



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      **MNRL-S MNDL-S MNDCL-S FFL**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy pursuant to section 67;
- an order for compensation for loss or other money owed by the Tenants pursuant to section 67;
- authorization to keep the Tenants’ security deposit under section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 72.

The original hearing (“Original Hearing”) of the Application was held on November 17, 2022. The Landlord’s agent (NS”) and the two Tenants (“KT” and “JT”) attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, I found KT was not served with the Notice of Dispute Resolution Proceeding and the Tenants were not served with all of the Landlord’s evidence as required by sections 88 and 89 of the Act. Pursuant to Rule 7. RoP, I adjourned the hearing and issued an interim decision dated November 20 (“First Interim Decision”). The First Interim Decision ordered the Landlord to serve the Notice of Adjourned Hearing, the First Interim Decision and all of the Landlord’s evidence (“Landlord’s Original Evidence”) that was submitted to the Residential Tenancy Branch (“RTB”) prior to the Original Hearing, on each of the Tenants. The Landlord was ordered not to amend the Application.

I also ordered that the Tenants were permitted to serve any evidence they considered relevant to respond to the claims made by the Landlord in the Notice of Adjourned Hearing and the Landlord's Original Evidence. The first adjourned hearing ("First Adjourned Hearing") was scheduled for January 9, 2023. NS, KT and JT attended the First Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The First Adjourned Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the First Adjourned hearing and issued an interim decision dated January 12, 2023 ("Second Interim Decision"). The Second Interim Decision stated the Landlord and Tenants were not permitted to serve each other or file any additional evidence with the RTB. The Second Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for February 27, 2023 ("Second Adjourned Hearing") were served on the parties by the RTB. The Landlord, NS, KT and JT attended the Second Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witness ("DI") was called during the Second Adjourned Hearing to provide testimony on behalf of the Landlord.

#### Preliminary Matter – Service of Notice of Dispute Resolution Proceeding and Evidence

At the Original Hearing, NS stated the Landlord served the Notice of Dispute Resolution Proceeding ("NDRP") on each of the Tenant's by registered mail April 30, 2022. NS stated he personally served most the Landlord's evidence on the Tenants on May 27, 2022. NS stated the Landlord used the address for service was used by the Landlord in respect of an application for dispute resolution ("Previous Application") made by the Landlord with the Residential Tenancy Branch ("RTB") for an early end of tenancy. NS stated he served a third package on October 20, 2022, consisting of the NDRP, the Landlord's evidence and a revised Monetary Order Worksheet, in the mailbox at the address stated for the Tenants for the Previous Application. JT stated she moved after the hearing for the Previous Application and the NDRP was forwarded to her address by Canada Post. JT stated she did not forward the NDRP Package for KT because her ex-husband through it away. KT stated she moved after the hearing of the Previous Application and she did not receive the NDRP Package. JT also denied receiving the Landlord's additional evidence.

### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I find, on a balance of probabilities, that the NDRP and the Landlord's evidence was not served on KT in accordance with the provisions of Rules 3.1 and 3.14. I also find the Landlord's subsequent two packages of evidence were not served on KT. As such, pursuant to section 75 of the Act, I adjourned the Original Hearing and ordered the Landlord to serve the Adjourned Hearing Package and the Landlord's Original Evidence on each of the Tenants prior to the First Adjourned Hearing using the addresses provided by each of the Tenants at the Original Hearing.

At the First Adjourned Hearing, NS stated the Landlord served the Notice of Adjourned Hearing, First Interim Decision and the Landlord's Original Evidence (collectively the "Adjourned Hearing Package") on each of the Tenants by registered mail. NS provided the Canada Post tracking numbers for service of the Adjourned Hearing Packages on each of the Tenants to corroborate his testimony. KT and JT acknowledged receipt of the Adjourned Hearing Packages. As such, I find the Adjourned Hearing Packages were served on each of the Tenants in accordance with the provisions of sections 88 and 89 of the Act. KT stated the Tenants did not serve the Landlord with, or submit to the RTB, any evidence for this proceeding.

### Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent from the Tenants?
- a monetary order for compensation to make repairs to the rental unit that the Tenants, their guests or guests caused during the tenancy?
- a monetary order for compensation for the Landlord's monetary loss or other money owed by the Tenants?
- retain the Tenants' security and/or pet damage deposit(s)?
- recover the filing fee of the Application from the Tenants?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

NS submitted into evidence a copy of a signed tenancy agreement, dated January 8, 2021, between the Landlord and Tenants. The tenancy agreement states the tenancy commenced on January 8, 2021, with a fixed term ending June 30, 2021. The rent was \$2,100.00 payable on the 1<sup>st</sup> day of each month. The Tenants were required to pay a security deposit of \$1,050.00 and a pet damage deposit of \$400.00 by January 8, 2022. NS acknowledged the Landlord received the security and pet damage deposits from the Tenants. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

NS stated the Landlord made an application for dispute resolution with the RTB to seek an early end of the tenancy ("Previous Application"). NS stated the arbitrator who heard the Previous Application granted the Landlord an early end of tenancy and issued an Order of Possession. NS stated that, in arbitrator's decision for the Previous Application, the Landlord was ordered to deduct \$100.00 from the security deposit to recover the Landlord's filing fee for the Previous Application. NS stated the Landlord is now holding a security deposit of \$950.00 and a pet damage deposit of \$400.00. NS and the Tenants agreed the Tenants vacated the rental unit on April 19, 2021. The parties agreed the monthly rent payable by the Tenants at the time they vacated the rental unit was \$2,100.00.

NS stated that the Application sought \$23,500.00 for unpaid rent from the Tenants. NS stated this claim was made in error and that he had inadvertently included damages that were paid by the Landlord's insurer (see below for more particulars). NS stated the Landlord was seeking unpaid rent of \$4,200.00 for March and April 2021. JT stated that she paid the Landlord \$2,100.00 by e-transfer from her bank account on March 1, 2021 and paid the Landlord \$1,050.00 by e-transfer from her bank account on April 1, 2021. At the First Hearing, NS stated he did not have any evidence the Tenants paid any of the rent for March or April 2021. However, at the Second Adjourned Hearing, the Landlord admitted she received \$2,100.00 from JT for payment of the rent for March 2021 and \$1,050.00 for payment of ½ of the rent for April 2021. The Landlord stated she was seeking the balance of the rent of \$1,050.00 for April 2021.

At the Second Hearing, NS stated the Landlord also wanted to claim for loss of rental income for the months of May through August 2021 on the basis the Landlord was unable to re-rent the rental unit during this time because of the extensive repairs that were required to be made to the rental unit.

NS submitted move-in and move-out condition inspections reports. Neither of the reports were signed by the Tenants. NS admitted a move-in and move-out condition inspection was not performed with the Tenants. The Landlord submitted into evidence a Notice of Final Opportunity to Schedule a Condition Inspection on Form RTB-22 ("Notice"). The Landlord stated the Notice was served on the Tenants' door on April 15, 2021. The Landlord did not submit a proof of service nor did she call a witness to provide testimony to corroborate her testimony to prove the Notice was served on the Tenants' door. KT denied the Tenants received this Notice.

NS submitted into evidence a completed Monetary Order Worksheet that provided details on the Landlord's claims for damages and other compensation. The Landlord's monetary claims, excluding the claims for unpaid rent for March and April 2021, are:

Reason	Amount of Claim
Clean Septic Lines	\$1,280.00
Replace Septic Pump	\$2,722.18
Trash Haul	\$675.00
Insurance Claim Deductible	\$1,000.00
Cleaning Rental Unit	\$658.75
Replacement of Bathroom Door	\$134.39
Replacement of Curtains	\$353.71
Damage to Exterior of Rental Unit	\$3,750.00
Replacement of Entry Door and Painting	\$936.00
<b>Total Monetary Claim:</b>	<b>\$11,510.03</b>

NS stated the Tenants flushed rags and other items down the toilet. NS stated the items plugged the sanitary line and septic pump and it cost \$1,280.00 to perform repairs in February 2021. NS stated that, after repairs were performed on the sanitary lines and pump in February 2021, the Tenants flushed additional items down the toilet that damaged the septic pump. NS stated the Landlord was claiming \$2,722.18 to repair the clogged lines and replace the septic pump in March 2021. NS submitted into evidence copies of the two invoices for repairs to the sanitary pipes and septic pump dated February 9, 2021 and March 3, 2021. Under "Description of Work", the invoice dated February 8, 2021 stated:

Have pump pit pumped out and remove debris feb 9/201 had pit pump pumped out, diagnose issue, have to remove to clear, cleared pump, removed rags, quite a bit, put back together tested, works fine, *pump is not the proper pump for the application it is used for, if problem persists I would suggest a grinder pump be installed...*

[emphasis in italics]

KT stated the Landlord told her, before the Tenants moved into the rental unit, that the previous tenant flushed rags down the toilet. KT denied the Tenants were responsible for this damage. KT stated she was not aware the sanitary lines were connected to a septic system and not to the city sewer system.

The Landlord stated the Tenants left garbage on the residential property and she had it hauled away. The Landlord stated Tenants abandoned a large amount of items in the rental unit after they vacated the rental unit on April 19, 2021 and she had it hauled away. The Landlord submitted into evidence copies of three invoices totalling \$675.00 and stated she sought reimbursement for these charges. KT stated the Tenants were not given very long to clean and vacate the rental unit after they were served by the Landlord with the Order of Possession that was issued by the arbitrator in the Previous Hearing.

The records of the Residential Tenancy Branch indicate the hearing of the Previous Application took place on April 13, 2023. The Landlord stated she resided in the basement suite ("Lower Unit") located below the rental unit. The Landlord stated that on the evening of April 13, 2023, she came home and about three hours later water started to come down from the ceiling and down the walls in the Lower Unit. The Landlord stated she went upstairs to the rental unit to investigate. The Landlord stated she found all of the sinks and bathtub were plugged with the taps on and the water was overflowing onto the floor. The Landlord stated she turned the taps off and called a plumber and her insurance agent. The Landlord submitted into evidence a copy of an invoice from the restoration company that performed the repairs after the flood in the rental unit and the Lower Unit for \$1,000.00, representing the deductible on her insurance policy. The Landlord submitted into evidence an invoice for \$17,670.00 for replacing flooring throughout the rental unit to corroborate her testimony on extraordinary damages caused to the rental unit. The Landlord stated there were a number of items of damage that were not covered by the insurance claim. The Landlord stated she was seeking reimbursement of the insurance deductible of \$1,000.00 from the Tenants.

DI stated he was the Landlord's realtor. DI stated he viewed the rental unit after the Landlord had the rental unit renovated before it was rented to the Tenants. DI stated that all the finishing was of very good quality. DI stated he viewed the rental unit after the Tenants vacated it, and stated the property was severely damaged. DI stated there was water damage to the floors and walls. DI stated the rental unit was remediated to the condition it was in at the time the Landlord had the original renovations completed. DI confirmed there are security cameras on the grounds of the residential property. The Landlord stated she never re-rented the rental unit after the Tenants vacated it and she sold it in October 2021.

The Landlord stated that, after the Tenants vacated the rental unit, it cost her \$658.75 for cleaning services. The Landlord submitted into evidence photos of the rental unit after the Tenants vacated it and an invoice for the cleaning services that stated it took 26 hours at \$25.00 per hour plus \$8.75 for miscellaneous items that were required.

The Landlord stated the bathroom door to the rental unit was badly damaged and required replacement. The Landlord stated the broken door was not covered by the insurer. The Landlord submitted into evidence a photo of the broken door and a receipt for \$134.39 and stated she was seeking reimbursement for this expense.

The Landlord stated the panel curtains, which were less than one year old, were covered in oil, water damaged and had burns on them. The Landlord submitted into evidence an invoice for \$353.71 for the cost of replacement of the curtains. The Landlord sought reimbursement for \$353.71 to replace the curtains.

The Landlord stated the police conducted a raid on the rental unit on February 11, 2021. The Landlord stated the police forced the entry door open to the rental unit. The Landlord stated the forced entry caused damage to the entry door and the exterior railings to the rental unit. The Landlord submitted into evidence a report ("Report") appearing in the local newspaper on February 16, 2021. The Report stated the RCMP executed a search warrant on a residence located at the address of the rental unit. The Report stated the warrant was issued in connection with an investigation into suspected drug trafficking on February 11, 2021. The Report stated the RCMP seized illicit drugs like fentanyl, methamphetamine and cannabis inside the residence. The Report stated the RCMP also seized firearms, weapons and items used for the production of illicit drugs as well as recovery of numerous stolen items. The Landlord submitted into evidence an invoice for these repairs and stated the entrance door and railings were less than one year old. The Landlord stated she was seeking \$3,750.00 for the costs of repairs to the entrance door and railings.

The Landlord stated her insurer did not cover all the damage by the Tenants to the rental unit. The Landlord stated that she incurred expenses to replace the front door and bathroom door and to repaint the walls, ceilings, door frames, widow frames and baseboards in the rental unit after the Tenants vacated the rental unit. The Landlord submitted the invoice for \$936.00 dated May 3, 2021 and stated she was seeking reimbursement for those expenses.

KT stated there was only one trash bin. KT did not deny the Landlord's testimony that the bathroom door was badly damaged. KT denied the Tenants left the water taps on



which caused water damage to the rental unit and the Lower Unit. The Landlord admitted she did not call the police in respect of this incident but stated she called a plumber and her insurance agent. The Tenant stated the Landlord had not provided evidence that someone else had broken into the rental unit and turned the taps on. However, the Tenants did not provide any evidence that either of them had called the police to report a break-in. The Landlord stated she viewed the security surveillance video of the residential property and she only saw KT and her friend at the rental unit during the relevant time period.

TK stated the rental was an illegal suite and that the Landlord told her not to tell bylaw officers that the Tenants were living in the rental unit. TK admitted that the rental unit had been renovated at the time the Tenants moved into it. The Tenant stated the Landlord did not inform her that the rental unit was connected to a septic system rather than the city sewer. KT denied the Tenants damaged the exterior railing but did not provide any explanation for how the damages occurred. KT stated there was only one trash bin. KT stated she engaged professional movers to move her furniture but admitted there were a lot of personal items left behind. JT stated the Landlord did not give the Tenants much time to clean up the rental unit.

## Analysis

### **1. Standard of Proof**

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In the present case, the Landlord has the onus of proving, on a balance of probabilities, that the Tenants are responsible for payment of the unpaid rent claimed by the Landlord

and that damages were caused to the residential property while the Tenants were in possession of the rental unit.

## **2. Effect of Not Providing Signed Move-In and Move-Out Inspection Reports**

Sections 23, 24(2), 35, 36, 38(1) and 38(5) of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
  - (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
    - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
    - (b) a previous inspection was not completed under subsection (1).
  - (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
  - (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
  - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
  - (6) The landlord must make the inspection and complete and sign the report without the tenant if
    - (a) the landlord has complied with subsection (3), and
    - (b) the tenant does not participate on either occasion.
- 
- 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, *for damage to residential property* is extinguished if the landlord
    - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
    - (b) having complied with section 23 (3), does not participate on either occasion, or
    - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
  - (b) the tenant has not participated on either occasion.
- (2) *Unless the tenant has abandoned the rental unit*, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, *for damage to residential property* is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
  - (b) having complied with section 35 (2), does not participate on either occasion, or
  - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

[emphasis in italics added]

The Landlord did not provide signed move-in and move-out condition inspection reports. The Landlord stated she served the Notice on the Tenants' door on April 15, 2021. The Landlord did not submit a proof of service nor did she call a witness to provide testimony to corroborate her testimony that the Notice was served on the Tenants' door. KT denied the Tenants received the Notice. As such, I find the Landlord has not demonstrated, on a balance of probabilities, that the Notice was served on the Tenants. Based on the foregoing, I find the Landlord did not comply with the provisions of sections 23(1) and 35(1) of the Act. Sections 24(2) and 35(1) of the Act provides a landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished. However, in the present case, the Landlord made a claim, in addition to the claim damages to the rental unit, for recovery of unpaid rent. As such, sections 24(2) and 35(1) do not extinguish the Landlord's right to claim against a security deposit for unpaid rent.

Furthermore, the Tenants did not provide any evidence they served the Landlord with a written notice providing their forwarding address. Section 39 of the Act states:

- 39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and

- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The parties agreed the Tenants vacated the rental unit on April 19, 2021. As such, the Tenants had until April 19, 2022 to serve a written notice with their forwarding address on the Landlord. As the Tenants did not provide their forwarding address to the Landlord, I find the Tenants right to the return of the security and pet damage deposits has been extinguished pursuant to section 39 of the Act. As such, the Landlord's right to claim against the security and pet damage deposit has not been extinguished by either of sections 24(2) or 36(2) of the Act, regardless of whether she scheduled and performed move-in or move-out inspections with the Tenants.

### ***3. Deposits Held by Landlord***

NS acknowledged the Tenants paid the security and pet damage deposits to the Landlord. NS stated the arbitrator who heard the Previous Application ordered the Landlord to deduct \$100.00 from the security deposit to recover the Landlord's filing fee for the Previous Application. The Tenants did not dispute NS's testimony. As such, I find the Landlord is holding a security deposit of \$950.00 and a pet damage deposit of \$400.00.

### ***4. Claim for Unpaid Rent***

JT stated she paid \$2,100.00 by e-transfer on March 1, 2021 for the March 2021 rent and \$1,050.00 by e-transfer on April 1, 2021 for ½ of the rent for April 2021. The Landlord acknowledged the Tenants paid the rent for March 2021 and ½ of the rent for April 2021. Section 26(1) of the Act states:

- 26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The rent for April 2021 was due on April 1, 2021, prior to the date of the Order of Possession issued by the arbitrator in connection with the Previous Application. The Landlord was unable to re-rent the rental unit during April as a result of the damages caused by the Tenants to the rental unit. As such, the Landlord did not receive any other rental income from the rental unit in April 2021. As such, I find the Landlord has proven, on a balance of probabilities, that the Tenants owe the Landlord \$1,050.00 for

unpaid rent for April 2021. Based on the foregoing, pursuant to section 67 of the Act, I order the Tenants pay the Landlord \$1,050.00 for unpaid rent. Pursuant to section 72(2) of the Act, I order that the Landlord may retain \$1,050.00 from the security and pet damage deposits in satisfaction of the unpaid rent.

#### ***5. Claim for Loss of Rental Income***

The Landlord stated the repairs were not completed to the rental unit until the end of August 2021. NS stated the Landlord was also seeking loss of rental income for the months of May through August 2021 as the rental unit was not available to rent. Neither the Application nor the Landlord's Monetary Order Worksheet stated the Landlord was seeking compensation for loss of rental income. The Landlord had over 7 months after making the Application on April 16, 2022 to amend the Application to make a claim for compensation for loss of rental income. The Tenants were not placed on notice that the Landlord was making a claim for loss of rental income. As such, the Tenants did not have the opportunity to prepare for and respond to a claim for loss of rental unit made by NS at the Second Adjourned Hearing. Based on the foregoing, I find the Landlord is not entitled to seek an amendment to the Application, after the hearing commenced on November 17, 2022, to make a claim for loss of rental income.

#### ***6. Landlord's Claim for Damages to Rental Unit and Other Monetary Loss***

NS acknowledged the Landlord did not perform move-in and move-out condition inspection reports with the Tenants. The Landlord stated the rental unit was fully renovated prior to the Tenants moving into the rental unit. KT acknowledged the rental was renovated prior to the Tenants moving into the rental unit. DI testified he viewed the rental unit before the Tenants moved in and that the rental unit had been renovated and was in very good condition. DI stated he viewed the damages to the rental unit after the Tenants vacated it and then after the repairs were completed on it. DI stated the condition of the rental unit, after repairs were completed, was the same as the condition of the rental unit when the Tenants moved into it. DI stated there were no upgrades made during its remediation. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the rental unit was in good condition at the time the tenancy commenced.

NS stated the Tenants plugged the sanitary line and septic pump and it cost \$1,280.00 to perform repairs in February 2021. NS stated that, after repairs were performed on the sanitary lines and pump in February 2021, the Tenants flushed additional items down the toilet that damaged the septic pump. NS stated it cost \$2,722.18 to repair the

clogged sanitary lines and replace the septic pump in March 2021. KT stated the Landlord told her, before the Tenants moved into the rental unit, that the previous tenant flushed rags down the toilet.

The invoice dated February 8, 2021 clearly stated the pump was not the proper pump for the application. Based on the warning provided in this invoice, I cannot determine whether the plugged sanitary line and the eventual failure of the pump were a result of the Tenants' actions or whether the problems with the sanitary lines and pump were the result of the use of a pump that was not fit for the purpose. As such, I find the Landlord has not proven, on a balance of probabilities, that the Tenants were responsible for these damages. Based on the foregoing, I dismiss the Landlord's claims for \$1,289.00 and \$2,722.18 for repairs to the sanitary line and septic pump.

The Landlord stated the Tenants left garbage on the residential property and she had it hauled away. The Landlord stated Tenants abandoned a large amount of items in the rental unit after they vacated the rental unit on April 19, 2021 and she had it hauled away. The Landlord provided copies of three invoices totalling \$675.00 for garbage removal. KT stated the Tenants were not given very long to clean and vacate the rental unit after receiving the Order of Possession issued by the arbitrator in the Previous Hearing.

Section 32(2) and subsection 37(2)(a) of the Act state:

32(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

37(2) When a tenant vacates a rental unit, the tenant must  
(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and  
[...]

The Tenants were responsible to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which they had access during the tenancy. The Tenants were required to leave the rental unit in reasonably clean condition. Regardless of whether the Tenants were given a limited amount of time to vacate the rental unit after service of the Order of Possession, they nevertheless remained responsible for complying with section 37(2) of the Act. As such,

I find the Landlord has proven, on a balance of probabilities, that the Tenants failed to maintain reasonable health, cleanliness and sanitary standards to the residential property and to leave the rental unit in reasonably clean condition after the vacated it. Based on the foregoing, I find the Landlord is entitled to recover \$675.00 from the Tenants for trash removal.

The Landlord stated there was extensive water damage to the rental unit and Lower suite as a result of flooding on April 13, 2021. This was the same date as the hearing of the Previous Application when the arbitrator issued an Order of Possession in favour of the Landlord. The Landlord stated that, when she investigated in the rental unit, she found the sinks and bathtub were plugged and the taps were left on. The Landlord stated she viewed security video outside the residential property and saw the Tenant and a friend at the rental unit. The Landlord submitted an invoice for \$17,670.41 for the installation of new flooring in the rental unit.

The Landlord provided an invoice for \$1,000.00 from the restoration company that performed the remediation of the rental unit for the insurance deductible on her insurance policy.

Section 32(3) of the Act states:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find the Landlord has proven, on a balance of probabilities, that extraordinary damage was caused to the rental unit on April 13, 2021. The Tenants did not provide any plausible explanation for why they were not responsible for the damages caused to the rental unit caused by the overflow of water from the sinks and bathtub. As such, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover the \$1,000.00 deductible on the insurance she was required to pay.

The Landlord stated that, after the Tenants vacated the rental unit, it cost her \$658.75 for cleaning services. The Landlord provided photographs and an invoice for the cleaning services. The invoice for cleaning stated it took 26 hours at \$25.00 per hour plus \$8.75 for miscellaneous items. As stated in section 37(2) of the Act, a tenant must leave the rental unit reasonably clean. I find the charge of \$658.75 to be reasonable for cleaning the rental unit after the Tenants vacated it. I find, on a balance of probabilities, that the Tenants did not leave the rental unit in reasonably clean condition when they



vacated it. As such, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover \$658.75 for cleaning the rental unit.

The Landlord stated the bathroom door was badly damaged and required replacement. The Landlord stated the broken door, which was less than one year old, was not covered by the insurer. The Landlord submitted into evidence a photo of the broken door. KT admitted the bathroom door was damaged during the tenancy. As such, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover \$134.39 for replacement of the bathroom door.

The Landlord stated the panel curtains, which were less than one year old, were covered in oil, water damaged and had burns on them. The Landlord provided an invoice for \$353.71 for the cost of replacement of the curtains. KT denied the Tenants caused this damage. The Tenants did not provide any plausible explanation for why they were not responsible for the damages caused to the curtains. As such, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover the \$353.71 for replacement of the curtains.

The Landlord stated the police conducted a raid on the rental unit on February 11, 2021. The Landlord stated the police forced the entry door open to the rental unit which damaged the entry door and the exterior railings to the rental unit. The Landlord provided the Report which stated the RCMP seized illicit drugs like fentanyl, methamphetamine and cannabis inside the residents. The Report stated the RCMP also seized firearms, weapons and items used for the production of illicit drugs as well as recovery of numerous stolen items. The Tenants did not deny a raid had been made at the rental unit by the RCMP or that the Report did not accurately document what was seized in the rental unit. The Landlord stated the doors and railings were less than one year old. The Landlord submitted into evidence an invoice for \$3,750.00 for the cost of completing repairs to the entrance door and railings. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that she is entitled to recover the \$3,750.00 for damages to the entry door and exterior railing of the rental unit.

As noted above, the Landlord stated the insurer did not cover all the damages to the rental unit. The Landlord stated she paid \$936.00 to replace the front door and bathroom door and repaint the walls, ceilings, door frames, window frames and baseboards in the rental unit after the Tenants vacated the rental unit. The Landlord submitted an invoice for \$936.00 dated May 3, 2021 and requested reimbursement for those expenses. The Tenants did not provide any plausible explanation for why they were not responsible for these damages to the rental unit. As such, I find the Landlord

has proven, on a balance of probabilities, that she is entitled to recover these replacements and repairs.

Based on the foregoing, I find the Landlord has proven the following damages:

<b>Reason</b>	<b>Amount of Claim</b>
Trash Haul	\$675.00
Insurance Claim Deductible	\$1,000.00
Cleaning Rental Unit	\$658.75
Replacement of Bathroom Door	\$134.39
Replacement of Curtains	\$353.71
Damage to Exterior of Rental Unit	\$3,750.00
Replacement of Entry Door and Painting	\$936.00
<b>Total Monetary Claim:</b>	<b>\$7,507.85</b>

I order the Tenants pay the Landlord \$7,507.85 for damages pursuant to section 67 of the Act.

#### ***7. Landlord's Claim for Recovery of Filing Fee for Application***

As the Landlord has been partially successful in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application.

#### **Conclusion**

I order the Tenants pay the Landlord \$7,307.85 as follows:

<b>Purpose</b>	<b>Amount</b>
Unpaid rent for April 2021	\$1,050.00
Compensation for Damages and Other Loss	\$7,507.85
Filing Fee of Landlord's Application	\$100.00
Less: Tenants' Security and pet Damage Deposits	-\$1,350.00
Total:	\$7,307.85

The Landlord must serve the Monetary Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 10, 2023

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Residential Tenancy Branch