



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, PSF, MNDCT, FFT  
                             MNDL-S, FFL

### Introduction

This hearing dealt with adjourned hearing for the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for conference call.

The Tenant’s Application for Dispute Resolution was made on January 15, 2020. The Tenant applied for the following relief, pursuant to the *Act*:

- for an order for the Landlord to comply with the *Act*, Regulation and/or the tenancy agreement,
- for an order for the Landlord to provided services or facilities required by the tenancy agreement or law, and
- for the return of their filing fee.

The Landlord’s Application for Dispute Resolution is dated February 7, 2020. The Landlord applied for the following relief, pursuant to the *Act*:

- for a monetary order for damages or compensation under the *Act*,
- for permission to retain the security deposit, and
- for the return of their filing fee.

The Tenant submitted an amendment to their application on March 31, 2020. The Tenant amended their application to apply for the following relief, pursuant to the *Act*:

- for a monetary order for damages or compensation under the *Act*.

Two Property Managers (the “Landlord”) and the Tenant attended the hearing and were each affirmed to be truthful in her testimony. Both parties were provided with the opportunity to present their 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 – Removal of Issues

During the hearing, it was determined that this tenancy ended on January 31, 2020, in accordance with the *Act*.

Accordingly, as the tenancy has already ended, I determined that there was no need to render a decision on the Tenant's claims for an order for the Landlord to comply with the *Act*, Regulation and/or the tenancy agreement, or for an order for the Landlord to provide services or facilities required by the tenancy agreement or law.

I will continue in these proceedings regarding the Tenant's remaining issues of a monetary order for damages or compensation under the *Act*, for the recovery of the Tenant's filing fee and the Landlord's full application.

#### Preliminary Matter - Settlement

During these proceedings, the parties agreed that the Tenant will attend the rental property, at a date to be determined and agreed to by both parties, but no later than 30 days after the Provincial Government Emergency Order is lifted, to pick up the cabinet that they left behind in the rental unit.

The Landlord withdrew their claim for \$85.00 in the recovery of their costs to dispose of the cabinet from their claim, consisting of \$25.00 in landfill costs and \$65.00 in labour.

#### Issues to be Decided

- Is the Tenant entitled to a monetary order for damages or compensation under the *Act*?
- Is the Tenant entitled to the return of their application filing fee?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of their claim?
- Is the Landlord entitled to recover the cost of their application filing fee?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on September 1, 2018, as a one-year fixed term tenancy that rolled into a month to month at the end of the initial fixed term. Rent in the amount of \$2,195.00 was to be paid by the first day of each month, and the Landlord collected a security deposit of \$1,097.00 at the outset of this tenancy. Both parties agreed that the move-in inspection had been completed in accordance with the *Act*. Both the Landlord and the Tenant submitted a copy of the Tenancy agreement into documentary evidence.

Both parties testified that an extensive renovation project was undertaken at the rental property, that involved the construction of scaffolding around the exterior of the building, the use of jackhammers on the concrete balconies and the restriction of the use of balconies throughout the renovation work.

The Tenant testified that the construction work began August 1, 2019, and was scheduled to be completed in October 2020. The Tenant testified that the construction work was extremely noisy and greatly effected their quiet enjoyment of the rental unit, that the scaffolding restricted their view, and that they were not allowed to use their balcony during this period. The Tenant submitted a picture of the view from their balcony door taken during the renovation work into documentary evidence.

The Landlord testified that the renovation project started September 16, 2019, and was scheduled to be completed in October 2020. The Landlord submitted a copy of the city approved building permit, for the renovation project, and seven residence notices into documentary evidence.

The Landlord testified that they agreed that the renovation work was noisy, that the erected scaffolding would have restricted the Tenant's view, and that the building occupants were not allowed to use their balconies during the renovation period.

The Tenant testified that they had initially tried to live in the rental unit during the renovation period but that as of the end of December 2019, they had decided that it was no longer possible for them to continue living there and gave their notice to end this tenancy on December 31, 2019. The Tenant testified that the extreme noise created by

the jackhammers working on the concrete balconies made living in the rental unit impossible and caused the frustration of this tenancy agreement. The Tenant testified that the noise had a severe effect on her family, causing their child and partner to stop staying with or visiting them at the rental unit. The Tenant submitted four decibel sound measurement reports, taken on September 25, 2019, and December 18, 2019, and a letter from their partner into documentary evidence.

The Landlord testified that they received the Tenant's notice to end their tenancy, and that the Tenant moved out of the rental unit on January 31, 2020, in accordance with that notice.

Both parties agreed that the move-out inspection had been completed in accordance with the Act. The Landlord submitted a copy of the move-in/move-out inspection report (the "inspection report") into documentary evidence.

The Tenant testified that they are claiming compensation for the loss of quiet enjoyment and the loss of the use of their balcony during the renovation period, in the amount of \$4,662.17. The Tenant testified that the Landlord knew the plan to renovate the rental property before this tenancy agreement had been signed and that the Landlord had a legal obligation to inform the Tenant of the plan in advance of them entering into this tenancy agreement. The Tenant submitted a copy of the Owners Construction Information sheet and construction safety package into documentary evidence.

Both parties acknowledged that they attempted to negotiate a settlement regarding the loss of quiet enjoyment and the loss of the use of the balcony before they filed for dispute resolution with the Residential Tenancy Branch but that those negotiations had failed. The Landlord offered a cash settlement again, during these proceedings. The Tenant refused the offer made during these proceedings and requested that this Arbitrator render a decision regarding the Tenant's claim for compensation for loss of quiet enjoyment and the loss of the use of the balcony. Both parties submitted copies of their email exchange, regarding their attempted settlement negotiations, into documentary evidence.

The Tenant testified that they are seeking to recover their moving expenses, in the amount of \$920.22, consisting of \$107.35 for a truck rental, \$290.00 for moving a piano, \$150.00 and \$120.00 in labour cost for movers, and \$252.87 in costs for moving supplies. The Tenant testified that they believe that the Landlord knew of the plan to renovate the rental property before this tenancy started. The Tenant argued that the Landlord was obligated to inform the Tenant of the planned renovation project during

the tenancy agreement negotiations. The Tenant testified that had they known that this renovation project was going to happen, they never would have entered into this tenancy and that they suffered additional moving costs due to the Landlord's failure to disclose this information. The Tenant submitted a bank statement, an invoice and three e-transfer receipts of their moving costs into documentary evidence.

The Landlord testified that they did not know about the planned renovation project when they entered into this tenancy agreement. The Landlord submitted in their written statement that the Strata Council minutes show that they began discussions regarding possible building renovation in Mid November 2018 but that the owners were not formally notified of a General meeting and vote regarding these possible renovations until April 23, 2020, seven months after this tenancy began. The Landlord submitted a copy of the notice to owners into documentary evidence.

The Landlord agreed, during these proceedings, that some compensation was due to the Tenant for loss of quiet enjoyment and the restriction on their use of the balcony during the renovation period of this tenancy. The Landlord testified that they would agree to a compensation period for the loss of quiet enjoyment of Monday to Friday, between 8:30 a.m. to 4:30 p.m. (8hr day) for each working day, not including weekend, holidays or a two-week construction shutdown period over the Christmas holiday. The Landlord also testified that the Tenant had restricted use of their balcony for the entire period of the renovation work.

The Tenant testified that they are also seeking to recover their replacement costs for an elliptical trainer that they had donated to the rental property exercise room. The Tenant testified that the rental unit had been too small to house their elliptical trainer and that they had donated it to the building exercise room so they would still be able to use it during their tenancy. The Tenant testified that the Strata Council had insisted that they transfer ownership of the elliptical trainer due to insurance purposes. The Tenant stated that they were ok with this as it was their plan to live in the rental unit for a long time and that they would retain the use of the elliptical trainer. The Tenant argued that due to the Landlord's failure to disclose the planned renovations, they had gone into their negotiation with the Strata Council regarding the elliptical trainer under the false pretences of having a long-term tenancy. They also argued that the Landlord should be responsible for the replacement value of the elliptical trainer due to their failure to disclose this information. The Tenant submitted a copy of their email correspondence with the Strata Council and an online ad for an elliptical trainer into documentary evidence.

The Landlord testified that they did not withhold information from the Tenant. The Landlord argued that it was the Tenant's decision rent a unit that was too small for their elliptical trainer, that it was the Tenants decision to donate the elliptical trainer to the building, and that the Landlord did not participate in the negotiation between the Strata Council and the Tenant regarding this elliptical trainer, and were therefore not responsible for the replacement cost of this machine.

The Landlord testified that they are claiming for \$2,362.50 in their costs to have the rental unit repainted at the end of the tenancy. The Landlord testified that the rental unit had been freshly painted, white, at the beginning of this tenancy and that the Tenant had painted the rental unit multiple colours, gray and purple, without their permission. The Landlord testified that the Tenant did not return the rental unit to the original white colour at the end of the tenancy as required. The Landlord submitted 104 pictures taken of the rental unit at the beginning of this tenancy, 102 pictures of the rental unit taken during the move-out inspection, and an invoice for the completed painting work into documentary evidence.

The Tenant testified that they agreed that they had painted the rental unit during their tenancy and that they had not returned the rental unit to the original white at the end of this tenancy. The Tenant argued that they were not responsible for the Landlord's cost to have the rental unit repainted as their tenancy agreement had become frustrated due to the renovation noise and that they had no time to repaint at the end of the tenancy.

The Landlord testified that they are claiming for \$367.50 in their cost to have the rental unit cleaned at the end of this tenancy. The Landlord testified that the Tenant had returned the rental unit uncleaned at the end of this tenancy, and that the tenancy agreement and the Act required the Tenant to fully clean. The Landlord reference the inspection report and end of tenancy pictures they had previously submitted into document evidence to support their claim. The Landlord submitted an invoice for the completed cleaning into documentary evidence.

The Tenant testified that they agreed that they had not cleaned the rental unit at the end of this tenancy. The Tenant argued that they were not responsible for the Landlord's cleaning costs as their tenancy agreement had become frustrated due to the renovation noise and that they had no time to clean at the end of the tenancy.

The Landlord testified that they are also claiming for \$336.00 in their cost for minor repairs to the rental unit the end of this tenancy, consisting of \$170.00 to purchase replacement drapes, \$65.00 to install the new drapes, \$65.00 to install a light switch,

\$15.00 for the purchase of light bulbs, and \$25.00 to install light bulbs, plus applicable GST.

The Landlord testified that the Tenant had returned the rental unit with a set of curtains missing. The Landlord reference the inspection report and end of tenancy pictures they had previously submitted into document evidence to support their claim. The Landlord submitted an invoice for the purchase of replacement curtains and labour costs to install the new curtains into documentary evidence.

The Tenant testified that they agreed that they had removed a set of curtains from the rental unit during their tenancy and that they had not replaced the curtains at the end of the tenancy. The Tenant argued that the curtains they removed were old and that they should not be responsible for the full replacement value of new curtains. The Tenant offered \$80.00 toward the replacement cost of new curtains for the rental unit.

The Landlord testified that they agreed the curtains were old but could not confirm their exact age.

The Landlord testified that the Tenant had removed a light switch from the wall of the rental unit during the tenancy. The Landlord submitted an invoice for the labour costs to install the light switch into documentary evidence.

The Tenant testified that they agreed that they had removed the light switch during their tenancy and that they had not reinstalled the light switch at the end of the tenancy.

The Landlord testified that the Tenant had returned the rental unit with three blown light bulbs. The Landlord reference the inspection report and end of tenancy pictures they had previously submitted into document evidence to support their claim. The Landlord submitted an invoice for the purchase of replacement light bulbs and labour costs to install the new light bulbs into documentary evidence.

The Tenant testified that they agreed that there had been three blown light bulbs in the rental unit at the end of the tenancy. The Tenant argued that there had been blown light bulbs at the beginning of this tenancy that they had to replace and that it should be a wash.

## Analysis

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

I accept the testimony of both parties that the rental property underwent major renovations that required scaffolding to be erected around the entire building, with the use of jackhammers Monday to Friday, and the lost of the unrestricted use of all balconies. During the hearing, the parties offered conflicting verbal testimony regarding the start date of the renovation work to the rental property. I have reviewed the documentary evidence that I have before me, and I accept the city building permit, submitted by the Landlord, to be the creatable account of the start date of the renovation work at the rental property. I find that the renovation work started as of September 16, 2019.

Section 32(1) of the *Act* requires a Landlord to provide a rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age and character of the building.

### ***Landlord and tenant obligations to repair and maintain***

**32 (1)** *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I accept the testimony of the Landlord that the renovations were required for the proper maintenance of the rental property, and I find that the renovation work to the rental property was being completed in accordance with the *Act*. I also accept the agreed upon testimony that the Tenant issued notice to end their tenancy and moved out of the rental unit on January 31, 2020, in accordance with the *Act*, due to excessive noise caused by the renovation work being completed at the rental property.

I accept the documentary evidence of the Landlord that the move-out inspection had been completed on January 31, 2020, the day the Tenant moved out of the rental unit and that both the Landlord and the Tenant were present for the move out inspection as required and both parties signed the inspection report. I have reviewed the inspection



report, and I find this document represents the reliable account of the condition of the rental unit at the end of this tenancy.

I have reviewed the Tenant's application, the amendment to their application, and their testimony, and I find that the crux of their claim and their rebuttal to the Landlord's claim rests on two arguments posed by the Tenant. The first that the tenancy agreement was frustrated due to the noise levels created during the renovation work, and the second, that the Landlord had withheld prior knowledge of the planned renovation work, from the Tenant that would have affected the Tenants willingness to enter into this tenancy, creating an unfair bargaining position in favour of the Landlord.

I will address each of the Tenant's arguments individually, the first argument, that the tenancy agreement was frustrated due to the noise level of the construction work at the rental property. The doctrine of frustration is a contract law doctrine that relieves the liability under a contractual agreement in the event of a breach of contract, where a party to the agreement is prevented from, or unable to, perform their obligations under the agreement, due to some event which occurs, which was outside of their sphere of control. In such circumstances, the law deems it unfair to compel the injured party to comply with the terms of the agreement, and the law relieves this person from their obligations under the contract.

For a claim pursuant to the *Frustrated Contract Act* to be successful, the claimant must show that circumstance arose that made the performance of the contract impossible. The classic example of this in relation to a residential tenancy is when there has been a fire in a rental unit, destroying the rental unit, resulting in the frustration of the tenancy agreement as there is no longer a rental unit to occupy. In such cases, the tenancy would immediately end, with no requirement for a notice to end tenancy or requirement to pay future rent. In the case before me, the Tenant has claimed that their tenancy was frustrated due to the noise created by the ongoing renovation work to the rental property.

I have reviewed the testimony provided by these parties, and I accept the testimony of the Tenant, that they were able to live in the rental unit from September 16, 2019, the date renovation work commenced, until January 31, 2020, the date the Tenant moved out of the rental unit. I also noted that the Tenant was able to provide the Landlord with the one month written notice to end their tenancy, as required by the *Act*. I acknowledged that the noises created by the ongoing renovation work would have created a hardship for the Tenant; however, it is not the creation of a hardship alone which calls the principle of frustration into play. It must be substantially more than

hardship for a contract to meet the test to be deemed frustrated. What is required is that the situation must have made it impossible for the contract to be completed.

As the Tenant was able to live in the rental unit for several months during the renovation work and was able to provide the full notice period, as required by the *Act*, to end their tenancy, I find that, by the Tenant's own actions, they have shown that the rental unit was in fact still habitable during the construction period and therefore not frustrated. Although it may have been a hardship for the Tenant and their family to live in the rental unit with the noise from the construction work, living there was not made impossible by the noise alone. Therefore, I find that this tenancy agreement was not been frustrated due to the ongoing renovation work to the rental property.

The Tenant's second argument is that the Landlord knowingly withheld knowledge of the planned renovations prior to the Tenancy Agreement being signed and that had the Tenant known of the renovations, they would not have entered into the agreement.

I find that the parties, in this case, offered conflicting verbal testimony regarding when the Landlord knew of the planned renovations to the rental property. 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, on this point, it is the Tenant who holds the burden of proof.

I have reviewed all of the Tenant's testimony and documentary evidence, and I noted that Tenant has not provided any evidence, other than their verbal assertion, that the Landlord had known of the renovation work in July 2018, when this tenancy agreement was signed.

I do accept the documentary evidence submitted by the Landlord, of a notice to owner of a Special General Meeting, for a vote on proposed renovation work, dated received April 23, 2019. I also except the Tenants written statement that they had been notified that the renovation work had been approved as of August 15, 2019. Therefore, based on the evidence that I have before me, I find that the Landlord knew of the potential for renovation work as of April 23, 2019, and that the Tenant was duly notified of the scheduled renovations once they were approved.

### Tenant's Claim

The Tenant is seeking compensation to cover their moving costs, in the amount of \$920.22, for compensation for loss of quiet enjoyment and loss of the use of their balcony, in the amount of \$4,662.17, and the replacement value of an elliptical trainer, in the amount of \$2,100.00.

As for the Tenant's claim for moving cost in the amount of \$920.22, consisting of; \$107.35, for a moving truck rental, \$290.00 to move a piano, \$120.00 and \$150.00 for two people to help move, and \$252.87 in moving supplies. When considering a request for a monetary award for compensation due to a loss, I must consider sections 7 and 67 of the *Act*, which states that 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.

I have carefully reviewed the testimony and documentary evidence provided by the Tenant, and I find that the Tenant has not proven a breach of the *Act* by the Landlord during the tenancy. Consequently, as the Tenant has not proven that the Landlord failed to comply with the *Act*, I find that they are not entitled to compensation for their moving costs.

As for the Tenant's claim for \$2,100.00 in their replacement costs for an elliptical trainer, they had donated to the strata. I accept the Tenant's testimony and documentary

evidence and find that the Tenant negotiated independently with the Strata Council for the rental property to donate their elliptical trainer to the exercise room located on the rental property. As the Landlord was not involved in the Tenant's negotiations with the Strata Council, I find that the Landlord is not responsible for the results of that negotiation. Consequently, as the Tenant has not proven that the Landlord was involved in and the Tenant's donation of the elliptical trainer, I find that the Landlord is not responsible to the replacement costs of that equipment. Therefore, I dismiss the Tenant's claim for compensation for the replacement costs of the elliptical trainer.

The Tenant's final claim is for compensation for loss of quiet enjoyment and the loss of the use of the balcony. I have previously accepted the verbal testimony of the Landlord and the Tenant that the Tenant did suffer a loss of quiet enjoyment due to the jackhammering that took place during the renovation work and that the Tenant was prohibited from using the balcony during the entirety of the renovation period. Section 28 of the *Act* establishes a tenant's right to quiet enjoyment and reads as follows:

***Protection of tenant's right to quiet enjoyment***

**28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the agreed upon testimony of these parties shows that there had been a breach of section 28 of the *Act* and that the Tenant did suffer a loss of quiet enjoyment during the renovation working days, conducted Monday through Friday for the period between September 16, 2019, to January 31, 2020, less statutory holidays and a two-week shutdown over the Christmas, for a total of 88 days. I also accept the agreed upon testimony of these parties that the Tenant did suffer a loss of the use of their balcony for the entire period between September 16, 2019, to January 31, 2020, for a total of 138 days.

In determining the amount of compensation to be awarded to the tenant, due to a breach of section 28 of the *Act*, I must consider the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

### **Compensation for Damage or Loss**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations”

I find that the loss of the undisturbed use of the rental unit during the working days of the renovation period, to be a deprivation of the Tenants’ right to the quiet enjoyment of the rental property. Due to the noise caused by the renovation work during this tenancy, I find it appropriate to award the Tenant the return of half of all the rent paid for the working hours of 7:30 am to 4:30 p.m. (8 hrs) on each of the 88 working days that the Tenant occupied the rental unit during the renovation of the property. Accordingly, I award the Tenant the amount of \$1,058.41 for the loss of quiet enjoyment.

Monthly Rent	\$2,195.00
Yearly Rent	\$26,340.00
Per Diem	\$72.16
Work day rate (1/2 of rent per hour)	\$12.03
Days Refunded	88
<b>Awarded to Tenant</b>	<b>\$1,058.41</b>

I also find that the Tenant lost the exclusive possession of the balcony of the rental unit for the duration of the renovation work, and that the loss of use the balcony to be a removal of the Tenant’s right to the exclusive possession of the rental property. I accept the Tenant’s testimony that the balcony accounted for 10% of the rental unit. Accordingly, I find it appropriate to award the Tenant the return of 10% of all the rent paid between September 16, 2019, to January 31, 2020, a total of 138 days. Accordingly, I award the Tenant the amount of \$995.87 for the loss of the use of the balcony during the tenancy.

Monthly Rent	\$2,195.00
Yearly Rent	\$26,340.00
Per Diem	\$72.16
Loss of use of the balcony (10%)	\$7.22
Days Refunded	138
<b>Awarded to Tenant</b>	<b>\$995.87</b>

Overall, I award the Tenant \$2,054.28, comprised of \$1,058.41 for the loss of quiet enjoyment and \$995.87 for the loss of the use of the balcony during this tenancy.

<u>Tenant's Claim Items</u>	<u>Requested</u>	<u>% Awarded</u>	<u>Due</u>
Replacement Elliptical	\$2,119.00	0%	\$0.00
Moving Truck	\$107.35	0%	\$0.00
Piano Moving	\$290.00	0%	\$0.00
Mover Costs (EK)	\$150.00	0%	\$0.00
Mover Cost (CG)	\$120.00	0%	\$0.00
Pro-rated Rent return	\$4,662.17	-	
- Loss of Quiet Enjoyment			\$1,058.41
- Loss if use of Balcony			\$995.87
Moving Supplies	\$252.87	0%	\$0.00
<b>Award</b>			<b>\$2,054.28</b>

### Landlord's Claim

The Landlord has claimed to recover their costs to have the rental unit painted at the end of tenancy, in the amount of \$2,362.50. I accept the agreed upon testimony of these parties that the Tenant did paint the rental unit during their tenancy, without the approval of the Landlord and that the Tenant had not returned the rental unit to the original (white) colour at the end of the tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

### ***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**

*(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 have reviewed the inspection report and noted that the rental unit had been freshly painted at the beginning of this tenancy. I have also reviewed the photographic evidence submitted by the Landlord, taken of the rental unit at the end of the tenancy, and I noted that the Tenant had painted the rooms in the rental unit several different and noticeably darker colours. I find that the Tenant damaged the rental unit when they painted it several different colours from the original white colour that they had received it in at the beginning of this tenancy.

I find that the Tenant breached section 37 of the *Act* when they failed to return the rental unit to the Landlord undamaged, and in the colour in which it had been provided. I also find that the Landlord has provided sufficient evidence to prove the value of their cost to return the rental unit to the original colour, and I am satisfied that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of their costs to repaint the rental unit, and I award the Landlord the recovery of the cost in the amount of \$2,362.50.

The Landlord has also claimed for \$367.50 to recover their costs to have the rental unit cleaned at the end of tenancy. I accept the agreed upon testimony of these parties that the Tenant did not clean the rental unit at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned. The Landlord has provided sufficient evidence to prove the value of their cost to clean the rental unit, and I am again satisfied that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of their costs to clean the rental unit, and I award the Landlord the recovery of those costs in the amount of \$367.50.

The Landlord has claimed for \$170.00 to replace missing curtains, and \$65.00 to install the new curtains in the rental unit. The Tenant agreed that they had removed the Landlord's curtains during the tenancy and that they were not replaced by the Tenant at the end of this tenancy. I accept the Tenant's testimony that the curtains were old and that they should not be responsible for the full replacement value of old curtains. The Tenant offered \$80.00 towards the Landlord replacement cost of the curtain. I find the

Tenant's offer to be reasonable, given the age of the curtains. Accordingly, I award the Landlord \$80.00 towards the replacement costs for the curtains and \$65.00 in the recovery of their installation costs for these new curtains.

The Landlord has claimed to recover \$65.00 to have a light switch reinstalled at the end of this tenancy. I accept the agreed upon testimony of these parties that the Tenant had removed a light switch in the rental unit and did not reinstall that light switch at the end of this tenancy. I find that the Tenant damaged the rental unit when they removed a light switch from the rental unit and that they breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged. The Landlord has provided sufficient evidence to prove the value of their cost to reinstall the light switch, and I am satisfied that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the costs to reinstall the light switch, and I award the Landlord the full recovery of those costs in the amount of \$65.00.

The Landlord has claimed to recover \$65.00 in their cost to purchase and install replacement light bulbs that had been burnout at the end of this tenancy, consisting of \$40.00 for buy and \$25.00 to install. I accept the testimony of the Tenant that there were several light bulbs blown, in the rental unit, at the end of this tenancy. I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord with blown light bulbs. The Landlord has provided sufficient evidence to prove the value of their cost to purchase and install the new light bulbs, and I am satisfied that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the costs to replace and install blown light bulbs at the end of this tenancy. I award the Landlord the recovery of those costs in the amount of \$65.00.

I acknowledge the Tenant's argument that there were light bulbs blowing in the rental unit at the beginning of the tenancy; however, that does not negate the responsibility of the Tenant to return the rental unit with working light bulbs at the end of Tenancy. Any deficiencies, including burnt-out light bulbs, noted at the beginning of the tenancy should have been addressed between the parties at the time, and the failure to do so does not remove the responsibility of the Tenant to return the rental unit clean and undamaged at the end of their tenancy.

Overall, I have awarded the Landlord \$3,005.00; comprised of \$2,362.50 for painting, \$367.50 for cleaning, \$80.00 in partial replacement costs for curtains, \$65.00 to install



new curtains, \$65.00 to reinstall a light switch, \$40.00 for the purchase of new light bulbs, and \$25.00 to install new light bulbs.

<u>Landlord's Claim Items</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Painting	\$2,362.50	100%	\$2,362.50
Cleaning	\$367.50	100%	\$367.50
Replacement curtain's	\$170.00	Offer	\$80.00
Labour to install curtains	\$65.00	100%	\$65.00
Install Light switch	\$65.00	100%	\$65.00
Replacement Bulbs	\$40.00	100%	\$40.00
Labour to install light bulbs	\$25.00	100%	\$25.00
<b>Award</b>			<b>\$3,005.00</b>

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. I have reviewed both applications, and correspondence between these parties that had been submitted into evidence, and I find that the Landlord had been attempting to mitigate this situation before the parties filed for dispute. I also noted that the Landlord had made a offer to the Tenant to resolve this dispute and had the Tenant excepted that offer, the need for these proceedings would have been avoided, and the Tenant would have secured a large financial settlement than what was awarded in this Decision. In light of this, I find that the Landlord is entitled to recover their \$100.00 filing fee paid for their application.

As for the security deposit (the "deposit") for this tenancy; section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

***Return of security deposit and pet damage deposit***

**38 (1)** *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

*(a)the date the tenancy ends, and*

*(b)the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

*(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*  
*(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

I accept the documentary evidence, submitted by the Landlord, that the Tenant provided their forwarding address to the Landlord during the move-out inspection on January 31, 2020. Accordingly, the Landlord had until February 15, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting an application for Dispute Resolution to claim against the deposit. The Landlord, in this case, filed their claim against the deposit on February 7, 2020, within the statutory timeline.

Overall, I find that the Landlord has been successful in their claim against the Tenant, and I grant the Landlord permission to retain \$1,050.72 of the Tenant's security deposit paid for this tenancy, in full satisfaction of the above award. I order the Landlord to return the remaining \$46.78 of the security deposit for this tenancy to the Tenant within 15 days of the date of this decision. I grant the Tenant a monetary order in this same amount, to be served on the Landlord in the event that the Landlord does not return the order amount as required.

Landlord's Award	\$3,005.00
Tenant's Award	<b>-\$2,054.28</b>
	\$950.72
Application fee Awarded to Landlord	\$100.00
Due to Landlord	\$1,050.72
Less Security Deposit Paid	<b>-\$1,097.50</b>
<b>Security Deposit Return due to Tenant</b>	<b>\$46.78</b>

Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$46.78**. The Tenant is provided with this Monetary Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 27, 2020

---

Residential Tenancy Branch