Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- Compensation for monetary loss of other money owed;
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, and two witnesses/agents for the Landlord R.P. and L.B. (the Witnesses), the Tenants, and a former occupant of the rental unit K.G. As the Tenants acknowledged receipt of the Notice of Dispute Resolution Proceeding from the Landlord, including a copy of the Application and the Notice of Hearing, and raised no concerns regarding the method of service or service timelines, the hearing proceeded as scheduled. As the parties acknowledged receipt of each others documentary evidence, copies of which were submitted for my review, and neither party raised concerns about service methods or timelines or argued that any of the documentary evidence should be excluded from consideration, I therefore accepted the documentary evidence before me from both parties for consideration.

All testimony provided was affirmed. The parties and their witnesses were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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

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

Preliminary Matters

Preliminary Matter #1

Shortly after the commencement of the hearing, the Agent L.B. disconnected without notice. We waited a brief period for L.B. to reconnect, which they did, and the hearing proceeded without further incident.

Preliminary Matter #2

Although I advised the parties of the option of settlement during the hearing, not all of the parties we in favour of settlement. As a result, I proceeded with the hearing and rendered a decision in relation to these matters under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss of other money owed?

Is the Landlord authorized to withhold all or some of the security deposit, and are the Tenants entitled to the return of any portion or double its amount pursuant to section 38 of the Act?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The two-year fixed term tenancy agreement in the documentary evidence before me, signed on February 16, 2018, states that the fixed term of the tenancy agreement commenced on March 1, 2018, and ended on March 1, 2020, after which time the tenancy was to continue on a month to month basis. Although the tenancy agreement was only signed by the Landlord and the Tenant N.G., the parties agreed that T.V. was also a Tenant under the tenancy agreement. The tenancy agreement states that rent in the amount of $2,250.00 is due on the first day of each month and that a $1,1250.00

security deposit was required. At the hearing the parties agreed that the security deposit was paid, the full amount of which is still held in trust by the Landlord.

The parties agreed that the tenancy ended on October 31, 2020, as the result of an Order of Possession from the Branch, issued by an arbitrator in relation to the Tenants' dispute of Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice). Although the Landlord stated that a move-in condition inspection was completed with the Tenants at the start of the tenancy, the Tenants disagreed. In any event, the parties agreed that no move-in condition inspection report was completed or given to the Tenants. The parties also agreed that no move-out condition inspection was properly completed.

The Tenant N.G. and the Occupant stated that the Landlord did not offer them two opportunities for a move-out condition inspection or use the required form for the second opportunity, as required, and instead simply showed up at the rental unit, unscheduled, just before 1:00 P.M. on October 31, 2020, demanding that they, and the persons they had at the property to help them move, leave. The Tenant N.G. stated that the Landlord refused their requests for a move-out condition inspection and instead called the police at 2:03 P.M. to have them removed from the property. The Tenants pointed to a several recordings and several witness letters in support of their testimony.

The Landlord acknowledged that they did not pre-schedule the move-out condition inspection with the Tenants or use the required form to provide a final opportunity for a condition inspection, stating that they did not believe notice of the inspection was required as they had an Order of Possession for the rental unit from the Branch. They also stated that they had planned to show up at 1:00 P.M. to complete the inspection, as it was their understanding that this is how it was supposed to happen. The Landlord agreed that they attended the rental unit unscheduled at approximately 12:55 P.M. on October 31, 2020, but denied the Tenants' allegations that they had refused to complete a move-out condition inspection with them. Instead the Landlord stated that they started inspecting the rental unit with the Tenant N.G. but it was not going well, and they were required to call the police. As a result, the Landlord stated that the inspection was stopped.

The Tenants stated that they provided their forwarding address to the Landlord via text message on October 31, 2020, and provided me with a date stamped copy of this text message. The Landlord did not refute this testimony or evidence.

The Landlord stated that the Tenants did not leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy, and sought $1,797.03 in compensation for cleaning and repair costs as follows. The Landlord stated that the Tenants removed the locks from the rental unit without their consent, and installed their own, which they took with them at the end of the tenancy. The Landlord stated that although the Tenants left the original locks behind when they left, they were missing parts and therefore could not be used. The Landlord sought $150.00 for replacement and installation of the lock, $98.56 for the lock itself, and $51.44 for time and labour costs to purchase and install it themselves. The Landlord submitted a receipt for the purchase of the lock and an accounting of their labour costs.

The Tenants denied that they are responsible for the above noted costs, stating that they left all of the parts for the lock behind, and therefore it could have been re-installed. The Tenants stated that the lock was also old, rusty, and did not function properly, which is why they replaced it themselves. Finally, the Tenants stated that the Landlord had the lock replaced with a higher cost lock of a significantly higher quality than what was there at the start of the tenancy and they should not be responsible for compensating the Landlord for this improvement.

Although the Landlord acknowledged replacing the deadbolt style lock with an electronic keypad style lock, they stated that it was actually cheaper than replacing the lock with a deadbolt of similar quality to what was originally installed, as the keypad was on sale, which is why they chose this option.

The Landlord stated that the carpets were dirty and required cleaning at the end of the tenancy, and sought $260.00 for carpet cleaning costs; $99.29 for the rental costs for the carpet cleaning machine, $16.50 for cleaning fluid, and $160.00 in labour costs for the time it took them to clean the carpets (8+ hours), plus the time it took to rent, clean and return the carpet cleaning machine.

The Tenants stated that the carpets were already 10-15 years old and were full of mould and stains due to moisture issues in the rental unit and the fact that the previous occupants had run a pet grooming business out of the property. Although the Tenants acknowledge that they did not shampoo the carpets at the end of the tenancy, they stated that they had shampooed it approximately a year into the tenancy, and argued that the carpets therefore did not require further carpet cleaning at the end of the tenancy. Finally, the Tenants stated that the Landlord walked through the rental unit with dirty boots when they attended the property on October 31, 2020, and that the amounts sought by the Landlord for carpet cleaning are too high. As a result of the

above, the Tenants argued that they should not be responsible for any of the carpet cleaning costs sought by the Landlord.

The Landlord stated that the rental unit had not been cleaned, and sough $450.00 in general interior cleaning costs. Although the Landlord stated that the cleaning took approximately 2-3 hours, the Agent stated that it took significantly more time than this to clean the rental unit, perhaps 4 days at 8 hours per day. The Landlord stated that the rental unit was not cleaned by the previous occupants and that the Tenants therefore completed a move-out clean for the previous occupants at the start of their own tenancy, at a cost of $450.00. The Landlord stated that as the same services were required at the end of the tenancy, the same amount seemed fair, and submitted a copy of the original cleaning invoice from the Tenant N.G.

The Tenants denied that any cleaning was required, stating that the rental unit was left reasonably clean at the end of the tenancy, except for mould, which they did not cause. Further to this, the Tenants stated that the Landlord had dirtied the rental unit after the end of the tenancy, and they should therefore not be responsible for cleaning up dirt brought into the rental unit after the end of the tenancy, especially as the Landlord had refused to complete a move-out condition inspection with them at the end of the tenancy as required.

Although the parties agreed that there was mould in the rental unit at the end of the tenancy, they disputed the cause of the mould and therefore whose responsibility it was to clean and remediate it. The Landlord stated that the mould was caused by the Tenants' failure to properly ventilate the rental unit and sought $240.00 in compensation for mould remediation: $40.00 for paint, and $200.00 for mould cleaning and labour for painting.

The Tenants denied being the cause of the mould and pointed to a report from a restoration company, completed on June 11, 2020, as evidence that the likely cause of the mould is condensation from water ingress due to a lack of proper siding on one portion of the home and a cracked chimney. The Tenants stated that the mould was a health hazard present in the rental unit due to no fault of their own, and that it was therefore the Landlord's job to remediate the mould, not theirs.

The Agent responded stating that the Landlord has their own report from the same restoration company, completed on August 31, 2020, which was submitted as evidence on a previous dispute between the parties, and shows that the Tenants are the cause of the mould. Although the Landlord's mould report was not before me at the hearing, the

parties acknowledged that it was part of a previous dispute and agreed that it could be reviewed by me and considered as part of this hearing. The Landlord provided me with the file number where the document could be located, which I have recorded on the cover page of this decision.

Although the parties agreed that the Tenants had taken a hedge trimmer at the end of the tenancy, that had been purchased by the Tenants for the Landlord, the Landlord stated that it was their property as they had reimbursed the Tenants for its purchase. The Tenants did not dispute this testimony. The Landlord submitted a receipt showing the original purchase price for the hedge trimmer and sought $47.03 for its replacement. Although the Tenants agreed that they had been reimbursed for the initial purchase, they argued that the Landlord had not compensated them for the time it took them to pick it up, and that its value had depreciated since it was initially purchased. As a result, the Tenants stated that the Landlord should only be entitled to $27.03, a little over half of its value at the time of purchase.

The Landlord stated that the Tenants had left behind a significant amount of garbage and abandoned property, and sought $550.00 for garbage and recycling removal and disposal costs, including 2 tipping fees of $37.00 and 40.00 and $473.00 in labour costs to load and dispose of the items at the dump and recycling depot. The Landlord categorized the items left behind as broken pavers and a broken garden statue, wood and pallets, kids bicycles, general refuse, tires, metal, and dog feces, as well as three large exterior garbage can style containers filled with garbage. The Landlord sated that it took them and their child at least 5 days to gather and dispose of all the items and that they took items to the dump when the tipping fees were cheapest to reduce costs. The Landlord submitted the tipping fee receipts a video of the exterior of the property and numerous photographs in support of their testimony.

The Tenants stated that much, if not all, of the above disposal costs could have been avoided if the Landlord had simply allowed them and the people they had present with them on October 31, 2020, to finish removing their belongings from the property instead of calling the police. The Tenants stated that had the Landlord allowed them only a few more hours, all of their possessions could have been removed. The Tenants also disputed the nature and volume of the items left behind, stating that they were not hoarders, as seemingly implied by the Landlord. Finally, the Tenant N.G. stated that many of the items the Landlord has claimed were disposed of, are in fact still in the Landlord’s possession on the property, such as the pavers and pallets. The Tenant N.G. stated that they are aware that these items are still there as they recently attended the property to drop off a USB and get some of their possessions from the Landlord, and

that while there, they entered the yard of the property without the Landlord's consent, as the Landlord was not present, and saw the items still on the property. Although the Tenant stated that they took photographs of these items, they acknowledged that they did not submit the photographs for my review.

The Landlord and Agent wanted recorded that the Tenant N.G. had admitted to trespassing and stealing. I advised them that I had not heard the Tenant admit to stealing, and that I had only heard them say that they had attended the property with the intention of dropping off a USB and getting some possession from the Landlord, that the Landlord had not been home, and that they had entered the yard without the Landlord's knowledge or consent and taken photographs. I advised the Landlord and the Agent that I had not heard the Tenant say that they took anything from the property in the Landlord's absence.

Finally, the Landlord sought $100.00 for repairs to a mirrored door, which they stated took them two hours to repair, as they are a glazier by trade. The Tenants stated that the door was broken at the start of the tenancy, and therefore they should not be responsible for the cost of its repair. The Tenants stated that the Landlord had previously repaired it with clear silicone, and had promised to replace it during the tenancy but never did. The Tenants pointed to a witness statement in support of this testimony.

The Landlord also sought recovery of the $100.00 filing fee and authorization to withhold any amounts awarded from the security deposit. The Tenants sought the return of their entire security deposit, or double its amount, if applicable.

Analysis

Based on the documentary evidence before me and the affirmed testimony of the parties at the hearing, I find the following:

- That the tenancy began on March 1, 2018, and ended on October 31, 2020;
- That the Tenants provided the Landlord with their forwarding address in writing on October 31, 2020;
- That a $1,125.00 security deposit was paid by the Tenants in compliance with section 19(1) of the Act, which is still held in trust by the Landlord; and
- That no move-in condition inspection report was completed or provided to the Tenants by the Landlord as required by sections 23(4) and 23(5) of the Act.

Security Deposit

Section 38(1) of the Act states that except as provided in subsection (3) or (4) (a), of the Act, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Branch records show that the Landlord filed their Application seeking retention of the Tenants' security deposit on November 9, 2020, and I have already found above that the tenancy ended on October 31, 2020, the same day that the Tenants provided their forwarding address to the Landlord in writing. I therefore find that the Landlord filed their Application within the timeline set out in section 38(1) of the Act.

However, as I am satisfied that the Landlord did not comply with sections 23(4) and 23(5) of the Act with regards to completion of a move-in condition inspection report and provision of that report to the Tenants at the start of the tenancy, I find that the Landlord therefore extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24(2)(c) of the Act.

Although section 36(1) of the Act states that tenants who do not participate in a move-out condition inspection after having been given proper notice of the inspection by the Landlord, extinguish their right to the return of their security deposit, Residential Tenancy Policy Guideline (Policy Guideline) #17 states that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As a result, I find that it is not necessary to determine if the Tenants subsequently extinguished their right to the return of the deposit under section 36(1) of the Act by failing to attend or complete a move-out condition inspection with the Landlord at the end of the tenancy, as I have already determined that the Landlord extinguished their right in relation to the security deposit first.

Although I am satisfied that the Landlord extinguished their rights in relation to the security deposit pursuant to section 24(2)(c) of the Act, I have already found above that the Landlord filed their Application seeking retention of the security deposit within the legislative timeline set out under section 38(1) of the Act. As extinguishment under section 24(2)(c) of the Act applies only to claims for damage to the rental unit, and the Landlord sought compensation and retention of the security for claims other than damage in their Application, I therefore find that the Landlord complied with section

38(1) of the Act and was entitled to retain the security deposit pending the outcome of the Application, despite having extinguished their right to claim against the security deposit for damage. I also find that the Tenants are therefore not entitled to the return of double the amount of their security deposit under section 38(6) of the Act.

Monetary Claims

Having made these findings, I will now turn to the Landlord's individual claims for compensation. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #16 states that 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 and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. The Policy Guideline also states that 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.

In addition to the above, rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Mirrored Door

Although the Landlord sought $100.00 for repairs to a mirrored door that they stated was broken during the tenancy, the Tenants and a witness stated that it was not damaged by the Tenants during the tenancy and was in fact already damaged at the start of the tenancy. As the Landlord did not complete a move-in condition inspection report at the start of the tenancy noting the condition of the mirrored door, and the parties could not agree whether damage to this door pre-existed the start of the tenancy, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the mirrored door was not already damaged at the start of the tenancy as alleged by the Tenants. As a result, I dismiss the Landlord's claim for $100.00 in repair costs for the mirrored door, without leave to reapply.

Carpet Cleaning

The Landlord sought $260.00 in carpet cleaning costs and submitted receipts for the cost of renting the machine, the purchase of carpet cleaning fluid, and an accounting of labour costs, in support of this claim. Policy Guideline #1 states that tenants are responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness and that generally after a tenancy of one year or more, tenants will be held responsible for steam cleaning or shampooing the carpets at the end of the tenancy. At the hearing the Tenants acknowledged that they did not steam clean or shampoo the carpets at the end of the tenancy, but argued that they should not have been required to do so as they had this done approximately one year into the tenancy. I do not agree with the Tenants in this regard. I do not find that shampooing the carpets approximately 1.5 years prior to the end of the tenancy, waives the Tenants' responsibility to have the carpets cleaned at the end of the tenancy, as set out in Policy Guideline #1, as this carpet cleaning was done a significant period of time before the end of the tenancy. As a result, I find that the Tenants were required pursuant to section 37(2)(a) of the Act and Policy Guideline #1, to have the carpets steam cleaned or shampooed at the end of the tenancy.

Although the Tenants also argued that the costs sought by the Landlord for carpet shampooing were high, they did not submit any documentary evidence in support of this claim, such as quotes to complete this same work at a significantly reduced cost. As a result, I find this argument speculative in nature. Further to this, I find that if the Tenants had wanted control over the cost of the carpet cleaning, they could have had the carpets cleaned themselves, either by hiring a company of their choosing or doing the work themselves, prior to the end of the tenancy, which they did not do.

At the hearing the Landlord provided affirmed testimony that it took them more than 8 hours over the course of two days to shampoo the carpets of the rental unit, including time required to pick-up, clean, and return the carpet cleaning machine. The Landlord also submitted receipts for the rental of the machine and the purchase of carpet cleaning solution. Based on the above, and in the absence of any compelling evidence to the contrary from the Tenants, I find that I am satisfied on a balance of probabilities that the Landlord incurred the above noted carpet cleaning costs as a result of the Tenants' breach of section 37(2) of the Act and Policy Guideline #1, and that the Landlord mitigated their loss by renting a carpet cleaning machine and cleaning the carpets themselves. I also do not find that the costs sought by the Landlord for carpet cleaning represent more than a reasonable cost for the services rendered. As a result, I grant the Landlord's claim for $260.00 in carpet cleaning costs.

Hedge Trimmer

As the Tenants acknowledged taking a hedge trimmer at the end of the tenancy that rightfully belonged to the Landlord, and the Landlord submitted a receipt for the purchase of the hedge trimmer in 2018, I therefore grant the Landlord the $47.03 sought for its replacement. Although the Tenants argued that the value of the hedge trimmer had significantly depreciated in the two years since it was purchased, and that the Landlord had never compensated them for the time it took them to pick it up on the Landlord's behalf, I do not find these arguments compelling. The Tenants did not submit any documentary evidence to support their argument that the hedge trimmer had lost significant value in the last two years, or evidence that a comparable one could be purchased at a lower cost, and I find their claim that the Landlord did not pay them two years ago to pick it up, entirely irrelevant to the matter of whether they took it from the property without authorization at the end of the tenancy.

Lock Replacement

Although the parties agreed that the Tenants had removed a lock to the door of the rental unit without the Landlords authorization during the tenancy, and left the original lock behind at the end, there was also agreement that the Tenants had not re-installed the original door lock at the end of the tenancy, and instead simply left it behind in the rental unit. At the hearing the Landlord stated that the lock left behind did not contain all the required parts and therefore could not be reinstalled, necessitating the replacement of the lock at a cost of $150.00, including the labour required for reinstallation. The Landlord submitted a receipt for the purchase of the lock and an accounting of the two hours of labour it took to install it.

Although the Tenants argued that they should not be responsible for these costs as the lock left behind was complete and could have been reinstalled by the Landlord, I do not agree. Section 31(3) of the Act states that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to the change, or the director has ordered the change. There is no evidence before me that the Tenants ever received written approval from the Landlord, or an order from the Branch, allowing them to change the lock. As a result, I find that the Tenants first breached section 31(3) of the Act when they removed the lock without authorization to do so. I find that the Tenants further breached the Act when they did not re-instal the lock at the end of the tenancy, therefore breaching section 37(2) of the Act as well. Finally, although the Tenants argued that the lock left behind was complete and could have been re-installed, the Landlord disagreed. As the lock was not re-installed by the Tenants, I do not find their argument in this regard compelling, as I find it speculative in nature, given that the Tenants did not in fact re-installed it to verify that it was either complete or functional.

Although the Tenants stated that the lock functioned poorly during the tenancy in any event, and therefore required replacement by the Landlord anyways, I am not satisfied that is the case as there is no documentary or other evidence in support of this testimony and the Landlord denied this allegation.

Finally, the Tenants also argued that they should not be responsible for the lock replacement costs as the Landlord purchased a replacement lock of significantly better quality than the one originally there, and at an increased cost. The Landlord denied this allegation, stating that the lock was on sale, making it cheaper than other alternatives available, and that although the replacement lock was a different style than the one replaced, it would have been more expensive to replace the lock with one of the same style. As the Tenants did not submit any documentary evidence in support their claim that the Landlord had purchased a more expensive lock than what was originally installed, I find that I am satisfied on a balance of probabilities by the Landlords affirmed testimony and receipts for the purchase of the lock, that it was cheaper to replace the lock with one of a different style. I also find that if the Tenants had wanted to avoid or minimize lock replacement costs, they should not have removed the lock without the Landlords approval and could either have had the original lock reinstalled, if it worked as they alleged, or replaced the lock with a lock of their own choosing, which they did not do.

Based on the above, I therefore grant the Landlords claim for $150.00 in lock replacement costs, as I find that the Landlord suffered this loss as a result of the Tenants' breaches of sections 31(3) and 37(2) of the Act, and that the Landlord mitigated their loss by purchasing a lock on sale and installing it themselves. I also do not find that the costs sought by the Landlord for lock replacement and reinstallation represent more than a reasonable cost for the services rendered.

Interior Cleaning

The Landlord and Agent stated that the rental unit was not left reasonably clean at the end of the tenancy, and sought $450.00 in cleaning costs, as they stated that it took a significant amount of time to clean the rental unit. However, the exact amount of time given for cleaning varied greatly between the Landlord and the Agent, with the Landlord stating that it was approximately 2-3 days and the Agent stating that is was closer to 4 days at 8 hours per day.

Although the Tenants disagreed, stating that the rental unit was left reasonably clean at the end of the tenancy, the Landlord submitted a video recoding date stamped October 31, 2020 at 1:59 P.M. which clearly shows that the rental unit was not properly cleaned. Although the Tenants alleged that the Landlords dirtied the rental unit after the end of the tenancy by, for example, walking through the rental unit with dirty shoes, the video submitted by the Landlord clearly shows that the rental unit was not adequately cleaned by the Tenants, as it shows things such as a cobwebs on the ceiling, food stains on the kitchen countertops, remnants of food and debris in the fridge, on the floors and throughout the cabinetry in the kitchen, a dirty fridge exterior and dirty kitchen cabinet doors, dirty baseboards and flooring, stained carpet, and flooring with remnants of debris, as well as dirty bathrooms. I do not find that these are things that could reasonably be attributed to the Landlord after the end of the tenancy and were, more likely than not, caused by the Tenants' failure to properly and thoroughly clean the rental unit at the end of the tenancy as required. Although it is clear to me that the Tenants engaged in some cleaning, I find that the level of cleaning completed by them was simply insufficient and does not meet the test for reasonable cleanliness as set out in Policy Guideline #1.

Based on the above, I am satisfied that the Tenants breached section 37(2) of the Act when they failed to leave the rental unit reasonably clean at the end of the tenancy as required. I am also satisfied that the Landlord suffered a loss as a result when they and the Agent were required to clean the rental unit after the end of the tenancy. However, the Landlord and Agent gave conflicting testimony at the hearing regarding the amount

of time required to clean the rental unit and the amount of time given by the Agent for seems exceptionally high to me, given the state of the rental unit shown in the video. Further to this, the amount claimed by the Landlord for cleaning costs is based on the amount the Landlord paid the Tenant N.G. to clean the rental unit at the start of the tenancy, rather than a genuine accounting of the time and cost to clean it at the end, which I find to be unreasonable. As a result, I therefore grant the Landlord only $337.50 in cleaning costs, which represents 75% of the amount originally sought by the Landlord.

Garbage and Recycling Removal and Disposal

The Landlord sought $550.00 for removal and disposal of items left behind after the end of the tenancy including but not limited to garbage, pallets, wood, broken pavers, a broken statue, tires, and bicycles. The Landlord submitted receipts for two dump tipping fees in the amount if $37.00 and $40.00 and sought the remaining $473.00 for labour costs to gather, load, and dispose of the above noted items.

Although the Tenants argued at the hearing that they could have removed these items themselves if the Landlord had permitted them more time, section 37(1) of the Act states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends. As there is no evidence before me that the parties agreed to another date and time, I therefore find that the tenancy ended at 1:00 P.M. on October 31, 2020, and that the Tenants were therefore required to vacate the property by that date and time. I also find that there was no legal obligation on the part of the Landlord to permit the Tenants additional time to remove their possessions after 1:00 P.M. on October 31, 2020, despite the Tenants' despite that they do so.

Based on the Landlords affirmed testimony, the photographs and videos of the exterior of the property after the end of the tenancy, and the receipts for tipping fees, I am satisfied that the Tenants breached section 37(2) of the Act by failing to leave the exterior portions of the rental property reasonably clean at the end of the tenancy and that the Landlord incurred a loss of not less than $550.00 to remove the abandoned personal possessions and refuse left behind at the property by the Tenants. Although the Tenant N.G. stated that the Landlord has not in fact disposed of many of the items listed above, and that they have photographic evidence that these items are still on the property, they did not submit these alleged photographs for my review and consideration. As a result, I prefer the Landlords affirmed testimony and supporting documentary evidence in this regard, including photographs, videos, and dump receipts.

I am also satisfied by the affirmed testimony of the Landlord that they mitigated their loss by attending the dump at times when tipping fees were lowest, and by completing this work themselves, with the help of a family member, instead of hiring a company to do it. As a result, I award the Landlord the $550.00 sought for garbage and recycling removal and disposal costs.

Mould

The Landlord stated that the Tenants caused mould in the rental unit by failing to properly ventilate it, resulting in $240.00 in mould remediation and painting costs. Although the Tenants agreed that there was mould in the rental unit, they denied responsibility for the mould remediation costs, stating that it was the result of water ingress through a failing building envelope and significant cracking in a chimney. Both parties pointed to reports from the same restoration company in support of their positions.

Although both reports indicate that there is mould and moisture in the rental unit, the Landlords report, completed on August 31, 2020, contains very little information in comparison to the Tenants' report, completed on June 11, 2020. With regards to cause of the mould, the Landlords report states only that it is "Believed to be high humidity within the unit" and that mould and water damage is suspected to be the result of poor air circulation in certain areas, such as the closets, and high levels of moisture in the air. No indication of the cause of the high moisture level within the rental unit was given. In contrast, the Tenants report from the same company states that there is suspected water ingress due to chimney cracks and a lack of siding on a portion of the home covered only in building wrap and tar paper.

Based on the above, I find that the Landlord has failed to satisfy me on a balance of probabilities that the mould in the rental unit was caused by the Tenants, as alleged by the Landlord, rather than water ingress as a result of chimney cracking and a lack of proper siding on a portion of the home, as shown in the Tenants' restoration report. As a result, I dismiss the Landlord's claim for $240.00 in mould removal and remediation costs, without leave to reapply.

Based on the above, I find that the Landlord is therefore entitled to compensation in the amount of $1,344.53 for the replacement of a door lock, interior and exterior cleaning and garbage removal, and replacement of a hedge trimmer. As the Landlord was at least partially successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the $1,125.00 security deposit against the above noted amounts, and I grant the Landlord a monetary order in the amount of $319.53.00 for the balance owed, pursuant to section 67 of the Act.

Conclusion

I authorize the Landlord to retain the $1,125.00 security deposit, in full, against amounts owed to the Landlord by the Tenants. Pursuant to section 67 of the Act, I also grant the Landlord a Monetary Order in the amount of $319.53. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither my authority to render this decision nor the validity of the decision are affected by the fact that it was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 30, 2021

Residential Tenancy Branch