Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 10, 2022, and October 27, 2022, by conference call. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- A monetary order for compensation for damage or loss under the Act.

The Landlord and one of the Tenants were present at all hearings. Both parties provided affirmed testimony.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding package as well as the separate main evidence package (the 2nd package). The Tenant stated he served a 3rd package which contained documents and orders relating to the previous hearing the parties had. These documents were sent by registered mail and tracking information was provided. Although the Landlord denied getting this package, I find the Landlord is deemed to have received this package 5 days after it was mailed, on December 5, 2021, pursuant to section 90 of the Act.

The Tenant acknowledged getting the Landlord's evidence package. No further service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation for damage or loss under the Act?

Background and Evidence

A copy of the tenancy agreement was provided into evidence which shows that monthly rent was set at $4,380.00 per month, and was due on the first of the month. The Tenants paid a security deposit in the amount of $2,190.00 and a pet deposit of $500.00. The tenancy agreement was for a fixed term starting on November 1, 2020, and ending on October 31, 2021.

As per the tenancy agreement, the utilities were not included in rent, and the Tenants were responsible for paying 2/3 of the utilities for the entire house, with the other 1/3 being allocated to the basement unit. The tenancy agreement specifies that the payment and collection of the utility bills is not the responsibility of the Landlord.

The parties had at least 3 previous dispute resolution hearings. One hearing was held on November 23, 2021, where the Landlord applied for monetary compensation for unpaid rent and damages, and to claim against the deposits. The Landlord was awarded amounts, but was ordered to return the balance of the deposit, above and beyond what was awarded.

The other hearing was held on February 8, 2021, and was based on the Tenant's application for emergency repairs. That hearing was dismissed due to lack of service of the documents. Another hearing was held on March 22, 2021, and covered emergency repairs, rent reduction, repairs, a 1 Month Notice to End Tenancy, authorization to sublet, and several other matters. At that hearing, the parties came to a settlement agreement with the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on May 15, 2021, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that only the two tenants named in this application and the third tenant named in the parties' written tenancy agreement, are permitted to reside at the rental unit for the remainder of this tenancy ending by May 15, 2021;
3. The landlords agreed that all of the landlords' notices to end tenancy, issued to the tenants, to date, are cancelled and of no force or effect;
4. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their first application at this hearing;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlords' application and the tenants' second and third applications scheduled for a future hearing at 11:00 a.m. on April 6, 2021, arising out of this tenancy, the file numbers of which appear on the front page of this decision;
    a. Both parties confirmed that they would not be attending the future hearing which is hereby cancelled by way of this settlement;
    b. The landlords agreed to bear the cost of the $100.00 filing fee paid for the landlords' application.

In this application, the Tenants are seeking the following 4 items:

1) $899.25 – BC Hydro losses

The Tenants stated that once they moved in, they became aware that they would have to put the hydro bill in their name. The Tenants were aware they were responsible for 2/3 of the utilities as per the tenancy agreement, but they were not aware they would have to put the bill for the entire house under their name, and then have to collect the other 1/3 of the bill from the lower unit each bill cycle. As cited in their worksheet, the Tenants stated that they are seeking the following for this item:

1) The difference in the 1/3 hydro 1 year plan and 1/3 of the actual payment for hydro.
I am claiming 1/3 of the hydro deposit / and the difference between 1/3 of 222$. which was the ground levels monthly fee for units' portion of the equal payment plan. Our suite paid the largest portion of electricity
Actual cost of each month's electricity:
- 519.55$ NOC 2020 - 171.45
- 527.34$ DEC 2020 – 174.02
- 522.42$ JAN 2021 – 172.39

- 731.98$ Feb 2021 – 241.55
- 639.05$ March 2021- 210.88
- 373.28$ April 2021 – No payment/new renter paid full share
- 87.06$ May 2021 – Tenant made no payment for this month
- 1/3 of damage deposit of 666$ which is 222 $ (claiming this loss)
- 1192.29 is the actual payment for the downstairs portion.

1/3 payment towards 222$
The 1/3 utility payment for the ground level suite = 73.26$
73.26$ x 5 months = 293.04$
Actual portion of downstairs utility = 1192.29 $

Claiming loss of = 1192.29 - 293.04$ = 899.25$

The Tenants stated that they had to break the lease due to issues with the rental unit, and ended up having to pay more than their share of the utilities, due to the way the Landlord made them manage billing for the house, the issues with the house and the manner in which the tenancy ended. The Tenants stated that the Tenant downstairs eventually moved out, part way through the tenancy, and he collected "maybe $400.00" in utility amounts from the lower unit as contribution to the overall bill. The Tenants did not explain the amounts, the bills, or the calculations any further.

The Landlord stated that the Tenants should have known up front what the arrangement was with the utility bill, given it was laid out clearly. The landlord stated that there were never any issues with the house such that he should be responsible for having to pay for the Tenants' utility expenses, given it was not included in monthly rent. The Landlord stated that it was the Tenant who broke the lease. The Landlord also stated that the Tenant below was an honest person, and likely paid the Tenants for his share, contrary to what the Tenants are saying.

2) $8,541.00 – 30% rent reduction for loss of quiet enjoyment

The Tenants stated that they are seeking $1,314.00 per month, for a period of 6.5 months (the entire tenancy). The Tenants explained in their worksheet that this is because the Landlord did not want to split the BC Hydro account into two separate accounts, which meant they had to shoulder the work. The Tenants also noted in the worksheet that they want this amount because the Landlord failed to maintain the property, which caused them stress and took time to manage, particularly given the visible mould growth.

During the hearing, the Tenants stated that there were issues with water leaking into the house from the roof, which caused a mould issue (3 types of mould). The Tenants also pointed out that there were issues with mice, holes in the attic, and leaking pipes in the house. The Tenants stated that they are seeking this amount because they were always having to worry about the disrepair and the safety of their living environment.

The Tenants stated that they paid for environmental testing at the house, and a copy of this assessment report was provided into evidence. A visual inspection and air sample was conducted on or around January 22, 2021. The conclusion of the report states:

> *Visible mold growth was present in the top floor bedroom closet ceiling area. The house had several areas with discoloration and drywall repairs that may have been related to past leaks. It was reported water was leaking in the main floor bedroom ceiling. Health Canada considers that mold growth in residential buildings may pose a health hazard. Health risks depend on exposure and, for asthma symptoms, on allergic sensitization. However, the large number of mold species and strains growing in buildings and the large inter-individual variability in human response to mold exposure preclude the derivation of exposure limits. Therefore, Health Canada recommends to control humidity and diligently repair any water damage in residences to prevent mold growth; and to clean thoroughly any visible or concealed mold growing in residential buildings. These recommendations apply regardless of the mold species found to be growing in the building. At the time of sampling the indoor air samples are considered elevated with mold spores. The Penicillium/Aspergillus like species was detected in both indoor samples at concentrations significantly higher than outdoors. Concentrations ranged from approximately 36 times to 63 times outdoor concentrations. This mold group is known to produce mycotoxins and poses a health risk to occupants at the concentrations detected.*

The Tenants also provided a few photos of disrepair, mainly the spots on the ceiling and walls where there was potential mould growth, as well as issues with the roof/attic. The Tenants stated that they were in school at the time, and having to ask for repairs and deal with these issues took away from their ability to work/study.

The Tenants also provided a few copies of text messages to the Landlord, sent as early as November 17, 2020, taking issue with this potential mould issue and the water damage in the ceiling.

As per the text messages, little was said in relation to the water damage, although the Landlord appears to have sent a roofer over to examine the premises on or around January 15, 2021. The Landlord asserts this was done in a timely manner, and as soon as he knew of any potential water leaks, but the Tenants assert it was not done in a timely manner.

The Landlord stated that he always addressed the repair requests in a timely manner, and he provided copies of emails to support this. The Landlord stated that there is no evidence to support that he failed to deal with issues that were brought to his attention. The Landlord denies he knew of any issues with the house before the Tenants moved in. The Landlord stated that the Tenants are now exaggerating the issues to seek compensation.

3) $9,180.00 – loss of rental income

The Tenants are seeking this amount because they feel the Landlord unreasonably refused to allow them to have additional occupants in the unit. The Tenants explained that this rental unit consists of 5 bedrooms on the top two floors of a house. The Tenants explained that this amount is calculated by taking monthly rent, $4380.00, dividing it by the number of bedrooms in the house (5), then using the value of each bedroom to calculate what it ended up costing them to have bedrooms vacant due to the Landlord withholding his consent for the Tenants to rent out the rooms.

A copy of the tenancy agreement was provided into evidence, which shows that there are two named “tenants”, who signed the agreement itself. Under the “permanent occupants and guests” portion of the agreement, it lists the two Tenants, plus one additional occupant, P.H. Below this is the following term:

> *Except for casual guests, no other persons besides the approved ones on the list above shall occupy the Rental Unit without prior written consent of the Landlord. Failure to obtain the Landlord's written approval is a breach of a material term of this Tenancy Agreement, giving the Landlord the right to end the Tenancy on proper notice. This applies to short term rental guests as well. Any change in occupants of the home must be approved by landlord in writing and contact information for occupants must be kept current at all times.*

The Tenants stated that when they initially viewed the house, the Landlord informed them, verbally, that they could get whatever roommates they wanted. However, the Landlord denies saying this. The Tenants stated that the two of them lived in the unit the

entire tenancy, but the occupant listed on the tenancy agreement, P.H., lived there from the start of the tenancy, until sometime in February 2021. However, the Tenants stated they had “lots going on” and that they didn’t recall the dates very well.

The Tenants stated that sometime in December 2020, they found two additional roommates to fill the two vacant bedrooms. One of these roommates moved in around December 1, 2020, and the other moved in around December 15, 2020. The Tenants stated that after they reported the Landlord to the city for neglect to the building (January 5, 2021), they received a letter from the Landlord two days later saying that they were in material breach of the tenancy agreement because there were additional unapproved occupants living in the rental unit. The Landlord requested that the Tenants remove the unauthorized occupants by February 1, 2021, otherwise an eviction notice may be issued.

The Tenants stated that all occupants and roommates moved out as of February 1, 2021, and it was only the two of them who remained in the unit until the end of the tenancy in May 2021.

The Tenants stated that having 5 occupants in a 5-bedroom house in not unreasonable, and they feel the Landlord had no basis to prevent them from renting out the additional bedrooms. The Tenants assert that they were given verbal permission to obtain roommates, and feel the Landlord is being unreasonably by asking for a “vetting” process before moving any additional occupants in.

The Tenants are seeking lost rental income for 3 bedrooms for February, March and April, which totals $7,884.00, plus $1,134.00 in lost rental income for May, given the parties agreed to end the tenancy mid-month.

The Landlord stated that the tenancy agreement clearly states that all occupants and any new roommates must be approved, in writing, prior to moving in. The Landlord stated that they sent a letter to the Tenants on January 7, 2021, about this issue, and he denies that it was in any way a retaliation for any of the other conflict going on between the parties. The Landlord stated that the Tenant never received any written permission to bring in additional occupants or roommates. The Landlord also asserts that he never gave any verbal permission for the Tenant to bring in roommates/occupants at his discretion. The Landlord asserts that the Tenant breached a material term of his tenancy agreement by bringing in roommates without written consent.

The Landlord pointed to a hearing in March of 2021, whereby the Landlord and the Tenant agreed to settle all matters pertaining to that file, as well as 3 other files. Following that hearing, the Landlord received an Order of Possession, effective May 15, 2021. After the tenancy ended in mid-May 2021, the Landlord applied against the security and pet deposit on May 25, 2021, and a hearing was held for that matter on November 23, 2021. As part of that hearing in November 2021, the Landlord was granted permission to retain $2,265.00 from the security and pet deposits, and to return the balance of the deposits in the amount of $425.00. That decision outlines that the Tenant is not entitled to double the security deposit, pursuant to section 38 of the Act. The Landlord confirmed that he returned the $425.00, as ordered by the previous hearing. The Tenant confirmed receipt of the $425.00, but took issue with the fact he had to wait so long for the hearing.

4) $5,380.00 – Double the security and pet deposit

The Tenants are seeking double the security and pet deposit because the Landlord failed to take the appropriate action within the “15 day timeline”. The Tenants do not feel this issue was addressed at a previous hearing, and they feel they ought to be entitled to double the security and pet deposit, less the amounts they noted on their application. However, the Landlord stated that this issue was clearly addressed at the previous hearing in November 2021. The Landlord asserts that this issue should be dismissed, since it has already been addressed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this application, the Tenants are seeking the following 4 items:

1) $899.25 – BC Hydro losses

I have reviewed the testimony and evidence on this matter. I note the Tenants provided a breakdown as to what this amount is based on as part of their monetary worksheet. However, at the hearing, I found the Tenant provided very little explanation as to how he calculated the amounts sought for this item. The Tenant did not specifically refer me to any documentary evidence to support the calculations, although he did provide copies of utility bills for the material months (November – May 2021). I note the Tenant stated that the lower unit was to pay 1/3 of all hydro bills, and that the "actual" portion of the downstairs utility bill was $1,192.29. From this, the Tenants deducted $293.26 for 5 months worth of utility payments for the basement suite. The Tenants stated that this means they are entitled to $899.25, which is the difference of these amounts. However, I note that during the hearing, the Tenants stated that the individual living downstairs did make some payments to them towards the hydro bill. The Tenants stated that the occupant living in the basement suite paid "maybe $400.00". I find this statement very vague and unclear and it leads me to question what amount the person living downstairs paid to the Tenants, and what amount may still be owed. Without a more clear and detailed account of what was paid by the occupant of the downstairs suite, it is difficult to discern what amounts the Tenants may be owed. I find the Tenants have failed to sufficiently demonstrate the value of their loss. I dismiss their claim for the recovery of this amount.

That being said, I turn to Residential Tenancy Policy Guideline #1, which states the following:

> **Shared Utility Service**
>
> A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

I find the manner in which the Landlord laid out the utility billing is unconscionable, as per the above noted policy guidelines and the Regulations. I find the Landlord breached section 3 of the Regulations, by including this unconscionable term that the Tenants put the bills for the entire house in their names. I find this likely would have caused added stress and work for the Tenants and would likely have devalued the tenancy, to some degree. However, this amount would be difficult to discern. That being said, since I have found the utility portion of the rental agreement is unconscionable, I find the Tenants are

entitled to some compensation. I find it appropriate to award a nominal award in the amount of $200.00.

> "Nominal damages" are a minimal award. 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.

2) $8,541.00 – 30% rent reduction for loss of quiet enjoyment

I note that Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline states that:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*
>
> *A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant […]*

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline states as follows:

> *Damage or loss is not limited to physical property only, but also includes less tangible impacts such as*:
>
> - *Loss of access to any part of the residential property provided under a tenancy agreement;*
> - *Loss of a service or facility provided under a tenancy agreement;*
> - *Loss of quiet enjoyment;*

- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings with respect to quiet enjoyment. During the hearing, the Tenants spoke generally about how the stress of this tenancy impacted their lives, as students, and how it took away from being able to properly focus on school/work. However, how the issue impacted them was only briefly touched on, and not explained in any detail such that I could understand how much time was lost in managing the concerns with respect to the issues claimed.

I turn to Section 32 of the Act, which states the following:

> **32** (1) A Landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

I find there is little to no evidence showing that the Landlord was aware of a significant issue with mould and water damage in the rental unit before it was brought to his attention in November 2020, which is when the Tenants started text messaging about the issue. I note there are several photos, provided by the Tenants, of the roof (patches, missing shingles), general state of repair, and the potential water leaks to the interior spaces, including several areas of concern on the inside of the house. These photos were taken during the tenancy.

Having reviewed the photos, testimony, and evidence on this matter, I am not satisfied that the Landlord has sufficiently maintained the residential property in a state of decoration and repair that complies with section 32 of the Act. I understand that this is an older home, with aging building components. However, even after considering the age and character of the home, I find the potential issues with the roof/building

envelope, and the clear signs of water damage likely made certain portions of the home unsuitable for occupation. I note the Landlord stated his roofing contractor didn't find any leaks when he attended the unit in January 2021. However, there were visible signs of mould in several areas, and the elevated levels of mould were confirmed by the environmental testing company. Photos show highly suspicious potential mould spots on the walls in upper bedroom and closet, the upper bathroom, wall below the window upstairs, and downstairs in the living room on the wall.

The tenancy started in November 2020, and within a couple of weeks, the Tenants were already communicating concerns over potential water damage on the interior of the home, in several locations. It appears the Landlords initial response to this was to offer an early termination of the lease, rather than send a qualified contractor to address the manner in a timely fashion. After being told about issues with water damage in November, I do not find it is reasonable to wait until mid-January to send a roofing contractor to start investigating the potential leaks, given the time sensitive nature of moisture, mould, and wet building components. I find the Landlord should have done more, sooner. It appears the parties also started having disagreements about the Tenants having unauthorized occupants, and the relationship started to degrade significantly, which likely exacerbated the delays in addressing the water issues.

I note the Tenants are seeking a rent reduction for loss of quiet enjoyment. However, I do not find they have sufficiently established that they suffered a loss of quiet enjoyment, as defined in section 28 of the Act for any of the issues they have raised (alleged failure to uphold tenancy agreement terms, water issues, and issues with utilities). I am not satisfied that there was a significant interference or unreasonable disturbance to their lawful use of the premises. Also, the Tenants provided very little detail as to how the issues impacted their tenancy, their use of the space, and to what extent the issues affected their school and work. Overall, I am not satisfied the Tenants have sufficiently established a claim for loss of quiet enjoyment, pursuant to section 28 of the Act.

The Tenants are also seeking the above noted rent reduction of 30% because the Landlord "failed to fulfill lease duties" and because of the hassle and struggle with trying to add occupants to the lease. However, the Tenants did not sufficiently articulate which lease duties were not fulfilled, and how this caused a loss in the value of their tenancy. There is a lack of detail and clarity on this matter. With respect to the Tenants' complaints regarding the withholding of consent to add occupants to the lease, I do not find they have sufficiently demonstrated how this caused a loss in the value of their tenancy, such that they ought to receive a rent reduction. The issue with the roommates

and occupants will be further addressed below when looking at the Tenants' claim for damage or loss as it relates to their inability to procure roommates to offset their rental costs.

Although I find the Tenants have failed to sufficiently demonstrate that they are entitled to a 30% rent reduction for loss of quiet enjoyment and the other issues they raised, I am satisfied that the Landlord breached section 32 of the Act, as noted above. I find this likely would have caused some stress, and time loss for the Tenants, as they investigated the water problems, and suspected mould. The extent of the impact on the Tenants is difficult to quantify, based on the testimony and evidence presented. However, I note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> *"Nominal damages" are a minimal award. 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.*

In this case, I find a nominal award is appropriate. I award a nominal award of $300.00, largely for the mould issues that were likely present for the duration of the tenancy (6.5 months).

3) $9,180.00 – loss of rental income

I have reviewed the testimony and evidence on this matter.

I note the following portions of the Schedule in the Regulations:

Occupants and guests

> ***9*** *(3)If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.*

Section 47 of the Act permits the Landlord to issue a 1 Month Notice to End Tenancy for Cause for an unreasonable number of occupants in the rental unit. However, it appears the Landlord was taking issue with what he considered to be a breach of a material term in the tenancy agreement, by not getting permission, in writing, before obtaining additional roommates and occupants.

There is nothing is the Act preventing the Landlord from asking for the Tenants to obtain prior written approval or explicit consent, prior to bringing in additional occupants. I note the tenancy agreement clearly specifies that "*no other persons besides the approved ones on the list above shall occupy the Rental Unit without prior written consent of the Landlord. Failure to obtain the Landlord's written approval is a breach of a material term of this Tenancy Agreement, giving the Landlord the right to end the Tenancy on proper notice."*

Although the Tenants assert they had verbal permission to bring occupants and roommates in, at their discretion, I note the Landlord denies that this was the arrangement. I find there is insufficient evidence that this is what was agreed to, given there is a clear written clause in the agreement, specifying the opposite. I note the Tenants obtained two additional occupants in December 2020 (who were not listed anywhere on the initial tenancy agreement). However, there is no evidence that they had any prior written consent to do so. I find the Tenants breached the tenancy agreement in this regard. The Tenants' failure to obtain the necessary permission before procuring roommates appears to have significantly contributed to the dysfunction and the disagreements. In any event, I do not find the Tenants sufficiently complied with the tenancy agreement regarding roommates and I do not find the Landlord is liable for any revenue loss claimed by the Tenants for this item. I dismiss this item, in full.

4) $5,380.00 ($2,990.00 after reducing items the Tenant noted) – Double the security and pet deposit

The Tenants are seeking double the security and pet deposit because the Landlord failed to take the appropriate action within the "15 day timeline".

I have reviewed the related files and decisions cited by the parties during the hearing. The related file numbers are noted on the front page of this decision. I find the Tenants application for monetary compensation, for the first 3 items (above) on their worksheet have not been specifically addressed such that I could find I am precluded from making a decision due to *Res Judicata.* I note the previous applications by the Tenant were not specifically for monetary compensation for damage or loss under the Act. They were largely for other, related but discrete remedies.

That being said, and although I find the first 3 items on the Tenants' worksheet for this application are allowable under this proceeding, I find the Tenants' application for this fourth and final item is not allowable. In making this determination, I note the Tenants are seeking double the security deposit. However, this issue was squarely addressed in

the November 2021 hearing and decision. The Arbitrator found that the Tenants were not entitled to double the deposits, and a decision was made regarding the deposits, and amounts due back to the Tenants. The Tenants confirmed receiving the balance of the deposits ($425.00), following the November 2021 decision. It appears the Tenants are unhappy with the amount of time it took to receive the money, in part due to the time it took for the hearing to be scheduled. However, as stated above, I find this matter has been addressed, and a decision on the deposits has been rendered.

I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

Pursuant to this principle, I decline to consider the fourth item on the Tenants' worksheet, as it largely relates to the handling of the security and pet deposit.

In summary, I grant the monetary order based on the following:

Claim	**Amount**
Utility Bill - Nominal	$200.00
Mould Issue - Nominal	$300.00
TOTAL:	**$500.00**

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **$500.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 28, 2022

Residential Tenancy Branch