Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $9,934.80 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant RJ attended the hearing on behalf of both tenants. The landlord was represented at the hearing by an agent ("**JZ**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

JZ testified, and the RJ confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. RJ testified, and JZ confirmed, that the tenants served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $9,934.80;
2) recover the filing fee;
3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

1. Prior to the tenancy

On June 14, 2019, the landlord and RJ entered into a written tenancy agreement starting August 1, 2019 and ending August 1, 2020. Monthly rent was $1,800 and was payable on the first of each month. RJ paid a security deposit of $900 at the start of the tenancy, which the landlord continues to hold in trust for RJ. The rental unit was fully furnished. The tenancy agreement included an addendum and an "inventory list" setting out what items would be provided as part of the furnishings.

RH signed all of these documents on June 14, 2019, prior to moving into the rental unit.

During the course of the tenancy, three adults occupied the rental unit (RJ, AT, and BL) and two children (one child of BL and one child of RJ). In her written submissions, the landlord wrote that BL's "husband died tragically, and she was unable to sign the original lease so the agreement was in [RJ's] name but the tenants were both RJ and BL and AT did arrive with them without our knowledge or consent".

RJ disputed that BL was a tenant. She asserted that JZ requested that the tenancy agreement be in her name only, and that she paid the full amount of the security deposit. RJ testified that the landlord knew that her, AT, and BL would be moving into the rental unit before the tenancy started.

The landlord submitted copies of rent cheques for August to December 2019 and January, February, March, May, June, and September 2020. Each of these cheques was for the $1,800 and written by BL. RJ agreed that the arrangement between her, TA, and BL was that each was responsible for $600 of the monthly rent. She did not deny that the payments to the landlord came from BL.

2. Moving In

JZ testified that she and BL conducted a move-in condition inspection report (the "**Move-in Report**") on August 2, 2019. The landlord submitted a copy of this report into evidence. RJ denied that such an inspection occurred, and alleged that the copy in evidence was a fraud, manufactured by JZ and BL after the fact.

In support of this allegation, RJ provided a copy of a text message between her and JZ dated August 1, 2019, where JZ wrote (at some point in July 2019)" "we are away this weekend leaving Thursday [August 1, 2019] and out of cell service but hopefully I will see you before, if not I'll just grab your cheques next Tuesday [August 6, 2019]". On August 1, 2019, JZ wrote "I'm just about to leave cell service. I just wanted to make sure you got in ok". RJ responded, "We made it!!! Yay! So tired! Thanks so much. Touch base next week". The next message in the conversation is dated August 7, 2019 and is from JZ, which states, "would it be okay to pick up the cheques today around 1:30? I was hoping to do the banking this afternoon."

JZ denied fabricating the Move-in Report. She testified that she returned from her trip on August 2, 2019 to conduct the inspection. She testified that RJ did not make herself available to do the inspection, and told her that the BL could do it, as she was travelling that day. In the landlord's written submissions, RJ makes mention of serving the Move-In Report on BL on August 3, 2019, and this being witness by the landlord. She refers to the Move-In Report as proof of it. I have reviewed the Move-In Report and see no indication that the landlord witnessed the delivery of it to BL on August 3, 2019.

JZ also submitted 21 photos of the rental unit taken before the start of the tenancy. They do not appear to have been taken during the move-in inspection, but rather appear to be from an advertisement offering the rental unit for rent (several of the photos have captions commenting on the features of the rental unit). No damage to the rental unit is visible in these photos.

3. The Tenancy

The tenancy was not a happy one. BL and RJ came into conflict. RJ alleged that BL was extremely messy. RJ alleged that BL and JZ became "drinking buddies" and that JZ was picking sides in the dispute between RJ and BL. RJ alleged that JZ defamed her on social media. I will not go into further details, as they are not relevant to this dispute. In June 2020, RJ emailed JZ saying that she and AT were going to start looking for a new place to rent. She clarified that this email was not a notice to end the tenancy. In August 2020, JZ emailed RJ saying that the landlord intended on moving into the rental unit in two months. Later that month, the landlord issued a one month notice to end tenancy for cause. RJ disputed it. Before the application to dispute this notice could be heard, the landlord applied for an early end to tenancy. RJ and AT moved out on October 1, 2020, before either of the two applications came to a hearing. JZ and RJ attended both hearings and advised the presiding arbitrators that the tenancy was over and both

applications were dismissed (copies of these decisions were entered into evidence by the tenants).

BL did not vacate the rental unit until January 20, 2020. JZ testified that she paid the landlord $600 per month in rent for the months she remained.

4. <u>The Aftermath</u>

JZ testified that the rental unit was left in a very poor condition after RJ and AT moved out. JZ conducted a move out condition inspection with BL on October 1, 2020. The landlord prepared a move-out condition inspection report (the "**Move-Out Report**") recorded the condition as follows:

- Entry
    - Walls dirty and stained
    - Closets dirty and full of garbage
    - Broken ceiling light
- Kitchen
    - Dirty throughout
    - Refrigerator and pantry full of food,
    - Broken microwave
- Living Room
    - Dirty walls
    - "Completely stained" carpet
- Bedrooms
    - Stained and dirty carpets ("totally stained" carpet in the master bedroom)
    - Sticker damage to walls
    - Holes in walls
    - Dirty walls and floors
- Bathrooms
    - Dirty throughout
- Dining Room
    - Dirty throughout
- Utility room
    - Broken dryer
- Exterior and Basement
    - Garbage left throughout

The landlord submitted into evidence a significant number of photographs of the rental unit which JZ testified were taken during the move-out inspection. In these photos, the carpet in multiple rooms can been seen to be stained and soiled with what appears to be cat feces. Walls have stickers on them. Garbage, piles of clothes, furniture and other items are seen in piles in multiple rooms. The rental unit appears very messy. One photo in particular shows a basket of fruits and vegetables that appears to have leaked brown liquid onto the countertop. JZ testified that this basket was located on the kitchen counter. The tenant denied that she left any rotting fruit on the kitchen counter (or anywhere else) when she left.

I note that, in another photo submitted by the landlord, a basket of fruits and vegetables is located on the shelf in a pantry, with no brown liquid oozing from it. This basket appear to be the same as the one in the picture leaking brown liquid, as the type of basket is the same, and the arrangement of the fruits and vegetables within appears the same (mostly limes on top, with a single protruding lemon, red onions on the bottom, and red fruits or vegetables, possibly apples or bell peppers, in the middle). The edge of the "counter" in the photo JZ claims was taken in the kitchen appears to be the same as the edge of the pantry shelves and is different from the kitchen countertop edges that can be seen in the landlord's "before" photos. I will discuss the significance of these discrepancies later in the decision.

JZ testified that the tenants allowed 16 cats to live in the rental unit, and that they urinated and defecated throughout the rental unit, substantially damaging the carpets. She testified that the carpets needed to be replaced in all five bedrooms, the living room, and the stairs of the rental unit. She testified that the carpets were seven years old at the end of the tenancy, and that the contractor advised her that the carpets were beyond cleaning, and that they should be replaced. She also testified that it would be cheaper to replace them with vinyl plank flooring.

The landlord provided a quote from a contractor estimating the cost of installing 1,275 square feet of vinyl flooring at $5,625 ($3,825 for materials, and $1,800 for five days labour). On the estimate, the contractor wrote "Due to the condition of the carpets I would not recommend bothering with cleaning. (Carpet is $2.75/square foot for cheap carpet) probably not fine nice carpet like this in [city where rental unit is located]."

The contractor also provided a quote for the cost of replacing the microwave range hood for $440 ($395 for materials plus $45 for labour) and the washing machine handle for $69.80 ($47.30 for the part and $22.50 for labour).

Finally, the contractor estimated the cost of cleaning the rental unit at $2,000. He did not provide a breakdown for this cost, although, based on the quote of $1,800 for five days labour to install the flooring, it would seem that he estimates the cleaning of the rental unit to take more than five days.

The landlord also claims one month's worth of lost rent to compensate for the time that would be spent cleaning and making repairs. JZ testified that the landlord started the repairs while BL continued to reside in the rental unit, but it was slow going. She testified that once BL moved out (which was two days prior to the hearing) she anticipated being able to complete the repairs. She testified that the cost of the repairs has gone beyond the estimate and it is taking more time than anticipated, which is why the work could not be completed during the almost four months since RJ and AT vacated the rental unit. She did not provide any documentary evidence to support her assertion that the scope, cost, and time needed for the repairs has increased.

Finally, JZ testified that a great deal of the items on the "inventory list" attached to the tenancy agreement were damaged or missing. She testified that all the mattresses (four queen-sized and one double) were soaked in cat urine and needed to be replaced. She also testified that a significant amount of the kitchen supplies (glasses, plates, knives, and forks) was missing at the end of the tenancy.

The landlord did not provide a breakdown for the replacement cost of these items, but rather is simply seeking to keep the security deposit ($900) in satisfaction of the cost of replacing the damaged or missing items. JZ testified that the replacement cost will likely be significantly higher. The landlord did not submit any photographs of the beds which show damage caused by cat urine (such as staining). There are photos of the beds submitted into evidence. One shows a bare mattress laying on the floor, but no damage is visible. Another shows a loose piece of material sagging from the bottom of a box spring.
The Move-Out Report states: "all furnishings ruined or broken. All kitchen items are missing". I note that the photos submitted into evidence by the landlord taken after RJ and AT moved out show dishes and pans left in a sink as well as some appliances in the pantry.

RJ denied that the Move-Out Report accurately captures the condition of the rental unit. She testified that the parts of the rental unit that "she was responsible for" were clean and in good condition at the end of the tenancy. She testified that throughout the tenancy, BL was extremely messy and allowed her portion of the rental unit to be a disaster. RJ was not able you say what condition the BL's part of the rental unit was in

at the end of the tenancy. RJ denied that the carpets in the living room, stairways, or the bedrooms she or AT used were damaged or covered in cat urine and feces.

RJ submitted several photos of the rental unit which she testified she took on October 1, 2020. They depict a tidy bedroom with an unstained and vacuumed carpet, a clean entry-way, a clean kitchen, and a clean, tile-floored bathroom.

In the days that followed her vacating the rental unit, RJ and JZ exchanged emails relating to the condition of the rental unit. JZ wrote “you abandoned and we just saw How you destroyed this house! … I am pursuing going after you for the damages” [sic]. RJ replied, “ [JZ] you’re absolutely incorrect. [BL], the one you let stay, is a filthy slob. I kept my room and the common areas clean and tidy. I spent most of every day cleaning up after her and that’s what most of the friction was about. You have a delusional assumption about me and you are very wrong.” In another email, RJ asserted that the photos she took of the rental unit (which were later submitted into evidence) are not “false photos”, but rather of her bedroom and the main floor. She stated that “the rest of the house is [BL and her child’s] mess”.

On one of the photos RJ entered into evidence she wrote “These are my spaces. The pictures you sent show exactly what I've been saying the whole time period you chose to allow BL to stay, she still living there and her mess and her things are still there. Her cans and booze bottles and recycling were left for her to deal with along with the rest of her belongings and her filth. I imagine she will take care of it when it's her turn to depart. I'm done with this conversation.”

RJ testified that the dryer handle broke the first time she used it at the start of the tenancy, as it was “glued on”. She testified that the kitchen microwave was damaged at the start of the tenancy.

In summary, the landlord claims $10,834.80 in damages, representing the following:

Replace carpets (materials)	$3,825.00
Replace carpets (labour)	$1,800.00
New microwave (material)	$395.00
Install microwave (labour)	$45.00
New washing machine handle (part)	$47.30
Install washer handle (labour)	$22.50
Loss of income (one month rent)	$1,800.00
Cleaning	$2,000.00

Replacement of furnishings	$900.00
Total	**$10,834.80**

Analysis

1. Statutory Framework

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> (the "**Four-Part Test**")

Section 32 of the Act, in part, states:

> **Landlord and tenant obligations to repair and maintain**
> **32**(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.

Section 37(2) of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> **37**(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, and

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove that it is more likely than not that the tenants breached the Act, that this breach caused a quantifiable loss to the landlord, and that the landlord acted reasonably to minimize its loss.

2. Identity of Tenants

    a. Is BL a tenant or occupant?

Neither party suggested that BL entered into a separate tenancy agreement in August 2019. As such, the status of BL is that either that of an “occupant” or a “tenant” of the rental unit.

Policy Guideline 13 discusses “occupants”:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

> Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. **The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.**
>
> [emphasis added]

There are factors which suggest that, notwithstanding BL's absence from the tenancy agreement, that she may have been a tenant, including: the reason JZ gave for BL not signing there agreement and that BL, and not JZ, paid the monthly rent to the landlord.

However, it is not necessary for me to determine the status of BL, as whether she is a tenant or an occupant makes no difference to this particular application. When more than one person is a tenant, each is liable for the damage caused by the other tenant. This principle is called joint and several liability and is discussed in Policy Guideline 13:

> Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.
>
> In a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.

So, if BL is an occupant of the rental unit, RJ would be liable for the damage caused by her to the rental unit, and, if BL was a tenant of the rental unit, RJ would be jointly and severally liable for the damage caused by BL. Under either outcome, the landlord would

still be able to claim against RJ for full compensation for any damage caused to the rental unit by BL.

RJ's argument that she left "her half" of the rental unit clean and undamaged is not one that can be successful, absent explicit language in the tenancy agreement to the contrary (which, in this case, does not exist).

I note that, at an October 5, 2019 hearing, the parties indicated that "the tenancy is over". This accords with section 44(1)(d) of the Act which states that the tenancy ends when "the tenant vacates or abandons the rental unit". As such, if BL was a tenant or an occupant, her continuing to stay in the rental unit and pay rent after October 1, 2020 amounts to a new tenancy agreement. It does not constitute a continuation of the tenancy.

b. Is AT a tenant?

In the landlord's written submissions, she wrote that the landlord did not know that AT would be moving into the rental unit prior to the start of the tenancy.

As such, at the time the tenancy agreement was made, the landlord could not have intended for AT to be a tenant. An essential element of the creation of a contract is a "meeting of the minds" as to the terms of the contract. This "meeting of the minds" includes all parties knowing who the intended parties to the contract are.

As the landlord takes the position that she did not know AT would be moving into the rental unit when the tenancy started, it is not possible for the landlord, at the time the tenancy agreement was made, to have intended that AT be a party to the tenancy agreement. Therefore, there was no meeting of the minds regarding the parties to the agreement and, as such, AT cannot be a party to the tenancy agreement (which would make him a tenant). Therefore, as AT occupied the rental unit during the tenancy and was not a tenant, I find that AT was an "occupant".

The Act applies only to disputes between landlords and tenants, and not to disputes between landlords and occupants. The Act does not permit a landlord to claim against an occupant of a rental unit. A landlord can only claim against a tenant. And, as stated above, tenants are responsible for the damage caused by any occupants they allow in the rental unit.

As such, AT is not properly a party to this matter, as he is not a tenant. I dismiss the landlord's application against TA, in its entirety, without leave to reapply.

3. Move-In Report

I am not convinced that JZ conducted an inspection and created the Move-In Report on August 2, 2019 as she claimed. The text messages submitted into evidence by RJ contain a six-day gap during which time no communication between JZ and RJ occurred. There is no mention of a move-in inspection in these text messages in the days preceding or following this gap.

If I were to accept JZ's testimony, I would have to accept that she attended the rental unit on August 2, 2019 without notifying RJ prior (or notifying her by some means other than the means of communication used for all communication prior, which there is no evidence of). I would have expected that such a notification would have been necessary given that JZ had previously indicated to RJ that she was out of cell range and that she would pick up rent cheques following her return if she couldn't pick them up before she left on August 1, 2019.

Indeed, JZ picked up the rent cheques on August 7, 2019. I am unsure why, if she attended the rental unit on August 2, 2019, she did not pick up the rent cheque then. The August 2019 rent cheque was dated August 1, 2019 and was from BL, who, according to JZ, was present for the move-in inspection.

Additionally, if RJ was out of town on August 2, 2019 (as JZ testified) it is unclear to me how JZ could have obtained RJ's instruction for BL to conduct the inspection on her behalf (as JZ testified). In light of the fact that their prior communication was done via text message, I would have expected that there be a text message on this subject in the conversation submitted into evidence. This is not the case, and, as stated above, there is no text message communication between JZ and RJ from August 1 to August 7, 2019.

In light of the fact that JZ's testimony is not supported by the documentary evidence, and that JZ's explanation does not address the gaps referenced above, I do not assign JZ's testimony on this matter any weight. I find it hard to believe that she would tell RJ that she would be out of cell service and would pick up a cheque a week later but then, one day after leaving cell service, would return to the rental unit to conduct the move in inspection, without giving RJ any indication that she would do this. I would also expect that, if JZ attended the rental unit without prior notice to RJ, that some kind of

communication (either contemporaneous or after the fact) between RJ and JZ would have occurred in the text message thread.

BL was not called as a witness by either side, so I do not have the benefit of her testimony to shed further light on this issue.

As such, I find that JZ has failed to discharge the landlord's evidentiary burden to prove that she conducted a move in inspection and created the Move-In Report on Aug 2, 2019 as claimed. I assign the Move-In Report entered into evidence no weight, and do not accept it as an indicator of the true condition of the rental unit at the start of the tenancy.

The effect of this finding is that the landlord has breached section 23 of the Act.

The completion of condition inspection reports at the start and end of the tenancy are required by section 23(4) of the Act, which states:

> **Condition inspection: start of tenancy or new pet**
> 23(4) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at section 24(2) of the Act:

> **Consequences for tenant and landlord if report requirements not met**
> 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with section 24(2)(c) of the Act, the landlord’s right to claim against the security deposit is extinguished for failure to complete a condition inspection report at the start of the tenancy.

Residential Tenancy Policy Guideline 17 states:

> C3. 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;

[…]

- whether or not the landlord may have a valid monetary claim.

RJ has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the deposit is extinguished. Therefore, RJ is entitled to receive double the amount of the deposit from the landlord.

Accordingly, I order that the landlord pay RJ $1,800, representing double the amount of the deposits.

A further effect this is that I do not find the Move-Out Report to be reliable either, as, if the Move-In Report was not completed as JZ claimed, then I do not have confidence that the Move-Out Report was completed as claimed or completed accurately. As stated above, the photos provided by the landlord directly contradict one of the statements on the Move-Out Report (that "all kitchen items are missing"). This comment might have been hyperbolic or it may have been intentionally misleading. I cannot say. But no matter which is true, I am given pause to consider what other parts of Move-Out Report contain hyperbolic or intentionally misleading descriptions. Accordingly, I will assign the Move-Out Report no weight determining the state of the rental unit at the end of the tenancy.

I note that this does not mean that the landlord's claim for damages is dismissed, however. She may still be entitled to compensation for damage caused by the tenant, and the amount I have ordered that she pay RJ may be offset against the monetary order made.

4. Claim for Damages

a. Microwave and Washing Machine Handle

As I have found that the landlord has failed to establish that a Move-In Report was created at the start of the tenancy, I cannot rely on it to accurately describe the condition of the rental unit at the start of the tenancy. Additionally, I cannot say when the "before" pictures submitted into evidence by the landlord were taken. It may be that they were taken just before the start of the tenancy. Or it may be that they were taken some

time earlier. The landlord bears the burden to prove when they were taken. I cannot rely on the photographs to accurately depict the condition of the rental unit at the start of the tenancy either.

As such, there is no documentary evidence supporting the landlord's claim that the tenants damaged the microwave or the washing machine. RJ testified that the microwave was damaged prior to the start of the tenancy. She testified that the washing machine handle was glued on and easily broke when she first used it. In the absence of evidence corroborating JZ's testimony, I find that the landlord failed to prove it was more likely than not that RJ, TA, or BL damaged these items as alleged.

Accordingly, I decline to award the landlord any amount in compensation on this part of her application.

b. Condition of Rental Unit at the End of the Tenancy

The photos taken of the rental unit at the end of the tenancy by each party tell two very different stories. There is damage shown in the photos submitted by the tenants. The photos submitted by the landlord depict a house in disarray. Upon my closer review of the photos, I have determined that, for the most part, these sets of photos do not show the same parts of the rental unit. The landlord's photos do not show the master bedroom that RJ occupied (they do show other bedrooms). The bathrooms in each set of photographs are different. They each contain a photograph of what appears to be a laundry room or mud room but are taken from different angles. The photos show a mostly clean room with a linoleum floor that looks like it needs to be swept, and a carboard box of miscellaneous items (the edge of this box can be seen in the tenants' photos, whereas the landlord has included a close up of it).

As such, I accept that both sets of photographs depict the true condition of the rental unit as of the end of the tenancy, with one exception.

As stated above, JZ alleged that the tenants left a basket of rotting fruit on the kitchen countertop when they left. RJ denied this. After reviewing the photographs provided, I find that the tenants did not leave a basket of fruit on the kitchen countertop when they left.

I find that, based on a photograph of the landlord, the basket of fruit in question was in the pantry at the end of the tenancy, and was not rotten. Furthermore, I find that the photo of the rotten fruit which JZ purported to have taken in the kitchen during the

move-out inspection on October 2, 2020, was, in fact, taken in the pantry sometime after the tenants vacated the rental unit. I come to this conclusion based on the fact that in the photo of the fruit basket which JZ stated was taken in the pantry shows no visible rot or brown liquid. I accept that this photo was taken on October 2, 2020. As such, the photo with rotten fruit must have been taken some time later, after the fruit had an opportunity to decompose.

I note that the other photographs the landlord took of the pantry show that it was cluttered and full of debris.

I have spent time discussing the issue of the fruit basket because it goes to the larger issue of credibility. I find that JZ's credibility is significantly diminished by her misstatements about the timing and location of the second photo of the fruit basket (as well as the by the demonstrably incorrect comments on the Move-Out Report set out above). The matter of the fruit basket was canvassed at the hearing at some length and JZ had ample opportunity to reconcile the conflict in what she testified the state of the kitchen was at the end of the tenancy, and what RJ testified it was. JZ argued that the photos submitted by RJ did not capture the true state of the kitchen. At no time did she suggest that she may have been mistaken about the location of the fruit basket or suggest that the photo was taken at a later date.

I am left to reach the conclusion that the JZ was either intentionally trying to mislead me with respect to the condition of the kitchen, or genuinely could not remember its condition. Under either of these scenarios, the reliability of her testimony is significantly diminished. As such, where JZ's and RJ's testimony differs with regards to the condition of the rental unit at the end of the tenancy, I prefer RJ's.

I accept that the photographs submitted into evidence by RJ accurate show the condition of those parts of the rental unit photographed at the end of the tenancy.

As RJ was not present at the move out inspection, as BL did not attend the hearing to provide corroboration of what was recorded on the Move-Out Report, as I have already found that the landlord had failed to discharge its onus to prove that she conducted a Move-In Report, and as I have found that JZ's testimony is not reliable, I assign no weight to the Move-Out Report (as stated above).

Based on the testimony of RJ, I find that prior to vacating the rental unit, she cleaned a portion of the rental unit that she believed she was responsible for cleaning. I understand this to include be the main floor area which includes two bedrooms, a

bathroom and the kitchen. I am unsure if the living room is located on the main floor or the upper floor.

c. Carpets

Based on the foregoing, I find that the carpets in two of the five bedrooms (which includes the master bedroom) were not soaked in cat urine.

RJ did not testify as to the condition of the carpets in the other bedrooms or common areas, except to say that the carpet on the stairs did not smell of cat urine.

RJ did not dispute that cats were kept in the rental unit. I accept that the landlord's photos showing cat feces on the carpets are genuine and depict the condition of the carpets in the areas not cleaned or used by RJ during the tenancy.

I find that the damage caused to these carpets constitutes a breach of sections 32(3) and 37(2) of the Act, and that the damage was such that their replacement was necessary.

The landlord has opted to replace the carpets with vinyl plank flooring. I accept the statement of the contractor contained in his quote that "cheap carpet" costs $2.75 per square foot. Based on the photographs submitted by the landlord, I find that the quality of the carpet in the rental unit at the start of the tenancy was better than "cheap". I accept the landlord's position that $3 per square foot of vinyl flooring is an equivalent cost to what the replacement cost for carpet of a similar quality would be.

The parties did not provide submissions as to the exact square footage of each of the rooms of the rental unit. As such, I cannot say exactly how much of the 1,275 square feet of carpet being replaced was damaged (that is, was in "BL's part of the rental unit"). As RJ used two of the bedrooms, one of which was the master bedroom, I find that 70% of the carpet is a likely amount that was damaged. As such, the value of carpets damaged by the tenant should reduced by 30%, as follows:

Description	Quoted Price	Reduction	Total
Materials (1,275 sq ft @ $3/sq ft)	$ 3,825.00	30%	$ 2,677.50
Labour (5 Days)	$ 1,800.00	30%	$ 1,260.00

As the carpet was seven years old, the landlord is not entitled to recover the full value of the replacement costs. She is entitled to recover an amount equal to the depreciated value of the carpet. Policy Guideline 40 discusses this in more detail:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
>
> If the 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 or replacement.

Policy Guideline sets the "useful life" of carpets at 10 years. The carpets were therefore 70% of the way through their useful life, and therefore the amount that the landlord can recover for the cost of replacing them must be reduced by 70% (2,677.50 x 0.7 = $1,874.25). The installation cost should not be reduced, as that cost would remain the same, no matter the age of the carpet. The landlord is entitled to $803.25 ($2,677.50 – $1,874.25) in compensation for the cost of replacing the damaged carpet. She is entitled to recover $1,260.00 in compensation for the cost of installing the replacement flooring.

d. Loss of Income

JZ testified that the scope of the required repairs had expanded since RJ vacated the rental unit and that they could not be properly undertaken until BL vacated the rental unit. She provided no documentary evidence of this. Such evidence should have been relatively easy to provide (for example, a statement and revised timeline from the contractor). Rather, the only documentary evidence before me relating to the amount of time needed for repairs is the contractor's original quote, which indicates the carpets will take five days to replace. Additionally, I see no reason why the replacement of carpets could not have been undertaken while BL continued to reside (with the permission of the landlord) in the rental unit. Policy Guideline 2B discusses what kinds of repairs require vacant possession of a rental unit to undertake. It states:

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing sinks, backsplashes, cabinets, or vanities.

As such, I do not find that the landlord lost the possibility of collecting any rent as a result of needing to replace the carpets. The landlord permitted BL to continue residing (and pay rent) in the rental unit after RJ and AT vacated. The carpets could have been replaced during this time. Accordingly, the landlord is not entitled to collect any amount for this portion of her application.

e. Cleaning

Based on the photos provided by the landlord I find that a significant portion of the rental unit required cleaning after RJ left. RJ's testimony corroborates this, as she repeatedly stated that BL was messy, and that, before she left, RJ only cleaned the portion of the rental unit that she occupied during the tenancy.

As stated above, the tenancy ended on October 1, 2020. Accordingly, per section 37(2) of the Act, the tenants had to leave the rental unit "reasonably clean". This was not done.

As such, the tenants breached the Act.

I accept that the quote of $2,000 from the contractor is a reasonable amount for the cleaning. The landlord's photographs show significant cleaning is required, and a large amount of garbage and debris needed to be removed from the rental unit.

I am not satisfied that the landlord acted reasonably to minimize her loss, however. BL continued to reside in the rental unit after RJ vacated it, and there is no evidence before me as to what efforts, if any, the landlord made to have BL clean the rental unit while she continued to reside there. Such efforts should have been reasonably undertaken in an attempt to minimize the loss landlord's loss.

I accept that some of the cleaning and garbage removal could likely not have been reasonably accomplished by BL, and would have required professionals, due to the scope. However, I see no reason why BL could not have been asked to assist in the cleaning.

Accordingly, as the landlord has failed to prove that it acted reasonably to minimize its damage, I find it appropriate to reduce the amount that the landlord may recover for the cleaning of the rental unit by 50%. The landlord is entitled to $1000 in compensation for its cleaning costs.

f. Replacement of mattresses and other items

As stated above, there is no documentary evidence which corroborates JZ's testimony that all the mattresses were urine-soaked or that any kitchen supplies were missing. As stated above, I do not find JZ's testimony to be reliable and the Move-Out Report tis not a reliable indicator of the condition of the rental unit at the end of the tenancy.

Accordingly, I find that the landlord has not discharged her evidentiary burden to prove that the tenant damaged the mattresses or removed aby items from the rental unit as alleged. The landlord is not entitled to recover any amount for this portion of her claim.

As the tenants have largely been successful in defending against the landlord's application, I decline to order that they reimburse the landlord's file fee.

Conclusion

I dismiss the landlord's application against AT, in its entirety, without leave to reapply.

RJ is responsible for any damage caused to the rental unit by BL, as BL was either an occupant (in which case RJ is liable for all damage caused by BL) or BL was a tenant (in which case RJ is jointly and severally liable for all damage caused by BL). The landlord did not apply for a monetary order against BL herself, so I have no jurisdiction to make any order against her, in the event that she was a tenant.

Accordingly, pursuant to sections 67 of the Act, I order that RJ pay the landlord $1,263.25, representing the following:

Replace carpets (materials)	$803.25
Replace carpets (labour)	$1,260.00

Cleaning	$1,000.00
x2 Security Deposit penalty	-$1,800.00
Total	**$1,263.25**

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: February 19, 2021

Residential Tenancy Branch