as later the realtor submitted a photo which showed the sticker being removed.

The Tenant claimed that at the time she moved in the Landlord told the Tenant not to bother cleaning the carpets as they intended to replace them when the tenancy ended.

The Tenant stated that she probably could have spent more time to remove the baby locks and done a bit more cleaning. She stated that the house was cleaned, but she could have spent more time such that she agreed that the Landlord should be entitled to ½ of the amount claimed: **$130.00.**

In terms of the $2,000.00 claimed for painting, the Tenant stated that she did not believe she was responsible for paying this amount. She claimed that the rental unit was not painted in late 2014 as claimed by the Landlord.

In terms of the nailholes the Tenant stated that the Landlord is exaggerating as the family photo wall had 25 photos, not 50 holes as claimed by the Landlord (she provided a photo in evidence to confirm this). The Tenant stated that there were also existing holes and she tried to use them to the best of her ability. She also noted that there were "gaping holes" in the walls when she moved in.

The Tenant stated that she did put up a mirror with drywall plugs in the hallway. She also noted that the master bedroom closet was "littered" with holes when they moved in. She also noted that the item which was affixed to the walls was there when she moved in.

In terms of the blinds on the sliding doors the Tenant confirmed that she removed the blinds as she was worried her children would damage them. She stated that she told the Landlord she would do this and they were stored for three years in the Landlord's personal storage area. The Tenant claimed that her boyfriend is a general contractor and he properly removed them.

The Tenant also noted that the Landlords claim they purchased replacement blinds online, yet the ad from the real estate agent shows no blinds such that the Tenant disputes the Landlords' claim that the blinds were replaced.

In terms of her claim, the Tenant testified as follows.

The Tenant confirmed she sought the sum of $153.71 as an overpayment of the electrical and gas utilities, such amount to be offset against the amount claimed by the Landlords. The Tenant stated that the Landlord, M.D., agreed that the Tenant overpaid and confirmed this by text message on February 19, 2018 at 8:55 a.m. The copy of the text message in evidence was cut off, but the Tenant testified that M.D. wrote: "please send me the difference on September and October 2017 for Fortis, I will e-transfer you, this clears it up, yeah!"

The Tenant confirmed she also sought the sum of $1,173.00 as compensation for what she claimed was an illegal rent increase. She stated that the illegal rent increase was during the final three months of her tenancy, from January 2018 to March 2018 when her rent was raised $391.00 from $1,659.00 to $2,050.00. The Tenant stated that the Landlord did not issue a Notice of Rent Increase, rather, the Landlord delivered a new tenancy agreement on November 13, 2017 at which time she stated that the Tenants had to sign a new tenancy agreement or they would have to move out. The Tenant stated that she felt pressured by the Landlords as the Landlords was threatening her that if she didn't sign they would have to move out, or that her boyfriend would have to move out as he was not on the lease.

The Tenant stated that she expressed her concerns to the Landlords at the time by text message; a copy of her text message dated November 16, 2017 was provided in evidence. The Tenant stated that she also told the Landlords that she did not agree to the rent increase and that the tenancy should continue on a month to month.

The Tenant confirmed that she was aware that the *Residential Tenancy Act* had changed as of December 11, 2017 such that a Landlord could not force a Tenant to sign a new agreement at a higher rent in a fixed term tenancy.

The Tenant also sought the sum of $6,636.00 for breach of her right to quiet enjoyment for four months starting December 2017 to March 2018. She confirmed that she sought compensation representing return of *all rent* paid at that time.

In terms of her claim for return of all rent paid, the Tenant stated that communication with the Landlords rapidly deteriorated when the Landlords asked her to sign a new tenancy agreement at a higher rent.

The Tenant stated that it didn't feel like home to them anymore. The Tenant stated that when the downstairs tenant moved out and the Landlords began a complete renovation to the unit, the Tenants lost their freedom from unreasonable disturbance as every day there was someone working downstairs, whether it was the Landlord or people hired on behalf of the Landlord. She claimed that the workers didn't follow the bylaws, as every Sunday there was somebody working, even though the bylaws prohibit work on Sundays. She also said that they were not permitted to work beyond 9:00 p.m., yet they regularly did so.

The Tenant stated that there were also a few instances when the workers blocked her from being able to exit the garage. The Tenant stated that she was told by J.V., not to speak to the workers, and then when it happened again she was not able to get in touch with the Landlords and she was not able to leave the house. The Tenant confirmed that on Tuesday February 13 at 1:40 p.m. the Landlord, J.V., texted her (via looping in a group conversation)

> "Hello [Tenant's name] re: [rental unit] renovations. The right side of the driveway, as previously requested of you by [M.D.] will be required to be clear for our workers to be working from 8:00 a.m. to 6:00 p.m. until this Thursday…do not communicate with my workers as this will increase the time period of the renovations and they are here on my behalf".

The Tenant stated that in general, she felt bullied by the Landlord into signing the new tenancy agreement even though the law had changed. When the Landlord began the renovations to the basement suite, it felt as though the Landlord did not care about how it affected the Tenant or their children and that the Landlord was trying to push them out.

The Tenant said that she valued stability in her home very much as she had children and she had just gone through a divorce and wanted to have a stable home for them. The Tenant also claimed that she has health issues which were aggravated by the stress caused by her living situation.

The Tenant also confirmed she also sought return of her security deposit in the amount of $1,025.00. The total amount claimed by the Tenant was $8,987.71 calculated as follows:

Overpayment of utilities	$153.71
Overpayment due to illegal rent increase	$1,173.00
Aggravated damages/loss of quiet enjoyment December 1, 2017	$6,636.00

to April 1, 2018	
Repayment of damage deposit	$1,025.00
TOTAL	**$8,987.71**

M.D. testified in response to the Tenant's submissions as follows.

M.D. confirmed that she disputed the Tenant's claim for overpayment of utilities. M.D. stated that the utilities were based on the number of people in the upstairs and downstairs units. She stated that after "bantering about this for some time", she told the Tenant that she was tired of arguing about this issue and would reimburse the Tenant $129.19 but the Tenant would not agree and refused the e-transfer. M.D. stated that she was doing it as a "peace offering" but she denies the Tenant is owed this amount.

In terms of the rent increase, M.D. stated as follows. M.D. confirmed that she was going away for the month of December and wanted to have this sorted out before they left. M.D. confirmed that the residential tenancy agreement was signed on December 2, 2017. M.D. stated that she was unaware that the law had changed on December 11, 2017.

A copy of this tenancy agreement was provided in evidence which confirmed that the parties agreed the tenancy would continue on a month to month basis following December 31, 2017. M.D. insisted that there was a problem with their computer which is why the first box was ticked off, not the second (which at that time permitted a Landlord to end the tenancy). She claimed that was why the Tenant and she initialled the box.

M.D. claimed the Tenant agreed to the move out clause.

In terms of the rental increase, M.D. stated that she had a meeting with the Tenant, and her boyfriend on December 2, 2017. M.D. stated that she told the Tenant that she was only paying $1,659.00 and fair market value was $2,400.00. M.D. stated that they agreed to $2,050.00 and the Tenant agreed to this. She stated that they both advised the Tenant to call the Residential Tenancy Branch and get advice if she did not want to enter into a new tenancy. She said that originally the Tenant was very upset about the amount (in November) but by the time they met, everyone had calmed down and the Tenant agreed and signed the agreement. M.D. stated that after the Tenant signed she did not raise the rent amount with the Landlords. M.D. stated that the first time the Tenant said anything was March 2018.

In terms of the Tenant's claims that the renovations went on all hours of the day and on weekends, M.D. stated that her husband works full time and they only have one car such that they were not able to be there every day as alleged by the Tenant.

M.D. confirmed that the renovations started February 1, 2018 and continued until mid-March 2018. The renovation was supposed to be done in February but there were issues with deficiencies with the cabinetry which were rectified in March.
M.D. confirmed that she told the contractors that they had to work between 9:00 a.m. and 6:00 p.m. and not to work on weekends and to her knowledge they followed her direction. M.D. stated that she did not receive any communication from the Tenant regarding the workers working outside the acceptable hours, except when the Tenant complained she was blocked in her driveway. She acknowledged that they had one worker who came in to deal with the ceiling for three days straight who came in from 6:00 p.m. to 8:00 p.m. M.D. also stated that she was very clear with the worker that the Tenant had four kids and they needed to be in bed by 9:00 p.m.

The Tenant then stated that the December meeting (about the tenancy agreement) was not "productive" as claimed by the Landlord. She claimed she only scheduled it when she could because her children were not around. She also stated that she felt that she was pressured into the meeting because the Landlord was going to give her a 30 day notice and as such she felt forced to sign the tenancy agreement.

The Tenant disputed M.D.'s testimony that she was not aware of the workers working past 6:00 p.m.; in this regard she noted that there is a text message from January 21st wherein the Landlord informed the Tenant that they would be putting in a wall on a Sunday (January 28).

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**
www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

April 2018 Rent

I will first deal with the Landlord's claim for unpaid rent for April 2018.

A tenant may end a tenancy provided they do so in accordance with sections 45 and 52 of the *Residential Tenancy Act;* those sections read as follows:

> **Tenant's notice**
>
> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Tenant alleged she should not be responsible for the April 2018 rent alleging the Landlord breached a material term of her tenancy. *Residential Tenancy Policy Guideline 8—Unconscionable and Material Terms* provides as follows:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
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> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
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> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

In the case before me, while I accept the Tenant was disturbed by the renovations to the basement rental unit, and that communication between her and the Landlords deteriorated as of January 2018, I am unable to find that this constituted a breach of a material term of the tenancy allowing her to end her tenancy early. More problematically, I find the Tenant failed to give the Landlord written notice as required. The Tenant gave her written notice on March 15, 2018; as such, and pursuant to section 45 of the *Act,* the effective date of her notice is April 30, 2018. I therefore find the Tenant is responsible for the April 2018 rent.

Cleaning

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

> **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.
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> (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.

On their Monetary Orders Worksheet the Landlords confirmed they sought the sum of $260.00 for cleaning of the rental unit; documentary evidence submitted by the Landlord confirms they paid $376.69. I find based on the photos submitted by the Landlords, that the Tenant did not clean the rental unit as required by section 37. The Tenant conceded that she could have cleaned more than she did. She suggested the sum of $130.00 representing half the amount initially claimed by the Landlords.

I accept the Landlords' evidence as to the condition of the rental at the end of the tenancy. I prefer their photos over the photos submitted by the Tenant as I find her photos were taken at such a distance that I was unable to see the true condition of the premises. I further accept the Landlord's evidence that they hired professional cleaners to clean the rental unit to a reasonable standard and paid the sum of $376.69. I find this sum to be reasonable based on the condition of the rental unit, as well as its size and I therefore award the Landlords the amounts claimed on their Monetary Orders Worksheet in the amount of **$260.00**.

Carpet Cleaning

The Landlords claim the cost to clean the carpets alleging that the Tenant failed to have the carpets cleaned as required. The Tenant submitted that the Landlords told her not to clean the carpets as they intended to remove them at the end of the tenancy.

The Landlords concede that the carpets were in fact removed. I therefore find the Landlords did not pay to have the carpets cleaned and I dismiss their claim for related compensation.

As well, I note that awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. 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 Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
>
> If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements; according to this table, carpets have a useful life of ten years according to *Policy Guideline 40.* In the case before me, and although the Landlords were not seeking the replacement cost of the carpets I note that I was not provided with any information as to the age of the carpets such that I am unable to determine the remaining useful building life of the carpets.

Paint

The evidence submitted by the Landlords indicates the rental unit was painted at the end of 2014. The Tenant disputed this, alleging it was not painted. I accept the Landlords' evidence in this regard and find the rental unit was painted in late 2014 such that at the time the tenancy ended the interior paint was approximately 3.5 years old.

Residential Tenancy Branch Policy Guideline 40 provides that interior paint has a useful building life of four years. The photos submitted by the Landlord support a finding that some painting was required due to damage to the walls. However, I find it likely that the Landlords would have been required to paint the rental unit in 2018 in any event. The Landlords claim $2,000.00 for the cost to paint the rental unit. I therefore award the Landlords **$250.00** representing the remaining six months of the remaining useful building life of the interior paint.

Blind Replacement

The Landlords sought compensation for the cost to replace blinds on the sliding door. The Tenant testified that her partner, who is a contractor, removed the blinds during the tenancy to protect them from her children. The Tenant further submitted that photos of the rental unit taken for the purposes of advertising the rental unit for sale show the blinds as having not been replaced.

While it is often the case that the parties' testimony conflict in hearings before the branch, without corroborating evidence favouring one parties' version of events I am unable to prefer the testimony of one over the other. I therefore find the Landlord has failed to prove that the sliding door blinds were replaced at the end of the tenancy and I dismiss this portion of their claim.

Gas and Electrical Charges

The Tenant confirmed that she was agreeable to reimbursing the Landlords the **$141.97** claimed for the electrical invoice and the **$68.93** claimed for the gas invoice. I therefore award the Landlords compensation for these sums.

I will now turn to the Tenant's claims.

Overpayment of Gas and Electrical Utility

The Tenant claimed the sum of $153.71 representing what she believed was an overpayment of the gas and electrical utility.

Documentary evidence submitted by the Tenant indicates that during the tenancy the parties discussed the Tenant's request for compensation for what she saw as an overpayment of these utilities. While the parties discussed this issue during the tenancy, the evidence before me confirms that no final agreement was reached in this regard as the Tenant failed to accept the Landlord's transfer for the alleged overpayment. That said, I find, based on this correspondence and the parties' testimony, that the Landlord was agreeable to reimbursing the Tenant **$129.19;** I therefore award the Tenant this sum.

Rent Increase

The evidence before me confirms that the parties entered into a new tenancy agreement on December 2, 2017. The terms of that agreement provided that the Tenant was to pay $2,050.00 in rent.

The Landlord testified that they initially asked the Tenant to pay $2,400.00 which they believed was market rent at the time. They further testified that after some discussion the parties agreed on $2,050.00 in rent. While the Tenant was clearly not happy about this rent increase, I am satisfied she agreed to the increase and voluntarily signed the tenancy agreement. I reject her argument that she did so under duress, and prefer the Landlord's testimony that the sum of $2,050.00 was agreed to by both parties.

While changes to the *Residential Tenancy Act* came into force on December 11, 2017 and affected the enforceability of move out clauses in fixed term tenancies, the parties entered into a new agreement on December 2, 2017 prior to those changes coming into force.

I therefore dismiss the Tenant's claim for compensation for an illegal rent increase.

Breach of Quiet Enjoyment

The Tenant sought compensation for breach of quiet enjoyment; in this respect she requested return of all the rent paid from December 2017 to March 2018 alleging that her tenancy was without value for the final four months of her tenancy. The onus is on the Tenant to prove her claim in this regard.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

> "…Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.
> …
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
> …
> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.
> …
> In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.
> …

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28.

I find the Landlords undertook renovations to the basement rental unit and that the resulting disruption and inconvenience to the Tenant was temporary. I also find that the Landlord instructed the workers to minimize any disruption to the Tenant and her family by directing them to work during regular business hours and avoid work in the evenings and weekends. When such work occurred outside those hours, I find the Landlord informed the Tenant so as to minimize the impact on her. Further, I find that the Landlord responded appropriately when the workers impacted the Tenant, by apologizing to the Tenant and directing the workers to adhere to appropriate hours of work.

The Tenant alleged that communication between her and the Landlords deteriorated after the new tenancy agreement was signed and that she felt bullied by the Landlords. While it is clear the parties' interactions were at times conflictual during the renovations I am unable to find that these interactions devalued the tenancy to such an extent that the tenancy had no value.

I therefore dismiss the Tenant's claim for return of all rent paid from December 2017 to March 2018.

Security Deposit

I will now turn to the issue of the Tenant's security deposit. Section 38 of the *Residential Tenancy Act* which reads as follows:

> **Return of security deposit and pet damage deposit**
>
> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
>
> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
>
> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished

> under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
>
> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The evidence confirms that the Landlord did not complete a move in condition inspection report as required by the *Residential Tenancy Act* or the *Regulations*. By failing to perform incoming condition inspection reports in accordance with the *Act*, the Landlords extinguished their right to claim against the security deposit for damages, pursuant to section 24(2) of the *Act*.

As such, when the tenancy ended the only option for the Landlords was to return the Tenant's security deposit. Having failed to do so, I find the Landlords breached section 38. I therefore award the Tenant the sum of $2,050.00 representing double the security deposit (2 x $1,025.00).

Filing Fee

As the parties have enjoyed divided success I find they should each bear the cost of their respective filing fees.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **$2,923.05** for the following:

Cleaning of the rental unit	$260.00
Painting	$250.00
Sliding door blinds	$152.15
Outstanding electricity invoice	$141.97
Outstanding gas invoice	$68.93
April 2018 Outstanding rent	$2,050.00
TOTAL AWARDED	**$2,923.05**

The Tenant is entitled to the sum of $2,179.19 for the following:

Overpayment of electricity and gas invoice	$129.19
Return of double the security deposit	$2,050.00
TOTAL AWARDED	**$2,179.19**

The amounts payable are offset such that the Landlord is entitled to a Monetary Order in the amount of **$743.86**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: April 10, 2019

Residential Tenancy Branch