Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT, MNDL-S, MNRL-S, FFL

Introduction

This hearing involved cross-applications made by the parties. On March 21, 2020, the Tenants made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 4, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were set down for a hearing on May 15, 2020 and were subsequently adjourned to be heard on June 16, 2020 as there was not enough time to hear all of the claims at the original hearing.

Tenant M.T. and the Landlord attended the adjourned hearing. All in attendance provided a solemn affirmation.

As per the Interim Decision, the Tenants requested in their Application that they were seeking an Order to comply; however, as they have vacated the rental unit, this will not be addressed as it is a moot point. Furthermore, they requested monetary compensation in the details of their dispute, but they did not indicate this appropriately in their Application, nor did they amend their Application to reflect this. However, as the Landlord stated that she understood the nature of the Tenants' dispute, there was no opposition with addressing the Tenants' monetary claims for compensation pursuant to Section 67 of the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2019 and ended when the Tenants gave up vacant possession of the rental unit on March 31, 2020. Rent was established at $2,800.00 per month and was due on the first day of each month. A security deposit of $1,400.00 and a pet damage deposit of $1,400.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on October 15, 2019, that a move-out inspection report was conducted on March 31, 2020, and that the Tenants provided their forwarding address in writing on the move-out inspection report on March 31, 2020.

As the Tenants made the first Application, their claims will be addressed first. However, as their Monetary Order Worksheet outlining their heads of claim were ordered in a disjointed manner, their evidence and testimony will be reorganized and documented in this Decision in an order that would allow for their claims to be practically and logically addressed.

The Tenant advised that they are seeking compensation in the amount of **$868.97** for a pro-rated portion of February 2020 rent due to an ant infestation. He stated that they first discovered “tons of ants” in the second bedroom of the rental unit on February 20, 2020 and they informed the Landlord of this by text that day. The Landlord’s father attended the rental unit later that day and put down some chemical insecticide to address the issue. On February 25, 2020, Landlord’s father attended the property to inspect the lower suite and mentioned that there was an “ant infestation.”

On February 28, 2020, they discovered ants in their bed, and they “believe” they were “bit by ants.” As they were unable to use this second bedroom due to the anxiety of the ant infestation, based on their belief that the rental unit was “unsafe and inhabitable[sic]”, and especially because Tenant S.P. was pregnant, they found alternate accommodations on February 28, 2020. He advised that they did not take pictures or have proof of the extent of the ant infestation in the second bedroom.

In addition, as these were carpenter ants, they had concerns with the structural integrity of the rental unit. Furthermore, he advised that on February 21, 2020, a drain cleaning company arrived to clean the drains and moisture was discovered. He expressed concerns of the potential for the presence of mould. He stated that the Landlord never advised them of this moisture, that the presence of this moisture was “not a good sign”, and that the “place is a disaster.”

The Landlord referenced a statement from her father, that was submitted as documentary evidence, that confirms that she took action immediately after being informed of this problem by the Tenants. On February 20, 2020, her father went to the rental unit and talked to the Tenants. He did not see any ants, but he applied insecticide where the Tenants had indicated they saw them, and the Tenants had no issue with the type of insecticide that was used or the application of it. On February 25, 2020, he returned to the rental unit and asked S.P. about the ant problem and she stated that “they seem to be dead or dying.” On February 27, 2020, S.P. texted the Landlord advising that there were “a few” ants seen and requesting an update on what would happen next as there was a concern for their health and safety. The Landlord replied that there were no health warnings associated with the insecticide that was used and that if an insect removal professional was necessary, the chemicals were toxic and would require the Tenants to move out for a short period of time. S.P. then stated that they will simply continue to monitor the situation.

On March 1, 2020, the Tenants withheld their rent and sent the Landlord an email stating that ants were found in their bed on February 28, 2020, and were biting them, so

they vacated the rental immediately. They requested that an exterminator investigate the problem, so the Landlord hired one to attend the rental unit on March 3, 2020. On March 2, 2020, the Landlord's parents had gone to the rental unit to assess the situation, but the Tenants refused to permit them to investigate the condition of the ant issue further.

The Tenant questioned why they should have been responsible for paying the rent if there had been no resolution to the ant issue. He stated that they were no longer living there, but he then made contradictory statements about whether he happened to be at the rental unit when the parents showed up or if he had previously arranged to meet them there. He stated that he refused entry because there was no point for them to look again and he told them to "go get an exterminator."

He expressed that they did not have any peace living in the rental unit as they would suffer from anxiety and paranoia of the ant issue. They would wake up and find ants in their bed or ants with wings flying around. He suggested that no one would rent the unit under these conditions. With respect to the insecticides that were applied, he stated that they were applied by the storage room, which was not safe. As well, he referenced a safety sheet regarding one of the insecticides used and stated that it was not safe in confined spaces, especially given that S.P. was pregnant. He stated that they could smell the chemical insecticides.

Regarding the use of the insecticides, the Landlord advised that these were general household products. She stated that the products are benign and that her father advised the Tenants that they could vacuum up the powder after a few days if they wanted to, but the Tenants did not. Furthermore, she emailed the insecticide company and submitted a response from them confirming that the product is not hazardous when applied in that manner. She stated that the insecticide was also applied in the storage room, but there is no furnace so it is not possible for this product to have become airborne.

The Tenant advised that they are seeking compensation in the amount of **$2,800.00** for March 2020 rent due to this ant infestation. When the Tenants spoke to the exterminator on March 3, 2020, they were advised to consult with their doctor if they were concerned if chemicals used to treat the ant infestation were safe. They both attended doctors and were told to stay away from the rental unit as it was not safe to be there. They submitted copies of the doctors' notes as documentary evidence to support their position.

He referenced the report of the pest control company, dated March 5, 2020, which confirmed that carpenter ants have likely been present in the rental unit for three years.

The Landlord confirmed that she is not denying that there was an ant issue; however, there is no ant infestation. The ants were primarily outside and the ant issue inside is seasonal and was dealt with immediately. She stated that the extent of the ant issue noted in the report from the pest control company's inspection on March 3, 2020 was based on the Tenants' observations and comments, not what the exterminator actually saw. In a follow-up email from this company, dated March 12, 2020, it was noted by the attending exterminator that "only a few dead ants" were found.

She reiterated that this report indicated a moderate ant problem that was treatable; however, the ideal treatment time would be in warmer weather. She then referenced an inspection report from another exterminator, dated March 13, 2020, that noted that there was no ant activity observed during the inspection, that any presence of ants is "very mild", and that full treatment is not needed. Furthermore, the application of chemical products to treat the ant issue are safe for people and pets but would require that the rental unit be vacant for five hours. Finally, the Landlord referenced an email where she contacted her own midwife to inquire as to the dangers of the chemical products being applied, and her midwife confirmed that the chemicals are not harmful. She advised the Tenants that if they believed the chemicals used by a professional were toxic, she could wait to treat the rental unit; however, the Tenants declined this offer.

The Tenant advised that they are seeking compensation in the amount of **$50.00** for the cost of the loss of use of the laundry facility that was provided to them as part of their tenancy. He stated that they had unfettered use of the laundry machines from the start of the tenancy; however, they received a text from the Landlord on February 4, 2020 stating that they are doing too much laundry and that this would cause the machines to break. He submitted that the Landlord reduced their use of the laundry facility to three days a week. As this was a minor issue, they "just left it" and did not address this any further. He referenced text messages submitted as documentary evidence to support his position that the Landlord unilaterally and illegally restricted their use of the laundry machines, contrary to the *Act*.

The Landlord advised that the downstairs tenants had complained because the Tenants had been doing so much laundry that the downstairs tenants could not do their own laundry. Furthermore, as the Tenants had been doing so much laundry, there was limited hot water left in the house. As such, the Landlord brought this issue up with the Tenants and it was S.P. that proposed a laundry schedule where they accepted that

they would only do laundry three days a week. The Landlord referenced the Tenants' own evidence that was submitted, and she advised that this supports her position that she did not restrict this facility, but it was S.P.'s own choice to propose a schedule and agree to abide by it.

The Tenant acknowledged that they agreed to this schedule as they "did not want drama" and wanted to take the "path of least resistance."

The Tenant advised that they are seeking compensation in the amount of **$128.97** for the cost of Canada post expenses and for the cost of doing laundry. This claim was broken down as $15.49 for Canada Post expenses and $113.48 for laundry expenses. As the Tenant was advised during the hearing, there are no provisions in the *Act* that allow for compensation for Canada Post expenses incurred. As a result, this portion of the Tenants' claim is dismissed without leave to re-apply.

With respect to their claim for laundry, the Tenant advised that due to the ant infestation and the chemicals used, this necessitated that they launder all of their clothing. He stated that the Landlord's father put down chemical insecticide near the furnace and "sprayed something else." He stated that they could smell these chemicals and that the ants that were exposed to these chemicals were found on their clothing and bed. On the advice of a friend that was a nurse, they laundered all of their clothing and linens, regardless of if these items were exposed to the ants or the chemicals. They submitted a receipt dated March 9, 2020 to support the cost of this expense.

The Landlord advised that the insecticide was applied on the floor of the bedroom and of the utility room, where the Tenants advised that they saw the ants. This product was applied away from the Tenants' property, as evidenced by the photos and video submitted, and it was placed in an area where it would not have been possible for this product to become airborne. She speculated that as the Tenant owned a cleaning company, this receipt for laundry could have been a business expense.

The Tenant advised that they are seeking compensation in the amount of **$396.67** for the cost of extra gas and travel time. They were also seeking further compensation in the amount of **$783.60** for the cost of extra commute time. Finally, it also appears as if the Tenants are seeking additional compensation in the amount of **$564.00** for relocation costs and time. As the Tenant was advised during the hearing, there are no provisions in the *Act* that allow for compensation for these costs. Also, I find it important to note that the Tenants elected to move to a different location, and it was their decision

to choose where they wanted to move. Consequently, these portions of the Tenants' claims are dismissed without leave to re-apply.

The Tenants advised that they are seeking compensation in the amount of **$2,000.00** for the cost of five days of lost work. As the Tenant was advised during the hearing, there are no provisions in the *Act* that allow for compensation for these costs. Consequently, this portion of the Tenants' claim is dismissed without leave to re-apply.

The Tenants advised that they are seeking compensation in the amount of **$2,800.00** for the return of their security deposit and pet damage deposit. The Tenant stated that they included this request in their Application because they "just wanted to make sure it was dealt with." As the Tenant was advised during the hearing, the security deposit and pet damage deposit are dealt with at the end of the tenancy only. As a result, this portion of the Tenants' claim is dismissed without leave to re-apply.

They were also requesting that they be granted permission not to be found responsible for having to clean the rental unit prior to giving up vacant possession of the rental unit. As the Tenant was advised during the hearing, the Tenants are responsible for leaving the rental unit in a re-rentable state. As the Landlord has made a claim against the security deposit and pet damage deposit in her own Application, matters related to those claims will be addressed below.

Finally, the Tenant advised that they are seeking compensation in the amount of **$3,000.00** for punitive damages. As the Tenant was advised during the hearing, there are no provisions in the *Act* that allow for compensation for "punitive damages." In reviewing the Tenants' explanation of their Monetary Order Worksheet claims, it appears as if some of the issues mentioned may pertain to the *Act* where remedy may be sought under the legislation. However, the Tenants have not made it clear what Sections of the *Act* these particular claims fell under or how much compensation is being sought for each specific breach of the *Act*. Furthermore, it also appears as if some of this compensation is already tied into the aforementioned claims for remedy, and this would amount to a doubling or tripling of the same claims. As it appears as if this is some vague, general claim for damages where the particulars are not clearly outlined, pursuant to Section 59 of the *Act*, this portion of the Tenants' claim is dismissed with leave to re-apply.

The Landlord advised that she is seeking compensation in the amount of **$294.00** for the cost of cleaning. She stated that the Tenants neglected to clean the rental unit at the end of the tenancy, that the condition of the rental unit was documented in the move-out

inspection report, and that the Tenant acknowledged on that report to leaving the rental unit in this condition. She stated that she paid a cleaning company $35.00 per hour for eight hours of cleaning to have the rental unit returned to a re-rentable state. She submitted a copy of the invoice to support the cost of this cleaning.

The Tenant acknowledged that they did not clean the rental unit prior to giving up vacant possession. He advised that when he went back to the rental unit on March 27, 2020, there were hundreds of ants on the front step, the windows were open, and when he went in the rental unit, the furniture had been moved around. He did not know what happened, so he just left because he did not feel safe being there. He stated that this was the reason they did not clean the rental unit. He also stated that as they had stopped communicating with the Landlord, he did not contact her to inquire about what was happening at the rental unit on March 27, 2020.

The Landlord advised that she is seeking compensation in the amount of **$93.91** for the cost of a cleaning a pet stain on the carpet. The Tenant acknowledged being responsible for this stain and agreed to pay this cost.

The Landlord advised that she is seeking compensation in the amount of **$75.00** for the cost of her time to refinish damage on a side table and **$49.19** for the cost of the materials required to do so. She stated that the damage on this table appeared to be from dog claws and this damage was noted on the move-out inspection report. As she is not experienced with this type of repair, she spent five hours of her time to fix it; however, she is only seeking compensation for three hours of her time at $25.00 per hour. She referenced photos of this damage and a receipt for the cost of the materials to support her claims.

The Tenant advised that he cannot confirm if they are responsible for this damage, or not. He stated that the Landlord accused them of other damage that they did not do, so he does not believe that they did this particular damage. He referenced a 17-minute audio recording of the move-out inspection; however, he did not specifically state where in this recording there was anything relevant to support their position disputing the Landlord's claim of damage to the side table.

The Landlord advised that she is seeking compensation in the amount of **$50.00** for the cost of reorganizing housewares. She stated that the rental unit was provided to the Tenants fully furnished and that the Tenants boxed up the Landlord's kitchenware. As a result, she had to unpack these items and reorganize them. She also had to launder some items that were provided to the Tenants at the start of the tenancy. She

referenced pictures submitted as documentary evidence to support her position. She stated that she charged herself $25.00 per hour for two hours to complete this work.

The Tenant advised that the Landlord is exaggerating; however, he did confirm that they boxed up some of the Landlord's property that they would not use. He stated that they put these items back at the end of the tenancy; however, he then contradictorily stated that it was his belief that the rental unit was not safe, so he did not return there until the move-out inspection was completed.

Finally, the Landlord advised that she is seeking compensation in the amount of **$2,800.00** for April rent because the Tenants signed a fixed term tenancy ending on May 1, 2020, but they gave insufficient notice to end their tenancy early and gave up vacant possession of the rental unit on March 31, 2020. She stated that she texted the Tenants on March 16, 2020, asking them if they had abandoned the rental unit but the Tenants did not respond. When she was advised on March 27, 2020 that the Tenants would be ending their tenancy on March 28, 2020, she immediately placed an ad to attempt to re-rent the property; however, she was unable to find a replacement tenant for April 2020 on such short notice. She referenced items submitted as documentary evidence to support when she was advised that the Tenants would be ending the tenancy, and other communication between the parties. As well, she referenced a photo of the ad she placed on March 28, 2020 attempting to re-rent the unit.

The Tenant again made reference to the ant infestation that started in February and he advised that they paid rent for February and March 2020. He stated that the Landlord is obligated to provide a rental unit that meets health, housing, and safety standards and that the Landlord did not meet this requirement. He submitted that they had to force the Landlord to get a professional pest control company to deal with this issue and there was no discussion from the Landlord about any compensation. He questioned the Landlord's ability to find a new tenant for the month of April 2020 because it was his belief that the Landlord would be renting the unit out in May 2020 for vacation accommodation.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Pursuant to Sections 24 and 36 of the *Act*, as the Landlord conducted move-in and move-out inspection reports with the Tenants, I am satisfied that the Landlord has complied with the *Act* and that she did not extinguish her right to claim against the security deposit or pet damage deposit for any damages incurred.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on March 31, 2020. As the tenancy ended on this date as well, I find that March 31, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on April 4, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

Moreover, the pet damage deposit can only be claimed against if there is damage due to a pet. As the Landlord advised that there was damage that was due to a pet, and as the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the pet damage deposit either.

As the Tenants made the first Application, their claims will be addressed first. When reviewing their Application, while not indicated specifically by the Tenants, I can reasonably infer that the crux of their claims pertain to their belief that the Landlord breached a material term of the tenancy by not providing a rental unit that met housing, health, and safety standards required by law. Section 32 of the *Act* outlines the Landlord's requirement to provide this.

Furthermore, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss

can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, the consistent evidence is that the Tenants advised the Landlord of the ant issue on February 20, 2020 and the Landlord's father immediately attended the rental unit to investigate the issue and attempt to rectify the problem. The insecticide was applied, the products were left there, and no complaints were made to the Landlord regarding the use of these products. Furthermore, when the Landlord advised the Tenants on February 27, 2020 about bringing in a professional exterminator, the Tenants advised that they would "monitor the situation and see how it goes." While the Tenants then claimed on February 28, 2020 that there were ants found in their bed, I accept that this was the case based on the photos that they provided; however, I do not accept that they were bitten by the ants as they submitted insufficient evidence to support this.

As the Tenants had allegedly stopped living at the rental unit as of February 28, 2020, I can reasonably infer that this is when they made the determination that the rental unit was uninhabitable. When reviewing their evidence, while they have provided documentation to support their position that the insecticides applied were hazardous, I find it important to note that the products applied by the Landlord's father appear to be conventional insecticides that can be regularly found in a general hardware store. I concur with the documentation that the insecticides used may be hazardous in some applications; however, I find it reasonable to conclude that all of these types of products would come with warning labels and that the warnings pertain to the manner and care with which they are used, not in the actual use of it. Furthermore, I do not find that there is sufficient evidence submitted by the Tenants to establish that these insecticides were applied in any manner that would have potentially caused the Tenants to have inadvertently ingested these products. In fact, there is little evidence supporting that the Tenants opposed use of these products. As such, I give no weight to the Tenants' position that these products were hazardous based on the warning labels or that they were applied in a manner which endangered their health.

While the Tenants provided doctors' notes in an attempt to support their position that their health was compromised by the use of these insecticides, I find it important to note that the note for S.P. states that her doctor "understand[s] that her current residence is infested with ants, and that chemicals are being used to exterminate the ants." In my view, as the doctor had not likely been present at the rental unit to witness this situation, this note is clearly the doctor's reiteration of what concerns S.P. relayed to her. Therefore, this is in no way the doctor's professional opinion nor was it based on her

personal observations. Furthermore, the doctor states in the note that “her residence may not be safe…” I do not find that this statement is definitive, or that it supports the Tenants’ position that the insecticides applied were hazardous to their health and rendered the rental unit uninhabitable. Moreover, there is no medical documentation provided to support that the doctor conducted any tests linking the insecticides used to any health concerns. As such, I give no weight to this note as I find it, more likely than not, to be written by the doctor as simply a response to information that was relayed by S.P.

With respect to the doctor’s note for the Tenant, this note simply states, “Patient developed upper respiratory symptoms after exposure to chemical pesticides for ant eradication.” During the hearing, the Tenant provided conflicting testimony regarding what he advised the doctor of or what he showed to the doctor regarding the insecticides that were applied. Furthermore, there is no medical documention submitted that corroborates that any testing or examination was conducted by this doctor to conclude that the Tenant’s alleged upper respiratory symptoms developed as a result of the use of insecticides. As a result, in my view, this doctor’s note is, more likely than not, simply just a reiteration of what the Tenant advised the doctor of regarding what he was experiencing. Consequently, I give no weight to this note, and I find that the combination of the notes fails to support the Tenants’ position that the insecticides applied were hazardous to their health.

With respect to their submission that there was moisture in the rental unit, they have provided insufficient evidence to support that the alleged moisture led to the presence of mould, or that if any mould had developed, whether or not it was toxic. I also find it important to note that the broad, general comment in the doctor’s note that “There may also be concerns about moisture and mould at her residence” supports a conclusion that there is little evidence, if any, to support these concerns. As there is insufficient evidence to establish on what basis the Tenants came to the conclusion that any purported moisture issues contributed to the formation of mould, I find that this submission is, more likely than not, based on mere speculation. In my view, this carries no weight when assessing their claim that the rental unit was uninhabitable.

With respect to their submission that the structural integrity of the rental unit was compromised dur to the carpenter ants, I find it important to note that the Tenants have provided no evidence to support this suggestion. As such, I also find this to be baseless speculation as well. I am satisfied that they have not submitted compelling or persuasive evidence that supports their claim of the rental unit being uninhabitable.

When assessing the Tenants' claim for compensation in the amount of $868.97 for a pro-rated portion of February 2020 rent, I accept that there was an ant problem, but the Landlord took steps to address this issue immediately, once notified. As the Tenants had lived there since October 2019 without any prior ant issues, I find it more likely than not that this was a seasonal problem. Even though the Landlord took steps to have this situation addressed immediately, I am satisfied that the Tenants still suffered a loss of essentially what would be considered quiet enjoyment of the rental unit due to the presence of these ants. As a result, based on the evidence before me, for the eight days of February 2020 where the Tenants lived with the issue, I find that the Tenants have established a loss, for the affected areas of the rental unit, that is equivalent to **$200.00**. This loss is calculated as a percentage of the daily rent for those remaining eight days that they lived in the rental unit.

When assessing the Tenants' claim for compensation in the amount of $2,800.00 for March 2020 rent, I find it important to note that it was the Tenants' own choice not to reside in the rental unit for this month. As per my findings above, I am satisfied that the Tenants have provided insufficient evidence to establish that the rental unit was uninhabitable. Furthermore, the consistent and undisputed evidence is that the Landlord took further steps to have a professional exterminator come in and address the issue in March 2020, and the Tenants would have only been displaced for a small period of time to allow for the chemical insecticide to dissipate. However, the Tenants still elected to live elsewhere. Ultimately, I do not find that the Tenants have submitted sufficient, compelling evidence to support their claim that they should be entitled to rent back for March 2020. As a result, I dismiss this claim in its entirety.

Regarding the Tenants' claims for compensation in the amount of $50.00 for the cost of the loss of use of the laundry facility that was provided to them as part of their tenancy, the consistent and undisputed evidence is that the Tenants proposed a schedule that established how laundry would be done in the future and the parties agreed to this proposal. As all parties agreed to this schedule, I do not find that laundry was restricted or terminated in contravention of the *Act* as alleged by the Tenants. As a result, I dismiss this claim in its entirety.

With respect to the Tenants' claims for compensation in the amount of $128.97 for the cost of Canada post expenses and for the cost of doing laundry, as noted earlier, their claim for Canada Post expenses was dismissed in its entirety. Regarding their claim of $113.48 for laundry expenses, as I am not satisfied that the insecticides were hazardous to their health, and as the Tenants had laundry facilities provided as part of

the tenancy, I do not find that the Tenants have established this claim. Ultimately, I dismiss this in its entirety.

Regarding the Tenants' claims for compensation in the amounts of $396.67, $783.60, $564.00, and $2,000.00, as the Tenant was advised during the hearing that there are no provisions in the *Act* that allow for compensation for these costs, these heads of claim are dismissed without leave to re-apply.

Finally, with respect to the Tenants' claim for compensation in the amount of $3,000.00, as noted earlier, this portion of the Tenants' claim was unclear and may even be tied to other issues that have already been addressed in this Decision. As this appears to be a general claim for damages where the particulars are not clearly outlined, this head of claim is dismissed with leave to re-apply, pursuant to Section 59 of the *Act*. However, it should be noted that if future claims are related to issues that have already been addressed in this Application, this would amount to *res judicata*, which prohibits a re-argument of the same claims from being heard again after a court of competent jurisdiction has already rendered a final Decision on the matters.

I will now turn my mind to the Landlord's Application. With respect to the Landlord's claims for damages, again, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim of $294.00 for the cost of cleaning, the consistent and undisputed evidence before me is that the Tenants did not clean the rental unit prior to giving up vacant possession. While the Tenant claimed that he did not do so because he did not feel it was safe, I find it important to note that they could have hired a company to fulfill their obligation for returning the rental unit to a re-rentable standard if they elected not to do so themselves. Furthermore, I find it curious why the Tenant did not contact the Landlord, after his visit on March 27, 2020, to voice his concerns about not cleaning if it was his belief the rental unit was not safe.

As I am not satisfied, based on my earlier findings, that the Tenants' evidence supports a finding that the rental unit was not safe, I place no weight on the Tenant's testimony that his intention was to clean the rental unit before they gave up vacant possession. As it is undisputed that the Tenants did not clean the rental unit prior to giving up vacant

possession, as the condition of the rental unit was clearly documented as in need of cleaning, and as the Tenants sent the Landlord an email on April 1, 2020 to proceed with cleaning, I am satisfied that the Landlord has substantiated this claim. I grant the Landlord a monetary award in the amount of **$294.00** to satisfy this issue.

With respect to the Landlord's claim of $93.91 for the cost of carpet cleaning, as the Tenant acknowledged being responsible for this damage, I grant the Landlord a monetary award in the amount of **$93.91** to satisfy this claim.

Regarding the Landlord's claim of $75.00 and $49.19 for the costs associated with repairing a scratched side table due to pet damage, I have before me a signed move-in inspection report which does not note any damage, and a signed move-out inspection report which does note this damage. I also have before me two pictures submitted from the Landlord that support her position and one picture from the Tenants that supports their position. In reviewing the Landlord's photos, I note that they depict many large scratches towards a corner of the side table, while the Tenants' photo depicts this same side table with a lamp and book on it.

While the Tenant suggested that these scratches could have been covered up by these items at move-in, I find it important to note that neither the lamp nor the book cover up the edges of the side table in their picture. In reviewing the Landlord's photos, this damage is clearly evident near one corner of the table. When comparing the three photos, I am not satisfied that the lamp or the book are close enough to any of the corners to have potentially covered up this damage at move-in. Furthermore, the scratches appear very evident to the naked eye and even if a portion of these scratches were covered up, I find that the scratches appear to be large enough that they would have been at least partially exposed and visible in the Tenants' photo, had they been pre-existing. Based on a balance of probabilities, I am satisfied that the Tenants were more likely than not responsible for this pet damage. Consequently, I am satisfied that the Landlord has substantiated these claims, and I grant her a monetary award in the amount of **$124.19** to rectify the damage.

Regarding the Landlord's claim of $50.00 for the cost of unpacking and reorganizing her furnishings and doing two loads of laundry, as the Landlord rented a furnished rental unit, I find it reasonable to conclude that the Landlord would have had to spend some time re-organizing the rental unit for the next tenant anyways. However, as I am satisfied that the Tenants made no efforts to clean the rental unit at the end of the tenancy, I find that the Landlord more likely than not was required to do some laundry.

As a result, I am satisfied that the Landlord has substantiated a portion of this claim, and I grant the Landlord a monetary award in the amount of **$25.00**.

With respect to the Landlord's claim for lost rent for April 2020, there is no dispute that the parties entered into a fixed term tenancy agreement from October 15, 2019 and ending May 1, 2020, yet the tenancy effectively ended when Tenants gave up vacant possession of the rental unit on March 31, 2020. Sections 44 and 45 of the *Act* set out how tenancies end, and Section 52 specifies that the Tenants must give written notice that contains specific items to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While the Tenants gave written notice on March 27, 2020 with one day's notice to end the tenancy, I find it important to note that they cited Section 45(3) as the reason they were ending their tenancy. Essentially, it is their position that they were entitled to end the tenancy due to a breach of a material term.

Policy Guideline # 8 outlines unconscionable and material term and states that a material term is:

> "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
>
> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.
>
> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> • that there is a problem;
> • that they believe the problem is a breach of a material term of the tenancy agreement;

> • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> • that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

When reviewing the requirements of a breach of a material term and whether or not this situation falls under that scenario, I find it important to note that there is no evidence submitted that the Tenants informed the Landlord that they considered these issues to be material terms of the tenancy, nor was there a deadline issued for the Landlord to have these problems rectified by. Furthermore, as indicated in my findings above, I am not satisfied by the evidence presented that the issues the Tenants wanted rectified would be considered to be so significant to constitute a breach of a material term. While I accept that there were ants in the rental unit, I find that there is little evidence to support the Tenants' position that there was ever a health or safety concern related to the Landlord's efforts to correct the ant problem. Moreover, the Tenants have not provided any evidence to support any of their other claims that the rental unit was uninhabitable. As a result, I am not satisfied that a material term of the tenancy was ever breached.

Given that their notice to end the tenancy was effective for a date earlier than the end of the fixed term tenancy, and that there was insufficient evidence to support that they were entitled to end the tenancy due to a breach of a material term, I am satisfied that the Tenants did not end the tenancy in accordance with the *Act*. Therefore, I find that the Tenants gave up vacant possession of the rental unit contrary to Section 45 of the *Act*. Moreover, I find that the consistent testimony indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines the Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the consistent testimony before me, the Tenants ended the tenancy contrary to the *Act*. In addition, the Tenants gave the Landlord one day's notice, near the end of

the month, to end their tenancy. As the Landlord had been given minimal notification that the Tenants would be giving up vacant possession, and as this was done at the end of the month, I am satisfied that the Landlord was put in a position that it would have been difficult for her to try and re-rent the unit. Moreover, I am also satisfied that upon learning of this, the Landlord made reasonable attempts to re-rent the rental unit as quickly as possible after receiving the Tenants' notice. As the Landlord was unable to re-rent the rental unit for April 2020, I am satisfied that the Tenants are responsible for this rent that was lost. Consequently, I grant the Landlord a monetary award in the amount of **$2,800.00** to satisfy the Landlord's loss of rent owing for this time period.

As the Tenants were not successful in their claims, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Tenants' loss of quiet enjoyment	-$200.00
Cleaning	$294.00
Carpet cleaning	$93.91
Repair of side table	$124.19
Laundry related to cleaning	$25.00
April 2020 rental loss	$2,800.00
Recovery of filing fee	$100.00
Security deposit	-$1,400.00
Pet damage deposit	-$1,400.00
TOTAL MONETARY AWARD	**$437.10**

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$437.10** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: June 24, 2020

Residential Tenancy Branch