Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0943355 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL
MNSDB-DR, FFT

Introduction

This hearing dealt with two separate Applications for Dispute Resolution that were filed by the Landlord (the Landlord's Applications) under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Compensation for damage caused by the Tenants, their pet(s) or their guest(s) to the unit, site, or property;
- Unpaid rent;
- Recovery of the filing fees; and
- Authorization to withhold the security, and/or pet deposit, towards money owed.

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Tenants (the Tenants' Application) under the Act, seeking:

- The return of their security and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord T.T. (the Agent), who was also named as a respondent in the Tenants' Application, and the Tenants. All testimony provided was affirmed. The Tenants acknowledged receipt of the Notice of Dispute Resolution Proceedings from the Agent, including the Landlord's Applications and the Notice of Hearing, and raised no concerns regarding service methods or timelines for service. As a result, I find them served with these documents in accordance with the Act and the Rules of Procedure. Although the Agent acknowledged receipt of the Tenants' Application, they stated that it was not served properly in accordance with the Act. However, the Agent stated that they had enough time to review, consider, and respond to the Tenants' Application and that as a

result, they were fine to accept service and proceed with the hearing of the Tenants' Application as scheduled. As a result, I deem the Tenants' Application sufficiently served for the purpose of the Act, pursuant to section 71(2)(b) and (c) of the Act.

Based on the above, the hearing of both the Landlord's Applications and the Tenants' Application proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all submissions, 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), not all evidence, testimony, and submissions have been recorded here. I refer only to the relevant and determinative facts, evidence, submissions, and issues in this decision.

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

Preliminary Matters

Preliminary Matter #1

At approximately 1:40 PM the Agent disconnected from the teleconference suddenly and without notice. The Tenants and I waited in the teleconference for the Agent to return, which they did at approximately 1:41 PM. No evidence, submissions, or testimony was accepted by me while awaiting the Agent's return.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Preliminary Matter #3

Although the parties disagreed about the dates of service and service methods for the Landlord's documentary evidence, ultimately the Tenants acknowledged receipt of the three evidence packages sent by the Agent well in advance of the hearing date, and raised no concerns about the acceptance or consideration of the Landlord's documentary evidence by me. As a result, I have accepted the documentary evidence before me from the Landlord for consideration.

There was also a dispute between the parties regarding the dates of service and service methods for the Tenants' documentary evidence, which was served via two separate packages, as well as the exact nature and description of documents served in each package. Ultimately the Agent acknowledged receipt of the majority of the documentary evidence before me from the Tenants, and as a result, I have accepted the documentary evidence before me from the Tenants for consideration which the Agent acknowledged receiving at the hearing.

The parties were also advised to point to the documentary evidence they were relying on during the hearing, pursuant to rule 7.4 of the Rules of Procedure, and to raise any concerns they had about service and receipt of any documentary evidence referred to during the hearing by the other party, so that concerns regarding service of that evidence and the acceptance or consideration of that evidence by me, could be addressed at that time.

Preliminary Matter #4

Although the Landlord sought recovery of $57.07 in registered mail costs, these costs are not recoverable under the Act.

Issue(s) to be Decided

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

Is the Landlord entitled to compensation for damage caused by the Tenants, their pet(s) or their guest(s) to the unit, site, or property?

Is the Landlord entitled to recovery of unpaid rent?

Is either party entitled to recovery of their filing fee(s)?

Is the Landlord entitled to withhold the security deposit and/or pet deposit, or a portion thereof, towards money owed? If not, are the Tenants entitled to the return of all, some, none, or double the amount(s) of their deposit(s)?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on January 24, 2020, states that the one year fixed term tenancy commenced on February 1, 2020, and it was set to continue on a month to month basis at the end of the fixed term on February 1, 2021. The tenancy agreement states that rent in the amount of $2,280.00 is due on the first day of each month, that only water, garbage, recycling, and free laundry facilities are included in the cost of rent, The tenancy agreement also states that the Tenants are to pay for their own natural gas and 80% of the electricity and that both a security deposit and a pet damage deposit were required, in the amount of $1,140.00 each. No addendums to the tenancy agreement were noted or attached.

At the hearing the parties confirmed that the above noted terms of the tenancy are correct, and that the Landlord still holds the full amount of both the security deposit and pet damage deposit. The parties also agreed that the tenancy ended on December 15, 2020, because the Tenants gave notice by email on November 12, 2020, to end their tenancy on December 15, 2020. While the parties agreed that the Tenants provided their forwarding address to the Landlord in writing after the end of the tenancy, they disputed how and when. The Tenant stated that they left the RTB-47, which is the written notice of their forwarding address, on a counter in the rental unit, along with the keys for the rental unit, at the end of the tenancy as per the instructions received by them from the Agent. The Tenants pointed to a photograph of the RTB-47 on a counter alongside keys, and email correspondence between themselves and the Agent in support of their testimony that it was agreed that they were to simply leave the keys for the rental unit on the counter. Although the Agent did not dispute that there was agreement for the Tenants to leave the keys for the rental unit on the counter, they stated that the Tenants never advised them that they had left their forwarding address with the keys, and that they only found it on December 29, 2020, when it was located in a cabinet at the rental unit.

The Agent stated that they are unsure if two opportunities for condition inspections were provided to the Tenants at the start and the end of the tenancy, in accordance with the Act, but provided details about communications with the Tenants at the end of the tenancy with regards to a condition inspection. Specifically, the Landlord stated that

they texted the Tenants on December 14, 2020, to inquire about getting the keys and conducting an inspection, and that when the Tenants did not respond, they followed up with an e-mail. The Landlord stated that they sent a subsequent email on December 30, 2020, when the Tenants did not attend for an inspection on December 15, 2020, or respond to their previous communications.

Although the Tenants did not dispute the existence of the above noted communications from the Landlord, they argued that the Landlord none the less failed to give two opportunities for the condition inspection at the end of the tenancy as required by the Act and the regulations, as the Landlord did not use the approved form. Further to this, the Tenants argued that the Landlord attempted to complete the condition inspection after the end of the tenancy, when they had already vacated the rental unit and returned the keys, which was not appropriate or in keeping with the requirements of the Act. In any event, all parties were in agreement that condition inspections and reports were not completed at either the start or the end of the tenancy and although the Agent stated that the rental unit was brand-new at the start of the tenancy, the Tenants disagreed.

The Landlord stated that the Tenants did not give proper notice to end their tenancy under the Act, and were required to pay for the full month of December 2020, as they were in the rental unit on the first day of the month, the day upon which rent is due in the tenancy agreement, and for two weeks thereafter, and were not in fact entitled to end their tenancy until February 1, 2021, the end date for the fixed term of the tenancy agreement. As a result, the Landlord sought ½ a month of rent for December 2020, in the amount of $1140.00, as the Agent stated that the Tenants paid only half of the monthly rent owed for December 2020. The Landlord also sought a full month of rent for January 2021, as they stated that the rental unit was not left reasonably clean or undamaged, except for reasonable wear and tear, at the end of the tenancy, and therefore could not be re-rented immediately. The Landlord stated that it was also an unfavorable time of year for repairs and contractors, as people rarely want to work over Christmas and New Years, and that as a result, the rental unit was not cleaned, repaired, and ready to be re-rented until January 15, 2021. Further to this, the Landlord stated that despite placing advertisements through various online service providers at various price points, and for various tenancy lengths, including short-term, a suitable tenant was not located until March of 2021. However, the Landlord did not seek any lost rent for February 2021.

The Tenants disagreed with the Landlord's testimony with regards to the state of the rental unit at the end of the tenancy, stating that it was left reasonably clean and undamaged, except for reasonable wear and tear and pre-existing damage. In support

of their testimony, they pointed to photographs taken by them of the rental unit at the end of the tenancy. The Tenants also questioned whether the Landlord had acted reasonably to have the rental unit re-rented as soon as possible, stating that they had received a copy of only one rental advertised from the Landlord as part of their documentary evidence, which listed the rental unit at the same rental rate shown in their tenancy agreement. Further to this, the Tenants stated that the Landlord had actually increased the rent to $2,880.00 in one online advertisement, a copy of which was submitted for my review and consideration by the Tenants, and as a result, they should not be responsible for any lost rent, as the Landlord made no concerted effort to have the rental unit re-rented quickly, at a reasonable economic rate, and was instead attempting to gain financially by significantly increasing the posted rental rate for the rental unit.

With regards to the ½ a month of rent sought by the Landlord for December 2020, the Tenants agreed that they paid only $1,140.00 in December of 2020, and stated that as the Landlord knew they were looking to move and got 30 days notice, they should not be responsible for any further rent for December 2020. The Tenants also stated that they had moved into the rental unit on February 15, 2020, not on the first, as set out in the tenancy agreement, which should entitle them to end their tenancy on the 15th, and that they were expecting a child in approximately one month and therefore it would not be suitable for them to move at a later date. Further to this, the Tenants stated that the tenancy was going to end in February of 2021, regardless, as either rent would be increased, which they could not afford, or the Landlord would move in.

Although the Landlord did not dispute that the Tenants moved into the rental unit on February 15, 2020, they stated that rent is due on the first day of each month according to the tenancy agreement, and that the tenancy was a fixed-term tenancy agreement with an end date of February 1, 2021. As a result, the Landlord stated that the earliest the Tenants could have lawfully ended their tenancy in accordance with the Act, by giving notice on November 12, 2020, was February 1, 2021, the end date for the fixed term, and the reasons given above by the Tenants as justifications for ending their tenancy early do not override the requirements of the Act.

The Tenants also argued that were allowed to end their fixed term tenancy early, as the Landlord had mutually agreed to it, as they had obtained a second pet without authorization and contrary to the terms of their tenancy agreement. While the Landlord agreed that the Tenants had breached their tenancy agreement by obtaining a second pet without authorization, and contrary to the terms of their tenancy agreement, they disagreed that any mutual agreement authorizing the Tenants to end their fixed-term

tenancy early, existed. The Landlord stated that although they had proposed a mutual agreement to end the tenancy on July 31, 2020, and provided the Tenants with a mutual agreement to that affect in June of 2020, the Tenants had never signed or returned it to them, and as a result, a mutual agreement was never reached between them with regards to end the tenancy.

With regards to utilities, the Landlord sought $145.36 for an outstanding natural gas bill and the Tenants agreed that this amount was owed to the Landlord. The Landlord also sought approximately $200.00 in electricity chares not previously sought or collected by them during the course of the tenancy, as they stated that they had mistakenly sought and collected only 70% of the electricity bill from the Tenants, not the 80% set out in the tenancy agreement. When asked how the Agent arrived at this amount, they stated that they "guessed" that this is the approximate amount that would be owed.

The Landlord also sought $310.43 towards the last electricity bill. The Landlord stated that the last bill was $440.96 for the period of October 24, 2020 – December 23, 2020, and that the $310.43 sought was calculated by subtracting 7 days from the billing period, as the tenancy ended December 15, 2020, and then calculating the 80% owed on that remaining balance. Although the Tenants did not disagree that some amount was owed to the Landlord for the last electricity bill, they stated that it should only be $271.63, as they had only ever paid 70%, despite what the tenancy agreement says. A copy of this electricity bill was submitted for my review and consideration by the Landlord.

With regards to damage and cleaning costs, the Landlord sought $272.00 for replacement of a missing griddle, $288.75 in cleaning costs for the kitchen, bathroom, and laundry room, $504.42 for plumbing and heating duct repairs, $28.58 for replacement of a damaged vent cover, $610.40 for damaged blinds, $808.50 for drywall repair, painting, and repairs to a light fixture, and $1,006.96 for replacement of a retractable screen they state was missing at the end of the tenancy. At the hearing the Agent stated that they did not charge for things such as nail holes, and reasonable wear and tear and that most of the claimed amounts are related to damage from the Tenants' dog. The Agent also stated that their actual costs are significantly higher than the amounts claimed, but they are being reasonable and only seeking recovery of costs incurred for cleaning and major damage. The Landlord submitted a significant amount of documentary evidence in support of these claims, including but not limited to invoices for work done, receipts for purchases made, numerous videos and photographs of the rental unit at the end of the tenancy, a few photographs of the rental unit prior to the tenancy, photographs of the griddle allegedly taken by the Tenants form the rental unit

and receipts for the cost of its replacement, and a quote for the replacement of the blinds and the retractable screen.

The Tenants reiterated their position that the rental unit was left reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear. The Tenants submitted photographs of the rental unit showing several small patched holes, carpet cleaning, and a receipt for the rental of a carpet cleaning machine between December 12-13, 2020, in support of this testimony. In any event, the Tenants stated that as no move-in or move-out condition inspections or reports were completed by the Landlord as required, the Landlord lacks evidence to establish the state of the rental unit at the start of the tenancy or to establish that the damage claimed by the Landlord in the Application occurred during the course of the tenancy. Finally, the Tenants denied taking or damaging a retractable screen or the griddle referred to by the Agent as missing, and pointed to an email dated December 30, 2020, from the Agent wherein the Tenants stated a picture showing the griddle present in the rental unit can be seen. The Landlord responded stating that although the Tenants had cleaned the rental unit, their cleaning was incomplete and insufficient and that the picture used in the December 30, 2020, email pre-dated the tenancy as was meant only to be an example of what the griddle looked like.

The Tenants sought the return of their security deposit and pet damage deposit, less the amounts they believe are owed for outstanding utilities, and both parties wanted recovery of their respective filing fees.

Analysis

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 a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #14 sets out a 4 part test for monetary claims for damage or loss, stipulating that to award monetary compensation, the arbitrator must be satisfied that a party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement, that loss or damage has resulted from the non-compliance with the Act, regulation, or tenancy agreement by the other party, that the party who suffered the damage or loss has proven the amount of or value of the damage or loss, and that the

party who suffered the damage or loss has acted reasonably to minimize that damage or loss. 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. At the hearing the parties disputed whether the Tenants had left the rental unit both reasonably clean, and undamaged, except for pre-existing damage and reasonable wear and tear, at the end of the tenancy. I will deal with reasonable cleanliness first.

Residential Tenancy Policy Guideline (Policy Guideline) #1 states that tenants must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property and that tenants are generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard but not for cleaning to bring the premises to a higher standard than that set out in the Act. It also states that an arbitrator may 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.

Although the parties agreed that the Landlord did not complete either a move-in or move-out condition inspection and report, and the Tenants argued that this should be fatal to the Landlord’s claim for cleaning costs, I disagree. While a condition inspection report can be good evidence of the state of a rental unit at the start or the end of a tenancy, it is not the only evidence that might be collected or retained by the parties in relation to the state of the rental unit. As a result, I do not find the lack of a move-out condition inspection report fatal, in and of itself, to the Landlord’s claims for cleaning costs at the end of the tenancy. Further to this, I find the matter of a move-in condition inspection report irrelevant to the matter of cleanliness of the rental unit at the end of the tenancy, as tenants are required to leave their rental units reasonably clean at the end of their tenancies, regardless of the state of cleanliness of the rental unit at the start of the tenancy. Having made this finding, I will now turn to the documentary evidence before me from the parties.

Both parties submitted documentary evidence in support of the state of cleanliness of the rental unit at the end of the tenancy. The Tenants submitted several photographs showing them cleaning the carpets, and a receipt for the rental of the carpet cleaning machine between December 12 -13, 2020. The Landlord submitted a large volume of

photographs and several videos showing that several areas of the rental unit were either left unclean or were insufficiently cleaned, at the end of the tenancy. In particular, the photographs and videos submitted by the Landlord showed that the fridge, the stove, the window ledges, the door threshold, the blinds, the stove vent screen, and behind and beneath the laundry room appliances were dirty. In the photographs and videos submitted by the Landlord, food or other residue can be seen in the fridge, burnt on food and splatter can be seen on the inside of the oven, grease and other debris can be seen in the stove vent screen, dirt and pet hair can be seen on the window ledges, blinds, and the door threshold, and a large amount of dirt and debris can be seen beneath and behind the laundry room appliances.

Although it is clear to me from some of the Landlords photographs, as well as the Tenant's photographs and the receipt for the rental of a carpet cleaning machine, that the Tenants made attempts to clean the rental unit, I find, based on the documentary evidence before me from the Landlord, that the Tenants' attempts were simply insufficient to meet the reasonable cleanliness standard set out in section 37 of the Act and Policy Guideline #1. I do not find that leaving the rental unit in the state shown by the Landlords' videos and photographs, in particular failing to adequately clean the fridge, stove/oven, windowsills, blinds, door threshold, and both beneath and behind the appliances, constitutes leaving the rental unit reasonably clean. As a result, I find that the Tenants breached section 37 of the Act by failing to leave all parts of the rental unit reasonably clean at the end of the tenancy as required.

The Landlord submitted an invoice for 5.5 hours of cleaning at $50.00 per hour, for the rental unit from a cleaning company. As I am satisfied that the Tenants breached section 37 of the Act by failing to leave the rental unit reasonably clean at the end of the tenancy, that the Landlord suffered a $288.75 loss as a result, and that the Landlord acted reasonably to mitigate their loss by having the rental unit cleaned at a reasonably economic rate, I therefore grant the Landlord recovery of the $288.75 in cleaning costs.

I will now turn to the matter of the Landlord's claim for damage to the rental unit and loss of a stovetop griddle. In addition to section 37 of the Act which states that tenants must leave a rental unit undamaged except for reasonable wear and tear at the end of a tenancy, Policy Guideline #1 states that tenants are generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect and that 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. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due

to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Both parties submitted documentary evidence in support of their positions with regards to whether or not the rental unit had been left undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear. The Tenants argued that they had not damaged the rental unit and had repaired some small holes prior to the end of the tenancy, which would nevertheless have constituted reasonable wear and tear. The Tenants also denied taking a stovetop griddle and damaging a retractable screen door. The Agent gave contradictory testimony, stating that the Tenants and their pets had caused significant damage to the rental unit and that they had taken a stovetop griddle that was in the rental unit at the start of the tenancy.

Although the Landlord stated that the Tenants had damage the rental unit and taken a stovetop griddle, for the following reasons, I am not satisfied by the Landlord that this is the case. Sections 23 and 35 of the Act specifically require Landlords and Tenants to inspect the rental unit together, at the start and the end of the tenancy, and to document the state of the rental unit at those times through the use of condition inspection reports. Although both parties bear responsibilities under the Act in relation to condition inspections, the Landlord was responsible for scheduling the inspections in accordance with the Act and the regulations, supplying and completing the condition inspection reports, and providing copies of the reports to the Tenants in accordance with the Act and the regulations, which both parties acknowledged the Landlord did not do.

Section 21 of the regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Although no condition inspections or reports were completed in this tenancy, I find that the requirement for their completion has a very specific purpose under the Act, which is to allow the parties to document, transparently and in a specific format, what the condition of the rental unit was at the start and the end of the tenancy, and to allow the parties to gather evidence in support of their respective positions regarding the condition of the rental unit at the start or end of the tenancy, should there be a dispute between them regarding its condition.

Although I do not find that the mere absence of condition inspections and reports in a tenancy is necessarily fatal to claims for damages, where the parties do not agree on the condition of the rental unit at the start and the end, and where they do not have

other compelling corroborative evidence to support their positions, it can be difficult for the party asserting loss to discharge the burden of proof incumbent upon them under section 7 of the Act and rule 6.6 of the Rules of Procedure, which I find is the case here.

As the Landlord is the one claiming compensation for damage to the rental unit and loss associated with a stovetop griddle, I therefore find that it was incumbent upon the Landlord or their Agent to satisfy me that it was more likely than not, that the rental unit was damaged during the course of the tenancy and that a stovetop griddle was not only provided to the Tenants as part of the tenancy, but not returned at the end.

Although the Landlord provided a photograph of a griddle in the rental unit at some time prior to the start of the tenancy, and documentation for the cost of its replacement after the end of the tenancy, the Tenants denied taking the griddle. As a result, I find that I have only the affirmed testimony of the parties at the hearing to establish whether or not the griddle was rented to the Tenants and left behind in the rental unit at the end of the tenancy. As there are no condition inspection reports indicating that one was provided to the Tenants at the start of the tenancy, and not returned at the end, or other corroboratory documentation to this affect, and the Tenants denied taking a griddle from the rental unit at the end of the tenancy, I am not satisfied by the Landlord and the Agent that they did. Although there is email correspondence from the Agent to the Tenants after the end of the tenancy with regards to the griddle, stating that it is missing, the Tenants never acknowledged, either in writing, or at the hearing, that they took it, and I do not find the self-authored correspondence by the Landlord after the end of the tenancy, or proof that the Landlord purchased a griddle after the end of the tenancy, sufficient to establish, on a balance of probabilities, that the Tenants took the griddle. As a result, I dismiss this portion of the Landlord’s claim for recovery of $272.00 in griddle replacement costs, without leave to reapply.

Similarly, I dismiss the Landlord’s claims for $504.42 in plumbing and heating duct repair costs, $28.58 for the replacement of a vent cover, $610.40 in blind replacement costs, $808.50 in drywall, painting, and light fixture repair costs, and $1,006.96 for replacement of a retractable screen, without leave to reapply. Although the Agent stated that the rental unit was brand-new at the start of the tenancy, the Tenants denied this, and the Landlord did not submit any documentation establishing when the rental unit was built or whether it was previously occupied prior to the start of the tenancy. Although the Landlord submitted photographs of damage to the rental unit allegedly caused by the Tenants, and invoices and quotes for the repair costs sought, the Tenants denied causing damage to the rental unit and stated that all damage either constitutes reasonable wear and tear or pre-existed the start of the tenancy. As no

move-in condition inspection or report were completed at the start of the tenancy, and the Landlord submitted only a few undated photographs of the rental unit allegedly taken at some point prior to the start of the tenancy, I find that I cannot be satisfied, on a balance of probabilities, by the Landlord or the Agent that the damages claimed by the Landlord in the Application did not pre-exist the start of the tenancy. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenants breached section 37 of the Act with regards to damage to the rental unit.

I will now turn to the matter of rent for December 2020 and January 2021. Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Section 44 of the Act states that tenancies end only in accordance with the Act and section 45(2) of the Act permits tenants in fixed term tenancies to end their tenancies no earlier than one month after the date the landlord receives their written notice to end the tenancy, provided the end date for the tenancy is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on February 1, 2020, and was set to continue on a month to month basis at the end of the fixed term on February 1, 2021. The tenancy agreement also states that rent in the amount of $2,280.00 is due on the first day of each month. At the hearing the parties confirmed that these terms were correct. As a result, I find that the earliest that the Tenants could lawfully have ended their tenancy under section 45(2) of the Act, by giving written notice on November 12, 2020, to end their tenancy, was February 1, 2021. Although the Tenants argued that there was a mutual agreement to end the tenancy early, the Landlord denied the existence of such an agreement, and the only documentary evidence submitted for my consideration was an unsigned mutual agreement to end the tenancy with a proposed end date of July 31, 2020. As the tenancy did not end on July 31, 2020, and the mutual agreement was unsigned by either party, I am not satisfied that a mutual agreement to end the tenancy existed. I also find that the Tenants arguments that a mutual agreement to end the tenancy existed is contradictory to their actions on November 12, 2020, where they gave the Landlord written notice to end their tenancy, as such written notice would not have been required, if there was a mutual agreement to end the tenancy as alleged by the Tenants.

Further to the above, I do not accept the Tenant's arguments that they were entitled to end the tenancy on the 15th of the month, because they moved into the rental unit on the February 15, 2020, that they were expecting a child in the near future and it would therefore be unsuitable for them to move at a later date, or that the tenancy was invariably going to end in February 2021 anyways, for various reasons. The tenancy agreement clearly states that the end for the fixed term of the tenancy agreement is February 1, 2021, and that rent is due on the 1st day of each month, and the Act is very clear on how and when Tenants may end their tenancies under the Act, as set out above. As a result, and given my finding above that no mutual agreement to end the tenancy existed, I find that section 45(2) of the Act applies and that the Tenants were therefore not entitled to end their tenancy on December 15, 2020, by giving written notice to do so on November 12, 2020.

As the parties agreed that the Tenants paid half a month's rent for December 2020, I therefore find that the Tenants are responsible for the remaining portion of rent owed for December 2020, $1,140.00, as they were not entitled under the Act to end their tenancy on December 15, 2020, as set out above. Despite the fact that the Tenants were not legally entitled to end their tenancy on December 15, 2020, the parties were agreed that the tenancy ended on December 15, 2020, when the Tenants vacated the rental unit.

Although the Landlord also sought $2,280.00 in lost rent for January 2021, for the following reasons I am not satisfied that the Landlord is entitled to lost rent for January of 2021 as I am not satisfied that they acted reasonably to mitigate this loss. Although the Landlord stated that re-rental was delayed because the Tenants did not comply with section 37 of the Act, I have already dismissed the Landlords claims in relation to damage to the rental unit. Although I found that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy, the cleaning invoice submitted by the Landlord showed that only 5.5 hours of cleaning were required. As a result, I am not satisfied that any significant delay in re-renting the rental unit was required due to cleaning, and certainly not past the end of December 2020. Further to this, the advertisements submitted by both parties show that the Landlord attempted, on at least one occasion, to re-rent the unit at a cost of $2,880.00, which represents a $600.00 per month increase to the rent payable by the Tenants under their fixed term tenancy agreement. Although the Agent argued that the rental unit was advertised at various price points, and for both short and long-term rentals without success, only two advertisements were submitted for my review, one in the amount of $2,880.00 per month and one in the amount of $2,280.00.

As the Landlord was aware as early as November 12, 2020, that the Tenants intended to end their tenancy effective December 15, 2020, I find that if the Landlord wanted to seek lost rent after the end of the tenancy, for the balance of the fixed term or any portion thereof, the Landlord was required to act expediently after November 12, 2020, in posting the rental unit for re-rental, and to take reasonable actions to have it re-rented quickly, including posting it at a reasonably economic rental rate, and reducing the advertised rental rate at reasonable intervals, until such a time as it was re-rented.

Policy Guideline #3 states that damages awarded for lost rent are to be in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. However, Policy Guideline #3 also states that in all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent and that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation.

As the documentary evidence before shows that the Landlord advertised the rental unit for rent at up to a $600.00 per month increase, I find that the Landlord did not mitigate their loss as required by section 7 of the Act and Policy Guideline #3. As a result, I therefore dismiss the Landlord's claim for $2,280.00 in lost rent for January 2021, without leave to reapply.

With regards to utilities, I grant the Landlord the $145.36 owing for a gas bill, as the parties agreed at the hearing that this was owed. Although the Tenant's argued that they should only owe $271.63 towards the last electricity bill, not the $310.43 claimed by the Landlord, as they only ever paid 70% of the electric bill to the Landlord, I disagree. The tenancy agreement is clear that the Tenants are to pay 80% of the electricity bill. Although the parties agreed that the Landlord had historically sought only 70% of the cost of the electricity bill from the Tenants, the Agent stated that this was in error, and given the plain language of the tenancy agreement with regards to the payment of utilities, I do not find the Agent's error in calculating the amount of previous bills owed, constitutes a waiver of the terms set out in the tenancy agreement with regards to the payment of utilities or prevents the Landlord from now insisting upon compliance with the terms of the tenancy agreement. As the tenancy agreement is clear that the Tenants are responsible for 80% of the electricity bills during the tenancy, I therefore award the Landlord the $310.43 sought, which represents 80% of the final electricity bill, less any amounts charged during that billing cycle after December 15, 2020, the end date for the tenancy.

Although the Agent also sought $200.00 for the 10% of the previous electricity bills they stated remain uncharged and unpaid for by the Tenants due to their miscalculations, the Agent did not provide copies of the previous bills, proof of the amounts previously paid by the Tenants towards these bills, or an accurate accounting of the outstanding amounts owed, as they stated at the hearing that the $200.00 sought was merely an approximation. Based on the above, I am not satisfied that the Landlord has met the third criteria in the four part test for awarding monetary claims previously set out in this decision, as I find that that they have failed to prove, with any degree of accuracy or certainly, the amount of or value of the damage or loss over the course of the tenancy by the Tenant's failure to pay the full 80% of the electricity bills owed. As a result, I dismiss this portion of the Landlord's claim without leave to reapply.

Based on the above, I therefore award the Landlord recovery of $1,884.54 as follows:

- $1,140.00 for the remainder of December 2020 rent owed;
- $310.43 for the final electricity bill;
- $145.36 for an outstanding gas bill; and
- $288.75 in cleaning costs.

As the Landlord was at least partially successful in their Applications, I also award them recovery of one $100.00 filing fee pursuant to section 72(1) of the Act. Although the Landlord incurred a second filing fee when they filed a subsequent Application, I decline to grant the Landlord recovery of this fee, as I find that the Landlord or Agent could have amended their original Application to include the additional claims made in the second Application, at no additional cost.

Having assessed the Landlord's claims, I will now turn to the Tenants' claims for the return of their security deposit and pet damage deposit and recovery of their $100.00 filing fee. The parties were in agreement at the hearing that the Landlord still holds the Tenants' $1,140.00 pet damage deposit and $1,140.00 security deposit in trust. 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 Applications seeking retention of the security deposit and pet damage deposit on November 17, 2020, and

December 30, 2020. As the parties agreed at the hearing that the tenancy ended on December 15, 2020, I find that the Landlord complied with the requirements set out under section 38(1) of the Act, regardless of whether the Tenants' forwarding address was received by the Landlord or the Agent on December 15, 2020, as alleged by the Tenants, or December 29, 2020, as alleged by the Agent. Although I am also satisfied that the Landlord extinguished their right to claim against the security deposit and pet damage deposit pursuant to sections 24(2) and 36(2) of the Act, as extinguishment applies only to the Landlord's ability to claim against the deposits for damage, and the Landlord's Applications included numerous non-damage related monetary claims, I therefore find that the Landlord was still entitled to withhold the above noted deposits pursuant to section 38(1) of the Act, pending the outcome of their Applications, despite having extinguished their rights in relations to the deposits under sections 24(2) and 36(2) of the Act.

Policy Guideline #17 states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on either a landlord's application to retain all or part of the security deposit, or a tenant's application for the return of the deposit. As stated above, I have awarded the Landlord $1,984.54 in compensation for outstanding rent, outstanding utilities, cleaning costs, and recovery of one filing fee. As the Landlord holds $2,280.00 in deposits, which is more than the amount awarded to them as part of their Applications, I therefore find that the Tenants will be entitled to the return of at least a portion of their deposits. As this means that the Tenants are at least partially successful in their Application, I award them recovery of their $100.00 filing fee pursuant to section 72(1) of the Act.

As set out above, I find that the Landlord is entitled to $1,984.54 in compensation from the Tenants and that the Tenants are entitled to $100.00 in compensation from the Landlord. As a result, I authorize the Landlord to withhold $1,884.54 from the Tenants' deposits pursuant to section 72(2)(b); $1,984.54 for compensation owed by the Tenants to the Landlord, less the $100.00 owed by the Landlord to the Tenants. Pursuant to Policy Guideline #17 and section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $395.46, the balance of their security and pet damage deposits owed to them after the above noted authorized deductions by the Landlord, and I order the Landlord to pay this amount to the Tenants.

Conclusion

The Landlord is permitted to withhold $1,884.54 from the Tenants' security and pet damage deposits pursuant to section 72(2)(b) of the Act.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$395.46**. The Tenants are provided with this Order in the above terms and the Landlord is ordered to pay this amount to the Tenants. Should the Landlord fail to comply, this order may be served on the Landlord, 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, and I apologize to the parties for the delay in the rendering of this decision, 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 the validity of this decision and the associated Monetary Order, nor my authority to render this decision, is affected by the fact that this decision 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: May 4, 2021

Residential Tenancy Branch