Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNSD, FFT, MNDCT
LL: MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

The matter originally proceeded by way of hearings held on January 25, 2021 and May 31, 2021 to deal with the following cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act"):

The landlords requested:

- a monetary order for unpaid rent and utilities, damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or monetary loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

These matters were originally assigned to, and heard by, a different Arbitrator. The Arbitrator had started the hearing, and had to adjourn the hearing twice due to insufficient time to complete the hearings. Unfortunately, due to unforeseen circumstances, that Arbitrator is unable to attend the reconvened hearing, and accordingly these applications were re-assigned to myself. As noted to both parties in the hearing, as I was not in attendance at the previous hearings, the hearing must be

heard as a new hearing before myself. I thank both parties for their patience while awaiting for a resolution to their disputes, and as I stated in the hearing I have prioritized these matters in order to provide both parties with a timely decision.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed service of the tenants' application and evidence package. Accordingly, I find the tenants duly served with the landlord's documentary materials. The tenants testified that they were only served with two packages for dispute resolution, and that the landlords failed to provide their USB evidence in the proper manner. The tenants confirmed that despite this, they were still able to review these materials, and were prepared to proceed with the scheduled hearing. The hearing proceeded as scheduled.

Both the tenants and I have noted a discrepancy in the monetary amount claimed by the landlords. The landlords had requested a monetary order of $7,962.00 on their application, while they requested a monetary order of $5,389.00 on their monetary order worksheet. The landlords confirmed in the hearing that they were proceeding with the monetary orders requested on their monetary order worksheet, and accordingly, the hearing proceeded with consideration of these monetary claims as noted on the monetary order worksheet.

Issue(s) to be Decided

Are the parties entitled to a monetary orders requested in their applications?

Are the parties entitled to recovery of their filing fee?

Are the tenants entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on July 1, 2020, and was to end on June 30, 2021. Monthly rent was set at $2,250.00, payable on the first of the month. The landlords had collected a security and pet damage deposit in the amount of $1,125.00 each deposit, which the landlords still hold.

The tenants filed an application on October 3, 2020 requesting the following monetary orders:

Item	**Amount**
Return of October 2020 rent	$2,250.00
Return of Security Deposit and compensation pursuant to section 38 of the Act	2,250.00
Return of Pet Damage Deposit and compensation pursuant to section 38 of the Act	2,250.00
Medical Report & receipt for medication	28.59
Registered mail x 4	60.00
Storage for personal belongings to minimize loss from mould	176.61
Disposal due to mould contamination	23.80
Photocopy – respondents' package	80.00
Estimates from tenants for lost objects, cleaning, lost wages	604.80
Breach of trust, privacy, loss of access to unit, denial of tenant rights	3,000.00
Total Monetary Order Requested	**$10,723.80**

The landlords filed their own application on October 8, 2020 requesting the following monetary orders:

Item	**Amount**
Loss of Rent for October 2020	2,250.00
Mitigation of Loss of October 2020 rent	-800.00

(re-rented October 21, 2020 for $800.00)	
Unpaid Utilities for September 2020	53.00
Unpaid Utilities for October 2020	108.00
Removal of damaged carpet	400.00
Painting due to pet damage/urine smell	245.00
Replacement flooring $1,300.00 /2	650.00
Cleaning	305.00
Liquidated Damages	1,000.00
Cost of travel, 10 trips	645.00
Key Replacement	144.00
Paint	189.00
Photocopying, USB stick, mailing costs	200.00
Total Monetary Order Requested	**$5,389.00**

The landlords testified that they had received an email from the tenants on September 29, 2020 giving notice that they were ending the tenancy effectively immediately due to issues with mould in the home. The landlords proceeded to communicate with the tenants with the understanding that the tenants were ending the fixed-term tenancy. The landlords submitted a copy of the email sent by the tenants on September 29, 2020 at 4:14:33 pm. The email informed the landlord that the mould problem in the rental unit has “recently returned very quickly in the last week with the return of the rainy season. The tenants described to the landlord how the mould growth had negatively impacted their health. The tenants then wrote that they “seek to terminate our lease effectively immediately as this situation is urgent. The extent of mold contamination is unsafe and as a result we must leave. Our rent is paid to Sept 30, 2020 and we are prepared for your inspection ASAP, in order for you to refund our damage and pet deposits in the total amount of $2250.00 on Oct 1, 2020 (the date you last advised you would next be in Squamish).”

The landlords testified that they felt the email was clear in expressing the tenants’ intent to end the tenancy effectively immediately, and that this email constituted their notice to end the tenancy. The landlords also felt that the tenants had clearly communicated that they were prepared for the final inspection of the rental unit. The landlords responded to the tenants’ email on September 30, 2020 at 4:39 p.m. informing the tenants that they were not notified about the mould returning, and informing the tenants that they did not provide proper notice to end a fixed-term tenancy. The landlords also wrote that they could meet on October 1, 2020 at 11:00 a.m. or 1:00 pm. to conduct the final inspection.

The tenants responded on September 30, 2020 at 10:11 p.m. The tenants responded with several points, and stated that “we seek to terminate our lease without financial penalty and that you return to us our deposits less $50 to cover Hydro. We will consider the matter closed and resolved when we receive an etransfer from you in the amount of $2200. Due to employment we can’t meet you on October 1, 2020 before 5 pm. If 6pm or later will not work for you, please conduct the inspection in our absence as we have taken a video journal and extensive photographs of the unit. We have left the rented unit in better condition than the day we moved in and we believe the mould is a pre-existing issue”.

The landlords responded on October 1, 2020 at 9:02 a.m. that they would perform the inspection at 11:00 a.m. The landlords sent another email on October 2, 2020 at 8:58 a.m. that they had conducted the final inspection at 11:00 a.m. in the absence of the tenants as suggested by the tenants, and that they were present at the rental suite until 2:30 pm. The landlords testified in the hearing that they had attempted to call the tenants several times during the inspection, but there was no answer. The landlords also stated in that email that they had changed the locks as the tenancy as over, and that they did not want to reinstate the tenancy.

The landlords confirmed that they received a forwarding address from the tenants on October 7, 2020, and that they filed their application for dispute resolution the next day to recover their losses. The landlords testified that the tenants had abruptly ended the fixed-term tenancy without proper notice, and that the tenants evaded their efforts to contact them by not answering their phone calls. The landlords testified that based on the emails sent by the tenants, the fact that they had requested a final move out inspection, with or without the tenants present, the fact that the rental unit was vacant, that the keys were left on the table, the landlords felt that they were justified in believing that the tenants have ended the tenancy and had vacated the rental unit. The landlords confirmed that the tenants did attempt to send them an etransfer for October 1, 2020 rent on October 1, 2020, which the landlords did not accept as they felt that the tenancy had already ended.

The landlords testified that the tenants failed to leave the rental unit in reasonably clean condition. The landlords testified that the carpets and underlay were soiled from what they and their technician believe to be cat urine or vomit, and the walls required repainting due to the smell. The landlords submitted the multiple quotes they had obtained in an effort to mitigate the tenants’ exposure to losses, and testified that they had advertised and re-rented the rental unit as soon as possible. The landlords also note that they had reduced their monetary claims to reflect reasonable estimates of their

losses, and that they had suffered a substantial amount of loss in trying to do so as they did not live in close proximity to the rental home, and had to make multiple trips to prepare the home for rental again. The landlords testified that home was in satisfactory condition since they had purchased the home in 2017, and that they had addressed various concerns of the tenants' at the beginning of the tenancy such as changing the locks, and providing the tenants with new oven parts and a new smoke detector. The landlords believed that the carpets should have lasted another five years. The landlords also testified that they had contacted the RTB for advice before proceeding.

The tenants filed their application for losses as they felt that they landlords had locked them out. The tenants testified that they did propose to the landlords that they allow the tenants to end the tenancy without penalty, but after the landlords had informed them that this was not possible, the tenants responded by email on October 1, 2020 at 8:40 p.m. The tenants included a copy of this email in their evidentiary materials. The email stated that "By now you have received our rent in full for October 2020, on time before midnight today. We acknowledge your right as landlord to one month's notice prior to terminating our rental agreement, the contract we have with you. As such we adjust our notice of lease termination accordingly to noon on October 31, 2020. We await your acknowledgement of this". The tenants also state in the email "As you know we were unable to attend the inspection during business hours due to employment responsibilities and you could not meet later due to childcare responsibilities, we understand. This final inspection will need to be rescheduled later in the month at a time and date that is mutually agreeable. You performed a landlord inspection of our rental unit today, was there any other inspection item that you have questions about or concerns besides requiring an invoice to prove carpet cleaning? We await your acknowledgement and report". The tenants also informed the landlords that they had contacted a professional restoration company to attend at the rental unit at 8:00 am on October 2, 2020 to assess the mould issue. The tenants testified that they attended on October 2, 2020 for the inspection, and realized the landlords had changed the locks, and the restoration company was unable to attend the call-out.

The tenants confirmed in the hearing that the October 2020 rent was returned to their bank account, but that the landlords still had their deposits in their possession. The tenants acknowledge the unpaid utilities for September 2020, but dispute that they should be responsible for the October 2020 rent or utilities as they were locked out. The tenants dispute that they had failed to leave the home in reasonably clean and undamaged condition as the home was damaged due to mould and dampness. The tenants also argue that they were not afforded the proper opportunity to attend a move-out inspection. The tenants argued that they had agreed for the landlords to inspect the

home in relation to the mould, but that they should have been provided the opportunity to do a final move-out inspection together.

In addition to these losses, the tenants are also seeking reimbursement of the losses associated with the mould in the home as listed in their monetary order worksheet, as well with various monetary losses associated with being locked out of the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their applications.

It is disputed as to whether the tenants gave proper notice to the landlords to end the tenancy, or whether the tenants were locked out. The landlords testified that the tenants gave notice by email on September 29, 2020 that they were ending the tenancy effective immediately due to the mould in the rental unit, and that they had already vacated the rental unit by removing all their personal belongings. The tenants testified that the tenancy had ended when the landlords had changed the locks on October 1, 2020, after the tenants had sent an etransfer for the October 2020 rent.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

> **44** (1) A tenancy ends only if one or more of the following applies:
>
> (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:…
>
> *(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*
>
> (c) the landlord and tenant agree in writing to end the tenancy;…

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

> ***45*** *(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.*

I have considered the evidence and testimony before me. I find that it is clear that the tenants had sent the landlords an email on September 29, 2020 at 4:14:33 pm. In that email the tenants stated that they "seek to terminate our lease effectively immediately as this situation is urgent. The extent of mold contamination is unsafe and as a result we must leave. Our rent is paid to Sept 30, 2020 and we are prepared for your inspection ASAP, in order for you to refund our damage and pet deposits in the total amount of $2250.00 on Oct 1, 2020". Although the tenants' intention may have been to initiate a discussion on how to end the tenancy by way of a mutual agreement, I find it completely possible and reasonable how the landlords could have interpreted the intention of the email as the tenants' formal notice that they were ending the tenancy "effectively immediately". Although the tenants' decision to use the word "seek" implies that they were requesting or asking for consideration of the offer, the fact that the tenants did not give a reasonable timeline for the landlords to respond to such a "request" gives reasonable inference that this was not a request, but rather the denoting of an intention.

The tenants sent the landlords the email two days prior to the beginning of the next month, and noted that the rent had been paid up until the last day of the current month. The tenants also noted that they were prepared for an inspection "ASAP" "in order for you to refund our damage and pet deposits in the total amount of $2250.00 on October 1, 2020". Although the tenants reference an inspection, which they testified was actually a reference to an inspection of the mould, I find that the fact that they tenants had requested the return of the deposits also signified that the tenancy was over. Furthermore, the landlords attended the home to a seemingly empty home, with keys on the table. Although the tenants testified that the keys were not the new keys that gave access to the home, and although the tenants testified that their belongings were

removed due to issues with the mould, I find it completely reasonable for the landlords to believe at this point that the tenants had vacated the rental unit.

The tenants sent a further email on October 1, 2020 at 8:40 p.m. stating that they had sent an etransfer for the October 2020 rent, and they wanted to “adjust our notice of lease termination accordingly to noon on October 31, 2020”.

Based on the evidence before me, I find that the tenants had provided written notice to the landlords that they were ending the tenancy “effectively immediately”, which clearly means the effective date of the tenants’ notice would have been on that same date, September 29, 2020. Although the notice did contain some ambiguity with the tenants’ choice to use the word “seek”, I find the lack of a reasonable opportunity for the landlords to accept or dispute this “offer” only gives weigh to the landlords’ belief that this was a final notice to end tenancy from the tenants. Furthermore, I find that there were multiple factors that contributed to the landlord’s perception that the tenancy had ended, included the tenants’ demand for the return of their security and pet damage deposits, the reference to an inspection, and seemingly vacant rental unit.

Although the tenants did send an etransfer for October 2020 rent, and although they sent a follow-up email on October 2020 amending the effective date of their notice, I find that they did so after the effective date of the first notice had already passed, the effective date being “immediately” as noted in the September 29, 2020 email. I find that the tenants had effectively ended the tenancy on the date that they had sent that email, and on October 1, 2020, the tenancy was already over. I do not find that it was possible for the tenants to reinstate the tenancy without the mutual consent of the landlords, or without an Order of an Arbitrator to do so. To further complicate matters and contribute to the confusion, for various reasons the tenants could not or would not answer the landlords’ phone calls to them on October 1, 2020. Although it may not have been the tenants’ intention, I find that the challenges in communication between the parties contributed to the landlords’ perception that the tenancy was over. I find that the landlords had changed the locks after they had believed that the tenancy had ended, and the landlords had vacant possession of the rental unit.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. Even if the tenants were able to amend the effective date of their notice to end the tenancy to October 31, 2020, the tenants would have ended the tenancy earlier than the fixed term, which was June 30, 2021. The tenants are still required to give proper notice under section 45(2)(b) of the *Act,* which states that the

tenancy cannot end *"earlier than the date specified in the tenancy agreement".* As noted above, I do not find that the landlords had changed the locks until after the tenancy had ended, and the landlords had vacant possession of the rental unit.

The evidence of the landlords is that they were able to re-rent the suite, and the landlords are only claiming $1,000.00 for liquidated damages as specified in the tenancy agreement, in addition to the lost rental income for October 30, 2020. The landlords' testimony was that they were able to mitigate their losses by recovering some rental income for October 2020, as demonstrated by their evidence and testimony.

I find that the tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. The tenants moved out earlier than the date specified in the tenancy agreement. I find that the landlords had made an effort to mitigate the tenants' exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*, and were able to find new tenants for October 21, 2020. I, therefore, allow the landlord's monetary claim for loss of rental income for the month of October 2020 in the amount of $1,450.00.

I must now consider whether the landlords are entitled to the $1,000.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

> *A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*
>
> *There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:*
>
> - *A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
> - *If an agreement is to pay money and a failure to pay requires that a*

greater amount be paid, the greater amount is a penalty.

- *If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum…

I have reviewed the written tenancy agreement submitted by the landlords. I am satisfied that the landlords had clearly stipulated on the tenancy agreement that the tenants would be responsible for the amount claimed by the landlords as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with locating a new tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlords' monetary claim.

The tenants confirmed in the hearing that they were not disputing the landlords' monetary claim for the September 2020 utilities, and accordingly, I allow the landlords' monetary order in the amount of $53.00. As the tenancy was effectively over in September 2020, I do not find that the tenants should be responsible for the utilities for October 2020, and accordingly, I dismiss this portion of the landlords' claim without leave to reapply.

The landlords made a monetary claim to recover the cost of rekeying the locks. Section 25(1) of the *Act* states that the responsibility falls on the landlords to change the locks at the beginning of each new tenancy, and that the landlords are responsible for this cost. Accordingly, I dismiss this portion of their claim without leave to reapply.

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

I will first address the tenants' concerns about the lack of an opportunity to perform a move-out inspection. Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenant:

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.*

As stated above, the landlord's final opportunity to attend an inspection must be proposed to the tenant in the approved form. In this case, although the tenants did send an email to the landlords that they could not attend an inspection before 5:00 p.m., and that the landlords may complete one in their absence, I find that the landlords failed to provide the tenants with a proper Notice and at least two opportunities in the approved from, specifically RTB Form *RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection*. I am not satisfied that the landlords have met the requirements of the *Regulation* and *Act.*

Based on the evidence and testimony before me, I find that the landlords did not provide a fair or reasonable opportunity for the tenants to attend the move-out inspection as required by the *Act* as set out above, regardless of whether the tenants had agreed for the landlords to proceed without them or not. The landlords are still obligated to comply with the *Act* and legislation, which is very specific as to what these obligations are.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
• having made an inspection does not complete the condition inspection report.

I must note, however, that the above does not exclude the landlords from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;
• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Accordingly, I will consider the landlords' monetary claims. The tenants dispute that the carpet was soiled or damaged by them, and attribute the damage to the moisture and mould issue in the home. The landlords submitted photographs and videos to show the condition of the suite, as well as the copies of the move-in and move-out inspection reports.

I note that RTB Policy Guideline #1 states the following about carpet cleaning and pets:

"The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises."

Although RTB Policy Guideline #40 states that the useful life of carpet is 10 years, without knowing the exact age of the carpet, it is apparent that the tenants had vacated the rental unit without steam cleaning or shampooing the carpet. I also find that the evidence submitted shows that the rental unit was not returned to the landlords in reasonably clean condition. As stated above, I find that this tenancy had ended at the end of September 2020, and although the tenants' argument was that they were locked out on October 1, 2020, the requirement is that the tenants should have accomplished the cleaning before the end of this tenancy, which I find that they did not. I find the landlords' monetary claim of $305.00 to be reasonable and sufficiently supported in evidence, and accordingly, I allow the landlords' monetary claim for the tenants' failure to return the rental unit in reasonably clean condition.

As noted earlier, Policy Guideline #40 speaks to the useful life of an item. The useful life of carpet is 10 years, while the useful life of paint is 4 years. It is likely that much of the damage referenced was due to the fact that the items claimed have reached their useful life. As noted above, the burden of proof is on the applicants to support their claims. In this case, I find that the landlords fall short. In light of the disputed claims for damage, I am not satisfied that the landlords had provided sufficient evidence to support that the damage was attributed to the tenants rather than wear and tear, or pre-existing damage due to fact that the carpet and paint has reached its useful life. Accordingly, I dismiss the landlords' claims related to the replacement of the carpet, and for the painting.

The landlords also filed monetary claims related to the losses associated with traveling to and from the rental unit in order to deal with the issues that had arisen at the end of the tenancy. Although I am sympathetic to the landlords that they had suffered a considerable expense to travel to and from the rental unit, I find that this loss is a result of the landlords' decision to own and manage a rental unit that is a considerable distance away, rather than due to the tenants' contravention of the *Act*. Furthermore, I find that the landlords had already claimed for, and were successful, in obtaining a monetary award for liquidated damages, which is a pre-estimate of the losses associated with the tenants' breach of the tenancy agreement. For these reasons, I dismiss the landlords' monetary claim for travel expenses.

Lastly, the landlords filed a monetary claim for losses associated with the filing of their application. Section 72 of the Act only allows an applicant to recover the filing fee. As the landlords' application does have merit, I allow the landlords to recover the $100.00 filing fee. I note that section 72 of the *Act* does not allow the applicant to claim for losses associated with filing an application beyond the $100.00 filing fee. Accordingly, I dismiss the landlords' other monetary claims related to filing this application without leave to reapply.

The tenants also filed monetary claims related to this tenancy. The tenants confirmed that the October 2020 rent was not claimed by the landlords, and the money is still in possession. Accordingly, I dismiss this portion of the tenants' claim without leave to reapply.

The tenants also filed monetary claims related to the filing of this application and responding to the landlords' claims. As noted above, section 72 of the *Act* does not allow the applicant to claim for losses associated with filing an application beyond the $100.00 filing fee. Accordingly, I dismiss the tenants' claims for reimbursement of the cost of postage and photocopying without leave to reapply.

The tenants filed an application under section 38 in relation to their security and pet damage deposits, which the landlords still hold. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord

receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that the tenants had provided a forwarding address to the landlords on October 7, 2020, and the landlords had filed their application on October 8, 2020, within the required time limit. As the landlords are still in possession of the tenants' deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' deposits in partial satisfaction of the monetary awards granted in this application. As I find that the landlords had filed this application within the required 15 days of the provision of the tenant's forwarding address, I do not find that the tenants are entitled to any compensation as set out in section 38 of the *Act.*

The tenants also filed claims in relation to the mould in the rental unit. In light of the disputed evidence before me, I find that the tenants failed to establish that there was truly a problem with mould in the home, and if so that the landlords failed to address these issues. I find that the tenants had ended the tenancy before giving the landlords an opportunity to investigate and address possible issues, and therefore I do not find that the landlords should be responsible for these claims. On a related note, the tenants had scheduled a company to attend to investigate the issue on October 2, 2020, which was later cancelled after the tenancy had ended. I find that the tenants had made the decision to schedule the inspection after the tenancy had ended, and no longer had possession of the rental unit. I find that the tenants are not entitled to recover any losses associated with this decision, and accordingly, I dismiss the tenants' claims related to the mould without leave to reapply.

In assessing the tenants' remaining claims, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the concerns raised by the tenants in regard to this tenancy, I find that the evidence presented by the tenants do not sufficiently support that the landlords had contravened the *Act*. Furthermore, although the tenants had requested compensation, I find that they had failed to support how the tenants had determined the value of the losses claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damage or losses the tenant is seeking in this application. I find that the tenants also failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlords.

I find that the tenants have failed to meet the standards of proof required to support their claims made in their application. On this basis I dismiss the remainder of the tenants' monetary claim without leave to reapply

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their claims, I dismiss their claim to recover the filing fee.

Conclusion

I issue a Monetary Order in the amount of $658.00 n the landlords' favour under the following terms which allows for the following monetary awards:

Item	**Amount**
Loss of Rent for October 2020	1,450.00
Unpaid Utilities for September 2020	53.00
Cleaning	305.00
Liquidated Damages	1,000.00
Filing Fee	100.00
Less Deposits Held	-2,250.00
Total Monetary Order	**$658.00**

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

I dismiss the remaining claims without leave to reapply.

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: February 3, 2022

Residential Tenancy Branch