Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlords' Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlords, the Tenants and two family members of the Tenants (the "Tenants") attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Both parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Digital Evidence

At the outset of the hearing, it was brought to this Arbitrator's attention that the Landlord had received the Tenants' digital evidence four days before this hearing. When asked, the Tenants testified that the digital evidence had been sent to the Landlords by Canada Post express mail on March 21, 2020, which is a next day to 2-day service provided by Canada Post.

The Landlord testified that they had received the Tenant's digital evidence package on January 26, 2020. The Landlord requested at the outset of these proceedings that the Tenants' digital evidence not be considered as it was not received, by them, seven days before today's hearing.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure states the following:

> **3.15 Respondent's evidence provided in single package**
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> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
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> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

Section 3.17 of the Residential Tenancy Branch Rules of Procedure provides further guidance, stating the following:

> **3.17 Consideration of new and relevant evidence**
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> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
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> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established

> above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
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> Both parties must have the opportunity to be heard on the question of accepting late evidence.
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> If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

I have reviewed the Tenants' digital evidence package and find that it contains two digital files. The two digital files are a two-part video of the move-out inspection conducted for this tenancy. Featured in the video are the Tenants, one of the Landlords, the Landlords' witness and one of the Tenants mothers. The video also shows the clearly stating, twice, that they are recording this video as well has showing that the Landlords' witness was creating a digital record of the move-out inspection at the same time as the Tenants' were creating their digital recording.

As one of the Landlords to this case, is featured in this video and is shown to be making their own digital record at the same event, I find that the Landlord, on a balance of probabilities, knew or ought to have known of the existence of this video evidence and its full content prior to receiving a copy of it in the Tenants' evidence package.

Due to the Landlords' prior knowledge of the existence of this video evidence and its full content, I find four days to be sufficient time for the Landlords to review the Tenants' digital evidence prior to these proceedings and that they are not unreasonably prejudiced by the consideration of this digital evidence.

Additionally, I must also acknowledge the current state of emergency declared by the Provincial Government on March 18, 2020, which has resulted in modifications to service delivery of mail by the national mail carrier, Canada Post. I find that the Tenants' evidence package was delayed in delivery due to the current Canada Post service modifications, which the Tenants had no control over.

For the reasons stated above, and pursuant to Section 3.17 Residential Tenancy Branch Rules of Procedure, I find it appropriate to allow the Tenants' digital evidence to be entered into evidence for these proceedings.

Preliminary Matter – Withdraw

During this hearing, the Landlords testified they no longer wished to proceed on their claims for the recovery of the $1,000.00 insurance deductible and the $1,993.00 insurance increase. The Landlords requested to withdraw those two items from their monetary claim during this hearing, as they wish to apply for them at a later date once the insurance claims are finalized.

The Tenants did not dispute the Landlords' request to withdraw the two items from their monetary claim.

As there was no objection from the Tenants to the Landlords' request, I find it appropriate to allow the Landlords' request to withdraw items number three and four from the Landlords' monetary worksheet; consisting of recovery of the $1,000.00 insurance deductible and the $1,993.00 insurance increase. I will proceed in this hearing on the remaining items listed on the Landlords' monetary worksheet, for the reduced monetary claim, in the amount of $7,453.76.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to a monetary order for compensation?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to recover the filing fee paid for this application?

Background and Evidence

The parties agreed that this tenancy began on August 1, 2019, as a six-month fixed-term tenancy. Rent in the amount of $2,000.00 was to be paid by the first day of each month, and the Landlords had been given a $1,000.00 security deposit at the outset of this tenancy. The parties also agreed that one of the Landlords lived in a different unit on the rental property. The Landlords provided a copy of the tenancy agreement and one-page addendum into documentary evidence.

The parties disagreed that the move-in inspection had been completed in accordance with the *Act*. The Landlords' testified that they had conducted the move-in inspection with one of the tenants, on August 1, 2019. Two of the Tenants testified that the move-in inspection had already been filled out when they arrived at the rental unit on move-in day and that the Landlords had forced them to sign the move-in inspection report

without being given an opportunity to walk through the rental unit or review the document. The Landlords provided a copy of the move-in inspection report into documentary evidence.

When asked by this Arbitrator, why the Tenants felt forced to sign the move-in inspection report, the Tenants testified that the Landlords had told them that if they did not sign, they would not be allowed to move in. The Tenants went on to testify that as this was their first tenancy, they were unaware of their rights as tenants.

The parties agreed that that the Tenants provided written notice to end their tenancy on October 1, 2019, with an effective date of October 31, 2019. The Landlords testified that they attempted to re-rent it as soon as possible but that the rental unit remains unoccupied as of the date of this hearing. The Landlords are seeking to be compensated $6,000.00 for the loss of rental income for November 2019, December 2019 and January 2019, the remainder of the term for this tenancy.

This Arbitrator asked the Landlords for more details as to what they had done to find a new renter for the rental unit and why the rental unit has remained unoccupied. The Landlords testified that they have two ads listing the rental unit as available on two different online rental sites. The Landlords testified that no one is interested in the rental unit due to the damage caused by the Tenants. The Landlords' testified that they have shown several prospective new renters the unit but that they all had refused to rent the unit due to the strong smell of cat urine in the rental unit and the damaged carpets. The Landlords testified that they have submitted a claim to their insurance company due to the damage to the carpets, caused by the tenants and that they are waiting for the carpets to be replaced by the insurance company before they can get a new renter for the rental unit. The Landlords submitted a copy of a seven-page insurance adjusters assessment into documentary evidence.

Both parties agreed that the move-out inspection dated October 29, 2019, had been completed in the presence of both parties. The Tenants testified that they did not agree with all the damage that the Landlords had written on the move-out inspection. The Landlords provided a copy of the move-out inspection report, a witness statement of a third party who attend the move-out inspection on their behalf, and 17 pictures of the rental unit and surrounding property at the end of tenancy into documentary evidence. The Tenants submitted a copy of a two-part video they took during the move-out inspection into digital evidence.

This Arbitrator asked the Landlords for more details on what damage they are claim for that was caused to the carpets by the Tenants. The Landlords testified that when the Tenants moved out, they had rented a carpet cleaner to clean the carpets as required but that they had misused it and caused extensive water damage to the carpets. Additionally, the Landlords testified that the Tenants' cat had urinated on the carpet and that they were unable to remove the smell of cat urine even after a professional carpet cleaner had been brought in to clean the carpets. The Landlords offered no explanation as to why the cat urine smell and water-logged carpets had not been recorded on the move-out inspection. The Landlords submitted a copy of the bill for professional carpet cleaning into documentary evidence.

The Tenants testified that they had completed a full cleaning of the rental unit at the end of this tenancy, which included steam cleaning the carpets. The Tenants testified that yes, the carpets were damp during the inspection but that they had completing the carpet cleaning just minutes before the move-out inspection took place. The Tenants testified that the carpets were not soaking wet as the Landlords have claimed, just damp, and that the carpets did not have cat urine damage or smell at the end of this tenancy. The Tenants testified that they did have a cat during their tenancy by that the cat was trained to use a litter box and that the cat never urinated on the carpets. The tenants testified that the rental unit did smell of a cat when they lived there and that a couple of the prospective renters had mentioned the cat smell, during the showings they were present for but that there was no smell of cat or cat urine after the cat had been removed and they finished cleaning for the move-out inspection. The Tenants' testified that the carpets had been in good condition at the beginning of the tenancy, with normal wear given their age and that the carpet had already been bunching up in places when they moved in, but that they in no way damaged the carpets during their tenancy.

This Arbitrator asked the Landlords for the age of the carpets in the rental unit. The Landlords testified that the carpets were 7 years old.

The Tenants also testified that the pictures the Landlord submitted of the rental unit into documentary evidence had been taken while they were in the middle of their move out of the rental unit, before they had completed cleaning. The Tenants' testified that the Landlords' picture evidence did not represent the true condition in which the rental unit had been returned to the Landlords' at the end of this tenancy.

The Landlords testified that the Tenants had returned the rental unit with two sets of damaged window blinds at the end of the tenancy. The Landlords testified that they had

had to replace the damaged window blinds at the cost of $132.97. The Landlord submitted a copy of the invoice for the new window blinds into documentary evidence.

The Tenants agreed that there were two sets of window blinds damaged during their tenancy that were not repaired before they vacated the rental unit at the end of the tenancy.

The Landlords testified that the Tenants had returned the rental unit with a blown light bulb at the end of the tenancy. The Landlords testified that they had had to replace the blown light bulb at the cost of $16.16. The Landlord submitted a copy of the invoice for the new light bulb into documentary evidence.

The Tenants agreed that there was one blown light bulb that was not replaced before they vacated the rental unit at the end of the tenancy.

The Landlords testified that the Tenants had returned the rental unit with a gouge in the fireplace mantel at the end of the tenancy. The Landlords testified that they conducted the repair themselves at the cost of $50.00, for supplies and labour to repair the gouge in the fireplace mantel.

The Tenants agreed that there was a gouge in the fireplace mantel at the end of the tenancy but that it had been there for their entire tenancy and that the gouge had happened before they moved into the rental unit. The Tenants testified the gouge in the fireplace mantel had not been noted on the move-in inspection report.

The Landlords testified that the Tenants had left a lot of garbage and unsorted recycling at the rental unit at the end of the tenancy. The Landlords testified that they had to sort the Tenants recycling and take out the garbage and recycling for curb pick up themselves. The Landlords are requesting $50.00 in compensation, at $25 an hour for 2 hours of labour, to sort and dealing with the Tenants' garbage and recycling after the tenancy had ended.

The Tenants agreed that they had left garbage in the garbage area for the rental property when the tenancy ended. The Tenants testified that the garbage had been properly sorted and bagged. The Tenants agreed that the Landlords would have to take out their garbage, for curb pick-up on garbage day, after the tenancy had ended. However, they had taken out the Landlords garbage during the tenancy, so they did think to leave this little bit of garbage and recycling to “be a big deal”.

The Landlords testified that the Tenants had left dog poop in the common area garden and that they had damaged a plant in the garden at the end of the tenancy. The Landlords testified that they cleaned up the dog poop themselves and that they are asking for $50.00 in labour cost to clean up the dog poop and compensation for their loss of the damaged plant.

The Tenants testified that the common garden is not fenced off and that anyone and any dog may have gotten into the garden in question. The tenants testified that they do not have a dog but that one of their parents does have a dog and that that dog had visited the rental property; however, that dog was very small and could not have left the large dog poop depicted in the Landlords' picture evidence. The Tenants also testified they did not damage a plant on the property during their tenancy.

The Landlords testified that the Tenants had not paid the utilities due for the tenancy, and that they are requesting to recover $487.76 in utilities from before the tenancy ended, as of October 31, 2019, as well as, $1091.87 in utilities that they Tenants owe for the period between November 1, 2019, to January 31, 2020, under their tenancy agreement. The Landlords testified that the utilities consist of cable television, internet, electricity and gas. The Landlords submitted copies of the cable television, internet, electricity and gas bills for the period between September 2019 to January 2020 into documentary evidence.

The Landlords testified that the tenancy agreement shows that cable television, internet, electricity and gas were not included in the rent and that the addendum to the tenancy agreement, section 3, shows that the tenants were required to pay 75% of these bills for the term of the tenancy.

The Tenants testified that they had several unresolved conversations with the Landlords regarding the utilities they were being asked to pay for this tenancy. The Tenants testified that their tenancy agreement had been unclear as to what percentage of the bills was their responsibility. They believed that they were overcharged and billed for things that they did not use or have access to during their tenancy.

The Landlords also testified that the Tenants had been rude to them when they were showing the rental unit to prospective new renters, that they Tenants had interfered with the showings, and due to the Tenants ending the tenancy early, they should cover the Landlords cost for having to show the rental unit. The Landlords are requesting $500.00 for intangible costs relating to this tenancy. When asked by this arbitrator how the

Landlords reached an amount of $500.00 for intangible costs, the Landlords testified that they thought it was a fair amount.

The Tenants testified that they disagree with the Landlords' claim for intangible costs, as they had given a months written notice to end the tenancy, that they had done every they could to assist the landlord in securing a new renter for the rental unit. The Tenants testified that they had not interfered with the Landlords' showing of the rental unit and that they had never been rude or used inappropriate language with the Landlord during these showings, as they need the Landlord to find a new Tenant so they could leave.

The Landlords testified that they are also requesting $75.00 in late fees due to late payment of rent for November 2019, consisting of three $25.00 fees, one for each of the Tenant to this tenancy agreement. The Landlord testified that the addendum to the tenancy agreement, section two, states that they can charge a $25.00 late rent payment charge to each Tenant.

The Tenants testified that they disagreed with the Landlords' claim for late payment of rental fees for November 2019.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

The Landlords have requested $6,000.00 in compensation due to the loss or rental income for November 2019, December 2019 and January 2020. I have reviewed the Tenancy agreement and attached addendum for this tenancy, and I find that the parties entered into a six-month fixed-term tenancy, beginning on August 1, 2019, in accordance with the *Act*. I also accept the agreed-upon testimony of these parties that the Tenants ended their tenancy early and moved out of the rental unit as of October 31, 2019, providing one month's written notice to the Landlords.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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.

As per the tenancy agreement, I find that this tenancy could not have ended in accordance with the *Act* until January 31, 2020. Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45*(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.

I find that the Tenants breached section 45 of the *Act* when they ended their tenancy early and moved out of the rental unit on October 31, 2019.

Additionally, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlords and that the Landlord has provided sufficient evidence to prove the value of that loss.

However, before I can make an award I must also determine if the Landlords acted reasonably to minimize this loss. During the hearing, the Landlords testified that they had made every attempt to re-rent the unit but that due to the damage to the rental unit

caused by the Tenants, they have unable to re-rent the unit and that it remains unoccupied as of the date of these proceedings. The Tenants testified that the rental unit was returned with only minor repairs needed and that the Landlords are purposefully delaying the re-rental of the unit.

I find that I have heard contradictory testimony from both parties, during this hearing, regarding the condition of the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Landlords.

I have reviewed all of the documentary and digital evidence submitted into these proceedings, and I find that the Tenants' digital evidence, taken at the time of the move-out inspection combined with the move-out inspection report submitted by the Landlords to be an accurate account of the condition of the rental unit at the end of this tenancy.

After reviewing this evidence, I find the evidence shows that a reasonably clean rental unit had been returned to the Landlords that needed a few minor repairs at the end of the tenancy. Additionally, I noted that the move-out inspection report submitted into documentary evidence by the Landlords makes no mention of the water-logged carpets or the smell of cat urine throughout the rental unit, as the Landlords are claiming as their rationale for having been unable to secure a new renter for the rental unit.

I also noted that the video evidence, 15.69 minutes of recording, taken of the move out inspection had no mention cat smell or of cat urine by anyone present during the move-out inspection of the rental unit.

The Landlords testified during these proceedings that the damage caused by the Tenants was so extensive that it resulted in a $10,000 insurance claim to have all of the carpets in the rental unit replaced. I find it unreasonable that there would be no clear mention of "significant water and cat urine damage to the carpets," on the Landlords' move-out inspection or that no one present during the move-out inspection would make mention of the smell of cat or cat urine at the time of move out.

I have reviewed and considered the professional carpet cleaning bill, submitted into document evidence by the Landlords. I noted that the professional carpet cleaner recorded on this bill that the carpets in the rental unit were damp, not water logged as Landlords had testified to during these proceedings. I also noted that the professional

carpet cleaner recorded that the carpet had buckling in one location, by the fireplace, not the several locations as the Landlords had testified to during these proceedings. Additionally, I noted that the professional carpet cleaner made no mention of cat urine damage to the carpets in the inspection section of the record on this bill, I find it strange that this professional would not list cat urine damage in their investigation, if it had, in fact, been present. Overall, I find that the Landlords' professional carpet cleaning bill evidence to be inconsistent with their testimony. However, I do find that the Landlords' professional carpet cleaning bill evidence to be supportive of the Tenants' testimony of the condition of the carpets at the end of the tenancy.

I have also reviewed the Landlords' insurance adjustment report, and I noted that this report makes no mention of or offers no account of what the damage to the carpets consisted of or why they are being replaced; listing only room dimensions and costs for replacements. I find that this report offers no supporting documentation to the Landlords' claim.

I acknowledge the Landlords' picture evidence, submitted to show the condition of the rental unit at the end of the tenancy. I have compared these pictures to what was recorded by the Landlord on the move-out inspection report as well as to what was recorded on the Tenants' digital evidence, and I find that the Landlords' picture evidence to be inconsistent with the move-out inspection report and the digital evidence. Due to this inconsistency, I find that the Landlords' picture evidence is not a credible account of the condition of the rental unit at the end of tenancy and, therefore, will not be considered in my decision.

Finally, I have reviewed the witness statement submitted into documentary evidence by the Landlords. The witness statement provides an account of experiencing the feel of wet carpets and having wet socks during the move-out inspection, which is an accepted fact by both parties to this dispute. However, I find remainder of this witness statement regarding the carpets to be a hearsay account of what the Landlord had communicated to the witness, not what the witness had experienced themselves, and will not be considered in my decision.

After a careful review of all of the evidence that has been submitted to these proceedings, I find that the Landlord has submitted insufficient evidence to satisfy me that the Tenants returned the rental unit to the Landlords so significantly damaged as to be unrentable to this date.

Additionally, I find that there is no evidence before me to show what steps the Landlords had taken to attempt to rent the unit as soon as possible. Given the current rental demand in the area that this rental unit is located, I find it unreasonable that the Landlords have been unable to secure a new renter of this rental unit. Therefore, I find that the Landlords have not provided sufficient evidence to satisfy me, that they acted reasonably to minimize their damages or losses due to the Tenants' breach. Consequently, I dismiss the Landlords' claim for loss of rental income in the amount of $6,000.00; for November 2019, December 2019 and January 2020.

As for the Landlords' claim to recover their cost for damaged window blinds, I accept the agreed-upon testimony of these parties that the Tenants' did damage two sets of window blinds during this tenancy. Section 37(2) of the Act states the following:

> **Leaving the rental unit at the end of a tenancy**
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> **37** (2) When a tenant vacates a rental unit, the tenant must
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> (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
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> (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.

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlords with damaged window blinds. I accept the Landlords' documentary evidence and find that the Landlords suffered a loss of $132.97 to replace the damaged window blinds and I find that the Landlords acted reasonably to minimize this loss. Accordingly, I award the Landlords $132.97 in the recovery of their costs to replace the damaged window blinds.

I accept the agreed-upon testimony of these parties that the Tenants did not replace a blown light bulb in the rental unit at the end of this tenancy. I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlords with a blown light bulb. I accept the Landlords' documentary evidence and find that the Landlords suffered a loss of $16.16 to replace the blown bulb and I find that the Landlords acted reasonably to minimize this loss. Accordingly, I award the Landlords $16.16 in the recovery of their costs to replace the blown light bulb.

The Landlords have requested to recover $50.00 in cost for the repair of the fireplace mantel at the end of this tenancy. I accept the agreed-upon testimony of these parties that there was damage to the fireplace mantel at the end of this tenancy. I acknowledge the Tenants' testimony that the damage had been there when they moved in; however, I

note that the damage to the fireplace mantel had not been recorded on the move-in inspection and that Tenants have not provided any documentary evidence to support their claim that the damage had been pre-existing to this tenancy. I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlords with damage to the fireplace mantel. However, I find that the Landlords have not provided any documentary evidence to support their claim for $50.00 in the recovery of their cost for materials and labour to repair the damage. In the absence of documentary evidence to support their claim for $50.00 in to repair the fireplace mantel, I must dismiss this portion of the Landlords' claim.

The Landlords have requested to be awarded $50.00 in labour cost for taking out and sorting the Tenants' garbage and recycling at the end of this tenancy, at a cost of $25.00 per hour for two hours of the Landlords' time. During this hearing, I heard contradictory testimony from both parties regarding the amount and condition of the garbage and recycling left at the rental unit at the end of this tenancy. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Landlords.

I have reviewed the documentary evidence submitted into these proceedings, and I find that the Landlords have not provided documentary evidence to support their claims regarding the amount and condition of garbage and recycling at the end of this tenancy. Therefore, I must reply on the agreed testimony in determining an award on this matter. As both parties agreed that there was some garbage and recycling left at the end of this tenancy, that need to be brought to the curb for community garbage pick up, I find that the Tenants breached section 37 of the *Act* when they left garbage and recycling at the rental unit at the end of the tenancy. In the absence of evidence, I find it reasonable to award the Landlords one-half hour of labour cost, at the rate of $25.00 per hour, in the amount of $12.50 to take the Tenants' garbage and recycling to the curb for pick up.

As of the Landlords' claim for $50.00 in cost to clean up dog poop left on the rental property and for losses due to a damaged plant. Again, I heard contradictory testimony from both parties, regarding where the dog poop came from and who damaged the plant. Again, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Landlords.

I have reviewed the documentary evidence submitted into these proceedings, and I find that there is insufficient evidence before me to prove who was responsible for the dog poop left on the rental property or who damaged the plant. Consequently, I dismiss this portion of the Landlords' claim in its entirety.

As for the Landlords' claim for $487.76 in unpaid utilities for the period ending October 31, 2019, and for $1091.87 in unpaid utilities for November 2019, December 2019, and January 2020. I have carefully reviewed the tenancy agreement and attached addendum entered into documentary evidence by the Landlords. Section 3 of the Landlords' addendum to the tenancy agreement reads as follows:

> "Three adult tenants EA' pay % of shared utilities internet, cable with the person upstairs.
> Their portion due last day of the month is for Heat, electricity, water, cable and internet and is on top of rent $2000.00"
>
> [Reproduced as written]

I find that section 3 of the addendum to this tenancy agreement to be unclear as to what percentage the Tenants are required to pay of the utilities for this rental unit. Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligation under it.

> ***Enforcing rights and obligations of landlords and tenants***
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> ***6*** *(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
> *(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
> *(3) A term of a tenancy agreement is not enforceable if*
>
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As it was the Landlords who drew up this tenancy agreement and attached addendum, I find that they bear the obligation to ensure that the terms therein were certain and the obligation of the parties was well-defined. After careful review of the tenancy agreement and attached addendum, I find that section 3 of the tenancy agreement does indicate that water, cable television, heat and electricity are not included in the rent. However, this agreement does not set out the percentages that are due in this tenancy. Given that

one of the Landlords also lives in this building and that the water, cable television, heat and electricity bills are for the whole building and not just for the Tenants' rental unit, I find that it would be unreasonable to expect that the Tenants ought to have known what percentage they were responsible for paying. I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the Landlords who drafted the tenancy agreement.

For this reason, I find that the Tenants are not responsible for any portion of the water, cable television, internet, heat and electricity bills for this tenancy. Consequently, I dismiss the Landlords' claim for $487.76 in unpaid utilities for the period ending October 31, 2019, as well as their claim for $1091.87 in unpaid utilities for November 2019, December 2019, and January 2020.

Regarding the Landlords' request for $500.00 intangible cost, the Landlords testified that this request for compensation consisted of payment of their time to show the rental unit to prospective new renters and compensation for the poor treatment the Landlords received by the Tenants during showings. I have reviewed the Landlords' documentary evidence and verbal testimony and I find that there is no evidence before me that provides an account of the Landlords' time spent conducting showing the rental unit.

As for the Landlords' claim that the Tenants were rude and interfered with the showings for the rental unit. During the hearing, I have heard contradictory testimony from both parties regarding the Tenants' behaviour during showings. Again, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Landlords.

I have reviewed the Landlords' documentary evidence, and I find that there is no documentary evidence to support the landlords' claim that the Tenants had behaved badly during or interfered with showings of the rental unit.

On the whole, I find that Landlords' testimony and evidence to be entirely deficient in this part of their claim. Consequently, I find that the Landlords have not provided sufficient documentary evidence or testimony to support their claim for an award for intangible cost. Therefore, I dismiss the Landlords' claim for intangible costs.

As for the Landlords' claim for $75.00 in late fees for November 2019, as it has already been determined, that the Landlords are not entitled to the rent for November 2019, I

find that the rent for that period cannot have been paid late. Therefore, I dismiss the Landlords' claim for $75.00 in late fees for November 2019.

Additionally, the Landlords were cautioned during these proceedings that the maximum late fee that can be charged for late payment of rent is $25.00. I acknowledge the Landlords' argument that they were charging $25.00 per tenant under the tenancy agreement. However, I find that the Landlords were attempting to contract contrary to the *Act*, when they included a clause in their tenancy agreement to charge each Tenant, under, the tenancy agreement the maximum late fee allowable under the *Act*. Section 5 of the *Act* states the following:

> ***This Act cannot be avoided***
>
> ***5****(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*
>
> *(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect*.

Pursuant to section 5 of the *Act*, I find that the Landlords' breached the *Act* when they contracted contrary to the maximum allowable late rent payment free in this tenancy agreement.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As I had determined that the Landlords had also breached the *Act* during this tenancy, I decline to award the recovery of their filing fee for this application.

Overall, I award the Landlords $161.63 consisting of; $132.97 in the recovery of their cost to replace damaged window blinds, $16.16 in the recovery of their cost to replace a blown light bulb, and $12.50 in the recovery of their cost to dispose of garbage from the rental unit at the end of the tenancy. I grant permission to the Landlords to deduct the amount awarded above from the Tenants' security deposit, in full satisfaction of this award.

I order the Landlords to return the balance of the security deposit they hold for this tenancy, in the amount of $838.37, to the Tenants, within 15 days of the date of this decision. The Landlord may not hold the balance of this security deposit pending any further claims; they may have, resulting from this tenancy.

If the Landlord fails to return the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover the balance of their security deposit for

this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the *Act*, if an application to recover their security deposit is required.

Finally, during this hearing I heard testimony from the Tenants and their family that the Tenants were pressured into signing the move-in inspection without being provided the opportunity to conduct the walkthrough of the rental unit or to make their own notes on the move-in inspection report. As the Landlords were not successful in the portion of their claim in which the move-in inspection report would have been relevant, this became a moot point in my decision. However, the parties were advised during these proceedings of their individual rights and responsibilities as tenants and landlords, and both parties were strongly advised to seek out legal guidance before entering into any future tenancy agreement.

Conclusion

I find for the Landlords under sections 67 of the *Act* and authorize the Landlord to retain **$161.63** from the Tenants' security for this tenancy.

I order the Landlords to return the balance of the Tenants' security deposits in the amount of **$838.37** to the Tenants within 15 days of the date of this decision.

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 3, 2020

Residential Tenancy Branch