Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDL; MNDL-S; FFL (Landlord)
MNRT; FFT (Tenant)

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for November 21, 2022 in response to monetary cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord's application is for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 67;
- a monetary order for damage to the rental unit in the amount of $1749.00 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The Tenant's application is for:

- a monetary order for the cost of emergency repairs to the rental unit in the amount of $950.00 pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing on November 21, 2022, both parties confirmed that the tenancy had ended although there was a dispute with regard to the date, the Tenant stating tenancy ended October 31, 2022 and the Landlord alleging the tenancy ended in November.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties using the contact information provided to the Residential Tenancy Branch. In the Interim Decision rendered on November 21, 2022 I set out the reasons for the adjournment and ordered both parties to provide by December 23, 2022 the following evidence and information to the RTB:

- copies of all evidence relevant to the monetary order and request for reimbursement for repairs including photos, documents, invoices etc.
- a table of contents listing the evidence;
- a written submission explaining the basis for the monetary claim,
- proof of exchange of evidence.

The Interim Decision is incorporated by reference and should be read in conjunction with this final Decision.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

A participatory hearing was scheduled for 60 minutes on January 3, 2023. The Corporate Landlord was represented by AGC, the owner [the "Landlord"]. The Tenant JC attended the hearing.

Neither party raised concerns regarding the service for Dispute Resolution or the documentary evidence. Both parties confirmed they received the Application and documentary evidence from the other party. I find that the parties were served with this in accordance with section 88 and 89 of the *Act*.
Is the landlords entitled to:

1) a monetary order for $1749.00;
2) retain the security deposit in partial satisfaction of the monetary orders made; and
3) recover the filing fee;

Is the tenant entitled to:

1) a monetary order of $950.00;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a non-standard written month -to -month tenancy agreement starting November 9, 2021. Monthly rent is $1000.00 and is payable on the first of each month. The Tenant paid the landlord a security deposit of $500.00. The landlord still retains this deposit.

The Landlord testified that a "condition inspection" was done at the start of the tenancy. The Landlord referenced the last page of the tenancy agreement which reads:

> Contents of the apartment include:
> Fridge and stove. Sparkling clean
>
> Condition of apartment: (pictures attached)
> Sparkling clean
> Fresh renovation
>
> Additional comments
> Your apartment is clean and in good condition. The apartment needs to be cleaned when you leave.

The Landlord stated that other than the tenancy agreement, there is no other document detailing the condition of the rental unit at the start of the tenancy. The Landlord stated that he "rarely uses the RTB condition inspection report" because the "apartment speaks for itself".

The Landlord stated that no condition inspection with the Tenant was undertaken at the end of the tenancy. The Landlord testified that "with the attitude that was displayed [I] did not want him [the Tenant] around".

The Landlord testified that on November 1, 2022 the Tenant sent $500.00 to the Landlord's account stating that he was "staying awhile longer". The Tenant did not ask the Landlord's permission, just simply assumed it would be okay. The Landlord said that the Tenant needed to vacate the rental unit immediately. The Tenant "dragged his heels" and left November 3. The Landlord did not return the $500.00 stating he charges $125.00 per day if Tenant's overstays. In his statement the Landlord writes:

> The tenancy ended October 31, 2022; however the tenant took it upon himself to over hold the apartment. On November 1, 2022, I received a deposit for $500.00 from the tenant. I contacted him to ask why. He said he was going to stay until November 15th and would probably leave sooner; by the end of the week. I informed him he didn't consult me before making such a decision and it wasn't his place to over hold the apartment without permission. I told him he needed to be out by November 4, 2022 by 1:00pm. On Thursday, November 3,, 2033 he contacted me, with a surprisingly cordial text, to ask if he could stay until the following Monday. My response was "no". I had made plans that were already in motion. [reproduced as written]

The Landlord submits that while the rent includes utilities, additional surcharges apply in certain circumstances and pointed to Clause 8 in the tenancy agreement.

> 8). Basic power, cable, hot water and gas heat are included in the rent. Telephone, internet and extended cable packages are the sole responsibility of the tenant. Air conditioners, freezers, heaters and fans are not considered in basic power consumption. An extra minimum fee of $25.00/month or more will need to be levied for their use. Use of equipment not considered in basic power consumption will be considered theft of utilities; resulting in eviction. **Wasting power, heat and/or hot water will raise everyone's rent. Please be fair to others.**
>
> The following is not considered in basic power consumption: air conditioner, heaters, block heaters, freezer, fans, other.
> Please note: Consumption will be calculated and added to your monthly rent.

The Landlord stated that he "operates on a shoestring budget to keep the costs down as much as possible so people can afford a decent place at a decent rent."

The Landlord, in his submission, wrote: "he [the Tenant] breached the terms of the tenancy agreement on several occasions despite numerous warnings".

The Landlord referenced Clause 7 in the tenancy agreement, which provide:

> 7). **The premises are leased to ONE individual(s) only.** Rent is calculated on said number of individual(s). Visitors, in **discrete** numbers are permitted. For insurance purposes, no over-night guests are permitted without express permission. *Over-night guests without permission will result in immediate evection.* **There are to be no gatherings that interfere with or causes in any way, discomfort to other tenants and any neighbors.**
>
> [reproduced as written]

The Landlord explained further:

> The tenant attracted strange people that were walking around the complex late at night, often checking doors and windows, making other tenants very uncomfortable.

The Landlord also argued that the Tenant abused utilities usage by inviting unauthorized guests to visit and stay overnight, and in some cases shower breaching the terms of the tenancy agreement. The Landlord submits this is 'theft of utilities' and subject to eviction. The Landlord charged the Tenant a surcharge of $75.00 in utilities for excessive use. In a written submission the Landlord writes:

> Early October, I issued a 10day notice for unpaid utilities. The tenant paid $75.00 for the extra utility within the allotted time and the notice was vacated.
>
> [reproduced as written]

The Landlord did not provide evidence of a demand letter sent to the Tenant 30 days prior to issuing a 10 Day Notice (withdrawn) or utility bills.

The Landlord provided affirmed testimony that when he inspected the rental unit after the Tenant left, it was badly damaged. In his submission, the Landlord wrote:

> The apartment is filthy and it stinks. He left clothes and trash behind including metal, wood, and electronics and did a fair bit of damage that is beyond normal wear and tear; as evidenced by the pictures. The smell of cigarettes and whatever else he was smoking can only be addressed by a thorough cleaning and re-painting. The carpets are ruined beyond cleaning and sterilizing. Please take not of the Terms of the Agreement.
>
> [reproduced as written]

The Landlord testified he hired cleaning people. The ceiling, the walls, and the kitchen cabinets were dirty. The rental unit was not disinfected as the Tenant stated. The Tenant "played with the light switches" and disconnect and removed the CO2 sensor. The Landlord hired an electrician to replace the sensor and inspect the electrical system (at no charge). The Tenant never reported a problem with the hot water and hot water was filling the toilet bowl. The Landlord called in licensed plumber to complete this repair.

The Landlord stated that the Tenant left items behind that needed to be taken apart and recycled. The Landlord described the item as a "stereo stand" and "electronics". The Landlord stated he needed to dismantle the item, sort the mixed materials (wood and metal) prior to going to the dump and to the recycling center.

The Landlord stated that the Tenant put holes in the wall and did not repair and repaint them. The Landlord had to repaint the rental unit. The Landlord stated that he repainted the rental unit in July or August of 2021, just prior to the Tenant moving into the rental unit. The Landlord stated that the carpet was washed and sanitized when the Tenant moved in.

Initially, the Landlord submitted a monetary order worksheet on November 8, 2022 in the amount of $3284.39 without supporting invoices stating the monetary order was an "estimate" reproduced below.

Document #	Receipt/Estimate. From	For	Amount
#1	$100.00	Garbage/recycle/labour	$100.00
#2	$400.00	Cleaning/disinfecting	$400.00
#3	$1230.00	Repair and painting supplies	$1230.00
#4	$2185.57	Carpet removal/replace 50%	~~$2185.57~~ $1092.78
#5	$461.41	Electrical Repair	$461.41
		Total monetary order claim	**~~$4377.18~~ $3284.39**

At the reconvened hearing, the Landlord submitted invoices and a revised monetary order for the alleged repairs required and completed since the Interim Decision was issued. The monetary order request is reproduced below.

Document #	Receipt/Estimate. From	For	Amount
#1	AC	Garbage/recycle/labour	$100.00
#2	ES	Cleaning/sanitizing	$400.00
#3	CS	Carpet cleaning/sanitizing	$99.75
#4	Home Hardware	Repair and painting supplies	$295.94
#5	MD	Repair/painting labour	$650.00
#6	CC	Electrical Repair	$203.45
		Total monetary order claim	**$1749.00**

The Landlord testified that he saved the Tenant money by having the carpet cleaned rather than replaced which reduced the monetary claim from $3284.39 to $1749.00.

The Landlord submitted photos with handwritten annotations to support his monetary order claim.

The Tenant testified he does not recall completing a condition inspection upon move in. The Tenant states he and the Landlord did a 'walk through' to view the property prior to the Tenant deciding if he wanted to sign a lease. The Tenant confirmed no written condition inspection document was

completed, signed, and provided by the Landlord. The Tenant testified he did not participate in a condition inspection when he move-out confirming the Landlord's testimony on the same matters.

The Tenant decided to vacate the rental unit prior to the dispute resolution hearing because of the ongoing conflict with the Landlord that was causing him stress.

The Tenant referenced "warning" and "eviction" letters sent to him from the Landlord. In a January 10, 2022 letter the Landlord wrote, in part:

> You continue to bring undesirable people onto the premises and into your apartment. You were reminded, as per the agreement, that overnight stays were not permitted, especially without my express knowledge and permission. Yet, you knowingly did it again. That is considered theft of accommodation and utilities. Your apartment is not a sanctuary. Your rent is based on one person living in the apartment.

In an "eviction letter" dated August 5, 2022 the Landlord wrote:

> Pursuant to a letter dated January 10, 2022, you were cautioned about overnight stays and undesirable people you attract to the premises and your apartment; some for overnight stays. Your apartment was rented to you on the basis of ONE occupant, JC. Your rent and subsequent utilities included, are based on that fact. Your apartment, the complex and the property is not a refuge for strays.

The Tenant stated on October 31, 2022 he moved everything he could out of the rental unit into a short notice storage unit. He confirmed that he did not take a coffee table that he purchased at a secondhand store that was made of metal and wood. The Tenant stated that he moved out on November 4th or 5th, he could not recall the exact date.

The Tenant stated that on November 1, 2022 he e-transferred the Landlord $500.00 thinking it would be okay for him to stay a few days into November until he had access to his new accommodations. He acknowledged he did so without the Landlord's permission. The Landlord did give him permission to stay a few days. When the Tenant asked for his $500 back the Landlord refused to return the money telling him that the tenancy agreement stipulated a $125.00 per day fee for overstaying. The Tenant asked for a copy of the tenancy agreement and again, the Landlord refused to provide him with a copy.

The Tenant disputes the Landlord's claim that the rental unit was not cleaned. He acknowledged that he could have better cleaned the appliances and removed the items left behind but stated that he purchased industrial strength bleach and disinfected the walls, kitchen, and bathroom. He states that he complied with BC Government COVID protocols. The Tenant stated that he took the guard off the sensor on the ceiling so that he would not knock it off when cleaning.

The Tenant confirmed he did put holes in the walls to hang pictures and when he left, he made sure he filled the holes in the drywall. The Tenant did not have the primer or paint complete the repair so left the touch up to the painter.

The Tenant admitted that he could have cleaned the appliances better and could have tidied up more and done a garbage run.

The Tenant stated he provided the Landlord his forwarding address on November 7, 2022 by way of an RTB 42O which advises parties of an amendment to an application.

The Landlord issued a 10 Day Notice to the Tenant for unpaid utilities in the amount of $75.00, which was withdrawn when the Tenant paid the utility charges. The additional charge of $75.00 in utilities was for an air conditioning unit. The Landlord told the Tenant as per the tenancy agreement an extra fee of $25.00 per month is charged for usage in excess of "basic" usage. The Tenant asked the Landlord to provide a copy of the tenancy agreement and the Landlord refused.

The Tenant requests reimbursement of the costs of short notice, short term storage based on the Landlord evicting him. He had nowhere to store his personal belongings until he was able to move into his new rental unit on November 22, 2022.

The Tenant is unsure if this additional fee was in the tenancy agreement.

The Tenant requests reimbursement of $775.00. The Tenant did not submit a monetary order request but did explain the amount requested in the amendments submitted and at the hearing:

For	Amount	Total
½ month rent November 1, 2022	$500.00	$500.00
Reimbursement of utilities charged	$ 75.00	$575.00
½ security deposit	$175.00	$750.00
Short term storage unit	$ 200.00	$950.00
Total Monetary Claim		**$950.00**

The Tenant stated that he is only requesting partial reimbursement of his security deposit because "I do not deserve the entire deposit".

Analysis

This is largely a dispute concerning the facts. When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

This is a cross application for monetary order requests. Both parties must prove their cases on a balance or probabilities, meaning that "it is more likely than not that the facts occurred as claimed".

I find the tenancy began on November 1, 2021 and the rental unit was vacated on November 4, 2022.

The Landlord's claim against the security deposit for damages to the rental unit.

Pursuant to s. 23 of the *Act*, a Landlord and Tenant must inspect the condition of the rental unit on the day the Tenant is entitled to take possession or on another date that the parties agreed to. Section 23(4) of the *Act* specifies that a Landlord must complete a condition inspection report in accordance with the *Regulation*. Section 23(5) provides that the parties are to sign the inspection report and the Landlord is to provide a copy to the Tenant.

Section 18 "Condition inspection report" in the *Regulations* states the Landlord must give the Tenant a copy of the signed condition inspection made under s 23 of the *Act* "promptly and in any event within 7 days after the condition inspection is completed".

Section 19 of the *Regulations* states the condition inspection report must in writing.

Section 20 of the *Regulations* stipulates what must be included in the condition inspection report. The *Regulation* is prescriptive: a condition inspection report **must** be detailed and specific. Further, the condition inspection report must be signed by both parties and must included the following statement completed by the Tenant:

> **20.** (1) (k)the following statement, to be completed by the tenant:
>
> I, ... Tenant's name
>
> [ ] agree that this report fairly represents the condition of the rental unit.
>
> [ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:
>
> .....
>
> .....;
>
> (l) a space for the signature of both the landlord and tenant

I find the notations on the tenancy agreement do not meet the requirements of a "condition inspection report" as set out in the *Act*, the *Regulation* and the *Guidelines.*

Section 24(1) stipulates a Tenant's right to the return of a security deposit is extinguished if the Landlord complied with s. 23(3) of the *Act* (2 opportunities for inspection), and the Tenant has not participated on either occasion. Based on the undisputed evidence, the Tenant was not given the opportunity to inspect the condition of the rental unit in accordance with the legislation. I find the Tenant did not extinguish his right to the return of the security deposit.

Based on the evidence, I find that the Landlord breached his obligation to complete a move-in (and move-out inspection) as required pursuant to s. 23 *Act* and in compliance with s. 20 of the *Regulation*. Section 24(2) of the *Act* stipulates the penalty for non-compliance stating that a Landlord extinguishes his right to claim against the security deposit for damage to the rental unit if the condition inspection was not completed. I find that the Landlord cannot claim against the security deposit for damages to the rental unit as their right to do so under the *Act* has been extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must either repay the security deposit plus interest or make an application for dispute resolution claiming against

the deposit. A Landlord is not required to act before this time limit is triggered. This means if the Tenant has not yet provided the Landlord with a forwarding address in writing the Landlord the 15-day requirement has not started.

The Tenant testified that he provided his forwarding address on the RTB 42O submitted to the RTB on November 7, 2022, assuming it also served as formal notice to the Landlord of his forwarding address along with the amendments. The Landlord, in his written submission dated November 9, 2022 writes, "The tenant left without disclosing his new mailing address. Only by way of his application to amend his claim, do I now have it; at least for the time being".

I have compared the RTB 42O, "Amend an Application for Dispute Resolution: Change Address, Add/Remove an Applicant, Remove a Claim", specifically Section 2, "Change a Service or Dispute Address (the address used to serve documents)" with The RTB-47 "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit. I note the RTB 42O specifies "Change a Service or Dispute Address". This is an address used to serve or receive documents which may or may not necessarily be a forwarding address for the purposes of returning the security deposit.

The RTB-47 is specific to a forwarding address for the purposes of returning the security and/or pet damage deposit. Further, the stipulation in the RTB-47 reads:

> The tenants) named below are providing you with the forwarding address for return of the security deposit and/or pet damage deposit. Under the Residential Tenancy Act, the landlord(s) have 15 days from the end of the tenancy and upon receipt of the forwarding address to either claim against the deposit(s) by filing an Application for Dispute Resolution, or to return the deposits to the tenants). If the landlord(s) fails to do either of these, the tenant(s) may apply for Dispute Resolution and receive double the security deposit and/or pet damage deposit, pursuant to section 38 of the Act. Additional information about deposits can be found on the last page of this form.

This insert effectively notifies the Landlord that the Tenant is requesting return of the security deposit and/or pet damage deposit and the Landlord is required to do so within a specified time.

Based on the evidence before me, I find that the Tenant did not comply with the *Act* s. 38(1)(b) as he has not provided the Landlord with his forwarding address in writing; therefore the provision of s. 38(6), the doubling provision, does not apply in this case.

.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished pursuant to s. 23(4) and s. 35 (1)of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming *against the security deposit for damage* and the only option remaining open to the Landlord is to return the security deposit within 15 days after the later of the date the tenancy ends and the Landlord receives the Tenant's forwarding address in writing.

Guideline 17 includes that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the rights to file a claim against the deposit for any monies owing for other than damage to the rental unit; and to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As I found the Landlord did not comply with s. 23(4) and s. 35(1) of the *Act*, I find that the Tenant is entitled to return of his security deposit of $500.00 in full.

Landlord's Claim for Damages

The Landlord is seeking compensation in the amount of $1749.00 pursuant to s. 67 of the *Act* for: cleaning; repairing/painting the rental unit; purchase of paint; electrical repairs; carpet cleaning; garbage and recycling. The Landlord submitted invoices for the repairs and photos of the alleged damage. I will address each issue separately.

Guideline 16 states: "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 claiming compensation to provide evidence to establish that compensation is due". Further, *Guideline* 16 provides: "A party seeking compensation should present ***compelling*** evidence of the value of the damage or loss in question." [emphasis added]

Proving a claim in damages includes establishing that damage or loss occurred; establishing the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss (the four (4) part test). All four (4) requirements must be proven.

Section 32 of the *Act* requires a Tenant to make repairs for damage that is caused by the action or neglect of the Tenant or other persons the Tenant permits on the property, or the Tenant's pets.

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

Notwithstanding, ss. 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Guideline 1, with which I concur, helps interpret these sections of the *Act*:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guests. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Move-Out Clean: $400.00

Section 37 states that Tenants must leave the rental unit "reasonably clean and undamaged".

Guideline 1, with which I concur, helps interpret these sections of the *Act*:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guests. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

To reiterate, the Tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move in ready" or, in this case, "sparkly clean". Oftentimes a Landlord wishes to turn the rental unit over to a new Tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean.

The Landlord submitted an invoice from a "cleaning service" dated November 18, 2022 in the amount of $400.00 for the following services:

- cleaning and sanitizing walls, ceilings apartment #3
- cleaning and sanitizing the bathroom, kitchen cupboards, and appliances
- floors, windows and doors complete

I note that "Invoice 383003" is from the Landlord's "Sales Order" book and is the number consecutive to the Landlord's "estimate" for disposal fees, "Invoice 383002". The cleaning invoice does not provide an hourly rate charged for the cleaning service or the number of hours.

I reviewed the photos taken by the Landlord. The photos are black and white, grainy, and of very poor quality. The annotations the Landlord made on the photos are difficult to read and in some cases illegible. A photo of the stove show "spots" on it; the fridge, other than a carton of eggs and a liter of almond milk and allegedly some dried goods on the top of the fridge, appears clean. The freezer contains an ice cube tray and another unidentifiable article and appears to be defrosted and clean. The Landlord's photos do not show dirty floors, walls, cupboards, windows, ledges, bathroom, closets or hallways etc. I find while there were some imperfections in the Tenant's cleaning of the rental unit, acknowledged by the Tenant; overall the rental unit appears reasonably clean. The Tenant is not required to clean to a level of perfection, but rather to a level that meets reasonable health, cleanliness and sanitary standards.

Based on the evidence before me, I find it difficult to accept the Landlord incurred $400.00 in cleaning costs after reviewing the photos. Additionally, the Landlord submitted an additional invoice for removing garbage bags and other miscellaneous items from the rental unit supporting the affirmed testimony from the Tenant that he could have cleaned the appliances better and disposed of the garbage bags and miscellaneous items.

I find the Landlord has provided insufficient evidence to meet his burden of proof in this matter on a balance of probabilities. I therefore dismiss this portion of the Landlord's claim, without leave to reapply.

Landlord's Labour for Garbage Disposal and Recycling

Section 37 states that Tenants must leave the rental unit "reasonably clean and undamaged".

Guideline 1, with which I concur, helps interpret these sections of the *Act* with respect to items/garbage left in the rental unit:

Garbage Removal and Pet Waste

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The Landlord submitted undated Invoice 383002 for the removal of garbage and dismantling and recycling items left in the rental unit in the amount of $100.00 for:

- 3 hours labour for removing garbage to dump and tipping (?) fees
- Separate wood from metal and electronics remove to recycle centre
- My labour will do this task.

The Landlord did not specify the amount charged for his labour vs the other costs.

I have reviewed the photos taken by the Landlord to prove the garbage disposal and recycling claim. I note that the Tenant left behind various items including a TV tray, speaker, dining room chair, some hangers, 2-3 large, filled garbage bags and a coffee table made of wood and metal. The items, other than the hangers left on the bedroom carpet, were neatly placed in the rental unit, not randomly scattered, but did require disposing of.

The Tenant acknowledged that he should have removed and disposed of the items left behind.

On the monetary order worksheet, the Landlord provided an estimate of loss and costs at $100.00. Considering the time it took the Landlord to remove the items from the rental unit, dismantle the small coffee table, take the items to the recycling plant and the dump and the cost of fuel, I find the $100.00 charge reasonable for time and effort expended.

I award the Landlord compensation in the amount of $100.00.

Electrical Repair
Again, I refer to *Guideline* 1, specifically the section on "smoke detectors", which reads, in part:

Smoke Detectors
…..
2. The tenant must not prevent the smoke alarm from working by taking out batteries and leaving them out, or by replacing them with batteries that are dead or the wrong size. For his or her own safety and the safety of others, the tenant must tell the landlord when a smoke alarm needs new batteries, or that it seems to need to be repaired or replaced.

The Landlord testified and the Tenant confirmed, the smoke detector was removed. The Landlord stated that the original smoke detector could not be used and had to be replaced. The Landlord submitted an invoice dated December 13, 2022 in the amount of $203.45 for the replacement and installation of a smoke/carbon combo.

I award the Landlord compensation in the amount of $203.45 for the replacement and installation of a smoke/carbon combo detector.

Carpet Cleaning

With reference to "Carpets" as found in *Guideline* 1, I note:

Carpets
1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in reasonable state of repair.

…..
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpet after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length or tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if h or she smoked in the premises.

I have reviewed the Landlord's photos submitted as evidence to prove the carpet cleaning claim. The photos are in black and white, grainy, and of poor quality. In the photos the Landlord annotates alleged damage to the carpets but I am unable to determine if there is damage and if there is damage the extent of the damage based on the photos. The Landlord did not provide additional testimony regarding the carpets other than to say he 'saved the Tenant money by not replacing the carpets' and stated the carpets "smelled."

The length of tenancy was 12 months and *Guideline* 1 states that generally at the end of the tenancy the tenant will be responsible for cleaning or shampooing the carpet.

The Landlord submitted an invoice dated November 22, 2022 in the amount of $99.75 for carpet cleaning. Taking into account the length of the tenancy and *Guideline* 1, I award the Landlord compensation in the amount of $99.75 for carpet cleaning.

Patch and Paint

The Landlord submitted an invoice dated December 5, 2022 for painting supplies from Home Depot in the amount of $295.94 and an invoice dated December 11, 2022 for 30 hours of painting in the amount of $650.00 totaling $945.94.

Guideline 1 provides the following guidance:

> **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 instruction 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.
>
> **Painting**
>
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Section 21 of the *Regulations* stipulates that a condition inspection report completed that is signed by both parties 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.

> **Evidentiary weight of a condition inspection report**
> **21** 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.

The Landlord testified that all the walls in the rental unit were so damaged from the nails the Tenant used to hang pictures, that he was required to repaint the entire unit. In his submission the Landlord wrote:

> The apartment is filthy and it stinks. He left clothes and trash behind including metal, wood and electronics and did a fair bit of damage that is beyond normal wear and tear; as evidenced by the pictures. *The smell of cigarettes and whatever else he was smoking can only be addressed by a thorough cleaning and re-painting* . The carpets are ruined beyond cleaning and sterilizing. Please take note of the Terms of the Agreement. [emphasis added]

The Tenant admitted he hung pictures using nails and testified he filled the holes with spackle prior to vacating the rental unit. He didn't primer or paint because he didn't have any paint.

I reviewed the photos submitted by the Landlord. Given the quality of the photos I do not find the marks on the walls caused to be damage beyond reasonable wear and tear.

Although the Landlord testified that rental unit was freshly painted about 5 months before the Tenant took possession, he provided insufficient evidence to support this testimony, for example, invoices. The Landlord failed to complete a move-in condition inspection (and a move-out condition inspection) with the Tenant, which , if available, as per s. 21 of the *Regulations* would provide supporting evidence of the state of repair and condition of the rental unit. The tenancy agreement indicates pictures were taken at the start of the tenancy but weren't submitted as evidence.

The Landlord's comments on the tenancy agreement that the unit was "sparkly clean" and "freshly renovated", are unsubstantiated subjective comments/observations made by the Landlord only. I am unable to conclude the notes were representative of the condition of the rental unit at the start of tenancy. As a result, I assign little persuasive weight to these comments.

I find the Landlord's claim for patching and painting the rental unit to be unsupported by the evidence. Consequently, I dismiss the portion of the Landlord's monetary order request in the amount of $1241.88 for patching and painting without leave to reapply.

Tenant's Monetary Request

The Tenant claims $950.00 in compensation. The Landlord argued that the Tenant did not submit a formal Monetary Order Request; therefore, his request should not be considered. While using an RTB 37 is preferable, pursuant to Rule 2.5 a party must submit "a detailed calculation of any monetary claim" and copies of the evidence in support of the claim(s). I find the Tenant submitted and provided evidence of his claims to the Landlord and the RTB in sufficient detail in his amendments. In fact, the Landlord argued against each of the Tenant's monetary claims. The Tenant supplied evidence of bank transfers to the Landlord and outlined his claims in sufficient detail for me to consider the merits..

$500.00 Rent Charge for 4 Days Extra

The Landlord received a bank transfer from the Tenant on November 1, 2022 and contacted the Tenant on November 1, 2022 asking why the $500.00 had been sent. The Tenant told the Landlord he wanted to stay in the unit temporarily and paid ½ month's rent but planned to be out of the rental unit sooner than November 15, 2022. The Tenant had not asked the Landlord's permission prior to remain in the rental unit after October 31, 2022.

The Landlord gave the Tenant permission to remain in the rental unit until November 4, 2022, no later. The Tenant subsequently asked for reimbursement of the $500.00 and the Landlord refused.

Section 57 of the *Act* defines "overholding tenant" to "mean a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

I find the Tenant was an "overholding tenant" as defined in the *Act*.

Section 57(3) states, "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

The Landlord told the Tenant he charged an overhold rate of $125.00 per day. It is unclear how the Landlord arrived at this rate. I reviewed the tenancy agreement and find no reference to an "overholding" fee. I also note rent is set at $1000.00 per month.

Guideline 3 helps interpret s. 57 of the *Act*. It reads, in part:

> **B. Overholding tenant and compensation**
> **…..**
> If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period they overhold pursuant to s. 57(3) of the *RTA* (section 50(3) of the *MHPTA.* This includes compensation for the use and occupancy of the unit or site on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate the landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

While I agree that for a period of time on November 1, 2022 the Tenant remained in the rental unit without the Landlord's consent, by the Landlord's own evidence after inquiring about the $500.00 deposit, on November 1, 2022, the Landlord allowed the Tenant to remain in the rental unit until November 4, 2022. Thus, the Tenant was using and occupying the rental unit with the express consent of the Landlord.

I have also considered if the Landlord missed out on gaining rental income as a result of the Tenant moving out on November 4, 2022. Although the Landlord stated the Tenant "cost me a tenant", the Landlord provided insufficient evidence to show the Tenant's use and occupancy actually "cost" him. In fact, the Landlord's invoices show a staggered approach to the alleged repairs and cleaning of the rental unit over a couple of months between November and December.

The Landlord is entitled to receive compensation for "use and occupancy". I find a rate of $125.00 per day out of line given a monthly rent set at $1000.00 per month. I have calculated the *per diem* based on the monthly rent divided by the number of days in November:

$1000.00/30= $33.33 per day
$33.33 x 4 = $132.21
$500.00-$132.21= **$367.79**

The Tenant's application for reimbursement of use and occupancy is granted, in part. The Landlord is ordered to pay the Tenant **$367.79.**

Utilities

The Tenant requests reimbursement of a $75.00 surcharge levied for excess use of utilities. In an amendment the Tenant stated that the surcharge might have been "for AC installation @$25.00 per month"; however, the Landlord testified the surcharge was for the guests' excess use of utilities.

Section 6(3) of the *Act* provides that terms of a tenancy agreement are not enforceable if they are:

(a) inconsistent with the *Act* or the *regulations*;
(b) unconscionable, or
(c) not expressed in a manner that clearly communicates the rights and obligations.

I find the clause in the tenancy agreement on which the Landlord relied on to request payment of "excess use" of utilities to be unenforceable. I find the clause to be vague and open to interpretation. It appears that the determination of what constitutes an "excessive use of utilities" is left to the sole discretion of the Landlord.

In the present case, the Landlord unilaterally determined that the Tenant's guests, whether overnight or otherwise, were "undesirables" and "strays" and their very presence in the rental unit equated to excessive use of utilities and "theft of utilities". Even if the "surcharge" was for an air conditioning unit or other appliances listed, I find a clause allowing the Landlord to make such determinations to be vague, subjective, and singularly unconscionable.

Accordingly, I grant the Tenant's application for the $75.00 paid to the Landlord for "excessive use of utilities".

Storage facilities

The Tenant requests $200.00 for the cost of three (3) days of short notice storage. In his written submission he states he took possession of his new rental unit on November 22, 2022. Although the Tenant applied for dispute resolution and the original hearing was scheduled for November 21, 2022 the Tenant told the Landlord he was vacating the rental unit on October 31, 2022 prior to the participatory hearing and receiving the arbitration decision.

I find the cost of renting the storage unit is not a cost borne as a result of the Landlord's breach of the *Act* but rather of the decision the Tenant made to vacate the rental unit prior to the participatory hearing and is not recoverable pursuant to s. 67 of the *Act.*

I dismiss this portion of the Tenant's claim, without leave to reapply.

Return of the security deposit

This matter has been adjudicated and is detailed in the Landlord's Monetary Claim Request above.

…..

In sum, I find as follows :

For the Landlord:

	Amount	Total
Garbage removal/recycle	$100.00	$100.00
Electrical Repair (damage)	$203.45	$303.45
Carpet Cleaning	$ 99.75	$403.20
	Total	**$403.20**

The Landlord is granted a Monetary Order in the amount of **$403.20**.

For the Tenant:

	Amount	Total
Security Deposit	$500.00	$500.00
Partial reimbursement for use and occupancy	$367.79	$867.79
Excess use of Utilities	$75.00	$942.79
	Total	**$942.79**

Pursuant to s. 72(2)(b), I make the following calculation:

$942.79 (Tenant) -$403.20 (Landlord) = **$539.59**

I grant the Tenant a Monetary Order in the amount of **$539.59**, to be served on the Landlord.

Pursuant to section 72(1) of the *Act*, as both parties have been partially successful in their respective application, each are entitled to $50.00 which balance each other so no award is forthcoming

Because I am concerned with several instances of violations of the *Act* by the Landlord including but not limited to requiring the Tenant to have the express permission from the Landlord to have overnight guests and the utilities surcharge, and the $125.00 per day penalty for 'overholding' tenants, I am sending a copy of this decision to my manager.

My manager will review this decision and if she is of the opinion that these circumstances could reasonably lead to administrative penalties, then she will send a copy of this decision along with any other relevant materials from this dispute resolution file to the Compliance and Enforcement Unit.

This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into these matters and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my

manager play any role in the process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the compliance and Enforcement Unit can review the contents of this dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact that I have made in this decision. The orders made in this decision are, however, final and binding and cannot be challenged or set aside in the administrative penalty process.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I order that the Landlord pay the Tenant **$539.59** representing the following:

- Return of the security deposit less carpet cleaning and garbage removal
- Partial return of use and occupancy fee
- Excess utilities surcharge

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: January 17, 2023

Residential Tenancy Branch