Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, MNDCL-S, FFL

Tenant: MNSDB-DR, FFT

Introduction

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

In their application, the Tenants claim:

- an order for the return of their security and/or pet damage deposits that the Landlord is holding without cause.
- Recovery of the $100.00 application filing fee.

In her application, the Landlord claims:

- a monetary order for damages of $17,864.00, retaining the security deposit to apply to the claim;
- a monetary order for damage or compensation for damage under the Act, retaining the security deposit for this claim;
- Recovery of the $100.00 application filing fee.

The Tenant, K.C., the Tenant's counsel, D.B. ("Counsel"), and the Landlord ("Agent") appeared at the initial teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants for the reconvened hearing. The teleconference phone line remained open for over an hour and was monitored throughout this time. The only person to call into the reconvened hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the reconvened call, besides me, was the Landlord.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process at the original hearing. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that she sent the Notice of Hearing, her Application, and her documentary evidence to each Tenant separately by registered mail sent on September 14, 2020. The Tenants' lawyer said that she received some documents from the Landlord through the Tenants. The Landlord submitted Canada Post registered mail tracking numbers as proof of service. I checked the Canada Post tracking system for these registered mail numbers, and only the package identified as sent to the Tenant, K.C., existed and was delivered, according to Canada Post.

The Tenants' lawyer said that they sent their documentary evidence to the Landlord via registered mail sent on August 21, 2020. The Landlord said that she did not receive this package from the Tenants, although the Canada Post tracking system indicates that it was delivered.

I advised the Parties to alert me in the hearing, if the other Party presents anything that they do not have.

After evidence was presented regarding the Tenants' claims, we adjourned the hearing, in order for time to review the Landlord's claims, I consulted the Parties on their availability for another hearing. Further, I Ordered the Parties to provide each other with their full set of submissions via email, or by a means agreed on by the Parties. I further Ordered them to provide each other with confirmation emails, indicating that they had received the evidence from the other Party and were able to open and view it. I Order each Party to submit to the RTB, a copy of the confirmation emails that they had sent to the other Party. This is the only new evidence that I was willing to accept from the Parties at the break, as I would consider only that evidence and Applications that were first submitted.

Both Tenants submitted emails indicating that they had received the Landlord's submissions by email. The Landlord submitted emails she had with the Tenants' Counsel in order to confirm that they had received her documentary evidence. Counsel replied indicating that she was awaiting instructions from her clients. Ultimately, Counsel

wrote to the Landlord saying that she no longer represented the Tenants in this matter. The Landlord continued to attempt to contact the Tenants directly about this matter, and submitted evidence of having emailed her documents to the Tenants, as directed in the Interim Order. The Landlord did not have evidence of a reply from the Tenants, though, but I find that the Landlord made her best efforts to comply with the Orders in the Interim Decision.

In the initial hearing, I advised the Parties to let me know if they did not have a piece of evidence on which the other Party was relying. No one raised this as an issue in the hearings.

Based on the evidence submitted on this matter, I find that the Parties were properly served with each other's documents by email, if not by registered mail, as well. Accordingly, I continued to hear from the Landlord and consider the Parties' evidence at the reconvened hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Early in the hearing, the Landlord said that she was amending her claim such that she was claiming less overall, because she had received final amounts for her claims, rather than estimates. The Landlord's revised amount claimed is set out below.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to the recovery of the $100.00 filing fee?

Background and Evidence

The Landlord said that the residential property is a four-bedroom, three-bathroom single

family dwelling that was built in 2004. The Parties agreed that the fixed-term tenancy began on September 15, 2019, with a monthly rent of $2,850.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,425.00, and a pet damage deposit of $1,425.00.

The Parties agreed that they conducted a move-in inspection of the condition of the rental unit at the start of the tenancy and that the Landlord provided the Tenants with a copy of the resulting condition inspection report ("CIR"). The Landlord submitted a copy of the CIR, which was dated September 8, 2019. The CIR had the initial walk-through notes, which indicated that the rental unit was in "good" condition. This was signed by both Tenants, with them agreeing that the report fairly represented the condition of the rental unit at the start of the tenancy.

The Landlord also submitted 16 photographs of the condition of the rental unit prior to the tenancy starting. The photographs showed a clean, multi-level home with no marks on walls or carpets or anywhere else.

The Landlord said that she tried to do a move-out inspection, but that the Tenants left before she could complete it with them. The Landlord submitted an audio recording of the discussion she had with the Tenant, K.C., during an attempt at doing a move-out inspection. I find that in this recording, the Landlord was asking the Tenant legitimate questions about whether the cleaning had been done, and if so, where the receipts for it and the steam cleaning were. The Tenant became irritable and would not participate in the move-out inspection past the point of this discussion.

The Tenants said they moved out of the rental unit on May 15, 2020, and that they had given the Landlord their forwarding address on May 6, 2020, by email. The Landlord confirmed that she received this written forwarding address.

TENANTS' CLAIM → $5,700.00

The Tenants have applied for the return of double the security and pet damage deposits. Counsel explained the Tenants' Application, as follows. She said:

> The Tenants' application is pursuant to section 38(1), they understood the Landlord to have withdrawn the application to keep the deposits. In event that you determine there should be no return of deposits, then that would deal with the relevant portion not 38(1)(a) being addressed by cross application.

The relevant amount of deposits are set out at page two on clause II(iv) of the tenancy agreement. $2,850.00 was paid by my clients. When the tenancy ended from .. .they asked for a condition inspection, but none was provided.

In August 2020, the Landlord applied to keep the deposits, but this claim was withdrawn. There was no order pursuant to subsections 38(3) or (4), and there was no agreement pursuant to section 38(4)(a). My clients deny they left any damage in the residence, and there was certainly no walk-through conducted, so the Landlord failed to fulfil her obligations under section 38 of Act, and therefore, my clients are entitled to the return of twice the deposits.

The Landlord said:

It's not true. The tenancy had been ended – there was an urgent eviction - because of the damages and issues in the home. When we filed for the urgent eviction, we had been trying to do a regular eviction, even during Covid, they followed through because of extreme. . . the neighbours were calling the police. We filed for an urgent eviction – during that time in that hearing, when the arbitrator asked if tenants and I were willing to come to an agreement, they agreed to vacate on May 15. I asked if we could deal with end of tenancy duties – cleaning…. Significant things were brought to the Tenants' attention by email. The arbitrator said we were just dealing with the urgent eviction that day and that we needed to file for an additional hearing to deal with the other issues.

When we showed up, we said I'd give them the remaining balance of May's rent, which I did give them, but they had not fulfilled any of the agreement. During the walk-through – on 15th of May. . .. Right after that I filed for an order, because I knew the damages in the home were going to exceed the deposits. Parts of flooring in the home were destroyed. That was filed in May and scheduled for August 10th. During that hearing, I had all of my evidence for the flooring invoiced, but because of Covid, the invoice was not provided within the window to serve other party. So, they agreed to give me the ability to reapply. Under no circumstances was there ever any walking away from this or ending this, but the damages were in the thousands, and I was not comfortable moving forward with a claim for a few thousand. That led to this hearing.

They did not fulfill the agreement that they signed and initialed in the their contract. Prior to them getting the home, it had been painted, the septic flushed,

> steam cleaning. They were required to do this, too. She says on the recording, 'no I didn't do those things'.

Counsel said:

> I have an issue with the mention of the recording of the walk-through. I assumed it was on the USB, which we were unable to open. We take issue with relying on that.

The hearing was adjourned at this point, as the hour had elapsed, and the Landlord's Claim was still to be reviewed in the hearing. The Parties were ordered to exchange their evidence again, and I have found that the Tenants were properly served by the Landlord with the Landlord's evidence, including the recording of the walk-through. However, only the Landlord attended the reconvened hearing. As the Tenants failed to attend the hearing to present the merits of any position contrary to that of the Landlord, I find that the Landlord's claims are undisputed.

LANDLORD'S CLAIMS → $16,580.18

In the reconvened hearing, in regard to whether she had received the Tenants' evidence, the Landlord said:

> I received an email, with a package with 30 attachments. But they did not respond to my email asking if that's everything. What bothers me about their photos is that they had photos from when I listed the property to them. And now they're presenting photos that look like my photos to see the property when I was listing it.

The Landlord submitted a monetary order worksheet with the following claims set out:

	Receipt/Estimate From	For	Amount
1		Move out cleaning service	$1,100.00
2		Pest control	$136.50
3		Carpet steam cleaning	$435.46
4		Septic service	$1,350.72
5		CRD bill	$79.77

6		Glass replacement – front window	$275.05
7		Stove top replacement	$649.97
8		Oil stain removal	$350.00
9		Paint and wall repairs	$765.33
10		Labour for paint/repairs	Not set out
11		Flooring & carpet replacement	$11,037.37
12		Kitchen island countertop repair	$400.00
13		Artisan rug - $2,000 purchase price	$2,000.00
		Total monetary order claim	$16,580.18

#1 MOVE-OUT CLEANING → $1,100.00

The Landlord said that she did not have a receipt for this cleaning amount, as she said she got quotes from cleaning companies. The Landlord said:

> [The Tenants] said they got it cleaned. See my evidence in numbers 8 and 9, which are cleaning company receipts. I had professional companies that looked at it, but with Covid, some of them wouldn't come for months. I had to get started. . . there were fur marks in the carpet, some of my pictures – 44 through 47 – show filthy hands on the walls. The house was immaculate at the start of the tenancy. It was filthy at the end. There were nine vehicles in the property – multiple occupants. There were too many animals and people in there. We tried doing a lot of it ourselves. We did the painting ourselves; we did the labour, because we were struggling to have someone agree to come in there during Covid.

Evidence number 8 was an email exchange between the Landlord and cleaning company [M.]. The emails were as follows. On May 28, 2020, the Landlord wrote:

> Hello,
> Would you be able to provide a move out cleaning quote for a 2200 square foot home with 3 bed plus den. 2.5 bathroom. Including window sills and baseboards, inside cabinets, fridge and stove….

On May 29, 2020, [M.] wrote:

> Between $1100 - $1300 including windows. Consultation is required. We do also offer hourly rate as well with a 4hr minimum at $105/hr for 2 maids deep cleaning. We have limited availability please let me know the date you were looking for and I'll let you know if our teams are available

Evidence number 9 was an email response from cleaning company [H.], which read as follows:

> I like to be generous when I am estimating, as I want to make sure we have enough time to help, that we reserve enough time for your booking, and we want to make sure the staff can perform at [H.] high detail. This is important to us.
>
> I would recommend 16.5 total hours service (if in the budget) – 5.5 hours with 3 helpers - $775.50 plus 5% tax.
>
> OR
>
> I can reduce the hours to match your budget and do what we can in that time. This means we would remove some wish list items (perhaps lower priority items) and the cost would go down. What we do, will be done professional, high detail. Efficient clean.
>
> We are very fair and ethical; we only invoice for the time we are helping.
>
> . . . .
>
> [emphasis added]

The Landlord directed my attention to her photo of dirt around the front door in submission number 43. Submission number 44 Is a photograph of what looks like hand marks on a wall. In number 46, the Landlord directed my attention to more dirty marks on another wall. The Landlord said:

> They had three dogs and I allowed one dog, because they said it was a service dog. The garage floor is dirty, because of all their vehicles; there's oil stains everywhere. We got a couple quotes, but I'm not finding it anyway. In the garage they had beds set up, couches set up, animal cages, and cars in there. I was trying so hard to get an arbitration call, they said we have got rid of all the animals and they said the visitors are gone. We came by for an inspection, but they tried not letting us in the garage, they hid them there. They had aquariums -

they were keeping ducks. I asked them if they wanted the fences kept up. I had beautiful garden and they had ducks there.

#2 PEST CONTROL → $136.50

The Tenant submitted a copy of the "Pet Agreement" that the Parties signed on September 3, 2019, at the start of the tenancy. Clauses six and seven of this agreement state:

> **6.** The tenant will maintain a regular flea control program appropriate to this type of pet. The tenant will, at the tenant's cost, have carpets in the rental unit professionally shampooed annually. Should flea infestation from this pet occur in the rental unit or on the residential property, the landlord may require the tenant to have the carpets shampooed and the rental unit de-fleaed at any time. Failure by the tenant to act promptly on the Landlord's request will be a breach of this Agreement.
>
> **7.** At the end of the tenancy, the tenant will, at the tenant's cost, have the rental unit inspected by a licensed pest control operator and obtain certification that the rental unit is free of fleas. Should treatment be required to remove fleas, such treatment will be done at the tenant's expense. As flea eggs cannot be detected and can be dormant for several weeks, should flea infestation attributable to the tenant's pet occur subsequent to the tenancy, the landlord may seek compensation from the tenant for the subsequent flea removal treatment.

The Landlord said that the Tenants were supposed to have the carpets shampooed annually, as well at the end of the tenancy, and have it inspected by licensed pet operator to ensure it was free of fleas. The Landlord said:

> That's on the CIR on page – no it's on the rental agreement. I wrote in there at the bottom underneath schedule D – I wrote in here and they signed on each section. In their evidence, they included the same copies of all this stuff – their stuff and their signatures. They agreed, read, and signed the rules. The house was rented to them and their immediate children. I list the pets to clean under the Pet Agreement and that they are supposed to do the pest control service. Another place I added it is at the beginning, that they had to have it steam cleaned. That's an invoice of me contacting the pest control. There's all these steps that have to happen.

The Landlord submitted an email exchange that she had with a pest control company. Ultimately, the Landlord was invoiced for $136.50 for this service.

#3 STEAM CLEANING CARPETS → $435.46

In the audio recording that the Landlord submitted of the Parties' attempt to do a move-out inspection, the Tenant claimed that the carpets had been steam-cleaned, but the Landlord disagreed. The Landlord said she has had the carpets steam-cleaned many times and that she knew what it looked like afterwards. She said that the carpets had not been steam-cleaned, and the Tenants could not provide a receipt for this service.

In the hearing, the Landlord said:

> I had a carpet cleaning invoice, although I have to replace the carpets, but I hoped I wouldn't have to. There's a carpet cleaning company that has this massive truck. I've used him over the years – gets it professionally done at the onset. I wrote on the contract that it's done for you at the beginning. I have an invoice – evidence #15 – shows [the professional] did it on June 24, 2020. He came in again – evidence #16 – he did it for me again, but only charged me for the first session. That would have been $1,000.00. I paid $435.46, and we did it again, and nothing. He even added a $50.00 stabilizing odour treatment on there, and it hasn't even touched it. We found out [the smell is] all in the floor boards.

In the Landlord's submission number 16, the carpet cleaner emailed the Landlord on July 11, 2020, saying: "I can try again if you like. Or [F.E.] is a local guy for carpet [phone number]". The Landlord's email response was:

> We just can't get rid of the smell, it's foul. The den is especially bad, and we have cleaned everything else top to bottom. Unfortunately, we are going to have to replace the carpet and underlay. Do you happen to know someone reputable in [town] we could reach out for a quote? Thanks for your help.

In the tenancy agreement, the Tenants signed and initialed the section that states:

> House cleaned and steam clean carpets professionally at end of fixed term.

#4 SEPTIC SERVICE → $1,350.72

In the hearing, the Landlord said:

I had this cleaned right before they moved in – the Friday they moved in. I have that invoice as well. On September 12th, I had the septic all pumped inspected and cleaned. That was on my agreement to them. I corresponded with them. Then this one is the quote from the septic place quoting me to come back in, because [the Tenants] didn't do this. They signed and initialled that they would have this done – the septic system serviced at the end of this term. When we were on the call ending the tenancy in May, I brought this up with the arbitrator, that there's specific things to be done, according to his contract.

Under Schedule D – Additional Terms or Conditions –

> The Landlord will complete the septic system service and pump with septic company at beginning of term. Tenants to complete same at end of term.

And they never did that. I can't say to them how many people were in there?

Over the years I have spent several hundred dollars with just two people in the house. That's why I did it for them at the start. If they are throwing wipes or feminine products down there, they have to look after that. They have to get the septic done - you have an invoice showing you had the septic was fully serviced at the beginning. These are thousands of dollars of expenses. I have been paying for the things I can do myself.

In submission number ten, I got a quote for the septic service, which gave the flat rate fee of $799.00 – just to go in and provide the inspection, then the pumping rate is $0.34 per gallon. On my last invoice there were 600 gallons, but that was just with two people. The issue with these guys was they had significant amount of people going throughout.

The septic tank technician quoted the following "to do a SEPTIC INSPECTION is as follows:

Fuel Surcharge	$5.00 flat rate per vehicle
Truck & labour time to pump out septic tank	$198.00 flat rate (1st hour)
Truck & labour time to pump out septic tank	$108.00 additional hours (eg digging for lids)
Disposal fees for waste pumped from tank	$0.34 per gallon
Septic Inspection Report of technicians	$799.00 flat rate **this is based

and inspector time (2 onsite and 2 off) on up to 4 hours
Any additional hours will be billed out accordingly.
Follow up inspections from recommendations $105.00 per hour
These prices do not include GST

The Landlord did not indicate how she came to the total that she claims, as she indicated that she had not had this service completed yet.

#5 CRD Bill → $79.77

The Landlord said:

> They were to pay their bills during their tenancy, and I had asked for them for these funds, but they never paid them. This has been a part of my evidence at my other arbitration hearings, so they're aware of it and they never paid it. May 15 was their last day on the property. When they moved in, it was their responsibility to pay the water bill. I would pay it and they would transfer the funds. I paid the first one, because there would be crossover of use. They neve paid at all. Submission number 12 is the CRD bill.

The Landlord submitted a bill from the municipality for water consumption charges from April 4, 2020 through May 29, 2020, for a total of $79.77.

Part four of the tenancy agreement sets out the services and facilities that are included in the rent. "Water" was not checked as included in the rent.

#6 GLASS REPLACEMENT – FRONT WINDOW → $275.05

The Landlord said that the front window was scratched before them moved in, but that it was replaced with new glass for the tenancy. However, she said:

> I had the front window replaced – that was on the CIR; and I don't know if it was meanness or vindictiveness, but they scratched this front window. I have an invoice - #11 the [S.] glass quote. That was the $275.00.

The Landlord submitted email correspondence that she had with [S.] Glass Ltd., in which the Landlord said: "I have a window at the front of my house beside the main entry door. Could you please provide a quote for replacement?" The Landlord also gave the address of the residential property. The vendor responded:" To change the small

unit next to the front door that is about 30½ x 37½ glass only – you keep the existing frame 275.05 incl. labour and tax."

#7 STOVETOP REPLACEMENT → $649.97

Evidence number 38 is a photograph of a flat top element of the stovetop. The Landlord said:

> Stuff bubbled over so many times. This photo is after it's been scoured – that's as good as it gets. My intent was to replace the stovetop, but they're a fortune. We bought a new stove at a cheaper price – I haven't even included in there.
>
> It was the stovetop that they damaged; the stove was still working. I was getting quotes between $500.00 and $1,500.00, and then you have to have someone come in and install it. It was cheaper to get a stove. I've been trying to mitigate whatever cost I can.
>
> I didn't submit a stove receipt. By the time I got that it was too late to submit it. That was when I was getting quotes. I thought it would be just a couple hundred dollars to replace the glass top. Now I've been trying to clean it and get rid of the smell and damage.
>
> The amount claimed is the amount I paid for the stove. I looked around for the best price of the stove, which was cheaper than the glass top. It's been scoured so bad.

It is not clear whether the stovetop elements worked or whether they were just aesthetically damaged.

#8 OIL STAIN REMOVAL → $350.00

The Landlord explained this claim, as follows:

> This is for the driveway. The garage – there are pictures of both. We've been trying to remove it, but it's not lifting. I don't know what else to do. He thought he could use a solution on that.

The Landlord submitted an email from a maintenance company about the oil stain. The company replied to her request for a quote, saying:

> For the oil stains im not sure if the pressure washer will get them all out id pressure wash the inside garage for 200 and the driveway for $150. So $350 total id throw degreasers down but cant guarantee perfection oil stains can be permanent
>
> [reproduced as written]

The Landlord submitted two photographs of the driveway stains after the tenancy ended. The photographs are of an asphalt or concrete driveway. These photographs show three or four main spots and a darker area that could have been an oil stain, as well. The Landlord also submitted a photograph of the concrete garage floor, which has what looks to be a significant stain on an otherwise reasonably clean floor.

The Landlord did not point me to any photographs of the garage or driveway taken prior to the tenancy. There is nothing noted on the CIR about there being any damage to the driveway or garage at the start of the tenancy.

#9 PAINT AND WALL REPAIRS → $765.33

The Landlord answered the question: what repairs needed to be done, as follows:

> On the walls – it's hard to show, but on the corner, you can see if it was their wear and tear or the pets chewing on corners. The walls have rounded corners. It wasn't a punch, but scores in the wall, scratch. We ended up just painting the house in stages, because we would have to go in and repair . . .the gouges. I've moved a number of times and you can hit the walls, but this was damage.

The Landlord submitted two photographs of what she called "stained walls" and "dirt on walls". The first photograph shows a line a little darker than the paint above a baseboard, beneath an electrical outlet. The Landlord said: "Something's been scored all across the bottom – it's just above the baseboard. We had no holes from paintings when they moved in. It was lots of . . it was just the best I can explain it could be."

The second photograph is of a wall with hand prints and other marks in the mid-range of the wall. The Landlord said the following about this photograph:

> It looks like a hand print, and we tried to wash them off. It's all over the walls. There are huge vaulted ceilings, and all in the areas they can reach, there are hand prints all over the walls. We washed all those down, and we were starting to lift the paint. We ended up having to paint. We did that and we got quotes for

> touch ups. We did the whole thing ourselves. We're over on the Mainland, so every time I come over here for my shift – I'm a nurse - we're paying for accommodation, because it stunk in the house.

In answer to how she came to the amount claimed, the Landlord said: "That's all the invoices I've included #50 – 53 all total that." The Landlord's receipts for this claim include:

- National paint retailer dated August 7, 2020 → **$248.80** for 6.86 litres of paint, painters masking tape, a brush and a roller, paint pail, and plastic tray;
- Different paint retailer dated August 11, 2020 → **$227.26** for three trays, three tins of paint and recovery fee, and four "ultra lintfree 15mm refill";
- National paint retailer dated August 23, 2020 → **$216.19** for 7.13 litres of paint, five plastic trays, and a "light polysheet";
- International hardware store dated July 11, 2020 → **$73.08** for green painters' masking tape, a paint roller, two rug/room deodorizers, and 3.64 litres of paint, and an ecofee.

The total of these receipts is **$765.33**.

#10 LABOUR FOR PAINT/REPAIRS → $_____

The Landlord did not put down a specific amount for this claim, but in the hearing, she said:

> We don't know how you go about claiming for that. We had some extra supplies of our own we used. This is additional stuff we bought, if we had anything extra, we used it. We just went in there and did it ourselves.
>
> I know exactly that we went over there on three different weekends. We had a morning ferry, and then we would work on it. First, we had to do all the cleaning. That is all we did. We would be back at our hotel, sleep, wake up, and do it again. We couldn't even stay in our own house, because it smelled so bad. We stayed close by so that we could spend our time working, not travelling.

#11 FLOORING AND CARPET REPLACEMENT → $11,037.37

In the hearing, the Landlord referred me to two sets of photographs – before shots of the rental unit and the flooring and post-tenancy photographs of the flooring. The first set of shots shows smooth, shiny hardwood flooring, in contrast to the post-hearing

shots, which show buckling of the wood and a white powder, about which the Landlord said:

> Underneath one rug, there was white powder. They tried to put it under there to absorb the urine. The rug was so saturated, it was so heavy. You can see it soaked right through. They are thick rugs, as you can see. You can see the white powder – showing the seams where they have swelled. [Pictures] 26 to 29 all show the same thing – the corners swelling all from the moisture from the urine. 23 is the underside of the carpet – the artisan rug. See #2 – the before picture of the artisan rug. #23 is three pictures of the circumference of the rug. You can see the urine has saturated through the thick rug.
>
> Numbers 24, 26, 27, 28, 30, and 31 – show where the seams are all swelling from the urine damage soaked through the carpets. They had so many accidents. They had aquariums in the house with snakes, salt-water aquariums with all different kinds of fish. Lizards, iguanas, but the smell of the urine was so pronounced from when you walk in the home. Even today, I can't get rid of the smell of urine. Before we painted, we bleached the walls. In a perfect world I could change the flooring, but I have to change the underside. It's right down into the plywood.
>
> What is so frustrating is you never want to rent it out again. This is my home. It's a place we want to come back to. If you don't live there you get the speculation tax. How do you go about . . . there were bailiffs who came looking for them before. I remember when my neighbours called to say that they had bailiffs looking for your Tenants. I called RTB.

The Landlord submitted an estimate from a national carpet and flooring distributor, which included removing the carpeting, pad, and laminate, disposing of the laminate, installing vinyl plank and installing the new carpeting – including the materials and labour. This detailed estimate came to $11,037.37, including taxes.

#12 ISLAND COUNTERTOP REPAIR → $400.00

The Landlord pointed me to evidence number 36, which shows the white spots on a section of counter, which the Landlord said shows that they set hot things down on the counter, as it bubbled the countertop. However, this is a very close up photograph, so it is difficult to see how large the white spots or bubbles are.

The Landlord submitted photograph 16, which shows the condition of the kitchen prior to the tenancy. The Landlord said that the counter would have been brand new in 2004.

The Landlord said:

> But you can see picture #16 that is was in great condition – smooth and shiny. The $400.00 was the quote I was given to replace the arborite top. We're not going to rebuild the counter - just do the repair. I haven't had anyone come in and do that yet. I called different companies and told them the size and showed them a picture and that's what they quoted me back. I had too many expenses at this point.

#13 ARTISAN RUG → $2,000.00

The Landlord said that she bought the rug at a specialty artisan rug store in Vancouver in 2014. She said:

> I'm not going to be able to replace that one. I haven't bought a new one. Aside from the rug. The carpets and flooring throughout the home. I have to tear them out throughout the home. I can deal without a rug, but it was a significant expense that I paid. You can find lots of rugs out there. That one is a pretty big rug. The home is 2400 square feet. There are rugs out there. That one was a really thick, hand stitched. Some of these things I didn't know how you . . . they damaged them, they destroyed them. I had gardening tools and supplies and they took them. How do you prove that? It might not seem like much, but a snow shovel - all these things they add up.

The Landlord did not direct me to a photograph, and I could not find one showing the damage to the artisan rug. The Landlord did not submit a receipt for the artisan rug's original purchase for proof of the value.

Analysis

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

Before the Parties testified, I advised them on how I would analyze the evidence presented to me. I told them that a party who applies for compensation against another

party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In these cases, you must each as applicant, 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** did what was reasonable to minimize the damage or loss.

(“Test”)

TENANTS’ CLAIM → $5,700.00

Based on the evidence before me in this proceeding, I find that the Tenants provided their forwarding address to the Landlord in writing on May 6, 2020, and that the tenancy ended on May 15, 2020. Section 38(1) of the Act states the following about the connection between and relevance of these dates:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $2,850.00 security and pet damage deposits within fifteen days after May 15, 2020, namely by May 30, 2020, or to apply for dispute resolution to claim against these deposits, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount or applied to the RTB to claim against the deposits before May 30, 2020. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenants double the amount of the security and pet damage deposits. There is no interest payable on the security deposit.

I, therefore, award the Tenants with **$5,700.00** from the Landlord.

LANDLORD'S CLAIMS → $16,580.18

#1 MOVE-OUT CLEANING → $1,100.00

Section 32 of the Act states that tenants "…must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 ("PG #1") helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

The Landlord gave evidence that more people and a variety of animals were residing in the rental unit. There were photographs of dirty walls and a dirty front door; however,

the Landlord did not provide any other photographs of the rental unit showing that the kitchen or bathrooms were left dirty, for instance, or general photographs of what the rental unit looked like overall, similar to the before tenancy photographs the Landlord submitted. There are photographs of the carpets after the tenancy ended, but I address that cleaning below.

I find from the evidence before me, overall, that it is more likely than not that the Tenants left the rental unit much dirtier than they found it. I find that it probably took the Landlord a long time to clean it. However, the Landlord had not provided any hours of work they spent cleaning the rental unit, since they indicated that they did the work, rather than having hired professional cleaners.

I note that the cleaners offered a range of cost estimates for the cleaning, from $1,100.00 for the first estimate, to a negotiated amount being possible with the second estimate. However, the Landlord chose to bill at the highest rate of their estimates, which I find they have not substantiated with evidence of the lack of cleanliness of the rental unit at the end of the tenancy.

The evidence before me is that the Tenants did not clean the rental unit walls or door, and that in all likelihood, they did not clean or have the rental unit cleaned at the end of the tenancy. I do not have evidence of how long it took the Landlord to do this work, but in this set of circumstances, I award the Landlord a nominal amount of **$600.00** for cleaning, pursuant to Policy Guideline #16 (“PG #16”).

#2 PEST CONTROL → $136.50

Based on the evidence before me on this matter, I find on a balance of probabilities that the Tenants did not fulfill their obligation in this regard, which is set out in the Pet Agreement that the Tenants signed. I find that the Tenants are, therefore, liable to reimburse the Landlord for completing some of the Tenants’ responsibilities under the tenancy agreement. As such, and pursuant to section 67 of the Act, I award the Landlord with **$136.50** from the Tenants.

#3 STEAM CLEANING CARPETS → $435.46

Based on the evidence before me overall, I find that the Tenants were responsible to steam-clean the carpets in the rental unit and that they did not do this required action. I find that the Landlord had the carpets professionally steam-cleaned twice, but was charged only for one cleaning session. I find that the Tenants must reimburse the

Landlord for the cost of this service. I, therefore, award the Landlord with **$435.46** from the Tenants, pursuant to sections 37 and 67 of the Act.

#4 SEPTIC SERVICE → $1,350.72

I find from the evidence before me that the Tenants were responsible for having the septic tank serviced at the end of the tenancy, but that they did not perform this service. Accordingly, I find the Tenants are responsible for the fees charged to the Landlord for the septic tank servicing, pursuant to the invoice from the septic tank specialist.

Adding up the charges quoted on the septic technician's email, I find that a basic septic billing would cost at least:

Fuel Surcharge	$5.00 flat rate per vehicle
Truck & labour time to pump out septic tank	$198.00 flat rate (1st hour)
Truck & labour time to pump out septic tank	$108.00 additional hours (eg digging for lids)
Disposal fees for waste pumped from tank	$255.00 ($0.34/gallon [x 750 gallons*]
Septic Inspection Report of technicians and inspector time (2 onsite and 2 off)	$799.00 flat rate **this is based on up to 4 hours
Any additional hours will be billed out accordingly.	
Follow up inspections from recommendations	$ 105.00 per hour
Sub-Total	$1,470.00
	x 1.05 (GST)
TOTAL	$1,543.50

* the Landlord had 600 gallons removed for two people, therefore I have increased this amount by 25% to represent the increase in the number of people using the septic. Given that my estimate – based on the quote - is higher than the amount charged by the Landlord for this service, I find that the Landlord was reasonable in her billing for this service, which the Tenants were supposed to have performed. I, therefore, award the Landlord with recovery of **$1,350.72** for this service, pursuant to sections 32, 37, and 67 of the Act, and Schedule "D" of the tenancy agreement.

#5 CRD Bill → $79.77

Based on the testimony and documentary evidence before me in this matter, I find that the Tenants were responsible for paying for water consumption during the tenancy. The Landlord has claimed the amount set out on the municipality bill, and I award her with

this amount of **$79.77** for this claim, pursuant to section 67 of the Act.

#6 GLASS REPLACEMENT – FRONT WINDOW → $275.05

The undisputed evidence before me is that the Landlord's front window beside the main entrance contained new glass at the start of the tenancy, but that this glass was scratched at the end of the tenancy. As a result, I award the Landlord with recovery of the **$275.05** cost to replace this glass again, pursuant to sections 32 and 67 of the Act.

#7 STOVETOP REPLACEMENT → $649.97

The Landlord spoke of not being able to get the stains or burn marks off of her glass stovetop, but she did not say that it still did not work as an element to heat food. While the Landlord was reasonable in finding a less expensive alternative to replacing the stovetop, I question whether she had to replace it at all.

As set out in PG #16: "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."

PG #1 is intended to clarify the responsibilities of the landlord and the tenant regarding maintenance, cleaning and repairs of residential property. Under the heading "Major Appliances", PG #1 states:

> 3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

I find that the Landlord did not prove on a balance of probabilities that the Tenants did any more damage than causing the stovetop to be marked during the tenancy. I find that this is proof of damage to the appearance of the stovetop, and that the Landlord suffered damage, as a result.

However, the Landlord did not submit a receipt confirming the amount she paid for a new stove, and she did not establish that the stovetop no longer works. While I find that the Landlord may not have proven the amount she claimed, I find it reasonable in the circumstances to award her with a nominal amount of half of the claimed amount. I, therefore, award the Landlord with **$325.00** for this claim.

#8 OIL STAIN REMOVAL → $350.00

I note that there is nothing in the CIR about there being damage to the driveway or garage at the start of the tenancy, and as a result, one could infer that these surfaces were not damaged prior to this tenancy. Given the undisputed evidence before me that the damage arose during the tenancy, I find it is more likely than not that the Tenants were responsible for this damage.

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

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

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

In PG #40, the useful life of concrete or asphalt is 15 years. The evidence before me is that the residential property was new in 2004, and there is no evidence before me that the driveway or garage floor were modified since then. As such, I find that these surfaces were approximately 15 years old at the end of the tenancy and had no years of useful life left. The CIR indicates that these surfaces were in good condition at the start of the tenancy, but the Landlord's evidence was that they were marred with oil stains at the end of the tenancy. However, given PG #40's indication that the surfaces were fully depreciated at the start of the tenancy, I find that the Tenants are not responsible for contributing to the improvement of their condition at the end of the tenancy. Accordingly,

I dismiss this claim without leave to reapply.

#9 PAINT AND WALL REPAIRS → $765.33

This is not a matter of considering how long it had been since the house was painted, because I find that the Tenants made unnecessary marks and gouges in the floors that was more than mere wear and tear. I find that the amount claimed by the Landlord in this matter is reasonable given the size of the house. I, therefore, award the Landlord with recovery of **$765.33** from the Tenants.

#10 LABOUR FOR PAINT/REPAIRS → $_____

I find that the Landlord and her family did the work cleaning and painting the walls themselves; however, they did not claim a specific amount to which the Tenants could respond. However, the Tenants did not attend the portion of the hearing covering the Landlord's claims in order to dispute the Landlord's testimony.

When I consider all the evidence before me on this point, I find that the Landlord is due at least a nominal amount to cover the three weekends of travel, work, and having to stay in a hotel, because the residential property smelled so bad. In this set of circumstances, and pursuant to section 67 of the Act and Policy Guideline #16, I award the Landlord a nominal amount of **$500.00** for her efforts and expenses in repairing and painting walls.

#11 FLOORING AND CARPET REPLACEMENT → $11,037.37

I find from the Landlord's photographic evidence and her testimony that the Tenants damaged the flooring and carpeting in the residential property, due to urine and possibly others spills (aquariums) from their pets.

As noted above, the residential property was new in 2004, which I find is how old the flooring is in the rental unit, as there is no evidence before me that it was installed or renovated at a later date. As such, the flooring was 16 years old at the end of the tenancy.

In PG #40, the useful life of hardwood, parquet is 20 years. The evidence before me is that the flooring was new in 2004, so it was approximately 16 years old at the end of the tenancy and had four years or 20% of its useful life left. The CIR indicates that the flooring was in good condition at the start 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 fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

Accordingly, I find that the Landlord was eligible for recovery of 20% of the cost of the replacement flooring, which reflects the remaining useful life it has. Accordingly, I award the Landlord with **$2,207.47** for this claim.

#12 ISLAND COUNTERTOP REPAIR → $400.00

I find that picture #16 shows the counter to be undamaged prior to this tenancy. Further, there is nothing about it in the CIR.

In PG #40, the useful life of counters is 25 years. The evidence before me is that the kitchen counter was new in 2004, so it was approximately 16 years old at the end of the tenancy and had four years or 36% of its useful life left. The CIR indicates that the counter was in good condition at the start of the tenancy.

Based on the Landlord's undisputed evidence, I find that the Landlord has provided sufficient evidence to bear the burden of proof in this matter. Given the depreciation of the counter at the end of the tenancy, I find that the Landlord is eligible for 36% of this claim, as that is the remaining useful life left in this item. I, therefore, award the Landlord with **$144.00** for this claim.

#13 ARTISAN RUG → $2,000.00

When I consider the evidence before me overall, I find that the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. There were no photographs submitted of this carpet at the end of the tenancy, and the Landlord did not sufficiently explain what the Tenants did to this item. I, therefore, dismiss this claim without leave to reapply.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of $2,850.00 in partial satisfaction of the Landlord's monetary claim.

The Landlord has been awarded the following amounts for her specific claims.

	For	Amount Awarded
1	Move out cleaning service	$600.00
2	Pest control	$136.50
3	Carpet steam cleaning	$435.46
4	Septic service	$1,350.72
5	CRD bill	$79.77
6	Glass replacement – front window	$275.05
7	Stove top replacement	$325.00
8	Oil stain removal	$0.00
9	Paint and wall repairs	$765.33
10	Labour for paint/repairs	$500.00
11	Flooring & carpet replacement	$2,207.47
12	Kitchen island countertop repair	$144.00
13	Artisan rug - $2,000 purchase price	$0.00
	Total monetary award	**$6,819.30**

Given the Parties' success in their respective applications, I decline to award recovery of the $100.00 Application filing fee to either.

I authorize the Landlord to retain the Tenants' $5,700.00 deposits in partial satisfaction of her award. I, therefore, grant the Landlord a Monetary Order of **$1,119.30** for the remainder of the award owing to the Landlord by the Tenants, pursuant to section 67.

Conclusion

The Tenants are successful in their Application for double the Deposits from the Landlord in the amount of $5,700.00, as the Landlord failed to comply with her obligations pursuant to section 38(1) of the Act.

The Landlord's claim for compensation from the Tenants is successful in the amount of $6,819.30, based on the Tenants' failure to repair and clean the residential property, pursuant to their obligations under sections 32 and 37 of the Act. The Landlord's additional claims for compensation for damage or other loss against the Tenants are unsuccessful, for the reasons set out above.

Given their respective success in their applications, I decline to award either Party with recovery of the security or pet damage deposits.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **$1,119.30**.

This Order must be served on the Tenants by the Landlord 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: March 30, 2021

Residential Tenancy Branch