Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: CNR, MNDCT, RR, LRE, LAT, OLC, FFT
For the landlord: OPC, MNRL, MNDCL, OPR, FFL, MNDL-S

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an order for the landlord to return the security and pet damage deposits (the deposits), pursuant to section 38;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order of authorization to change the lock, pursuant to sections 31 and 70;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' deposits, pursuant to section 38;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

The hearing on January 22, 2021 was adjourned and reconvened on May 31, 2021 due to time constraints. This decision should be read in conjunction with the interim decision dated January 25, 2021. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant JA (the tenant), the landlord and the landlord's interpreter SW attended both hearings. The tenant represented tenant KA in the January 22, 2021 hearing.

Tenant KA attended the May 31, 2021 hearing. At the outset of both hearings the attending parties affirmed they understand the Director's Rules of Procedure prohibit recording of the hearing. Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service

The tenant stated he served the notice of dispute resolution in person on October 09, 2020. The tenant served the amendment and the evidence by registered mail sent on November 08, 2020. The landlord confirmed receipt of the tenants' notice of dispute resolution, the amendment and the evidence (the materials). Based on both parties' testimony, I find the landlord was served the tenants' materials in accordance with sections 88 and 89 of the Act.

The landlord affirmed he served the notice of dispute resolution and the evidence by registered mail sent on October 23, 2020. On January 02, 2021 the landlord served the amendment and extra evidence by email. The landlord submitted several video files to the Residential Tenancy Branch (the RTB) and stated he did not serve one of them.

The tenant confirmed receipt of the landlord's materials.

Rule of Procedure 3.5 states:

> At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the landlord submitted into evidence several video files and did not indicate which video was not served, I do not accept the landlords' video files into evidence.

Based on both parties' testimony, I find the tenants were sufficiently served the landlord's materials, except the video files, in accordance with section 71(2)(c) of the Act.

I note that the tenants submitted evidence to the RTB in the form of 143 files on 10 dates. The landlord submitted into evidence 198 files on 13 dates.

Rule of Procedure 3.7 states:

> 3.7 Evidence must be organized, clear and legible
> All documents to be relied on as evidence must be clear and legible.
> To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the
> Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.
> For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".
> To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Rule of procedure 3.10.1 states:

> 3.10.1 Description and labelling of digital evidence
> To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.
> A party submitting digital evidence must:
> • include with the digital evidence:
> o a description of the evidence;
> o identification of photographs, such as a logical number system and description;
> o a description of the contents of each digital file;
> o a time code for the key point in each audio or video recording; and
> o a statement as to the significance of each digital file;
> • submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and
> • serve the digital evidence on each respondent in accordance with 3.10.4.

I warned both parties that the large amount of evidence submitted on different dates is not in accordance with the Rules of Procedure. Both parties affirmed they are aware of the evidence offered and they feel ready to proceed with the hearing.

Preliminary Issue – Landlord's name

At the outset of the hearing the landlord corrected the spelling of his first name. Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application.

Preliminary Issue – Vacant rental unit

Both parties agreed the tenants vacated the rental unit on October 31, 2020.

Both parties claims' are moot, except for the monetary claims and the claim for an authorization to retain the tenants' deposits.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss both parties claims' except for the monetary claims and the claim for an authorization to retain the tenants' deposits.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for loss?
2. an order for the landlord to return the deposits?
3. an authorization to recover the filing fee for this application?

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenants' deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

I explained Rule of Procedure 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent." I note that the two hearings extended for 390 minutes and a total of 341 files were entered into evidence.

Both parties agreed the periodic tenancy started on October 01, 2017 and ended on October 31, 2020. Monthly rent was $1,439.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $650.00 and a pet damage deposit of $500.00. The landlord currently holds $1,150.00 in trust. The tenancy agreement signed on September 18, 2017 was submitted into evidence. It states: "No smoking / No Drug / No marijuana".

The parties agreed the tenants occupied the ground floor unit, the landlord lives on the upper floor unit and they shared the backyard. The parties did not complete a move in condition inspection report. Both parties agreed the forwarding address was not provided. The tenant confirmed his forwarding address during the hearing (mentioned on the cover page of this decision).

The tenants are claiming for compensation in the amount of $3,000.00 for pain and suffering due to a personal injury (tenants' claim 1). The tenant stated the landlord agreed to illuminate the walkway to the rental unit's entrance at night. On August 10, 2019 at 11:30 P.M. the walkway was not illuminated because the landlord turned off the light, tenant KA fell and suffered bruises.

The tenant affirmed he cultivated cannabis in the rental unit from June to September 23, 2020. The tenants are claiming for compensation in the amount of $2,240.00 because the landlord destroyed the cannabis plants (tenants' claim 2).

The tenant submitted into evidence text messages with the landlord in October 2019 to demonstrate that he was authorized to cultivate cannabis:

> T: The other change is, as verbally agreed to you before. Addendum 2: No smocking cigarettes of marijuana INSIDE the house. Do you agree?
> L: We can discuss later.
> […]
> L: Hi, I change no smocking inside the house, I will pass to you if I meet with you on the weekend when I mow the backyard.
> L: Hi, if you sign the agreement, Can you pass to us or leave it in the mailbox? Txs

> T: I think at this time we already have an agreement for the rent change to $1439.00 monthly, so there is no need for a new lease. Plus, we already talked about smoking outside to be fine but there is no smoking in side as well.
> L: Actually I like to do simple way, but unfortunately I was told by the RTB office that I still need sign paper. That is why I prepared it for you, so everything is ready, it is easy to sign, please!
> T: No. We have a lease and agreement for the rent amount among other agreements. These conversations are enough for court if there is an issue, I'm 0% concerned.

The landlord stated he did not authorize the tenant to cultivate cannabis in the rental unit.

Both parties agreed the tenant informed the landlord in early September 2020 that he would be on vacation overseas from September 17 to 28, 2020 and that a friend of the tenants would visit the rental unit during the tenants' vacation.

The landlord noticed someone was in the rental unit when the tenants were on vacation and called the police. The police attended and the landlord noticed the tenants cultivated cannabis in the rental unit's shed. The landlord unplugged the electricity source of the tenants' shed because the tenants were not authorized to cultivate cannabis. The landlord texted the tenants on September 23, 2020:

> We unplug our outside power, to plant cannabis using our hydro inside shed is never permitted by us. We have police claim number and policeman can be our witness, also you have to pay the difference hydro bill from 2019 winter season based on our agreement. You swear never to plant again last year and We gave you the chance before, and even no apologies to us. You even don't have bottom line and any integrity. Being an engineer, I am shamed of you.

The tenant testified the marijuana plants occupied one square meter and were worth at least $2,240.00. The tenant submitted into evidence two marijuana websites prints indicating "Yeld 380 – 500 grams / squared meter" and "cost of marijuana $23 for 3.5 grams; $140 for 28 grams".

The tenants are claiming for compensation in the amount of $1,000.00 for humiliation and loss of self-confidence (tenants' claim 3). The tenant stated the landlord attempted to serve the application materials at the tenant's workplace to humiliate the tenant and cause personal, physical, and emotional damage to the tenant. The landlord said he attempted to serve the materials at the tenant's workplace because they avoided service at the rental unit.

The tenants are claiming for compensation in the amount of $13,800.00 for loss of quiet enjoyment (tenants' claim 4). The tenant affirmed the landlord's children had piano lessons for 30 minutes, six days per week, and the piano sound was very loud. The tenant submitted into evidence a video with the sound of a piano playing.

The tenants are claiming for compensation in the amount of $1,439.00 for loss of quiet enjoyment (tenants' claim 5). The tenant stated the landlord called the police to submit frivolous complaints about the tenants eight to ten times during the 3-year tenancy. The tenant affirmed the frivolous complaints were about noise and the usage of the backyard. The police did not file charges against the tenants. The tenant submitted into evidence an email from the police dated October 28, 2020:

> I told your landlord that day that the fan noise was reasonable and not an issue he can make a complaint over. The officer that attended that night stated the same to your landlord and further issued a public mischief warning that further frivolous complaints could result in a public mischief charge.

The landlord affirmed he called the police three times during the tenancy because the landlord was afraid of the tenants' behaviour. Later the landlord affirmed he called the police five or six times.

The tenants are claiming for compensation in the amount of $295.67 for moving expenses (tenants' claim 6).

The tenants are claiming for compensation in the amount of $725.00 for repairs to the ceiling (tenants' claim 8). The tenant stated the landlord asked him to repair the rental unit's ceiling and he conducted the repairs at his own expense. The tenant is claiming for this amount because the landlord is also claiming it.

The tenants are claiming for an order for the return of double the deposits (tenants' claims 9 and 12).

The tenants are claiming for compensation in the amount of $2,782.00 for vacation expenses (tenants' claim 10). The tenant testified the landlord destroyed his marijuana plants and served the one month notice to end tenancy for cause (the Notice) on September 23, 2020 knowing that the tenants were overseas to disrupt their vacation.

The landlord said he wanted to serve the Notice since April 2020 but he could only serve it in September because of the pandemic regulation. The landlord affirmed he did not take any actions to disrupt the tenants' vacation.

The tenants are claiming for compensation in the amount of $1,439.00 (tenants' claim 11) under section 51(1) of the Act. The tenant stated the landlord did not serve a 2 month notice to end tenancy. The tenant believes the landlord should have served a 2 month notice to end tenancy.

The tenants are claiming for compensation in the amount of $3,500.00 because the landlord stalked and monitored them since April 2020 (tenants' claim 13). The landlord said he did not stalk the tenants.

The tenants are seeking monetary compensation in the total amount of $32,808.97.

The landlord is claiming for compensation in the amount of $867.77 for the electricity needed to cultivate cannabis (landlord's claim 1). The landlord testified that the electricity bills increased from $3,571.47 in 2019 to $4,441.24 in 2020 because of cannabis cultivation.

The tenant said the equipment used to cultivate cannabis consumed electricity in the amount of $45.70 from June to September 23, 2020. The tenant submitted into evidence a spreadsheet indicating the electricity consumption per hour, how many hours per day each piece of equipment was used and the total amount of electricity consumed. The tenant stated the utilities were included in rent and he does not agree to pay extra for electricity.

The landlord abandoned his claim for compensation for repairs to the ceiling (landlord's claim 2), as the tenant conducted the repairs.

Both parties agreed the tenant did not pay October 2020 rent. The landlord affirmed he could not re-rent the unit in November 2020 because of the damages caused by the tenants. The tenant stated he did not cause damages to the rental unit. The landlord is claiming for $1,439.00 for unpaid rent of October 2020 and $1,439.00 for loss of rental income in November 2020 (landlord's claim 3).

The landlord is claiming for compensation in the amount of $1,500.00 for painting expenses (landlord's claim 4) because the tenants damaged the walls during the tenancy. The tenant testified he did not damage the walls.

The landlord is claiming for compensation in the amount of $126.00 for carpet cleaning (landlord's claim 5). The landlord stated the tenants did not clean the carpet when the

tenancy ended and submitted into evidence a photograph and a receipt in the amount of $126.00. The tenant said the carpet was clean when the tenancy ended.

The landlord is claiming for compensation in the amount of $14.29 for repairs to the washing machine and dryer knob (landlord's claim 6) because the tenants damaged it. The landlord submitted into evidence a photograph and a receipt in the amount of $14.29. The tenant affirmed the washing machine knob was missing when the tenancy started.

The landlord is claiming for compensation in the amount of $55.00 for mental counselling assessment (landlord's claim 7) and $11,440.00 for mental counselling treatment (landlord's claim 8). The landlord stated he paid $55.00 for mental counselling assessment for his children and he estimates he will spend $11,440.00 for counselling treatment for one year. The landlord testified the tenants continuously harassed the landlord, the landlord's children and wife during the 3-year tenancy.

Both tenants said they always had a friendly relationship with the landlord's children. Sometimes the landlord's wife had arguments with the tenants, and she would get agitated.

The landlord affirmed he explained to the tenants that the backyard garden contained sentimental plants and that the tenants should not make any changes to the garden. The tenants destroyed the garden.

The tenant stated he changed the garden location because he was authorized by the landlord to do so. The tenant testified the garden was originally located next to his bedroom window and impacted his privacy. The landlord submitted photographs showing the original garden with several plants and the area of the garden after the tenants removed the plants. The tenant submitted one photograph that shows the plants transplanted to another area of the backyard.

The landlord is claiming for $1,000.00 for garden repairs (landlord's claim 9) and $3,500.00 for garden maintenance expenses (landlord's claim 10). The landlord estimates he will spend $1,000.00 to repair the garden and that he spent $3,500.00 to maintain the garden for five years. The landlord submitted into evidence a print of a website:

> How much does it cost to build a small garden? $500 to $1,500.00 for a landscape design of a small garden, $1,500.00 to $3,000.00 for a landscape design of a mid-sized

garden, $3,000.00 to $6,500.00 for a landscape design of a large garden, and even $10,000.00+ for a more complex design project of a larger garden or any other space.

The landlord is seeking monetary compensation for 10 claims in the total amount of $22,108.00.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Tenants' claims 1, 3 and 13: pain, suffering, humiliation, self-confidence, and stalking

Section 58 (1) of the Act states:

> (1)Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
>
> (a)rights, obligations and prohibitions under this Act;
>
> (b)rights and obligations under the terms of a tenancy agreement that
>
> (i)are required or prohibited under this Act, or
>
> (ii)relate to
>
> (A)the tenant's use, occupation or maintenance of the rental unit, or
>
> (B)the use of common areas or services or facilities.

I find the tenants have not identified claims related to the rights, obligations and prohibitions under this Act or a tenancy agreement as described in section 58(1) of the Act.

As such, I decline jurisdiction to render a decision with respect to the tenants' claims for compensation related to pain, suffering, humiliation, loss of self-confidence and stalking.

Tenants' claim 2: marijuana plants

Section 27(1) of the Act states:

> A landlord must not terminate or restrict a service or facility if
>
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b)providing the service or facility is a material term of the tenancy agreement.

I accept both parties' uncontested testimony that the landlord unplugged the electricity of the rental unit's shed on September 23, 2020 knowing that the tenants cultivated cannabis in the rental unit's shed and that the tenants were overseas from September 17 to 28, 2020. I find the landlord partially terminated an essential service (electricity) to the tenants' use of the rental unit as living accommodation, thus breaching section 27(1) of the Act.

Based on the tenant's detailed testimony, as well as the marijuana websites prints, I find the tenants proved, on a balance of probabilities, a loss of $1,900.00 (380 grams of marijuana at $5.00 per gram) because of the landlord's failure to comply with the Act.

As such, I award the tenants compensation in the amount of $1,900.00.

Tenants' claim 4: loss of quiet enjoyment – piano sound

Section 28 of the Act states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (a)reasonable privacy;
> (b)freedom from unreasonable disturbance;
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6 states:

> **A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.**
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> (emphasis added)

Based on the tenant's testimony and the video submitted into evidence, I find the piano sound emanating from the landlord's unit is not unreasonable.

Thus, I dismiss the tenants' application for compensation for loss of quiet enjoyment due to the piano sound without leave to reapply.

Tenants' claim 5: loss of quiet enjoyment – police complaints

The landlord's testimony about the number of times he called the police to submit complaints about the tenants was contradictory. First the landlord affirmed he called the police three times. Later the landlord affirmed he called the police five or six times.

Based on the tenant's convincing testimony and the police email dated October 28, 2020, I find the landlord called the police to submit frivolous complaints about the tenants eight to ten times during the tenancy and unreasonably disturbed the tenants, breaching section 28(b) of the Act. I further find the tenants suffered a loss of quiet enjoyment because of the landlord's failure to comply with section 28(b) of the Act.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> **A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.**
> **In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss**. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • **file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.**
> **Compensation will not be awarded for damage or loss that could have been reasonably avoided.**
> Partial mitigation
> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.
>
> (emphasis added)

Based on the tenant's testimony, I find the tenants failed to mitigate their losses, as they did not apply for dispute resolution seeking for an order for the landlord to comply with the Act during the 3-year tenancy.

As such, the tenants are not entitled to the compensation claimed.

Tenants' claim 6: moving expenses

The tenants voluntarily moved out of the rental unit, as the tenants applied to cancel the Notice and moved out before the hearing. The moving expenses are not related to the landlord not complying with the Act.

Thus, I dismiss the tenants' claim for a monetary award for moving expenses without leave to reapply.

Tenants' claim 8: ceiling repairs

Based on the tenant's uncontested testimony, I find the tenants failed to prove the landlord did not comply with the Act.

Residential Tenancy Branch Policy Guideline 24 states:

> Frivolous or abuse of process: An application is frivolous when it lacks any arguable basis or merit in either law or fact. It is an abuse of process when the applicant wishes to reargue the case or submits an application for review in order to postpone the decision or order issued after the original hearing.

Based on the tenant's testimony, I find the tenants' claim lacks any arguable basis or merit. I dismiss the tenants' claim without leave to reapply and warn the tenants not to file frivolous claims.

Tenants' claim 10: vacation expenses

Based on the tenant's uncontested testimony, I find the tenants failed to prove, on a balance of probabilities, that the landlord did not comply with the Act, the Regulation or the tenancy agreement. The tenants did not prove that the landlord breached the Act or tenancy agreement by serving the Notice and destroying the tenants' cannabis plants.

The tenants' claim is dismissed without leave to reapply.

Tenants' claim 11: compensation under section 51(1) of the Act

Section 51(1) of the Act states:

> A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As the tenants did not receive a valid 2 month notice to end tenancy for landlord's use of the property under section 49 of the Act, I find the tenants are not entitled to the compensation claimed under section 51(1) of the Act.

As such, I dismiss the tenants' claim without leave to reapply.

Landlord's claim 1: electricity

The tenancy agreement signed on September 18, 2017 explicitly states: "No smoking / No Drug / No marijuana". Based on the tenancy agreement, the landlord's convincing testimony and the text messages in October 2019, I find the tenants could not smoke or use drugs, including marijuana, in the rental unit and that the tenants were not authorized to cultivate cannabis in the rental unit.

I find in October 2019 the parties engaged in a conversation to change the terms of the tenancy agreement regarding the usage of marijuana but did not reach an agreement. The agreement regarding rent increase in October 2018 does not mean that the tenants were authorized to cultivate cannabis in the rental unit.

I accept the tenant's uncontested testimony that he cultivated cannabis in the rental unit from June to September 23, 2020 and that the equipment used to cultivate cannabis consumed electricity. Thus, I find the tenants breached the tenancy agreement by cultivating cannabis and the landlord suffered a loss because of the tenants' failure to comply with the tenancy agreement.

The landlord's testimony about the amount of electricity consumed by the equipment used to cultivate cannabis was vague. The tenant's testimony was detailed and convincing. Based on the tenant's testimony and the electricity consumption spreadsheet, I find the landlord suffered a loss of $45.70 because of the tenants' non-compliance with the tenancy agreement.

As such, I award the landlord compensation in the amount of $45.70 for this loss.

Landlord's claim 4: painting

Both parties' testimony regarding damages to the walls and the necessity to paint the rental unit was conflicting. 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 (in this case the landlord) has not met the burden on a balance of probabilities and the claim fails.

I find the landlord has not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by damaging the walls during the tenancy.

Thus, I dismiss the landlord's application for compensation without leave to reapply.

Landlord's claim 5: carpet cleaning

Residential Tenancy Branch Policy Guideline 1 states the tenant is responsible for cleaning the carpet at the end of the tenancy:

> **CARPETS**
> 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
> 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
> 3. **The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
>
> **(emphasis added)**

Based on the photograph submitted into evidence and the tenant's convincing testimony, I find the carpet had reasonable wear and tear and was reasonably clean when the tenancy ended.

I find the landlord has not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement.

I note that the Residential Tenancy Branch Policy Guidelines are a guidance to interpret the Act. The Act does not require the tenants to steam clean the carpets when the tenancy ends.

Thus, I dismiss the landlord's claim for carpet cleaning expenses without leave to reapply.

Landlord's claim 6: washing machine and dryer

The testimony of the parties regarding damages to the washing machine and dryer damage was conflicting.

I find the landlord has not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement by damaging the washing machine and dryer during the tenancy.

Thus, I dismiss the landlord's claim for compensation without leave to reapply.

Landlord's claim 3: unpaid rent and loss of rental income

Based on both parties' undisputed testimony, I find the tenants agreed to pay monthly rent in the amount of $1,439.00 and did not pay rent in October 2020.

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 this Act.

In accordance with section 26(1) of the Act, I order the tenants to pay the landlord $1,439.00 for October 2020 rent.

As stated previously in this decision (Landlord's claims 4, 5 and 6), the landlord has not proved, on a balance of probabilities, that the tenants damaged the rental unit.

Thus, I dismiss the landlord's claim for loss of rental income without leave to reapply.

Landlord's claims 7 and 8: counselling expenses

The landlord affirmed the tenants continuously harassed his family from October 01, 2017 to October 31, 2020 and his family needs counselling treatment because of the tenants' actions.

The Ministerial Order M89 did not allow notices under section 47 of the Act to be served from March 30, 2020 to June 23, 2020.

As stated previously in this decision (Tenants' claim 5), the applicant must take reasonable efforts to minimize his losses. The landlord failed to explain why he did not serve a notice to end tenancy under section 47 earlier.

I find the landlord did not mitigate his losses by not serving a notice under section 47 earlier. Thus, I dismiss the landlord's claims for compensation for counselling expenses without leave to reapply.

Landlord's claims 9 and 10: garden

The tenant stated he changed the garden location because he was authorized by the landlord. Both parties' testimony about the authorization to change the garden was conflicting. 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 (in this case the tenants) has not met the burden on a balance of probabilities and the claim fails.

I find the tenants have not proved, on a balance of probabilities, that the landlord authorized them to change the garden location.

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Based on the landlord's convincing testimony and the photographs submitted by both parties, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by changing the garden location and reducing the garden size and the landlord suffered a loss because of the tenants' failure to comply with the Act.

I find the amount of $4,500.00 to repair and maintain the garden is not reasonable. The landlord did not provide a detailed estimate for this amount and his testimony regarding the amount claimed was vague. The search website estimate is generic. Based on the photographs submitted into evidence, I find it reasonable to award $500.00 in compensation for the garden damages.

I award the landlord $500.00 in compensation for this loss.

Forwarding address

I accept both parties' uncontested testimony that the tenants' forwarding address was not served.

The tenants provided the forwarding address during the hearing.

Per section 71(2)(b) of the Act, I order that the landlord is sufficiently served the tenants' forwarding address three days after the date of this decision.

Deposits

Section 38 of the Act requires the landlord to either return the tenants' security and pet damage deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing:

> (1)Except as provided in subsection (3) or (4) (a), 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.

As previously stated in this decision ('Forwarding address'), the tenants did not serve their forwarding address in writing and the landlord is deemed served the tenants' forwarding address three days after the date of this decision.

Section 72(2)(a) of the Act states that if the director orders a tenant to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit held by the landlord. Pursuant to section 72(2)(a) of the Act, I authorize the landlord to retain the $1,150.00 deposits.

Thus, the tenants' application for an order for the landlord to return the deposits (tenants' claims 9 and 12) is dismissed without leave to reapply.

Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

The tenants are awarded $1,900.00.

The landlord is awarded:

Item	**$**
Electricity	45.70
Rent October 2020	1,439.00
Garden	500.00
Subtotal	1,984.70
Minus deposits	1,150.00
Total:	**834.70**

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

In summary:

Award for the tenants	$1,900.00
Award for the landlord	$834.70
Final award for the tenants	**$1,065.30**

Conclusion

Pursuant to section 67 of the Act, I grant the tenants a monetary order in the amount of $1,065.30.

The tenants are provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. 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: June 16, 2021

Residential Tenancy Branch