Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, MNDL-S, FFL
For the Tenant: MNSD, MNDCT, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on August 30, 2021 seeking compensation for damage to the rental unit, and compensation for money owed. Additionally, they seek reimbursement of the Application filing fee.

On November 18, 2021 the Tenant applied for the return of the security deposit they paid to the Landlord at the start of the tenancy, other compensation, and the filing fee. The Residential Tenancy Branch joined this Application to that of the Landlord which was filed previously.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 14, 2022.

Preliminary Matter – parties' Notice of Dispute Resolution Proceeding and evidence

The hearing was adjourned twice to ensure that the parties completed disclosure of their Notice of Dispute Resolution Proceeding document, as well as prepared evidence. Through that process there was communication directly to me, via the clarification/correction application process normally reserved for matters that are closed, and direct emails to me as the Arbitrator via the Residential Tenancy Branch general email Inbox. During that time, I deemed this communication inappropriate (as per Rule 6.9 of the *Residential Tenancy Branch Rules of Procedure*) outside of the hearing process, and granted no consideration to the contents thereof.

At the key hearing on May 24, 2022, each party confirmed they received the package of the other. To be clear: the Tenant confirmed receipt of the Landlord's 211-page package, containing exhibits A through J; the Landlord confirmed they received the Tenant's 137-page package, with Tabs 1 to 25.

In this hearing the Tenant's representative noted that they completed disclosure before they received the Landlord's evidence; therefore, they asked for a concession on this point to allow for more evidence from them when and if needed in this proceeding.

The hearing reconvened on July 18 for the Tenant to present witnesses who gave testimony. The Landlord had the opportunity to question witnesses directly. Following this, the Tenant submitted more materials for the reconvened hearing on July 25, submitted on that same day. This was a 97-page package, as stated "in response to Landlord questions to witnesses in the previous hearings". The Tenant reiterated the point set out above that the Landlord did not file their evidence in this matter first, raising it as a procedural fairness issue and citing s. 75 of the *Act* which allows for an arbitrator's authority to admit evidence deemed necessary, appropriate, and relevant to the proceeding.

In the July 18 hearing, the Tenant did not state definitively that such evidence exists; however, they alluded to it in the hearing. They did not petition specifically for its inclusion in the subsequent hearing. In each of the four previous Interim Decisions, I stated there was no opportunity for further submissions of evidence, and also stated that I would not consider any evidence submitted in the interim. The Tenant had ample opportunity throughout this hearing process to prepare materials and ensure disclosure in a timely manner.

Specific to the July 25 evidence submitted by the Tenant, I will not consider this material. The Landlord did not have the opportunity to be heard on the question of admitting this evidence in a subsequent hearing. For this reason, as per Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* and with a view to procedural fairness, I exclude this material from consideration, and it is in effect removed from the record. Further, the Tenant did not demonstrate that this material was new and relevant and not available at the time their Application was made; therefore, I exclude this material as per Rule 3.17.

Preliminary Matter – hearing duration

The hearing reconvened four times and ran for 662 minutes in total. This afforded the parties the opportunity to have witnesses attend the hearing as required, and their representatives made thorough cross-examinations of the other parties' witnesses. Throughout the hearing, I mentioned mindfulness to the parties' relative experience of trauma as a result of this tenancy.

The hearing process is intended to be an expedient measure to determine parties' rights and obligations under the *Act* and/or a tenancy agreement between the parties.

While the *Act* s. 77(1)(d) sets a 30-day time limit for a decision of the delegated decision-maker, ss. (2) does not invalidate a decision that is given past the 30-day period. I reached this decision through review and evaluation of all witnesses' testimony, and hundreds of pages of evidence submitted by both parties for this hearing. The parties' right to due process, for a thorough consideration of all evidence, and my deliberation of the applicability of the law, outweighs the need for a 30-day time limit. Also, this was a matter of monetary compensation between the parties and did not concern an eviction or end of tenancy that are matters of human consequence.

Issues to be Decided

Is the Landlord entitled to compensation for damages and/or money owed from this tenancy, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to a return of the security deposit, as per s. 38 of the *Act*?

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided copies of two consecutive tenancy agreements:

- The first shows a tenancy start date of December 15, 2019 for the initial fixed term until December 15, 2020. The rent was $2,800 per month, with the Tenant paying six months in advance. The Tenant paid a security deposit of $4,200 that was $1,400 as a "damage deposit of the home", and $2,800 for the furnishings. The Tenant's sister signed this agreement on the Tenant's behalf, listing 6 other tenants who would stay in the rental unit.

  The Applicant/Respondent Landlord here has their name appearing on this agreement, along with their father's name (as Landlord/owner) in the same space.

- The second agreement extended the term for another six months, from December 15, 2020 to June 15, 2021. The rent was $2,900 per month. This agreement noted the Landlord already collected the deposits, to be held by the Landlord for the following 6 months. The Tenant themself signed this tenancy agreement.

  This agreement bears only the name of the Applicant/Respondent Landlord, and does not add their father's name.

In the hearing, the Tenant noted their disability which factored into their choice of this rental unit due to its access and availability.

In their overview of the tenancy agreement, the Landlord provided that the Tenant liked the furniture as it was in place in the rental unit; therefore, they agreed to pay a higher deposit for this. They also stated the Tenant proposed the $100 rent amount increase to "incentivize the Landlord to extend the Tenant's stay at the Unit [past] the fixed term" – it was the Tenant who offered to pay $100 more. This Landlord and the Tenant signed the second agreement.

The Tenant drew attention to the fact that a different Landlord (i.e., the Landlord's father) was in place at the time of the start of this tenancy. In response to this particular point, the Landlord noted they were present in some capacity on the first day the Tenant moved into the rental unit, and "went through everything with their father."

In the Tenant's evidence is a copy of the note provided to them by the Landlord, dated March 13, 2021: "this letter serves as a notice that your lease will not be renewed after

June 15, 2021. We ask that you clear the premises at the termination of your current lease."

The Tenant responded to this notice on June 13, 2021 in writing, referring to the Landlord's notice to them as "illegal" because it violates s. 52 of the *Act* governing the requirement for the "approved form". They consider the eviction notice to be "illegal and unenforceable."

By mid-June, the Landlord moved into what was thought to be a storage area at the back of the property. They provided they had no choice in the matter at this time. This was their choice because it prevented repeated entry by them into the rental unit, thereby disturbing the Tenant. A witness for the Tenant described the Landlord's father notifying the Tenant that a different family member (*i.e.*, not the Landlord here) had to move in, then the Landlord here forcing their way into that back part of the rental unit and taking up residency.

Landlord's Application: damage to the rental unit

On August 1, 2021 the Tenant was to hand over the keys and attend for a move-out inspection. According to the Landlord the Tenant asked to re-schedule this meeting to a different day so a different family member could attend, being the one "to handle any remaining matters on their behalf." This interaction, captured on video by a witness at that initial meeting, appears in the Tenant's evidence for this hearing.

The Landlord still received the keys from the Tenant on this date. Upon entering the rental unit on August 1, they noted a persistent odour, and uncleanliness and damage throughout the rental unit. On an impromptu query from the Landlord, the Tenant answered that they did have the rental unit cleaned by a professional and commented that the Landlord did not have a move-in Condition Inspection Report in place.

Over the next few days, the Landlord received no response to their follow-up calls. The Landlord contacted the Tenant's family member who was away, and, according to the Landlord, not willing to participate in a meeting on the Tenant's behalf. The Landlord completed and mailed a Notice of Final Opportunity to Schedule a Condition Inspection, making the August 14 date available expressly for the purpose of a move-out condition inspection meeting.

The Tenant's family member, the Tenant, and a third party "who had previously shown up at various times to intimidate the Landlord" attended for the inspection meeting. This

third party noted the process was “a waste of time” and inquired on when it would be over. This resulted in the Landlord not properly filling out the condition inspection report, with the Tenant wanting the security deposit returned to them, refusing to sign the Condition Inspection Report.

The Landlord provided a copy of this report in their evidence. One copy has the completed report for the rental unit at the start of the tenancy, with the move-in inspection date provided as December 5, 2019. A summary statement on the document is: “No repairs everything is in good condition and working with no issues.” The document as it appears in the Landlord’s evidence was not signed by the Tenant.

The document appears again in the Landlord’s evidence, provided separately for the move-out inspection date, as indicated, of August 14, 2021. The copy is distinct from the move-in report in that the notation on that prior copy does not appear on this version. Room-by-room, the Landlord listed “damaged & unclean” throughout. The Landlord listed 21 distinct points of damage in the rental unit. The Landlord’s signature appears on the final page, without that of the Tenant. The space for the Tenant’s forwarding address is not completed on the document.

In their written submission, the Landlord provided this as 10 points, noting damage to individual rooms, furniture damage (including carpets), appliance damages, and discarded items outside. The Landlord provided photos showing the state of the rental unit at the start of the tenancy (exhibit E,) noted a “pristine condition on move-in day”, as against those they took after the end of the tenancy (exhibit F, 104 images), with “significant damage to the Unit.” In answer to a specific question from the Tenant in the hearing, the Landlord clarified that these photos were taken on the day that the Tenant moved out, one image bearing a time stamp.

One of the Landlord’s witnesses in the hearing described their attendance at the rental unit for the final inspection. On August 1st, this was an inspection conducted without the Tenant present, noted as “absolutely filthy” with “things were broken” and “completely filthy” being their relevant statements in the hearing. The Tenant at that time instructed the Landlord to contact their other family member who attended on August 14th. On the 14th this witness was present, and they noted the Tenant “didn’t want anything to do with the whole process and didn’t want to sign” the Condition Inspection Report.

The Landlord also provided as a witness the restoration specialist who attended on an initial call from the Landlord. They performed a cleanup of “so much mess” and travelled to the garbage dump, then attended the rental unit to paint different rooms and

refinish all of the floor. This work in its totality took about 2 months. They noted their initial impression that they could not stay in the rental unit because of a persistent odour.

The third Landlord witness was a neighbour to the rental unit who witnessed various interactions between the Landlord and the Tenant.

The Landlord provided this restoration specialist's invoice in the evidence. This shows 8 separate items of work within the kitchen and bathroom, with $5,000 in painting. The total invoice dated January 15, 2022, is $13,440. In their written submission, the Landlord listed an amount of $15,540, and noted the work as "replacing bathroom flooring, kitchen cabinets, kitchen sink, backsplash, kitchen countertop, small bathroom vanity."

The Landlord saw the need to "salvage the carpets by getting them cleaned". They were left "stained, burned and had gum on it." The Landlord provided an invoice from the carpet care company, in the amount of $224.28 for work on January 7, 2022.

The Landlord also retained a cleaning company because of "the unbearable filth that the tenants left the house in." These cleaners stayed for 13 hours, as presented in the Landlord's written submission. The Landlord provided the invoice for this showing the amount of $447.80, dated December 29, 2021.

The Landlord bought a new washing machine and dryer. They allege the washing machine was "molded and had a horrible stench even after washing it our with bleach several times." The dryer also was damaged because of foreign materials in the electrical component of the dryer. The Landlord provided the invoice for this, showing the amount for washer/dryer removal and replacement, for $2,211.93 on January 27, 2022.

The Tenant summarily described the state of the rental unit when they moved in. They had not seen the move-in Condition Inspection Report which the Landlord provided in their evidence, not until the Landlord disclosed it as evidence for this hearing. They noted they did not sign this particular document, and the Tenant directly noted that their name was used in that document even though they were not present, their sister was. They also noted: a discrepancy in the punctuation of their name as written, differing Landlord signatures, and the incorrect date on that document of December 5, prior to their move-in date of December 15.

The Tenant provided a set of photos that they submit shows the state of the rental unit in December 2019 at the start of the tenancy. This contrasts with the Landlord's own photos provided as at the start of the tenancy, which the Tenant submits are actually photos the Landlord used to advertise the rental unit online, taken by a professional, prior to this tenancy start.

One Tenant witness – who was the Tenant's own family member who signed the initial tenancy agreement on their behalf – noted the carpet in place had paint on it, and wood was scratched, and paint was removed from the wall itself. They recalled the Landlord's father stating that the unit was not currently clean, but they would move out their own things soon. This witness described cleaning on their own for 4 days prior to the Tenant moving in. On direct questions from the Landlord in the hearing, this witness clarified that they did not raise issues of cleanliness with the Landlord initially upon move in, to which the Landlord stated they would clean but not paint. This witness also described a fair amount of dog hair in place, leaving them to clean it for 4 days.

In the hearing this witness stated they did not see the Landlord's father do a walk-through inspection with the Tenant. They did not see a Condition Inspection Report and this document was not given to the Tenant. They were not aware of any photos taken by the Landlord at that time; however, those assisting this witness and the Tenant with moving in advised this witness to take photos, "because it's an old house."

Regarding the final inspection meeting, the Tenant provided as follows, in their summary statements in the hearing and direct testimony from witnesses:

- A second witness called by the Tenant described attending the final condition inspection meeting on August 1st, asked by the Tenant to attend to take photos of the rental unit. This witness asked to do the inspection, to which the Landlord replied "no" and stated that a professional was coming in a couple of days to do so.

  This witness confirmed that images the Tenant provided in their evidence were the photos they took at the final inspection meeting, to which they had no doubt that they were taken August 1st. On redirection, this witness in particular observed specific Landlord photos showing damage to the rental unit, stating they would have taken photos of the same had they noticed such damage, *e.g.*, the mirror closet door, and a punched-in bedroom door.

- Another Tenant witness described not seeing the present Landlord at the time of move in, when this witness attended with the Tenant for that event. They also described their impression of the rental unit, being "very dark", having a "floor with loose pieces" and "old appliances." Over the course of the tenancy, they visited several times and did not note any particular damage.

  On the final inspection, this witness described the present Landlord as focusing more on what was dirty in the rental unit, as opposed to damage, with no particular damage noted by the present Landlord. This witness attended the Landlord's walkthrough on August 1st and attended again with the Tenant's other family member on August 14th. They recalled pieces of the form not being completed by the Landlord at the time of the inspection.

- The final Tenant witness was the family member whose presence was necessitated from the August 1 inspection, not present at that meeting and requested to be present at the meeting on August 14. They were familiar with this tenancy because they negotiated other interactions between the parties during the tenancy.

  Regarding the meeting on August 14, this witness presented that they had to force this meeting because the Landlord here was treating the matter as closed. They attended the August 14 meeting, stressing that the Tenant had the unit professionally cleaned before move-out, though with no invoice as proof.

The Tenant provided 40 photos that show the interior of the rental unit. The Landlord specifically noted these images were undated. The Landlord in the hearing noted their pictures show a pristine rental unit at the start of the tenancy, and the Tenant did not provide photos that show otherwise.

In response to the Landlord's presentation of expenses involved with restoration and cleaning, the Tenant noted in particular that invoices in the evidence were dated December and January, when this Tenant moved out in August. To this, the Landlord responded that public health measures in effect at the time prevented easy hiring of services in the short-term, and they did not have funds at the ready when they needed the Tenant out from the rental unit.

Landlord's Application: other money owed

In their Application, the Landlord set out their claim for their own separate rent paid in a separate living arrangement, at $1,510 per month. They provided a receipt dated August 24, 2021 showing this amount paid for each of July and August 2021. This is "because [they were] unable to move into [their] house on June 15, the day the tenants were supposed to originally move out because they did not want to leave, resulting in [the Landlord] having to pay an extra month of rent on July 1, 2021." For the following month, the Landlord provided that their own house (*i.e.*, after the Tenant vacated) was "dirty, damaged and not in a livable condition. . .This resulted in me not being able to move in again and having to pay another extra month of rent."

The Tenant provided no specific objection to this amount. Throughout the Tenant's account of events, they noted the Landlord was living in the attached rental unit space, what was deemed previously as a storage area, though the area was equipped with a kitchen. They noted the Landlord moved into this space in mid-June, 2021.

Tenant's Application: return of security deposit

In their written submission, the Landlord presented that they retrieved mail from their postal box with the Tenant's forwarding address, on August 15, 2021. The Landlord made their Application for Dispute Resolution on August 30, 2021; this was within 15 days as prescribed in the *Act*; therefore, there is no doubling on the deposit on its return to the Tenant. Further, retrieved via regular mail is deemed to have been received by the Landlord 3 days later, making the date here deemed to be August 18.

In the hearing, the Tenant stated they sent their forwarding address to the Landlord on August 6. This was via registered mail that the Landlord declined. They provided a copy of the form titled 'Tenant's Notice of Forwarding Address for the Return of the Security and/or Pet Damage Deposit' emphasizing the date signed: August 13, 2021. They also provided a dated postal receipt though the copy in the evidence is illegible, and a second receipt, dated August 18, 2021.

A witness for the Landlord stated they attended the rental unit on August 15 specially to give the Landlord their forwarding address in person. They did this "by hand" to the Landlord, and had no contact with this Landlord after that. This was the day following a more formal inspection meeting, with others present on August 14th. This witness also presented that they inquired on the deposits' return on August 19th and received no response from the present Landlord.

Tenant's Application: other money owed

The Tenant claims $1,000 for the return of the $100 rent increase they paid from the contract renewal from October 2020 to July 2021, a total of 10 months.

The Tenant presented the Landlord's father – who was the prior Landlord at the time of the signing of the original tenancy agreement – originally intended a rent increase of $200 on the second agreement. A witness in the hearing stated this was an increase of $300. To avoid a conflict with that prior Landlord, the Tenant "reluctantly agreed" to the $100 increase. While the Landlord here submits it was the Tenant who offered an additional $100 as an incentive to stay in the rental unit, the Tenant submits that the Landlord now cannot for certain say what their own father said in that discussion with the Tenant.

In a timeline prepared by the Tenant, they listed their family member who "was involved in order to resolve the rent increase issue." This witness in the hearing said that the Landlord's desire was for a $300 increase. The Tenant decided to "settle for a rent increase of $100 per month effective January 1 to try and appease the landlord."

The Tenant in the hearing provided direct testimony that the Landlord requested an additional $300, due to an increase in market value of the rental unit, and the "tenants were very lucky to be there".

In their Monetary Order Worksheet prepared by a representative on February 23, 2022 (the Tenant's Tab 19 in their evidence package), the Tenant lists the months January to July 2021 for a total of $700. This was 3 months after the Tenant indicated 10 months on their Application.

The Landlord thus maintains there was no illegal rent increase: "The rent was mutually agreed to be $100.00 more than under the last tenancy." Further, the Landlord in the hearing stated that the Tenant offered to pay more rent on the subsequent agreement because they wanted to stay longer.

Secondly, on their Application, the Tenant listed recovery of rent they paid – for a 2-week period – for the time from July 15 to August 1, 2021. On their prepared Monetary Order worksheet of February 23, they listed the dates "August 1 to 15, 2021". The total amount is $1,450.

The Tenant presented a copy of their rent cheque for the full two months' rent amount they paid for June 15 to August 15, 2021.

The Tenant also presented a letter (very faded and unclear) dated July 18, 2021 where they notified the Landlord of their intent to move out early, following the Landlord's Two Month Notice to End Tenancy, received by the Tenant, as indicated, on June 28, 2021. This cites the *Act* s. 50, advising the Landlord that the final day of the tenancy will be August 1st, 2021. They request payment of the 15 days of August, already paid in their two-month rent payment earlier.

Finally, on their Application, the Tenant claimed $4,800 for the Landlord's breach of their right to quiet enjoyment during the tenancy. In Tab 19 in their evidence package on the Monetary Order Worksheet signed on February 23, 2022 (indicated as "revised" in the table of contents), the Tenant provided the amount of $4,200.

In summary at the conclusion of the hearing, the Tenant listed what they submit are numerous breaches of the *Act* and/or the tenancy agreement by the Landlord:

- s. 29(1) – numerous unannounced visits by the Landlord
- s. 31 – no back door available for the Tenant's use at the rental unit
- s. 32 – presence of ants/wasps in the rental unit not dealt with by the Landlord
- s. 32 – lawnmower maintenance that the Landlord insisted was the Tenant's responsibility
- s. 28 – lack of quiet enjoyment from the Landlord's presence in the separate but affixed area in the rental unit

The Tenant's witnesses provided the following relevant evidence:

- The Tenant's family member who initially established the rental unit as livable after their cleaning at the start of the tenancy provided that there was no key for the back door and the Landlord refused to provide one. This left no secondary exit for the Tenant to use. The Landlord claimed that lawnmower repair was not their responsibility and stated the Tenant had to purchase one separately. On one occasion, the Landlord entered right into the Tenant's living room and stated "I've come to check on my mail" – this family member instructed the Tenant that the Landlord simply cannot do that.

  This family member was the person who mentioned the presence of a wasp's nest to the Landlord, and allegedly the Landlord replied that "this was normal with an old house" and "we usually have this in summer". A church associate hired

someone to come to deal with the wasp's nest and paid on their own. The Tenant also purchased chemicals to battle an ant infestation in the rental unit.

The increased rent amount for the second tenancy agreement, and a payment of 6 months up front was made with this witness asking the Landlord to "please leave the [Tenant's] family alone".

The Landlord arrived at the home in June 2021 along with three men to occupy the extra space in the rental unit. The Tenant called to the police when the Landlord arrived with their possessions to the backyard at the rental unit intending to move in. During the time of a heat wave and the need for open windows, the Landlord was playing loud music and dancing, prompting the Tenant to close windows so their family could not see this behaviour which runs counter to their faith. In their written statement, they provided that "this made the Tenant feel very uncomfortable."

- Another witness for the Tenant presented their awareness of the pest issue in the rental unit. The Tenant had queried to the Landlord about fixing the issue, but the Landlord did not, yet the Tenant did not want to cause trouble. This witness called an exterminator and they paid for that exterminator via their church.

- Another Tenant witness noted the Tenant's physical condition – necessitating the ease of access that this rental unit provides – meant they did not want to cause issues or conflict for fear or jeopardizing this suitable living arrangement. This is also why the Tenant felt forced to sign a second tenancy agreement with a rent increase.

  They noted their impression that the Landlord moving into the extra rental unit space was a "pressure tactic" They felt the Landlord brought the extra men to the rental unit to intimidate the Tenant, with these men filming the Tenant and "causing issues".

In the hearing, the Tenant directly described the Landlord's father intruding into the rental unit "without notice at least in the first year." They asked the Landlord to stop this, and these entries ended. They described the Landlord visiting to renovate the roof, to pick up mail at the rental unit, and requesting an illegal rent increase with an unannounced visit in October 2020.

At the time the Landlord moved into the extra space, with two other men in tow, the Landlord tried to explain that being filmed, and entering with their belongings was "unacceptable." At this time, they had no choice but to call the police. Additionally, music loudly playing in the extra space was "really unacceptable", forcing them to close their windows during hot temperatures.

In a statutory declaration, they listed the following infringements on their rights as a Tenant:

- no access to the back door and no secondary exit
- pests including ants and wasps, paid for by the Tenant and their contacts
- electrical problems
- Landlord attending to the property and expecting entry
- no notice of a roof renovation
- no provision of a new lawnmower
- Landlord's father "threatened and verbally abused the Tenant inside the property with racist harassment when [the Landlord's father] came to pick up [their] mail" and requested an illegal rent increase
- the Landlord "threatened to bring people to kick the family out of the property"
- police were called when the Landlord arrived expecting to move in to the "storage room . . .connected to the rest of the house." They began harassment by bringing people to the storage area and playing loud music. They were informed that such behaviour was unacceptable due to the Tenant's health condition.

In the Tenant's timeline for June 15, 2021 the Tenant stated "[The Landlord] was informed that such behaviour is unacceptable due to health condition of the elderly home occupants." And: "[the Landlord] continued to argue and harass the family while filming, instigating arguments, and provoking the family." The following day the Landlord called the police because of their concern with the Tenant's own installed security camera.

In the hearing the Tenant, via their representative, clarified that the extra space where the Landlord chose to take up residence is attached to the rental unit, and shares two walls. There was no back door to the rental unit.

In a summary statement on the alleged infringement on the Tenant's right to quiet enjoyment, the Landlord states that at no point did they breach the Tenant's right to quiet enjoyment. They submit there was no evidence of the Landlord breaching this right.

On one specific point, the Landlord noted the Tenant provided no notice about wasps/pests in the rental unit, and never requested reimbursement, with no proof of the cost for extermination thereof.

A witness who accompanied the Landlord when they moved into the extra unit space in mid-June noted the Tenant came to intimidate and harass the Landlord, then calling the police. According to this witness, the police arrived and confirmed that the Landlord had the right to be there.

A second witness who was a neighbour to the rental unit attended the hearing to provide testimony for the Landlord. They noted the Landlord's very calm demeanour during interactions with the Tenant; however, the Tenant was "getting agitated" at the time of the Landlord's move in.

The Landlord themself in the hearing described their tactful access to the extra space at the rental unit. It was not their intention to enter that space through the rental unit thereby disturbing the Tenant. There was no loud music, and no dancing, and they had no choice but to move into this area in the rental unit.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

Landlord's Application: damage to the rental unit

The *Act* s. 23 is the governing provision regarding inspection of a rental unit at the start of a tenancy:

> (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
>
> (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
>
> (4) The landlord must complete a condition inspection report in accordance with the regulations.
>
> (5) Both the landlord and the tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
>
> (6) The landlord must make the inspection and complete and sign the report without the tenant if
>
> (a) the landlord complied with subsection (3), and
> (b) the tenant does not participate on either occasion.

Following this, s. 24 sets consequences where these requirements are not met:

> (2) the right of a landlord to claim against a security deposit . . . for damage to residential property is extinguished if the landlord
>
> (a) does not comply with s. 23(3)
> (b) having complied with s. 23(3), does not participate on either occasion, or
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

From the testimony of the Tenant's witnesses, and the Tenant themself, I find the Landlord did not undertake these measures are required by the *Act*. Ultimately this was the cause of the issues regarding damage and/or cleanliness in the rental unit – as alleged by the Landlord – at the end of the tenancy.

Strictly speaking the Landlord and the Tenant did not have the opportunity to inspect the rental unit *together*. The witness in the hearing was present and described their initial effort at cleaning up the rental unit on the Tenant's behalf. They did not witness the Landlord undertake an inspection, nor did they provide that they had an invite to do the same on the Tenant's behalf. Their account held that the Landlord left their own possessions behind in the rental unit, yet pledged to clean that up. From this, I conclude there was no walk-through inspection at the start of this tenancy.

Further, the Landlord did not present evidence that they offered such an inspection to either the Tenant or the person who was setting up the tenancy/rental unit on the

Tenant's behalf. I find as fact there was no such offer from the Landlord; therefore, there was no right for the Landlord to complete an inspection unilaterally and solely complete the Condition Inspection Report.

Finally, I find the Landlord did not provide a copy of the Condition Inspection Report – as it appears in their evidence – to the Tenant when required to do so. The Tenant directly testified to this in the hearing. The premiere witness who spoke to moving-in and their clean-up of the rental unit at that time stated this directly in the hearing. As such, it is unknown when the Landlord actually completed this Condition Inspection Report, and it is astonishingly blank on required information: the Landlord's name, completed, and the Tenant's own signature or at the very least that of a family member who prepared the rental unit on their behalf, who was present and more likely than not known to this Landlord and/or their father.

Because of this, s. 24(2) applies to the current situation, and the Landlord is precluded from claiming against the security deposit, notwithstanding s. 72(2) that gives an arbitrator the authority to make a deduction from the security deposit held by a landlord.

More importantly, I find the manner in which the Landlord handled the move-in, with no inspection, detracts from the veracity of the Condition Inspection Report as found to be complete in their evidence, minus the Tenant's signature. Presumably this document would remain close at hand for completion at the end of the tenancy; however, it was not. I find the Tenant otherwise credible that this document, showing the Landlord's record of the state of the rental unit at the start of this tenancy, was not presented to them, and only appeared in the Landlord's evidence for this hearing.

I balance the weight of this flawed evidence against the first-hand accounts of witnesses who attended the hearing and presented their impressions on the state of the rental unit. There was an abundance of testimony about the imperfect state of the rental unit at the beginning. There were statements, though not definitive, about the 50-year-old age of the rental unit itself. A Condition Inspection Report at the start of the tenancy is mandatory for this very reason, where photos in the evidence conflict on their accuracy and/or chronology. It's left up to the impressions of the individuals on their recollection of the initial state: on this, the Tenant and their witnesses were more definitive and credible in their accounts.

Here, neither the Tenant nor the present Landlord were present at the start of the tenancy in that capacity. In particular, the Landlord was not present, and they have no credible evidence on the state of the rental unit. Also, there is no direct evidence or

recall about an inspection meeting that I find did not occur. The Tenant's first witness was the party who attended and stated they accomplished a lot of cleaning at the start. This carries more weight than the Landlord's Condition Inspection Report, and the Landlord's first-hand account of being present somewhere vaguely in the vicinity of the rental unit when their father was primarily dealing with the move in, in what I find was an impromptu fashion.

The Landlord did not correctly ascertain or record the condition of the rental unit at the start of this tenancy. This undermines all of the Landlord's evidence on the true state of the rental unit at the end of this tenancy. When examining a possible remedy, the before-after record is not clear as it must be in this case, with the burden of proving damage and cleanliness and the need for restoration resting with the Landlord here.

For these reasons, I am not satisfied of the need for a restoration specialist to undertake a large amount of work in the rental unit. The Landlord has not proven that this major work – bathroom flooring, kitchen cabinets, kitchen sink, etc. – was necessitated from damage by the Tenant. This is major renovation work, not justified in its cause by the Tenant, nor justified in the record of the state of the rental unit at the start of this tenancy.

Further, it appears the restoration work overlapped with paid cleaning and carpet cleaning, and restoration work completing in March by the restoration specialist's own account. Presumably major contract work began after the cleaning of the rental unit (invoiced on December 29, 2021) and carpet cleaning (invoiced January 7, 2022). This is counter-intuitive, and all occurring some months after the end of this tenancy. As a result, it is difficult to determine whether the extensive restoration work was the true need for extra cleaning within the rental unit. There is no valid reason why the Landlord could not have accomplished carpet cleaning and cleaning within the rental unit immediately after the end of the tenancy; therefore, I cannot find that the cleaning and carpet cleaning were necessitated exclusively by the Tenant, and not affected and/or primarily caused by the restoration work in progress at that time.

On the Landlord's next point, the *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Despite the Landlord's timeline to address the cleaning being some months after the end of the tenancy, I find the photos the Landlord did present show the need for cleaning at the end of this tenancy. The Tenant provided that they had cleaning

performed; however, the cost and details of that are unknown without evidence from them on this singular point.

Though overlapping and with some delay as presented in the Landlord's evidence, I find some award for cleaning is owed to them. The photos show a breach of s. 37(2) by the Tenant, with items and appliances left unclean throughout, the state of the stove and kitchen with food remaining in the refrigerator, garbage left behind, and even a simple cleaning of carpets by vacuuming. This represents an amount necessary to bring the rental unit to a state that was reasonably clean, and not factoring in any alleged damage the Landlord remedied through a restoration process. I so award the Landlord the amount of $300 for this piece of their claim, due to the delay and overlap with the restoration, some months after the Tenant vacated.

Again, with reference to the Landlord's photos, I am not satisfied of the need for other special carpet cleaning. That work as shown in the invoice overlapped with a restoration process, and given the lack of photos showing the need, and with the delay from the end of the tenancy, I cannot establish that carpets were left in a state *not* reasonably clean exclusively from this tenancy. I dismiss this portion of the Landlord's claim for this reason.

Concerning the washer/dryer and their replacement, the Landlord provided only 4 images showing their condition at the end of the tenancy. These do not show damage or decreased operability. This is insufficient proof that they needed replacement, particularly with the allegation that foreign material in the mechanism of the machine was present from neglect or other actions of the Tenant.

In sum, I grant the Landlord $300 for cleaning costs associated with this tenancy. This is a concession that the Tenant left the rental unit in a state that was not reasonably clean, and something beyond reasonable wear and tear. This is not the full amount of the cleaning expense claimed due to the Landlord not mitigating the damage by having the unit cleaned promptly after the tenancy, and a restoration ongoing that I am certain affected the cleanliness overall of the rental unit.

Landlord's Application: other money owed

I find the evidence is clear that the Landlord themself took up residence in what was deemed an extra space (albeit with a kitchen) at the rental unit. There were no particulars on this portion of the Landlord's claimed amount for their own separate living arrangement. If they took up residence in a space at the rental unit, they why did they

not end the other living arrangements? While July may be questionable – even though the evidence shows the Landlord moved into the rental unit extra space in mid-June – it is not known why the Landlord did not end their other living arrangement by August 2021. I find this is not an effort by the Landlord at mitigating their loss, as the *Act* requires, set out above. I find it was the Landlord's own choice to live in a part of the rental unit; they did not provide sufficient evidence or make an adequate account of why, if they continued to pay rent at their other domicile, they would not reside there. Further, I am not satisfied this links back to any breach of the tenancy agreement and/or the *Act* by the Tenant here, where the Landlord attempted to end the tenancy in a manner that was not legally valid, *i.e.,* without the correct form and timing of the notice to the Tenant.

The Landlord also did not include this amount in their final claim value of $18,454.01 prepared on March 6, 2022 as their final written submission, and there was no account of their inability to end their other tenancy in that submission.

For these reasons, I dismiss this piece of the Landlord's Application for compensation.

Because the Landlord was not successful for the majority of their Application, I dismiss their claim for reimbursement of the Application filing fee, without leave to reapply.

Tenant's Application: return of security deposit

I find the amount of the security deposit in full was $4,200. A policy guideline by the Residential Tenancy Branch (#29) provides that a furniture deposit would itself be, or form part of, a security deposit. Thus, the $2,800 accepted by the Landlord as a furniture deposit is part of the full deposit. Added to the $1,400 amount indicated to actually be the security deposit in the agreement, I find the total deposit amount is $4,200.

The *Act* s. 19 states that a security deposit must not exceed one-half the monthly rent amount. The Landlord did so here, therefore, the remedies of the *Act* apply to the sum total.

To address the Tenant's claim for a return of the sum total, I turn to the *Act* s. 38. This is the relevant portion regarding the return of the security deposit:

> (1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing;

> The landlord must do one of the following:
>
> (c) repay. . .any security deposit. . .to the tenant. . .;
>
> (d) make an application for dispute resolution claiming against the security deposit. . .

Next, s. 38(4) sets out that the Landlord may retain an amount from the deposit with either the Tenant's written agreement, or by a monetary order of this office. Where a landlord does not comply with subsection (1), they must pay a tenant double the amount, by s. 38(6).

In this hearing, I find the Tenant's forwarding address was within the Landlord's knowledge on August 15, 2021. The Tenant's witness provided that they handed this directly to the Landlord on that date; I find this confirms an adequate proportion of weight to the Landlord's statement that they had the Tenant's address on August 15th. I find it more likely than not that the Landlord knew of the Tenant's forwarding address on that date.

I find the Landlord properly applied for dispute resolution within the 15 days as set out in the *Act*, on August 30, 2021. I find as fact they complied with subsection (1) set out above. This defaults against a doubling of the total deposit amount, and the full amount of the deposit remains $4,200 as set out above.

Above, I awarded the Landlord $300 for cleaning costs within the rental unit. I reduce this amount from the security deposit total amount of $4,200. On this piece of the Tenant's Application, I award to the Tenant $3,900.

Tenant's Application: other money owed

Regarding the Tenant's claim for recompense from a rent increase, I find this was not a situation of rent increase, neither imposed nor demanded by the Landlord. The Tenant did not submit documented proof that the Landlord was forcing a higher rent amount of $300 as claimed, though I appreciate this was likely the topic of discussion only. The Tenant submits they agreed to the $100 amount in the following tenancy agreement, to appease the Landlord who was subjecting them to harassment and bullying, though this is vague in its description.

I find the basic elements of a valid contract – *i.e.*, the new tenancy agreement – were in place between the parties. This is based on the record showing a dialogue prior to the Tenant signing the second agreement. I find it plausible that there was a discussion with the Tenant prior to their signing of the tenancy agreement. The Tenant accepted

the offer, with the value being the right to maintain the rental unit, thereby forming the important element of consideration.

I find the Tenant had the capacity to understand the terms and nature of the tenancy agreement, consulting with and relying on others for assistance on this. There is no evidence of coercion or an inordinate amount of pressure from the Landlord for the Tenant to sign the agreement. In sum, I find there was a discussion, and the tenancy agreement was the result of that discussion.

On this piece of the Tenant's claim, I find there was no breach of the *Act* by the Landlord. This was not a situation where the Landlord imposed an illegal increase. I find there is no loss to the Tenant for rent amounts they paid from the start of that second agreement through to the end of the tenancy.

Regarding the return of one-half month's rent they already paid, I find the Tenant intended to claim the amount paid for August 1 – August 15, despite the different dates provided on their Application. The Tenant provided August 1 - 15 in their July 18 letter; therefore, I find the dates indicated on their Application were a clerical error.

The *Act* s. 50 provides for a tenant ending a tenancy earlier in a situation where a landlord ends a tenancy for their own use of the rental unit. Subsection (2) provides for compensation:

> If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

In this situation – fraught with difficulties in communication and many other parties weighing in on the situation – I find the Tenant overheld the end of their tenancy. I find it was the Tenant who forced the Condition Inspection Meeting two weeks later, insisting that another family member, who was away on a business trip, arrive to be present at that meeting held on August 14. This was to assert their rights were not infringed upon by the Landlord in that important meeting, and while that is understandable, there was no account as to why the Tenant could not arrange for their family member, or another representative if needed, to be present at their indicated final move-out date of August 1, 2021. I find it fundamentally unfair to the Landlord for the delay to the end of the tenancy with having to wait for the presence of another family member who was away.

I find the Tenant overheld the tenancy in this instance, and without the matter of the tenancy fully closed with an inspection, the Tenant properly must pay rent for this time

they legally had possession of the rental unit. What was originally August 15th, then becoming August 1st, and then turning into August 14th, was because of the Tenant. By application of s. 62(3) and s.68(2)(a), I order the effective date of the end of this tenancy was August 14. I find the delayed Condition Inspection Meeting was at the Tenant's behest, and in doing this, the Tenant relinquished their right to the s. 50(2) compensation.

For this reason, I grant no award of one-half month's rent to the Tenant here.

Given the discrepancy in amounts, I find that the Tenant's claimed amount for their loss of quiet enjoyment is $4,200. This is because the Monetary Order was labelled as "revised" on February 23, some time after the Tenant's Application. There was no accounting for the discrepancy in the hearing or elsewhere in the Tenant's submissions.

I find the Tenant had a support structure in place during the entire time of the tenancy. I find that in some instances this was a supportive network that assisted the Tenant in solving incidental issues that arose; however, in other instances I find that this was intimidating to the Landlord in terms of a number of people arriving to facilitate virtually every meeting between the parties, and in all likelihood frustrating when issues that arose could not be resolved through one-on-one discussions.

On certain of the issues, I find the Tenant did not take initiative and pursue the issues with the Landlord. It is thus unfair to bring these forth at this hearing stage when lumping a number of issues in together as loss of quiet enjoyment. Issues such as a perceived imposed rent increase became the subject of protracted negotiations with various members of the Tenant's network and/or family. I do not know whether sub-issues – such as the lawnmower, no back door/secondary exit, electrical problems, unannounced roof renovation – were the subject of input from others on the Tenant's behalf. There is no record of the Tenant bringing these matters to a dispute resolution process. Because of this, I give no consideration to these issues here and they do not factor into a consideration of some award.

There was no record of the Tenant asking for recompense of their costs towards insects or other pests in the rental unit; therefore, this forms no basis for compensation. The Tenant's own testimony was that they mentioned the inappropriate entries by the Landlord and that ended.

Certain other points raised by the Tenant I find more intangible, and minus documented evidence I find these are a matter of impression or emotion. I find this is a reflection of

the Tenant's own feelings after communicating with the Landlord, subject to the impressions of those advising the Tenant along the way, and those people likely were not partial to direct interactions with the Landlord. I cannot establish as fact that charges such as "threatened and verbally abused the Tenant inside the property with racist harassment" were real or perceived, minus a record of exact language and phrases used in such instances. Terminology or phraseology detailing this did not appear in the Tenant's evidence. I cannot make any award to the Tenant minus substantial evidence on those serious charges. The Tenant also made no move to subpoena the Landlord's father who apparently was the source of these statements.

The *Act* s. 28 sets out a tenant's right to quiet enjoyment. This includes: reasonable privacy; freedom from unreasonable disturbance; and exclusive possession subject to a landlord's right to enter. As phrased in the *Residential Tenancy Policy Guideline 6: Entitlement to Quiet Enjoyment*, a breach means "substantial interference with the ordinary and lawful enjoyment of the premises" for a tenant. There is a distinction between temporary discomfort or inconvenience, and ongoing interference or unreasonable disturbances.

In this case, I find the Landlord moving into the rear of the rental unit in a space that is questionably designed for that purpose was an ongoing, substantial interference with the Tenant's right to quiet enjoyment. This began in mid-June 2021. The details of music and/or dancing were not clear in terms of dates; however, even moderate use of music or other media would present difficulties for the Tenant who was accustomed to quiet time in their own space up to that point in the tenancy.

There was no plausible explanation from the Landlord on why they chose to take up residence in that portion of the rental unit home. They were trying to have an end to the tenancy and that process was drawn out by input from others, and a negotiation process where the Tenant was finding appropriate accommodation elsewhere which in their particular case was a challenge. Above, I decided on the Landlord's other accommodation during July and August. I find it was unnecessary to move in the rental unit space when the Landlord had another living arrangement in place. That other living arrangement exists as fact. This was not explained sufficiently by the Landlord in the hearing or their written submissions.

Their taking up residence in a part of the rental unit was of such close proximity to the Tenant and their family that it caused sustained interference and was definitely an ongoing disturbance to the Tenant. I thus consider both the seriousness of the situation

and the length of time over which this situation occurred. This was a six-week period in total before the Tenant physically moved out from the rental unit on August 1.

I grant the Tenant one-half of their rent amount during this time for substantial interference from behaviour that I find was intimidation, an impact to the Tenant's privacy, and an infringement on their right to exclusive possession of the rental unit. As phrased by one witness in the hearing, I find the Landlord moving into that part of the rental unit was "a pressure tactic" and the Landlord's rationale that they checked with the Residential Tenancy Branch on the legality of such a move holds no weight against the testimony of the Tenant and their witnesses.

For the Landlord's breach of Tenant's quiet enjoyment, I grant the Tenant $2,175, being one-half of the rent amount paid during this six-week timeframe. While the Tenant's own access or amount of physical space of the rental unit was not impacted, the Landlord and other people were present – constantly over a six-week period – to an unsuitable degree causing the Tenant distress beyond discomfort.

As the Tenant was successful in their Application, I find they are entitled to recover the $100 Application filing fee.

Conclusion

Pursuant to s. 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of $6,175 for the return of the security deposit, compensation for the Landlord's breach of the Tenant's quiet enjoyment, and recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: August 26, 2022

Residential Tenancy Branch