Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LeHomes Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 7, 2021, and April 9, 2021. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "*Act*").

The Landlord was represented at the hearing by two agents, collectively referred to as the "Landlord". One of the Tenants attended the hearing along with his son. Both parties acknowledged receipt of the each other's application packages, and evidence. Neither party took issue with the service of the documents. I find both parties sufficiently served each other with their application, Notice of Hearing and evidence.

All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

On the Landlord's application, he listed that he is seeking compensation for 3 items (missing picture, wall repair, and cleaning). Nearly two months later, when the Landlord filed his evidence, an extra item was added to the worksheet he presented. However, I note no formal amendment was filed with our office.

In order to modify or increase a monetary amount sought, beyond what was initially applied for, an amendment must be filed. As this was not done, the Landlord is limited to what was included in his initial application. These items will be laid out further below.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on July 1, 2019, and ended on August 31, 2020.

Both parties also agree that monthly rent was set at $4,500.00 and that the Landlord still holds a security deposit in the amount of $2,250.00.

Tenant's Application

The Tenants are seeking the following items:

1) $4,500.00 – double security deposit 2 x $2,250.00 (less outstanding utility bills)

The Tenant stated that they are seeking double the security deposit because the Landlord did not perform a move-out inspection and the Landlord has filed an application against their deposit, which has no merit.

The Tenant explained that the Landlord failed to offer them any opportunities to inspect the rental unit together at the end of the tenancy, and they were also not given a Notice of Final Opportunity to Schedule a Condition Inspection form. The Tenant stated this is a breach of section 35(2) of the Act.

Further, the Tenant stated the Landlord also failed to comply with section 35(3) of the Act in that the Landlord did not fill in a condition inspection report, and only sent an email with a few details.

The Tenant also pointed out that the Landlord breached section 35(4) of the Act because the email sent (rather than a properly completed condition inspection report) was not “signed” by both parties. The Tenant stated that since they did not abandon the rental unit, the Landlord was not allowed to do the inspection themselves, in the Tenants’ absence. As a result of all of this, the Tenant asserts that the Landlord has extinguished their right to claim against the deposit, and had no right to claim against the deposit.

The Landlord stated that he attended the rental unit on the final day of the tenancy, August 31, 2020, because this is the time he believed they both agreed to for the final condition inspection. The Landlord pointed to text messages he had with the Tenant, whereby the parties had agreed to meet at 5pm on August 31, 2020. The Landlord stated that when he showed up, the Tenants stated they had to leave right away, and could not do the move-out inspection at that time. The Landlord stated the Tenants left him their forwarding address on a document that same day. Although the text messages speak to meeting up on August 31, 2020, at 5pm, no mention was made regarding it being a move-out condition inspection.

The Tenant stated that when they met the Landlord on August 31, 2020, the Landlord had already started inspecting the unit. The Tenant stated that they were under the impression that they were meeting the Landlord to return the keys, and pick up the last of their belongings. The Tenant stated that the Landlord never actually said that the move-out inspection was supposed to occur on August 31, 2020.

The Landlord stated that after the Tenants left that day, August 31, 2020, he recorded the damages, and sent the Tenants an email/text regarding what he saw. The Tenants responded stating they would like to see what the issues were, and the parties met at the property to discuss the noted damage on September 3, 2020. However, the Tenants stated that when they arrived on September 3, 2020, to see what issues were noted by the Landlord, the Landlord had already started cleaning and repairing the unit. The Landlord confirmed that they hired a cleaner and that the cleaners were present and started working prior the time the Tenants were scheduled to come back on September 3, 2020, to discuss the issues that the Landlord had noticed.

A copy of the condition inspection report was provided into evidence, and it shows that the parties met and agreed to the items laid out on the move-in portion of the document at the start of the tenancy. However, the move-out portion of that document was not properly completed, and was not signed by the parties. The Landlord took photos of the damage he saw, rather than completely and fully documenting the issues on the condition inspection report.

2) $650.00 – Gardening Services

The Tenant stated that the Landlord agreed to pay them $50.00 per month for gardening services, and to care for the lawn. The Tenant stated that they did some of the work, and hired out some of the work. The Tenants stated that the amounts they hired out cost them $320.00.

The Landlord agreed to pay the Tenant for the amount they paid out of pocket, $320.00, but no more.

The Tenants agreed to this, and agreed to settle this item for $320.00.

3) $145.00 – Driveway Gate Repair

The Tenant stated that there were several occasions where the automatic driveway gate opener would not work, which trapped their vehicles in the driveway. The Tenant stated that it first occurred on October 10, 2020, and they mentioned it to the Landlord. The Tenant stated they fixed the gate out of their own pockets, but lost the invoice, and have no way to verify the amount.

The Landlord stated they were not opposed to paying for this if the Tenant had a receipt, but without one, they refuse to pay.

4) $639.00 – Central Vacuum

The Tenant stated that when they moved into the home, they saw that there were "rough in" ports for a built-in vacuum installed on the interior walls. The Tenant stated that they assumed this meant there was a functioning built in vacuum. However, they never verified this prior to entering into the tenancy agreement, and when they moved in, they realized a central vacuum had never been installed. The Tenant stated that consequently, they had to buy a freestanding vacuum to use in the house, which they feel the Landlord should be responsible for. The Tenant spoke to the Landlord about having one installed at the Landlord's expense, the Tenant stated that the Landlord asked them to get a quote. However, it was never installed.

The Landlord stated that they are not sure why they should be responsible for this item, as there was never a central vacuum installed, nor did they advertise the home as having one. The Landlord acknowledged that there were ports installed on the wall, but this was done at the time the home was constructed, and there has never been a built in vacuum central unit installed. The Landlord only asked for a quote to see how much the installation of a central vacuum would cost, and in no way committed to doing the work, or paying for it.

5) $191.49 – Storage of Coffee Table

The Tenant stated that when they moved into the rental unit, they asked for it to be vacant and unfurnished, and for all of the Landlord's belongings to be removed. The Tenant provided a series of text messages with the Landlord asking them to remove the table. The Tenant stated the Landlord's coffee table was about 2.5 feet wide by 4.5 feet long, and they took the square footage this table took up in the corner of their living room and proportionately calculated the cost of this space (based on overall square footage of the house, divided by monthly rent). The Tenants stated that the Landlord never removed the table, despite their requests, and it took up space they would have liked to use in the corner of the living room. The Tenant calculated this amount at 11.25 square feet, by $1.31 per square foot, times by 13 months.

The Landlord acknowledged that when the Tenant moved in, the Landlord had left behind a picture and a coffee table. The Landlord stated that since these items were made of glass, they could not be shipped to where the Landlord was moving to, which is

why they were left. The Landlord expected that the Tenant would put the item in the crawl space or somewhere out of the way.

6) $1,820.00 – 2 Toilets not functioning correctly

The Tenant stated they are seeking a rent reduction for the above amount due to 2 toilets (out of 5 total in the house) that were not flushing properly. The Tenant stated that the flush on the toilet was so weak, it rendered the toilets almost unusable. The Tenant indicated that they had conversations with the Landlord early on in the tenancy about the flush strength, but it was not until February 2020 that the Tenant put his concerns about the toilets into an email. The Tenant stated that they tried to use a plunger, drain snake, and tried to call a plumber to obtain an over-the-phone consult. The Tenant stated that the plumber advised it could very well be a vent issue on the roof but the Tenant never had the plumber over. The Tenant stated that despite their requests, the Landlord didn't follow up and have the issue addressed.

The Tenant proposed a rent reduction of $70.00 per toilet, per month, over a 13 month period, which they based off the cost they pay for a port-a-potty rental in a different location.

The Landlord denied that they were told about this issue verbally, and stated they were only made aware of the problem in February 2020, when the Tenant sent an email. The Landlord stated that they could not find anyone to do the work, which is why it was not done. The Landlord did not elaborate on why they were unable to find someone, or what steps they took. The Landlord agreed that the flush was weak on the two toilets, which was evident when they tried to repair them after the Tenant moved out. The Landlord explained that the roof vents were not the issue, and the issue was fixed when the Landlord installed new toilets after the tenancy ended. The Landlord stated that although the Tenant complained in February 2020, via text/email, they also sent a message on June 16, 2020, stating that they did not want anyone coming to the house because of COVID. The Tenants did not refute saying this.

Landlord's Application

In the Landlord's application, they indicated they are seeking 3 items (Move-out cleaning, wall repair, and missing picture). These items are related to "damage" to the rental unit. Subsequently, the Landlord uploaded a monetary order worksheet, indicating that, in addition to the above noted 3 items, they also want to claim for unpaid

utilities. However, the Landlord failed to submit an amendment for to modify or increase the amount laid on the initial application. As such, the Landlord's claim in what was initially listed on their application, for damage to the unit, based off the following 3 items:

1) $157.50 – Wall Repair Quote

The Landlord stated that the Tenants made a couple small dents in a stairwell when they were moving out. The Landlord pointed to the move-in inspection to show that no damage was documented at the time the tenancy started. Although no move-out inspection was properly filled out, the Landlord took a few photos on the day the Tenants moved out, on August 31, 2020. The Landlord pointed to the photos to show that the dents were in the wallpaper, and it is not as easy as just filling the holes with putty and painting over them. The Landlord provided a copy of a quote for this item, and stated they have not done the work yet but feel the Tenants ought to be liable for this item.

The Tenant stated that he is not sure how the damage happened, but stated it "may have happened" when they were moving out. The Tenant stated he is not sure, but doesn't feel these dents, which are half an inch wide, are that big of a deal. The Tenant stated that this should be considered normal wear and tear.

2) $406.50 – Cleaning Fees

The Landlord stated that the Tenants failed to sufficiently clean up the rental unit prior to vacating. The Landlord provided a few photos of some dirty appliances, and some dirt and scuff marks on the walls. The Landlord provided a copy of an invoice showing they paid $540.75 to clean the entire rental unit, and the appliances. However, the Landlord stated he is only seeking $406.50, because that is what it cost him when he hired cleaners prior to this tenancy. The Landlord was reducing the amount to be fair.

The Landlord stated that he saw the Tenants walking through the rental unit with their shoes at the end of the tenancy, and with COVID going on, he felt the rental unit needed an extra level of cleaning, which the Tenants did not do.

The Landlord pointed out the tenancy agreement addendum, which says that the Tenants must have the unit professionally cleaned, and provide receipts, at the end of the tenancy.

The Tenants acknowledged that they did not fully wipe down the oven after it was put on self cleaning (some ash left behind), and also left a couple small splatters on the microwave. The Tenants also acknowledge that there were some minor scratches and marks on the walls, but they do not feel the cleaning fees are reasonable, since the marks could have easily been cleaned with a quick wipe. The Tenants did the cleaning themselves for the most part, and do not feel they should be held liable for cleaning to meet COVID sanitization standards. The Tenants stated that the marks on the wall would not warrant this amount of cleaning expense. The Tenants stated they had the carpets cleaned professionally but did most of the other work themselves.

3) $500.00 – Missing picture

The Landlord stated that at the start of the tenancy, they left behind a couple of items, one being a glass coffee table, the other being a framed picture. The Landlord stated that they estimate that the picture was worth $500.00 but they had no evidence to support its value nor did they explain how this estimate was arrived at. The text messages provided into evidence show that the Landlord and the Tenant had a discussion about the coffee table and a picture that was present at the time the Tenants were moving in.

The Tenants denied that there was a photo at the start of the tenancy, and stated that by the time they moved in, the photo was gone. The Tenants are not sure what happened to the photo but they deny they did anything with it. The Tenants also pointed out that there is no evidence to support the value of this photo.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Tenants' Application

The Tenants are seeking the following items:

1) $4,500.00 – double security deposit 2 x $2,250.00 (less outstanding utility bills)

I have reviewed the evidence and testimony regarding the Tenant's request for double the security deposit, and I make the following findings:

I note the Tenant is seeking double the security deposit 2 x $2,250.00, less the amount of the outstanding utility bills, which amount to $192.25. The Tenant agrees they are responsible for these utility bills. I note the Landlord received the Tenant's forwarding address on August 31, 2020, at the time the keys were returned, and the Landlord filed an application against the deposit on September 15, 2020.

I note the following portions of Policy Guideline #17

B. SECURITY DEPOSIT

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

> *• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
> *• having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;
• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

• if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
• if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
• if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
• if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
• whether or not the landlord may have a valid monetary claim.

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

• any arbitrator's monetary order outstanding at the end of the tenancy;
• any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit (see example B below);
• if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

In this case, I find there was a lack of clarity regarding what was agreed to in terms of the move-out inspection. I note the Landlord has provided a copy of the text messages, confirming that they were supposed to meet the Tenant at 5 pm on August 31, 2020. However, there was no mention in those messages as to what the purpose of the meeting was. The Tenant stated they were under the impression it was to return the keys and move the last of their things out. I find it is incumbent on the Landlord to not only arrange a time to meet and conduct the move-out inspection, but to be clear about what the purpose of the meeting is. In this case, there is insufficient evidence that the parties agreed to August 31, 2020, as a date to do the move-out inspection.

After unsuccessfully meeting to conduct a move-out inspection in person with the Tenants on August 31, 2020, at around 5pm, the Landlord should have filled out an RTB-22, which is a Notice of Final Opportunity to Schedule a Condition Inspection. This was not done, and instead there was more discussion and disagreement about what the issues were. I find the Landlord failed to sufficiently articulate the reason for meeting at the rental unit on August 31, 2020, such that I could find they were able to legally conduct the inspection in the Tenant's absence. I find the Landlord extinguished their right to claim against the deposit by failing to give a clearly articulated first opportunity for inspection, and importantly a formal second opportunity, on the appropriate form (RTB-22). Had this step been done, it could have added much needed clarity to the move out process. Further, there does not appear to be a completed move-out inspection report, which is also a breach of the Act and the regulations.

Based on the above, I find the Landlord extinguished their right to file against the security deposit, and they were required to return the security deposit, in full, within 15 days of receiving the Tenant's forwarding address in writing, or the end of the tenancy, whichever is later. In this case, both of those dates are August 31, 2020, which is also the date the keys were returned.

Since the Landlord did not return the deposit by September 15, 2020, I find the Landlord breached section 38(1) of the Act. Accordingly, as per section 38(6)(b) of the Act, I find the Tenant is entitled to recover double the amount of the security deposit.

As laid out in the Policy Guideline, when the parties come to an agreement about deductions from the deposit, only the amount of the deposit, less what the Landlord is authorized to withhold, is doubled. In this case, the Tenant agreed that the Landlord could retain $192.25 from the security deposit, for the outstanding utilities. This equates

to $2,250.00 less $192.25 which leaves $2,057.75 as the remaining security deposit. The Tenants are entitled to $2,057.75 x 2 = $4,115.50.

2) $650.00 – Gardening Services

Having reviewed this matter, I find the parties have mutually agreed to settle this item for $320.00. The Landlord agreed to reimburse this amount. I will add this to the amount of the monetary order that the Tenant is entitled to.

3) $145.00 – Driveway Gate Repair

Having reviewed this matter, I find the onus is on the Tenant to establish the value of their loss, which they have failed to do in this case. The Tenant had no corroborating receipt of proof of loss. I dismiss this item, in full.

4) $40.00 – Air Conditioner Filer

Having reviewed this matter, I note the onus is on the Tenant to establish the value of their loss on this matter, which they have not done. The Tenant had no corroborating evidence to prove the actual value of this item, regardless of whether or not the Landlord is responsible for the maintenance of the AC unit, generally. I dismiss this item, in full.

5) $639.00 – Central Vacuum

Having reviewed the testimony and evidence on this matter, I find the Tenant has failed to sufficiently demonstrate why the Landlord ought to be responsible for this amount. It does not appear a functioning central vacuum was ever part of the rental unit or the tenancy agreement. It appears the Tenant assumed there was a central vacuum system due to the fact there were ports on the wall. The Tenant should have taken steps to confirm there was a central vacuum installed, prior to renting the unit, if this was an important item for them. I dismiss this item, in full.

6) $191.49 – Storage of Coffee Table

Having reviewed this matter, I note the Tenants made it clear, right at the start of the tenancy, via text message, that they wanted the Landlord to remove the rest of her belongings. I accept that the Tenants rented an unfurnished space, and they could have reasonably expected the Landlord to remove all of her belongings, prior to the tenancy

start. The Landlord appears to have left this item because it was glass, and difficult to move/ship to her new location, not because it was part of the rental unit or the tenancy. I find the Landlord should have taken a more pro-active approach to ensuring the table was either removed from the rental unit, or put in a place which did not impact the Tenant's use of space.

I find the Tenant's likely suffered some off of use of the living room due to the space the Landlord's table occupied. However, I am not satisfied the Tenant sufficiently mitigated the impact this table had on their use of space. Although the table was glass, and could not be shipped overseas, I do not find the Tenant has sufficiently explained why they would have been unable to move it to a less impactful place, such as the crawl space. In this case, I decline to award the full amount sought, but I find a nominal award is appropriate, as the Landlord should have made better efforts to clear the item.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award a nominal award of $50.00.

7) $1,820.00 – 2 Toilets not functioning correctly

Having reviewed this matter, I accept that there was an issue with the functionality of 2 out of the 5 toilets in the home. The Landlord feels the toilets were still somewhat usable, but I accept that they had limited functionality. There is no evidence that the Landlord was made aware of this issue prior to February 2020. As such, I do not find it reasonable for the Tenant to expect compensation for this issue prior to February, since there is no evidence the matter was clearly articulated to the Landlord, especially in writing.

I note the Landlord became aware that there was an issue with two of the toilets in February. There is little to no evidence to show they took reasonable steps and measures to try to find a qualified contractor to come and fix the issue in a timely manner, following the receipt of this information. They stated they were unable to find someone to come and fix the toilets. However, it is unclear what steps they took, especially given this would have been a somehwat routine plumbing visit, in a

reasonably populated area. I find the Landlord should have taken a more proactive approach to addressing the issue. I accept the Tenants would have suffered a reduction in the value of their tenancy. I find the Tenants request of $70.00 per toilet, per month is reasonable. I award this $140.00 per month, but only for 4 months (from February 2020, until June 2020). I decline to award past June because the Tenants appear to have asked the work not to be completed at that time, due to COVID. I award $140.00 x 4 = $560.00.

Landlord's Application

1) $157.50 – Wall Repair Quote

I have reviewed the evidence and testimony on this matter. I accept that the move-in inspection report is reliable, as the parties both agreed to the report as being a fair representation of the unit at the start. This report shows that the walls were noted to be in good condition, and no damage was noted in the wallpaper. Although there is no properly completed move-out condition inspection, I have considered the photos that were taken to show the damage at the end of the tenancy.

Although the Tenant does not specifically acknowledge doing the damage, they did not deny that it was done by one of them. The Tenant eludes to the possibility that it was done when they moved out. I find it more likely than not that the damage was caused either during the tenancy, or when the Tenant was moving out. I find the type of wall damage is beyond reasonable wear and tear, and I find the Tenant is responsible for this damage. I accept the Landlord's statements that, since the damage is on wallpaper, it is not as simple as filling it. I award the above noted quote, in full.

2) $406.50 – Cleaning Fees

I have reviewed the testimony and evidence on this matter. I find that, generally, the Tenant left the rental unit in a reasonably clean state. However, there were areas that were not sufficiently cleaned (wall surfaces, appliances). Further, and importantly, I find the Tenants clearly agreed to a term in the addendum of the tenancy agreement, whereby they would have the rental unit professionally cleaned, and provide a receipt to the Landlord to demonstrate the work was done. In this case, there is no evidence the Tenants had the unit professionally cleaned, other than the carpets. I agree with the Tenants that they are not responsible for cleaning to meet the COVID disinfectant protocols. However, they did agree to have the unit professionally cleaned, beyond just

the carpets, which they did not do. I find the Landlord is entitled to recover the costs they incurred to have the unit professionally cleaned. I note the Landlord actually paid $540.75 for professional cleaning, but they are only seeking $346.50 for general cleaning, plus $60.00 for an appliance cleaning fee, to be "fair", because this is what they paid to have the unit cleaned at the start of the tenancy. I award the Landlord the full amount claimed for this item.

3) $500.00 – Missing picture

Having reviewed this matter, I note the Landlord is responsible to demonstrate that the Tenants caused of contributed to this loss. Additionally, the Landlord must also demonstrate the value of the loss. I find the Landlord has not sufficiently done either of these things. Although there was some text message dialogue regarding this picture, and the table, prior to the Tenant moving in, I find there is insufficient evidence to show this item was actually present at the start of the tenancy, or that the Tenant is responsible for this item. It is not noted in any condition inspection report at the start of the tenancy. Further, the Landlord has provided no evidence to establish the value of this item, and provided a poor explanation as to why they are seeking $500.00. I dismiss this item, in full.

In summary, I issue the monetary order as follows:

Tenant's application entitles them to:

- $4,115.50 for double the deposits
- $320.00 – Gardening fees
- $50.00 – Nominal award for coffee table
- $560.00 – Toilet issue

Total: $5,045.50

Landlord's application entitles them to:

- $157.50 – Wall repair
- $406.50 – Cleaning Fees

Total: $564.00

After offsetting these two amounts, I find the Tenant is entitled to a monetary order in the amount of $4,481.50.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties were partially successful in this hearing, I decline to award either party with recover of the filing fee.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of $4,481.50. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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

Dated: April 14, 2021

Residential Tenancy Branch