Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act of $1.00 (the Landlord said she did not know how to fill out the Application form.). The Landlord also applied for a monetary order for damages for the Landlord of $540.00, retaining the security deposit to apply to these claims; and to recover the $100.00 cost of her Application filing fee.

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

Service is an issue before me, as the Tenant reported that she was not served with the Notice of Hearing documents or evidence until the first week of April, although the Landlord applied for dispute resolution on December 21, 2020. The RTB Rules of Procedure provide parties with rules mirroring those of administrative fairness and natural justice, and are authorized by section 9 of the Act.

Rule **3.1** states:

> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available to them by the RTB, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the RTB, which includes the Application for Dispute Resolution;

b) the Respondent Instructions for Dispute Resolution;

c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and

d) any other evidence submitted to the RTB directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5

Rule 3.11 reads:

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Rule 3.13 reads:

3.13 Applicant evidence provided in single package

Where possible, copies of all of the applicant's available evidence should be

submitted to the RTB directly or through a Service BC Office and served on the other party in a single complete package.

An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution]

In the hearing, I noted that most of the Landlord's evidence was submitted 26 days or a little over 3 weeks before the hearing, although she applied for dispute resolution on December 21, 2020, or approximately four months before the hearing. I asked the Landlord about the reason for this delay, and she said: "I was compiling the information for her, so there was a lot of back and forth, and additional evidence was needed for the gaps."

The Landlord did not serve the Tenant with the Notice of Hearing or Application or

Evidence until early April – 4 months after she applied - contrary to section 59(3) of the Act and Rule 3.1. As such, I said I could not consider their evidence, as the Landlord did not even serve the Notice of Hearing anywhere close to on time. I told the Landlord that she could proceed with the hearing on testimony only, or I could dismiss the Application with leave, and she could apply again and add other things she said she wanted to claim.

The Landlord and the Agent said they wanted to have their claim dismissed with leave; however, the Tenant said that she wanted to go ahead with the hearing, so that she could get her security deposit back. I asked her if she approved of my considering the Landlord's evidence in these circumstances, and she said yes, so we proceeded with both Parties' evidence before me for consideration.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

This Decision includes quotes of what the Parties said in the hearing. I have tried to reproduce the Parties' words as spoken throughout this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on February 1, 2016, ran to January 31, 2017, and then operated on a month-to-month basis. The Parties agreed that the Tenant paid the Landlord a monthly rent of $1,180.00, due on the first day of

each month. They agreed that the Tenant paid the Landlord a security deposit of $540.00, and no pet damage deposit.

The tenancy ended by mutual agreement signed and dated by the Parties on October 31, 2020. This agreement states: “All of us agree to stop the current rent agreement, and [the Tenant] wants to move out of the apartment on November 30, 2020.” It also states that there will be “no charge for ending the tenancy early.”

The Tenant said that she tried to give the Landlord her forwarding address “multiple times”, but the Landlord used the rental unit address as her address for service in the tenancy agreement. The Tenant said she sent this information to the Landlord by registered mail to the rental unit address. The Landlord submitted a copy of a text she received from the Tenant with the Tenant’s forwarding address, although the date is not evident in this text. I find there is not sufficient evidence before me to determine when or how the Tenant’s forwarding address was provided to the Landlord in writing.

The Parties agreed that they did not conduct an inspection of the condition of the rental unit at the start of the tenancy. The Tenant said that the rental unit was “in decent shape, but it was ‘lived in’, had nails in the wall . . ..” The Landlord said the rental unit was “brand new” the year prior to the Tenant moving in. They agreed that the rental unit is a one bedroom, one-bathroom unit of approximately 577 square feet.

In her final statements, the Landlord referred to the move-out inspection that was attempted between the Parties. The Landlord said:

> I want to say we didn’t finish walk-through and she left. She was mad. I told her that the window not clean and oven not clean. She said Strata responsible and oven self-cleaning. Want me to clean now or take money out from deposit. Her Mom asked how much you’re taking out. $25.00 per hour.
>
> For all that, I need $150.00. When Tara heard that she needed to pay some money, she was mad and rude and loud – ‘I don’t want to pay anything’, and she and her Mom left, and we didn’t finish the walk-through. I texted her ‘we haven’t finished yet; we have to talk about it. You can clean up or take money out – we can talk about it’. She wouldn’t talk about it. ‘Strata responsible for the windows’; they aren’t responsible for inside; they’re responsible for outside.
>
> I’m a very reasonable person and she just disagrees with me and takes advantage of us, because we don’t have good English like she has. We tried our

best to keep good relationship with Tenant. We do right away whatever they need. The washer broke and she was very rude to me. I called a technician right away; the schedule couldn't match in the same day and she was rude. The Technician found a whole bunch of coins in the washer – stuck - made washer doesn't work. I paid for her and didn't say any word.

I try to make a good relationship with her: charge her low rent, and still not satisfied. Still like someone push us to the corner and we have to push back. I want to communicate with her; I didn't want this bill. . . . you can clean up or take money out of deposit

The Tenant said:

Again, she wanted to deduct $150.00 at the walk-through, even though it's not complete yet, but she gave a dollar value. She started yelling at me . . .. I would like my security deposit back in full.

LANDLORD'S CLAIMS

The Landlord set out her claims in a worksheet with entitled "Move_Out_Accounting". We reviewed these claims in the hearing, and I have transcribed the details of the Landlord's worksheet in the following chart.

	For	Amount
1	Removed nails, filled holes 20 x $1.50	$30.00
2	Paint walls 5 hrs x $30/hr	$150.00
3	Cleaning carpet	$100.00
4	Clean suite 6 hrs x $25.00	$150.00
5	Damage	$80.00
6	Cleaning materials	$50.00
	Total monetary order claim	**$560.00**

#1 REMOVING NAILS, FILLING HOLES → 20 HOLES x $1.50/per = $30.00

In the hearing, the Landlord said:

> I needed to take the nails out, and big long fixture take long time, we filled up the holes with the filler and left them to dry, then we sanded it – that takes time to fill the holes. There were so many nails and the holes. She doesn't really take the nails out – just left the nails in. We had to go buy filler and paint – a couple hours shopping from my husband and me – we're already 60 years old, and we needed to line up to buy things – line ups.

The Tenant said:

> When I first moved in, there were already nails in multiple walls. Most of the nails I just used the nails to hang things and [the Landlord] told me verbally that I could use nails to hang things.

The Agent said:

> Attached with the submission are photos, as well. There are photos of nails and a 'long wall fixture' that she was talking about. There were wall hooks stuck on the window. The wall in the kitchen on the back splash – this indicates the level of care to maintain or remove these things.
>
> There's no permanent damage, but a simple 10 second removal, if the care was not provided to take these things off.

I reviewed these photographs after the hearing, and I note there were four pictures of nails in the walls, and one with a white hook of some kind that is larger than nails. The Landlord also included a photograph of a metal bar of about 12 inches long that is secured to the wall, and which has five nail holes above it. This must be what the Agent referred to as the "long wall fixture". The Landlord also included pictures of hooks on walls stuck with adhesive, rather than having been nailed or screwed in.

The Tenant said:

> Re the adhesive hooks – I never purchased them, and the backboard in the kitchen was already there. There is one window glass sliding door. There's a blind string hung there, but I never put anything up there.

The Landlord said:

> I'm really sure the unit doesn't have any holes before she moved in. When we

> gave her the key – to look at the whole apartment, she was so happy. She said everything good. It's a 36-floor, high-rise unit on the 18th floor – the best spot. We kept it really good. It doesn't have any spots. I'm talking the truth every word.

The Tenant said she didn't have anything more to say about this topic.

When asked how the Landlord arrived at the amount claimed for this item, the Agent said:

> We're talking about including the time taken to get supplies necessary and go over it with the paint pens. In overall, close-out accounting, we rounded down because we already had supplies at home. No cost taken on the cost of those items – concessions were made there. The receipts for the cost of supplies is more than cost [the Landlord's] looking for.

The Agent did not direct me to any evidence of receipts. However, I understand that the Landlord used her own supplies for this claim.

The Tenant said: "He mentioned a paint person with the next item for painting."

The Agent said:

> It took five hours for painting - so many holes not all in one wall. There were 5, 6, 7 walls – each wall had nails. I had to paint each wall to look good. The material includes paint. . .. roughly $50.00 for materials.

#2 PAINTING WALLS → 5 HOURS X $30.00/HR = $150.00

The Landlord said that the rental unit had been renovated, including new paint a year prior to the tenancy starting, which means it was last painted in 2015.

The Agent said:

> Prior to the previous tenants living there for one year, the building was four years old, but only occupied for one year prior to her. The unit is brand new, and was rented first by two very nice boys.

I asked the Landlord if this claim includes the cost of paint, and she said:

> It's labour. We drove to [the international hardware retailer] – regular stuff,

> nothing special – two coats of paint. The important areas needed two coats. One coat in not important area. Only one container of paint.

The cost of paint is addressed further in #6 below.

The Tenant said: “I said earlier, it was not brand new when I moved in. After five years, I shouldn’t be responsible for painting the apartment.”

#3 CLEANING CARPET → $100.00

I asked the Landlord if she had submitted a receipt for this claim. The Agent said: “Receipt? They did it themselves.”

The Landlord said:

> I have a shampoo cleaner, and my husband and I cleaned up two or three times for that area. We used a shampoo washer and liquid from our home, and I didn’t count those materials.

I asked the Landlord how she came to the total of $100.00 for this claim, and she said:

> I called carpet cleaners and they charge that. I called twice, but in the beginning of the month they were too busy. Too small an area for them to clean – ‘we don’t have the time for you.’
>
> It took a couple hours. Once until dry, and then another time, and still a stain, but I tried to use a bleach. Two to three days to dry. Winter time takes longer to dry. My husband used a hand brush to brush it.

The Tenant referred me to a receipt she submitted for having had the carpets steam cleaned on November 29, 2020. This receipt was for $100.00. The Tenant also said: “The carpet wasn’t in perfect condition when I moved in.”

#4 CLEANING SUITE → 6 HRS @ $25.00 = $150.00

The Landlord said that there is no cleaning receipt for this claim, because they did the cleaning themselves. She said:

> We cleaned by ourselves. because we didn't have an income. We don't have a job, only CERB for only myself. Rental income is our major income, so we can't afford to hire people to clean for us. See the evidence - the first pictures - how dirty the balcony – three hours for the balcony and window and frame. It's 16 feet long, 12 feet high – the wall is glass. Hard to clean up the blinds.
>
> The oven and baseboards, closet, oven – she tried to use – her Mom tried to use – I said the oven is dirty. Her mom said the oven is self-cleaning; yes, but you need to turn it on and clean it before giving key back; why not turn on switch? Self-clean doesn't mean you give me the dirty oven. They take advantage from us.

The Tenant said:

> It was clean when I left. There was no issues. She basically continues to change what she needed the security deposit for. On October 30, when we signed the agreement to end the tenancy early, she made a comment about giving extra money because she isn't working. The apartment was clean when I left. Her photos are black and white. You can't see issues with the oven. The balcony is dirty, and the Strata pressure washes it.

The Agent said:

> Attached in the bottom of every page of the evidence package was a link with the full-sized quality photo drafts, which are in google drive in the link. This is where I am going through the same evidence….

The Tenant said: "I attempted to use the link; it didn't work. I asked the RTB to provide a .. . it's not my responsibility to use a google link."

The Landlord said: "About the cleaning part, [the Tenant] said she can't see black and white, but the evidence we submitted is very clear."

In a text message the Landlord received from the Tenant, which the Landlord submitted into evidence, the Tenant states:

> I originally moved in on Feb 1 2016 and provided you with a ½ months rent ($540.00) as a damage deposit. I feel the issues you report, self cleaning oven, and blinds being not straight are normal wear and tear from living there for

> 4years 10 months. Please provide me with a address for you, so I can provide you my forwarding address. .
>
> [Reproduced as written]

#5 DAMAGE TO RENTAL UNIT → $80.00

Given that the Landlord broke this category into four parts, we examined each part in the hearing.

A. Entrance Door

I asked the Landlord to describe the damage to the door and explain what repairs she did and how much this cost. The Landlord said:

> If you see the pictures, the second picture is showing the damage to the entrance door. Big hole on the bottom of the door. I just rounded to $80.00 They came to fix it for $150.00, so I didn't ask them to do it, so the door still has the hole there.

The Tenant said: "It was there when I moved in."

The Landlord submitted a photograph of what looks like the top of a door frame, which must be the bathroom door, because the Landlord said the front door damage was at the bottom of the door. However, I find that she did not direct me to (or submit) any photographs of a door with damage at the bottom.

B. Washroom Door Frame (top of frame)

I find it is more likely than not that the only photographic evidence of damage to a door in the rental unit was to the top of the washroom door frame. In this photograph, the damage to the upper, middle of the frame looks to be marks or gouges; however, it does not look to be something that would affect the functioning of the door. The Landlord did not say if this was repaired or not.

C. French Door Frames

The Landlord said in the hearing that there were: "Hooks and tape on French door frame. The $80.00 was from the entrance door; over $80.00, I didn't count any money from those."

The Tenant said that the damage was already there at the start of the tenancy.

D. Window Frame (per air-conditioner)

The Landlord said that the Tenant damaged the aluminum frame of a window where the Tenant used an air-conditioner. She said there was damage along the track at the bottom of the window where it slides, due to the window mounted air-conditioner unit affecting the tracks.

The Tenant said that the damage was already there at the start of the tenancy.

The Landlord submitted photographs of window frames that show what looks to be scratching of the sides of the window frame finish.

#6 CLEANING MATERIALS → $50.00

The Landlord said that this claim is for "spackling, filler, paint, white paint, sanding paper, and oven cleaner." The Landlord said:

> There is a receipt of $76.69, including the door stopper. It was behind the door; it was broken. It was too late to submit this as evidence. That is where the number is coming from. I rounded that down to the $50.00

The Tenant said: "Honestly, I'm having a hard time following - $30.00 to take out nails, but adds $50.00 for the filler - where the prices are for what?"

The Landlord said: "I tried to round it down, not up or it would be much more than that."

The Agent said:

> I would be able to provide it, because I have it here, but I don't think – it's too late to provide new evidence.
>
> As far as the move-out accounting – a lot of numbers are rounded down, because they had to do the work, themselves. The cleaning materials are rounded down from the materials she had, for the sake of having a round number and not using all of the materials.

Analysis

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

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36.

Further, landlords are required by section 24(2)(c) to complete and give tenants copies CIRs in accordance with the regulations.

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

Policy Guideline 16 ("PG #16") states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. PG #16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 REMOVING NAILS, FILLING HOLES → 20 HOLES X $1.50/PER = $30.00

The Parties disagreed about whether there were nails in the walls of the rental unit before the tenancy started. This is the purpose of completing a CIR at the start of the tenancy – so that there is a baseline of comparison at the end of the tenancy.

I find that based on the evidence before me overall, that there is insufficient evidence that the condition of the rental unit changed during the tenancy, such that there were additional holes, nails, a metal bars, and hooks hung throughout by the Tenant. As such, I find that the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. Pursuant to section 62 of the Act, I, therefore, dismiss this claim without leave to reapply.

#2 PAINTING WALLS → 5 HOURS X $30.00/HR = $150.00

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

In PG #40, the useful life of interior paint is four years. The evidence before me is that the paint was new in 2015, so it was approximately five years old at the end of the tenancy and had 0% of its useful life left.

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

I have considered my findings in the last category, which addressed the absence of a move-in CIR to prove that any damage was the result of the tenancy and was not there prior to the tenancy starting. Further, given that PG #40 indicates that the interior paint had depreciated fully during the tenancy, I find that the Landlord is not eligible to claim relief in this matter. I, therefore, dismiss this claim without leave to reapply.

#3 CLEANING CARPET → $100.00

As noted above, section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

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

I find that the Tenant provided evidence that she had the carpets cleaned at the end of the tenancy. While this may not have left the carpet as clean as the Landlord would have liked, I find that it is more likely than not that the Tenant left the carpet "reasonably clean", as is the requirement of the Act. Further, without a move-in CIR, there is insufficient evidence before me that the carpets were in worse shape at the end of the tenancy than they were at the beginning, beyond reasonable wear and tear. As such, I find the Landlord has not provided sufficient evidence to meet their burden of proof on a balance of probabilities, and I dismiss this claim without leave to reapply.

#4 CLEANING SUITE → 6 HRS @ $25.00 = $150.00

I find the Tenant's evidence about the oven being "self-cleaning", which is why she did not clean it, illustrates the Tenant's understanding of basic cleaning standards. Further, in a text to the Landlord, the Tenant indicated that she considered a dirty oven to be normal wear and tear. I find that this is an unreasonable belief, and that tenants are

responsible for cleaning ovens before the end of the tenancy.

PG #1 states that “At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.”

I find that the Tenant did not give sufficient evidence of how or how much she cleaned the rental unit at the end of the tenancy. I find that it was necessary for the Landlord to clean the apartment to a reasonable level at the end of the tenancy, given that the Tenant failed to sufficiently do so.

The Landlord’s evidence is that she and her husband spent three hours cleaning the balcony and large window. I find this indicates either a) that their cleaning standards are higher than is necessary under the Act and Policy Guidelines noted above, or b) that they are slower at cleaning, because of their age, which they noted in the hearing.

The Landlord said they spent as much time cleaning the balcony and window as they did the rest of the apartment. I find the hourly rate that the Landlord charged to be reasonable, given that it is on the low side of a standard hourly rate that I regularly see. However, I find that four hours to clean a rental unit of this size would be reasonable in the circumstances. Therefore, I award the Landlord with **$100.00** for having had to clean the rental unit at the end of the tenancy.

#5 DAMAGE TO RENTAL UNIT → $80.00

I will analyze the four claims and then explain any related award.

A. Entrance Door

As noted above, PG #16 states: “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

The Landlord said that she did not have the door damage repaired, but she claimed compensation for this, anyway. Further, as there as no CIR to compare the condition of the rental unit at the start to that at the end of the tenancy, it is difficult in most cases for the Landlord to determine what damage was caused by this tenancy and what was there before the tenancy began.

I find that the Landlord did not provide sufficient evidence to fulfill her burden of proof in this specific claim; therefore, I dismiss this specific claim without leave to reapply, pursuant to section 62 of the Act.

B. Washroom Door Frame (top of frame)

I find on a balance of probabilities that the damage illustrated by the photograph noted above is more than normal wear and tear. However, I find it is something that a tenant may not report as needing to be repaired – it could have been there without the Tenant complaining about it. As such, I find that the Landlord has not provided sufficient evidence that this specific claim occurred during this tenancy; therefore, I dismiss this specific claim without leave to reapply, pursuant to section 62 of the Act.

C. French Door Frames

The Landlord said that there were hooks and tape on the French door frame; however, she also said that her claimed amount was for the entrance door, and that she did not count any repairs over $80.00. I did not find any photographs of the damage to a French door frame in the Landlord's submissions. Accordingly, I find that the Landlord has not provided sufficient evidence of this damage for a remedy; therefore, I dismiss this specific claim without leave to reapply, pursuant to section 62 of the Act.

D. Window Frame (per air-conditioner)

The Tenant acknowledged that there was damage to the aluminum window frame along the track at the bottom where the window slides; however, she said it was there at the beginning of the tenancy. I find it more likely than not that any damage that affected how the window would slide would be something that a tenant is likely to report to the landlord during the tenancy. I find it improbable that the Tenant would put up with this for the four-year tenancy, if it was there at the start. As such, I find it more likely than not that the Tenant was responsible for this damage, and I find that the Landlord is therefore, eligible for compensation from the Tenant. Further, I also find that the Tenant's insistent denial of responsibility for anything claimed by the Landlord decreases her credibility, in the face of the Landlord's considerable evidentiary submissions and testimony. I, therefore, find the Tenant responsible for the damage set out in this specific claim. The award for this claim is detailed below.

Given the absence of a move-in CIR, most of the claims before me turn into a she

says/she says debate, although the burden of proof is on the Landlord in this case. However, I find from the evidence overall that the Landlord has slightly more credibility than the Tenant, and therefore, I find in this set of circumstances that the Landlord is eligible for a nominal award, pursuant to PG #16.

As the Landlord has already discounted the amount it would cost her to fix the damage in this overall category, I, therefore, award her with a nominal amount of **$50.00** for the "Damage to Rental Unit" claim, with a focus on having found the Tenant responsible for the last item in this overall claim. This award is made pursuant to sections 37 and 67 of the Act.

#6 CLEANING MATERIALS → $50.00

I found that it was necessary for the Landlord to clean the rental unit, and that the Landlord was eligible for nominal compensation for damage left in the rental unit. I, therefore, find that it is reasonable that the Landlord would be eligible to claim for supplies for these activities and, therefore, to be compensated for this claim, pursuant to sections 37 and 67 of the Act.

The Agent said that he had a receipt that included these materials, as well as a doorstopper; however, he did not submit that receipt, because he ran out of time before the hearing.

The Landlord said that this claim is for "spackling, filler, paint, white paint, sanding paper, and oven cleaner." I find that without a receipt, I am limited to giving the Landlord a nominal award pursuant to PG #16. As such, I grant the Landlord a nominal award for materials of **$25.00** pursuant to PG #16 and section 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $540.00 in complete satisfaction of the Landlord's monetary claim.

	For	Award
1	Removed nails, filled holes 20 x $1.50	$0.00
2	Paint walls 5 hrs x $30/hr	$0.00

3	Cleaning carpet	$0.00
4	Clean suite 6 hrs x $25.00	$100.00
5	Damage	$50.00
6	Cleaning materials	$25.00
	Total monetary order claim	**$175.00**

Given her partial success in her Application, I also award the Landlord with recovery of her $100.00 Application filing fee pursuant to section 72 of the Act for a total award of **$275.00** from the Tenant.

The Landlord has been awarded $275.00 for her claim, and I authorize the Landlord to retain $275.00 of the Tenant's security deposit and return the remaining $265.00 to the Tenant as soon as possible.

I grant the Tenant a Monetary Order of **$265.00** for the amount of the security deposit remaining after the Landlord's award has been satisfied.

Conclusion

The Landlord's claim for retaining the Tenant's security deposit is successful in the amount of $275.00. This includes recovery of the $100.00 filing fee for this Application from the Tenant.

The Landlord is authorized to deduct $275.00 from the Tenant's $540.00 security deposit in complete satisfaction of this award. The Landlord is **Ordered** to return the remaining $265.00 of the award to the Tenant as soon as possible.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$265.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 02, 2021

Residential Tenancy Branch