



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Counsel for the tenant also attended and was provided with a full opportunity to be heard, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The landlord testified that the tenant was served with a copy of the landlord's application for dispute resolution and some of the landlord's evidence via registered mail on September 23, 2021.

The tenant testified that he received the above application for dispute resolution and evidence in September of 2021 but could not recall the exact date of receipt. I find that the above documents were served on the tenant in accordance with sections 88 and 89 of the *Act*.

The landlord testified that all the evidence uploaded to the Residential Tenancy Branch Dispute Management System after September 23, 2021, were not served on the tenant. The landlord testified that he believed that he was not permitted to serve the tenant with evidence after the original application for dispute resolution was served on the tenant.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. The landlord was permitted to serve the tenant with evidence after the original application for dispute resolution, as long as it was received by the tenant not less than 14 days before the hearing.

I find that all evidence submitted to the Residential Tenancy Branch after September 23, 2021 is excluded from consideration because it was not served on the tenant, in accordance with Rule 3.14.

The tenant testified that he served the landlord with a copy of his evidence via registered mail on April 13, 2022. The landlord testified that he received notification to pick up the above package on April 25, 2022 but did not pick it up until April 29, 2022 which only gave him three days to review the evidence.

The tenant provided the Canada Post tracking number for the above mailing in the hearing. The tracking number is located on the cover page of this decision. The Canada Post website states that the package associated with the tracking number provided by the tenant was mailed on April 12, 2022 and was signed for by the landlord and delivered to the landlord on April 14, 2022.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find on a balance of probabilities, based on the Canada Post tracking number provided by the tenant, that the above package was mailed on April 12, 2022 and that the landlord received it on April 14, 2022. I find that the tenant's evidence was served on

the landlord more than seven days before this hearing, in accordance with section 3.15 of the *Rules*, and will therefore be considered.

Issues

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

Background/Evidence

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

Both parties agreed to the following facts. This tenancy began on June 15, 2020 and ended on August 31, 2021. Monthly rent in the amount of \$2,600.00 was payable on the first day of each month. A security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that:

- an agent for the landlord and an agent for the tenant completed the joint move in condition inspection report on June 15, 2020, and
- an agent for the landlord and the tenant completed the joint move out condition inspection report on August 31, 2021.

The move in and move out condition inspection reports were entered into evidence. Both parties agree that the tenant provided the landlord with his forwarding address in writing on the move out condition inspection report.

The landlord's original application for dispute resolution sought \$15,661.28 based on a restoration quote for the following:

- Site prep: \$350.00
- Drywall and paint - \$7,500.00
- Carpentry (Trim)- \$400.00

- Flooring; laminate- \$3,600.00
- Blinds- \$750.00
- Lighting- \$120.00
- General Debris and cleaning- \$250.00
- Subtotal- \$12,970.00
- Contractor's fee- \$1,945.50
- 5% GST- \$745.78

The landlord's monetary worksheet dated September 17, 2021, seeks, in addition to the above claims, the cost of an insurance deductible in the amount of \$2,500.00. The landlord did not file an amendment seeking to increase his monetary claim and did not serve the tenant with said amendment.

The landlord testified that the company who provided the restoration quote was not hired to complete the repairs, and the only repairs listed in the above quote that have been completed are the replacement of the blinds.

The landlord testified that in a subsequent monetary order worksheet, that was not served on the tenant and was not accepted for consideration in this hearing, he increased the monetary claim for the replacement of blinds from \$750.00 to \$4,206.93. The landlord did not file an amendment seeking to increase his monetary claim and did not serve the tenant with said amendment.

Drywall and paint

The landlord testified that the walls were professionally painted on September 21, 2017 and were in great condition when the tenant moved in. The landlord testified that he gave the tenant permission to hang a few pictures on the walls with small nails. The landlord testified that at the end of the tenancy the walls were covered in spackling paint where holes had been filled in. The landlord testified that he is seeking \$7,500.00 to repair the drywall and paint.

The tenant testified that he put up a few items on the walls but did not damage them. The tenant testified that the walls were in the same condition on move out as move in. The tenant testified that the puttied-up holes in the drywall were there when he moved in.

With respect to the walls, the move in/out condition inspection report states:

	Move in condition	Move out condition
Entry, Halls, Stairs	Drywall chips	Same
Living Room, Family Room, Great Room	Nail holes patched Drywall chips	Same
Kitchen	Satisfactory	Patch in wall
Dining Areas	Hooks, nail holes	[left blank]
Master Bedroom	Scratches	Same
Bedroom #2	Nail holes	Same plus patches
Bedroom #3	Marks on ceiling	Same
Main bathroom	Satisfactory	Some sm patches
Ensuite bathroom	Satisfactory	Satisfactory
½ bath	Satisfactory	Satisfactory
Main entrance	Satisfactory	[left blank]

The landlord testified that the move out condition inspection report minimized the extent of the damage. The landlord testified that the damage is much more severe as evidenced by the package of 137 photographs he submitted to the Residential Tenancy Branch. The 137 photos were excluded from consideration because they were not served on the tenant.

The landlord testified that the extent of the damage is also evidenced by his correspondence with his insurance adjuster. The landlord entered into evidence email correspondence with the insurance adjuster. On September 11, 2021 the landlord wrote:

... I have a concern with the paint job, which is undertaken professionally. From what I have seen from photos, the tenants did not just hang things up on the walls and leave a few holes but have left them all blotchy, effectively wrecking the professional paint job. Would this not count as vandalism?

On September 11, 2021 the adjuster replied:

In regards to the walls, hanging things on the wall is typically a normal thing to do. Such as small nails for pictures or other decorative items. Other things such as heavy hanging items typically would need your permission now a TV mount could likely require permission as it does leave larger holes. So these things

would be around the lines of negligence if you did not allow this to occur based on the tenancy agreement and ask they get your consent. But still it would not be vandalism.

Vandalism is a criminal offence and is done with the intent to destroy others property. Further in order to classify as vandalism it would have to be reported to the police. Further I do not think this would be vandalism as most of the walls did have hole filler added.

Based on my inspection of the site, I do believe the tenants did not put the unit back to original condition. There also appeared to be an excessive amount of holes in the walls, scratches on the floor etc. Based on this I would suggest you file a grievance through the Residential Tenancy Board (RTB).

Four photographs of the alleged damaged to the walls were accepted into evidence for consideration, they show patches on three different walls two of which are located in the living room and the third located near the front entrance.

The tenant testified that when he moved in the drywall was full of puttied up holes in the living room and bedroom and the landlord's property manager told him that he was entitled to a paint job if he wanted. The tenant testified that this is reflected in the move in condition inspection report.

Blinds

The landlord testified that the tenant and the tenant's pets damaged every single blind in the subject rental property. The landlord testified that every blind was either chewed on by dogs, missing slates, or the pull cords were broken.

With respect to the blinds, the move in/out condition inspection report states:

	Move in condition	Move out condition
Entry, Halls, Stairs	Satisfactory	Broken, needs replaced X2
Living Room, Family Room, Great Room	Satisfactory	Satisfactory
Kitchen	Satisfactory	Needs [illegible]

Dining Areas	Satisfactory	[Left blank]
Master Bedroom	Satisfactory	Slats missing
Bedroom #2	Satisfactory	Satisfactory
Bedroom #3	Satisfactory	Satisfactory
Main bathroom	Satisfactory	[dash left in space]
Ensuite bathroom	Satisfactory	[dash left in space]
½ bath	Satisfactory	[dash left in space]
Main entrance	Satisfactory	[Left blank]

The move in/out condition inspection report states at Part V- MOVE OUT INSPECTION:
I, [tenant] agree that this report fairly represents the condition of the rent unit
needs cleaning + 3 blind repairs/replacement

The above statement was signed by the tenant. The tenant testified that his dog wrecked three blinds and that he is willing to pay for those damaged blinds, but only three blinds were damaged. The tenant testified that the other blinds in the subject rental property were not damaged, and he is not responsible for their replacement.

Two photographs of damaged blinds provided by the landlord were accepted for consideration, they show one damaged set of blinds.

The landlord testified that the move out condition inspection report does not note all the damage to the blinds in the rental property. The landlord testified that the quote for the repair of the blinds found in the restoration quote is only for the blinds near the front entrance. The landlord testified that when he viewed the property, he noticed that all the blinds were damaged, not just the blinds noted in the move out condition inspection report.

The landlord testified that the replacement of all the blinds cost \$4,206.93. No invoice in this amount was accepted for consideration. The landlord entered into evidence the receipt for the blinds where they were originally purchased in May of 2017 for a total of \$3,078.00.

Downstairs flooring

The landlord testified that the laminate flooring in the downstairs (living room, kitchen and dining room) was installed sometime in 2011 but he did not know in which month. The landlord testified that at the start of this tenancy the flooring had some scratches

but was otherwise in good condition. The landlord testified that the flooring was heavily scratched at the end of the tenancy.

The tenant testified that the floor was in the same condition on move out as on move in and that the scratches were already there when he moved in.

The move in and out condition inspection reports state:

	Move in condition	Move out condition
Entry, Halls, Stairs	Scratches	Same
Living Room, Family Room, Great Room	Scratches	Same
Kitchen	Front of dyer stains (bleach)	Same
Dining Areas	Scratches	[Left blank]

Two photographs of the floors taken after the tenant moved out were accepted into evidence from the landlord. The photographs show scratches and peeling laminate.

The landlord testified that he was quoted \$3,600.00 for the laminate to be replaced and is seeking that from the tenant plus an additional \$400.00 in site preparation for that work which was also quoted. The quote for both was accepted into evidence.

Trim

The landlord testified that the trim at the subject rental property was in excellent condition at the start of the tenancy and required replacement in the bathrooms and by the laundry machine at the end of this tenancy.

The move in and out condition inspection reports do not mention trim.

The landlord testified that he was quoted \$400.00 to repair the damaged trim and is seeking that amount from the tenant. The above quote was accepted into evidence. One photograph of a piece of damaged trim was entered into evidence.

The tenant testified that there was damage to the trim, but it was already damaged when he moved in and that the trim was in the same condition on move in as move out.

Lighting

The landlord testified that kitchen light fixture was in excellent condition at the start of this tenancy and was loose and required repair at the end of the tenancy.

The move in condition inspection report states:

	Move in condition	Move out condition
Light Fixtures, Light Bulbs, Electric & Electronic Connections	Bulb burnt out	Satisfactory

The landlord testified that approximately six light bulbs also required replacement. The landlord testified that he was quoted \$120.00 for repairing the kitchen light fixture and replacing the light bulbs.

The move in condition inspection report states that other than the kitchen, the lighting is in satisfactory condition. The move out condition inspection report states that one bulb is burned out in the main bathroom and one is burned out in the ½ bath.

The tenant testified that the light fixture in the kitchen was in the same condition on move in as on move out. The tenant testified that he did not do any work on the kitchen light fixture. The tenant testified that six bulbs were not burned out and that he thought the move out condition inspection report only notes three burned out bulbs.

Cleaning

Both parties agree that the subject rental property was not cleaned at the end of the tenancy.

The landlord entered into evidence a cleaning receipt for the subject rental property for \$378.00 and is seeking that amount from the tenant.

The tenant agreed that he owes the above amount to the landlord for cleaning.

Analysis

Amendments re insurance deductible and blinds

Residential Tenancy Branch Policy Guideline #23 states:

The following sequence of events must be followed in amending an application for dispute resolution:

1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);
2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;
4. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;
3. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and
4. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.

A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.

I find that the landlord did not amend his application for dispute resolution in accordance with the Rules as set out in PG #23 because no amendment was filed and served on the tenant for either the insurance deductible claim or the increased monetary claim for damage to the blinds.

Section 4.2 of 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 while the tenant was served with the updated monetary worksheet, in accordance with section 88 of the *Act*, that document does make it clear that the landlord's claim is being changed and does not provide the tenant with information regarding amendment requirements.

I find that the insurance deductible claim is distinct from the other claims made in the original application for dispute resolution and that to amend the landlord's application for dispute resolution would prejudice the tenant who was not provided a fulsome opportunity to prepare a response in advance of these hearings.

I find that the tenant could not have reasonably anticipated the landlord's change in claim based on receipt of the updated monetary worksheet alone, without the required amendment documents. Pursuant to my above findings, I decline to amend the landlord's application to include a claim for the cost of the insurance deductible.

The landlord's original application for dispute resolution claimed the cost of the replacement blinds located near the front door, in the amount of \$750.00. The landlord testified that after further inspecting the subject rental property it became clear that all the blinds in the subject rental property required replacement and so he is seeking to increase the claim to \$4,206.93.

I find that the tenant had no notice of this increased claim as the landlord did not file an amendment and did not serve the tenant with any notice of an increased claim.

The move out condition inspection report only notes damages to blinds in the entry area and the master bedroom and states that blinds in the remainder of the house are in satisfactory condition (though I note an illegible comment pertaining to the blinds were made about the kitchen blinds). I find that given the contents of the move out condition inspection report, signed by the landlord's agent, the tenant could not reasonably have anticipated that the landlord's claim increased by a factor of more than five and that the landlord was now seeking damages for all the blinds in the subject rental property. Pursuant to my above findings, I decline to amend the landlord's claim for the cost of blinds in this hearing.

Condition Inspection Reports

Section 37 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.

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 tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Pursuant to section 21 of the Residential Tenancy Act Regulation, where the landlord and the tenant disagree on the move in and/or out condition of the rental property and the parties have not provided a preponderance of evidence to the contrary, I rely on the move in and out condition inspection reports as both parties (or their agents) signed them.

Damages

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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Useful life of building elements

Residential Tenancy Guide #40 (PG #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.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord. I find that when items are repaired, a useful life calculation is not required because the repair will not likely increase the useful life of the repaired item, but will return it to its pre-damaged state.

Drywall and paint

Based on the move in and out condition inspection report, I find that the walls in the subject rental property were in substantially the same condition on move in as on move out, with an extra patch on the wall in the kitchen, and extra patches in bedroom #2 and the main bathroom.

Photographs of the patches in the kitchen, bedroom #2 and bathroom were not accepted for consideration. The correspondence from the insurance claims adjuster does not state where the “excessive amount of holes in the walls” are located nor any proof of the number of holes in the walls at the start of the tenancy. I find that the landlord has not provided a preponderance of evidence to override the move in and out condition inspection reports.

Residential Tenancy Branch Policy Guideline #1 (PG#1) states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

As no photographs of the patches in the kitchen, bedroom #2 and the main bathroom were accepted into evidence and the move out condition inspection report does not elaborate on the number or size of the patches in the above rooms, I find that the landlord has not proved, on a balance of probabilities, that the holes were unreasonable or excessive. As noted in PG #1, the tenant is not responsible for damage caused by the hanging and removing of items hung on the walls. As the landlord has not discharged the landlord's burden of proof to establish that the tenant damaged the walls beyond regular wear and tear and the allowable hanging of items as described in PG #1, I find that the tenant is not responsible for the cost of filling or painting the holes.

I also note that the useful life of paint is four years and that at the end of this tenancy, the paint had less than a month of useful life remaining. The landlord is not entitled to collect damages for repair or replacement of an item when the useful life of that item has expired. I find that the useful life left on the paint of this unit was negligible.

Blinds

Based on the move in and out condition inspection report, I find that the blinds were in satisfactory condition at the start of this tenancy and that three blinds required replacement at the end of this tenancy, two of which were in the “entry, hall, stairs” area and the third which was in the master bedroom. I find that the landlord has not provided a preponderance of evidence to override the move in and out condition inspection reports.

I find that in damaging the three blinds, the tenant breached section 37 of the *Act*.

The landlord testified that the quote for the damaged blinds entered into evidence in the amount of \$750.00 plus GST was only for the blinds near the front door. The quote does not state how many blinds are included in the quote. The landlord entered into evidence a receipt for the blinds purchased in 2017. This receipt totals \$3,078.00 inclusive of GST for 19 sets of blinds. A price breakdown for each set of blinds was not provided nor were their locations in the home.

I find that the landlord has not proved the replacement cost of the three damaged blinds as the quote was for blinds in the entrance (and the landlord did not state how many blinds were in the entrance way) and the quote did not include the cost of the blinds in the master bedroom. The 2017 bill does not specify where the blinds purchased were installed in the home. I find that the landlord has not proved the value of the loss suffered. I also note that at the end of the tenancy the blinds were 52 months old and had a useful life of 120 months; therefore, even if the landlord had proved the value of the three damaged blinds, the full cost of the blinds would not be recoverable.

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 he suffered a loss due to the tenant’s breach of section 37 of the *Act*. I find that the landlord is entitled to nominal damages in the amount of \$300.00 for the three blinds that required replacement.

Downstairs flooring

Based on the move in and out condition inspection report, I find that the downstairs flooring was scratched at the start of this tenancy and was in the same condition at the end of this tenancy. I find that the landlord has not provided a preponderance of evidence to override the move in and out condition inspection reports.

I find that the landlord has not proved that the tenant damaged the downstairs flooring. The landlord's claim for the cost of flooring is therefore dismissed without leave to reapply.

Trim

The testimony of the parties regarding the move in and move out condition of the trim differs. The move in and out condition inspection report does not specifically mention trim. The burden of proof is on the landlord. The landlord did not provide any documentary proof regarding the move in condition of the trim, only the move out condition. The tenant testified that the move out condition was the same as the move in condition. I find that the landlord has not met the burden of proof to prove that the damage seen in the photographs was caused by the tenant. The landlord's claim for trim damage is therefore dismissed without leave to reapply.

Lighting

The landlord did not provide a preponderance of evidence to override the evidence regarding the condition of the kitchen lighting found in the move in and out condition inspection reports. Based on the move in and out condition inspection reports, I find that the kitchen lighting was undamaged and in satisfactory condition at the end of this tenancy and that two bulbs were burned out. I therefore dismiss the landlord's claim for repair of the kitchen lighting and award the landlord \$10.00 in nominal damages for the burnt-out light bulbs.

Cleaning

As both parties agree that the tenant owes the landlord \$378.00 for cleaning, I award the landlord \$378.00.

Contractor's Fee

I find that since the contractor was not actually hired and the majority of the claims made in this application and set out in the quote were not awarded to the landlord, the landlord is not entitled to collect the contractor's fee.

Security Deposit

Section 38(1) of the *Act* states that 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, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was partially 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*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$788.00 from the tenant's security deposit. I Order the landlord to return the remaining \$512.00 of the security deposit to the tenant. I Order the landlord to return the tenant's entire pet damage deposit in the amount of \$1,300.00 to the tenant.

Conclusion

The landlord is entitled to retain \$788.00 from the tenant's security deposit.

I issue a Monetary Order to the tenant in the amount of \$1,812.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: August 23, 2022

Residential Tenancy Branch