Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT

Landlord: MNDL-S, FFL

Introduction

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

In their application, the Tenants claim:

- Double the security and pet damage deposits ("Deposits") from the Landlord in the amount of $5,000.00; and
- Recovery of the $100.00 application filing fee.

In his application, the Landlord claims:

- A monetary order for compensation or damage from the Tenants in the amount of $20,900.00; and
- Recovery of the $100.00 application filing fee.

The Tenant, R.J., and the Landlord 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 Tenant and the Landlord were given the opportunity to provide their evidence orally and to 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.

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.

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.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the fixed term tenancy began on April 1, 2019, running to March 31, 2020, and then operating on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of $2,500.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,250.00, and a pet damage deposit of $1,250.00. The Parties agreed that the tenancy ended on January 1, 2020, when the Tenants moved out. They agreed that the Tenants provided their forwarding address to the Landlord in writing via registered mail sent on January 2, 2020. The Tenants provided a Canada Post registered mail tracking number as proof of this mailing.

The Parties agreed that they conducted an inspection of the condition of the rental unit at the beginning of the tenancy and one at the end of the tenancy. The Landlord said he emailed a copy of the condition inspection report (“CIR”) to the Tenants a couple days after the condition inspection; however, the Tenant denied that they received a copy of it from the Landlord.

LANDLORD’S CLAIMS

According to RTB records, the Landlord applied for dispute resolution on January 24, 2020.

1. LOST RENT January – March 2020 → $7,500.00

In his written submissions, the Landlord said:

- November conversation, I indicated I would be moving in March 31, 2020,
- If tenants were able to find suitable space before that date, I would be willing to break the lease; however, I would still require a 30-day notice,
- I received an email dated December 16, 2019 indicating they would be moving out by December 31, 2019.

The Landlord submitted a copy of a handwritten note signed by the Tenant, R.J., saying: "This letter is for the agreement that [R.J.] will be moving out of [rental unit address] as of dec 31 at 12:00 pm."

The Landlord said in the hearing:

> Well, when I had sent him the text that I would be moving back in, I said: 'If you find a place sooner, give me 30 days notice; you move on, and I'll forgo the lease. If you want to stay the rest of the term…'; I just wanted to make it clear.
>
> I got a phone call in Mexico. He was asking for the pet deposit back, while still in the property. His email on December 16 says he will be leaving on the 31st, so I didn't get 30 days notice. If he did everything right, I would have had no problem - still a problem with the ceiling, but not with the lease. But not even the decency of 30 days notice. I hadn't given him anything in writing, so the lease still exists.

The Tenant said:

> As the texts show - there was no asking for 30 days notice. He just said if I found a place, he would forego the lease. I asked the RTB and they said to handwrite a letter, take a picture of it and send it to him. He could sign it as notice he got it. In those texts there's no mention of 30 days notice. What he is asking for by redemption, he would also have to give me a month's free rent on top of that, so his claim for $7,500.00 of missed months is wrong. I just asked for the damage deposit back, so I could use it for the new place. He refused and there was no argument about that.

No one directed my attention to texts between the Parties in the evidence before me.

The Landlord said:

> The notice you provided – you have to give two months notice in writing, which I did not do, then he's entitled to a free month rent. He would have had to pay February rent and got March's rent for free. Until then, he is still bound by our lease agreement. If he needed something in writing, we still have a rental agreement, we're just going to amend the lease part. I made it quite clear when he called asking for the security deposit; I told him then that he needed to give me 30 days notice – that was around December 10th. I made it clear to [R.J.] that he still needed to follow the rules.

2. WATER BILL → $470.71

The tenancy agreement indicates that the cost of water is not included in the monthly rent payment.

The Landlord said:

> [R.J.] was required to pay the water during the tenancy. That's what he failed to pay, and I was left with it. We had the water bill moved into his name. When he moved out, he still left that outstanding and had been in arrears for about six months. Needless to say, that gets put on the owner. Even when he served me papers for this arbitration, I said why don't you go pay the water bill.
>
> In tenancy agreement – we checked off that he is responsible for it; that's why we moved it into his name.

The Tenant said:

> I had made a couple payments, but it hadn't come to me for months, I had to phone in and talk to them, because they came and turned it off. The fact that it didn't come for awhile, I have no idea why it didn't come. Once I had left, the water bill went back in his name. We had no contact, nothing after the day that I served him the papers at his house.

The Landlord submitted a "Water Bill" that shows the dates on it from October 1, 2019 to December 31, 2019. This states that the last payment was made on June 11, 2019, with a balance forwarded as of January 2, 2020 in the amount of $409.35.

The Landlord said:

> The last payment he made was in June [2019] and never again. When I got there the water was going to be cut off. I don't believe it was not cut off, because there had been no payment since June.

The Tenant said:

> It actually was shut off, because I had to make payments to have it turned on. They apologized, because I had made payments for May or June [2019].

3. CLEANING → $125.00

The Landlord submitted a copy of the CIR, which indicates that the following areas of the rental unit were dirty:

- Kitchen cabinets and doors,
- Stove/Stove top,
- Oven,
- Refrigerator door – exterior,
- Back porch, and
- Patio/Balcony doors.

The Landlord said that the amount claimed in this regard is from, [a cleaner], who he said:

> … did the did the cleaning for me to get it sort of tidied up. She did the kitchen and bathroom and she provided a list of stuff she had cleaned. She spent five hours in there and that was just the surface. A professional cleaner came in for an estimate of what was really needed. I had to have the carpets cleaned up twice, washed the floor . . .the hours I've put in myself; it was time consuming. There is a write-up from a professional cleaner who went through the house – this is what it would take to put back to normal. The cleaning charge – see re the stove, fridge. . . pictures, nothing was clean. That's part of their requirement. There was no offer to come back and get this cleaned up, nothing. This is why I was holding the deposit. This is brand new home - four years old this May.

The Tenant said:

> I would love to know what had to be cleaned so many times. There was a gate at

the top and bottom of the stairs. The dogs were not allowed in that house not one day. We did our very best at coming in and cleaning. I was in the hospital. My son was in there for a week with double pneumonia. I was sleeping in the hospital room with him, while I was supposed to get it cleaned out. I came back on the 30th and tried. As we went through on the walk-through, he told me to leave his property. Come back after I had been asked to leave? We did clean that place up to 2 or 3 in the morning. We did what we could in the amount of time allotted. As for the dogs ever being upstairs, the dogs were completely house broken.

4. CARPET CLEANING → $300.00

The Landlord said:

The house stunk of dog. He did have the stairs gated. But when I did a walk through in September, there was no gates on the stairs. I have trouble with that statement, because the stairs were wide open. The house stunk of dog. He has a pit bull/mastiff and another dog with a bladder problem. I provided pictures of how clean it wasn't. If he wants to leave on short notice, he's making it sound like I'm pushing him to get out. He left himself short. He went away at Christmas and didn't leave himself time. Upstairs stunk of dog and downstairs stunk of dog. Another carpet cleaner was up there for two hours. That finally got rid of the odour upstairs. It's taken months to get rid of the dog smell downstairs. There was no cleaning done. See pictures.

The Tenant said:

The fact that he said I went away for Christmas - I was in the hospital with my son who was dying. When he went in, my dog didn't have a bladder problem, he had cancer. He had diapers on. The big dog, he never peed or pooed in the house. As for the smell… the animals were never ever upstairs.

The Landlord submitted receipts for two sets of carpet cleaning by different companies, the first dated January 4, 2020 for $120.00, and the second dated January 5, 2020 for $180.00, for a total of $300.00.

5. CEILING REPAIRS → $630.00

In his written submissions, the Landlord said that he inspected the rental unit in

September 2019, at which time he was told that the upstairs bathtub had overflowed, which resulted in ceiling damage in the kitchen below the bathroom.

In the hearing, the Landlord said:

> Had to bring in [local company's] drywall and they looked at it and hummed and hawed, and two drywall guys came in. They said too much mud, and there was no assurance of mould or anything up there, so I had to have a professional do what needed to get done. The patch is 90% done, but at least now I know there is no mould or water damage. [The Tenants] provided no documentation for that.

The Tenant said:

> I did have a 5-star company do the work – rated 5-star across the board. They came in and went about the best way to fix it. It looked fine. The paint was too white. It is not exactly going to match four-year-old white paint. If he didn't like the job, why would he have phoned them and asked them for a quote?

The Landlord's notes say that he had the ceiling assessed and repaired by a local drywall company, in order to ensure structural security and to correct the "unsatisfactory job" previously done by another drywall company. In the CIR category of kitchen ceiling, the Landlord marked "damage/water".

The Landlord submitted a photograph of the ceiling that shows board lines from an improper mudding and/or taping job, which rendered the ceiling imperfect.

6. PAINT → $58.89

The Landlord said that he is only claiming for the paint supplies. He said: "I hired a painter and provided the supplies. Like for the pee damage and door trims."

The Tenant said:

> There was no pee damage; my dogs do not pee in the house - not into baseboard heaters. It just didn't happen. My friend's bulldog was put down in December, so the cancer took his life. And my one dog is completely house broken since a puppy. [The Landlord's] claim that they peed so much that it wrecked doors and trim is completely not true.

The Landlord submitted a receipt from a national paint store for the amount claimed.

7. BASEBOARD REPLACEMENT → $124.14

The Landlord said that he had to replace baseboards throughout the house, because they were damaged from dog urine. He said:

> There was no urine damage in that house – no pets had been in that house before [the Tenant] got into that house. I couldn't have done to my house in ten years what was done in nine months. Baseboards – door trims, that was all part of the pet damage. Painting repairs holes in walls, damaged walls…
>
> The laundry room and in the bathroom on the main floor - they just stunk.

The Tenant said:

> My dogs didn't pee into his baseboards; another mistruth. The person he bought the house from had a giant bull mastiff that barked, as well, so that statement's completely untrue. And I will go back again, my French Bulldog wore a diaper, so it was not possible, and he was short. My other dog is completely house broken, and he never once urinated in his house.

The CIR indicates that there was "D" for damage to the "walls and trim" in the living room and the second bedroom. All other categories of "walls and trim" are marked as in "Good" condition at the end of the tenancy. However, I note that the "walls and trim" of the stairwell and halls category in the CIR has "walls" underlined, and it is noted that there were a "couple marks" at the start and the end of the tenancy. As a result of this item, I find that it is more likely than not that in the living room and second bedroom the damage reported was to the "trim" rather than the walls, and it is more likely than not that trim refers to baseboards in this case.

The Landlord submitted receipts from local plywood and hardware stores in the amounts of $54.93 and $69.21, which total $124.14, to set out the value of this claim. The Landlord's evidence was that he purchased the supplies and did this work, himself.

8. DISHWASHER REPLACEMENT → $838.31

In the CIR, the dishwasher is noted as in good condition at the start of the tenancy and in damaged condition at the end of the tenancy.

In the hearing, the Landlord said:

> Somebody stood on the door, which bent the hinges and damaged the inside of the door. To replace the inner liner of . . it was.$300.00 for this, $90.00 for the repairman to show up, . . . I've sent the breakdown of it all; he said I was better to buy another dishwasher and that's what I did.

In answer to how the Landlord selected the new dishwasher, he said, "Pretty much the same as the model that was in there." The Landlord submitted a receipt from an international wholesale outlet for the full amount claimed of the dishwasher.

The Tenant said:

> We actually didn't even use the dishwasher. My girlfriend would wash dishes after every meal. So, no idea what he is talking about. He made that claim when we did the walk through. He didn't even include the dishwasher in the first items … we didn't even use it. He tried to show us dents and breaks; we didn't know what he was talking about, because we didn't even use it.

9. KITCHEN SINK REPLACEMENT → $431.14

The Landlord said: "There was a nice dent in the sink. I provided pictures." The Landlord submitted an invoice from an international home supplies store for a new sink in the amount of $431.14.

The Tenant said:

> I have no idea where that dent came from. There were no dents in the sink when we did the walk-through. The pictures were sent on March 25th and not there when we walked through or when we were in the premises.

According to the CIR, the sink was in good condition at the start and good condition at the end of the tenancy.

TENANTS' CLAIMS

The Tenants' claim is for return of double the $1,250.00 security and the $1,250.00 pet damage deposits for a total of $5,000.00.

The Tenants said:

> We did the walk through. We were going through the house, and he was saying this was dirty, that was dirty. There was no discussion of what was owed. He said he was keeping my security deposit and he said some figures and asked me to leave the property.
>
> The reason for leaving was based on his text message to forgo the lease because his girlfriend was pregnant, and he wanted the house back. I waited for him to file for what he thought he was allotted. I called the RTB and did what they said to go about settling this. [The Landlord] didn't file until I had filed, and he retaliated with his own claim with an exuberant amount of money.

The Tenants claim that the Landlord is unreasonably holding the Deposits. When asked about the Tenants' claim, the Landlord mentioned issues with repairs and lack of cleanliness of the rental unit.

He said:

> [The Tenant, R.J.] didn't supply any documents re repairs. He said he had paperwork at home, but he never got it to me. When you do water damage to the ceiling it's a major issue and things need to be done right. You can't put a band aid on it and assume things were fixed. I had to take it upon myself to make sure it was done properly. Now I had some mud thrown on my ceiling, it looked horrible. No documentation for the work done or the condition of the drywall that remained up there. It is just verbal and hearsay. He has no evidence to support anything he said.

Analysis

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

LANDLORD'S CLAIMS

Pursuant to section 38(6)(a), the Landlord is barred from making a claim against the security and pet damage deposits; however, he may still claim compensation from the Tenants for damage or other money owed.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16

("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party must prove:

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

("Test")

PG #16 also 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 who is claiming compensation to provide evidence to establish that compensation is due.

1. LOST RENT JANUARY – March 2020 → $7500.00

The Landlord was required to give the Tenants notice of the end of the tenancy pursuant to section 49(3) of the Act but he did not. The Tenants were supposed to give the Landlord one month's notice of the earlier end of the tenancy, pursuant to section 45 of the Act, but they did not. As this was a fixed term tenancy, the Tenants could not end the tenancy any sooner than March 31, 2020, according to the Act; however, I find that the Landlord led the Tenants to believe that the tenancy was ending as of March 31, 2020, but that if they found another place sooner, that the Landlord would "forego the lease" or not require the Tenant to stay until the end of the lease.

The Tenants denied that the Landlord's text included the requirement to provide 30 days notice of an early termination of the lease, and the Landlord did not direct me to a copy of this text in his extensive submissions, pursuant to Rule 7.4, as noted above. As the burden of proof was on the Landlord to prove his eligibility for the compensation he claims, and the Landlord did not give the Tenants proper notice of his end to the tenancy, I find that it would be administratively unfair and against the rules of natural justice for the Landlord to benefit from his inadequate notice to end the tenancy, which put the Tenants in a difficult, confusing position.

No one pointed me to a copy of the Landlord's text in the evidence; therefore, I find there is insufficient documentary evidence that the Landlord required the Tenants to

give him 30 days' notice of the Tenants' early termination of the tenancy, should they find another place.

The undisputed evidence before me is that the Landlord advised the Tenants that he would be moving back into the rental unit after March 31, 2020, and that the Tenants could end the tenancy earlier than this, if they found another place to live. The Tenants took the Landlord up on his offer to end the tenancy early, and therefore, I find it would be administratively unfair of the Landlord to require the Tenants to follow the rules regarding ending the tenancy, when the Landlord had not done so, himself. Regardless, as two wrongs do not make a right, I award the Landlord a nominal amount of compensation in this category of 20% of his claim or **$1,500.00** pursuant to PG #16.

2. WATER BILL → $470.71

The Landlord submitted a "Water Bill" that shows the Tenants' last payment was made on June 11, 2019, with a balance forwarded as of January 2, 2020 in the amount of $409.35.

As set out below, I find that the tenancy ended on January 1, 2020; therefore, I find that the water bill submitted by the Landlord indicates that the Tenants were responsible for the water bill up to this point. Accordingly, and given the undisputed evidence that the Tenants failed to pay the water bill in the last half of 2019, I find that the Landlord is eligible for compensation in the amount of $409.35, and I award the Landlord **$409.35** for this claim.

3. CLEANING → $125.00

Section 32 of the Act states that tenants "…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." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 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).

> 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.
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> [emphasis added]

I find that the Landlord's claims about the cleanliness of the rental unit at the end of the tenancy are inconsistent with what is set out in the CIR, other than notes about the condition of the kitchen. However, I find the Tenants' evidence about their efforts to clean the rental unit at the end of the tenancy to be internally inconsistent. For instance, R.J. said that the dogs were not allowed in the house: "not one day", he said. He also said that the dogs "were completely house broken", which I infer means that if and when they were in the house, they would not have done any damage, because they were house broken.

The Tenant also said that he was with his son at the hospital until December 30th, at which time he "tried" to clean up. There is no indication that the Tenants hired someone to clean the residential property when they determined that they would not have time to do it properly themselves.

Based on the evidence before me overall in this matter, I find that the Landlord's claim for five hours of cleaning at $25.00 per hour is reasonable in the circumstances. I, therefore, award the Landlord with **$125.00** for this claim.

4. CARPET CLEANING → $300.00

Based on the Tenant's inconsistent comments about the dogs in the house noted above, I find that I prefer the Landlord's evidence that the residential property smelled of dog urine. The Tenant even said that one of his dogs was suffering from cancer, which required the dog to wear a diaper. Based on common sense and ordinary human experience, I find that it would be difficult to monitor a dog's movements and actions 24 hours a day, seven days a week. As such, I find it more likely than not that the ailing dog may have urinated outside of his diaper on occasion.

I find that dog urine is more than normal wear and tear left behind by the Tenants, and therefore, I award the Landlord with recovery of these carpet cleaning costs in the amount of **$300.00**.

5. CEILING REPAIRS → $630.00

Pursuant to the Test noted above, I find that the Landlord proved on a balance of probabilities that the Tenants breached their requirement of section 37 to leave the premises undamaged. I find that this breach resulted in the kitchen ceiling to be marred by an inadequate ceiling repair job. Further, I find that the Landlord set out the value of repairing this damage, pursuant to the third step of the Test.

In order to minimize the damage, the evidence before me is that the Landlord contacted the company that did the repair work for the Tenants, but that this did not result in a remedy for the Landlord. I find that it was the Tenants' responsibility to ensure that their drywall company did a satisfactory job, which was not the case, as demonstrated by the photograph of the kitchen ceiling after the Tenants' repair was completed.

Accordingly, based on the evidence before me overall in this matter, I award the Landlord with recovery of **$630.00** for this claim.

6. PAINT → $58.89

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage 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 tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the interior paint of the residential property was new or fresh in 2016, when the house was built. Therefore, I find the rental unit's interior paint was approximately four years old at the end of the tenancy and had 0% of its useful life left. The CIR indicates that the walls were in good condition at the start of the tenancy, which is undisputed in the evidence before me.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures (and paint) of a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, interior and exterior paint etc., which depreciate all the time through normal wear and tear.

As a result, I find that the Landlord would have needed to repaint the interior of the residential property at the four-year mark, anyway, regardless of the tenancy. As a result, I dismiss this claim without leave to reapply.

7. BASEBOARD REPLACEMENT → $124.14

The Landlord's evidence was that he did this work, himself, which I find was a means of mitigating or minimizing this cost, consistent with the fourth step of the Test. The Tenant's only reply to this claim was to insist that his dogs did not urinate on the baseboards. However, I have found the Tenants' evidence in this regard to be unreliable; therefore, I prefer the Landlord's version of events in this matter.

Based on the evidence before me, overall, in this matter, I find that the Landlord is entitled to compensation, and I award the Landlord with recovery of **$124.14** from the Tenants.

8. DISHWASHER REPLACEMENT → $838.31

In this situation, I have a he said/he said situation to resolve. However, I also have the CIR, which indicates that the dishwasher was in good shape at the beginning of the tenancy and not so at the end. Further, it seems inconsistent with common sense and ordinary human experience to go to the trouble of doing dishes manually, when you could use a dishwasher. This combined with the Tenants' internally inconsistent evidence in other claim categories, I find the Tenants' evidence to be less reliable than that of the Landlord. I find it more likely than not that the broken dishwasher was the

result of the tenancy and, therefore, that the Tenants are culpable in this regard.

Further, pursuant to PG #40, the useful life of a dishwasher is ten years. This dishwasher was relatively new at the beginning of the tenancy, along with the rest of the residential property, therefore, I find that it had a useful life left of six years or 60% at the end of the tenancy. Accordingly, I decrease the Landlord's compensation for the dishwasher by 40% or by $335.32. I, therefore, award the Landlord **$502.99** for this claim.

9. KITCHEN SINK REPLACEMENT → $431.14

The photograph of the dent in the sink looks to be smaller than the size of a dime. I find that this is evidence of normal wear and tear. Further, it is not clear why the Landlord found it necessary to replace the sink entirely for such a minor matter that would not have affected the use of the sink.

As set out in PG #1, as noted above:

> 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.
>
> [emphasis added]

I find that the small dent in the sink evidenced by the Landlord's photograph may not be acceptable in terms of the Landlord's standards; however, I find on a balance of probabilities that it is a reasonable outcome of normal wear and tear, and that to replace a sink over such a minor matter is unreasonable. As a result, I dismiss this claim without leave to reapply.

TENANTS' CLAIMS

I find that the Tenants provided their forwarding address to the Landlord on January 7, 2020, five days after it was sent by registered mail on January 2, 2020, pursuant to section 90 of the Act. I also find on a balance of probabilities that the tenancy ended on January 1, 2020. Section 38(1) of the Act states the following about the connection between these dates:

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

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

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $1,250.00 security and the $1,250.00 pet damage deposits to the Tenants within fifteen days after January 7, 2020, namely by January 22, 2020, or to apply for dispute resolution by this date to claim against the security deposit, pursuant to section 38(1). The Landlord provided no evidence that he returned any amount of the deposits; further, the Landlord applied for dispute resolution on January 24, 2020 to claim against the deposits. I find the Landlord was two days late applying for dispute resolution pursuant to the Act. 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 Tenant double the amount of the security and pet damage deposits. There is no interest payable on the Deposits.

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the evidence and authorities before me, I find that the Tenants are entitled to double the return of the $1,250.00 security deposit and the $1,250.00 pet damage deposit for a total of $5,000.00. I award the Tenants with recovery of **$5,000.00** from the Landlord pursuant to sections 38(6) and 67 of the Act.

Summary and Set Off

The Tenants are awarded recovery of double the security and pet damage deposits in

the amount of $5,000.00 from the Landlord.

	Source	For	Amount Awarded
1	Landlord's claim	Rent from January – March 2020	$1,500.00
2	Water Bill from City	Water bill	$409.35
3	Cleaning receipts	Cleaning	$125.00
4	Carpet cleaning company receipts	Carpet cleaning	$300.00
5	Drywall receipt	Ceiling repair	$630.00
6	Paint supplier receipt	Paint	$0.00
7	Hardware stores	Baseboard supplies	$124.14
8	Wholesale outlet	Dishwasher	$502.99
9	Hardware chain	Kitchen sink replacement	$0.00
		Landlord's sub-total	$3,591.48
	Tenants' claim	Return of double the security and pet damage deposits	($5,000.00)
		Total monetary order claim	($1,408.52)

Based on the evidence before me, overall, and on a balance of probabilities, I award the Tenants with recovery of $1,408.52 from the Landlord in this proceeding, pursuant to section 67 of the Act. Given the Tenants' success, I also award them with the $100.00 Application filing fee pursuant to section 72 of the Act, for a total monetary order of **$1,508.52** from the Landlord.

Conclusion

The Tenant is successful in this cross-application proceeding, as the Landlord was awarded $3,591.48 in compensation for damages incurred, but the Tenants were awarded $5,000.00 for recovery of double the security and pet damage deposits, as well as the $100.00 Application filing fee for a net monetary award of from the Landlord.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **$1,508.52**.

This Order must be served on the Landlord by the Tenants 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: July 3, 2020

Residential Tenancy Branch