Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused to the rental unit or property by the Tenant, their pets, or their guests,
- Recovery of the filing fee; and
- Authorization to withhold all or a part of the security deposit in recovery of amounts owed.

The hearing was convened by telephone conference call and was attended by the Landlords C.M. and C.H. (the Landlords), and the Tenant, all of whom provided affirmed testimony. As the Tenant confirmed receipt of the Application and the Notice of Hearing from the Landlords, and raised no concerns regarding service or timelines, I accept that the Application and the Notice of hearing were served on the Tenant in accordance with the Act and the Rules of Procedure and the hearing therefore proceeded as scheduled. As the parties also acknowledged receipt of each others documentary evidence and neither party raised concerns regarding service, timelines or the acceptance of the documentary evidence for consideration, I therefore accepted all of the documentary evidence before me from both parties for consideration in this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

The Landlords stated that they believe that they submitted forms increasing the amount of their monetary claim, however, they could not verify for me that an Amendment to an Application for Dispute Resolution (an Amendment) had been completed, filed with the Residential Tenancy Branch (the Branch), or served on the Tenant as required. I could not locate an Amendment in the Landlord's file or the documentary evidence before me for consideration and the Tenant could not recall having received an Amendment.

Although rule 4.2 of the Rules of Procedure allows for Applications to be amended at the hearing without the need for service of an Amendment in particular circumstances, these circumstances are restricted to increased costs that can reasonably be anticipated by the respondent, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. I do not find an increase in the amount of a monetary claim for damage to the rental unit could reasonably have been anticipated by the Tenant prior to the hearing, without service of an Amendment on them. As a result, I decline to amend the Application in the hearing to increase the amount of the Landlords' monetary claim.

Based on the above, and as an Amendment increasing the amount of the Landlords' monetary claim was not filed and served as required in accordance with rule 4.1 of the Rules of Procedure, the hearing therefore proceeded as scheduled based only on the claims shown in the Application, pursuant to rule 6.2 of the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused to the rental unit or property by the Tenant, their pets, or their guests?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold all or a part of the security deposit in recovery of amounts owed for damage?

Background and Evidence

There was no dispute between the parties that a tenancy under the Act had existed between them since May 30, 2018, which ended on May 31, 2020, and that a security deposit in the amount of $1,675.00 was paid, which the Landlords still hold.

The parties agreed that a move-in condition inspection and report were completed at the start of the tenancy with the Tenant and an agent for the Landlord and the Tenant acknowledged receiving a copy of the move-in condition inspection report as required by the regulations. However, the parties disagreed about whether a move-out condition inspection and report were completed. The Tenant stated that the Landlords made no attempt to schedule a move-out inspection with them prior to the end of the tenancy on May 31, 2020, and that when they returned the keys to the Landlords after moving out, the Landlords demanded that they do the inspection at that time, despite having made no arrangements to schedule one. The Tenant stated that their son was with them, as the inspection had not been pre-scheduled, and although they did not really have time to complete the inspection due to the Landlords' failure to schedule it properly, they attempted to complete the inspection with the Landlords as requested, but the Landlords were behaving abusively towards them which made this impossible. The Tenant stated that the Landlord also had no condition inspection report with them. As a result, the Tenant argued that a move-out condition inspection was neither properly scheduled nor completed with them by the Landlords as required by the Act and that the Landlords therefore extinguished their right to claim against the security deposit for damage.

The Landlords denied the Tenant's allegations against them stating that it was the Tenant who lost their patience during the inspection, not them, making it uncomfortable for everyone. The Landlords acknowledged that they had not made any attempts prior to the scheduled end date for the tenancy to schedule the move-out condition inspection as they had simply assumed that it would be completed at the time of move-out. The Landlords stated that after the failed inspection attempt with the Tenant on May 31, 2020, they sent the Tenant and email on June 12, 2020, requesting that the Tenant attend the rental unit for an inspection, but the Tenant declined. As a result, the Landlords' believe that the Tenant extinguished their right to the return of their security deposit as they refused to either attend or fully participate in the inspection on either occasion.

The Tenant acknowledged denying the Landlords' email request to attend an inspection as they stated that the tenancy had ended almost two weeks prior and that an

inspection at that time would no longer be accurate as the Landlords had had possession of the rental unit in the intervening time. The Tenant also argued that the Landlords were required to schedule the inspection in accordance with the Act and the regulations prior to the end of the tenancy and to use the required form for notice of their final opportunity for an inspection, and that there was therefore no obligation for them to attend the inspection the Landlords attempted to scheduled 12 days after the end of the tenancy without use of the proper form.

The Tenant stated that they sent their forwarding address to the Landlords in writing by email on June 11, 2020, and the Landlords acknowledged receipt the following date on June 12, 2020. The Landlords stated that when the Tenant subsequently refused to attend for an inspection, they filed their Application on June 15, 2020, seeking retention of the Tenant's security deposit for damage. During the hearing the parties agreed that there was no agreement at the end of the tenancy for the Landlord to keep all or any portion of the Tenant's security deposit and that there was no outstanding monetary order against the Tenant at the end of the tenancy or a pre-existing order from the Branch authorizing the Landlords to retain any portion of the security deposit.

In the hearing the Landlords sought $3,500.00 for damage to flooring in the kitchen dining area, $1,500.00 for the repair of wall damage allegedly caused in the walls, including damage to the laundry room walls allegedly caused from bicycles, and smoke damage to a built in entertainment unit allegedly caused by candles. The Landlords sought $280.00 for damage to two doors, $250.00 for weather stripping they believe was damaged by the Tenant's cat, $210.00 for the replacement of 7 light bulbs, and $600.00 for the replacement of curtains. The Landlords also sought $200.00 in cleaning costs. The Landlords submitted photographs, a contractor invoice, and copies of the move-in and move-out condition inspection reports in support of their testimony and claims.

The Tenant denied causing much of the damage claimed by the Landlords or failing to leave the rental unit reasonably clean at the end of the tenancy and argued that the majority of the damage noted by the Landlords either pre-existed their tenancy or qualifies as reasonable wear and tear for which they should not be responsible. The Tenant stated that the move-in condition inspection report clearly shows pre-existing floor and wall damage in the rental unit and argued that any wall damage caused by bicycles qualifies as reasonable wear and tear as the Landlord knowingly allowed them to store their bikes in the laundry room. The Tenant also described this damage as scuffs, rather than holes, dents, or other types of damage. The Tenant stated that nail

holes noted by the Landlords were largely there prior to the start of the tenancy and are very tiny. They also argued that these qualify as reasonable wear and tear.

The Tenant denied causing or noticing any damage to any doors, and although they acknowledged pet damage to some weather stripping, they disputed the amount sought by the Landlord for its replacement stating that it could be purchased for approximately $10.00 at a hardware store. Although the Tenant acknowledged failing to change up to three light bulbs in a bathroom, they argued that all other light bulbs were in working order at the end of the tenancy. The Tenant also denied that the Landlords entitled to any compensation for curtains as they stated that they were never used and remained folded in a closet throughout the tenancy.

Finally, the Tenant stated that they had cleaned the rental unit weekly and completed regular maintenance throughout their tenancy, and had even hired a cleaner at move-out, for which an invoice was submitted. As a result, the Tenant argued that the rental unit was left reasonably clean at the end of the tenancy and therefore disputed that the Landlords are entitled to any cleaning costs.

The Tenant stated that they are entitled to double the amount of their security deposit as the Landlords extinguished their right to claim against the security deposit for damage when they failed to schedule or complete the move-out condition inspection as required by the Act and the regulations and failed to return their security deposit to them within 15 days after the later of the date the tenancy ended or the date their forwarding address was provided to the Landlords in writing. The Landlords denied that the Tenant is entitled to the return of their security deposit, stating that they believed that they were entitled to retain it as part of their Application and that their Application seeking retention of the Tenant's security deposit was filed on time.

The Tenant also called into question the credibility of the invoice submitted by the Landlords, which shows additional costs in the amount of $784.80 for management fees and $366.24 in GST, as they stated that they are from a company that is not licensed and therefore not legally allowed to operate or charge these fees. The Landlords denied that the invoice is invalid, stating that it is from a legitimate company.

In support of their testimony the Tenant submitted photographs, a cleaning invoice, copies of a city bylaw, email correspondence from a business licensing authority, a blank copy of the #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection, and a screen capture of the Residential Tenancy Branch website information about scheduling condition inspections.

Analysis

Section 38 (1) of the Act states that except as provided in subsection (3) or (4) (a), of the Act, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the Act states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Policy Guideline 17, section C, states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on a landlord's application to retain all or part of the security deposit or a tenant's application for the return of the deposit, unless the tenant's right to the return of the deposit has been extinguished under the Act. It also states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit, less any authorized deductions, if applicable. The Tenant did not specifically waive the doubling of the deposit at the hearing and as this was a hearing of the Landlords' Application, there was no Application before me in which the Tenant could have waived this provision.

Based on the affirmed testimony and documentary evidence before me, I find as fact that the tenancy ended on May 31, 2020, and that the Landlord received the Tenant's forwarding address in writing by email, which I accept as a valid written form of communication, on June 12, 2020, the day after it was sent by the Tenant. While I agree that the Landlords' Application seeking retention of the Tenant's security deposit, which was filed on June 15, 2020, was filed within the timelines set out under section 38(1) of the Act, I find that the Landlord was not entitled to retain the Tenant's security deposit for this purpose as set out below.

Section 35(1) and (2) of the Act states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day and that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36(2) of the Act states that unless the tenant

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

Policy Guideline 17, section B, subsection 7, states that the right of a landlord to file a claim against a security deposit for damage to the rental unit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity). Further to this, section B, subsection 3 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

There was agreement between the parties that prior to the date and time of the end of the tenancy, the Landlords made no attempts to schedule a move-out condition inspection as required by the Act, or in the manner prescribed by the regulations, as the Landlords simply assumed it would be done at the time of move-out. Although the parties disputed whether a proper move-out inspection was in fact completed at the end of the tenancy, I do not accept that it was, as there is no signature for the Tenant on the move-out inspection report and the Tenant denied that an inspection was properly completed. Although I accept that the Landlords later attempted to schedule a move-out inspection with the Tenant by email on June 12, 2020, the Tenant refused, and there is no evidence before me that the Landlords offered a second opportunity for inspection using the required form, #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection. As a result, I am satisfied that the Landlords did not offer two proper opportunities for inspection as required by section 35(2) of the Act or the regulations, thereby extinguishing their right to claim against the security deposit for damage, pursuant to section 36(2) of the Act.

As the parties agreed that the security deposit had not been returned to the Tenant as of the date of the hearing, and as I have already found above that the Landlords extinguished their right to claim against the security deposit for damage, I find that the Landlords therefore did not have the right to retain the Tenant's security deposit as part of their Application, as their Application was filed seeking only compensation for damage caused by the tenant, their pets or guests to the unit, site or property, and recovery of the filing fee. As recovery of the filing fee was only necessary as a result of

the Application for compensation for damage, I do not consider it a separate claim in its own right, in terms of assessing whether or not the Landlords' had a right to retain the Tenant's security deposit as a result of Application, despite having extinguished their right to claim against the security deposit for damage.

Based on the above and pursuant to Policy Guideline 17 and section 38(6) of the Act, I therefore find that the Tenant is entitled to $3,350.00, double the amount of their $1,675.00 security deposit. I find that no interest is payable given the date of commencement for the tenancy and payment of the security deposit.

Having dealt with the security deposit, I will now turn my mind to the Landlords' claims for damage, as Policy Guideline 17, section B, subsection 9, states that a landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the right to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline 1 states that tenants are generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard and to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. Tenants are 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 Legislation. Policy Guideline 1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. It also states that an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear, due to deliberate damage or neglect by the tenant, and 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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Although the Landlord submitted a move-out condition inspection report, it was not signed by the Tenant and I have already found above that a proper condition inspection was neither completed with the parties, or their agents, nor scheduled by the Landlords in accordance with the Act and regulations. Section 35(5) of the Act only authorises a landlord to complete the inspection and sign the report without the tenant if the landlord has complied with the requirement to offer two inspections, and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit. I am satisfied that the Tenant did not abandon the rental unit and as previously stated above, I am also satisfied that the Landlords did not offer two proper opportunities for inspection as required by the Act and regulations.

Condition inspections have a very important and specific purpose under the Act, to allow the parties together, at the start and the end of the tenancy, to inspect the rental unit, document its condition, and document any agreement for the costs or damage and to register any disagreement between them about damage noted in the report. By failing to comply with the requirements of the Act with regards to scheduling and completing the move-out condition inspection, I find that the Landlords negated the Tenant's ability to dispute their assessment of the condition of the rental unit at the end of the tenancy and deprived the Tenant of the opportunity to both know whether the Landlords found the rental unit to be acceptable at the end of the tenancy, and to collect any necessary evidence on their own behalf in dispute of allegations made against them in the move-out condition inspection report, before giving over possession of the rental unit to the Landlords.

Based on the above, and as I find that the Landlords did not have a right under section 35(5) of the Act to complete the move-out condition inspection and report in the absence of the Tenant, I therefore afford it no evidentiary weight. I therefore turn to the remaining documentary evidence before me from the parties and the affirmed testimony provided in the hearing, to assess the Landlords' claims for damage.

I will deal with the Landlord's' claim for $200.00 in cleaning costs first. Based on the Landlords' photographs, I am satisfied that some small areas of the rental unit may have required a small amount of further cleaning and attention at the end of the tenancy. However, I am also satisfied by the invoice that the Tenant submitted that they paid for professional move-out cleaning services, including appliance cleaning. Section 37(2) of the Act states that tenants must leave the rental unit reasonably clean at the end of the tenancy, not that they must leave it spotless. Based on the evidence before me and Policy Guideline 1, I am satisfied that the Tenant left the rental unit reasonably

clean at the end of the tenancy as required by the Act. As a result, I dismiss the Landlords' claim for $200.00 in cleaning costs without leave to reapply.

I will now deal with the Landlords' claim for damage to weather stripping and the replacement of light bulbs. As the Tenant acknowledged that their pet damaged weather stripping around two doors, I find that the Landlords are entitled to recovery of some compensation for this damage. Although the Tenant argued that this weather stripping could be obtained for as little as $10.00, no basis for this claim was submitted, such as proof of the cost of weather stripping, and the Landlord submitted an invoice for $250.00 for replacement of weather stripping by a contractor. Although the Tenant argued that the contractor is not licensed, and therefore the invoice should not be valid, I do not agree. The Residential Tenancy Branch is not a licensing authority for contractors, and it is not within my jurisdiction to determine whether a contractor, licensed or not, is entitled to run a business and charge for their services. My role is to determine on a balance of probabilities whether a party to the tenancy agreement breached a section of the Act, whether there was a loss to the other party as a result, the value of any such loss, and whether the party who suffered the loss acted reasonably to mitigate their loss, pursuant to section 7 of the Act and Policy Guideline 16.

Based on the evidence and testimony of the parties and the documentary evidence before me, I am satisfied that the Tenant breached section 27 of the Act by damaging the weather stripping, or allowing their pet to do so, and failing to repair this damage at the end of the tenancy. I am also satisfied that the Landlords suffered a loss as a result. Although the Tenant argued that the costs sought for this repair are excessive, they provided no evidentiary basis for this claim, and the Landlords submitted a quote from a contractor stating that it will costs $250.00 to replace the weather stripping on both doors. While I agree that this is not an insignificant amount of money for this repair, it does not appear to me to be so high as to constitute and unreasonable price for the repairs, especially considering they are to be completed by a professional, and I therefore find that the Landlords have acted reasonably to mitigate their loss in getting a quote to have the weather stripping repaired at a reasonably economic rate, albeit one that is higher than the Tenant would like. If the Tenant wished to control the cost of the repairs, it was open to them to have this weather stripping repaired prior to the end of the tenancy, which they did not do. Based on the above, I therefore grant the Landlords the $250.00 sought for repairs to weather stripping.

Although the parties agreed that some light bulbs were burnt out in the rental unit and that the Tenant was responsible for replacing light bulbs which burnt out during the tenancy pursuant to Policy Guideline 1, they disputed how many were burnt out and

whether the amount sought by the Landlord for their replacement was reasonable. I am satisfied by the photographs submitted by the Landlord that 7 light bulbs were burnt out in the rental unit at the end of the tenancy, that the Tenant was therefore in breach of section 37 of the Act, and that the Landlord is entitled to compensation for their replacement. The Landlord submitted a quote from a contractor stating that it will cost $210.00 to replace 7 light bulbs throughout the rental unit. Again the Tenant argued that this amount is unreasonable, however, they provided no basis for this argument, such as proof of the cost of the light bulbs to be replaced, and the quoted amount does not appear to me to be so high as to constitute and unreasonable price for their replacement, considering the number of bulbs being replaced, the wide variance in the cost of light bulbs, and the fact that they are being replaced by a contractor. I therefore find that the Landlords have acted reasonably to mitigate their loss in terms of replacing the burnt out bulbs at a reasonably economic rate, albeit one that is higher than the Tenant would like. Again, if the Tenant had wished to control the cost of light bulb replacement, it was open to them to replace all burnt out bulbs before the end of the tenancy, which they did not do. Based on the above, I therefore grant the Landlords the $210.00 sought for light bulb replacement.

Having made the above findings, I will now turn my mid to the remainder of the Landlords' claims for damage. Although the Landlords sought $3,500.00 for the repair of floor damage, I agree with the Tenant that the move-in condition inspection report clearly shows wear and tear to the floors in the areas in which the Landlord is now seeking compensation from the Tenant for floor damage. As no other documentary evidence was submitted showing the condition of the floors in these areas at the start of the tenancy, such as photographs or videos, to which the photographs taken by the Landlords at the end of the tenancy can be compared, I find that I am not satisfied that the damage to the flooring claimed by the Landlords to have occurred during the tenancy, did not pre-exist the start of the tenancy or does not qualify as reasonable wear and tear. As a result, I dismiss the Landlords' $3,500.00 claim for flooring repairs without leave to reapply.

Although the Landlords sought $600.00 for the replacement of drapes they allege were damaged by the Tenant's pet and/or left dirty, the Tenant denied damaging the curtains and claimed that they were stored in a closet for the duration of the two year tenancy. Although the Landlords submitted photographs of the curtains in question, only a very small number of picks, holes, or puckers can be seen in the photographs and I am unable to discern from the photographs whether or not they are clean. Although Policy Guideline 1 states that if window coverings are provided at the beginning of the tenancy,

they must be clean and in a reasonable state of repair at the end, As stated above, I am not satisfied that the curtains were not clean.

In terms of damage, Policy Guideline 40 states that the useful life of curtains is 10 years and the Landlords submitted no documentary evidence or testimony regarding the age of the curtains, which look quite dated to me. As a result, I am not satisfied that the curtains were not already past their useful life expectancy. As no proof that the $600.00 worth of curtains to be purchased represent curtains of similar size, quality, or value to the ones to be replaced, I find that I am not satisfied that it does. Further to this, I am not satisfied that the damage shown to the curtains in the Landlords' photographs constitutes more than a reasonable amount of wear and tear that would be expected over the course of a two year tenancy. As a result, I therefore dismiss the Landlords' $600.00 claim for curtain replacement costs without leave to reapply.

The Landlords also sought recovery of $280.00 for door repairs, and $1,500.00 for drywall and wood repairs, mudding, tapping, and painting. Although the Tenant argued that all damage either pre-existed the start of the tenancy, or constitutes reasonable wear and tear, I do not agree. The Landlord submitted numerous photographs showing a large number of mudded-over holes, wall dents, scratches to walls and doors, and dark scuff marks on walls. Although the photographs with already mudded over holes make it difficult to see the full extent of the damage underneath, there appears to me to have been a large number of holes or damage requiring mudding at the end of the tenancy.

During the hearing the Tenant argued that there was no bike storage indoors and that the Landlords had permitted them to store their bikes in the laundry room, therefore the damage caused to the laundry room walls by the bikes constitutes reasonable wear and tear. I do not agree. The absence of dedicated interior bike storage space on the premises or the Landlords' consent that bikes be stored indoors does not permit tenants to cause damage the property beyond what would reasonably be expected over the course of the tenancy for wear and tear if they had used the premises in a reasonable fashion. Policy Guideline 1 also states that tenants are responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibits wiping and that they must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage or where deliberate or negligent damage has occurred.

Based on the photographs before me from the Landlords and the move-in condition inspection report, I am satisfied that the Tenant, or their pets or guests, caused at least

some damage to the walls, doors, and a built in shelving unit beyond what can be classified as reasonable wear and tear for a two year tenancy. As a result, I find that the Tenant breached section 37 of the Act by failing to repair damage, other than reasonable wear and tear, at the end of the tenancy. I am also satisfied that the Landlords suffered a loss as a result. However, I am not satisfied that the loss suffered is as stated by the Landlords or that they acted reasonably to mitigate the entire loss suffered. Policy Guideline 40 states that the useful life of interior paint is 4 years, and no evidence was presented by the Landlords regarding when the rental unit was last painted. Given the move-in condition inspection report and the testimony of the Tenant during the hearing that some of the damage pre-existed the start of the tenancy, I find that the Landlords did not fully mitigate their loss by claiming for the repair of costs of at least some repairs that pre-existed the start of the tenancy or constitute reasonable wear and tear.

As a result of the above, I grant the Landlords the $280.00 sought for door repairs, but only $500.00 of the $1,500.00 sought for wall repairs, painting, and damage to a built in shelving unit. As the Landlords were at least partially successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Based on the above, I find that the Tenant is entitled to $3,350.00 for double the amount of their security deposit, and that the Landlords are entitled to $1,340.00 for damage to the rental unit and recovery of the filing fee. Pursuant to section 67 of the Act and Policy Guideline 17, section D, subsection 1, I therefore set-off the awards and make a single Monetary Order in the amount of $2,010.00, for the balance owing to Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$2,010.00**. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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.

I acknowledge that this decision has been made more than 30 days after the conclusion of the proceeding contrary to section 77(1)(d) of the Act. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that I have not lost jurisdiction to render this

decision and that the validity of the decision and associated order remains unaffected by the lateness of the decision.

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: November 17, 2020

Residential Tenancy Branch