Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNSD
Landlord: MNDC MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 30, 2019, June 27, 2019 and August 29, 2019.

The Landlords were present along with their agents/property managers (Landlords' agents). Both Tenants attended the hearing along with their counsel. All parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenants

- Are the Tenants entitled to the return of double the security deposit held by the Landlords?

Landlord

- Are the Landlords entitled to compensation for damage to the rental unit or for damage or loss under the Act?
- Are the Landlords entitled to keep the security and pet deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings, or unless the parties specifically referred me to it.

Both parties agree that:

- The tenancy began May 1, 2014.
- The Tenants moved out on May 23, 2015, and returned on May 30, 2015, to do a walk through with the Landlord.
- Both Landlords were present for the inspection, as was one of the Tenants
- The Tenants came back on May 31, 2015, to complete some repairs, and do some final cleaning.
- The Tenants never returned to the property after May 31, 2015.
- Monthly rent was $3,700.00 and was due on the first of the month
- The Landlords hold a security deposit of $1,850.00 and a pet deposit of $1,000.00.

General Background Information

The Landlords stated that there was a major house fire in 2005, and the house was rebuilt in 2006. The Landlords stated that the house was only lightly used on weekends from the time of the house fire until the Tenants moved into the property in May of 2014 (no kids and no pets during that time). The Landlords' witness and caretaker confirmed during the hearing that no one else lived there during that time, as they live next door. The Tenants stated it cannot be known how many people used the house, prior to them moving in.

The Tenants stated that, at the start of the tenancy, they had 1 small terrier dog, and 2 cats. The Tenants stated they acquired a new puppy in December of 2014, after checking with the Landlords, verbally, in November 2014. The Landlords deny that the Tenants ever asked about a new dog.

Move-in and Move-out Inspection

A condition inspection report (the "report") was provided into evidence. The parties agree that a move-in inspection was done on April 28, 2014, and the parties signed and agreed to the condition as listed on this report at the start of the tenancy.

Tenants stated they never got a physical key to the rental unit, and only ever used a key-code, which is why they never returned the physical keys to the Landlord at the end of the tenancy. The Landlords stated they gave the Tenants keys but never got them back at the move-out inspection and pointed to the condition inspection report which shows that at the start of the tenancy, multiple keys were given to the Tenants. This report shows that they signed and acknowledged this in the move-in portion of the condition inspection report.

The parties had some dialogue with respect to when the move-out inspection would be completed. The email chain was provided into evidence, and it provides an unclear account and arrangement. The date the inspection was scheduled was not clearly established, although both parties agree that the one of the Tenants and the Landlords were present for the move-out inspection on May 30, 2015. The Landlord completed the move-out portion of the report after the Tenant left that day. The Landlords stated that they left a copy of the report on the counter in the house, so that the Tenants could pick it up and sign it next time they came by. However, the Tenants stated they never got this report because they never returned after May 31, 2015. Subsequently, the Landlords sent the Tenants the report by email on June 12, 2015, which the Tenants acknowledge getting. The Tenants stated that the report (move-out portion) was filled out in their absence, and they did not sign it because it was not presented at the time they did the walk-through.

Tenants' Application

The Tenants are seeking double the security and pet deposit because the Landlord failed to return their deposits within 15 days. The Landlord stated they got the Tenants' forwarding address in writing on April 28, 2015. The Tenants stated that they emailed the Landlord on June 12, and June 17, 2015, but did not hear back until June 18, 2015.

The Tenants stated they never got any of their deposits back, so they filed an application for dispute resolution on June 18, 2015, to recover double the deposits. The Landlords stated they filed their application on June 19, 2015, claiming against the deposits, but the system reflects that this application was not made until June 21, 2015.

The Landlords have pointed to their written submission, which states that the timeline for them filing against the security deposit can, and should be extended, as this is an exceptional circumstance. The Landlords stated that given that they were actively trying to work out a solution with the Tenants and were seeking to mitigate damages and determine losses, they should be afforded a few extra days, pursuant to section 66 of the RTA.

Landlords' Application

The Landlord provided a monetary order worksheet speaking to 6 different items as follows:

1) $616.00 – Couch Replacement

The Landlord provided a receipt into evidence which shows that they bought a new couch, after they determined that the Tenants had damaged the couch that was part of the furnished rental. The Landlords stated that the photos show that the Tenants cat scratched the couch and ruined the leather. Photos were provided into evidence which show some minor scuff marks and very zoomed in photos of small marks on the couch. The Landlords stated they bought a non-leather replacement to save money and it still cost them $616.00. The Landlords stated that this couch was bought in 2006.

The Tenants stated that the photos show that this was normal wear and tear and there are only minor scuff marks, not cat damage, as the Landlord has asserted.

2) $33.60 – Missing Snow Shovel

The Landlords pointed to the condition inspection report to show that there was a snow shovel listed on the move-in inventory of the house, as part of the carport list of items. The Landlords stated that this shovel was missing at the end of the tenancy.

The Tenants stated that this shovel was there when they left, and there is no evidence that they took it. The Tenants stated that the snow shovel was never mentioned at the move-out inspection. The Tenants stated that the shovel could have been taken after they moved out, as it was unsecured in the carport.

3) $347.97 – Blind Replacement

The Landlord stated that this was the cost to replace the blind in the upstairs bedroom. The Landlord stated that the slats were broken. The Landlord presented a few photos taken after the Tenants moved out to show that the blind was broken. The Landlords stated that the blinds were new in 2006. The Landlord pointed to the condition inspection report to show that it was in good condition at the start (move-in portion), but damaged at the end of the tenancy (on move-out portion).

The Tenants stated that they never signed the move-out condition inspection report and it appears the Landlord filled it out afterwards. The Tenants stated that they were under the impression that the blinds were normal wear and tear and they deny that they broke the blinds. The Tenants stated that the blinds were 9 years old and were getting brittle, but they did not neglect them.

4) $900.00 – Move Furniture in/out

The Landlord is seeking this amount as they had to hire someone to move the furnishings out of the house so that the carpets could be repaired, and then back in once the repairs were complete. A copy of this invoice was provided into evidence.

The Tenants assert that they should not have to pay for this item because the damage did not warrant the replacement of the carpet, and so they should not have to pay for the moving fees.

5) $16,051.71 – Carpet replacement

The Landlords are seeking the above amount (receipt provided) because they had to replace the carpets due to all the stains and damage. The Landlords stated that they explored all options prior to replacing the carpets, but the cat urine stains were so bad that they could not be treated. The Landlord pointed to the affidavit of the carpet specialist, where he stated that it was “clear” that there was significant urine all over the carpets. The affidavit outlines that the Landlord obtained a blacklight, as he had recommended (blacklight shows organic stains) and that it showed extensive

staining. The Landlords had the carpets assessed on June 17, 2015, had the measurements for new carpets completed on June 19, 2015, and obtained a quote on June 23, 2015. That same day, the Landlords authorized the carpet company to proceed with the carpet replacement, (as per the affidavit).

The affidavit of the carpet specialist further explains that after they pulled up the carpets, they noted that the underlay and floors below were heavily stained by pet urine, and this required further treatment, and delayed the project. The specialist further noted that the Landlords only replaced the damaged carpets, and proceeded as quickly as they could.

The Landlords stated that they got the final invoice on July 16, 2015, which included work on the bedroom upstairs, kids bedroom, hallways upstairs, front entrance, downstairs office, hallway, entrance, and other areas. The Landlord stated that the staining was widespread and is highlighted by the blacklight photos they provided into evidence. The Landlord stated that they did not replace the whole house, but rather just the rooms that had been heavily soiled. The Landlords stated that this carpet was new in 2006, and they also tried to mitigate their loss by first attempting to clean the carpets, on June 11, 2015 (the carpet cleaner opined and noted that there were many pet urine stains and smell). The Landlord's agents also were present when the carpets were cleaned and stated, in the hearing, that they heard the carpet cleaner say that the pet urine was so bad the carpets likely had to be replaced.

The Landlords stated they continued to mitigate by contacting the Tenants by email on June 11, 2015, to discuss the damage, and look for ways to fix the issue but these discussions led nowhere. As such, the Landlords proceeded with carpet replacement in the following weeks.

The Tenants stated that the only area the Landlords brought up at the time they did the walk through was the front entrance where there was some dirt. The Tenants pointed to photos in their evidence which show staining of carpets that appear to originate from the wall in the basement. The Tenants also stated that since the carpets were 9 years old at the time, they were almost at the end of their useful life expectancy. The Tenants also stated that many other substances glow under blacklight, and it cannot be assumed that it was all from them, or that it was pet urine. The Tenants further stated that they believe the carpet cleaning company exaggerated the pet urine claim to help out the Landlord. The Landlord denies having any personal connection with that company.

The Tenants further pointed to letters from a couple different friends, who opined that the house was clean and well kept. The Tenants also provided a letter from the cleaners they hired at the end of the tenancy, and they opined that the house had no visible damage and that it was clean.

The Landlord had his agent and property manager (who lives next door) speak at the hearing, and he stated that he is a retired investigator, and is familiar with UV blacklight as a means of looking for stains. He stated that although the blacklight can reveal staining from a variety of sources, he could easily and clearly smell animal urine in the majority of the stains. The Landlord's agent stated that he personally got down on his knees and smelled the spots both before and after the carpet was torn out, and it was very easy to smell the urine. The Landlord stated that when such a strong smell is combined with evidence of staining via the blacklight, it is a reliable indication that the stains are from pet urine. The Tenants feel there is no way to know that it wasn't the neighbour's dog or another visitor who caused the stains, and the Landlord cannot know for sure it was their animals.

6) $11,100.00 – Loss of Rent During Repairs

The Landlords are seeking 3 months' worth of lost rent (3 x 3,700.00) because the unit sat empty while the carpets were replaced and repairs were done. The Landlords stated that they tried to quickly mitigate both the carpet damage and the rental losses by quickly re-cleaning the carpets, engaging with companies to assess the damage, and provide quotes. The Landlord stated that they ordered the carpets around June 23, 2015, after spending the time leading up to this trying to find matches for "splicing in patches" rather than replacing whole rooms. The Landlords stated that patching efforts proved fruitless as the color was just different enough that they could not splice in small patches. The Landlords stated that the carpets were not actually installed until August 25, 2015, which is 2 months after they were ordered because of the following reasons: the company was "extremely busy", they had to clean and treat the urine spots, and had to move furniture etc in preparation. The Landlords stated that they re-rented the unit as of September 1, 2015.

The Tenants stated they should not have to pay for this amount because they did not cause the carpet damage, and also in part because the Landlords lived out of town, and they contributed to some of the delays. The Landlords stated that they had their agent and neighbour help keep things on track, and their absence was not a factor in the timelines.

Analysis

I note that the burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (move in inspection, photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a 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, and at the end of the tenancy before a new tenant begins to occupy the rental unit. 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.

In this case, I note that the parties do not dispute the contents of the move-in portion of the condition inspection report. As such I find this part of the condition inspection report provides reliable evidence with respect to the condition of the rental unit at the start of the tenancy. Further, I note the furniture contents report provided into evidence was signed by the Tenants at the start of the tenancy, and I find it also provides reliable evidence with respect to the condition of the contents of the furnished rental unit at the start of the tenancy.

With respect to the move-out portion of the condition inspection report and the furniture contents report, I find the document before me is of limited value in determining the condition of the unit, and the items within at the end of the tenancy. I note that both parties attended the unit to do a walk-through/move-out inspection, which I find happened on May 30, 2015, as this is when both parties were present, walked through the unit, and had discussions about the condition. However, I also note there was some

miscommunication regarding the date and time of the inspection. As per the email chain provided by the Tenants, it appears as though the Landlord offered Saturday May 30, 2015 as a time for the move-out inspection, then the Tenant replied and said he would like to do it on the following day, Sunday. Then, the Landlord replied and "confirmed" 1pm on Saturday, May 30, 2015, even though the previous message from the Tenant was for a different date. The final email in that chain indicates the Tenant agreed to Saturday at 1 pm. I find the communication in this email chain is unclear, particularly in light of the fact that there were multiple dates mentioned.

The Tenants have suggested that part of the reason they had to leave early from move-out inspection was because of the miscommunication and scheduling issues. The Landlords have suggested that the Tenant left the move-out inspection early because he was not happy with how things were going. It appears at least some of the move-out portion of the condition inspection report was completed after the walk through was done on May 30, 2015, and the Tenant had left, which made it difficult for both parties to sign and agree to this report as being an accurate reflection of the state of repair. At this point, it is clear that the parties do not agree that the move-out portion of the condition inspection report accurately represents the rental unit.

Ultimately, I am not satisfied the move-out portion of the condition inspection is sufficiently reliable. I find there was some miscommunication with respect to when the inspection would be done, and I find both parties bear some responsibility for this. I find this likely contributed to the lack of time, and some of the dysfunction at the time the move-out walkthrough was done. It also seems likely that this made it harder for the parties to complete the inspection, fill out the report, sign it (whether it be to sign and disagree, or sign and agree). I have placed little weight on the *move-out* portion of the condition inspection report, and I will rely on other documentary evidence, testimony and photo evidence provided by both parties to make my determinations with respect to the condition of the contents of the furnished rental unit at the end of the tenancy.

Tenants' Application

First, I turn to the Tenants' application for the return of double the security and pet deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to

do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

The Tenants stated they moved out on May 23, 2015, but came back to do a walk-through move-out inspection with the Landlords on May 30, 2015. The Tenants returned on May 31, 2015, to address some of the issues identified at the walk-through move-out inspection. I note the Tenants stated they never got a key to the rental unit, and only ever used a key-code, which is why they never returned the physical keys to the Landlord. However, I note the condition inspection report shows that at the start of the tenancy, multiple keys were given to the Tenants, and they signed and acknowledged this in the move-in portion of the condition inspection report.

After weighing the evidence before me on this matter, I find the Landlord has provided more detailed and compelling evidence on the issue of the keys, and I find it more likely than not that the Tenants were given physical keys at the start of the tenancy. I note they did not return any keys at the end of the tenancy. With respect to when the tenancy ended, I note the Landlords in their written submission, stated that they extended the tenancy until June 12, 2015, to allow the Tenants time to remedy the issues. However, a change to the end date of the tenancy would require the consent of both parties, and there is insufficient evidence that the parties agreed the tenancy would end on June 12, 2015, rather than at the end of May, which is when written notice was given for. I note the Tenants were given a chance to come back and remedy a few issues. However, I also note this occurred on May 31, 2015, and the Tenants never returned.

I note the tenants moved out on May 23, 2015, and the rental unit was empty when the parties met and walked through the unit on May 30, 2015. Given no keys were returned, and the Tenants came back on May 31, 2015, to remedy a couple of issues that were identified at the move-out inspection, I find the tenancy did not end until this date. Although the Landlord was not happy with the work the Tenants did to clean and repair the unit on May 31, 2015, this was the last day the Tenants entered the rental unit. Although conversations about damages continued for the following weeks, I find the tenancy formally ended on May 31, 2015.

The Landlords have argued, via their written submission, that the time limit for them to apply to keep the security and pet deposit should be extended, pursuant to section 66 of the Act. The Landlords noted the efforts undertaken to address the pet urine damage, the extension of the move-out period till June 12, 2015, and the Landlords efforts to negotiate on the damages. The Landlords stated their case is similar to Kikals v. British Columbia, 2009 BCSC 1642 at paras. 22-34. However, they did not explain how or why

this case is similar, or which findings or principles from this case are instructive or relevant. In any event, I have considered the Landlords' request to have their time limit, to apply against the security deposit, extended.

I note that section 66 of the Act states as follows:

> **Director's orders: changing time limits**
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> **66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

Further, I turn to *Residential Tenancy Policy Guideline #36 – Extending a Time Period*.

> The *Residential Tenancy Act*1 and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances.*** An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.
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> **Exceptional Circumstances**
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> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:
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> • the party did not wilfully fail to comply with the relevant time limit
> • the party had a bona fide intent to comply with the relevant time limit
> • reasonable and appropriate steps were taken to comply with the relevant time limit

- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In this case, I note the Landlords were undertaking efforts to mitigate the damages and loss by having the carpets cleaned multiple times, getting professional opinions as to what could be done about the carpet stains. I note that it took the Landlord a few weeks to determine that the carpet damage and repairs were more extensive than they initially anticipated, which is a large part of the reason the application was filed late (alongside the miscommunication and misunderstanding around the timing of the move-out inspection).

Although the Landlord only had 15 days to file their application, pursuant to section 38 of the Act, after the tenancy ended on May 31, 2015, I note the Landlord was taking reasonable and appropriate steps to comply with the time limit by promptly re-cleaning the carpets and seeking further input as to what was required in terms of carpet remedies. I also note the Landlord was engaged in email conversations with the Tenants about how best to proceed with the alleged carpet damages. I further find the Landlords application appears to have merit, and that they brought their application forward as soon as practical under the circumstances. As such, I grant the Landlord an extension of the time limit to file their application claiming against the security deposit and I dismiss the Tenants' application to recover double the security and pet deposit. I note the Landlords still hold the Tenants security and pet deposits, and this deposit will be addressed further below, as part of the Landlords' application.

Landlords' Application

1) $616.00 – Couch Replacement

Having reviewed the documentary evidence and testimony on this matter, I find the photos show some minor surface damage to the leather. However, I find it is not as severe as the Landlords have asserted. I find the marks, although noticeable in some of the zoomed in photos, are difficult to assess because they are so zoomed in they do not show how large the scratches/marks were, or how significant they were, within the overall context of the appearance and functionality of the couch. Overall, I find there is insufficient evidence to show the scratches go beyond the level of reasonable wear and tear for this type of item. Also, I note the Landlords have provided an itemization of what

contents were in the furnished rental unit, which includes this couch. I also note the Landlords have written on this document that the couch was scratched. However, I also note there were no photos taken to show the state of the couch prior to the Tenants moving in, and the list of items provided as part of the inspection, which includes the couch, does not sufficiently show the condition of the couch at the start of the tenancy, such that I could reasonably conclude that all of the damage was a result of the Tenants. Furthermore, I note the couch, although only lightly used, was about 8 years old at the time the tenancy started, and without photos or a detailed description as part of that itemization list, it is not sufficiently clear that the couch was without any marks or scratches at the beginning of the tenancy, in 2014. Overall, I find the Landlords have not sufficiently shown that the scratches on the couch were caused by the Tenants, or that they go beyond the level or reasonable wear and tear. I dismiss the Landlords application to recover the cost of replacing this couch.

2) $33.60 – Missing Snow Shovel

I note that there was a snow shovel listed on the move-in inventory of the house, as part of the carport list of items. The Landlords stated that this shovel was missing at the end of the tenancy. However, I find there is insufficient evidence to show that the Tenants are responsible for this item, as I note this shovel was always left in an unsecured area (the carport). I do not find the move-out portion of the condition inspection provides the most reliable account or the inventory of items. The Tenants stated it was there when they left, which is difficult to ascertain at this point. Overall, I find there is insufficient evidence to show that this item went missing while the Tenants were residing there, and that it did not go missing afterwards, even if it were a few days afterwards. I dismiss this part of the Landlord’s claim.

3) $347.97 – Blind Replacement

The Landlord stated that this was the cost to replace the blind in the upstairs bedroom. The Landlord stated that the slats were broken. I note that the blinds were new in 2006. The Tenants stated that they were under the impression that the blind damage was from normal wear and tear. The Tenants stated that the blinds were 9 years old and were getting brittle, but they did not neglect them.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Element*s, which states as follows:

> This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

I note the useful life expectancy of blinds is 10 years, and these blinds were 9 years old approximately. I find the evidence sufficiently shows that this damage occurred while the Tenants were living in the rental unit. However, given the age of the blinds, I find the Landlord is only entitled to recover 10% of the cost of this item, as it was 90% of the way through its useful life expectancy. I award the Landlord $34.79 for this item.

Expenses Related to Carpet Damage

4) $900.00 – Move Furniture in/out
5) $16,051.71 – Carpet replacement
6) $11,100.00 – Loss of Rent During Repairs

This portion represents the largest portion of the Landlord's claim, and the most contentious of the items. The parties completely disagree on the state of the carpets, the cause of the stains, whether the damages noted warrant the replacement, and should the Tenants be responsible for rent, while all of these carpet issues were being sorted out.

I have considered the totality of the evidence, testimony, affidavits, photos, and reports provided into evidence. I accept that the carpets were new in 2006. I accept the Landlords' testimony and the testimony of the Landlords' agent with respect to the fact that the entire house, carpets included, were very lightly used (generally no kids, pets, and mainly only used on weekends by the Landlords). I find the evidence sufficiently shows that the carpets were likely in much better condition than other similar rental unit carpets of that age (9 years old).

As stated above, I find the *move-in* portion of the condition inspection report is reliable and it shows that the carpets were in good condition with the exception of a couple small noted issues. I note the Tenants had 1 dog and two cats for part of the tenancy, and then also acquired a puppy for the last 6 months they lived there. When the tenancy ended, the Tenants had a carpet cleaning company come in, and clean the carpets. This same company was brought back by the Landlords in the following weeks to clean them again. This cleaning company noted on their invoices that there was a lot of pet

urine on the carpets. The second time the carpet cleaning company came back, they noted that some of the stains were “very deep”, and that they may reappear.

In the following days/weeks, the Landlord had someone from a local flooring company come by and assess the carpets, help with color matching/patching, and help determine the best course of action. The Landlord provided an affidavit from the employee of this company who stated that: on four separate occasions he inspected the property and he believes the carpets have been heavily damaged by pet urine. He inspected the carpet, and vinyl flooring with UV blacklight and noted that, what appeared to be urine, had absorbed into the flooring, and the underlay, and it was extensive. The Landlord provided photos of the stains under blacklight.

The affidavit and email from the employee of the flooring company further stated that they removed the carpets, and the smell of urine was quite bad. Following the removal, another scan was done with the blacklight, which showed staining right into the subfloor. At that time, he recommended sealing the subfloor. I further note that the Landlords’ agent testified directly to the fact that he was on-site and saw the stains, before and after removal, as well as with and without blacklight. The Landlords’ agent provided clear and compelling testimony that the stains were not only visible, but that it was clearly a urine smell where each stain was. I accept that not all of the stains were from pet urine, but I find it more likely than not that most of these stains were caused by pet urine, as this was consistently identified by the Landlords, their agent, the cleaners, and the carpet company. I find it unlikely that that these stains were from other people’s pets or from other visitors, as the Tenants have suggested.

I note the Tenants have explained and provided evidence to show that blacklights can reveal lots of different types of staining, both organic and inorganic (body fluids, cleaners etc). I note the Tenants stated, and provided statements from people they know, claiming that the house was clean. However, when weighing the two versions and all of the evidence, I find the Landlords have provided a more compelling and detailed version of events regarding the carpets, the stains, as well as the likely cause.

With respect to the Landlords’ mitigation of the cost of carpet replacement, I note the Landlords tried to clean the carpets a second time, attempted to repair just the stained portions but couldn’t find a close enough color match to “splice” in, and gradually found the smell and stains were more stubborn and deep than initially thought.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is

located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

In this case, I find the Landlords' sufficiently mitigated their loss with respect to the carpet replacement cost. Ultimately, I find the Tenants are responsible for the vast majority of the carpet damage, and I accept that most of this was caused by pet urine and the lingering odour/staining.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Element*s, which states as follows:

> This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
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> 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.
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> 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.

I note the useful life expectancy for interior carpets is 10 years. The evidence and testimony indicates that these carpets were installed sometime in 2006, and at the time the Tenants moved out (May of 2015), the carpets were around 9 years old. I further note that, these guidelines for "useful life expectancy" are not prescriptive, and I am not bound to them, particularly in situations where there the materials, or their use, falls outside of what is considered normal. In this case, I note that the Landlords only used the property part-time on weekends for a large part of the time, leading up to the start of this tenancy (May 2014). I accept that there would be substantially less wear and tear on the carpets than average, as it was not previously rented, and was only used part

time. As such, I have deviated from the useful life policy guideline with respect to the carpets.

As stated above, I find it more likely than not that the Tenants caused significant damage to the vinyl flooring, the carpet and the underlay. As a result, I find the Tenants are responsible for some of these costs. As previously stated, I accept the carpets were likely in better than average condition, given the limited use of the house, which is why I will be deviating from the useful life expectancy laid out in the policy guidelines. Although I find the Tenants are responsible for the bulk of the carpet damage, I find the Tenants are not liable for all the costs, as these were several years old at the time (approximately 9 years). Rather than applying the useful life expectancy model within the policy guidelines (which would suggest the Landlord only receive 10% of the cost), I have increased this amount. I find the Tenants are liable for 25% of the costs associated with the vinyl flooring and carpet replacement. I award $4,012.92.

Further, given my findings thus far, and the fact that it was largely a furnished rental, I find the Landlord's should be awarded the moving costs they incurred before and after carpet replacement. I accept the Landlord would have had to clear out the rooms before carpets could be replaced. I award $900.00 for this, as this is what the moving invoice shows.

With respect to the Landlord's claim for lost rent (3 x 3,700.00), I note the Landlord could not re-rent the unit because of all the carpet repair issues and the delays associated with this. I note the Tenants feel the Landlord contributed to some of the delays by living out of town. However, the Landlords stated that they had their agent and neighbour help keep things on track, and their absence was not a factor in the timelines. I accept that the Landlord had their agent present, and I find it unlikely that by living out of town that this was a material or significant factor in why it took so long to replace the carpets.

That being said, I find there are issues with how the Landlord mitigated the loss of rent. I acknowledge that the carpet issue and the severity of the issue was not fully known until a couple of weeks after the Tenants moved out. I also acknowledge that the Landlord had to perform several steps before the carpets could be replaced (cleaning, blacklight, estimate, furniture move, removal of old carpets). However, I also note that the Landlord chose a company to replace the carpets who was "extremely busy". I acknowledge the affidavit from the flooring company which states they proceeded without delay. However, it is not sufficiently clear why there was a 2 month lapse between ordering the carpets, and having them installed, even after considering the issues identified. I find

the Landlords failed to explain why they could not contract a different flooring company, and find one that was better able to complete the job in a timely manner. A two month gap does not seem to be a reasonable time frame to wait for carpets to be installed, especially in the absence of information regarding whether or not there were other carpet contractors available, or what efforts were undertaken to see if it could be done sooner by a different company.

I turn to Policy Guideline #3 – Claims for Rent and Damages for loss of Rent, which states the following:

> *This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.*
> *[…]*
> *Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.*

I turn to *Residential Policy Guideline #5 – Duty to minimize loss*, which states as follows:

> *If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.*

In this case, I find there is sufficient evidence to show that the Landlord partially mitigated, but there is insufficient evidence showing they took all the steps they reasonably could have and should have to ensure the carpets were replaced in a more time sensitive manner. I award the Landlord with $3,700.00 in rent to compensate them for one month worth of rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were substantially successful with the application, I order the Tenants to repay the $100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlords are entitled to the following monetary compensation, as outlined above:

Item	Amount
1. **Blinds**	$34.79
2. **Moving costs**	$900.00
3. **Flooring costs**	$4,012.92
7. **Rent**	$3,700.00
PLUS: Filing Fee	$100.00
Subtotal:	$8,747.71
LESS: Security/Pet Deposit	$2,850.00
Total Amount	**$5,797.71**

Conclusion

The Landlords are granted a monetary order in the amount of **$5,797.71**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: August 29, 2019

Residential Tenancy Branch