



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT (tenant);
MNRL-S, MNDCL-S, MNDL-S, FFL (landlord)**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*,

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenant HL corrected his name which is amended throughout.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

No issues of service were raised. I find each party served the other in compliance with the Act.

Issue(s) to be Decided

Are the parties entitled to compensation for their claims?

Background and Evidence

The parties submitted many documents and photographs as well as considerable disputed testimony in a 107-minute hearing. For example, the tenants submitted a 77-page document with a Table of Contents and organized, numbered Exhibits. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

The tenant submitted a copy of the signed tenancy agreement and addendum which includes a clause that, “utilities bill gets paid on October 1st each year”. An Addendum permits one small dog.

The parties agreed to the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	Fixed term (May 15, 2019 to May 31, 2021)
Date of beginning	May 15, 2019
Monthly rent payable on 1 st	\$4,450.00

Security deposit	\$2,225.00
Pet deposit	\$2,225.00
Tenant sent 30-day notice of termination by email and registered mail	January 25, 2021
Landlord acknowledgement of notice	January 25, 2021
Forwarding address sent	March 5, 2021, effective March 10, 2021
Date of tenant's Application	March 18, 2021
Date of landlord's Application	March 25, 2021

In correspondence before the hearing, the parties agreed the landlord would reimburse the tenants for rent increase during the tenancy in the amount of \$1,035.00 which was not permitted.

The tenants claimed return of the security deposit and pet deposit (together "the security deposit") and reimbursement of the filing fee as follows:

ITEM	AMOUNT
Security deposit	\$2,225.00
Pet deposit	\$2,225.00
Rent refund as agreed	\$1,035.00
Reimbursement filing fee	\$100.00
TOTAL CLAIM TENANTS	\$5,585.00

The landlord submitted a claim for a monetary award clarified at the hearing as follows:

ITEM	AMOUNT
1. Cleaning	\$1,102.50
2. Lost rental March 2021	\$4,450.00

3. Repair: kitchen ceiling stains and kitchen cabinet door	\$475.50
4. Outstanding utility bill	\$69.30
5. Reimbursement filing fee	\$100.00
TOTAL CLAIM LANDLORD	\$6,197.30

Each of the landlord's claims and the tenants' response are considered.

1. *Cleaning* \$1,102.50

The landlord claimed a cleaning cost. The tenants stated the unit was reasonably clean when they moved out.

A condition inspection report was conducted on moving in which indicated that the unit was in good condition in all relevant aspects. Both parties signed the report.

The landlord submitted a condition inspection on moving out which was completed on March 7, 2021 by the landlord only. Most of the line items are marked "DT" (dirty). No line item is marked as "good".

Background to Scheduling Condition Inspection on Moving Out

As stated, the tenants provided notice to the landlord on January 25, 2021 that they were vacating the unit February 15, 2021 and February was the last month for which they intended to pay rent. The landlord acknowledged receipt that day and wrote, "let's quickly put the home on the market today". Both parties started advertising separately.

The female tenant informed the landlord on January 26, 2021 that she had already moved out.

During February 2021, the tenants testified that they concluded from the landlord's rejection of eligible renters and her conduct that she had no intention of agreeing to a new occupant who could move in on March 1, 2021. They formed the opinion that the landlord was motivated by making their lives difficult and obstructing the smooth transition to a new tenant on February 28, 2021.

The tenants testified they sought to comply with the Act regarding the condition inspection on moving out. They submitted a copy of an email from them to the landlord dated February 22, 2021 in which they stated they would only do a walk through once, preferably February 28, 2021 up to March 7, 2021 at the latest.

The landlord replied by email dated February 22, 2021, a copy of which was submitted. The landlord suggested a “pre-inspection” on March 21, 2021 at 10:00 AM “in case if anything you need to redo then you will have enough time to get them done properly”. A “final inspection” would then take place on March 28, 2021 at 10:00 am. The landlord requested the tenants pay rent for March 2021 “as you always did”.

The tenants testified as follows. They explained that by this time, they believed that the landlord was acting with “malicious intention”. They believed the landlord intended to keep their security deposit no matter what they did. They found that dealing was her was and continually problematic and troublesome. They believed that nothing they did would satisfy the landlord.

The tenants testified as follows: They viewed the landlord’s response as a refusal to conduct an inspection in compliance with the Act. They believed the landlord did not have good faith and she intended to keep their security deposit despite their best efforts. They gave up communicating with the landlord as it “*became harassing and not reasonable*”. They wrote, “*It seems we cannot fulfil landlord expectation and satisfaction*”.

In their written submissions, the tenants stated as follows:

Despite a full collaboration to facilitate daily showing, to advertise, to promote, to quality prospect and to answer all demand in a timely manner, request for information and showings. It seems we cannot fulfil landlord expectation and satisfaction.”

Despite proposed planning agenda to work smoothly. We receive a reply where the landlord had a malicious intention to make the move-out condition difficult, miserable, and discriminating by first presuming the house will not be on her satisfaction.

Landlord proposed and insisted for 2 move-out inspection date, the first PRE-inspection on March 21, 2021 @ 10:00AM, and a FINAL-inspection March 28th

at 10:00 am to define later and subject to match with the date and time of the next tenant coming inspection moving schedule.

Landlord request was not acceptable and not reasonable for the following reasons-

Exhibit 10 a. To schedule a walk-out inspection 3 weeks after day of lease end-date

b. to maintain for having first Pre-inspection walk-out inspection and top it with a 2nd Final walk-out inspection;

c. To link and match the unknown date with the next coming tenant;

d. Indirectly to put us in charge of the responsibility of the house after moving-out until next one moving-in despite we have announced in advance that we will be move out by February 28, 2021.

e. Further on, we stopped to entertain communication with the landlord as they became harassing and not reasonable for a general common understanding.

On February 26, 2021, the tenant sent the landlord a letter confirming they had moved out and returned the keys; a copy of the letter was submitted.

The landlord then attempted to schedule the inspection. The tenants submitted a copy of a message dated February 27, 2021 from the landlord which stated in part:

It's about to discuss your move-out inspection date in order to avoid a dispute between you and us.

[...]You clearly understand you are breaking the fixed term contract that you won't win this dispute and you will have to pay March rent with all the expenses plus all the contractors fee who involved with your moved-out inspection if you refused to do it;

The landlord submitted a copy of a Notice of Final Opportunity to Schedule a Condition Inspection in the RTB Form # 22 dated February 27, 2021 signed by the landlord in which the condition inspection is scheduled for the following day, February 28, 2021, at 9 AM. The tenants testified they received the Notice the evening before, did not reply to the landlord for the reasons stated, and had already moved out. They did not attend.

The landlord testified she went to the unit on February 28, 2021 at 9 AM. In an

email of February 28, 2021 to the tenants, the landlord listed items that need cleaning, stating “the home condition is fine except it’s dirty with minor damages, it seemed you did not do any cleaning because you were too busy of moving perhaps”. The landlord’s list included the following items: dusty baseboards, dirty toilets, greasy stove and exhaust hood, uncleaned fireplace, dusty light fixtures, and so on.

The landlord submitted a second signed Final Notice in the RTB form to schedule the inspection for March 7, 2021 at 10 AM, a copy of which was submitted. This was sent to the tenants by email and during the hearing the tenants acknowledged receipt.

The tenants did not attend the second inspection for the reasons stated. The landlord completed the condition inspection in their absence and provided a copy of the report to the tenants.

The landlord submitted many photographs taken March 7, 2021. These are mostly close ups, many of which are poor resolution, illustrating areas which were dusty or dirty and required cleaning such as the base of a toilet, a dusty front door, and dusty baseboards.

The landlord stated in her written submissions as follows (as written):

It seemed the tenants hadn't done any cleaning for a very long time, the home is dirty "1ith [sic] minor damages also the garbage left behind. Please see the attached photos were taken on March 7th 2021.

The landlord testified she received estimates to clean the unit and retained a company that provided a suitable fixed quote. The landlord submitted a receipt in the amount of \$1,102.50 for the cleaning.

The tenants stated that they left the unit in reasonable condition. They submitted many organized pairs of photographs showing “before [at time of move in] and after [move out]” condition. For example, the first of each pair of photos shows the condition of an interior or exterior area, such as a room, when the tenants moved in; the second shows the condition on moving out. They testified the photographs supported their assertion that the unit was in good condition when they moved out and reasonably clean.

They objected to the landlord’s list of items that needed cleaning. For example, they

submitted pictures including a cleaned fridge with the doors opened and lights on, although the landlord's invoice included a line item of fridge cleaning.

The tenants acknowledged that it was not garbage day when they moved out and they left some garbage which they later removed. This was denied by the landlord who said she removed it.

The landlord requested compensation for cleaning in the amount claimed. The landlord requested authorization to retain the security deposit as the tenant did not attend the condition inspection on moving out although provided with two Final Notices as required.

The tenants requested the claim be dismissed without leave to reapply.

2. *Lost rental March 2021* *\$4,450.00*

The landlord testified as follows. They took all reasonable steps to find a replacement occupant as soon as they received the tenants' letter of January 25, 2021 stating they intended to end the tenancy on February 28, 2021.

The landlord located a suitable applicant on February 19, 2021 who moved in April 1, 2021. The unit was vacant March 2021, and they claimed the tenants are required to pay her rent for one month in the amount of \$4,450.00.

The landlord stated as follows in her written submission:

I had put 2 ads on [free website] immediately on January 25th and 2 ads on [another free website] Feb 4th & 5th after I received [tenants'] Notice. I had focused on advertising very actively and communicated with more 30 home seekers, finally we secured the new tenant [name of new occupant] Feb 19th with tenancy starting Apr 1st; [the lttts were] fully aware of this process and I was trying to arrange the move-out inspection date with her on March 21st.

The landlord testified she renewed the ads frequently. On February 19, 2021 she met the new occupant to whom the tenant had shown the house.

The landlord submitted copies of some of the ads. One such ad dated February 4, 2021, included the following terms about the rental:

Prefer very long term 2-5 years please. [...]

No pets.

The tenants testified as follows. As soon as they gave notice on January 25, 2021, they immediately listed the unit on four web sites and refreshed the ads regularly. The tenants paid for listing promotion on some of the websites. They also retained a property management rental firm, payment subject to successful location of replacement occupant. They submitted copies of all ads and the contract.

The tenants testified as follows. They made every effort to find a replacement tenant suitable to the landlord. They opened viewing of unit from Monday to Friday, 5:00-7:00 PM and Saturday. The tenants submitted a spread sheet in which all appointments were recorded for viewing from January 27, 2021 (three viewings) to February 23, 2021 (two viewings); 36 appointments are listed. The tenants notified the landlord of every showing, although the landlord never attended. The landlord testified at the hearing that she had found a replacement tenant on February 19, 2021 although the tenants continued showing the unit to the date they vacated.

The tenants testified as follows. They vetted prospective occupants by collecting applications, CV's, photographs, financial statements showing net worth, and so on. They communicated more than 50 times with applicants regarding eligibility and appointments; copies of the considerable correspondence were submitted. The tenants testified that they sent correspondence to the landlord updating her on their efforts

The tenants testified as follows. They screened and evaluated many applicants. They selected 8-10 suitable applicants and submitted their complete applications to the landlord. This included documentary evidence of eligibility, financial security (such as investment statements) and so on. The applicants' family photographs were sent, including pictures of pets. Despite their efforts, the landlord rejected all applicants.

The tenants submitted as evidence one such application which they said they had carefully evaluated, approved and recommended to the landlord. A positive letter of reference from a previous landlord was provided. Nevertheless, the landlord rejected the proposed applicants as they had pets including two dogs. The landlord testified that the tenants were permitted to have a small dog, but the applicants had "large dogs" which she would not permit.

The landlord denied that the tenants' efforts were adequate or resulted in any eligible applicants.

The landlord requested reimbursement of one month's rent for the month of March 2021 when the unit was vacant.

The tenants requested the landlord's claim under this heading be dismissed without leave to reapply as the landlord unfairly and unreasonably rejected qualified applicants ready to move in on March 1, 2021.

3. Repair: kitchen ceiling stains and kitchen cabinet door *\$475.50*

The landlord stated that the tenants caused a stain on the ceiling of the kitchen which could only be remedied by painting the entire ceiling. A photograph was submitted showing some small spots on the ceiling. They also claimed that the kitchen door had a cut in it requiring a repair. A blurred photograph showed a small dark line on a door was submitted. The landlord stated that the items were recently updated and were in good condition when the tenants moved in.

The landlord submitted one receipt for both items, claimed the tenants caused the damage, and sought reimbursement.

The tenants denied that they had damaged anything in the house. They acknowledged that the kitchen inspection on moving in did not reveal either of these items. However, they stated that this is understandable given they did not do an "inch by inch" inspection and did not look at the ceiling. They stated the house is old and the damages likely happened a long time ago, certainly before their tenancy.

The landlord requested reimbursement in the amount claimed. The tenant requested that the claim be dismissed without leave to reapply.

4. Outstanding utility bill *\$69.30*

The landlord stated that the tenants owed the above amount for utilities unpaid for the month of March 2021.

The tenants asserted they moved out and paid all utilities to the end of February 2021 and are not responsible for utilities for the month of March 2021.

Analysis

Each party submitted substantial conflicting evidence. Only relevant, admissible evidence is considered. Key facts and findings are referenced.

a) Credibility

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered.

I found both parties to be well-prepared, articulate, and firmly convinced of their point of view.

Each party supported their version of events with substantial evidence. Each submitted many photographs in support of their testimony. Both the landlord and tenants submitted a written statement, lengthy testimony, and detailed evidence.

After reviewing the evidence and hearing the testimony, I find the tenants were particularly credible and sincere. For example, I found their efforts to find a replacement tenant to be well meaning, exhaustive and comprehensive. I find they have created doubt about the landlord's claims. I find the tenants have provided a reasonable and believable version of events.

As a result, I place greater weight on the tenants' evidence. Where the parties' evidence conflicts, I prefer the tenants' version.

b) Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* 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. It is up to each party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

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.

c) Condition Inspection Report

The requirement of the parties to conduct an inspection of the unit is set out in in the Act and in Part 3 of the Regulation [Last amended July 1, 2021 by B.C. Reg. 174/2021] .

Section 16 states that the landlord and tenant must attempt in “good faith” to mutually agree on a date and time for a condition inspection. The section states:

Scheduling of the inspection

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Under section 17, the landlord must offer the tenant two opportunity to schedule an inspection. The section states:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The scheduling of the condition inspection on moving out is dealt with in section 35 which states as follows:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

I find on February 27, 2021 the landlord attempted to schedule the inspection for the following day. The tenants did not respond. The landlord attended at the unit. When the tenants failed to attend, she attempted to schedule the inspection for March 7, 2021 at which time they also failed to attend.

Section 4(4) of the Regulation provides that if a tenant fails to attend an inspection properly scheduled, the tenant extinguished their right to a return of the security deposit. The section states:

(4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under sections 23 and 35 of the Residential Tenancy Act.

Further to the provisions of the Act and the Regulations, I find that the landlord complied with the landlord's obligations to schedule an inspection. I find the right of the tenant to the return of both the security and pet deposit was extinguished.

Accordingly, I award the landlord the security deposit and pet deposit as follows:

ITEM	AMOUNT
Security deposit	\$2,225.00
Pet deposit	\$2,225.00
TOTAL AWARD LANDLORD	\$4,450.00

The remainder of the landlord's claims are considered as follows.

d) *Four-part Test*

When an applicant, the landlord in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

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

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

...

67 Without limiting the general authority in section 62 (3) [. . .] 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.

1. *Cleaning* \$1,102.50

The obligations of the parties are set out in the Act and clarified in *Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises*.

Section 32 states as follows (emphasis added):

Landlord and tenant obligations to repair and maintain

32 (1) ...

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) 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.

*(4) A tenant is not required to make repairs for **reasonable wear and tear**.*

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

(2) When a tenant vacates a rental unit, the tenant must

*(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear**, and*

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property

I accept the tenants' testimony that the tenants cleaned the unit before they left and *believed* that it was "reasonably clean".

First Test

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

I find the tenants failed in the tenants' obligation under section 37(2) with respect to cleaning. I find the tenants did not clean the unit to the standard required by the Act. I accept the evidence of the landlord's photos and the condition inspection report on moving out that some cleaning was necessary, mostly in the nature of wiping surface dust and grease.

I have considered the testimony and receipt submitted by the landlord; I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2) to leave the unit "reasonably clean".

Second Test

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

In hearing the testimony of the landlord, supported by the receipt, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred a cleaning expense but for the tenants' breach of their obligations. I accept the landlord's evidence that he incurred the cleaning expense for which he submitted an invoice.

Third Test

3. Has applicant proven amount or value of damage or loss?

As referenced, *RTB Guideline # 1 – Responsibility for Premises* states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

I accept the testimony of the tenants that they believed the unit was "reasonably clean".

I accept the landlord's evidence that they paid the amount claimed for cleaning.

However, I find the time and cost on the submitted invoice to be excessive given the facts as I understand them and the level of cleaning required as evidenced by the photos of both parties. I find the level of cleanliness likely achieved by the cleaning company was greater than the standard of "reasonably clean" set out in the *Act*.

I therefore find the landlord has not met the burden of proof with respect to the amount of cleaning and cost and find the cost claimed was not necessary to bring the unit to a state of being "reasonably clean".

Fourth Test

4. Has applicant done whatever is reasonable to minimize damage or loss?

Considering all the evidence, I find the landlord has met the burden of proof on a balance of probabilities that the unit required some cleaning at the end of the tenancy.

However, I find the landlord has not met the burden of proof as to the monetary value of the cleaning necessary. I find the amount of the invoice to be excessive and unjustified by the level of uncleanliness I observed in the photographs and evidence.

I therefore find the landlord failed to take reasonable steps to minimize the cleaning expense and the tenant is not responsible for the full amount of the claim.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which allows an Arbitrator to award nominal damages.

I find the landlord has failed to meet the burden of proof with respect to the amount of the claim for cleaning although I find some additional cleaning was needed. I find that a nominal award of \$200.00 to be reasonable in the circumstances and to amount to compensation adequate to bring the unit to the required standard of "reasonably clean".

I accordingly grant the landlord a monetary award in the amount of \$200.00 under this heading.

2 Lost rental March 2021	\$4,450.00
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I will now consider the landlord's claim for loss of rent for March 2021.

Each test in the 4-part test is considered with respect to this claim.

First Test

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows (emphasis added):

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

*(2) A tenant may end **a fixed term tenancy** by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In this dispute, the tenancy was a fixed term tenancy, so section 45(2) applies. The tenant gave notice by way of email to the landlord on January 26, 2021 and stated they would be moving out at the end of February 2021.

In other words, the tenants ended the tenancy on a date that was earlier than the date specified in the tenancy agreement as the end of the tenancy.

Thus, I conclude that the tenant breached section 45(2)(b) of the Act by ending the tenancy early.

Second Test

2. Did the loss or damage result from non-compliance?

As set out earlier, having found that the tenant breached the Act, I must next determine whether the landlord's loss resulted from that breach.

In this case, I find that but for the tenants' ending the tenancy as they did, that the landlord would not have suffered a loss of rent for March 2021.

Third Test

3. Has applicant proven amount or value of damage or loss?

The parties acknowledged the amount of monthly rent.

I find that the landlord has proven the loss of rent for one month of \$1,950.00 and the loss of rent of \$150.00 for four subsequent months.

Fourth Test

4. Has applicant done whatever is reasonable to minimize damage or loss?

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent up to the end of the fixed term. Section 7 of the Act provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses.

Section 7 of the Act imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

Liability for not complying with this Act or a tenancy agreement

7 (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. (emphasis added)

The primary focus under this heading is whether the landlord met their burden to mitigate loss of rent.

Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

I find that the landlord sought to modify the terms of the lease with the incoming occupant. I find that these changes significantly impacted the pool of eligible candidates to the detriment of the tenants' efforts. For example, the landlord sought a 2–5-year term in one of the ads posted on a website. The landlord also changed the conditions to exclude a pet when the tenants were allowed a small dog.

After they provided their notice on January 25, 2021, I find that the tenants embarked on a vigorous, comprehensive, and sustained effort to find new occupants for the unit to move in on March 1, 2021. I find this is apparent in the evidence submitted by the tenants which included a spreadsheet of appointments, copies of ads and correspondence, and a recommended sample candidate with supporting background information.

The tenants described the landlord's behaviour in many ways throughout their evidence. In their written submissions, the tenants stated their perception of the landlord's actions including the following descriptions:

[The landlord had] malicious intention to make the move-out condition difficult, miserable, and discriminating

[The landlord was] not acceptable and not reasonable

[The landlord wanted to] indirectly to put us in charge of the responsibility of the house after moving-out until next one moving-in

[The landlord was] harassing and not reasonable for a general common understanding

I find the landlord expressed ongoing insistence, expectation, and confidence to the tenants that they were required to pay rent for March 2021 irrespective of their efforts. I find that the tenants reasonably understood her behaviour to mean that the landlord did not intend to rent the unit to a new occupant on March 1, 2021. I find it is more likely than not that the landlord did not seriously review, appraise, or consider the applicants proposed by the tenants. Without such a thorough examination, I find I do not give much credence to the landlord's assertion that none of the suggested new occupants were qualified.

I therefore have concluded that the landlord unreasonably failed to consider the applicants put forward by the tenants and to make realistic efforts to find a suitable replacement tenant. I find the landlord failed to take necessary and reasonable steps to reduce losses.

For these reasons, I am not satisfied the landlord has met the burden of proof on a balance of probabilities that the landlord made reasonable efforts to mitigate losses as required under the *Act*.

I therefore dismiss the landlord's claim under this heading without leave to reapply.

3. Repair: kitchen ceiling stains and kitchen cabinet door \$475.50

Each of the elements in the 4-part test are considered with respect to this claim.

First Test

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

I accept the tenants' testimony that they were unaware of the ceiling stain and the cut in the cupboard.

I have considered the age of the house and the unsupported testimony of the landlord as to the date the ceiling was last painted, and the cupboards were installed. I find this damage was likely to have occurred prior to the tenancy taking place. I find the ceiling and kitchen cupboard to be likely beyond their useful life. I find it unlikely that the tenants caused any such damage as claimed.

I find the tenants did not fail to comply with the Act and the landlord has failed to meet the burden of proof with respect to the first aspect of the 4-part test.

Accordingly, I find the landlord's claim for compensation under this heading fails. The claim is dismissed without leave to reapply.

4. *Outstanding utility bill* \$69.30

First Test

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The landlord seeks reimbursement of an outstanding utility bill for March 202. The landlord testified the charge was incurred after the tenants vacated.

I find the tenancy ended on February 28, 2021. As stated, I find that the landlord failed to mitigate her losses by reasonably considering the proposed applicants submitted by the tenants. I find the landlord has failed to meet the burden of proof on a balance of probabilities that the tenants failed to pay a properly due account.

I therefore find that the tenants did not fail to comply with the Act.

I dismiss the landlord's claim without leave to reapply.

5. *Reimbursement filing fee* \$100.00

As the landlord has been partially successful in the application, I grant reimbursement of the filing fee in the amount of \$25.00.

Summary of my Award

I authorize the landlord to retain the award from the security deposit held in trust.
I award the landlord **\$225.00** calculated as follows:

ITEM	AMOUNT
Award to landlord – the deposits	\$4,450.00
Award to landlord – cleaning costs	\$200.00
Award to landlord – filing fee	\$25.00
(Less deposits)	(\$4,450.00)
TOTAL MONETARY ORDER – LANDLORD	\$225.00

I grant a Monetary Order to the landlord in the amount of \$225.00.

Conclusion

I grant the landlord a Monetary Order in the amount of \$225.00. This Order must be served on the tenants. This Order may be filed in the Courts of the Province of British Columbia 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: August 29, 2021

Residential Tenancy Branch