



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:07 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the parties from recording the hearing. The landlord testified that he was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed his email addresses for service of this decision and order.

The landlord testified that he served the tenant with a copy of this application for dispute resolution via registered mail on September 23, 2021. A registered mail receipt stating same was entered into evidence.

The landlord entered into evidence a move in/out condition inspection report on which the tenant provided his forwarding address, which is different than the address the tenant was served the landlord's application for dispute resolution. The landlord testified that the tenant did not attend the move out condition inspection and all the information provided by the tenant on the move in/out condition inspection report was provided on move in.

The landlord testified that the tenant texted him his forwarding address on August 31, 2021, the day the tenant moved out. The August 31, 2021 text was not entered into evidence. I allowed the landlord to upload the August 31, 2021 text message into evidence during the hearing. I find that the tenant is not prejudiced by the late admittance of this evidence because he had a copy of the text message because he sent it.

The landlord entered into evidence the August 31, 2021 text message from the tenant in which the tenant provided his forwarding address. The forwarding address in the text matches the address at which the tenant was served with the landlord's application for dispute resolution. I find that the tenant was deemed served with the landlord's application for dispute resolution on September 28, 2021, five days after its registered mailing, in accordance with sections 89 and 90 of the *Act*, at the forwarding address provided by the tenant.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began as a fixed term tenancy agreement from January 1, 2020 to December 31, 2020 at which point the tenancy rolled into a month to month tenancy. The tenant moved out on August 31, 2021. Monthly rent in the amount of \$1,075.00 was payable on the first day of each month. A security deposit of \$537.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord filed this application for dispute resolution on September 8, 2021.

The landlord testified that on August 30, 2021 the tenant texted the landlord notice to end the tenancy the following day, August 31, 2021. The above text message was entered into evidence. The landlord testified that on August 30, 2021 he asked the tenant via text when he would be available to complete a move out condition inspection of the subject rental property and the tenant became upset and did not provide his availability and stated that the subject rental property was a cesspool and that the landlord should not be concerned about the security deposit.

The landlord testified that after the forwarding address was provided by the tenant, the tenant refused to respond to subsequent text messages and the landlord did not provide further written correspondence regarding the move out condition inspection report.

The landlord entered into evidence a move in/out condition inspection report. The move in section of the condition inspection report is signed by both parties and the tenant states that he agrees with the contents of the report. The move out section of the condition inspection report is signed by the landlord but not the tenant. On the move in/out condition inspection report the tenant provided the landlord with written permission to retain the entire security deposit. The landlord testified that this permission was granted at the start of the tenancy but does not know why.

The landlord testified that the tenant damaged the subject rental property and entered into evidence a quote stating the following costs to repair/replace the damaged areas:

Description	Amount
Replace broken bathroom tile	\$105.00
Replace barnwood accent wall	\$250.00
Replace bathroom vanity, drawers and doors	\$850.00
Remove and replace laminate floor in living room	\$1,300.00
Replace broken cover plates on plugs	\$10.00
Replace kitchen cabinet shelves, stained and damaged	\$300.00
Pre/post construction clean up	\$275.00
Carpet cleaning	\$100.00
Subtotal	\$3,190.00
GST @ 5.00%	\$159.50
TOTAL	\$3,349.50

Replace broken bathroom tile

The landlord testified that the bathroom tile was installed in 2013 and was in good condition at the start of the tenancy, and one of the tiles was broken at the end of the tenancy. The landlord testified that the contractor who provided the above quote was given an extra tile from the original construction and charged the landlord \$105.00 to install it.

The move in condition inspection report states that the floor is in good condition. The move out condition inspection report states that a tile is broken. A move out photographs showing a broken tile was entered into evidence.

Replace barnwood accent wall

The landlord testified that the tenant damaged the barnwood accent wall with some type of liquid and that there was a big stain on it. The landlord testified that the hired the contractor who provided the above quote to replace the barn wood with shiplap because the contractor said it would be too expensive and labour intensive to repair the damage to the barn wood. The landlord testified that the contractor was paid the quoted \$250.00 to replace the accent wall with shiplap.

The landlord testified that the barnwood was three years old at the end of the tenancy. The move in condition inspection report states that the living room walls and trim are in

good condition. The move out condition inspection report states that the barn wood wall is dirty and stained.

Replace bathroom vanity, drawers and doors

The landlord testified that tenant damaged the bathroom vanity, drawers and doors which were installed in 2013. The landlord testified that the vanity drawers and doors were in good condition at the start of this tenancy and were de-laminating (peeling) at the end of this tenancy.

The move in condition inspection report states that the bathroom cabinets are in good condition. The move out condition inspection report states that the drawer faces are chipped. The landlord entered into evidence move out photographs of the drawer faces peeling off.

The landlord testified that he could not find matching replacement drawers, so the entire vanity had to be replaced. The landlord testified that the construction company quoted him \$850.00 for a new vanity using the old countertop and faucets, but he decided to upgrade and countertop and faucets and so paid \$1,300.00. The landlord is only seeking the cost to replace the vanity in the amount of \$850.00.

Remove and replace laminate floor in living room

The landlord testified that the tenant damaged the laminate flooring in the subject rental property that was new in 2013. The landlord testified that at the start of the tenancy the flooring was in good condition and that at the end of the tenancy there were several areas showing water damage and swelling and that the tenant's entrance mat adhered to the floor and pulled the laminate up when it was removed. The landlord testified that the laminate was also chipped where the tenant's couch was located during the tenancy.

The landlord testified that the construction company originally quoted \$1,300.00 for removing and replacing the flooring, but since he removed the old flooring himself, the construction company only charged \$1,175.00 for installing the new flooring. The landlord testified that he is not seeking compensation for the removal of the flooring because it did not take him long to remove.

The move in condition inspection report states that the living room flooring was in good condition and the move out inspection report states that there is "damage/swelling of

floor in areas". The landlord entered into evidence photographs showing swollen laminate flooring and marks on the flooring from the entrance mat.

Replace broken cover plates on plugs

The landlord testified that the tenant broke one plug and one light switch cover plates and that the construction company replaced the plug/light switch cover plates for \$5.00 per cover for a total of \$10.00. The landlord testified that the plug/light covers were in good unbroken condition at the start of this tenancy.

The move in condition inspection report does not mention damaged plug/light faceplates. The move out condition inspection report states that a plug cover in the bathroom and the bedroom are damaged. The landlord entered into evidence photographs of the damaged plug/light covers. The landlord testified that they covers were new in 2013.

Replace kitchen cabinet shelves, stained and damaged

The landlord testified that the tenant left all of the cabinet shelves dirty and so stained that they had to be replaced. The landlord testified that cabinets and shelves were new in 2013. The landlord testified that the construction company quoted \$300.00 to replace the shelves but that way more was ultimately paid because he decided to install all new kitchen cabinets and countertops instead of just replacing the shelves. The landlord is only seeking the \$300.00 for the cost of replacing the shelves.

The move in condition inspection report states that the kitchen cabinets are in good condition. The move out condition inspection report states that the kitchen cabinets and doors are dirty and stained. The landlord entered into evidence photographs of dirty and stained kitchen shelving.

Pre/post construction clean up

The landlord testified that the tenant left the subject rental property filthy and that the construction company would not complete the required repairs until the subject rental property was cleaned. The landlord testified that it looked like the tenant never cleaned the subject rental property for the entire duration of the tenancy. The landlord testified that the floors were sticky, the windowsills looked like they had never been wiped down, there was mouldy food in the cabinets, and what looked like cat feces behind the water

heater.

The landlord entered into evidence an inspection from the same company who provided the quote for damages, dated September 8, 2021 which states in part:

- Inspection of unit revealed neglect and filth that requires cleaning before work may commence
- Kitchen cabinets and drawers are extremely dirty, cleaning will not remove stains on shelves and drawer bottoms
- Behind hot water tank appear to be cat feces in storage area under stairs

The landlord testified that the construction company was paid \$275.00 to clean the subject rental property before repairs were made and that this fee also included the cost of cleaning up after the repairs were made.

The move in condition inspection report states that the subject rental property is in good condition, no area was noted to be dirty. The move out condition inspection report states that almost every area of the subject rental property is dirty. Photographs of the dirty property were also entered into evidence.

Carpet cleaning

The landlord testified that the tenant did not clean the carpets at the end of this tenancy and that the construction company charged him \$100.00 to clean the carpets.

Loss of rental income

The landlord testified that due to the amount of work completed and the supply chain issues present following COVID 19, the subject rental property was not repaired until mid November 2021 and new tenants were not found until December 1, 2021.

The landlord's application for dispute resolution states that the landlord is seeking 1.5 months' rent "to cover the loss of revenue caused by short notice along with damages and repairs before I am able to rent the suite again."

In the hearing the landlord testified that at the time of filing for dispute resolution, he believed the suite would be ready 1.5 months after the tenant moved out, but it ended up taking three months for the repairs to be completed. The landlord testified that he didn't know if he could request all three months now. The landlord did not file and serve the tenant with an amendment seeking to increase the monetary award.

The landlord testified that he started advertising the subject rental property for rent in the beginning of November 2021, when he could see that the subject rental property would soon be finished.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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.

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

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and

determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

When an item is replaced, a useful life calculation is required so that the landlord is not unjustly enriched by the tenant paying for the entire cost of the new item when the item replaced only had a portion of its useful life left. A useful life calculation is not required when an item is repaired as the repair is unlikely to extend the useful life of the item overall and is only returning the repaired item to its previous condition.

The tenant testified that the majority of items repaired or replaced were from 2013 (month not specified), I accept this undisputed testimony. There are 104 months between January of 2013 and the end of August 2021.

Replace broken bathroom tile

Based on the undisputed testimony of the landlord and the move in condition inspection report, I find that the bathroom tile was in good condition at the start of this tenancy and was broken at the end of the tenancy, contrary to section 37(2)(a) of the *Act*.

I find that replacing the one broken tile in the bathroom constitutes a repair of the bathroom floor, and not a replacement as the repair will not extend the life of the entire bathroom floor. I therefore find that a useful life calculation is not necessary.

I find that the above breach of section 37(2)(a) of the *Act* resulted in a loss to the landlord evidenced by the construction quote for \$105.00 plus 5% GST which totals \$110.25. I find that the landlord acted reasonably to minimize the loss by repairing the single damaged tile rather than replacing the entire floor.

Replace barnwood accent wall

Based on the landlord's undisputed testimony and the move in/out condition inspection reports, I find that the tenant damaged the barn wood accent wall, contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of that loss as stated on the construction quote in the amount of \$250.00 plus 5% GST which totals \$262.50. I find that there are no mitigation issues.

I accept the landlord's testimony that the accent wall was three years old at the end of this tenancy.

PG #40 does not provide the useful life of a barn wood accent wall. However, it states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

PG #40 states that a wood retaining wall has a useful life of 15 years (180 months). I find that as the accent wall is made of wood the wood retaining wall is similar enough in nature for the useful life of it to be used for the wood accent wall. Therefore, at the time the tenant moved out, there was approximately 144 months of useful life that should have been left for the accent wall of this unit (180 months less 36 months (3 years)). I find that since the accent wall required replacement after only 36 months, the tenant is required to pay according to the following calculations:

$\$262.50 \text{ (cost of new accent wall)} / 180 \text{ months (useful life of accent wall)} =$
 $\$1.46 \text{ (monthly cost)}$

$\$1.46 \text{ (monthly cost)} * 144 \text{ months (expected useful life of accent wall after tenant moved out)} = \mathbf{\$210.24}$

Replace bathroom vanity, drawers and doors

Based on the landlord's undisputed testimony, the move in/out condition inspection reports and the move out photographs entered into evidence, I find that the tenant damaged the bathroom vanity contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of that loss as stated on the construction quote in the

amount of \$850.00 plus 5% GST which totals \$892.50. I find that there are no mitigation issues.

I accept the landlord's undisputed testimony that the vanity was new in 2013.

Policy Guideline #40 states that the useful life for cabinets is 25 years (300 months). Therefore, at the time the tenant moved out, there was approximately 196 months (300 months less 104 months) of useful life that should have been left for the bathroom cabinets of this unit. I find that since the cabinets (vanity) required replacement after only 104 months, the tenant is required to pay according to the following calculations:

$\$892.50$ (cost of vanity/cabinets) / 300 months (useful life of cabinets/vanity) =
 $\$2.98$ (monthly cost)

$\$2.98$ (monthly cost) * 196 months (expected useful life of vanity after tenant moved out) = **\$584.08**

I note that while the landlord elected to upgrade the bathroom countertops and vanity, the landlord is not entitled to collect compensation for the upgrade, only compensation for the value of the loss caused by the tenant. I find that the quote provided by the landlord shows the loss suffered by the landlord and the landlord is being compensated for that loss, not the additional upgrade.

Remove and replace laminate floor in living room

Based on the landlord's undisputed testimony, the move in/out condition inspection reports and the move out photographs entered into evidence, I find that the tenant damaged the bathroom laminate flooring contrary to section 37(2)(a) of the *Act*. The construction quote is for \$1,300.00. I accept the landlord's undisputed testimony that he removed the old flooring himself and was therefore only charged \$1,175.00 for the new flooring and installation. I find, on a balance of probabilities, that the total loss suffered by the landlord was \$1,175.00 plus 5% GST which totals \$1,233.75. I find that the landlord mitigated his loss by removing the flooring himself.

I accept the landlord's undisputed testimony that the laminate flooring was new in 2013.

Policy Guideline #40 does not have the useful life of laminate flooring. Policy Guideline #40 states that carpet has a useful life of 10 years and hardwood has a useful life of 20 years. I find that laminate is not as durable as hardwood and cannot be refinished like hardwood but it more durable than carpet which is more easily stained and ripped. I find

that the useful life of laminate is therefore between that of hardwood and carpet. I find that the useful life of laminate is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 76 months of useful life (180 months less 104 months) that should have been left for the laminate flooring of this unit. I find that since the laminate flooring required replacement after only 104 months, the tenant is required to pay according to the following calculations:

$\$1,233.75$ (cost of laminate) / 180 months (useful life of laminate) = $\$6.85$
(monthly cost)

$\$6.85$ (monthly cost) * 76 months (expected useful life of vanity after tenant moved out) = **$\$520.60$**

Replace broken cover plates on plugs

Based on the landlord's undisputed testimony, the move in/out condition inspection reports and the move out photographs entered into evidence, I find that the tenant damaged two outlet/light switch covers contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of that loss as stated on the construction quote in the amount of \$10.00 plus 5% GST which totals \$10.50. I find that there are no mitigation issues.

Residential Tenancy Policy Guideline #40 does not provide a useful life for outlet/ light switch covers and there are no similar items listed, so I find that I am not able to complete a useful calculation to determine the percentage of the loss attributable to the tenant.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proved that the tenant breached the *Act* and suffered a loss as a result of this breach; however, the exact percentage of the loss attributable is not determinable without the useful life of the item. I therefore award the landlord nominal damages in the amount of **$\$7.50$** .

Replace kitchen cabinet shelves, stained and damaged

Based on the landlord's undisputed testimony, the move in/out condition inspection reports and the move out photographs entered into evidence, I find that the tenant

damaged the kitchen cabinet shelving contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of that loss as stated on the construction quote in the amount of \$300.00 plus 5% GST which totals \$315.00. I find that there are no mitigation issues.

I accept the landlord's undisputed testimony that the kitchen cabinets were new in 2013.

Policy Guideline #40 states that the useful life for cabinets is 25 years (300 months). Therefore, at the time the tenant moved out, there was approximately 196 months of useful life (300 months less 104 months) that should have been left for the kitchen cabinet shelving of this unit. I find that since the shelving required replacement after only 104 months, the tenant is required to pay according to the following calculations:

$\$315.00 \text{ (cost of shelving)} / 300 \text{ months (useful life of shelving)} = \$1.05 \text{ (monthly cost)}$

$\$1.05 \text{ (monthly cost)} * 196 \text{ months (expected useful life of shelving after tenant moved out)} = \mathbf{\$205.80.}$

I note that while the landlord elected to upgrade the kitchen cabinets, the landlord is not entitled to collect compensation for the upgrade, only compensation for the value of the loss caused by the tenant. I find that the quote provided by the landlord shows the loss suffered by the landlord and the landlord is being compensated for that loss, not the additional upgrade.

Pre/post construction clean up

Based on the landlord's undisputed testimony, the move in/out condition inspection reports and the move out photographs entered into evidence, I find that the tenant left the subject rental property dirty, contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of that loss as stated on the construction quote in the amount of \$275.00 plus 5% GST which totals \$288.75. I find that there are no mitigation issues. The landlord is awarded the cost of pre and post cleaning as the property was left dirty and the construction mess was created due to the damage to the property caused by the tenant. I award the landlord **\$288.75** for cleaning.

Carpet cleaning

Residential Tenancy Policy Guideline #1 (PG #1) states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

This tenancy was over one year. Based on the landlord's undisputed testimony, the move in/out condition inspection report and the photographs entered into evidence, I find that the tenant did not clean the carpets as required at the end of this tenancy, contrary to PG #1 and section 37(2)(a) of the *Act*. I find that the landlord has proved the value of the loss suffered as stated in the construction quote of \$100.00 plus 5% GST which equals \$105.00. The landlord is awarded **\$105.00** for carpet cleaning.

Loss of rental income

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that there is no evidence to suggest that the tenant has any knowledge of delays caused by supply chain issues. I therefore find that the tenant could not have reasonably anticipated that it would take the landlord over 1.5 months to repair the subject rental property due to supply chain issues. Pursuant to my above findings, I find that it would be unfair to amend the landlord's claim to increase the landlord's claim for lost rental income.

Section 45(1) of the *Act* states that 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.

Based on the landlord's undisputed testimony and the August 30, 2021 text message, I find that the tenant provided one day's notice to end the tenancy, contrary to section 45 of the *Act*.

Residential Tenancy Policy Guideline #5 explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the *Act*, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Residential Tenancy Policy Guideline # 3 states:

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenant was permitted to end the tenancy was September 30, 2021. I therefore find that the tenant owes the landlord **\$1075.00** in unpaid rent for the month of September 2021.

PG #3 states:

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the RTA and section 30 of the MHPTA). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

The landlord testified that the subject rental property was not ready for new tenants, due

to the damage caused by the tenant, until mid November 2021 and that new tenants moved in December 1, 2021. The landlord's monetary claim seeks .5 months' rent for loss of rental income due to damage.

I find that the landlord has not proved, on a balance of probabilities, that the supply chain delay was caused by materials required for tenant's damage as opposed to the materials for the additional renovation completed by the landlord. The landlord's claim for loss of rental income is therefore dismissed.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant.

Section 36(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection.

Section 17 of the *Residential Tenancy Act Regulation* (the "Regulation") states:

- 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.

The landlord testified that the tenant was asked via text to identify acceptable times for a move out inspection but failed to do so. I find that this text request does not meet the section 17 requirements of the *Regulation* as actual dates and times were not provided to the tenant and the final request was not in the approved form.

Since I find that the landlord did not follow the requirements of the *Act* regarding the move out condition inspection report, I find that the landlord's eligibility to claim against

the security deposit for **damage** arising out of the tenancy is extinguished, in accordance with section 36 of the *Act*.

Based on the landlord's testimony and the August 31, 2021 text message entered into evidence, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address on August 31, 2021.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if, at the end of the tenancy, the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, the tenant provided the landlord with authorization to retain his security deposit at the start of the tenancy, not the end of the tenancy. Section 38(4) requires the authorization to be provided at the end of the tenancy, not the beginning, so the authorization provided is void because it does not meet the requirements of the *Act*.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for **damage** to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of this tenancy, he is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 36 of the *Act*. However, the extinguishment provisions only apply to claims for **damage**, not for loss of rent. I find that the landlord was entitled to hold the tenant's security deposit until the outcome of this decision as

part of the landlord's claim is for loss of rent. The tenant is therefore not entitled receive double his security deposit.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under section 36 of the *Act*. I find that the landlord is entitled to retain the tenant's entire security deposit, in the amount of \$537.50 in part satisfaction of his monetary claim.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Description	Amount
Replace broken bathroom tile	\$110.25
Replace barnwood accent wall	\$210.24
Replace bathroom vanity, drawers and doors	\$584.08
Remove and replace laminate floor in living room	\$520.60
Replace broken cover plates on plugs	\$7.50
Replace kitchen cabinet shelves, stained and damaged	\$205.80
Pre/post construction clean up	\$288.75
Carpet cleaning	\$105.00
Loss of rent due to improper notice to end tenancy	\$1,075.00
Filing fee	\$100.00
Less the security deposit	-\$537.50
TOTAL	\$2,669.72

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 26, 2022

Residential Tenancy Branch