Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) C.S.	110059856	MNDL-S, MNDCL-S
(Tenants) S.R. and G.B.	110061042	MNSD, MNDCT, MNRT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties. Given the complex nature of the Parties' applications, we had to adjourn the first hearing and reconvene at a later date. All Parties attended both hearings (except for the Tenants' Witness, who was available only for the first hearing).

The Landlord filed claims for:

- $1,794.25 compensation for damage caused by the tenant, their pets or guests to the unit or property; and
- a monetary order of $425.00 for compensation for other money owed under the Act, retaining the security deposit for these claims.

The Tenants filed claims for:

- the return of their $850.00 security deposit;
- a monetary order of $9,439.23 for damage or compensation under the Act; and
- a monetary order of $400.00 for the cost of emergency repairs.

The Tenants, S.R. and G.B., and the Landlord, C.S., appeared at the teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenants was also present and available to provide affirmed testimony; however, she was never called upon by the Tenants to testify.

During the hearings, the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party and my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I considered service of the Notices of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenants with his Notice of Hearing documents and evidence by Canada Post registered mail, sent on January 26, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. The Tenants acknowledged they had received the Landlord's documents, as stated by the Landlord. I find that the Tenants were served with the Landlord's Notice of Hearing documents and evidence in accordance with the Act.

The Tenants testified that they served the Landlord with their Notice of Hearing documents and evidence on February 23, 2022. The Tenants provided Canada Post tracking numbers as evidence of service. The Landlord acknowledged that he had received the Tenants' Notice of Hearing documents and evidence, as stated by the Tenants; however, the Landlord noted that the Tenants were late in this service under the Act.

RTB records show that the Tenants applied for dispute resolution on February 6, 2022, and that the RTB provided them with the Notice package by email on February 14, 2022. Pursuant to Rule 3.1, an applicant must within three days of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, serve each respondent with copies of all of the documents provided by the RTB, in addition to any evidence submitted to the RTB at that point. This means that the Tenants were required to serve the Landlord with this Notice of Hearing documents and evidence by February 17, 2022; however, they served the Landlord on February 23, 2022,or six days late.

Policy Guideline #12, "Service Provisions" states that

> **12.1 TIME LIMIT TO SERVE NOTICE OF DISPUTE RESOLUTION PROCEEDING PACKAGE**
> The Legislation and Rules of Procedure state that a person who applies for dispute resolution must give a copy of the Notice of Dispute Resolution Proceeding Package ("Notice Package") to the other party within 3 days of the

> Notice being made available by the Residential Tenancy Branch, or within a different period specified by the director.
>
> As noted in Section 12 of this Policy Guideline, the objective of serving documents is to give notice to the person who has been served that an action has been or will be taken against them. An applicant failing to serve the Notice Package within 3 days of it being made available does not necessarily mean that the respondent was not made aware of the action being taken against them and that they did not have sufficient time to respond to the matters of dispute. Instead, the Legislation gives arbitrators the authority to extend the time limit to serve the Notice Package if they find that the Package was sufficiently served for the purposes of the Act on a later date.
>
> **For example**, say a Notice of Dispute Resolution Proceeding was made available on January 1 and the hearing is on June 1, and the applicant served the Notice Package on the respondent on January 15. Even though the applicant did not serve the Notice Package within 3 days, an arbitrator may find that it was served with enough time for the respondent to understand and respond to the claims made against them. An arbitrator will consider the principles of procedural fairness when deciding whether to extend the time limit. If a respondent feels that they were not provided sufficient notice, they should raise these concerns with the arbitrator at their hearing. .
>
> [emphasis added]

Similar to the example, the hearing in the case before me was not scheduled for six months after the Tenants' Notice of Hearing was served to the Landlord. The Landlord acknowledged receipt of the Tenants' documentation. As a result of these factors, I find that the Landlord was served sufficiently by the Tenants pursuant to the legislative purposes.

Preliminary and Procedural Matters

The Landlord provided his email address in his Application, and he confirmed this address in the hearing. The Tenants provided their email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed term tenancy began on October 26, 2019, and ran to October 25, 2020, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlord a monthly rent of $1,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $850.00, and no pet damage deposit. The Landlord said he retained the security deposit to apply to his claims. The Parties agreed that the tenancy ended on January 7, 2022, when the Tenants vacated the rental unit. They also agreed that the rental unit is a two-bedroom, one-bathroom ground level suite. The Landlord said it was last renovated in 2016.

The Parties agreed that they inspected the condition of the rental unit at the start of the tenancy, and that the Landlord had provided the Tenants with a condition inspection report ("CIR") documenting this. The Landlord said in the hearing that they also did an inspection of the condition of the rental unit at the end of the tenancy. He said:

> It was at 1:00 pm on January 10. They had moved, but they had [an agent], who left 20 minutes in. He didn't want to have anything to do with it.

The Tenants directed my attention to a letter from this representative, E.N. ("Representative"), in their evidence. This letter was in email form and it included comments about his being "…largely excluded from their quiet and secretive conversation and I did not want my signature in their possession as I felt a very strong distrust of them."

The Representative also commented on issues, including:

- Replacement of the refrigerator;
- Necessity to clean flooded floors;
- Driveway damage by the Tenants' movers;
- Cleanliness of the bathroom;

- A water stain and crack on the living room ceiling;
- Drywall damage in a storage cupboard; and
- Kitchen tap set, dishwasher, and storm door, replaced in the tenancy at the Tenants' expense;

LANDLORD'S CLAIMS

We started with the Landlord's claims, because he happened to apply for dispute resolution first; however, this gave the Landlord no advantage over the Tenants in my considerations.

The Landlord submitted a monetary order worksheet, the contents of which we reviewed consecutively.

A. REPLACE DOOR CLOSURE → $85.00

The Landlord explained his first claim, as follows:

> The storm door closure in the back door. Because that door was left open all the time - it wasn't closed - the spring mechanism rusted out. The replacement was in the ball park of $40.00 and the installation the remaining amount.

I asked the Landlord if he had submitted a receipt or an invoice for this claim, and he said that the repairs have not been conducted yet. He said:

> The suite is still vacant. We're dealing with the damages from the flood. The interior has been gutted to the studs. Floors removed, cabinets separated…. A verbal estimate was provided.

The Tenants said: "It was rusted when we moved in and didn't function properly anyway. When we did this inspection, the movers were moving inside."

The Landlord replied:

> When they moved in, the only movers were their other daughter and them. We spent over an hour conducting the initial walk through. I encouraged them to do photos and what ever they wanted I said it needs to be done together. I found the photos for door closure - numbers 4 and 5 of photos.

The Landlord submitted photographs showing a rusty screen door closing mechanism.

B. DRYWALL DAMAGE→ $100.00

In the hearing, the Landlord explained this claim, as follows:

> Photos 1, 2, 3, are photos of the closet, and where the door opens on the bottom side - that's where the damage is. A zoomed in on 1 and 2. They had some heavy boxes stored up there. They would ask me to help them remove those boxes, what happened is when they pulled it out, they dragged it on the bottom of the drywall.
>
> This is about at the 5½ foot level, but [restoration company] won't remove anything above four feet – flood damage repairs – is all that the restoration company will do. They go up in increments. They start at two feet, three feet, four feet. The damage is approximately at eye level; they stopped repair at four feet.

The Landlord's photographs show drywall damage, as he has stated above. The Landlord said that the amount claimed comes from an "oral estimate for this amount".

The Tenant responded:

> This was damaged when we moved in. I didn't take any pictures. My brother-in-law was there when they were doing the move-out inspection, but they were ignoring him and speaking in their own language. [My brother-in-law] is a landlord himself, so he knows all about the [*Residential*] *Tenancy Act*. See the statement from him in the submissions.

In the Tenant's brother-in-law's report following the move-out inspection, the brother-in-law said the following about the drywall damage in the closet: "Also his claim of drywall damage in a storage cupboard, I'm sure, was prior to your tenancy and very poorly done, not damage."

In the CIR it states: "Damage to drywall for storage cupboards" at the end of the report; however, this damage is not indicated in the main part of the CIR where it lists specific locations in the residential property. It is not clear in what room or closet this damage is, as it is not noted in any specific location in the rental unit.
The Landlord responded:

> I don't believe they are being truthful. I'm dumbfounded about the mental abuse they're referring to. We're not those kinds of people. As [G.B.] stated, I don't

> speak my native tongue. My father was going from room to room ahead of us, inspecting the flood damage. This is the first time he's seen the property ahead of us. I was with [the Tenant's brother-in-law] for the 20 minutes he was there. He was not there for 1½ hours. We didn't even spend that much time ourselves. He went out during part of the inspection and was smoking. We said you have to participate with us. That's why you're here. We waited from him to stop smoking and he came back in.

The Landlord referred to his evidence at pages 13 – 15, and 25 – 26. However, I could not find any comments about the drywall damage in these pages.

C. DRIVEWAY DAMAGE → $1,559.25

I asked the Landlord to explain this claim, including how he calculated the amount. The Parties agreed that there was damage to the driveway, which was from the Tenants' moving truck creating "two large ruts along the side of the driveway", as the Landlord set out. The Landlord said the amount claimed comes from an estimate that he submitted into evidence.

The Landlord further explained the damage:

> The vehicle drove into the driveway, slipped off, having come at speed, and slid to the side – it's clay primarily here. It's the wet season in the winter, and the vehicle got stuck. See a number of photos indicating damage done by the vehicle – it was the moving truck that did this. I spoke to the moving company and they informed me is that it is the responsibility of the persons who hired them, and on whose behalf, they are hired. [The Tenants] are responsible to ensure the driveway was clear of debris for the movers. I wasn't informed of that.
>
> Additionally, yard maintenance is listed as part of the addendum of the tenancy agreement – see number two. Yard maintenance, grass cutting, snow shovelling. The driveway was the driveway for the Tenants. My driveway is on the side. I permitted them to park their vehicle on my driveway out of the way for the moving truck, but it still got stuck.

The Tenants said:

> He was notified that the moving truck would come. A foot of fresh snow fell on that day and the driveway is not marked. Nothing was cleared.

I asked the Tenants if they are not responsible for clearing the snow under the tenancy agreement, and they said:

> As a tenant, I suppose, I guess so. But our actual area in front of the door that we use was cleared. It was the driveway to the road that was covered in snow so [the movers] had no idea of where to go.

I asked the Tenants, since they were using the driveway for their moving truck, why was this not their responsibility to clear? They said: “I guess it was.”

The Landlord said: “Both Tenants were aware that all of us had signed the Addendum page.” I note that the Addendum states:

> 2. The tenants are responsible for contributing to yard maintenance (i.e. grass cutting, snow shovelling, etc.)

This page was signed by the Landlord and both Tenants.

The Tenant said: “How is that identified as the area we are responsible for? Is it to a certain area or all the way to the road?”

I asked the Tenants if they parked in the driveway, and they said: “It was in the front of the driveway. It was designated for us.”

In answer to where their moving truck was supposed to go, the Tenants said:

> On the driveway that enters into the property. It’s mostly a grass and gravel driveway. Plus, it was all covered in snow and it had been flooded. It was difficult to know - directing the truck where to go and what was a safe area to park.

The Landlord responded:

> There is a single entrance into the property and a straight away driveway, and the circular part is used by the Tenants. The moving truck came onto the circular part. [The Tenant] and myself did direct the moving truck and told him the safe areas where to go and how to park. However, the moving truck driver came at speed – he almost went into the ditch - fishtailed quite a bit. [The Tenant] can attest to that.

The Tenant said: “I agree completely. We tried to direct them, but this person was not listening to us and has his own mind. What he just explained, it was exactly what happened.”

In the Landlord’s estimate from an excavating company, the driveway repair was set out as:

> Repair driveway from moving truck – smooth out ruts, bring in gravel to repair - place small boulders back to original place.

This was estimated to cost $1,485.00, plus $74.25 GST for the Landlord’s total claim of $1,559.25.

D. OVERHOLDING TENANCY → $425.00

The Landlord explained this claim, as follows:

> They owe us a quarter of a month of rent. They didn’t move out until January 7th, and they didn’t pay any rent for that month, but I’m only charging them for the one week.

The Tenants responded:

> On November 15th, there was a flood all over BC. And our unit was flooded. A disaster was declared. [The Landlord] gave us a frustrated tenancy notice. He reimbursed us half a month’s rent with the intention of us moving out ASAP. It was disappointing. We had a good tenancy and the flood is an act of God.
>
> We proceeded to search diligently. I have many emails and marketplace contacts with low income, and I’ve pursued it to the best of our ability as seniors with some restrictions. This was all before Christmas, too. We ended up not having found a place without getting any help from government low income, or disaster housing. Our daughter stepped in and decided to move us out of the area to where she lived in Alberta. So, we couldn’t get out until January 7.

The Landlord said:

> They did provide a notice to vacate the premise dated January 7, 2022. I’ve provided it in my evidence and it’s at page 23 of their evidence.

The Landlord directed me to the two-page Frustrated Tenancy Notice he submitted,

which was dated December 13, 2021 (“Notice”). It states that the Parties agree that the tenancy was frustrated by mould growth from “black” water. This Notice said that pursuant to section 44 (1) (e) of the Act, the tenancy ended on the date on which it was frustrated. The Notice acknowledges that the Tenants paid the Landlord $1,700.00 in rent per month. It was signed by the Landlord, but not by the Tenants, and is dated December 13, 2021.

I note from the Landlord’s testimony above, that the flood occurred on November 15, 2021; however, the Parties declared the tenancy frustrated on December 13, 2021, given the mould growth, presumably from the flood.

The Landlord also submitted a document entitled, “Agreement – Tenancy Agreement Frustrated”, dated December 13, 2021. This agreement includes the statement: “The rental unit at the above address was rendered uninhabitable on the following date: December 13, 2021.” This has the Parties’ names, but not their signatures. In the Landlord’s evidence, this agreement is set out on two pages; however, the Landlord uploaded the same page twice.

The Landlord also submitted a document he had received from the Tenants dated January 7, 2022. The purpose of this document is stated as: “This letter shall serve as my written notice of intent to vacate the premises”.

E. CLEANING APPLIANCES → $50.00

The Landlord explained this claim:

> Essentially, I charged a nominal fee of $50.00, and part of this is for the next door neighbour, cleaning personnel, who charged $35.00. I just charged $25.00 per hour.

The Landlord directed me to photographs of a bathroom screen,

> …and just inside the ledge of the windows there. Also, on page 28 of the stove – underneath, a bunch of food had boiled over and it was quite black - same with inside the stove; it could have been cleaned as well.
>
> Also, some bits in the dryer – photo #31; and frozen things in the fridge – it could have been cleaned out better and wiped down better. Photo 30 shows a handful of frozen peas on the fridge. I didn’t give a proper view of entire fridge, but that’s an indication.

The Tenants responded:

> We did have a discussion with the Landlord after the flood, and it was acknowledged that there will be a renovation. We did not have communication with any reno company, but the Landlord said that there would be a lot – up to four feet that they would have to rip up and major construction on everything. All appliances would have been replaced. He was okay. We weren't making a big issue about cleaning.

The Landlord replied:

> Yes, the construction is still under way, as we speak. The appliances were not replaced and I didn't inform them of that, because I didn't know if they would be at that time. It would have been nice to have things cleaned out. The back of the window is above the level that they would be ripping out. The condition in which they left the suite. It's just a nominal charge.

The Landlord's photographs included:

- the refrigerator's freezer section with a number of peas and other debris left in the bottom;
- a washing machine with dirt or mould and debris left inside; and
- a stovetop lifted to reveal food spill underneath.

TENANTS' CLAIMS

#1 RETURN OF SECURITY DEPOSIT → $850.00

The Tenants said that they want the Landlord to return their security deposit, which they say he is holding without just cause. The Tenants submitted a copy of RTB Form number 41, "Proof of Service Tenant Forwarding Address for Return of Security and/or Pet Damage Deposit". This Form states that the Tenants sent their forwarding address and a request for the return of their security deposit to the Landlord by registered mail, which registered mail was sent on January 12, 2022. Pursuant to section 90 of the Act, registered mail packages are deemed served to the other party five days after being mailed, so on January 17, 2022, in this case.

The Landlord applied for dispute resolution to retain the security deposit and apply it to his claims on January 13, 2022.

#2 COMPENSATION FOR OTHER MONEY OWED → $9,439.23

A. FRUSTRATED TENANCY RESTITUTION → $987.10

The Tenants explained this claim in the hearing, as follows:

> He came in with a written letter saying we had a frustrated tenancy on December 13th, and he brought us a cheque for $987.10. So, we held that, thought it was kind, not realizing that it's part of the law. So, we held it and when we finally got a moving solution, we attempted to cash that cheque, and he had cancelled the cheque and it was returned to us.
>
> So, we feel that because that was the problem – the flood and frustrated tenancy - that we were entitled to keep this cheque. We were surprised when he cancelled it.

The Landlord replied:

> I did provide them a notice of frustrated tenancy and at that time I was with the agent. We advised [the Tenants] that it is part of the formalities. The rent has to be prorated. I also talked to the RTB and spoke with an agent on January 10th, and they informed me that because the Tenants were overholding the tenancy that the Landlord is able to receive compensation for that. So, then I was informed that I could make a stop payment to the cheque. I was informed that I could do this by the RTB. I was uncertain about that, so I called again and talked to someone else. They confirmed that I was able to stop payment of the cheque.

The Landlord referred to his documentary submissions, which included the following explanation:

> The tenants put the property at considerable risk. By the tenants not vacating the suite in a timely manner, this prolonged the initiation of the restoration process, which caused the mould to spread thereby [jeopardizing] the suite. Additionally, this delayed the timeline as to when the suite could be rented after the repairs were done and it was restored.

The Landlord also noted in his written submission that he called the RTB on January 10; he said:

> I called the BC residential tenancy branch phone number and spoke with an

> agent in regards to the tenants overholding tenancy from the date the tenancy was frustrated (December 13, 2021) to the date the tenants vacated the suite (January 7, 2022.) I informed the agent that I provided the tenants a signed frustrated tenancy notice and gave them prorated rent from December 13 till December 31, 2021. The agent informed me that because the tenants were overholding tenants, and did not vacate the suite until Jan 7, 2021, that I could put a stop payment to the check for the prorated rent for the month of December. In addition, I could file for a dispute resolution to claim compensation for the first week in January (Jan 1-7) when the tenants did not vacate the suite.

In the hearing, the Tenants said:

> As far as I could understand, the difference between frustrated tenancy and overholding tenant is that the [frustrated tenancy] letter makes the tenancy agreement null and void. We were expected to vacate as soon as we could. So, if you could define it, overholding

The Landlord replied in the hearing:

> In not moving out in due time – they did move out during the frustrated tenancy, which happened on December 13th. They didn't move out until January 7th. They put the suite of risk – put off the restoration process and allowed mould to spread. And I do live upstairs and I am allergic to mould. They delayed the whole project. There are still workers downstairs today. The actual flood was in November 2021.

B. FORCED RELOCATION – MOVERS → $4,717.60

When I asked the Tenants why the Landlord should be responsible for paying their moving expenses, they responded, as follows:

> He was in such a rush to get us out of there. And our daughter had to rescue us, so the moving company was the natural progression. If we could have found a place in Victoria somewhere, it wouldn't have cost that much at all. But since the only solution was to move to my daughter's, this required much more extensive planning. So why should she have had to pay that money? We are low income seniors with no way we could have paid for that. Just because I felt it was fair.

The Landlord responded:

> As [the Tenant] mentioned earlier, this was an emergency – a flood was declared – a provincial state of emergency was declared. I cannot be held responsible for natural disasters – it's beyond my control. It was a good tenancy up to that point.
>
> Unfortunately, the suite was unhealthy and there was mould growth. [The Tenant] was sick and had to be admitted to the hospital. I spoke to her social worker and she agreed that this may have been one of the causes of this.
>
> They did not have tenant insurance and if they had, their moving expenses and accommodation would have been taken care of. I tried to see if they could be covered under my policy, because we were good friends.
>
> Re trying to find a rental suite, I agree that they were looking, and I had helped them look and had sent them numerous advertisements of rental suites . . .and even coordinating viewings for them. It's a nice suite; it's a beautiful location - very quiet - I tried to be nice by doing them a favour and I lowered the advertised rent price by $100.00. And I never increased the rent in two years that they were here.
>
> They said they couldn't find something of the equivalent value within the same price point. I had posted this below market value – quite spacious with the amenities. I was speaking to the Tenants on a regular basis, finding out how the viewings went. But a lot they had rejected, because it wasn't comparable. So, there were other suites, but they chose not to move to them.

The Tenants said:

> We really appreciated the Landlord assisting finding a place - I had almost nearly 30 different communications. The restrictions I had – I can't handle stairs and a lot of them are basement or upstairs. I can't walk them.
> If the price was higher than we were managing to pay, we couldn't have managed it. The price and the facility it needed – two bedrooms and the stairs – flat areas, so there were a lot of restrictions to find a suitable place. We couldn't just take anything. It had to be something we could comfortably be in.

C. FORCED RELOCATION – AIR TRAVEL → $598.75

The Tenants said that this claim "…goes along with relocation. [Residential property city] to where we are situated now in [another province]."

The Landlord responded:

> It's similar to the last in regards – they chose to move to [another province]. They even boasted that the rent was cheaper than here and the size larger. So, it's not surprising that they moved there. However, I don't understand how I would be responsible for their flight fees. To me that doesn't sound right. If they moved to a cheaper area – if they chose Mexico, how I would be responsible for their movers and flights?

D. FRUSTRATED TENANCY NOVEMBER → $850.00

When they were asked to explain this claim, they said that it is the security deposit, "…a duplicate claim."

E. FRUSTRATED TENANCY DECEMBER → $1,700.00

The Tenants explained this claim, saying: "That was rent – rent back to when he gave the frustrated tenancy."

The Landlord responded:

> I'm confused, because already they are claiming for frustrated tenancy restitution for $987.10. Now they're again claiming for the entire month of December. Their rent was only $1,700.00, so they are asking for $2,687.10, and they don't want to give the Landlord any compensation for the time they did live there.

The Tenants said:

> The $1,700.00 is a claim from when the flood happened - November 15th, until the day he gave us the frustrated tenancy notice - which was a month later. That is what this is for.

I asked the Tenants if the Landlord was responsible for the flood, and they said:

> He's responsible for this place and should have given us the [Frustrated Tenancy] Notice the next day, not a month later. That's why it took him four days to remove the carpet from the bedroom, because he didn't know if he was going to get paid for it.

The Landlord replied:

> I knew that I was covered for flood insurance, because I read my policy; however, the restoration project manager had to see everything as in the condition – as it was. Because there were so many claims that time of year, I was able to get them four days later. They had given me a two-week waiting period, but because I was tenacious about it, they came sooner – I was advised to leave it in place. They could see it and then I was able to take everything out with the help of [the Tenant].

The Tenants had applied for five other claims; however, at the end of the last hearing, the Landlord said that the Tenants had told the Landlord that he could keep the items for which they were claiming compensation. The Tenants agreed to withdraw their last five claims, even though I advised that it would be the end of the matter for these claims, as they would be dismissed without leave to reapply. The Tenants agreed. Therefore, the Tenants claims for the following are **dismissed without leave to reapply**:

F. Kitchen faucet replacement → $167.98
G. Front screen door → $222.88
H. Dishwasher → $395.90
I. Water filtration system → $135.44, and
J. Reimbursement for Emergency Repairs → $400.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I informed them of how I analyze evidence presented to me.

I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, they must each, as applicant, prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That you did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 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.

Policy Guideline #1 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 guest. 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 refer 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 premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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."

LANDLORD'S CLAIMS

A. REPLACE DOOR CLOSURE → $85.00

Based on the evidence before me overall in this matter, I find that the Landlord has not provided sufficient evidence of the cost of this claim. In the hearing, he said it would

cost “in the ball park of $40.00” plus the cost of installation. The Landlord did not provide a source for this estimate, nor had he incurred this expense yet. I find that the Landlord has not provided sufficient evidence that this is more than normal wear and tear, nor of the value of the repair or replacement of this part. As a result, I **dismiss this claim** without leave to reapply, pursuant to section 62 of the Act.

B. DRYWALL DAMAGE→100.00

If find that the Landlord did not provide sufficient evidence of drywall damage being attributable to the Tenants. The move-out CIR makes a note of it at the bottom; however, there is no note of in which closet this damage occurred. Rather, the move-in and move-out portions of the location of damage do not differ for any noted closets.

Further, the Landlord obtained an oral quote for this amount, which I find is insufficient to prove the value of this alleged damage. As a result, I **dismiss this claim** without leave to reapply.

C. DRIVEWAY DAMAGE → $1,559.25

Section 37 of the Act states that a tenant must leave the residential property undamaged at the end of a tenancy. I find that the Tenants agree with the Landlord that the Tenants’ moving truck driver damaged the Landlord’s property by creating ruts and by moving specially placed boulders.

The Tenants deny that they are responsible for shovelling the driveway; however, the Addendum that they signed says that they are responsible for contributing to snow shovelling. Further, they did not dispute that the circular part of the driver was for them. In addition, Policy Guideline #1, “Landlord & Tenant – Responsibility for Residential Premises” (“PG #1“) states the following:

> **PROPERTY MAINTENANCE**
>
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
>
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, **clearing snow**.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow, and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

I also find that it is consistent with common sense and ordinary human experience that if a person is expecting the arrival of their moving truck, that they would be concerned about the condition of the driveway. I also find that such a person would or should feel responsible for clearing that driveway, although they are probably very busy getting ready to move. In the hearing, the Tenants completely agreed with the Landlord as to how this damage was done.

Based on all the evidence before me overall on this matter, as well as pursuant to the Act and PG #1, I find that the Tenants are responsible for the damage done to the Landlord's driveway in this matter. I, therefore, **award the Landlord with $1,559.25** from the Tenants, pursuant to section 37, PG #1, and section 67 of the Act.

D. OVERHOLDING TENANCY → $425.00

Frustration of a tenancy, which the Parties agreed their tenancy had been, involves assumptions regarding future events. Section 44 (1) (e) of the Act provides that a tenancy ends if the tenancy agreement is frustrated.

Frustration arises when an event occurring *after* the formation of the contract makes performance legally problematic. The unexpected event must be so far beyond the range of risks allocated by the contract that it constitutes a fundamental change in the bargain. An example would be the rental unit being destroyed by fire, or in this case, by flood.

If a contract is frustrated, the contract is not void, but the parties are relieved of future

obligations at the point the contract is frustrated. In the example given, the tenant would no longer be required to pay rent, as of the date of the fire.

Also, Policy Guideline #34: "Frustration" ("PG #34"), provides in part:

> A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.
>
> The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the *Frustrated Contracts Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.
>
> [emphasis added]

As PG #34 indicates, the test for determining that a contract has been frustrated is a high one. The Guideline further provides that "the change in circumstances must totally affect the nature, meaning, purpose, effect and consequent of the contract so far as either or both of the parties are concerned."

I find that on December 13, 2021, the Parties agreed that the tenancy was frustrated, as the unit "…was rendered uninhabitable" on this date. As a result, I find that the Parties were discharged from fulfilling their obligations under the tenancy agreement as of this date, pursuant to section 44 of the Act and PG #34. Accordingly, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

E. CLEANING APPLIANCES → $50.00

I find that the Landlord provided sufficient evidence that the Tenants failed to clean the appliances to a reasonable level at the end of the tenancy. However, as noted above, PG #34 indicates that a tenant's obligations end upon the tenancy being found to have been frustrated. Further, there is no evidence before me that the Landlord had

investigated whether the appliances were operational after the flood.

As a result, I find that the Tenants were not obliged to fulfil their requirement to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, pursuant to section 37 of the Act. As such, I **dismiss this claim without leave to reapply**, pursuant to sections 44 and 62 of the Act.

TENANTS' CLAIMS

#1 RETURN OF SECURITY DEPOSIT → $850.00

I find from the evidence before me that the tenancy ended on December 13, 2021, when the Parties agreed that the tenancy was frustrated, although the Tenants did not vacate the rental unit until January 7, 2022.

The Parties agreed that the Tenants paid the Landlord a security deposit of $850.00, which the Landlord retained to apply to his Application. Pursuant to section 32 of the Act.
Section 38 of the Act states that a landlord must do one of two things with the security deposit at the end of the tenancy. Within 15 days of the later of the end of the tenancy (January 7, 2022) and receiving the tenant's forwarding address in writing (January 17, 2022), the landlord must: (i) repay any security deposit; or (ii) apply for dispute resolution claiming against the security deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security deposit pursuant to section 38 (6) of the Act.

I find that the Landlord did the second requirement of section 38, by applying for dispute resolution within 15 days of January 17, 2022, when he was deemed to have received the Tenants' forwarding address. As the Landlord applied for dispute resolution on January 11, 2022, I find that he acted within his rights to retain the security deposit in this set of circumstances. Therefore, the Landlord is entitled to retain the security deposit to apply to his claims and monetary award. As such, I **dismiss the Tenants' claim** in this regard **without leave to reapply**.

#2 COMPENSATION FOR OTHER MONEY OWED → $9,439.23

A. FRUSTRATED TENANCY RESTITUTION → $987.10

I refer back to PG #34, and to Policy Guideline #3, "Claims for Rent and Damages for Loss of Rent" ("PG #3"), which helps clarify issues such as "overholding":

B. Overholding tenant and compensation

> Section 44 of the RTA … sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit . . .after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA…. 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 a 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.

In the case before me, the Tenants' continuing to live in the rental unit after the frustration date prevented the Landlord from moving forward with renovations and repairs as quickly as he would have liked. The Landlord said that the result was additional damage to be repaired due to the mould build up from December 14, 2021, through January 7, 2022.

Based on the evidence before me, I find that the Tenants breached the legislation by overholding in the unit for the duration of December and into January. I find this caused the Landlord's property to deteriorate more than it would have, had the Tenants moved out more promptly after the frustration date. I find that the Landlord exhibited restraint in claiming only for the period of December 2021 in which the Tenants were overholding, rather than for the week in January, as well. Based on the evidence before me on a balance of probabilities, I find that the Tenants have not fulfilled their burden of proof in this matter. I, therefore, **dismiss this claim** without leave to reapply pursuant to section 62 of the Act and PG #3.

B. FORCED RELOCATION – MOVERS → $4,717.60

My authority to award compensation is restricted to section 67 of the Act, which is limited to claims where damage or loss has stemmed directly from a violation of the tenancy agreement or a contravention of the Act by the other party. I, therefore, have no ability to return the costs associated with moving to a new rental unit, and I decline to

award the Tenants recovery of these costs. This claim is **dismissed without leave to reapply**, pursuant to section 62 of the Act.

C. FORCED RELOCATION – AIR TRAVEL → $598.75

As with the previous claim, I do not have the authority under the legislation to award this type of compensation. As such, this **claim is dismissed without leave to reapply**, pursuant to section 62 of the Act.

D. FRUSTRATED TENANCY NOVEMBER → $850.00

As the Tenants acknowledged that this claim duplicates a prior claim, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

E. FRUSTRATED TENANCY DECEMBER → $1,700.00

I find that the Tenants have not established that the Landlord breached the legislation or tenancy agreement, and as such, they have not fulfilled their burden of proof under the Test. I **dismiss this claim** without leave to reapply, pursuant to section 62 of the Act.

The rest of the Tenants' claims were withdrawn by them in the last hearing, and so I dismiss them without leave to reapply, pursuant to section 62 of the Act.

Summary and Set Off

Landlord's Claims:

Award	Description
$ 0.00	-screen door closure;
$ 0.00	-closet drywall damage;
$1,559.25	-driveway damage;
$ 0.00	-overholding
$ 0.00	-cleaning appliances
$1,559.25	**Total Awarded**

Tenants' Claims:

Award	Description
$ 0.00	-frustrated tenancy restitution;

$	0.00	-moving costs;
$	0.00	-flight costs;
$	0.00	-frustrated tenancy, November
$	0.00	-frustrated tenancy, December
$	0.00	**Total Awarded**

The Landlord is partially successful in his Application, as he provided sufficient evidence to meet his burden of proof on the claims awarded to him.

The Tenants failed to meet their burden of proof on a balance of probabilities for their claims, and so the Tenants are unsuccessful in their application. I, therefore, dismiss the Tenants' application wholly without leave to reapply, pursuant to section 62 of the Act.

I find that the Landlord's award meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' **$850.00** security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenants' security deposit, and I further award the Landlord **$709.25** from the Tenants for the remainder of the award owed to the Landlord by the Tenants, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Orde**r of **$709.25** from the Tenants pursuant to section 67 of the Act.

Conclusion

The Tenants are unsuccessful in their application, as they failed to provide sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenants' application is dismissed wholly without leave to reapply.

The Landlord is partially successful in his application, in the amount of **$1,559.25**, as he provided sufficient evidence to meet his burden of proof on a balance of probabilities for this claim. The Landlord is authorized to retain the Tenants' **$850.00** security deposit in partial satisfaction of his award.

I grant the Landlord a **Monetary Order** from the Tenants of **$709.25** for the remaining amount of the Landlord's monetary award owing. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 19, 2023

Residential Tenancy Branch