



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlords: MNDCL, MNDL, FFL

For the Tenants: MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenants filed claims for:

- \$2,700.00 compensation for monetary loss or other money owed; and
- recovery of their \$100.00 Application filing fee.

The Landlords filed claims for:

- \$1,460.00 compensation for damage caused by the tenant, their pets or guests to the unit, or property;
- \$4,081.12 for compensation for monetary loss or other money owed; and
- recovery of their \$100.00 Application filing fee.

The Tenants, E.Y. and T.B., and the Landlord’s counsel, L.V. (“Counsel”), 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 Tenants and the Counsel were given the opportunity to provide their evidence orally and 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. At the outset of the hearing, 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and they confirmed these 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.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the residential property had four bedrooms and a loft, and two bathrooms. They agreed that the fixed-term tenancy began on June 1, 2019, ran to May 31, 2020, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$2,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,350.00, and no pet damage deposit. They agreed that the Tenants vacated the rental unit on March 1, 2021, and provided the Landlord with their forwarding address by posting it on the refrigerator on or before March 1 2021. The tenancy ended because the Landlords sold the residential property.

The Parties agreed that the Landlords did not conduct a condition inspection of the rental unit before or at the start of the tenancy; however, the Landlords submitted photographs they took of the residential property prior to the tenancy starting, as well as photographs at the end of the tenancy. The Parties agreed that the Tenants were not offered an opportunity to do a move-out inspection, pursuant to section 35 of the Act.

TENANT'S CLAIM → \$2,700.00

The Tenants have requested a monetary order for damage or compensation under the Act of \$2,700.00. In the hearing, the Tenants explained this claim, which was related to

the Landlords' effort to sell the residential property:

Comes from an agreement with the Landlords re their needing processes completed – meaning showing the house in a pandemic. It's to help offset some of the cost and of being put out - being out of the house for days on end - since we were asked not to be present.

We were on great terms with the Landlord, and he offered \$2,700.00 of rent back to facilitate leaving and cleaning – he provided a list of things that needed to be done and cleaning. We did that - pressure washed the exterior, removed items that are part of our day to day living - we were asked to move items - pressure washed decks, all to have a better showing of the house. We worked closely with [J.M.]. We were hoping to continue our tenancy in the residence.

I asked the Tenants if this arrangement had been written down, and they said:

Yes, we submitted an email of the offer entitled 'email evidence'; we also emailed it to the Landlord. Also, attached is their response for us requesting it of them after the fact. Also, the text message from [R.M.], with thanks. 'Really appreciate all the effort' – an indirect response after we'd left the residence for the day.

The email to which the Tenants referred from the Landlords was dated December 8, 2020 at 8:36 p.m., and it states:

Hi [Tenants],

Again we are really sorry that we are needing to sell the house you rent from us. We will try hard to keep you in the house, if possible. Hopefully an investor will come forward and we will definitely give you a glowing reference.

As [J.M.] discussed with [T.B.] earlier today, we will need to hold viewings on Sundays 1-4 pm and would greatly appreciate it if you could clean up the garden and deck areas – remove garbage, tire, and everything that is placed up against the side of the house. If any window coverings that are not on a rail could be removed too, we can open all blinds for the viewings. We really need to show the house as clean and tidy as possible, for us to get as much as we can and obviously for you to show how much you love your home and would like to stay.

As the tenancy agreement states, if the new owner cannot keep you on, you will receive your last month's rent free and receive your deposit back. We would also like to offer you a refund on one more month's rent payment at the end of the tenancy, if you are able to do the cleanup as described above before Sunday. We offer this as a 'thank you' to you and a help for you moving forward with a new home. Although we really hope it doesn't come to this and you are able to stay.

[J.M.] will pop by and see you on Sunday before the viewings. Any questions please let us know and also please respond to this email so we know you have received it.

Thanks

[B. and J.]

("Cleanup Agreement")

[reproduced as written]

Counsel responded to the Tenants' testimony, as follows:

Re pressure washing of the deck, in the Landlords' evidence at Exhibit 9 page 2, there are pictures of cigarette butts on the deck taken on March 2nd.

It was not on page two of Exhibit 9, but the Landlords submitted a photograph of a small portion of a deck with small, light brown tubes of some kind on the deck. As noted below, the Tenants said that those were wood pellets, not cigarette butts.

Counsel had no comment on the text messages raised by the Tenants.

Counsel continued:

Regarding their email offer, the Landlords asked if they could assist by cleaning up after the weekend of the 7th. They asked that if Tenants could keep suite clean, organized... and in exchange, they'd give \$2,700.00 [one month's rent], but the clean up required was garden and deck, removal of tires and other stuff against house, removal of window coverings. Some of the stipulations were met, but the refund would be granted if all stipulations were complete before Sunday, December 13, 2020, when the showings were.

They scheduled photos for the listing for December 8th, but the Landlords had to

send away the photographers, because the house was such a mess. They had asked the Tenants to clean up the place, but there were boxes everywhere, curtains nailed to the wall, stuff all over the yard and deck – they said, ‘we can’t do the photos today.’

The Tenants did do some clean up, but not enough for \$2,700.00. [The Landlords] were worried that if they said anything about the condition that [the Tenants] would have left it in a worse case. They didn’t want to cause any trouble, as they had a good relationship with the Tenants. [J.M.] going through cancer – there’s a lot going on.

I asked Counsel how much time the Tenants were given to prepare the property for showings. She said: “It was emailed on December 8 to the 13th, there was an offer, acceptance so there was a binding contract.”

The Tenants said:

Regarding the photographer’s statement, he tried to come during the day of the 8th. The email is time stamped 8:36 p.m. on December 8. We were confined to the house – only leaving to go to work. It was coming up to Christmas with four children, Christmas, pandemic, cold weather – we did our best to facilitate their request – we did everything in our power to facilitate their request and maintain a great relationship until March 1. We texted back and forth... checking up with each other; it was more of a friendship ... funny that they were concerned that we would be leaving place in a less good status. There was no animosity.

The picture of the cigarette butts on the deck? Those are wood pellets, and the picture was taken on March 2 - two months after this showing, so there is no photographic evidence of after our clean up for the house showings. Six of us were living upstairs and two people downstairs. We did our best to clean up, while still living there.

It’s written we would also like to offer you a refund of one more month’s payment - see the third paragraph.

In a statement in their evidence, “Proof of Loss”, the Landlords said:

9. In a separate conversation, the Landlords offered to help with the Clean-up if needed and confirmed with the Tenants that in order to receive the \$2,700

refund, the Tenants needed to ensure that the sale of the Property went through smoothly.

The Tenants submitted a copy of a text from the Landlord, R.M., to the Tenants dated Sunday, December 13, 2020. In it the Landlord said:

Thank you so much the house looks amazing. Really appreciate all the effort, really hope the right people will come forward.

LANDLORD'S CLAIMS

The Landlords submitted a monetary order worksheet, which combines their two claims, as follows.

	Receipt/Estimate From	For	Amount
1	[A.V.] and [J.W.]	Move out clean	\$240.00
2	[R.B.] - CPS	House reduction	\$3,000.00
3	[lawn mower vendor]	Lawn Mower Replacement	\$841.12
4	Loss of earnings (no receipt)	Taking time off work - 3 days	\$1,280.00
5	Tenancy Agreement	Unpaid rent for 2 days	\$180.00
		Total monetary order claim	\$5,541.12

Items 1 – 3 relate to the Landlords' second claim and items 4 and 5 refer to the first claim below.

#1 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$1,460.00

Loss of Earnings → \$1,280.00

Counsel explained that their first claim is for the loss of earnings to do a move-out clean, and the handing over of the keys to the Landlord.

Counsel explained their claim from a chronological perspective. She said it starts with photographs of the condition of the rental unit at the start of the tenancy. I have viewed these photographs and they show an empty, clean residence from a promotional perspective – no close ups of potential holes in the wall, for instance.

Counsel said that the Tenants' obligations for cleaning the residential property are set out on page four of the tenancy agreement. They noted that the Tenants are not responsible for reasonable wear and tear. I note that the tenancy agreement is form number RTB-1, and that it has terms which are consistent with Parties' requirements under the Act.

Counsel confirmed that the property did sell, and that the new owners were moving in. Counsel said the Landlords gave the Tenants a two month notice to end tenancy dated December 23, 2020, and that the Tenants accepted being out by February 28th. The completion date for sale was March 3, 2021, but Counsel said it was later changed to March 1, 2021, at which time the mortgage company wanted the Tenants to be out.

Counsel acknowledged that on or about January 26, 2021, the Tenants asked if the Landlords needed any assistance to fill in holes and do spot painting on walls. On February 27th, [R.M.] contacted the Tenants to arrange the key exchange, and the walk-through for the next day; however, the Tenants confirmed they had no movers until March 1. Counsel said that they were no longer Landlords at that point, so the Tenants had to be out before then. The Tenants advised the Landlords that they could not move out until March 1.

Counsel said that on March 1st at about 4 p.m., the Landlord, J.M., attended the residential property and discovered that the Tenants were still not out. The Tenants testified that the Landlord was verbally abusive to them, and Counsel said that the Tenants were abusive of the Landlords. Counsel said that the Tenants were not out until 9:00 p.m. on March 1. The Landlords said it was dark by then, and therefore, they could not do a thorough walk-through inspection.

Counsel said that the Landlords had taken the day off work, and had to take additional days off work, so that they could attend to the cleaning of the property, and to ensure that they repaired what was damaged. They said they hired cleaners for March 1st, but that they had to come back the next day, since the Tenants were not out yet. The Landlords claim \$1,280.00 for lost wages

In their written statement, the Tenants said:

Regarding document #4 on the Monetary Order Worksheet: The amount of days [the Landlords] took off work to finalize the sale of their home should hardly fall on our shoulders. We also had to take unpaid time off work in order to move residences, to facilitate the sale of their home.

Regarding document #5 on the Monetary Order Worksheet: We told [the Landlords] via text message that we would move into our new residence on March 1, 2021. At no time did they say that was not acceptable to them, until Feb 27, 2021 when a text message was received from [R.M.] (submitted in evidence) saying that no one can be on the premises from on March 1, 2021, to which [E.Y.] replied saying that we will be out as fast as we can, but the movers were coming at 10am on March 1, 2021. Text messages are submitted as evidence that [R.M.] gave us the impression that it was fine we were moving out on March 1, 2021. Due to the pandemic, the moving process was significantly slowed due to covid procedures the movers had to take into account.

Rent Charge for Two Days Extra → \$180.00

Counsel said:

The Tenants lived rent-free for two days, so the Landlords claim \$180.00 for two days rent.

The Tenants said:

We submitted evidence of text messages to [R.M.] saying that we found a place and would be going on March 1. There was no disagreement. They said the house changed hands on the 3rd, and we hadn't heard that it changed from that date. We moved on March 1; no one said 'no, you can't, you have to be out sooner'. By the time we found someone to move us, it was hard to secure movers. Moving in the middle of Covid slowed the movers down. The truck arrived at 10 a.m. They wiped everything down until they moved it. That was the protocol at the time.

In the Landlords' Exhibit #7, there is a Contract of Purchase and Sale Addendum dated December 17, 2020 ("Sale Contract Addendum"), in which it states: "The new Possession and Adjustment Dates will be March 3, 2021."

**#2 COMPENSATION FOR MONETARY LOSS OR OTHER MONEY OWED
→ \$4,081.12**

Move-Out Clean → \$240.00

Counsel said that when the Landlords saw the residential property in the daylight on

March 2, 2021: "...they were shocked at what they had found." The Landlords submitted Exhibit 6, which is a move-out cleaning receipt. This receipt has the Landlord's name, the address, and a charge of eight hours of cleaning at \$30.00 an hour for a total of \$240.00. This receipt was dated March 2, 2021.

The Landlords submitted photographs of the residential property at the end of the tenancy, which they have labelled: "Images of the damage and mess left behind", parts 1 and 2. The photographs show:

- electrical plates or outlets caved in to the drywall,
- dirty walls,
- close ups of holes in the walls from hanging pictures, etc.,
- a crushed can in the back yard
- white spots where drywall holes were patched throughout the house,
- pencil marks on a wall where something was hung up,
- dirt and wood pellets on the deck, and
- large, bare patches in the grass in the yard.

The Tenants said:

We did clean the residence. In our opinion, it was in great condition. We had to pay for a separate cleaning. We lost wages through the whole process. Both of our businesses had failed due to Covid, and [J.M.] wasn't working with Covid and his cancer. And they were moving at the middle of the month, as well. It was hard to find that they were losing wages when a lot of circumstances are considered. It's difficult to bring evidence forward, other than talking about the conversations we had.

Truthfully, I didn't know how far to jump into the home inspection.

We did do our best to patch and paint. We didn't get it done to the level we thought we would, but we did patch a lot, but didn't have chance to paint. Mounting a TV, hanging photos, and a shelf up - that type of stuff – normal wear and tear.

In the Tenants' submitted statement, they said:

Regarding document #1 on the monetary order worksheet: [E.] went through the house after the movers had taken the bulk of our contents, and washed every

wall, swept, and mopped every floor. As per the rental agreement, the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, which was upheld on the tenants part, for the entirety of their tenancy. Every room was thoroughly wiped with Lysol Wipes to ensure it was safe, regarding covid, on moving out. [The Landlords] have submitted two receipts for professional cleaners, totally \$240 each. Their claim that the house was 'filthy inside and out' is simply not true. Further, we were not offered a Final Condition Inspection. Nowhere in the rental agreement does it state that the tenants needed to have professional cleaners come in.

Counsel pointed to the last page of the tenancy agreement, page seven, which is an addendum to the tenancy agreement, and which includes the requirement to remove all trash and debris in the yard.

House Price Reduction → \$3,000.00

When Landlord inspected the property, they found electrical boxes pushed into the drywall. They said they had to reduce the sale price by \$6,000.00 for electrical issues. The Landlords acknowledge there were pre-existing electrical issues, though. But the before pictures and the after pictures at Exhibit 9 show the electrical boxes pushed in. The Landlords are not asking for \$6,000.00 – only the \$3,000.00 for the contractors' labour.

Counsel said that a contractor had Incorrectly wired the receptacle [electrical outlet plates], "...so there may have been pre-existing damage". She said that exhibit #7 is a long report detailing electrical issues found in the home.

The Sale Contract Addendum in Exhibit #7 also states: "The Buyer and Seller agree to adjust the Purchase Price from \$975,000 to \$969,000." Counsel indicated that the Landlords hold the Tenants responsible for this \$6,000.00 price reduction. Exhibit #7 comes in the form of an email from the Landlords' realtor, and it contains a Home Inspection Report, which includes comments on electrical issues found in the residential property. A comment in this report states:

There was multiple electrical concerns with open junction boxes, cabling against ducting which can cause overheating, cabling limiting access and not armoured which was at risk of mechanical damage. There was also damaged and incorrectly wired receptacles, contact a licensed electrical contractor for repairs.

In the hearing, he Tenants said:

My first comment, it's interesting that they've attached the home inspection without the previous inspection to connect the dots. Even page 1 of Exhibit 7 – figures of open junction boxes, wires, parts of illegal add-on without a permit. How would we be responsible for insulation or incorrect wiring of any add-on that we didn't do?

Their evidence – 9 photos – is what was the loft – the add-on referenced. What had occurred was, the boxes were never mounted to anything in the wall. When you plugged into them, the plastic covers cracked. We had been away – we didn't do the add-on - didn't touch anything electrical, didn't add any wiring. If they would have required a repair, we would have had the Landlord do that.

Their sub #9 – the first three pages show perceived damages - also pictures of lots of patch work that we did do on our way out. There were some things that happened between the Parties that neither is proud about. But we did our best to help them ... a \$6,000.00 sale reduction, because of a home inspection is not our responsible.

In their written statement, the Tenants said:

Regarding document #2 on the Monetary Order Worksheet: There were many issues found with the home on the House Inspection done as a condition of sale on the house. The Housing Inspection notes that there were 'multiple electrical concerns'. We had no part in the electrical wiring of the home, which can only conclude that we carry no responsibility for the 'open junction boxes' or 'cabling against ducting', 'cabling limiting access and not armored'. The faceplate covers in the loft bedroom were broken, yes, but only as a result of incorrect installation of junction boxes, which we again, we are not responsible for the installation of said junction boxes. (figures 12-5, 12-6, 12-8). The point we are trying to make with this example is that what was reported on the House Inspection, we are not responsible for. We did nothing, beyond reasonable wear and tear.

I asked Counsel for the electrical bill for the \$3,000.00 they are claiming from the Tenants. Counsel said it's not an invoice, but that they had to reduce the selling price of the home by that much. "We had to cancel the photos and use photos from advertising it as a rental property....".

Lawn Mower Replacement → \$841.12

Counsel said:

The Landlords had provided a gas lawn mower to the tenants. At the end of the tenancy, it was broken and covered in rust; it still doesn't turn on. The replacement of a new lawn mower cost \$841.00. At Exhibit 8 - see the invoice in quotes.

In Exhibit 1, at page 7 – the addendum, re yard maintenance. It says the Landlord will give the Tenant a serviced lawn mower for the Tenant to use. . . to maintain the yard. But that was not done.

Exhibit #8 contains an “estimate” of the cost of a new lawn mower from a local retailer.

The Tenants replied, as follows:

Re the lawn mower – it was in good working order when we left. It was an old, used lawn mower, missing the bag or pieces. It was a basic lawn mower to maintain the yard. We mowed previously, and stored it in the same location as they did when they rented us the house.

In their written statement, the Tenants said:

Regarding document #3 on the Monetary Order Worksheet: The lawnmower was in working order when we left the premises. Unfortunately, we were not given the opportunity for a Final Condition Inspection. It should be noted that it was also not a brand new lawn mower when we took occupancy of the home. The lawnmower had no bag or any other attachments.

Counsel could not tell me how old the lawn mower was at the start of the tenancy.

Analysis

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

Before they testified, I advised the Parties 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. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, they must each, as applicant, prove:

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

(“Test”)

TENANT’S CLAIM → \$2,700.00

This matter involves an agreement between the Parties, which set out that the Landlords would pay the Tenants \$2,700.00, if the Tenants “...are able to do the cleanup as described above before Sunday.” The cleanup described above included:

...clean up the garden and deck areas – remove garbage, tire, and everything that is placed up against the side of the house. If any window coverings that are not on a rail could be removed too, we can open all blinds for the viewings.

The Tenants had five days to do these tasks, despite having to work, having four children, it being Christmas time, there being a pandemic, and it being December and was cold outside. Further, the Landlords’ evidence was that “...in order to receive the \$2,700 refund, the Tenants needed to ensure that the sale of the Property went through smoothly.”

Counsel said: “The Tenants did do some clean up, but not enough for \$2,700.00.” However, Counsel did not direct my attention to photographs taken on or after Sunday, December 13th, which show the level of cleanliness that the Tenants obtained for the showing. Further, the text the Tenants submitted from the Landlord on December 13, 2020, said: “Thank you so much the house looks amazing. Really appreciate all the effort”.

I find from the evidence before me overall on this matter, that the purpose of the Cleanup Agreement between the Parties was to facilitate a smooth sale of the residential property.

The Landlords served the Tenants with a Two Month Notice to End the Tenancy for Landlord's Use on December 23, 2020, because they had sold the residential property, and the new owners wanted to move in. This means that the property sold within 10 days of the showing on December 13, 2020. Based on this quick sale of the property, I find that the Tenants must have cleaned up the property sufficiently to allow the purchasers to want to purchase it.

I find on a balance of probabilities that the Tenants have provided sufficient evidence to determine that they complied with their part of the Cleanup Agreement; I find that the Tenants rendered the residential property "reasonably clean", as is required of section 37 of the Act. I also find that the Tenants facilitated a smooth sale of the residential property for the Landlords, as it was sold within 10 days of the showing. However, I find that the Landlords have not complied with their obligations set out in this Cleanup Agreement.

Accordingly, and pursuant to the Parties' Cleanup Agreement, I find that the Tenants are eligible for this fee from the Landlords, and therefore, I award the Tenants with **\$2,700.00** from the Landlords, pursuant to sections 37 and 67 of the Act, and the Cleanup Agreement.

LANDLORD'S CLAIMS

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 #1 ("PG #1") helps interpret these sections 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 refers 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.

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."

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

#1 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$1,460.00

Loss of Earnings → \$1,280.00

Counsel said that this claim was because the Landlords had taken the day off work for March 1, 2020; however, because the Tenants did not move out on time, the Landlords felt they had to take additional days off work. Counsel said they did this so that they

could attend to the cleaning of the property, and to ensure that they repaired what was damaged.

As PG #16 above states: "It is up to the party claiming compensation to provide evidence to establish that compensation is due."

On the Landlords' monetary order worksheet, they listed their lost earnings for three days totalling \$1,280.00. This amounts to \$213.33 each per day; however, Counsel indicated that the Landlords did not have any receipts or other documentary evidence to support this claim. In addition, Counsel did not say why both Landlords needed to be present for the whole three days. Further, the Landlords' evidence is that they hired people to clean and repair the rental unit, rather than doing it themselves. As a result, I find that the Landlords have provided insufficient evidence to meet their burden of proof on this claim, and therefore, I dismiss it without leave to reapply.

Rent Charge for Two Days Extra → \$180.00

The Landlords claim \$180.00 for two days' rent from the Tenants. I appreciate that the Parties agree that the Tenants were supposed to be out of the residential property by February 28, 2021, and they were not out until March 1, 2021 at approximately 9:00 p.m. To calculate this, the Landlord divided the monthly rent of \$2,700.00 by 30 days to equal \$90.00 a day.

First, March has 31 days, therefore, the rate should have been \$87.10 per day for a total of \$174.20.

However, the Landlords did not miss out on gaining rental income as a result of the Tenants moving out a day late. Rather, they did not indicate what this actually cost them, other than delaying their cleaners for a day. Further, the Tenants were out of the residential property only a date late; therefore, it is not clear why the Landlords are charging for two days of rent.

Having reviewed the evidence presented to me in this matter, I find that the Landlords failed to provide sufficient evidence to establish this claim on a balance of probabilities. I, therefore, dismiss this claim wholly for want of evidence, without leave to reapply, pursuant to section 62 of the Act.

**#2 COMPENSATION FOR MONETARY LOSS OR OTHER MONEY OWED
→ \$4,081.12**

Move-Out Clean → \$240.00

Section 37 states that tenants must leave the rental unit “reasonably clean and undamaged”.

As noted above, PG #1 helps interpret section 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]

The Landlord submitted photographs of walls that had been prepared for a coat of paint, after the holes had been covered up. There were also a few photos of holes that had not been filled for painting. There were a few dirty walls . . . However, the Landlords’ photos do not show dirty floors, windows, ledges, oven, refrigerator, bathrooms, closets, or hallways, etc. While the residential property is large with four bedrooms and a loft, I find it difficult to believe that it took two professional cleaners four hours each to clean half of this house each. I find that there were some imperfections in the Tenants’ clean and repair of the rental unit; however, a tenant is not required by the Act to clean to a level of perfection, but rather to a level that meets reasonable health, cleanliness and sanitary standards.

The Tenants said that they wiped down the rooms with Lysol wipes, which addresses

pandemic concerns. I find from the Landlords' photographs and the Parties' testimony that the residential property was left reasonably clean by the Tenants when they vacated the property. Accordingly, I find that the Landlords have not provided sufficient evidence to meet their burden of proof in this matter on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

House Price Reduction → \$3,000.00

Again, as PG #16 above states: "It is up to the party claiming compensation to provide evidence to establish that compensation is due."

There is evidence before me that the sale price of the residential property to the new owners was reduced by \$6,000.00 for electrical issues; however, the house inspection report indicated that these issues could be placed at the feet of the original electrician(s) whose work caused the "open junction boxes, cabling against ducting which can cause overheating, cabling limiting access and not armoured which was at risk of mechanical damage . . . and damaged and incorrectly wired receptacles".

I find that the Landlords have not established a connection between the electrical problems in the residential property and any actions or behaviour on the part of the Tenants. As a result, I find that the Landlords have provided insufficient evidence with which to prove their claim on a balance of probabilities, and therefore, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Lawn Mower Replacement → \$841.12

As set out in the third step of the Test, a party who claims compensation from another party must prove the value of the loss. Counsel did not dispute the Tenants' claim that the lawn mower at the residential property was used. The Tenants called it "old" and said that it was missing pieces.

In making this claim, the Landlords have provided an estimate of what a new lawn mower would cost. However, I find that the Landlords failed to prove that their lawn mower at the start of the tenancy was equivalent in value to a new lawn mower. As such, I find they have failed the third step of the Test.

Further, I find that the Landlords have also failed the fourth step in the Test in that they did not show how they mitigated their damage. Rather than seeking an estimate for a new lawn mower, they should have sought prices for and purchased a used lawn

mower that is similar to the one they say the Tenants broke to mitigate or minimize their loss in this regard.

As I have found that the Landlords failed two of the steps in the Test, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Summary

The Tenants are successful in their claim, and they are awarded **\$2,700.00** from the Landlords. The Landlords are unsuccessful in their Application, as they failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities.

As the Tenants were successful in their application, I also award them recovery of the **\$100.00** application filing fee, pursuant to section 72 of the Act. I grant the Tenants a Monetary Order of **\$2,800.00** from the Landlords pursuant to section 67 of the Act.

Conclusion

The Landlords are unsuccessful in their application, as they failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlords' claims are dismissed wholly without leave to reapply.

The Tenants are successful in the claim for compensation from the Landlords of \$2,700.00. The Tenants are also awarded recovery of their \$100.00 filing fee for this application from the Landlords. I grant the Tenants a Monetary Order under section 67 of the Act from the Landlords in the amount of **\$2,800.00**. This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) 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: November 12, 2021

Residential Tenancy Branch