



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord and tenant N.C. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agreed that the landlord served the tenants with this application for dispute resolution and evidence via registered mail. I find that the tenants were served with the landlord's application for dispute resolution and evidence in accordance with sections 89 and 88 of the *Act* respectively.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 2, 2019 and ended on December 29, 2020. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. Both parties agree that the subject rental property came furnished. Both parties agree that a list of furnishings included with the apartment was not provided at the start of the tenancy.

Both parties agree that they mutually agreed to end this tenancy on December 29, 2020. The tenant testified that the landlord asked his family to move out because it would be easier to sell. The landlord testified that she wanted to end the tenancy because of the tenant's bylaw infractions. Both parties agree that the subject rental property has been listed for sale since June 2020.

Both parties agree that the landlord did not ask the tenant to complete a move in condition inspection report at the start of this tenancy and one was not completed. Both parties agree that they met on December 31, 2020 to complete a move out condition inspection report but that the parties did not agree on the alleged damages and the inspection ended after the parties argued. The landlord's version of the move out condition inspection report was entered into evidence.

The tenant testified that the landlord was emailed with the tenants' forwarding address on December 31, 2021. The landlord testified that she was not served with the tenant's forwarding address in writing but that she did receive the December 31, 2020 email

containing the tenants' forwarding "a few days" after it was sent. The landlord applied for dispute resolution on January 20, 2021.

The landlord testified that the following damages arose from this tenancy:

Item	Amount
Cleaning	\$240.00
Painting	\$1,800.00
Blinds	\$200.00
Repairs	\$245.00
TV repair/replacement	\$750.00
Utilities	\$176.10
Move out fee	\$100.00
Missing items	\$1,155.00
Loss of rental income	\$1,800.00

The landlord entered into evidence photographs of the subject rental property which she testified were taken on July 1, 2019, the day before the tenant moved in. The tenant testified that the photographs entered into evidence by the landlord to show the move in condition of the property were photographs taken before the previous tenant moved in and do not reflect the condition of the property when he and his family moved in.

The landlord also entered into evidence photographs which she testified were taken on September 15, 2020 and December 31, 2020. The authenticity of these photographs were not disputed by the tenant.

Cleaning

The landlord testified that the floors, kitchen and bathroom were not cleaned at the end of this tenancy. Photographs showing same were entered into evidence. The landlord testified that the photographs were taken on December 31, 2020. The tenant entered into evidence an email quote from a cleaner which states that the cleaner charges \$80.00 per hour with a two-hour minimum. The landlord testified that she hired the cleaner for three hours and is seeking \$240.00. No receipts were entered into evidence.

The tenant testified that the subject rental property was in equal or better condition at the start of this tenancy as the end. The tenant testified that he did not agree with the need for cleaning services.

Painting

The landlord testified that the walls of the subject rental property were in good condition at the start of this tenancy and required repainting at the end of this tenancy due to nicks and marks on the walls and due to the heavy cigarette smell left by the tenants. The landlord testified that she purchased the subject rental property new in August of 2015 and that the property has not been painted since then.

The landlord testified that she had the subject rental property painted in mid January 2021 and that this cost \$1,800.00. The landlord entered into evidence a quote for painting in the amount of \$1,800.00. No receipts or invoices were entered into evidence.

The tenant testified that the walls were not in great condition at the start of the tenancy and that any marks left on the walls were due to reasonable wear and tear. The tenant testified that no one ever smoked in the unit.

Blinds

The landlord testified that the blinds were new in August 2015 and in good condition at the start of this tenancy. The landlord testified that the blinds in the bedroom were broken at the end of this tenancy. Photographs of same were entered into evidence. The landlord also entered into evidence photographs of the subject rental property she testified were taken on July 2, 2019 in which no damage can be seen. The landlord entered into evidence photographs of the subject rental property she testified were taken on September 15, 2020 for the sale of the property. No close-up images of the blinds were provided and it is not possible from the photographs to determine what condition the blinds are in.

The landlord testified that the subject rental property was sold in January 2021 but that she had to reduce the price of the unit due to the damage to the blinds. No documentary evidence was submitted by the landlord showing that the sale price was reduced due to the condition of the blinds. The landlord entered into evidence a copy of an online shopping cart showing blinds in the amount of \$210.56. The landlord testified that she is seeking \$200.00 from the tenant for the damage done to the blinds.

The tenant testified that the blinds were in poor condition when he moved in and fell apart from regular wear and tear.

Repairs

The landlord testified that a handyman made the following repairs for \$245.00:

Item	Amount
Repair cupboard doors	\$50.00
Replace small bedroom doorknob	\$50.00
Replace dryer duct	\$45.00
Repair ensuite shower	\$95.00
Repair light switch	\$10.00

The tenant entered into evidence a quote from a handyman which states:

Item	Amount
Paint suite walls	\$1,735.00
Repair cupboard doors	\$50.00
Replace small bedroom doorknob	\$50.00
Replace dryer duct	\$45.00
Repair ensuite shower	\$95.00
Total	\$1,975.00

The landlord testified that the cupboards, door knob, dryer duct and en suite shower knob were all in good condition at the start of this tenancy and required repair/replacement at the end of this tenancy. The landlord testified that the handyman made all the repairs stated on the quote, for the amount stated, except the painting. The landlord testified that the handyman also repaired a broken light switch for \$10.00. The landlord did not enter into evidence a receipt for work completed.

The landlord entered into evidence photographs of the subject rental property showing damage to the kitchen cupboards, bedroom door knob, dryer duct and the shower knob. The landlord testified that the photographs were taken on December 31, 2020. The photographs the landlord testified were taken on July 1, 2019 and September 15, 2020 are not close ups and it is not possible to determine if the above items are damaged in the photographs.

The tenant testified that the cupboards were not in good condition when he moved in and that the wear seen in the landlord's December 31, 2020 photographs is the result of

regular wear and tear. The tenant testified that the doorknob in the small bedroom fell off shortly after he moved in and since the landlord did not live in town, there was no one to fix it so he left it in a drawer at the property. The tenant testified that at the end of the tenancy the shower knob became stripped and stopped working, the tenant testified that the shower knob was not used in an inappropriate manner and that it required replacement due to regular wear and tear.

The landlord testified that the dryer duct was not attached to the dryer and required repair. The tenant testified that he was not aware that there was anything wrong with the dryer duct and that if it became detached it was from regular wear and tear.

TV repair/replacement

The landlord testified that the television was five years old or less and in good condition when the tenant moved in. The landlord testified that a piece on the bottom of the television was broken off at the end of the tenancy and the screen showed coloured stripes at the bottom of the television when turned on. The landlord testified that she received an email from a television repair shop which stated that it would cost as much to fix as a new television. The email was entered into evidence.

The landlord testified that she has not replaced the television. The landlord entered into evidence an online advertisement for televisions. One advertisement is for \$747.99 and the other for \$647.99. The landlord testified that she is seeking \$750.00 to replace the television. The landlord entered into evidence a close-up photo of the tv which she testified was taken on December 31, 2020, which show the small broken piece of the television. The photographs the landlord testified were taken on July 1, 2019 and September 15, 2020 are not close up photographs and it is not possible to determine if the television is broken in them.

The tenant testified that the television was already broken when he moved in and that he and his family did not damage it.

Utilities

Both parties agreed that hydro was not included in the rent and that the tenant owes \$176.10 for the last hydro bill at the subject rental property.

Move out fee

Both parties agree that the tenant owes the landlord a \$100.00 move out fee as provided in the addendum to the tenancy agreement.

Missing items

The landlord testified that the subject rental property came fully furnished. The tenant testified that the subject rental property came partially furnished. Both parties agree that the landlord did not provide the tenant with a list of items that came with the subject rental property. The landlord testified that a number of items were missing when the tenant moved out.

The landlord testified that the following missing/damaged items were all in good condition and five years old or less:

Item	Amount sought	Amount of online advertisement for new similar product (tax not included)	Receipt from original purchase
Corner workstation	\$200.00	\$199.00	
Dumbbells (2)	\$40.00	\$17.99 each	
Accent chair	\$200.00	\$314.99	
Stainless Steel Cookset	\$100.00	\$149.99	
Skillet	\$25.00	\$24.97	
Stainless steel cutlery	\$10.00	\$19.99	
Kitchen utensils	\$10.00	\$15.97	
Landry basket	\$10.00	\$12.97	
Electric kettle	\$20.00	\$39.97	
Toaster	\$20.00	\$19.98	
Blue ray player	\$90.00	\$89.98	
Indoor rug	\$130.00		\$103.00 USD- \$138.94 CAD
Queen mattress	\$300.00		\$587.18 plus tax

The landlord entered into evidence an online advertisements for similar products as set out in the table above and some receipts from the original purchases.

The landlord entered into evidence a text message exchange between the parties dated December 31, 2020 which states:

- Landlord:
 - There a few appliances missing. The desk that was in your daughter's room is also missing.
- Tenant:
 - Which appliances?
 - Can you help with a list? Thanks and see you later.
 - The desk was poorly put together and quite broken when we received it and when u went to move it recently to shampoo your carpets it literally just broke more into many pieces. Sorry for that but it was of poor value unfortunately.
- Landlord:
 - I will compile a list. Furthermore, the agreement stated no hanging on the walls. The carpet clean in appreciated. However the desk will need to be replaced. Please review the addendum on our tenant agreement. Thank you
- Tenant:
 - Will discuss. Can you send list prior so I can make sure I didn't bring it by mistake. Thanks.
- Landlord:
 - Toaster, electric kettle, blu ray player, colored wine cups
 - There are also damage to the TV
 - A discussion won't be required. There have been violations to the tenancy agreement.
- Tenant:
 - Wear and tear with age are part of furnished apartments. Will discuss happy to come to a mutual agreement. Ttyl thx
- Landlord:
 - As you are already are of the condition of the unit, a move out inspection won't be necessary. Pictures of the damages will be emailed to you. Please review the terms of our tenancy agreement, including the addendum. There have been violations to the agreement. Please meet me at the front gate to handover the two set of keys and the small appliances stated earlier. As per the agreement, please send the move out fee by January 1, 2021. Thank you.

- Tenant:
 - So what amount of my desoposite are you keeping? I'm happy to procure any missing items?
 - What amount is the move out fee?
 - There is a very expensive, nice glass table the TV is on. That was mine and I left in hopes to help reimburse some of the wear of your items.
 - Also I can bring a new kettle, also I have the wine glasses and will bring. Didn't realize they were yours. I also left many extra glasses dishware and cutlery in good faith.
- Landlord:
 - The move out fee is \$100.00. I will continue to look thru the unit and compile a list of missing items. Then, the completed list will be emailed to you. There are lids but pots are missing. Please let me know when you're at the gate and I will head down. Thank you
- Tenant:
 - Those lids are from my pots. May you bring them down I was washing them and hopes to get them.
 - Not sure why you aren't answering. May I have a quick call with before I come there? Running behind as I', getting your glasses and toaster etc. wasn't sure what was yours exactly....
 - Happy to take 500\$ and give you the keys now.
 - Figure that can help pay for any paint and a DVD player.
 - If not I'll mail them to you accordingly. Or if I'm the next few days while you in town you can give me a quote which I agree upon I'll drop them off.

The tenant testified that the landlord did not provide a list of items included in the rent so the landlord has not proved that any of the items claimed to be missing were provided in the rental.

Corner workstation

The tenant testified that the workstation was given to him by the landlord at the start of the tenancy. No documentary evidence to support this testimony was provided The tenant testified that the workstation was of poor quality and crumbled when he tried to move it.

The landlord testified that the workstation was not gifted to the tenant and was in good condition at the start of this tenancy. The landlord testified that the workstation was five years old or less at the end of this tenancy.

Dumbbells (2)

The landlord testified that the dumbbells were in good condition at the start of this tenancy and were missing at the end of this tenancy. The landlord testified that the dumbbells were five years old or less.

The tenant testified that dumbbells were not included in the rental.

The landlord entered into evidence a photograph she testified that taken on September 15, 2020 in which dumbbells can be seen in the master bedroom.

Accent chair

The landlord testified that the accent chair was in good condition at the start of this tenancy and was missing at the end of this tenancy. The landlord testified that the accent chair was five years old or less.

The tenant testified that an accent chair was not included in the rental.

The landlord entered into evidence a photograph she testified was taken on September 15, 2020 in which the accent chair can be seen in the master bedroom. The same chair can be seen in a photograph the landlord testified was taken on July 1, 2019.

Stainless Steel Cook set and skillet

The landlord testified that the pots to the cook set and the skillet were in good condition at the start of this tenancy and were missing at the end of this tenancy. The landlord testified that the cook set and skillet were five years old or less.

The tenant testified that he did not take the landlord's cook set or skillet at the end of this tenancy.

The landlord entered into evidence a photograph of pot lids. The landlord testified that the photograph was taken on December 31, 2020.

Stainless steel cutlery and utensils

The landlord testified that the cutlery and utensils were in good condition at the start of this tenancy and were missing at the end of this tenancy. The landlord testified that the cutlery and utensils were five years old or less.

The tenant testified that he did not take the landlord's cutlery and utensils.

The landlord entered into evidence a photograph of cutlery and utensils. The landlord testified that the photograph was taken on December 31, 2020.

Landry basket

The landlord testified that the laundry basket was in good condition at the start of this tenancy and were missing at the end of this tenancy. The landlord testified that the laundry basket was five years old or less.

The tenant testified that a laundry basket was not included in the rent.

Electric kettle

The landlord testified that the electric kettle was in good condition at the start of this tenancy and were missing at the end of this tenancy. The landlord testified that the electric kettle was five years old or less.

The tenant testified that he attempted to return the kettle, but the landlord refused to accept it. The landlord testified that the kettle the tenant attempted to return was not the correct kettle. The tenant did not agree.

Toaster

The landlord testified that the toaster was in good condition at the start of this tenancy and was missing at the end of this tenancy. The landlord testified that the toaster was five years old or less.

The tenant testified that a toaster was not included in this rental.

Blue ray player

The landlord testified that the blue ray player was in good condition at the start of this tenancy and was missing at the end of this tenancy. The landlord testified that the blue ray player was five years old or less.

The tenant testified that he does not recall if a blue ray was included in the rental but if it was, he did not take it.

The landlord entered into evidence photographs the landlord testified were taken on July 1, 2019 and September 15, 2020 in which a player can be seen.

Indoor rug

The landlord testified that the indoor rug was in good condition at the start of this tenancy and was left outside and damaged at the end of this tenancy. The tenant did not provide testimony regarding the rug.

The landlord entered into evidence a photograph of the rug on the outside patio. The landlord testified that the photograph was taken on December 31, 2020.

Queen mattress

The landlord testified that the queen mattress was in good condition at the start of this tenancy and was missing at the end of this tenancy. The tenant testified that the rental did not include the queen mattress but did include the box spring. The tenant testified that he did not take a mattress that was not his at the end of this tenancy.

The landlord entered into evidence photographs in which a mattress can be seen on the bed. The landlord testified that the photographs were taken on July 1, 2019 and September 15, 2020.

Loss of rental income

The landlord testified that the tenant left the subject rental property dirty and in disrepair that she was not able to rent the property out for January 2021 and so is seeking \$1,800.00 in loss of rental income.

The landlord testified that in late December 2020 she put the subject rental property up for short term rental but did not find anyone to rent the property. The online advertisement entered into evidence was posted on December 17, 2021 and lists the property for rent at \$1,950.00 per month, viewings from December 31 – Jan 07, available on Jan 08.

The landlord testified that she sold the subject rental property in mid January 2021 and did not rent it out and that it remained vacant until the new owner took possession in March 2021.

The tenant testified that he was asked to leave the subject rental property so that it was easier to sell, which the landlord did shortly after he moved out. The tenant testified that the subject rental property was not left in an unrentable state and that he is not responsible for January 2021's rent.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Photographs

The landlord entered into evidence photographs the landlord testified were taken on September 15, 2020 and December 31, 2020. The tenant did not dispute that the photographs were taken on those dates or that the content of the photographs was not accurate. I accept the landlord's undisputed testimony that the photographs with file names dated September 15, 2020 and December 31, 2020 were taken on those dates.

The landlord entered into evidence photographs the landlord testified were taken on July 1, 2019, the day before the tenant moved in. The landlord testified that these photographs are an accurate representation of the condition of the subject rental property at the start of this tenancy.

The tenant testified that the photographs were taken before the previous tenancy and are not an accurate representation of the condition of the property at the start of this tenancy. The photographs are not date stamped. Given the conflicting testimony and the lack of a corroborating move in condition inspection report, I find that the landlord has not proved, on a balance of probabilities, that the photographs entered into evidence with file names dated July 1, 2019, were taken on July 1, 2019. I therefore will not consider the photographs as proof of the condition of the property at the start of the tenancy.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. I find that

the landlord failed to complete a move in condition inspection report as required by section 23 of the *Act*. Consequently, pursuant to section 24(2) of the *Act* I find that the right of the landlord to claim against the tenant's security deposit for damage to residential property is extinguished.

Cleaning

As stated in Residential Tenancy Policy Guideline 16, the party who suffered the damage or loss must prove the amount of or value of the damage or loss. I find that the landlord has not proved the loss suffered as no receipts or invoices for cleaning were entered into evidence. I find that the email quote of an hourly rate from a cleaner is not enough to prove the loss suffered or to prove that the cleaner was actually hired and for how long the cleaner worked. The landlord's claim for cleaning is therefore dismissed.

Painting

Residential Tenancy Guideline #40 states that the useful life of paint is four years. I find that at the time this tenancy ended the useful life of the paint had expired and the landlord is therefore not entitled to compensation from the tenant to repaint the property. The landlord's claim for painting costs is therefore dismissed.

Blinds

I find that the landlord has not proved, on a balance of probabilities, that the sale price of the subject rental property was reduced by \$200.00 due to the condition of the blinds as no documentary evidence indicating same was provided. The landlord testified that the blinds were not replaced. I find that the landlord has not proved the value of the loss suffered and so the landlord's claim for \$200.00 for the damage to the blinds is dismissed.

Repairs

As stated in Residential Tenancy Policy Guideline 16, the party who suffered the damage or loss must prove the amount of or value of the damage or loss. I find that a quote is not enough to prove the alleged loss. I find that the landlord has not proved the value of the loss suffered as no receipts or invoices for the repairs were entered into evidence. I find that the landlord has not proved that the repairs were actually made and a loss actually suffered. The landlord's claim for repairs is therefore dismissed.

TV repair/replacement

I find that the landlord has not proved the move in condition of the tv as no condition inspection report was completed and the parties' testimony regarding the move in condition differs. I find that the landlord has not proved, on a balance of probabilities, that the tenant damaged the tv. The landlord's claim for the cost of a new tv is therefore dismissed.

Utilities

I award the landlord \$176.10 for the tenant's outstanding hydro bill, as agreed by the parties in this hearing.

Move out fee

I award the landlord \$100.00 for the tenant's move out fee, as agreed by the parties in this hearing.

Corner workstation

Based on the testimony of both parties, I find that a corner workstation was a furnishing at the subject rental property at the start of this tenancy. I find that, on a balance of probabilities, the workstation was not gifted to the tenant as the property came at least partially furnished. I find that the tenant has not provided any documentary evidence to establish his position that the workstation was a gift.

I accept the landlord's evidence that the value of the workstation when new was worth \$199.00. Based on the September 15, 2020 photographs, I find that the workstation was in good condition. Based on the testimony of both parties I find that the workstation required replacement at the end of the tenancy.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline #40 states that the useful life for furniture is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 66 months of useful life that should have been left for the workstation. I find that since a new workstation was required after only 54 months, the tenants are required to pay according to the following calculations:

$\$199.00 \text{ (cost of work station)} / 120 \text{ months (useful life of furniture)} = \1.66
(monthly cost)

$\$1.66 \text{ (monthly cost)} * 66 \text{ months (expected useful life of workstation after tenant moved out)} = \109.56

Dumbbells (2)

Based on the September 15, 2020 photographs entered into evidence by the landlord, I find that dumbbells were included in the rental property. I accept the landlord's testimony that they were missing at the end of this tenancy. I accept the landlord's testimony that the dumbbells were five years old or less.

Residential Tenancy Branch Policy Guideline #40 does not provide a useful life for dumbbells or anything like dumbbells and the landlord did not provide testimony on the useful life of dumbbells. As such I cannot complete a useful life calculation to calculate the landlord's loss.

Residential Tenancy Policy Guideline 16 states that 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 find that the landlord is entitled to \$10.00 in nominal damages for the loss of the dumbbells.

Accent chair

Based on the September 15, 2020 photographs entered into evidence by the landlord, I find that the accent chair was included in the rental property. I note that in the photograph the landlord testified was taken on July 1, 2019, the same chair can be seen as in the September 15, 2020 photo. Whether the photo tiled July 1, 2019 was taken on July 1, 2019 or prior to the previous tenancy, the presence of the chair at the property before the tenant moved in shows that the chair in the September 15, 2020 photo was not the property of the tenant.

I accept the landlord's testimony that the chair was missing at the end of this tenancy. I accept the landlord's testimony that the chair was five years old or less. I accept the landlord's evidence that the chair was valued at \$314.99 when new.

Policy Guideline #40 states that the useful life for furniture is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 66 months of useful life that should have been left for the chair. I find that since a new chair was required after only 54 months, the tenants are required to pay according to the following calculations:

$\$314.99 \text{ (cost of chair)} / 120 \text{ months (useful life of furniture)} = \$2.62 \text{ (monthly cost)}$

$\$2.62 \text{ (monthly cost)} * 66 \text{ months (expected useful life of chair after tenant moved out)} = \$172.92.$

Stainless Steel Cook set and skillet

The testimony of the parties on the presence of a cook set and skillet differ. I find that the landlord has not provided evidence to establish that the cook set and skillet were included with the subject rental property. An agreed list of items included in the rent signed by both parties at the start of the tenancy would have been helpful in this regard.

I find that none of the landlord's documentary evidence has proved that a cook set and skillet were included in the rent. I note that in the text messages entered into evidence the tenant states that the cook set is his, not the landlords.

I find that the landlord has not proved that the tenant took a cook set or skillet. The landlord's claims for these items is therefore dismissed.

Stainless steel cutlery and utensils

The landlord testified that the tenant took cutlery and utensils from the property, the tenant disputes this. The landlord entered into evidence a photograph of cutlery and utensils at the property on December 31, 2020. I find that the landlord has not proved on a balance of probabilities, that any of the cutlery and utensils were missing. The landlord's claim for their value is therefore dismissed.

Landry basket

The testimony of the parties on the presence of a laundry basket at the subject rental property differs. I find that the landlord has not provided evidence to establish that the laundry basket was included with the subject rental property. The landlord's claims for the value of the laundry basket is therefore dismissed.

Electric kettle

Both parties agree that the tenant accidentally took the kettle from the subject rental property. The tenant testified that he attempted to return it but the landlord refused. The landlord testified that the tenant did not return the correct kettle. The tenant disputes this.

I find that the landlord has not proved what kettle was provided as a furnishing at the subject rental property or that the tenant did not return the correct kettle. I find that the landlord is not entitled to refuse the return of the kettle and then claim damages for it. The landlord's claim for the cost of a kettle is dismissed.

Toaster

The testimony of the parties of the presence of a toaster differs.

In the text messages entered into evidence the tenant states:

- Tenant:
 - Not sure why you aren't answering. May I have a quick call with before I come there? Running behind as I'm, getting your glasses and toaster etc. wasn't sure what was yours exactly....

Based on the landlord's testimony and the above text message, I find that a toaster was

included in rent at the subject rental property as it was specifically mentioned by the tenant.

I accept the landlord's testimony that the value of the toaster when new was \$19.98 and that the toaster was approximately five years old.

Policy Guideline #40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

A toaster does not appear in the table, but a microwave does. The useful life of a microwave is 10 years. I find that since a toast and a microwave are both small appliances, the same useful life applies to toasters.

The useful life for a toaster is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 66 months of useful life that should have been left for the chair. I find that since a new chair was required after only 54 months, the tenants are required to pay according to the following calculations:

$\$19.98 \text{ (cost of toaster)} / 120 \text{ months (useful life of toaster)} = \$0.17 \text{ (monthly cost)}$

$\$0.17 \text{ (monthly cost)} * 66 \text{ months (expected useful life of toaster after tenant moved out)} = \11.22

Blue ray player

The testimony of the parties of the presence of a blue ray differs.

In the text messages entered into evidence, the tenant states:

- Tenant:
 - Happy to take 500\$ and give you the keys now.
 - Figure that can help pay for any paint and a DVD player

I find that the DVD player referenced by the tenant in the above text message actually

refers to the landlord's blue ray player. Based on the landlord's testimony and the above text message, I find that the blue ray player was included in rent at the subject rental property as it was specifically mentioned by the tenant. I accept the landlord's testimony that the blue ray player was missing at the end of this tenancy.

I accept the landlord's testimony that the value of the blue ray player when new was \$89.98 and that the blue ray player was approximately five years old.

Policy Guideline #40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

A blue ray player does not appear in the table, but a microwave does. The useful life of a microwave is 10 years. I find that since a blue ray and a microwave are both small appliances, the same useful life applies to blue ray players.

The useful life for a blue ray player is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 66 months of useful life that should have been left for the blue ray player. I find that since a new blue ray player was required after only 54 months, the tenants are required to pay according to the following calculations:

$$\begin{aligned} &\$89.98 \text{ (cost of blue ray player)} / 120 \text{ months (useful life of blue ray player)} = \\ &\$0.75 \text{ (monthly cost)} \end{aligned}$$

$$\begin{aligned} &\$0.75 \text{ (monthly cost)} * 66 \text{ months (expected useful life of blue ray player after} \\ &\text{tenant moved out)} = \$49.50. \end{aligned}$$

Indoor rug

I accept the landlord's undisputed testimony that the tenant left the rug outside and that it was ruined. I accept the landlord's evidence that the rug cost \$134.94 CAD.

Policy Guideline #40 states that the useful life for carpet is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 66 months of

useful life that should have been left for the rug. I find that since a new rug was required after only 54 months, the tenants are required to pay according to the following calculations:

$$\$138.94 \text{ (cost of rug)} / 120 \text{ months (useful life of rug)} = \$1.16 \text{ (monthly cost)}$$

$$\$1.16 \text{ (monthly cost)} * 66 \text{ months (expected useful life of rug after tenant moved out)} = \$76.56$$

Queen mattress

The testimony of the parties on the presence of a queen mattress at the subject rental property differs. I find that the landlord has not provided evidence to establish that the queen mattress was included with the subject rental property. While the photographs entered into evidence show a mattress on the master bedroom bed, I find that I am not able to tell if the mattresses are the same in all the photos or if the tenants brought in their own mattress. I find that the landlord has failed to prove that a queen mattress was included as a furnishing at the subject rental property. The landlord's claim for the queen mattress is therefore dismissed.

Loss of rental income

I accept the testimony of the tenant that the reason they tenant was asked to move out of the subject rental property was to make it easier for the landlord to sell the subject rental property. I accept the landlord's testimony that the property was sold mid January 2021. I find that the landlord did not suffer a loss of rental income resulting from the condition of the rental property because it was the landlord's primary goal to sell the property, not to re-rent it, thus a loss of rental income was not possible.

While the landlord entered into evidence a single online advertisement, it is undisputed that the landlord had been trying to sell the property for months and that the sale of the property was the avenue preferred by the landlord and most actively pursued. The landlord was able to sell the property shortly after the tenants vacated which may not have occurred if the premises were still occupied by the tenants.

I also note that the major work of re-painting the subject rental property was not the tenant's responsibility and the landlord failed to prove that repairs were actually made to the subject rental property prior to the sale. I find that the landlord has not proved that

the condition of the subject rental property at the end of this tenancy resulted in a loss to the landlord. The landlord's application for loss of rental income is dismissed.

Security Deposit

Section 38(1) of the *Act* states that within 15 days after the later of:

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

The landlord testified that she received the tenant's forwarding address via email "a few days" after it was sent. The tenant testified that the forwarding address email was sent on December 31, 2020. Section 88 of the *Act* only permits service via email if the parties have agreed to accept service via email in writing. No evidence to support this conclusion was entered into evidence. However, if both parties agree a document was sent and received, even if the document was sent in a manner not set out in section 88 of the *Act*, such documents are routinely found to have been sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*.

"A few" can mean anywhere from 3-10. Given that email was not agreed on as a method of service by the parties, I allow the landlord the five days granted for items to be deemed served that were sent via regular mail as parties who have given written authorization to be served via email are more likely to check their emails more frequently.

I find that the landlord was sufficiently served for the purposes of this *Act* with the tenant's forwarding address, pursuant to section 71 of the *Act* on January 5, 2021, five days after it was sent. I find that the landlord filed this application within 15 days of receiving the tenant's forwarding address.

As stated earlier in this decision, the landlord's right to claim against the security deposit

for **damage** to the rental unit arising out of this tenancy is extinguished.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for **damage** to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, the landlord is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the *Act*. However, the extinguishment provisions only apply to claims for **damage** to the property, not for loss of rental income. I find that the landlord was entitled to hold the tenant's security deposit until the outcome of this decision as part of the landlord's claim is for loss of rental income. The tenants are therefore not entitled receive double their security deposit.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under section 24 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$805.86 from the tenants' security deposit. I Order the landlord to return the remaining \$94.14 from the tenants' security deposit to the tenants.

Conclusion

The landlord is entitled to retain \$805.86 from the tenants' security deposit pursuant to the below calculation.

Item	Amount
Utilities	\$176.10
Move out fee	\$100.00
Corner work station	\$109.56
Dumbbells	\$10.00
Accent chair	\$172.92
Toaster	\$11.22
Blue ray player	\$49.50
Rug	\$76.56
Filing Fee	\$100.00
TOTAL	\$805.86

I issue a monetary order to the tenants in the amount of \$94.14.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: May 26, 2021

Residential Tenancy Branch