



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, MNDL-S, FFL
For the Tenant: MNSD

Introduction

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

The Tenant filed a claim for:

- the return of the security deposit and pet damage deposit in the amount of \$1,300.00.

The Landlords filed a claim for:

- combined compensation of \$8,806.88 for damage caused by the tenant, their pets or guests to the unit or property – holding the pet or security deposit; and
- recovery of the \$100.00 Application filing fee.

The hearing was adjourned twice. In the first hearing, we went over the Tenant’s claim and started those of the Landlords. However, we had to adjourn twice, because we needed more time to review Landlords’ claims.

The Tenant, M.A., and the Landlords, B.G., and R.G., 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 Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their

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

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

Preliminary and Procedural Matters

The Parties confirmed their email addresses in the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlords stated that the rental unit is a townhouse that was last renovated in 2017, prior to this tenancy. The Parties agreed that the periodic tenancy began on September 15, 2019, with a monthly rent of \$1,600.00, due on the first day of each month. They agreed that the Tenant paid the Landlords a security deposit of \$800.00, and a pet damage deposit of \$500.00. They agreed that the tenancy ended on February 29, 2020, when the Tenant moved out. In the hearing, the Tenant said that on February 2, 2020, she had talked to the Landlord, who told her that leaving at the end of February was okay. The Tenant said that she provided the Landlords with her forwarding address in her Application on March 15th.

The Parties agreed that the Landlord conducted an inspection of the condition of the rental unit before or at the start of the tenancy; however, the Tenant said that she did not sign or receive a copy of the condition inspection report ("CIR"), until she received the Landlords' evidentiary submissions for their application.

TENANT'S CLAIM

In her Application, the Tenant said she seeks the return of her security and pet damage

deposits in the amount of \$1,000.00, as the Landlords returned \$300.00 of her deposits at the end of the tenancy.

The Tenant said that at the beginning of the tenancy, the Parties did the walk-through or condition inspection and signed the original tenancy agreement. However, she said that she "...never received a copy of either, though I reminded him several times. I didn't sign it, until the 5th of July; I don't know who signed on my behalf. On March 2 we were supposed to do a walk-through, but [the Landlord] never showed up."

The Tenant submitted an undated email or text message she sent to the Landlord stating:

Hi, went at 5 and waited 20 min you didn't arrive. Are you going to be there tomorrow? I would like you to return the funds you owe me.

The Tenant also submitted an undated response email from the Landlord, which said:

ya cuz I was busy getting new rug for that room cuz the 4 red stains and the one big stain arnt comin out not in da best mood.

The Tenant said:

They gave me the \$300.00 of security deposit back, but I wanted it back in full. There was no final walk-through in the end. I wanted the whole amount back, no dispute. I wasn't there March 1. My friend who is a cleaner cleaned it.

My daughter, Sarah, was in the accident on October 24. She didn't speak for a month; she was in very bad shape. No one was over visiting, because she didn't want to see anyone. I gave my notice because I was struggling to pay in the first place, to pay her rent. I talked to them about it and they were totally fine with it. So that's as far as that goes. We didn't do any damage and I'm admitting to the payment problem and the reason is my daughter.

In the hearing, the Landlord said:

First, she's saying I wasn't there, but obviously, I was there the day we did the walk-through; I gave her the \$300.00. There's a witness statement. I showed her when she first moved in how it all looked, and then I showed her all the damage she had done to the place. She said: 'Not me, normal wear and tear.' But you've only been here for five months. She did damage to most of the walls.

When she came in, we did a condition inspection report and I told her to sign it. She wanted her deposit back because... she was pretty upset, but I gave her \$300.00. She came back with two unknown males. She did sign the condition inspection report on March 1. There's no date on the text messages. I have a witness saying she was there. I told her that I'd let her know [about the rest of the deposits], once I got everything quoted.

The Tenant said:

Like he said, when he got the dispute papers on March 5 – my forwarding address was on there, so he had it from that, anyway, before the text. He had a parcel for Sarah [her daughter] and she said to come to my place. I met them on the 29th; that's when they gave me the \$300.00, not there on the 1st, that's not my signature. So, I never got the paper until the 5th of July. I wasn't there on the 1st. My girlfriend, Michelle, who was doing the cleaning said there was just him and his wife and Michelle were there.

LANDLORDS' CLAIMS

The Landlords submitted a monetary order worksheet with the following claims:

	Receipt/Estimate From	For	Amount
1	[National flooring co.] estimate (Pg #18)	Carpet damage Room #2	\$1,074.82
2	[National flooring co.]. (p.19, 20)	Livingroom damage, bdrm #2	\$3,557.16
3	[Paint company] ... (receipts) (p. 21, 22)	Paint damaged walls & baseboards, 3 doors	\$290.80
4	[Plumbing suppliers] (receipts) (p. 23, 26, 27)	New faucet and parts	\$159.50
5	[C. Interiors] (est. & recei) (p. 24, 25)	Repairs to walls, baseboards & labour & painting	\$1,218.00
6	Loss of 1 month rent	Due to repairs, paint, etc.	\$1,600.00
7	15 hours cleaning @ \$15/hr	Carpets, walls, baseboard, floors	\$225.00

8	Kitchen sink & faucet repairs 2½ hours	Cash job to put new sink in	\$280.00
9	Missed 2 days work \$25/hr.	Cleaning, repairs scheduling appointments	\$401.60
10	RTB	App Filing fee	\$100.00
		Total monetary order claim	\$8,906.88

In the hearings, we reviewed each claim individually, as follows.

#1 Carpet Damage Room #2 → \$1,074.82

The Landlord said that the carpet in the rental unit was new when he bought the residential property, and that it was three years old in 2020. He said:

There's damage done to the baseboards and a big stain on the carpets. In one of our text messages, I ask her what the stain was. She said there's no stain. The guys cleaning the carpet said it was urine. They didn't get it out, he tried, and I tried, and maybe it comes out with different chemicals, but it didn't come out. There were also four red stains – wine or markers, or I don't know. They are presented in my evidence too.

I shopped around and I went to two different places and got a quote from [a national carpeting chain] and that's presented in my evidence. I also went to [a national building materials vender] and got a quote from there for some cheap carpet and that's also presented; and I also shopped at [a national hardware store] for the carpet. The price comes from the cheapest carpet – [the national carpeting chain]. For them to come in and dispose of the carpet and install new would be this much, [the national hardware chain] would charge \$2,200.0 for carpet and more for installation.

The Landlord submitted photographs of the carpet in bedroom number two that shows a close up of one section of a light beige coloured carpet. This photograph shows a slightly lighter colour on the carpet, which may be a stain.

The Tenant said:

First, my girlfriend vacuumed it. It was an older carpet when I moved in. There is

no carpet cleaning bill in any papers that were delivered to me. He said he was getting it cleaned prior to going there on the 2nd, but he didn't show up on the Monday to do the walk-through. The carpet cleaning, nothing about that. If you got it cleaned it would come out.

I didn't see anything nor did my friend who is the cleaner. There should be a bill stating that the carpet couldn't be cleaned, so you have to get new – but nothing about that.

When re reconvened the hearing, I had a few questions about this claim for the Landlord. I asked if bedroom number two is his first claim. He said:

There's one main bedroom. The other is a normal-size bedroom. So, room number one is the main bedroom, room number two is the smaller bedroom. In room number two there is carpet damage, stains, pet damage, and damage to the baseboards, as well. The stain was still there, and the carpet's going to have to be removed. I have estimates from. . . I haven't' been able to afford having the repairs done yet, so the carpets are still there.

The Landlord said that there are new tenants in the rental unit. He said:

Yes, they're complaining that there's a distinctive smell from the carpet, and they want it removed. They said it's making a distinctive smell. I told them my situation and they said they understand.

The room has carpet, and I have to remove it and put new carpet in there or laminate. I went with the cheapest one, which was carpeting.

The Tenant said:

On the 2nd of March, there was an email from the 1st of March – number 27 – it does say that there was floor stain and I said I don't recall. The carpet guy was coming again with some other chemicals. And I'm meeting him at 5 pm. My parents came with me and he never showed up. When I sent a text asking where was he – his response #34, he said he was busy getting new carpet, b/c the stain won't come out. That was to do the walk through, which we never did.

The Landlords' text on page 27 of the Tenant's evidence states:

Hey [Tenant], I had someone come take a look and there's a lot more damage than just wall & carpet & those 4 red stains and other big one are no carpet guy is comin again tue with some other chemicals and the inspector took pics & notes and is meeting me tomarro at 5 with a total, I call & me case you have any questions for him thnx.

[reproduced as written]

The Tenant stated:

We went there on the 2nd and he didn't show up. And it doesn't coincide with the statement of the 1st that he was getting someone to get the stain out. The text in #27 was on March 1. The carpets were cleaned on the 1st, but this is what he's stating - someone coming on the 2nd to try to get out the stains. But we met him on the 2nd, when he didn't show up, and he states that he didn't show up, because he was getting new rugs. So, on Tuesday someone was getting the stain out, but Monday, he was getting new carpets.

The Landlord said:

I had a carpet cleaner come in and he wasn't able to get the stains out. My text was to get new carpets, because the stains weren't coming out, but I wasn't able to afford it at the time.

He came back with other chemicals and he wasn't able to get the stains out. He said 'You're just going to need new carpets.' That's when I asked her on the text, it would be easier if you could tell me what the stains were, it would be easier to get it out.

At the end of tenancy walk-through with her, I did have a witness who signed and wrote a statement, and did do a walk-through and gave her the amendment piece of paper, and she wouldn't sign until she got the whole security deposit back. I gave her \$300.00 and I got the rest quoted.

The Tenant said:

I would like to know from him, what time on the 1st I was there. I moved everything out on the 29th, and they said they were having someone move in on the 1st. I have papers that state that. I asked them to come and meet me at 3 o'clock, and he said they were on their way. And he gave me the \$300.00 on the

29th. I have all sorts of messages. This signature witness, this [K.], I don't know a [K.]. Just like my signature - my signature is forged on the CIR. I wasn't there on the 1st, so this is very frustrating. Where is the receipt for the cleaning, as well?

#2 Livingroom damage & Bedroom #2 → \$3,557.16

The Landlord said that this claim is for the master bedroom, not bedroom #2.

He said:

In bedroom #1 there's damage to two walls that I had to repair and paint. There's damage in the closet that I had to repaint and drywall, as well. There's damage on the floor of the living room – big scratches on the floor and in the closet, as shown in the pictures. If you go to the master bedroom closet, there are holes in the closet and some sort of stains on the closet walls and a big scratch. There's also damage done to the door – there's a big dent in the door.

The Tenant said:

There was no damage. We didn't do any damage to the door or anything. I'm not going to interrupt, but what documents did I refuse to sign? I never got it, I never did it. Somebody signed for me, actually. We didn't do any walk-through whatsoever, and somebody forged my signature, so what damage did I do?

The Landlord said:

As far as her saying she didn't do no damage, I also sent the CIR from the tenants prior to her, and if you look at their CIR, you'll see I did a walk-through with them at the end of their tenancy. They left it in immaculate condition when they left. And then [the Tenant] moved in right after that. I understand normal wear and tear, but she was only there for 5 – 6 months, tops, and the amount of damage done in six months? The previous tenants were there for a year and left it in excellent condition. There's no damage done whatsoever by them.

On the CIR of the previous tenant, there is a comment about the "End of Tenancy Damage to rental unit or residential property for which the tenant is responsible"; it states: "Same as written in condition inspection report. All new paint in interior & baseboards. Everything good." This CIR was dated July 31, 2019, at the end of that tenancy.

The Landlords also submitted a copy of the Tenant's condition inspection report, in which the move-in inspection was consistent with the previous tenant's move-out CIR, although it was signed on September 15, 2019, a month and a half later. Further, the Tenant denies having signed the move-in CIR.

The Tenant said:

[The Landlord] gave me the \$300.00 on the 29th . . . I was standing there; he gave me the \$300.00, but we still had to go through the place, which was happening on the 2nd of March. But he never showed up. All I got was \$300.00, and the pet never did any damage. And it was the 15th of March when he got the [forwarding] address.

➔ Master Bedroom Door Scratches

The Landlord submitted photographs of the damage he said was done to the master bedroom or bedroom #1. These photos included two extremely close-up photos of what could be a door with small scratches on it.

➔ Master Bedroom Floor Scratches

The Landlords' photos for this claim were close-ups of scratches to what looks like wood flooring. However, it is not clear how many scratches there were, and how large they were in the context of the whole bedroom floor.

➔ Master Bedroom Closet Holes

The Landlords' first photograph for this claim looks to be the size of a small nail hole, although without any context in the photo, it is difficult to tell. I could not see a hole in the second closet photograph. In the third photograph of holes in the closet, I could see one small hole, possibly from a small nail and a couple other dirty spots.

➔ Master Bedroom Wall Scratches

In the photographs identified as master bedroom wall scratch, the first photograph seems to be too close to know how large the scratch is. The last photograph of master bedroom wall scratches is again, very close up and difficult to determine how large it is.

➔ Living Room Wall

The first photograph of the living room wall damage looks like it has a reflection on the wall, which makes it difficult to see the damage to which the Landlord has evidenced. In the second photograph, there are scratches or black marks on a white wall, although it is difficult to see it out of the context of the rest of the wall or living room. Another photograph shows multiple, thick scratch marks above the baseboard in the living room.

➔ Living Room Floor Scratches

The photograph for this claim shows a scratch mark across four panels of wood on the floor, although, it does not show the scratch in the context of the whole living room floor.

#3 Paint Damaged Walls & Baseboards, and three Doors ➔ \$290.80

The Landlord said:

If you go through pictures here, if you look at the pictures of room #1 and the door, there was damage throughout the laundry room, and there are two pictures in the laundry room. I had to get this repainted. I bought paint and painted the whole place. There's the laundry room and living room wall damage, and living room baseboard damage.

The Landlord submitted two receipts for having purchased five cans of paint on March 26, 2020, and April 14, 2020. These receipts add up to the total claimed in this matter.

The Tenant did not have any specific comments about the laundry room or this claim.

#4 New Kitchen Faucets & Parts ➔ \$159.50

The Landlords submitted three photographs labelled "broken_faucet_pic". Two photos are from beneath the sink and one is a close up of the faucet hose pulled out from the fixed base. The hose has what looks to be black electrical or duct tape wrapped around about a one centimetre portion of the hose.

In the hearing, the Landlord said:

I don't know if she pulled the hose out, but that pipe taped up goes to the hand faucet. That was taped up and it was just wrecked and dropping down. There are

also scratches in the sink and the pipes ... when we unwrapped the tape, we had to get new a new faucet. It just hangs there; you can't pull it out properly. I had to put a new faucet in, because it wasn't staying in place and was leaking. I got a new faucet and have a receipt from [D. Faucets], which cost \$115.50, and a second receipt for \$28.38 for a total of \$133.88

The Tenant said:

I didn't know what sink it was, because I never did any taping of the sink. And if there is damage, I don't have a clue what this is all about. I didn't know what sink it was. Honest to goodness, I didn't tape it, and I didn't wash the dog in the sink.

#5 Repairs to Walls, Baseboards & Three Doors → \$1,218.00

The Landlords submitted an estimate and a receipt from [C. Interiors], for what he said related to their repair of walls and damage to baseboards. The receipt for the work done throughout the rental unit is dated March 2, 2020.

#6 Loss of One Month Rent – Repairs/Painting, etc. → \$1,600.00

The Landlord said:

Obviously, after she moved out, I wanted to rent as soon as possible, but due to the damage, I had to do the repairs first. I wasn't able to rent it until the beginning of the next month. I lost out a month of rent getting estimates, doing the repairs, having people to do it. I have a mortgage payment to pay, which this didn't help.

The Tenant said:

I had already arranged to move on the 29th. They said 'you have to be moved out on March 1'. I changed everything to move on the 29th. I wasn't allowed to be there. These pages talk about meeting there on the 29th. My friend cleaned the floors – they saw her there; she cleans for a living. She went over and did the floors. Everything was clean, even the oven that didn't work.

The Tenant submitted copies of email exchanges with the Landlords, which included the following:

Tue. Feb 18

Hi [Landlord], I hope you are managing ok. I am moving [on] the 29th. Can you or

your husband meet me here later in the afternoon to go through and [indecipherable word(s)] deposit. Thank you.

The Landlords' reply was:

Tue Feb 18
Sure [Tenant].

#7 Cleaning - \$15.00/hour for 15 Hours → \$225.00

The Landlord said:

I did it myself, my wife, and we had a friend help, as well. [The Tenant] did clean it, but the walls where the damage was on the baseboard, the damage in the closet – some stain on the wall. We wiped the baseboards, the walls. Trying to save money and get it off, as best I could. The carpet had urine and wine stains.

I got a professional guy to come in. We cleaned all the walls and baseboards. The cupboards, underneath there was food and garbage. I don't know if she missed those. We wiped the walls down, the bathroom down. The baseboards had water stains. We tried to save money. It wasn't coming off; it was on there pretty good.

The Landlord submitted photographs of the baseboards, which showed that there were some scuffs, but it did not show dust or dirt on the floor, which would suggest that the floors and the baseboards had not been cleaned by the Tenant.

The Landlord said:

She did clean the countertops, fridge, oven was all fairly clean, but the main stuff that was mostly damaged - there was no effort to try to get the stains off the walls. That's why I had to repaint the whole place. It was dinged up too much.

The Tenant said:

The place was clean – I have no idea what he's referring to. He didn't do a walk-through, so I don't now how this was pertinent. I didn't do a walk-through at the end. We didn't do it.

The Landlord said:

Walk-through – she was with me on a walk-through at the start and the end. She wanted all of the security deposit back; that's when I gave her \$300.00 back, but she wouldn't sign the report, until gave her the full refund. She said she wouldn't sign any papers.

When we did first initial walk-through, she did sign it

The Tenant said:

He didn't show up on the 2nd; I had both parents were with me, a guy was working there. [The Landlord] is lying. I only saw him on the 29th when ... he said he has to do the walk-through and shop around. He didn't show up. I was just finishing cleaning. We didn't do a walk-through that day. I admit to what did happen, but not what didn't happen.

The Landlord said:

There was a walk-through; we did a full walk-through. That's the only reason I gave her the \$300.00. She said she needed it for rent and food. I showed her all the damage she did, but she denied that she did these things. I said you were the one living there, so who did it? We did the walk-through and . . . she said she wants the rest of the money. 'I'm not signing anything'. I gave her the \$300.00, but she wouldn't sign the mutual agreement.

I checked everything off on the inspection report. I showed her all the damage she had done. The only other plan was to see how much it was going to cost me to do all this repair, and if it's in excess of that amount, then I'll keep the damage. There was no other walk-through.

#8 New Sink & Faucet Installation → \$280.00 (\$112/hr?)

The Landlord said that this claim is for the installation of the faucet, which was addressed in #4 above. The Landlord said:

I'm not a plumber, so I had to get that whole faucet ripped out, a new faucet in, hook up the pipes. I had to get that done by a plumber which cost over \$100.00.

I might not have sent the plumber receipt in to you. Obviously, I had to buy a new faucet – wouldn't buy it just for the heck of it.

The Tenant said:

If I knew it was leaking, I wouldn't try to fix it myself. One time he came in for the washing machine. I didn't know anything about any leaking sink or I would have sent him a message. I wouldn't have tried to fix it myself. I am honestly dumbfounded. It was taken two inches from the sink – I never bathed my dog in it, just dishes.

#9 Missed Two Days of Work Cleaning & Repairs -> \$401.60

The Landlord said:

My wife and I both missed work for two days. My wife and I took two days off, and I was paying my friend \$15.00 an hour. It took us probably three days actually.

The \$225.00 claimed above was for cleaning and repairing. We had to miss work to put a new faucet in. The first part is for the cleaning, and one day for faucet, and the second was for [C. Interiors] to come in and repair the damage to the baseboards and broken toilet and the walls, laundry room, and what not.

#10 RTB Application Filing Fee → \$100.00

Arbitrators generally award this depending on how successful a party is with their application - so I will determine this claim at the end of my Decision.

Analysis

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

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, each of you, as Applicant, must prove:

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

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 ("PG #1") helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², 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.

[emphasis added]

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

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act.

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

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

TENANT'S CLAIM

The Tenant's claim is for the return of the full security and pet damage deposits. Section 38 of the Act states:

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:

I 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.

In the hearing, the Landlord said: "I told her that I'd let her know [about the rest of the deposits], once I got everything quoted." I find this is evidence that the Landlord was not intent on following the Act in regard to the return of the deposits.

Further, I find that the Tenant provided her forwarding address to the Landlords on March 15, 2020, and that the tenancy ended on February 29, 2020. Therefore, pursuant

to section 38(1), the Landlords were required to return the \$1,300.00 of deposits within fifteen days of March 15, 2020, namely by March 30, 2020, or to apply for dispute resolution to claim against the security deposit. The Landlord provided evidence that he returned \$300.00 of the deposits. The Landlord applied to claim against the deposits on June 6, 2020. Therefore, I find the Landlord failed to fully comply with his obligations under section 38(1).

The consequences for a landlord failing to comply with the requirements of section 38(1), are set out in section 38(6)(b) of the Act:

- (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.

I find the Landlord must pay the Tenant double the amount of the remaining \$1,000.00 security and pet damage deposits. There is no interest payable on the deposits. I award the Tenant **\$2,000.00** for double the return of the security and pet damage deposits, pursuant to section 67 of the Act.

LANDLORDS' CLAIMS

#1 Carpet Damage Room #2 → \$1,074.82

Landlords' and tenants' rights and obligations for cleaning and repairs are set out in sections 32 and 37 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

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

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards

throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[emphasis added]

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

[emphasis added]

In his testimony, the Landlord said there are four red stains on the carpet; however, he submitted a close-up photograph of one section of a carpet with a stain that I find is hardly noticeable in this photograph. I find that the stain is not red, and I find it is no more than normal wear and tear. However, the Landlord also said that there was a urine stain after the carpet had been professionally cleaned, which is what this may have been in the photograph.

Much of the Landlords' claims are estimates of the damage they said they incurred. The Landlords have not paid to have the carpeting removed or replaced; however, they obtained three quotes from different suppliers of how much it would cost to replace it. Further, the Landlords' testimony is that they promised the new tenants that they will replace the carpets.

I find in this set of circumstances, that the Landlords have provided sufficient evidence to fulfil their burden of proof in this matter. I, therefore, award the Landlords with this

claim, which I find to be the least expensive option of the suppliers they contacted. I award the Landlords with **\$1,074.82** from the Tenant, pursuant to section 67 of the Act.

#2 Livingroom damage & Bedroom #2 → \$3,557.16

→ Master Bedroom Door Scratches

Given the close-up photographs that the Landlord took in this situation, I find that his evidence is insufficient to give the alleged damage the context it needs to determine the size of any marks that are there. Based on the photographs that were provided, I find these marks are part of normal wear and tear. As such, I dismiss this claim without leave to reapply.

→ Master Bedroom Floor Scratches

The Landlord submitted photographs identified as master bedroom floor scratches. Again, these photos were close-ups of what looks to be scratches to wood flooring. However, it is not clear how many scratches there are, and how large they are in the context of the whole bedroom floor. While these scratches may not have been normal wear and tear, it is not clear how large and/or damaging they are to the flooring. As such, based on the evidence before me in this regard, I find that the Landlords are eligible for a nominal award of **\$200.00** for this damage, pursuant to PG #16.

→ Master Bedroom Closet Holes

Given what I found to be the small size of the holes in the closet, I find that this damage is normal wear and tear, and therefore, I dismiss this claim without leave to reapply.

→ Master Bedroom Wall Scratches

Again, given the small, close-up photographs of the alleged damage to the master bedroom walls, I find that this consists of normal wear and tear, and therefore, I dismiss this without leave to reapply.

→ Living Room Wall

I find that the damage claimed in the living room is more substantial than is the damage from the master bedroom. The Landlords did not substantiate their evidence by separating out how much it cost to make the repairs in the living room. Further, the Landlords provided estimates of what it would cost to have the repairs professionally

done, while actually doing much of the work themselves, according to testimony.

However, there is no evidence before me of how long it took the Landlord to do the repairs or how much they charged for this work. As I find that the Landlords are eligible for compensation for the marks evidenced in the living room, I award the Landlords a nominal amount of one-sixth of the total amount, since there are six areas of work in this claim. As such, I award the Landlords with recovery of **\$592.86** for the damage in the living room.

→ Living Room Floor Scratches

This evidence does not set out the size or location of the scratch in the context of the whole living room floor. I find that the Landlord has provided insufficient evidence to support this claim. Accordingly, I find it more likely than not that this is normal wear and tear, and I dismiss this claim without leave to reapply.

#3 Paint damaged walls & baseboards, and 3 Doors → \$290.80

In the Landlords' photographs of the front door, it was not clear where the damage was in the photograph, as I only see what looks to be slightly dirty spots. The Landlords also directed my attention to the master bedroom door once again, which I have already analyzed in the last section. It is not clear what the third door was in the Landlords' photographs. Further, the baseboards have already been addressed above.

I find that the purpose of this claim was to establish that the Landlords purchased paint for the rental unit. They said that the rental unit had been renovated, including being painted in 2017.

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.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the rental unit was newly painted three years before the end of the tenancy. As such, I find the paint had one year or 25% of its useful life left at the end of the tenancy.

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 building elements, 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, paint, etc., which depreciate all the time through normal wear and tear.

I find that the Landlords are eligible for recovery of 25% of the cost of the paint, pursuant to PG #40. I, therefore, award the Landlords with **\$72.70** for this claim, pursuant to section 67 of the Act.

#4 New Faucets & Parts → \$159.50

Based on the evidence before me overall on this matter, I find that the Landlords have not provided sufficient evidence to support his claim. The Landlords claimed that the hose “was just wrecked and dropping down”; however, they did not provide a photograph of this in their submissions. The Landlords did not explain what the point was of photographs from beneath the sink, rather than one showing a damaged hose or faucet. Further, the cost figures that the Landlord claimed in the hearing were different than the amount claimed in their monetary order worksheet. Given these factors, I find it more likely than not that the Landlords overstated this claim and I dismiss it without leave to reapply.

#5 Repairs to Walls, Baseboards & Three Doors → \$1,218.00

The receipt for the work done throughout the rental unit is dated March 2, 2020. However, in earlier testimony, the Tenant said that the Parties were supposed to do a move-out condition inspection of the rental unit on March 2, 2020. The Tenant said that she was there, but that the Landlords never attended that day. If repairs were being completed by workers, it would have been reasonable for the Tenant to have seen someone there that day.

I note that this company claims in their receipt to have completed some of the work in the master bedroom, which the Landlord said that he had done, and for which the Landlord claimed expenses in #2 above. I have already found that some of these claims were no more than normal wear and tear.

I also note that this company’s receipt is not on letterhead; rather, the items they claim to have worked on are hand written on a standard receipt form that could be obtained from any stationary or office products store. This receipt and the duplication of claims

raises questions in my mind about the reliability of this claim. I find on a balance of probabilities that the Landlords have not provided sufficient evidence to support this claim; and therefore, I dismiss this claim without leave to reapply.

#6 Loss of One Month Rent – Repairs/Painting, etc. → \$1,600.00

The Landlords are claiming for the loss of rent for March 2020, because they had to do repairs to the rental unit. However, the Landlords did not provide evidence that they had advertised for a new tenant starting on March 1, 2020, despite having known about the vacancy on February 2nd. The Landlords have claimed that they were unable to have a new tenant move in on March 1, 2020, because of the needed repairs, not because the Tenant had not given them sufficient notice of the end of her tenancy. However, the Landlord did not indicate that they needed to reject a possible renter for March 1, because of the repairs.

I find that the Landlords have not provided sufficient evidence that they would have had a renter for March 1, 2020, but for the repairs to the rental unit. Therefore, I dismiss this claim without leave to reapply.

#7 Cleaning - \$15.00/hour for 15 Hours → \$225.00

As it states in PG #1:

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]

Based on the evidence before me overall, I find that the Tenant cleaned the rental unit at the end of the tenancy to a reasonably clean standard acceptable to most people. I find that there were instances of normal wear and tear on the baseboards and walls, aside from those marks and stains for which I have awarded the Landlords compensation.

Based on the testimony and the photographs before me, I find that there may have been areas that the Tenant missed cleaning; therefore, and pursuant to PG #16, I award the Landlord a nominal amount for extra cleaning they did of five hours at \$15.00 per hour or **\$75.00**.

#8 New Sink & Faucet Installation → \$280.00 (\$112.00/hr?)

As noted in #4 above, I have already found that the Landlord did not provide sufficient evidence to support his claim for a new faucet. For the reasons given in that claim, I also dismiss this claim without leave to reapply.

#9 Missed Two Days of Work Cleaning & Repairs → \$401.60

The Landlords have not provided any evidence from their employers that would substantiate that they were uncharacteristically absent from work, as claimed, or what income they would have made at work.

I find that the Landlords have received appropriate recompense for the work they had to do in the rental unit at the end of the tenancy. I further find that it was their choice to do these activities on a work day, rather than on a weekend. In addition, I find that the Landlords are seeking compensation for doing the work of a landlord. Surely the Landlords would have realized that their work as landlords would affect their employment to some degree at some point.

When I consider this Application overall, I find that the Landlords have not provided sufficient evidence to substantiate this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

Set-Off of Claims

I have granted the Tenant a monetary award of **\$2,000.00** for the return of double the remaining security and pet damage deposits.

Since the Parties were both partially successful in their claims, I decline to award either the recovery of their \$100.00 Application filing fees. The remainder of the awards are set out below.

	Receipt/Estimate From	For	Amount
1	[National flooring co.] estimate (Pg #18)	Carpet damage Room #2	\$1,074.82
2	[National flooring co.] est. (p. 19, 20)	Livingroom damage, bdrm #2	\$792.86

3	[Painting company] (receipts) (p. 21, 22)	Paint damaged walls & baseboards, 3 doors	\$72.70
4	[Plumbing company] (receipts) (p. 23, 26, 27)	New faucet and parts	\$0.00
5	[C. Interiors] (est. & receipt) (p. 24, 25)	Repairs to walls, baseboards & labour & painting	\$0.00
6	Loss of 1 month rent	Due to repairs, paint, etc.	\$0.00
7	15 hours cleaning @ \$15/hr	Carpets, walls, baseboard, floors	\$75.00
8	Kitchen sink & faucet repairs 2½ hours	Cash job to put new sink in	\$0.00
9	Missed 2 days work \$25/hr.	Cleaning, repairs scheduling appointments	\$0.00
		Landlords' Monetary Award	\$2,015.38
		Tenant's Monetary Award	\$2,000.00
		Amount owing to the Tenant	\$15.38

Given that both Parties were partially successful in their applications, I decline to award anyone recovery of the \$100.00 Application filing fee. Therefore, in setting off the Tenant's award from that of the Landlords, I grant the Tenant a monetary order of **\$15.38** from the Landlords, pursuant to section 67 of the Act.

Conclusion

The Tenant's claim for recovery of double the remaining security and pet damage deposits is successful in the amount of \$2,000.00. The Landlords' claims for compensation for damage or loss from the tenancy is successful in the amount of \$2,015.38. The Landlord did not provide sufficient evidence to prove the remaining claims on a balance of probabilities.

As they were both at least partially successful in their claims, neither Party is awarded recovery of the \$100.00 Application filing fee. After setting off the awards, I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$15.38**.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 4, 2020

Residential Tenancy Branch