# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

## A. Dispute Codes

For the landlord: MNDL, MNDCL, FFL
For the tenant: MNRT, MNSD, MNDCT, FFT

## B. Introduction

The landlord filed an Application for Dispute Resolution (the "landlord's Application") on February 26, 2020 seeking a monetary order for compensation for damage caused by the tenant, and other monetary loss. Additionally, they requested a return of the cost of the filing fee for their application.

The landlord provided the tenant notice of this hearing via registered mail sent on February 26, 2020. The tenant confirmed receipt of this information as well as the landlord's prepared evidence between February 27 and February 29, 2020.

The tenant filed an Application for Dispute Resolution (the "tenant's Application") on March 6, 2020 seeking an order to return the security deposit or pet damage deposit, compensation for the cost of emergency repairs they made; compensation for monetary loss or other money owed. Additionally, they requested a return of the cost of the filing fee for their application.

They stated they provided the notice of their application and this cross-application for hearing via registered mail on March 6, 2020. There were two attempts and the second package contained the evidence they are relying on for this hearing. The landlord confirmed receipt of the second mailing on April 17, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 11, 2020. Both parties attended the conference call

hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing.

## C. Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for Damage, or compensation for monetary loss pursuant to section 67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

- Is the tenant entitled to a monetary order for the cost of emergency repairs, for damage/compensation, and/or the return of the security deposits?

- Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the Act?

## D. Background and Evidence

The tenant and landlord both verified the details of the tenancy agreement between them signed on August 1, 2018. The agreement for rent was $1,600.00 per month payable on the first day of each month. The tenancy began on August 1, 2018, continuing on a month-to-month basis. The tenant paid a security deposit of $800.00 on July 6, 2018. The agreement also provides that the "landlord and tenant are pay 50% Of utility."

Clause 12 in the agreement sets out specific items that the landlord "may charge the tenant or make deductions from the Security Deposit" – this is during the term of this Lease or after its termination. These include repairs of a general nature, water damage, and extermination.

Clause 30 in the agreement provides that the tenant shall promptly notify the landlord of any damage or "any situation that may significantly interfere with the normal use of the Property."

According to the landlord, they visited the unit with the tenant prior to signing the agreement and inspected the condition of the unit. There was just a verbal agreement on the condition of the unit, and then both parties signed the agreement.

The tenant stated that the tenancy ended on January 31, 2020, on their request. The landlord confirmed this was the case.

The tenant provided a document addressed to the landlord titled 'One Month Notice to End Tenancy', dated December 26, 2019. This notice had the tenant's forwarding address. They also asked that the landlord give them an amount for utilities, and they "will send a payable Cheque". The tenant gave the date of January 31, 2020. In the hearing the landlord confirmed this was the date of the end of tenancy.

On January 31, 2020 the two parties met to review the condition of the unit. The landlord was "surprised" to see changes, as they presented in the hearing. This includes the items listed below. The landlord stated in the hearing that both parties agreed to no return of the security deposit because of $400.00 for utilities owing. This amount is $400.00, to be offset from the security deposit.

Additionally, the landlord retained the security deposit for an additional $394.00. This was recompense for work they finished on repair of a water leak on their own unit, which is directly underneath that of the tenant. At the end of the tenancy, the landlord retained the full amount -- $800.00 -- of the security deposit.

The landlord applies for a monetary order for compensation for damage caused by the tenant, for $2,478.42. This is for "unapproved alterations to the unit by the tenant": changes to the main water supply; 3 big holes drilled in the kitchen cabinet; a wooden board installed behind the washing machine; 9 wall anchors installed in the living room walls; and a ripped portion of the drywall in the living room.

The evidence of the landlord for this portion of the claim is a quotation from a restoration contractor for the amount of $2,478.42. This is a printed quotation dated February 5, 2020. Specifics are:

| | |
|---|---|
| Site Protection | $90.00 |
| Drywall | $496.00 |
| Paint | $674.40 |
| Cabinetry | $439.20 |
| Plumbing | $570.00 |

| | |
|---|---|
| Final Clean | $90.00 |

The landlord presented photos of the details of alterations made by the tenant, primarily in the kitchen. This involved plumbing, work to the cabinets, and installing wood panelling behind the dishwasher. Additionally, there were nine wall anchors.

The landlord also applies for the reimbursement of one-month lost rental revenue for $1,600.00. This was due to the amount of restoration and repair work in the unit after the tenancy ended on January 31, 2020. This amount claimed is for February 2020.

There is evidence of ceiling damage that occurred in the landlord's unit. The landlord presented that this occurred because of the tenant's bathroom immediately above the spot on the ceiling where water leakage occurred. The landlord made repairs to this area two times within the last year: one on July 24, 2019 for which the tenant paid $1,150.00; the second in October 2019, for which the landlord retained $394.00 from the security deposit at the end of the tenancy.

The tenant applies for reimbursement of these amounts, for a total claim of $1,544.00. This is for the landlord repairing the ceiling "without [the tenant's] agreement."

The tenant also applies for a doubling of their paid security deposit amount, for $1,600.00. This is because the landlord did not return the security deposit within the timelines set out in the *Act*.

The tenant also applies for reimbursement of money they paid for utilities. In July 2019 the landlord began to charge an additional percentage for utilities, and the tenant thus overpaid, in contrast to what is set forth in the original tenancy agreement.

## E. Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* creates obligations for both the landlord and the tenant to repair and maintain the unit. Section 33 defines "emergency repairs" and sets out the duties for either party in extreme situations.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide enough evidence over and above their testimony to establish their claim.

I have subdivided each issue into the evidence presented by each party, and an analysis with consideration to the *Act* or the tenancy agreement.

## 1. SECURITY DEPOSIT

### i. Background and Evidence

The relevant dates on this issue are as follows:

| | |
|---|---|
| July 6, 2018 | tenant pays $800.00 at the start of the tenancy |
| December 26, 2019 | tenant provides forwarding address in their notice to end tenancy |
| January 31, 2020 | both parties conduct walkthrough of unit – this is not documented in a report |
| February 26, 2020 | the landlord makes a claim for monetary compensation – they |

| | |
|---|---|
| | did not apply against the security deposit |

Clause 12 in the agreement sets out specific items that the landlord "may charge the tenant or make deductions from the Security Deposit" – this is during the term of this Lease or after its termination. These include repairs of a general nature, water damage, and extermination.

Both parties agreed there was no return of the $800.00 security deposit.

The landlord stated that the tenant agreed to $394.00 taken from the deposit to offset ceiling damage. This is the result of water from the rental unit damaging the ceiling of the unit below that is the landlord's residence. In the landlord's submission this is the second incident of water causing this damage to their ceiling. The landlord made the repairs on their own through a repair company of which they have ownership.

On this specific issue of $394.00 the tenant confirmed this was paid by being offset against the security deposit. This was for the second time the ceiling was damaged due to water. The tenant agreed to this amount because they "didn't want to make trouble."

The landlord also applied $400.00 from the security deposit amount – at the end of the tenancy – for outstanding utilities amounts. In addition to this, the tenant paid an additional $91.00 for utilities. This issue of money for utilities is outlined separately below.

ii. Analysis

Section 5 of the Act states that "landlords and tenants may not avoid or contract out of this Act or the regulations." Section 6 adds that "A term of a tenancy agreement is not enforceable if . . . the term is inconsistent with this Act . . ."

Section 20(e) also states that a landlord must not "require, or include as a term of the tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement."

The relevant portion of the Act regarding the return of the security deposit is section 38:

(1) . . .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. . .any security deposit. . .to the tenant. . .;
>
> (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection (4) sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office. However, section 38(5) stipulates that this right is not allowed if the liability is in relation to damage of the unit and their right to claim against the deposit has been extinguished pursuant to section 24.

Subsection (6) provides that where a landlord does not comply with subsection (1), they "must pay the tenant double the amount of the security deposit. . .".

I find clause 12 of the tenancy agreement is in violation of the *Act*.

The *Act* section 38 is that governing piece by which landlords must return or make a claim against the security deposit. I find the tenancy agreement in the evidence gives license to the landlord to make "deductions from the security deposit". This clause runs counter to the overarching authority of the *Act*: the landlord, under clause 12, would not have to return the deposit or apply to make a claim against the deposit. This is not compliant with sections 6, 20, and 38 of the *Act*.

Furthermore, section 23 of the *Act* requires the landlord to complete an inspection and a documented Condition Inspection Report at the start of the tenancy. Section 24 stipulates that if a landlord fails to comply with this requirement, they have extinguished their right to make a claim against the deposit for damage to a rental unit.

As such, and based on the testimony of both parties, I find the landlord had extinguished their right to claim against the deposit for damage to the rental unit, pursuant to sections 23 and 24.

With regard to the timeline of the tenant giving notice of their forwarding address and the end-of-tenancy date, the later of these two events is that of the tenant vacating the unit on January 31, 2020. The landlord did not make a claim against the security deposit subsequent to this within 15 days. I find the landlord had no authority to retain any amounts from the security deposit, pursuant to non-compliance with sections 6, 20 and 38. The landlord applied for dispute resolution on February 26, 2020 and did not make the application for compensation against the security deposit.

Even with the landlord's submissions on ceiling damages, the sole issue before me is that of the merit of the tenant's application. There is no issue of credibility on either account on the matter of actual damage; rather, the issue is that of reclaiming the deposit in line with the *Act*.

I find the landlord followed the process as set out in the tenancy agreement and made their clause 12 deductions. This is outside of the *Act*. As a result of the landlord following this process, they did not make a claim for compensation against the deposit within 15 days of the end of tenancy as the *Act* dictates.

In line with the provisions of the *Act*, I order the landlord to repay the tenant double the amount of the security deposit. On this issue, the tenant's claim succeeds for the compensation amount of $1,600.00.

2. UTILITIES

i. Background and Evidence

The tenancy agreement contains the clause that parties each pay 50% of the utilities. This was signed and agreed to by both parties on August 1, 2018. The tenant stated in the hearing that the landlord advised on May 31, 2019 that the utility cost would increase to 65%, starting July 1, 2019. The tenant submits this raise was within one year, by 15 % more. A maximum rent increase, by law, is only 2.5% annually.

The tenant submits that they complained, but the landlord stated that their family was now 3 people, with the landlord's family being 2. The words of the landlord given by the tenant in their evidence is "our place is small your place is big."

The tenant submitted the document dated May 31, 2019. This states: "The front part of the house utility bill will be adjusted to 65% start July 1, 2019."

The tenant claims $374.31 as the calculated amount they paid from July 1, 2019 through to January 2020. They provided bills and statements with equations showing the difference between what they paid at 65% versus the agreed-upon amount of 50%.

The landlord submitted that they gave the tenant notice of this utility cost increase. To them, the tenant admitted they installed a portable heater, and this increased the BC Hydro bill for the electricity. The landlord mentioned this to the tenant because the

tenancy is month-to-month. The landlord submits they gave the tenant two months' notice of this utility amount increase.

ii. Analysis

The *Act* section 14(2) provides that a term in the tenancy agreement may be amended only if the landlord and tenant agree to the amendment. This does not apply to a rent increase.

The tenancy agreement signed by the parties here bears a clause about changes, at paragraph 24:

> . . .any amendment or modification of this lease or additional obligations assumed by either party in connection with the Lease will only be binding if evidenced in writing signed by each party

By the terms of the tenancy agreement and the *Act*, neither of the parties can unilaterally amend the terms of the agreement without the other's consent, and in writing.

I find the landlord imposed an increase in the utilities disregarding this stipulation in the agreement, and contrary to the *Act*.

I have reviewed the tenant's calculations and find them accurate in their description and amounts. The tenant's evidence is clear on this point. As such, I find the tenant can recover the amount they overpaid, $374.31.

The tenant submits the offset from the security deposit for overdue utilities was $400.00. There are no receipts or amounts for this; however, I find the tenant has given a precise outline of the costs on this part of the claim. Additionally, the tenant submitted they paid an extra $91.05 by cheque on February 1, 2020.

I add the tenant's calculated cost here -- $374.31 – to the extra amount paid on February 1st, 2020 by cheque -- $91.05. This is a total of $465.36 that I award the tenant for compensation of the amounts they overpaid in

By my finding above, the tenant has recovered the $400.00 they paid by the landlord's use of the security deposit. By their evidence the bill had not yet come by the end of the tenancy when they discussed the security deposit amounts. Calculating from the bills

then arrived, in accounting for this hearing, that amount is $374.31. I so deduct this calculated amount from the $400 initially paid from the security agreement. the balance remaining is $25.69.

Factoring in the $91.05 the tenant also paid on January 31, I subtract the $25.69 remainder from this to award the amount of $65.36. as compensation for the extra utility amount the tenant paid from July 1, 2019 to the end of January 2020.

## 3. UNAPPROVED/UNAUTHORIZED WORK

### i. Background and Evidence

The landlord submits that the tenant performed unapproved or unauthorized repairs or changes to the rental unit during the tenancy. This includes: changes to the main water supply; 3 holes drilled in the kitchen cabinet; a wood panel installed behind the dishwasher; and 9 anchors in the walls. There was also a ripped portion of drywall in the living room. They stated the tenant acknowledged this, and then agreed to fix these items.

The landlord presented evidence of a written quotation from a restoration company. This lists specific items and methods for each room in the unit. The amount in the quotation, with specific breakdowns, is $2,478.42. The landlord gives this specific amount in their claim for compensation for damages.

The tenant prepared a specific statement for this issue. This provides a timeline of events for when they tried to rectify the matter after accepting responsibility for these alterations. They provided that on their move in the house was very dirty, with insects, previous nail holes in walls and other deficiencies. They mentioned these to the landlord upon move in – in their opinion, this means the “house already had problems.”

The timeline relevant to this issue, as presented by the tenant, is as follows:

- January 31, 2020, move out – landlord husband said all clear
- on bearing responsibility for alterations, the tenant volunteered to bring a carpenter to the unit to make repairs – the tenant provided an estimate for work from the carpenter
- they did so and the carpenter finished work needed on February 1
- February 5: the landlord made more inquiries about repairs

- February 7: the tenant arrived back to the unit accompanied by their own carpenter/plumber – the landlord was not present at the unit to let them in
- February 20: the restoration company the landlord consulted for the quotation sent the invoice directly to the tenant via email
- The tenant informed the company that the landlord "stole their name" and they proceeded to fix the unit without their own authority
- February 24: the restoration company emailed to the tenant directly
- The landlord visited the tenant's place of work to inform them that the restoration company would send the bill directly to them.

ii. Analysis

The tenancy agreement itself addresses matters of "Tenant Improvement" in clause 16. This is where the tenant "will obtain written permission" before undertaking work such as walls, painting, structural changes; and wiring or heating alterations.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the tenant's evidence and testimony shows that they undertook to make repairs at the end of the tenancy for modifications they made during the tenancy. This involved their consultation with a contractor, for an estimate of $525.00. This estimate is in the

tenant's evidence. The tenant hired the handyman to make repairs and informed the landlord of this. The tenant then arranged for more repairs and made arrangements for the handyman to attend to more repairs. To this, the landlord was not responsive and did not attend to oversee these repairs.

In considering the four-part test, I find the tenant did not violate the *Act* or any specific term in the tenancy agreement. While clause 16 of the agreement addresses "tenant improvements", I find these are primarily aesthetic, and the specific point about changes to heat or wiring do not apply and was not the nature of specific work undertaken by the tenant.

I find the landlord did not make reasonable efforts to mitigate the damage or loss. The evidence shows the landlord gave the tenant's contact information to a third-party contractor who pursued the issue with the tenant directly. This involved a visit by the landlord to the tenant's workplace. Further, the landlord did not explain why the contractor brought to the unit by the tenant was not allowed to further undertake repairs to further rectify the alterations and move the landlord closer to the state they were in at the beginning of the tenancy.

In summary on this portion of the claim, the tenant provided evidence of specific measures they undertook – involving their own time and substantial cost – to make the situation right. I find the landlord, by contrast, engaged in actions that are not reasonable efforts to mitigate. I find the actions of the landlord – primarily through their consultation with a restoration company that then pursued reimbursement from the tenant directly – exacerbated the issue and the costs involved.

For these reasons, I dismiss the landlord's claim for compensation of what they deem to be the tenant's unapproved or unauthorized work.

## 4. CEILING REPAIRS

### i. Background and Evidence

The landlord submitted evidence on a ceiling leak that occurred in their unit, which lies underneath that of the tenant, on July 24, 2019. In the landlord's opinion this occurred from the bathroom of the unit upstairs immediately above the affected area. When this occurred, the tenant accepted responsibility for this because the tenant's daughter

splashes in the tub. The tenant paid $1,150.00 directly to the restoration company for this work.

The tenant presents that the landlord ignored their attempts to rectify this situation through insurance. The landlord then repaired the ceiling on their own via their own business. On August 9, via text message, the tenant advised the landlord that their insurer would visit on August 13. The landlord replied by stating: “Already Fixed. The company will billing [*sic*] you soon”

The tenant presented a document dated August 8, 2019 wherein the insurer advised the tenant to hire a qualified restoration contractor. If coverage is deemed recoverable, then the tenant’s insurance policy would pay for the loss. Right at this time, the landlord gave the tenant a bill for $1,150.00. The insurance company made a move toward visiting, but prior to this the landlord had already made repairs to the affected ceiling area.

The tenant conceded on this amount to the landlord. They felt there was “no choice, because it is hard to live if someone do [*sic*] not get along with the landlord in one house.” The tenant also added that upon reflection they felt “the bathtub/sink were not waterproofing well”, meaning the “sink and bathtub were not good.” On July 24, they replied to the initial query of the landlord by stating “we did not used second bathroom yesterday, we just put few water in a bathtub becoz [*sic*] some bug were there”. In one message the landlord dismissed the tenant’s concern by saying “this is not an insurance issue therefore flooding is due to ignorance.”

The tenant also stated that they stopped using this bathroom after the issue with water running into the ceiling below. Onwards from August 2019, they used another bathroom for cleaning purposes like baths or showers.

The tenants claim $1,544.00 as compensation for the amounts they paid. This is $1,150.00 for the initial ceiling water issue paid on August 21,2019. and $394.00 for the second incident. On both these amounts, the tenant maintains that the landlord went ahead and repaired the ceiling without their agreement.

For the second amount of $394.00, this incident happened on October 15, 2019, in the same spot. The tenant states “We did not use bathtub, but water damage was issued again.” The landlord gave a bill for fixing this issue, then by January 31, 2020, the end of the tenancy, the parties rectified this issue by offsetting the security deposit.

ii. Analysis

Though the tenant referred to these ceiling water issues as “emergency repairs” they had to pay for, I find that does not match to how emergency repairs are defined in the *Act*. Those are repairs of such a sudden and extreme nature that the tenant is left to their own devices on repairing the issue as soon as possible in order to avoid extreme damage or hardship. With the landlord being present in the unit below and identifying the issue, I find these are not emergency repairs.

Section 32 provides for who is responsible for aspects of maintenance of a rental unit. Specifically, it states that a landlord or a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In considering the four factors to assess in a claim for compensation, I find the tenant has proven the amount of damage or loss. Moreover, they have provided a clear account of their efforts to take responsibility for the matter, only to be forced into payment by the landlord, without a clear assignment of responsibility.

I find it untenable that the water damage to the ceiling of the unit below was caused by the tenant’s infant daughter splashing in the tub. The tenant accepted responsibility for this damage, though not without some questions that were dismissed by the landlord as “ignorance”.

In addition, I find it inconsistent that the ceiling under the tenant’s bathroom required additional repairs in October 2019 as a result of the tenant’s activities in their rental unit after the tenant stopped using the bathroom in August 2019.

The landlord did not provide clear evidence of the water damage arising from the bathroom upstairs, and I give more weight to the tenant’s evidence that they were aware of the issue and did not use the bathroom in question. This is not a situation arising from a tenant breach of the tenancy agreement or the *Act*.

I also find the tenant acted reasonably to minimize damage or loss by consulting with their insurer. The visit of the insurer did not occur because the landlord went ahead and fixed the issue, thereby incurring cost. This cost was passed on to the tenant haphazardly. I find the landlord repaired the damage and forced the cost on the tenant without a proper accounting, or evidence of the amount.

This happened in a similar fashion later in the tenancy, on October 15, 2019. The tenant maintains that they did not use this bathtub as it was the possible cause of the previous issue. By January 2020, another invoice appeared in the amount of $394.00. The tenant then agreed to have this deducted from the security deposit.

Given the four factors I examine in a claim for damages, I find the tenant is not responsible for the total cost of the repair. Primarily this is because they tried to take a pro-active approach in taking the matter forward to their insurer. This is an effort at minimizing the cost of the damage. Moreover, they were not consulted or given the opportunity to agree to the landlord's repair of the ceiling. The amount of work involved, and a receipt showing details, was not provided into evidence.

Therefore, I find the tenant shall recover the costs for repair to the ceiling: $1,150.00 and $394.00.

## 5. LOSS OF RENT

### i. Background and Evidence

The landlord claims a loss of rent for the month of February 2020. This is because the landlord cannot rent out the unit because of the restorations. The landlord did not speak to this point specifically in the hearing.

By the end of the tenancy, on January 31, the tenant and landlord had discussions about the state of the unit. This was a meeting on January 31. According to the tenant, the landlord gave the indication that all was well; however, after this the need for repairs was made known to the tenant. This is the extra work that the tenant added on, and this formed the bulk of the landlord's claim for compensation on the tenant's alterations.

By February 1st, the tenant hired a carpenter who came to the unit and completed work to restore the tenant's alterations. As set out above, the tenant and carpenter did not return after this.

The tenant's statement on this issue of rental compensation is that no one came to the see the house. That is, no potential tenants visited the unit with the landlord. They reiterated the dates of their end of tenancy: giving notice to the landlord on December 26, 2019, with the final move-out date being January 31, 2020. For this entire one-month period, they did not see the landlord show the unit to other potential tenants.

ii. Analysis

The *Act* section 7(2) provides that a party claiming damages from a breach of a tenancy agreement has a duty to minimize loss arising as a result of the breach. In terms of a loss of rental income, the Residential Tenancy Policy Guideline 5 provides detail on the landlord's duties in this situation. That is making a reasonable effort to re-rent the unit.

There is no evidence here of the landlord attempting to re-rent the unit. There is no evidence of advertising for new tenants. Furthermore, the landlord provided no evidence that he had new tenants set to move in to the rental unit as of February 1, 2020 after the tenant gave notice to end the tenancy on December 26, 2019. I give weight to the tenant's statement that there were no visitors with the landlord to view the unit.

There is no evidence to the contrary presented by the landlord for the purposes of this hearing.

On this basis, I find the landlord cannot attribute the loss of rent to the repairs required to be made by the tenant. I dismiss the landlord's claim for compensation because of a loss of rent for the month of February 2020.

6. APPLICATION FILING FEE

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claims, I find they are entitled to recover the filing fee from the landlord.

As the landlord was not successful in their application for monetary compensation, I find they are not entitled to recover the filing fee paid for this application.

## F. Conclusion

I order the landlord to pay the tenant the amount of $3,309.36. This includes: $1,600.00 for double the amount of the security deposit; $65.36 for overpaid utilities; $1,544.00 for ceiling repair costs; and the $100.00 filing fee.

I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 10, 2020

Residential Tenancy Branch