Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, FFL
For the Tenant: MNDCT, OLC, PSF, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $1,344.00 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – holding the pet or security deposit; and
- recovery of the $100.00 Application filing fee.

The Tenant filed a claim for:

- $800.00 compensation for monetary loss or other money owed in the form of…;
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an order to provide services or facilities required by the tenancy agreement or law; and
- recovery of the $100.00 Application filing fee.

The Tenants, the Landlord, and his wife, T.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2019, and was to run to August 31, 2020, with a monthly rent of $1,400.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $700.00 and no pet damage deposit.

The Parties agreed that the Landlord conducted an inspection of the condition of the rental unit before or at the start of the tenancy and a move-out inspection on December 31, 2019; however, the Tenants said that the Landlord did not give them a copy of the move-in condition inspection report (“CIR”).

In the hearing, the Parties agreed that the Tenants vacated the rental unit on December 27, 2019, and provided the Landlord with their forwarding address on the CIR on December 31, 2019.

I went through the Landlord’s evidence, and the copies of the CIR did not indicate the condition of each element in the rental unit that is listed on the CIR. There are only a few short notes about the condition of a few items at the beginning of the tenancy, such

as a crisper/shelf in the refrigerator having a “broken shelf”. I only found one page of the CIR with notes of both the move-in and the move-out conditions. Unfortunately, it is difficult to read the notes on this page.

LANDLORD’S CLAIMS

1. FLOOR REPAIR → $1,281.00

In the hearing, the Landlord said that on September 3, 2019, two days after moving in, the Tenants called him to report something wrong with the washing machine. He said the Tenants told him that it was leaking, as it had overflowed onto the floor. The Landlord said he had an appliance repair person attend, and that this person said there was nothing wrong with the washing machine, but rather, that someone had over-filled the machine with laundry before starting the cycle.

The Landlord said that the water was all over the floor and that he used a shop vacuum to suction up as much as he could. He said there was quite a bit of water on the floor and on the baseboards.

The Landlord said the appliance repair person told the Tenants and their roommates not to overfill the machine, and that someone has to be home when it is running. The Landlord also said that the type of detergent the Tenants used was not appropriate, as it had stained the floor a pink colour.

The Landlord said he turned up the heat in an attempt to dry the floor and baseboards. He said the baseboards would have to be replaced, because they are made of particle board. He said he contacted people about having the baseboards replaced.

The Landlord said they had the house renovated in 2014, at which time they had the floor replaced. He said:

> One of the options was, if we could find the original person, that we may be able to get away with replacing just that section of that corner, since we had extra material left over. We couldn’t find him, though. We had to contact contractors and we got multiple quotes. We went with the cheapest and most efficient, to could get it done in a reasonable time.
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> The floor was removed on October 12, and it was still wet, as you can see from

> photos. The sub-floor was wet. The contractor didn't want to lay new flooring on top of a wet sub-floor. Therefore, from October 10th to the 16th, the heater was running day and night to dry that corner. He was supposed to come back on the 15th, but we sent him pictures and he said the floor was still too wet.
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> He came on the 16th and placed the entire floor in the kitchen area - about 100 square feet in the kitchen area. We informed the Tenants of the timeline and what was happening every step of the way. On September 10, he had a conversation with the Tenants, explaining the reason why the machine water landed on the floor, and that we were going to have to replace a portion of floor. We gave them every opportunity. They wanted the invoice. I told them where it was, and they made a copy. We said they could contact contractors for a second opinion. We were willing to work with them to come to an understanding.

The Tenants said:

> We moved in on September 1st, and on September 3rd, a roommate washed clothes. Water was coming out of the machine and we stopped the machine and informed the Landlords immediately.

The Tenants submitted a video focusing on the corner of the laundry room, in which there was some water on the floor, which they said was coming from where the hose connects to the washing machine. They said:

> This was given to us by the person who was renovating the floor. In the video it shows that the hose had been changed. There's an old hose and a new hose. They told me that you're using hot water, and this is why the leak has happened. Every machine uses hot. If we couldn't use hot, they should have advised us. We never did anything to cause the damage. [The repair person] said it was a very old washing machine.
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> Also, the pipe of the machine was too small. How much water could be leaked when there were clothes in the machine. There was leakage from a back pipe.

The Landlord submitted an invoice he received from the floor repair company that charged him $1,281.00 for the flooring work done in this matter.

The Tenants questioned the Landlord's statement that previous tenants left the unit in "excellent condition". "How do I know? There was leakage in the refrigerator – we

mentioned it to them on August 27th. I opened the fridge and it was leaking, so what about the excellent condition?"

The Landlord commented on the Tenants' testimony that there were new and old hoses behind the washer and that one was dripping on the floor. He said:

> When the renovator was putting the machine back, he's not a plumber; he replaced the floor. He has basic knowledge about hooking up an appliance. When we got our machines, we got two brand new kits. I offered to give them brand new hoses, since they were going to put the machine back. We said we'd remove the machine and deduct the amount from rent. They said, no, they wanted the machine, I told them the contractor has two brand new hoses; I can give you those ones. I brought that package down and they didn't use it. They opened it up and decided not to use the steel hoses, because the rubber fit the washing machine better.

As for the dripping refrigerator, the Landlord said they showed it to the appliance repair person, who told them that it needed a new air filter. The Landlord said:

> We said to use a little bowl to catch that water from the freezer/condensation. We advised them that the fridge is dripping, and they said the fridge was too small. They weren't happy with it, but we said we'll replace it with a new fridge. I wanted to put a nice fridge in there. My [name brand refrigerator] sometimes drips; it's not that big of a deal. We replaced it on October 7th.

The Landlord said he did not know how old the washing machine was, but that he thought it was about six or seven years old. He said it was there when they bought the house. "It was a few years old when we bought it. We replaced it with a stackable."

2. PLUMBING VALVES → $200.00

The Landlord said that they needed to have the plumbing valves replaced, because the Tenants turned the water off in the entire house. He said: "Our machines are parallel to their machines, so when they turned the water back on, underneath their sink, the valve started dripping. We had to get this replaced by – they were only valves, we paid via etransfer, so he has direct deposit. We provided the etransfer receipt for [L.] plumbing – the business card is included too."

The Tenants said that the water was never turned off for the whole house:

> I was there the whole time; I was there and, in my room, and I came outside when [the repair person] was moving the machine.
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> The valves were never changed in front of me. [The Landlord] got into an argument with the plumber. You called the plumber to increase the water pressure. He never changed anything, and he put tape on top of the kitchen sink tap. As for the leak under the sink, the water pressure was down, so we couldn't take showers.

The Landlord spoke of the plumber attending the rental unit. "The first time he came in was for the washer/dryer installation. I received a message from [P.K.] saying the water pressure was not full. I called the plumbers back. They discovered the washer was not installed properly and unscrewed it. The kitchen sink has a hose attached to the faucet, so that you can rinse big pots; the water was coming out of this slowly."

The Tenant said she informed the Landlord that the water pressure was down in the kitchen and the shower. She said: "The issue was involving the washer. They started charging us for everything, as well. The shower pressure improved after plumber was there."

3. COSTS ASSOCIATED WITH TENANT ISSUES → $200.00

The Landlord said: "This category is for the cost of our time, and for registered mail, for making copies, for the information we had to gather, and the inconvenience that this caused."

The Landlord said that they took time for days they worked on this, and that it would probably be way more, as they had to take days off work, when work was being done on the unit. They said: "We had to keep kids at home, cancel appointments, and rearrange our schedule. My husband had to take days off work. We had to go to RTB to file papers. We rounded it down to a reasonable number."

TENANT'S CLAIM

In their Application, the Tenants said they seek compensation for damage or losses suffered, because of the Landlord, in the amount of $1,160.00. The Tenants submitted a monetary order worksheet with their claims, as follows:

	For	Amount
1	Laundry	$50.00
2	Leaking refrigerator	$200.00
3	Two heaters	$100.00
4	Moving costs	$250.00
5	Filing fee & related prep costs	$200.00
6	Security deposit deduction	$360.00
	Total monetary order claim	$1,160.00

1. LAUNDRY → $50.00

The Tenants said that the washing machine was disconnected when renovations were being done in the unit. They said the four people living in the rental unit were required to go to a laundromat to do their laundry. The Tenant, P.K., said there is no receipt to prove the amount they spent, aside from payments on the credit card, which she said she can provide, but had not yet. I advised that all submissions must be submitted in advance of the hearing, pursuant to the time limits set out in the Act and Rules.

The Landlord said that he offered the Tenants use of his washing machine for their laundry, which is in the Landlord's upstairs suite. He said:

> The day that this incident happened, I advised them that because there was wet laundry in the machine, I could dry it upstairs. They said, no; that was fine. The washing machine was only out for the weekend on the 7th and 8th, until the contractors came back to do the work at the end of November. The flooring was removed on October 12th, and they disconnected the machine, so the tenants advised us that they wanted to have the stove and fridge working, but they didn't ask about the washing machine. The contractor got drop sheets to plug in the fridge and stove. The washing machine was out on the 13th, 14th, and 15th, but they were given the option to use our machine.

The Tenants said that the washer was not unavailable just during the renovation:

> We rented starting on September 1; on September 3, the water leaked from the washer and we informed the Landlord about it. He came on September 5, but the plumber said he needs parts, so he didn't fix it. On September 10th, he came

> back and did the washer fix. That was a gap of seven days without it. We are four people; it would be okay in two days, but there was a gap of seven days. We couldn't take four people in their house to use their machine.

2. LEAKING REFRIGERATOR → $200.00

The Tenant said the refrigerator was leaking, which was noticed on the move-in condition inspection of the rental unit. They said it was leaking, dripping inside the refrigerator, causing vegetables to rot. The Tenants submitted a photograph of a piece of fruit or vegetable with mould growing down one side of it.

The Tenants said: "The Landlord said he planned to replace fridge; we asked him to look for a bigger one, as this is small for four people. This happened for a month. He replaced the fridge on October 9 – it was more than a month that we had the old fridge."

The Tenants explained the $200.00 claim as being $50.00 worth of groceries for four people each, although, they were not able to support this with any receipts.

The Landlord said the drip was coming from the freezer, and that they needed to put a bowl in the refrigerator to catch the drip. He said:

> My fridge does that, too. We were aware of the problem in the walk-through. We told them we would be replacing the refrigerator. I was looking at a higher end refrigerator, and I didn't give them any time frame, as to when I would replace it. I bought a [name brand] refrigerator, not just one off an [online seller's listing]. They were fully aware it was dripping when they moved in. The previous tenants didn't have a problem with it. The veggies in the crisper shouldn't be on top of the shelf.

3. TWO HEATERS → $100.00

The Tenant, P.K., said this basement suite has no heating system controls. She said: "We didn't have control of the heat in our unit. There was a heat controller, but that was a dummy; it was controlled upstairs. [The Landlord] said 'I will manage it', but it was never warm enough."

P.K. said the Tenants had to purchase two heaters, because the Landlord kept the heat too low in the residential property, or he turned off altogether. The Tenant, J.S., said: "Everything was good, but we requested a couple times to turn the heat on. He would do that, but it was extremely cold. We didn't want to spend money on heaters, but it was

very, very cold. A kind of torture to us. The other tenants were reluctant to buy heaters, but we had to convince them to buy it." P.K. said they have a receipt for the heater, but they did not submit it into evidence. She said they purchased their heater from a well-established, online shopping site.

The Landlord said the residential property has a forced air heating system and that the rental unit suite is not underground. He said:

> If you open the blinds during the day, the house gets really hot. We're not shutting the heat on and off. When I went down there, the doors are constantly closed. You can't expect air to circulate, if you keep the doors all closed. There's going to be the temperature set at 24, and the furnace shuts off at 23, and the fan goes on and pushes the hot air out. We increased it to 24.5, when they came up on September 21. [J.S.] was asking if he could use the hose to wash the car, and the conversation went to the heat. I said it was 23.5 on the thermostat. Once they advised that the heat had been too high, so we lowered it to 23.
>
> We have equalized billing and pay exactly the same amount. When the thermostat detects that the temperature is going lower, we can hear the furnace go on. At the bottom of the stairs we have my desk and home office, so I do constantly work at the bottom of the stairs. We have another thermostat. We can hear the furnace go on.

The Tenant referred to the gas bill and said: "First if you look at the graph – October, November, December – it was 5 degrees - 8 degrees in the whole house. Also, historically, October and November 2019 were the coldest in many years. They turned it down during the day. They kept it off when they were away. We had their deck in front of our house, so [the sun] is covered by their deck, and we can't get light directly into the unit."

4. MOVING COSTS → $250.00

The Tenants said that they had to cancel the moving day they had requested, because the Landlord would only do a condition inspection on the 31st, because of his availability. We wanted to move out and clear everything at once. We wanted to leave earlier, but they said no, so we left the house on 27th."

5. FILING FEE AND RELATED HEARING PREPARATION COSTS → $200.00

The filing fee is something that an arbitrator awards or not, depending on the respective success of the Parties in the hearing.

In terms of the preparation costs, the Tenant said: "I didn't have a printer, so for all of the documents, I had to go out to do scanning and printing costs, which are expensive in [the City]." However, the Tenant did not direct me to any submitted receipts for these expenses, for which they are claim $100.00.

6. SECURITY DEPOSIT DEDUCTION → $360.00

The Tenants said in the hearing that the Parties had already filed applications for dispute resolution with the RTB, when the Landlord deducted $360.00 from the Tenants' $700.00 security deposit before the hearing took place. The Tenants submitted a copy of a chart they received from the Landlord, as follows:

TYPE	DESCRIPTION	COST
Service call	[T's] Appliance Repair (washing machine repair)	$ 60.00
Repair	[Plumbing company] (Unclogging rental unit drains)	$150.00
Damage	Scratches on flooring in den area	$100.00
Damage	Scratch in bedroom	$ 50.00
	Total Deductions:	$360.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36 of the Act. Further, landlords are required by section 24(2)(c) to complete and give tenants copies of CIRs in accordance with the regulations.

Section 32 of the Act requires a tenant repair damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably

clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
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> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Policy Guideline #16 (“PG #16”) states: “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16:

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.

   [the “Test”]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

LANDLORD'S CLAIMS

I find that the Landlord's CIR is incomplete and an insufficient record of the condition of the rental unit at the start of the tenancy. I find, therefore, that the CIR does not support the Landlord's claim for compensation for damage in these matters. I find that the Landlord has not met the requirements in section 23(4) of the Act to "complete a condition inspection report in accordance with the regulations." Further, pursuant to section 24 of the Act, the Landlord has extinguished his right to claim against the security deposit for damage to the residential property.

1. FLOOR REPAIR → $1,281.00

I find that the Landlord's claim in this regard surrounds whether the Tenants overfilled the washing machine, causing it to overflow and damage the floor. I find that the testimony did not include reference to having emptied the washing machine of an amount of clothing that went beyond a reasonable amount for the capacity of the machine.

The Landlord said that the repair person told him that it was overfilled by the Tenants. However, the Tenants said he told them that it was a very old machine. When I consider the evidence before me overall on this matter, I find that the Landlord has not provided sufficient evidence to establish on a balance of probabilities that the washing machine incident was the Tenants' fault. I, therefore, dismiss this claim without leave to reapply.

2. PLUMBING VALVES → $200.00

As applicant, the Landlord has the burden of proof in this matter, and he must provide sufficient evidence to establish that the Tenants are responsible for this repair on a balance of probabilities. At one point in his testimony about the plumbing valves, the Landlord said: "[The plumbers] discovered the washer was not installed properly and

unscrewed it." I find it is more likely than not that the issue with the valves arose as a result of the appliance not having been properly installed, initially. As a result, I find that the Landlord has provided insufficient evidence to prove on a balance of probabilities that the Tenants were responsible for this item. Therefore, I dismiss this claim without leave to reapply.

3. COSTS ASSOCIATED WITH TENANT ISSUES → $200.00

The Landlord was informed in the hearing that this type of costs is authorized by the Act. As such, I dismiss this claim without leave to reapply.

TENANT'S CLAIMS

Section 35 of the Act requires landlords and tenants to inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit. Further, the landlord "must offer the tenant at least 2 opportunities, as prescribed, for the inspection", pursuant to subsection 35 (2). I understand that the Landlord and his family were away from the residential property for the second half of December, and that they may not have been able to inspect the condition of the rental unit with the Tenants earlier than December 31st; however, there is insufficient evidence before me that the Tenants were given a second opportunity to participate in the condition inspection with the Landlord shortly thereafter.

Section 36 of the Act states the following regarding the consequences of a landlord not complying with subsection 35 (2) of the Act:

> 36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

In addition, a landlord must complete a condition inspection report in accordance with the regulations. A landlord may conduct the inspection and complete and sign the CIR without the tenant, if the landlord has complied with section 35 (2), and the tenant does not participate on either occasion, or the tenant abandons the rental unit.

1. LAUNDRY → $50.00

Based on the evidence before me, I find that the circumstances with the washing

machine required the Tenants to do their laundry outside of the rental unit. I appreciate the Landlord's offer of his washer for the Tenants to use; however, I find that given the animosity between the Parties that this would not have been a reasonable solution in the circumstances. Further, the Tenants were able to do as much laundry as the four of them had at a laundromat in much less time than it would have taken to do it all at the Landlord's residence.

While the Tenants may have needed to have laundry done during the time that the rental unit washing machine was inoperable, I find that they did not provide sufficient evidence to establish the real cost they incurred in doing the wash elsewhere. They did not say how many loads were done in washing machines and dryers at the laundromat, nor how much each load cost. I find that the amount quoted was an estimate that would mean laundry cost each person $12.50 to do. I find the Tenants were in a position to provide the actual amount they spent on laundry, but they failed to do this. As such, I find that they failed the third step in the Test of proving the value of their loss. However, pursuant to RTB Policy Guideline #16, I award them a nominal amount of **$20.00** for this claim.

2. LEAKING REFRIGERATOR → $200.00

In "Definitions" under section 1 of the Act, it states that "'service or facility' includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit: (a) appliances and furnishings". I find that the Parties agreed that a refrigerator is a service or facility agreed to be provided by the Landlord to the Tenants in the rental unit. The Landlord recognized the problem and provided a replacement refrigerator on October 9, 2020.

I find that the Tenants were inconvenienced by having a refrigerator for over a month that leaked inside. I find that having a refrigerator that had a drip inside for this long establishes the first step of the Test. I find that the Tenants suffered a loss of some kind, as a result of the Landlord's violation in not providing a suitable refrigerator from the start of the tenancy.

However, I find that again, the Tenants have not provided sufficient evidence of the value of the loss they incurred as a result of the dripping refrigerator. First, as the Landlord said, they could and probably should have put a bowl of some kind in place to catch the drip, so that it did not affect the food. However, there were four people living in the rental unit and they were sharing a small refrigerator; therefore, it might have been too crowded to have a bowl in place to catch the drips.

Then again, the Tenants' evidence is that one piece of food was damaged by the drip, not $200.00 worth of food. I find that it is more likely than not that the Tenants' actions involving the drip contributed to any loss of food they suffered due to the leak. I also find that the Tenants have not provided sufficient evidence to establish the value of the loss they incurred. Again, and without any receipts or even a list of the food that was affected by the Tenants, I find the amount quoted was more likely than not an estimate without a proper basis in the reality of their grocery bills. I, therefore, dismiss this claim without leave to reapply.

3. TWO HEATERS → $100.00

The "service or facility" definition in section 1 also includes "heating facilities or services". I find the Parties agreed that heat for the rental unit was included in the rent and was to be provided by the Landlord. I find it was in the Landlord's best interest to control the heat in the house, as they were paying for it. I find that the Landlord and the Tenants had differing opinions on how much heat is appropriate at different times of day and year.

I find the Tenants found it necessary to buy heaters to supplement that provided by the Landlord. However, there is no evidence before me that the Tenants left the heaters behind in the rental unit; therefore, I find that they benefited from having these appliances going forward.

I appreciate that the Tenants' point is that they should not have had to buy heaters, since the heat was included in the rent. I find that there was some heat provided by the Landlord, although, it did not meet the Tenants' expectation of what they had bargained for in the tenancy. As a result, they felt it necessary to supplement the heat. I find that the Tenants' have a point in this regard, and I award them only a nominal amount, because they took the heaters with them when they left.

In this set of circumstances, and pursuant to Policy Guideline #16, I award the Tenants a nominal amount of $25.00 for having to purchase heaters, even though there was some heat provided by the Landlord.

4. MOVING COSTS → $250.00

The Act does not specifically permit additional moving costs or compensation to be awarded for moving costs. The Tenants said they wanted to leave earlier than originally planned, but the Landlord would only do the move-out condition inspection on December 31. However, the Tenants said they moved earlier on the 27th, anyway. I find

the Tenants did not provide sufficient proof that they suffered a loss in this set of circumstances. As a result, I dismiss this claim without leave to reapply.

5. FILING FEE AND RELATED HEARING PREPARATION COSTS → $200.00

I will address the filing fee at the end of the Decision. As noted in the Landlord's section above, there are no provisions of the Act that allow for recovery of costs that a party incurs in preparing for a hearing. Further, the Tenants did not provide sufficient evidence to support the amount that they are claiming in this regard. Accordingly, I dismiss this claim without leave to reapply.

6. SECURITY DEPOSIT DEDUCTION → $360.00

Section 38(1) of the Act states the following:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> **the landlord must do one of the following:**
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> (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.
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> [emphasis added]

According to section 38, the Landlord was required to return the $700.00 security deposit to the Tenants within fifteen days after December 31, 2019, namely by January 15, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Parties agreed that the Landlord returned $340.00 of the security deposit to the Tenants. The Landlord applied to claim against the deposit prior to the end of the tenancy, on October 9, 2019; however, a landlord cannot deduct from the security deposit in anticipation of a hearing. The landlord must await a decision of the director, before taking possession of a tenant's security deposit funds. Therefore, I

find the Landlord failed to comply with his obligations under section 38(1).

Since the Landlord failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenants double the amount of the security deposit, less the amount previously returned to them. There is no interest payable on the security deposit.

The Landlord was unsuccessful in his claims. The Tenants' claims were successful as follows:

	For	Amount Awarded
1	Laundry	$20.00
2	Leaking refrigerator	$0.00
3	Two heaters	$25.00
4	Moving costs	$0.00
5	Filing fee & related prep costs	$0.00
6	Security deposit deduction	$1,400.00 -$ 340.00 $1,060.00
	Total monetary order claim	**$1,105.00**

I grant the Tenants a monetary award of $1,105.00 from the Landlord. Given that the Tenants were partially successful in their application, I award them recovery of the $100.00 application filing fee for a total monetary order of **$1,205.00** from the Landlord.

Conclusion

The Landlord is unsuccessful in his application, as he failed to provide sufficient evidence to support his claims. The Tenants were partially successful in their application. The Tenant's claim for compensation for damage or loss against the Landlord is partially successful in the amount of $1,105.00. The Tenants are also awarded recovery of the $100.00 filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$1,205.00.**

This Order must be served on the Landlord by the Tenant and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

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 1, 2020

Residential Tenancy Branch