



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S MNRL-S FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$34,946.76 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

Two agents for the landlord SL and ED (agents), counsel for the landlord SE (counsel), the tenant and the advocate for the tenant MD (advocate) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Although two witnesses AF and DL (witnesses) attended the hearing, only AF testified during the hearing.

The parties confirmed that they had received and reviewed the documentary evidence from the other party. As a result, I find there are no service issues.

### Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing. The parties also confirmed their understanding that the decision will be emailed to both parties. Any related monetary order will be issued to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 4, 2019 and was scheduled to revert to a month to month tenancy after February 29, 2020. Monthly rent was \$1,795.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$897.50 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim for \$34,946.76 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Emergency plumber July 27, 2019	\$666.75
2. Emergency repairs/repairs	\$32,871.35
3. Affected tenants compensation	\$600.00
4. September 1-13 rent and storage	\$791.18
5. Junk removal	\$193.20
6. Cleaning suite	\$157.50
7. Re-key	\$185.98
8. Painting	\$157.50
9. Bathroom sink	\$144.48
10. Invoice 254	\$76.32
11. <i>Less tenant's security deposit of \$897.50</i>	<i>-\$897.50</i>
<b>TOTAL</b>	<b>\$34,946.76</b>

Regarding item 1, the landlord has claimed \$666.75 to hire an emergency plumber the agents stated used an auger to clear a blockage in the toilet of the rental unit after it was reported by the tenant to have overflowed. The invoice submitted in evidence indicates that the plumber found a plugged toilet and that water was off. The invoice also indicates that the plumber augered the toilet and cleared the blockage, tested the

toilet multiple times and found no issue, and cleaned up site. There is no mention as to any specific items found in the toilet or removed from the toilet other than a clog.

The tenant's response to item 1 was that there was no question that the toilet was clogged and that is why the tenant called the emergency line to report the flooding and that the tenant needed help. A transcript of the calls made between the tenant and landlord agent N (N), between N and ED (ED), and between the tenant and landlord agent J (J) and the boyfriend of the tenant and J.

The tenant stated that she was advised by N to either call a plumber herself at her own expense or snake the toilet herself or wait until Monday. The tenant stated that she was taken aback at the response from the landlord agent and as a result, called back to the emergency line and spoke to J and that when they asked to be put through to ED, the tenant's request was denied and that they could take it up with the management on Monday. The audio clips of the calls made related to the toilet have also been reviewed. The tenant explains that their toilet is backing up and is clogged and has flooded and needed repair.

The advocate stated that the tenant's request for an emergency repair was denied and that it is not very feasible for a tenant to find a plumber immediately after hours on a weekend and especially given that the landlord has a plumber on contract who responds to calls from the landlord. The tenant testified that she did not cause the clog in the toilet by flushing anything abnormal or inappropriate down the toilet and that the toilet was only used for its normal purpose.

Witness AF was called and was affirmed. AF is the plumber who attended the rental unit to deal with the tenant's flooded toilet. AF testified that they did not recall what time they arrived at the rental unit but does recall that they brought the wrong equipment and that there was water on the floor of the bathroom. AF stated that the toilet was off and that they did not notice anything special about the tank. AF testified that the original equipment they had was for a much bigger blockage so instead AF went to get his smaller auger to clear the blockage and then once cleared, AF tested the toilet 10 times and it flushed normally. AF stated that they could feel a blockage with their toilet snake and although AF originally thought it was the main sewer line that needed clearing, it was not, it was the smaller line coming from the toilet. AF also stated that the sink and bathtub were not backing up with water so AF knew the problem was not a bigger problem because otherwise, the sink and bathtub would also back up if the main line was blocked.

Upon cross-examination, AF confirmed that the landlord receives a preferred rate as they have several contracts with the landlord and offer after-hours service to those with contracts with the plumbing company AF works for.

Regarding item 2, the landlord is claiming \$32,871.35 for the cost of emergency and regular repairs to the rental unit caused by the clogged and ultimately flooding toilet. The agents stated that toilet water is considered contaminated and that due to toilet water leaking into two other units, that the costs are justified as there was damage behind drywall and the amount of \$32,871.35 is divided into two amounts:

1. \$9,938.70 for the initial removal of flood related damage
2. \$22,932.00 for the repairs to bring the units back to their original condition before the toilet flooded.

The landlord submitted the invoices to support the amount claimed. The tenant responded to this item by asking why the landlord did not consider the after-hours call about toilet water flooding from the toilet to be an emergency if toilet water creates contamination? The tenant asked if the tenant is supposed to do emergency repairs or is the landlord required to do emergency repairs? The advocate stated that the witness AF confirmed that they would only attend after-hours for someone that they had a contract with, and the tenant did not have a contract with a plumbing company. The tenant testified that they were ignored several times and that it took quite some time for the plumber to eventually be called and to attend and the tenant questioned why it took so long. The tenant stated the following timeline:

1. 4:15 p.m. noticed water
2. 4:19 p.m. tenant calls landlord regular line
3. 4:22 p.m. tenant uses gym bathroom
4. 4:33 p.m. tenant calls landlord emergency line

According to the summary of events provided by the landlord, agent ED headed to the building at 6:25 p.m. and entered the rental unit at 7:30 p.m. and indicates the "water shut off still in the on position" and that "water is visible on the bathroom floor" of the rental unit.

The tenant referred to an email dated June 6, 2019, which indicates in part that the tenant requested several things be looked at in their rental unit including that the fridge leaks water, the toilet runs, and the bathtub and bathroom sink don't drain properly. The tenant also referred to a second follow-up email from the tenant to the landlord dated

June 24, 2019 about their concerns related to the toilet and that it “runs” and the tenant is requesting to have their toilet looked at that week. The tenant also presented another email dated June 25, 2019, asking for the toilet to be looked at as the tank keeps running after being flushed. The tenant testified that caretaker DL in the response email dated June 26, 2019, stated “we can attend tomorrow around noon” and that the caretaker did not attend and that their request to have the toilet address went unanswered.

Regarding item 3, the landlord has claimed \$600.00, which is comprised of two \$300.00 gift cards that the landlord provided to the two neighbouring rental units, to compensate them for the inconvenience that the flood from the rental unit created for them. The tenant responded by asking if the gift cards were for restaurants owned by the landlord company, which the agents confirmed they were.

Regarding item 4, the landlord has claimed \$791.18 due to the tenant breaching their fixed-term tenancy by vacating before February 29, 2020. The landlord submitted the email sent from the tenant to the landlord dated August 27, 2019 at 9:02 p.m. which reads in part:

“...I have moved out of [rental unit address] and am ending my tenancy starting tomorrow (August 28<sup>th</sup> 2019) due to being blamed for damage that I did not do.”

The agents confirmed that they were able to re-rent the rental unit effective September 14, 2019 and as a result, are seeking the rental loss of \$791.18 of the \$1,795.00 normal rent the tenant would have been paying for September 2019. The tenant’s response to this item was that being accused of the flood caused much tension and that the tenant considered the actions of the landlord to be harassment. In an email referred to by the tenant dated August 7, 2019, the tenant writes in part accusing the landlord to be continually entering their suite and harassing the tenant and stated it is abuse. The tenant writes that they are on medical leave from work and that the continuous disruption is tantamount to harassment and is disrupting the tenant’s mental health. The tenant also states that they have the right to reasonable enjoyment and proposes a mutual agreement to end tenancy. The tenant ends the letter with “If you would like to communicate please do it in writing and please do it respectfully.”

The tenant referred to the email dated August 8, 2019 from the landlord to the tenant and stated that the email was a clear signal to the tenant that the landlord was going to continue to harass the tenant and ended the tenancy due to a breach of a material term as a result. The tenant testified that they sent the rental unit keys via registered mail;

however, the tenant admitted to using the incorrect mailing address and as a result, the tenant still has the rental unit keys.

The agents stated that in the same email dated August 8, 2019, the tenant denied access for repairs and that the landlord provided an option for the tenant to have an agent for the tenant if they were off work due to medical leave, which the tenant did not provide.

Regarding item 5, the landlord has claimed \$193.20 for junk removal from the rental unit. The landlord submitted an invoice and photo evidence of the items left behind by the tenant including plants, items in the dishwasher, items in the sink, items in the fridge, and that the photo showed a rental unit that was not cleaned. The advocate asked the agents if they notified that tenant of their personal items, and the agents stated that all items left behind were considered garbage and were discarded appropriately.

Regarding item 6, the landlord has claimed \$157.50 to clean the rental unit after the tenant vacated the rental unit. The landlord also submitted the invoice which supports that two cleaners spent 6 hours to clean the rental unit on September 4, 2019. The tenant responded to this item by stating that they would not have left so quickly if they were not being harassed. The landlord replied by stating that a request to be repaid is not harassment and requesting access to repair the rental unit is also not harassment.

Regarding item 7, the landlord has claimed \$185.98 to rekey the rental unit as the rental unit keys were not returned at the end of the tenancy. As indicated above, the tenant admitted that they sent the rental unit keys to the incorrect mailing address and that they were returned to the tenant as a result. The landlord stated that the correct mailing address of the landlord was provided on the tenancy agreement, so the keys should have been returned and were not as required by the Act. The invoice was submitted in evidence for this item.

Regarding item 8, the landlord has claimed \$157.50 to re-paint the rental unit areas that were damaged by the tenant. The landlord provided photos that were blurry, which I will address later below. The tenant's response to this item was that the most tenants will hang pictures and even though the tenant asked for instructions and permission, the tenant did not end up doing so and that the tenant denied doing anything unreasonable and beyond wear and tear to the rental unit walls.

Regarding item 9, the landlord has claimed \$144.48 to replace a damaged sink in the bathroom that was cracked by the end of the tenancy. The agent testified that an on-site worker was able to install the bathroom sink so labour was not added to this portion of the landlord's claim. The landlord referred to the Condition Inspection Report and noted that the sink was not indicated as cracked at the start of the tenancy, only at the end of the tenancy. The tenant's response to this item was that they don't recall anything about the sink.

Regarding item 10, the landlord has claimed \$76.32 for invoice 254, which is comprised as follows:

1. 2 tenant fobs not returned (\$20.16 each)	\$40.32
2. One door stopper	\$6.00
3. Light bulbs (\$8.00 each x 3)	\$24.00
4. Window handle replacement	\$6.00

The landlord referred to the incoming and outgoing Condition Inspection Report in support of these items and the invoice dated September 3, 2019 submitted in evidence. The agents testified that because the landlord purchases these types of items in bulk, the charge to the tenant is at the landlord's cost. The tenant's response to this portion of the landlord's claim was that it was quite wasteful and that the window handle knob could have likely been put back on and used. The tenant also stated that the sink worked just fine so did not see why it had to be replaced.

The landlord summarized their claim by stating the flood was caused due to a clog in the toilet and not a latent defect of the toilet and that the tenant did not turn off the water after the flood and that the flood occurred because of the actions of the tenant.

The tenant summarized their response by stating that they feel the repair was an emergency repair and is the responsibility of the landlord. The advocate stated that the landlord is claiming on one hand that nothing could be done once the contaminated water overflowed so the time it took the landlord to send their plumber out is not relevant to the damaged caused, and on the other hand, the landlord is claiming that the tenant had the duty to turn off the water, use a plunger and deal with the overflow and to arrange a plumber themselves. The advocate stated that the tenant called both numbers and that there was no evidence presented that the tenant was negligent in any way in terms of flushing something inappropriate down the toilet. The advocate also stated that during the first call, the tenant was not advised to turn off the water at all by the landlord agent and reminded the landlord that the tenant had complained about the

toilet previously multiple times and the landlord failed to send anyone to inspect the toilet. The advocate also stated that although the tenant was urgently seeking a plumber, it took several calls before the landlord sent their plumber to address the flooding toilet. The advocate also stated that the landlord agents downplayed the urgency of the tenant's multiple calls on July 27, 2019, which is the landlord's responsibility and not that of the tenant.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

**Item 1** - The landlord has claimed \$666.75 to hire an emergency plumber. The plumber used an auger to clear a blockage in the toilet of the rental unit after it was reported by the tenant to have overflowed. The invoice submitted in evidence indicates that the plumber found a plugged toilet and that water was off. I have reviewed the invoice from the plumber which also indicates the water was off, which contradicts the landlord's position that the water was on to the toilet. As a result, I find that the landlord has not provided clear indication of when the water was turned off and by whom.

Furthermore, I have reviewed the calls made by the tenant and I afford significant weight to the testimony of the plumber who at no time stated that they found anything inappropriate that had been flushed in the toilet, such as a diaper, sanitary napkin or



other foreign object not intended for flushing. I also note that the invoice did not allege that the tenant was negligent in using the toilet. I also afford significant weight to the fact that the tenant advised the landlord on several occasions about their concern with the toilet and that I find the landlord provided insufficient evidence to support that those concerns were addressed prior to the flood.

Based on the above, I find the landlord has failed to provide sufficient evidence that the tenant was negligent with the toilet and breached the Act. I find it more likely than not that the toilet failed to work based on the previous issues raised in the tenant's complaints about the toilet that I find were not addressed by the landlord sufficiently. Consequently, I dismiss this item due to insufficient evidence, without leave to reapply.

**Item 2** - The landlord is claiming \$32,871.35 for the cost of emergency and regular repairs to the rental unit caused by the clogged and ultimately flooding toilet. Consistent with my finding for item 1 above, I find the landlord has failed to provide sufficient evidence that the tenant was negligent in using the toilet and that it is more likely than not that the toilet failed based on the previous complaints by the tenant, which I find the landlord failed to address appropriately. In particular, the June 6, 2019 email from the tenant to the landlord complained of the sink and bathtub draining slowly, which supports the testimony of the plumber that the sink and bathtub drains are a sign of a bigger plumbing problem.

Furthermore, I find the tenant's phone calls to the landlord were made in a reasonable time frame and that the landlord agents downplayed the seriousness of the water from the toilet, which I find is not the fault of the tenant. Based on the totality of the evidence before me, I find the landlord should have responded to complaint as an emergency repair and instead, took a different approach from the first call, which is not the responsibility of the tenant. In addition, the landlord failed to present why they did not attempt to minimize their loss by claiming this matter on their insurance. Having considered all of the evidence presented, I find the landlord has failed to meet all parts of the test for damages and loss and therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

**Item 3** - The landlord has claimed \$600.00, which is comprised of two \$300.00 gift cards that the landlord provided to the two neighbouring rental units, to compensate them for the inconvenience that the flood from the rental unit created for them. Consistent with my finding for items 1 and 2 above, I dismiss this item in full, without leave to reapply, as I find the landlord has failed to prove that the tenant was negligent and caused the flood. I find it more likely than not that the toilet needed repair and that

the landlord was negligent in failing to have the toilet inspected in response to the tenant's early complaints, before the toilet flooded.

**Item 4** - The landlord has claimed \$791.18 due to the tenant breaching their fixed-term tenancy by vacating before February 29, 2020. Section 45(2) and 45(3) of the Act apply and state:

**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.

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

[Emphasis added]

Firstly, I find the tenant breached section 45(2) of the Act as the tenant provided one day notice on August 27, 2019 that they would be vacating and ending the tenancy on August 28, 2019. Secondly, I am not persuaded by the tenant or advocate alleging that the tenant provided sufficient notice of a breach of a material term. Firstly, the tenant did not allege in their correspondence with the landlord that they would be ending their tenancy for breach of a material term if the failure was not corrected within a reasonable time frame. Secondly, I find that there is insufficient evidence to support that the landlord was harassing the tenant based on the evidence before me. Thirdly, the tenant had the option of not paying the plumbing bill and advising the landlord to take them to arbitration and instead, the tenant made the decision to breach a fixed-term tenancy, which I find is contrary to section 45(2) of the Act. Therefore, I find the landlord has met the burden of proof and that the tenant owes **\$791.18** as claimed for this item.

**Item 5** - The landlord has claimed \$193.20 for junk removal from the rental unit. The landlord submitted an invoice and photo evidence of the items left behind by the tenant including plants, items in the dishwasher, items in the sink, items in the fridge, and that

the photo showed a rental unit that was not cleaned. I find that section 37(2)(a) of the Act applies and 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, and  
[Emphasis added]

I find the photo evidence provided by the landlord sufficiently supports that the tenant failed to leave the rental unit reasonably clean and that items which I find to be consistent with garbage were left behind. I also agree with the agents that the items left behind by the tenant had no value and were treated accordingly. As a result, I find the tenant breached section 37(2)(a) of the Act by leaving personal items behind that that the tenant must pay the landlord **\$193.20** as claimed for this item.

**Item 6** - The landlord has claimed \$157.50 to clean the rental unit after the tenant vacated the rental unit. I have reviewed the photo evidence and the invoice which I find supports that two cleaners spent 6 hours to clean the rental unit. Consistent with my finding for item 5 above, I find the tenant breached section 37(2)(a) of the Act by failing to leave the rental unit reasonably clean. I note that the tenant left dishes in the dishwasher, items in the fridge and failed to clean the rental unit to a reasonable standard before vacating. As a result, I award the landlord **\$157.50** for cleaning costs as claimed.

**Item 7** - The landlord has claimed \$185.98 to rekey the rental unit as the rental unit keys were not returned at the end of the tenancy. I note the tenant admitted that they sent the rental unit keys to the incorrect mailing address and that they were returned to the tenant as a result. The landlord stated that the correct mailing address of the landlord was provided on the tenancy agreement, so the keys should have been returned and were not as required by the Act. The invoice was submitted in evidence for this item.

Section 37(2)(b) of the Act applies and states:

**Leaving the rental unit at the end of a tenancy**

**37(2) When a tenant vacates a rental unit, the tenant must**

(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.

[Emphasis added]

Based on the above, I find the tenant breached section 37(2)(b) of the Act by failing to properly return the rental unit keys to the mailing address listed on the tenancy agreement or to ensure an agent of the landlord received the keys personally. Therefore, I grant the landlord **\$185.98** as claimed as I find the landlord met the burden of proof.

**Item 8** - The landlord has claimed \$157.50 to re-paint the rental unit areas that were damaged by the tenant; however, I afford no weight to the blurry photos submitted by the landlord and I find the photos do not support that the rental unit required re-painting. As a result, I find the landlord has failed to meet the burden of proof and I dismiss this item, without leave to reapply, due to insufficient evidence.

**Item 9** - The landlord has claimed \$144.48 to replace a damaged sink in the bathroom that was cracked by the end of the tenancy. Due to the incoming Condition Inspection Report, that does not indicate the sink was broken and the tenant's testimony which stated that they do not recall anything about the sink, I am satisfied based on the photo evidence provided that the tenant or a guest of the tenant, damaged the sink caused a crack. I also find that a crack is not normal wear and tear for a sink and as a result, I grant the full amount claimed of **\$144.48** to the landlord for this portion of their claim.

**Item 10** – The landlord has claimed \$76.32 for invoice 254, which is comprised as follows:

5. 2 tenant fobs not returned (\$20.16 each)	\$40.32
6. One door stopper	\$6.00
7. Light bulbs (\$8.00 each x 3)	\$24.00
8. Window handle replacement	\$6.00

The landlord referred to the incoming and outgoing Condition Inspection Report in support of these items and the invoice dated September 3, 2019 submitted in evidence. The agents testified that because the landlord purchases these types of items in bulk, the charge to the tenant is at the landlord's cost. I have considered the testimony of the agents and the tenant's response, which was that the landlord was being "quite wasteful" and that the window handle knob could have likely been put back on and

used. I find that the tenant is responsible for these items and that RTB Policy Guideline 1 states that tenants are responsible for replacing burned out lightbulbs, and I find the tenant is also responsible for the other items as well. Therefore, I find the landlord has met the burden of proof for this item and owes **\$76.32** as claimed.

As the landlord's claim had some merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$1,648.66**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Emergency plumber July 27, 2019	dismissed
2. Emergency repairs/repairs	dismissed
3. Affected tenants compensation	dismissed
4. September 1-13 rent and storage	\$791.18
5. Junk removal	\$193.20
6. Cleaning suite	\$157.50
7. Re-key	\$185.98
8. Painting	dismissed
9. Bathroom sink	\$144.48
10. Invoice 254	\$76.32
11. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,648.66</b>

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's security deposit of \$897.50, which has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$751.16**.

### Conclusion

The landlord's claim has some merit.

The landlord has established a total monetary claim of \$1,648.66. The landlord has been authorized to retain the tenant's full security deposit of \$897.50, which has

accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$751.16. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 6, 2020

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Residential Tenancy Branch