Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLYWELL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S MNRL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $16,907.91 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented by its property manager ("**AY**") at the hearing. Tenant MN ("**MN**") attended the hearing and represented both tenants. Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties gave evidence at two separate hearings. I issued an interim decision following the first hearing (dated October 16, 2019). At that hearing, AY testified, and MN confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. MN testified, and AY confirmed, that the tenants served the landlord with their evidence package. In my written decision of October 16, 2019, I found that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

1) a monetary order of $16,907.91;
2) recover the filing fee from the tenant; and
3) keep the security deposit in partial satisfaction of any monetary award made at this hearing?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenants moved into the rental unit (a single detached home) on November 1, 2014, but the parties did not enter into a written tenancy agreement until February 1, 2015. At the end of the tenancy, monthly rent was $1,550 and was payable on the first of each month. The tenants paid the landlord a combined security and pet damage deposit of $1,070. The landlord still retains this deposit. The landlord seeks to have the tenants pay a further $330 as part of the pet damage deposit which it says the tenants were obligated to pay but failed to. The tenants deny they are obligated to pay this amount.

Procedural History

On April 2, 2019, the landlord's served a One Month Notice to End Tenancy for Cause, with an effective date of May 31, 2019. The tenants did not dispute this Notice. On June 27, 2019. The landlord applied for an order of possession. This application came to a hearing on June 27, 2019 (the "**June Hearing**"). At the June Hearing the parties entered into a settlement agreement (the "**Settlement**") which was recorded by the presiding arbitrator in the form of a written decision. The terms of the Settlement were recorded as follows:

> Both parties agreed to the following final and binding settlement of all issues currently under dispute, except for the application filing fee, at this time:
>
> 1. Both parties agreed that this tenancy will end by 1:00 p.m. on June 30, 2019, by which time the tenants and any other occupants will have vacated the rental unit;

2. The landlord agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application, except for the $100.00 application filing fee.

[…]

The landlord asked that I make a decision regarding the $100.00 application filing fee. Since the landlord settled this application and I was not required to have a full hearing or make a decision about the merits of the landlord's application, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants.

The tenants vacated the rental unit on June 30, 2019. The landlord filed this application on July 4, 2019.

On July 16, 2019, the parties appeared again before the Residential Tenancy Branch to hear an application of the tenants to recover their costs for emergency repairs and for reimbursement of rent (the "**July Hearing**"). The presiding arbitrator considered the condition of the rental unit at the start of and during the tenancy. He wrote:

> I accept the Landlord testimony and evidence that the rental unit was in acceptable condition at the start of the tenancy and that the Tenant accepted the condition of the rental unit as good or acceptable on October 31, 2019 by signing the report.
>
> I also accept from both parties' testimony and evidence that the rental unit has deteriorated during the tenancy. The Tenant says it was due to the Landlord's neglect and the Landlord says the Tenants did not clean or maintain the property and the Tenants operated a marijuana grow operation in the rental unit which may have caused the problems.
>
> The Tenants have not provided any corroborative evidence to prove the origin of the mold issues, electrical issues or the if the Tenants' medical issues were caused by the rental unit. The Landlord has provided photographic evidence that marijuana was grown in the rental unit and his testimony is that growing the marijuana in the house could have created the mold issues and the electrical issues. The Tenant agreed they grew marijuana in the rental unit. I accept that growing marijuana in the house could have affected the humidity and the electrical systems in the rental unit. As the Tenant has not provided any corroborative evidence to prove the source of the mold and the electrical problems such as in a mold inspection report or an electrician's report; I find the Tenant has not proven the source of these issues.

The presiding arbitrator dismissed the tenants' application in its entirety.

Current Claim

The landlord's monetary claim relates to two categories: compensation for damage to the rental unit and costs to repair the damage; and compensation for unpaid amounts owing by the tenant and loss of rental income. The landlord's monetary claim is broken down as follows:

Condition of Rental Unit	
Cleaning, Repairs, Fees, and Supplies	$6,543.00
Electric Damage	$513.42
Replacement Washer and Dryer	$987.50
Replacement Fireplace	$783.99
Arrears and Losses	
Loss of Rental Income (July to October)	$6,200.00
Unpaid June 2019 Rent	$1,550.00
Unpaid Pet Damage Deposit	$330.00
Total	**$16,907.91**

1. Condition of the Rental Unit

The parties completed and signed a move-in condition inspection report on October 31, 2014 (the "**Move-In Report**"). The Move-In Report listed the condition of the rental unit as in predominantly "good" condition, with some wear and tear to various doors and walls throughout the rental unit recorded.

The tenants argued that the Move-In Report does not reflect the true condition of the rental unit at the start of the tenancy. MN testified that a fire occurred in the rental unit prior to the start of the tenancy which significantly damaged it. The tenants submitted an email they sent to the landlord's agent dated November 25, 2014 in which they outline damage they say existed at the start of the tenancy. The landlord's agent, in an email sent that same day, replied that she would arrange for a second walk-through to be done on December 3, 2014.

Neither party provided any documentary evidence relating to the results of such an inspection (either by way of a revised condition inspection report, or an email from the landlord confirming the condition of the rental unit alleged by the tenants in their email) or provide oral testimony as to what damages (if any) were confirmed at this inspection.

The landlord conducted a move-out condition inspection report on July 2, 2019 (the "**Move-Out Report**"). The tenants declined to attend the move out inspection and did not sign the Move-Out Report. The Move-Out Report documented significant damage to the rental unit, including:

- smoke stains to the walls and ceilings;
- damage to baseboards and trim;
- "dozens" of holes in the walls;
- mold on the walls and windows;
- damage and removal of various doors;
- missing washer/dryer;
- electric fireplace missing;
- tampering with electrical system; and
- signs of a marijuana grow up in the crawl space.

The Move-Out Report recorded the condition of most items in the rental unit as either "damaged", "poor condition", "dirty" or "missing".

a. Cleaning and Repairs

The landlord submitted photographs which show the rental unit in a significant state of disrepair. Mold, cobwebs, and staining are visible on the walls. Large amounts of refuse have been left on the rental property. Holes in the walls are visible. The floors have not been cleaned and, in once instance, tape has been left affixed to the of the floor.

AY testified that the owner of the rental unit (the "**Owner**") undertook the cleaning and repairs of the rental unit himself. She submitted copies of invoices the landlord created to document the work done. She testified that the Owner calculated the cleaning work done at a rate of $25 an hour, and the repair work done at $35 an hour. In brief, the work undertaken (and the associated value of the work) is as follows:

Date	Work Performed	Hours	Hourly Rate	Amount
09-Jul-19	Take garbage to dump	8.5	$35	$297.50
10-Jul-19	Clean molds from inside windows and doors	7	$25	$175.00
12-Jul-19	Wash walls in house	8	$25	$200.00
13-Jul-19	Clean interior walls with bleach	4	$25	$100.00
13-Jul-19	Fill holes in drywall throughout house	6	$35	$210.00
15-Jul-19	Fix holes in drywall and replace baseboards	8	$35	$280.00

16-Jul-19	Holes in drywall, and baseboards	9	$35	$315.00
17-Jul-19	Clean kitchen	10	$25	$250.00
26-Jul-19	Paint ceilings and walls with primer	9	$35	$315.00
27-Jul-19	Paint ceilings and walls with primer	10.5	$35	$367.50
28-Jul-19	Paint ceilings and walls with primer	6	$35	$210.00
29-Jul-19	Paint with first coat	9	$35	$315.00
07-Aug-19	Clean 2 bathrooms and laundry	6	$25	$150.00
08-Aug-19	Modify and trim bi-fold closet door and paint	8	$35	$280.00
08-Aug-19	Remove nail polish from walls	1	$35	$35.00
09-Aug-19	Modify and trim bi-fold closet door and paint	4	$35	$140.00
09-Aug-19	Sand and prime 3 walls damaged by nail polish	1	$35	$35.00
10-Aug-19	Install 11 pairs of bi-fold doors	6	$35	$210.00
10-Aug-19	Paint walls damaged by nail polish	1	$35	$35.00
17-Aug-19	Install doors	6	$35	$210.00
18-Aug-19	Paint bifold doors and interior doors	10	$35	$350.00
20-Aug-19	Paint bifold doors and interior doors	10	$35	$350.00
01-Sep-19	Drive to dump	0.5	$35	$17.50
04-Sep-19	Trip to recycling plant to get rid of electronics left by tenants	1	$35	$35.00
10-Sep-19	ESTIMATE - grout tiles and remove tiles	9	$35	$315.00
			Total	**$5,197.50**

The landlord also submitted receipts for:

- the purchase of supplies to repair the rental unit in the amount of $1,177.86; and
- refuse disposal fees incurred removing refuse from the rental unit in the amount of $167.00.

AY argues that the Move-In Report accurately reflects the condition of the rental unit at the start of the tenancy, and as such, the tenants are responsible for the cost of the repair and remediation of the rental unit.

The tenants did not dispute the condition of the rental unit at the end of the tenancy. Instead, they argued that the damage was not caused by them, and rather existed at the start of the tenancy (as discussed above) or was caused by water entering the rental unit through a hole in the roof that existed at the start of the tenancy.

The tenants take the position that, prior to the start of the tenancy, the roof leaked and allowed water to enter the rental unit causing water damage, which, in turn, gave rise to the presence of the mold on the windows and walls that the landlord alleges the tenants caused.

The tenants entered an expert mold assessment report, dated September 29, 2019. This report confirms the presence of mold in the rental unit. The author writes:

> Here is the assessment report you requested during our discussions regarding the potential health effects caused by moulds found present in your rental property, located at [rental unit address]. You explained that you resided at this residence from Nov. 2014-June 2019. We also discussed the recommended cleaning techniques and the conditions needed to start microbial growth.
>
> To be clear, [the author] did not respond to this water damage claim. We do not know if the cause of the water leak was properly repaired. We do not know if the resulting water damages were properly remediated, properly dried out or repaired to Coast Wide standards.
>
> [...]
>
> In review of the photos and chronology of events that you described in your email to us, we can ascertain that there are quite a few examples of conditions that could potentially lead to the development of fungal contaminants, including moulds. Firstly, the picture indicating an apparent hole in the roof visible light proves a noticeable hole near the roof peak would be the most likely access for water infiltration. An invoice provided by a professional roofer (Bruce Gordon) also supports this fact. Secondly, the presence of water in the light fixtures and soft drywall on the ceiling and walls are also indicative of a leak causing water damage. The insulation was also reported to be wet. Thirdly, pictures of the baseboard trim show distinct signs of swelling, accompanied with signs of mold growth, also indicative of prior water damage. It is our understanding that prior to moving in there was a chimney fire that occurred in June of 2014.
>
> To summarize, based on photographic evidence, an invoice from the roofer, and a written, chronological description of events (emails) provided by Maureen Norton, we can conclude that there was definitely signs of microbial growth (pictures of ceiling, walls, and baseboard trim covered in mold). Based on our professional training and experience, the humid conditions required (60% RH or more) to stimulate mold growth were satisfied and maintained with the intermittent, but sustained (every time it rained) introduction of water through the hole in the roof. We have seen the photographic evidence that shows a

> noticeable hole (see light?) at the peak of the roof. Water will always find its level and, therefore, will continue down until it does, eventually, hit its "bottom." This is the most likely cause of the "moist" drywall on the ceilings and walls, including the wet insulation, as well as the "swelled," mouldy, water stained baseboard trim and the water-filled light fixtures. All of these damp, mouldy areas were at or below the ceiling level, in the living space of the home. In addition to flooding, leaks or structural damage, indoor dampness can also result from normal residential activities including cooking and bathing, excessive numbers of indoor plants, pet urine, or improper use of moisture-generating appliances, such as improperly vented clothes dryers. The evidence we saw corroborated with the structurally damaged, leaking roof as being the primary cause of indoor moisture.
>
> [emphasis added]

The tenants entered into evidence a photograph of the rental unit's attic which shows a hole in the roof. I understand this to be the photo the author of the report refers to. The tenants also entered into evidence an invoice from a roofer issued to the landlord dated April 29, 2018, in which the roofer wrote "this cedar roof is in extremely bad shape. I think the owner needs to replace it."

AY argued that the author of the report never attended the rental unit to inspect it, and as such, the report is of little probative value. The landlord produced no evidence regarding the current or former condition of the rental unit's roof.

b. Electrical

AY testified that that the tenants had tampered with the electrical system in the rental unit so as to create a marijuana grow-op in the crawlspace. The landlord entered into evidence photographs of marijuana plants in buckets located in the crawlspace, as well as a row of jugs of marijuana plant food.

MN strongly denied that the crawl space contained a grow-op (I note that the arbitrator presiding over the July Hearing found that the tenants had a grow-op in the crawl space). Rather MN testified that the tenants grew their marijuana legally off-site (they provided a copy of a license to do so) and used the crawl space as a marijuana processing facility. She testified that the marijuana plant food was stored in the crawl space for use at the off-site facility.

AY testified that the tenants tapped into the existing electrical system and drew electricity to power the grow-op. In support of this, she provided an email from an electrical contractor, who wrote:

> As requested we have done an inspection on the [rental unit], I have attached the pictures that in my professional opinion proves that the electrical work was not done when the house was built. There are numerous code violations and its not done in a professional manner.

Among the photos referred to was one of an electrical cable which bears the date “Sep / 2016”. AY testified that the date on the electrical cable references the date the cable was manufactured. She argued that this indicates the cable was installed during the tenancy (which started in 2014) and that, therefore, the tenants installed the cable.

MN denied that the tenants installed electrical cables or did any electrical work in the crawlspace. She testified that the tenants used the electrical system in the crawlspace as they found it at the beginning of the tenancy. She speculated that, the electrical cable bearing the date “Sep / 2016” must have been installed by an agent of the landlord at some point during the tenancy. She did not specific when this might have occurred.

AY testified the landlord hired an electrician to fix the ad-hoc electrical system in the crawl space at a cost of $513.42. The landlord entered a copy an invoice supporting this amount into evidence.

c. Missing Washer/Dryer

AY testified that the washing machine and dryer were missing from the rental unit at the end of the tenancy. She testified that the landlord had purchased a new washing machine for the rental unit on March 28, 2018. She provided a receipt for the purchase of a new washing machine in the amount of $542.13 in support of her testimony. She provided a website printout from The Brick showing the cost of a new dryer as $445.

AY did not know how old the landlord’s dryer would have been at the end of the tenancy. No evidence was provided by either party as to whether the landlord replaced the dryer during the tenancy.

MN testified that the electrical system in the rental unit did not function properly. She testified that this caused the appliances, including the washer and dryer, not to work properly, and malfunction or break. She submitted an email dated August 26, 2016 in

which she advised the landlord's agent that the washer/dryer is "terrible" and that clothes require two to three cycles in each.

MN testified that the washer and dryer supplied by the landlord broke (including the washer that was installed in 2018). She testified that when these appliances broke, she purchased her own, and had the landlord's disposed of. She provided a copy of a receipt for a new washer and dryer (costing $1,097 each) dated March 2, 2019.

MN testified that she did not seek the landlord's permission to dispose of the landlord's appliances. She provided no documentary evidence which supports her assertion that the landlord's washer or dryer were broken or non-functional.

d. Fireplace

AY testified that the rental unit contained an electric fireplace during the tenancy, and that it was missing at the end of the tenancy. She testified that a replacement fireplace would cost $783.99.

MN acknowledged that the fireplace was not in the rental unit at the end of the tenancy. However, she testified that when the tenants moved out of the rental unit, their movers took it by error. She testified that she returned it the landlord on July 15, 2019. She submitted an email dated July 15, 2019 sent to an agent of the landlord stating that she had returned the "stove". MN testified that this referred to the fireplace. I note that the Move-Out Report does not indicate that the kitchen stove has been removed and does indicate that the fireplace had been removed.

AY did not give any evidence to contradict MN's testimony.

2. Arrears and Losses

a. Loss of Income

AY testified that the landlord was unable to re-rent the rental unit for the months of July, August, September, and October 2019 due to the condition the rental unit was left in, as it required extensive cleaning and repairs. The invoices submitted by the landlord which document the repair work being performed (see table above) show that this work took place in July, August, and early September 2019. No documentary evidence was provided to show that repairs or remediation were made in October 2019.

MN opposes this relief on the basis that the repairs and remediation being done are not required due to any fault of the tenants.

b. Unpaid June 2019 Rent

AY testified that the tenants remained in the rental unit until the end of June 2019 and not pay rent for that month. She argued that the tenants are obligated to pay rent for the month of June 2019.

In their written submissions, the tenants denied June 2019 rent was owing. They wrote:

> The Residential Tenancy Board already dismissed the request for payment of June rent in the hearing decision on June 27, 2019.

I note that, as stated above, the June Application did not concern an application for unpaid rent, and the terms of the Settlement did not address payment of June 2019 rent.

c. Pet Damage Deposit

As stated above, AY testified that the tenant failed to provide $330 of the pet damage deposit, as required by the tenancy agreement. The landlord seeks payment of this amount.

The tenants dispute this. In their written submissions they wrote:

> [The landlord] did not apply to the Residential Tenancy Branch to keep our Damage Deposit. They just kept it. The amount of the damage deposit on the Rental Agreement is incorrect. In our previous hearing [the landlord's agent] said that we paid $700.00 Damage Deposit. We also paid a half month rent of $700.00 Pet Deposit.
>
> [The landlord] also kept our Damage Deposit from our previous rental with them.

Analysis

Relevant Authorities

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
>
> 32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
>
> 37(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

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord bears the onus to prove that it the tenants have breached the Act (in this case, either section 32 or section 37), that the landlord has suffered a quantifiable loss as a result of the breach, and that the landlord acted reasonably to minimize its loss.

1. Condition of Rental Unit

a. Cleaning and Repairs

Based on my review of the evidence, I find that the Move-In Report accurately reflects the condition of *the parts of the rental unit inspected* at the start of the tenancy. The Move-In Report does not document the state of the roof. I will discuss the significance of this shortly.

I do not accept the tenants' evidence that the condition of the rental unit was as described in their email of November 25, 2014. I find that if this were the case, they would not have signed the Move-In Report which indicated the rental unit was in substantially good condition. The fact that no subsequent Move-In Report was completed after the tenants' November 25, 2014 email, and no oral evidence was provided as to the findings of the a second inspection, supports this finding.

I note that the arbitrator presiding over the July Hearing found:

> I accept the Landlord testimony and evidence that the rental unit was in acceptable condition at the start of the tenancy and that the Tenant accepted the condition of the rental unit as good or acceptable on October 31, 2019 by signing the report.

While I am not bound by the decisions of prior arbitrators, I do assign them a not-insignificant amount of weight.

However, the arbitrator presiding over the July Hearing did not have access to the same evidence that was presented to me at this hearing, as he wrote “the Tenants have not provided any corroborative evidence to prove the origin of the mold issues”. At this hearing the tenants provided an expert report, supported by documentary evidence, relating to the cause of mold issues in the rental unit.

Despite the fact that, as argued by AY, the expert did not inspect the rental unit in person, I find the expert report to be of assistance in explaining the origins of the mold in the rental unit.

I find that the roof of the rental unit had a hole in it, based on my review of the photographic evidence. I find that the condition of the roof was “in extremely bad shape” in 2018, per the invoice of the roofer dated April 28, 2018.

There is no basis in evidence that the roof was damaged by the actions or neglect of the tenants. A tenant is not responsible for maintenance of the roof of a rental unit; a landlord is.

As such, I accept the expert’s conclusions that:

> A noticeable hole near the roof peak would be the most likely access for water infiltration.
> […]
> [T]his is the most likely cause of the ‘moist’ drywall on the ceilings and walls, including the wet insulation, as well as the "swelled," mouldy, water stained baseboard trim and the water-filled light fixtures.
> […]
> In addition to flooding, leaks or structural damage, indoor dampness can also result from normal residential activities including cooking and bathing, excessive numbers of indoor plants, pet urine, or improper use of moisture-generating appliances, such as improperly vented clothes dryers.

Based on the documentary evidence, I find that the tenants kept an excessive number of marijuana plants in the crawl space of the rental unit. I do not have sufficient evidence to determine whether the tenants grew the plants there, or if they merely stored them there once fully grown. I do not believe it necessary to make a determination on this issue, as under either scenario, the marijuana plants are present

in the crawlspace, and it is the presence of an “excessive number of indoor plants” that can give rise to indoor dampness which causes mold, as per the expert report.

It does not appear that the expert was aware that the tenants kept marijuana plants in the crawlspace. As such, I cannot say what effect he would say the storage of such plants would have had on the presence of mold in the rental unit.

In light of there being two factors present in the rental unit which, the expert says, can contribute to mold growth, and that each party is responsible for the cause of one of the factors, I find it appropriate to reduce the costs incurred by the landlord in relation to the remediation of mold damage by 50%.

However, not all the damaged listed on the Move-Out Report and repaired or remediated by the Owner was related to mold. As such, it is necessary to conduct an examination of the work done by the Owner to determine what of it relates to the remediation of the mold damage.

i. Mold Remediation

Based on my review of the Owner’s invoice, I find that the following work done by the Owner relates to mold remediation:

10-Jul-19	clean molds from inside windows and doors	$175.00
12-Jul-19	wash walls in house	$200.00
13-Jul-19	clean interior walls with bleach	$100.00
26-Jul-19	paint ceilings and walls with primer	$315.00
27-Jul-19	paint ceilings and walls with primer	$367.50
28-Jul-19	paint ceilings and walls with primer	$210.00
29-Jul-19	paint with first coat	$315.00

The evidence suggests that the walls and the ceiling required remediation and painting for more reasons than simply the presence of mold. They required the cleanings of stains, dirt, and cobwebs and repainting due to the presence of a large number of holes in the walls that the Owner patched.

As such, I find that only 50% of all of the work done in the invoices outlined above relates to the remediation of mold damage (the “**Mold Damage Portion**”). The other

50% relates to remediation and repair of other damage, which I find was caused by the tenants' actions or neglect, and the tenants are liable for in the entirety.

Policy Guideline 1 states:

> PAINTING
>
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

As I have found that the tenants are 50% responsible for the presence of mold in the rental unit, I find that they are responsible for 50% of the costs of the Mold Damage Portion.

As I have found that the landlord is 50% responsible for the presence of mold in the rental unit, I find the it is responsible for 50% of the costs Mold Damage Portion.

The effect of these findings is to reduce the total amount owing to landlord for the work indicated above by 25% (that is, 50% of the Mold Damage Portion which itself represent 50% of the cost of the work indicated above, or, more concisely, half of half).

ii. Doors

The landlord has submitted invoice relating to the repair, replacement, and installation of 11 pairs of bi-fold doors.

08-Aug-19	modify and trim bi-fold closet door and paint	$280.00
09-Aug-19	modify and trim bi-fold closet door and paint	$140.00
10-Aug-19	install 11 pairs of bi-fold doors	$210.00
17-Aug-19	install doors	$210.00
18-Aug-19	paint bifold doors and interior doors	$350.00
20-Aug-19	paint bifold doors and interior doors	$350.00

The Move-In Report and the Move-Out Report list the conditions of various doors throughout the house as follows:

Room	Move-In Condition	Move-Out Condition
Entry	closet door off	damage
Kitchen	good	good
Living room	good	good
Stairwell/hall closet	good	damaged
Main bathroom door	good	damaged
Master bedroom closet	no door	same
Master bedroom door	good	missing
Bedroom 2 closet	wear and tear	same
Bedroom 2 door	good	damaged

Based on the two Reports, I find that only five of the 11 doors recorded were damaged by the tenants. As such, I find it appropriate to reduce the amount the landlord is entitled to in connection with repairing and replacing the doors by 55% (6 improperly claimed doors ÷ 11 doors claimed).

iii. Other Repairs and Remediation

I find that all other work done by the Owner to remediate and the repair the rental unit is properly compensable by the tenants.

I find that the landlord acted reasonably to minimize its losses. I find the rates charged by the Owner to be reasonable, and I find the amount of time it took to make the repairs and remediation to be reasonable.

In summary, I order that the tenants pay the landlord $3,929.88 in compensation for the repairs and remediation labour performed by the Owner, representing the following

Date	Work	Claimed	Reduction (%)	Awarded
09-Jul-19	take garbage to dump	$297.50	0%	$297.50
10-Jul-19	clean molds from inside windows and doors	$175.00	25%	$131.25
12-Jul-19	wash walls in house	$200.00	25%	$150.00
13-Jul-19	clean interior walls with bleach	$100.00	25%	$75.00
13-Jul-19	fill holes in drywall throughout house	$210.00	0%	$210.00
15-Jul-19	holes in drywall and replace baseboards	$280.00	0%	$280.00
16-Jul-19	holes in drywall, and baseboards	$315.00	0%	$315.00
17-Jul-19	clean kitchen	$250.00	0%	$250.00

26-Jul-19	paint ceilings and walls with primer	$315.00	25%	$236.25
27-Jul-19	paint ceilings and walls with primer	$367.50	25%	$275.63
28-Jul-19	paint ceilings and walls with primer	$210.00	25%	$157.50
29-Jul-19	paint with first coat	$315.00	25%	$236.25
07-Aug-19	clean 2 bathrooms and laundry	$150.00	0%	$150.00
08-Aug-19	modify and trim bi-fold closet door and paint	$280.00	55%	$126.00
08-Aug-19	remove nail polish from walls	$35.00	0%	$35.00
09-Aug-19	modify and trim bi-fold closet door and paint	$140.00	55%	$63.00
09-Aug-19	sand and prime 3 walls damaged by nail polish	$35.00	0%	$35.00
10-Aug-19	install 11 pairs of bi-fold doors	$210.00	55%	$94.50
10-Aug-19	paint walls damaged by nail polish	$35.00	0%	$35.00
17-Aug-19	install doors	$210.00	55%	$94.50
18-Aug-19	paint bifold doors and interior doors	$350.00	55%	$157.50
20-Aug-19	paint bifold doors and interior doors	$350.00	55%	$157.50
01-Sep-19	drive to dump	$17.50	0%	$17.50
04-Sep-19	trip to recycling plant to get rid of electronics left by tenants	$35.00	0%	$35.00
10-Sep-19	ESTIMATE - grout tiles and remove tiles	$315.00	0%	$315.00
	Total Claimed	$5,197.50	**Total Awarded**	**$3,929.88**

iv. Supplies and Refuse Disposal Fees

I find that the refuse disposal fees were reasonably incurred by the landlord and arose as a result of the tenants' failure to adequately clean the rental property at the end of the tenancy. I accept AY's evidence that the landlord incurred $167 in refuse disposal fees. I order the tenants to pay the landlord this amount.

The landlord did not provide a breakdown as to which of the Owner's repairs and remediation individual supplies were purchased for. As such, I cannot apply the reductions used above to determine what supplies costs are properly recoverable by the landlord.

However, as I have awarded the landlord 76% of its labour costs it sought to recover ($3,929.88 ÷ $5,197.50), I find that it is appropriate to award the landlord a similar percentage of the costs incurred to purchase the supplies. As such, I order that the tenants pay the landlord $895.17.

b. Electrical

AY testified that the tenants made improper electrical modification in the crawl space. MN denied this, saying that the landlord's agents made them at some point during the tenancy.

I do not find MN's testimony persuasive. I find that the electrical cables were installed during the tenancy, based on the fact they bear the date of September 2016. There is no evidence to suggest that the landlord's agents made electrical repairs in the crawl space in 2016.

I find it more likely than not that the tenants made the electrical modifications themselves, so as to provide power to their marijuana facility (the nature of which I make no findings).

I accept the landlord's electrician evidence that the electrical installation was in violation of many codes and was not done in a professional manner. As such, I find that the tenants have damaged the rental unit by altering the electrical system, and therefore breached the Act.

I find that the landlord incurred a loss of $513.42 to repair the electrical system in the crawlspace, and that it was reasonably incurred. Accordingly, I order the tenants to pay the landlord this amount.

c. Missing Washer/Dryer

I find that the washer and dryer the landlord provided the tenants was missing at the end of the tenancy. I accept MN evidence that they discarded or disposed of these appliances after they purchased new appliances.

However, I have no evidence before me to support MN's position that the washer or dryer was non-functioning.

In any event, even if these appliances were faulty or non-functioning, the tenants would not be permitted to dispose of them without the landlord's consent. To do so constitutes damage to the rental unit and is a breach of section 32 of the Act.

I find that the landlord is entitled to recover the depreciated value of these appliances. I find the landlord purchased the washer discarded by the tenants on March 28, 2018 for $542.13.

Based on the documentary evidence supplied by the landlord, I find that a replacement dryer would cost $445.

Policy Guideline 40 requires that the amount awarded to the landlord for the replacement of these appliances reflect the appliances depreciated value. Policy Guideline 40 sets the “useful life” of a washer and a dryer at 15 years.

The washer was purchased roughly one year before the end of the tenancy. As such, a 7% reduction is appropriate. I have no evidence before me to indicate when the dryer was purchased, but that it was not replaced during the tenancy (which would make it at least 5 years old). In the absence of such evidence, I find that a 50% reduction of value is appropriate.

I order the tenants to pay the landlord $504.18 representing the depreciated value of the washing machine and the $222.50 representing the depreciated value of the dryer.

d. Fireplace

MN testified that the tenants returned the fireplace to the landlord’s agent shortly after the end of the tenancy. She provided a contemporaneous email to this agent stating that it was accidently removed from the rental property by the movers. AY did not contradict any of this evidence.

I accept MN’s evidence, and find that the tenants returned the fireplace to the landlord’s agent.

As such, I decline to award the landlord any compensation for the cost of the fireplace.

2. Arrears and Losses

a. Loss of Rental Income

The landlord claims loss of rental income for July to October 2019.

I have already found that the condition of the rental unit was such that significant repairs and remediation needed to be undertaken by the Owner. I have also found the tenants to be liable for a large percentage (76%) of this work. I have found that the amount of time the Owner took to perform this work was reasonable, given its scope.

The landlord has not provided any documentary evidence of work done in October which, or oral testimony as to what work remained to be done in October. The Owner's invoices are only dated to early September 2019. I find that the landlord has failed to discharge its onus to show that it lost the opportunity to rent out the rental unit in October 2019.

As such, I find that the tenant's breaches of section 32 and 37 of the Act caused the landlord not to be able to rent out the rental unit for the months of July, August, and September 2019. It is not necessary to reduce this amount by 76%, as, even if it were reduced, the amount of time the rental unit was not able to be rented out attributable to the tenants would still span into September 2019.

As such, I order that the tenants pay the landlord $4,650 ($1,550 x 3 months).

b. June Rent

It is common ground that the tenants did not pay June 2019 rent and that the tenants occupied the rental unit until the end of June 2019. The tenants argue that a term of the Settlement reached at the June Hearing was that they were not required to pay June 2019 rent. Upon review of the written decision made following the June Hearing, I find that the Settlement contained no such term.

As such, I find that the tenants are obligated to have paid rent for the month of June 2019, and that they failed to do so. This is a breach of section 26 Act ("a tenant must pay rent when it is due").

As such, I order that the tenant pay the landlord $1,550 representing payment for June 2019 rent.

c. Pet Damage Deposit

The landlord seeks an order that the tenant paid it the balance of the pet damage deposit owed ($330). As the tenancy has ended, I find that such an order is not necessary.

A pet damage deposit is not money that a landlord is entitled to keep at the end of a tenancy. Rather, it is money held in trust by a landlord that may be applied to a future monetary order made against a tenant. Were I to order that the tenants provide the landlord with the balance of the pet damage deposit, I would then order that the amount paid be offset against the other monetary orders made in this decision, essentially rendering moot my order the balance of the deposit be paid.

As such, I decline to grant this portion of the landlord's application.

The tenants claim in their written submissions that the landlord did not make an application against the security or pet damage deposit at the end of the tenancy. This is not correct. The landlord applied against the security and pet damage deposit in this application, which was filed within 15 days of the end of the tenancy.

3. Filing Fee and Offsetting

The landlord has been substantially successful in this application, as such, pursuant to section 72(1) of the Act, I order that the tenants reimburse the landlord its filing fee ($100).

Pursuant to section 72(2) of the Act, I order that the landlord may retain the entirety of the security deposit and the pet damage deposit (in total, $1,070) in partial satisfaction of the monetary orders made in this decision.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order the tenants to pay the landlord $11,462.15, representing the following:

Cleaning and Repairs	$3,929.88
Refuse Disposal Fees	$167.00
Supplies	$895.17
Electric Damage	$513.42
Replacement Washer (depreciated value)	$504.18
Replacement Dryer (depreciated value)	$222.50
Loss of Rental Income (July to September)	$4,650.00
Unpaid June 2019 Rent	$1,550.00
Filing Fee	$100.00
Security Deposit Credit	-$1,070.00
Total	**$11,462.15**

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: December 4, 2019

Residential Tenancy Branch