



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT, MNETC, FFT  
                                 MNDL-S, MNDCL-S, FFL

### **Introduction**

This hearing was originally convened on December 15, 2022 and was adjourned due to time constraints. This Decision should be read in conjunction with the December 15, 2022 Interim Decision.

The tenants, the landlord and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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

### **Issues:**

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order because the landlord has not complied with the *Act*, or used the rental unit for the stated purpose, pursuant to section 51 of the *Act*?
3. Are the tenants entitled to recover of the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?

5. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
6. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
7. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background/Evidence

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

Both parties agreed to the following facts. This fixed term tenancy began on November 1, 2021 and ended on April 1, 2022 by way of a RTB Form #8 Mutual Agreement to End Tenancy ("RTB Form #8"). This was originally a fixed term tenancy set to end on October 31, 2022. Monthly rent in the amount of \$2,150.00 was payable on the first day of each month. A security deposit of \$1,075.00 was paid by the tenants to the landlord.

The tenants testified that the landlord did not ask them to complete a move in condition inspection of the subject rental property with the landlord. The tenants testified that the landlord left an already filled in move in condition inspection report for them at the subject rental property and asked them to sign it. The tenants testified that they agreed with the contents of the report and signed it and sent it to the landlord.

The landlord testified that when she gave the tenants the key to the subject rental property at the start of the tenancy she was going to do the move in inspection with the tenants but the tenants told her that they were tired and didn't want to complete the move in condition inspection. The landlord testified that she filled in the report herself and asked the tenants to sign it. The landlord testified that the subject rental property was brand new so there were no issues.

The landlord testified that she provided the tenants with two opportunities to complete the move in condition inspection report through texts. The tenants testified that the landlord never asked them to complete the move in condition inspection and report together. The move in condition inspection report was entered into evidence.

Both parties agreed that they met at the subject rental property on April 1, 2021 to complete the move out condition inspection and report. The tenants testified that they did not sign the move out condition inspection report because part-way through the inspection the landlord stormed out. The tenants testified that the landlord refused to provide a copy of the move out condition inspection report until April 19, 2022. The agent testified that the landlord did not storm out. The landlord agreed that she provided the tenants with a copy of the move out condition inspection report on April 19, 2022. Both parties agree that the tenants provided the landlord with their forwarding address on the move out condition inspection report on April 1, 2022.

No text messages or other documentary communication between the parties regarding condition inspection reports were entered into evidence.

#### Tenants' Claim

Tenant E.G. testified that the landlord told her that if she paid the landlord \$1,075.00 (one half month's rent), the landlord would mutually agree to end the fixed term tenancy agreement before the end of the fixed term and would signed RTB Form #8. The landlord agreed with the above testimony. Both parties agreed that they mutually agreed to end the tenancy via RTB Form #8 and the tenants paid the landlord \$1,075.00. RTB Form #8 was signed by both parties and states that the parties agreed to end the tenancy on March 31, 2022.

Tenant E.G. testified that she paid the landlord the \$1,075.00 to compensate the landlord for losses associated with ending the tenancy early. The tenants' section 51 application seeks the landlord to return the \$1,075.00 paid by the tenants. Tenant E.G. testified that the landlord should re-pay this amount because the landlord did not relist the subject rental property right away or show the subject rental property after RTB Form #8 was signed on March 4, 2022.

The landlord testified that that she listed the property for rent straight away but did not want to show the subject rental property in the condition left by the tenants. The landlord testified that since the \$1,075.00 was agreed upon by both parties for damages for ending the tenancy early, whether or not she listed the subject rental property for rent immediately after the signing of RTB Form #8 is not relevant.

The tenants testified that they are seeking 1/3 of all rent paid during the tenancy for the loss of quiet enjoyment of their balcony caused by the amount of bird poo on it.

The tenants testified that they informed the landlord that there was a seagull problem and that the seagulls sat on their balcony and pooped. The tenants testified that the landlord told them that this was a strata problem and did nothing.

The tenants testified that after they moved out, they saw that the landlord made several different attempts to divert the seagulls including adding spikes to the railing, as well as adding balloons and strings.

The tenants testified that they gave notice to end the tenancy because of the bird poo. The tenants entered into evidence photographs of the balcony of the subject rental property that show bird poo on the balcony railing and on either side of the railing. The bird poo does not appear to extend into the middle of the balcony. The tenants entered into evidence photographs of the balcony taken from the exterior of the building which they testified were taken approximately one week after the tenancy ended which show bird poo on the railings. The railings of the unit below can also be seen and they are free of bird poo.

The tenants testified that they spoke on the phone with the landlord about the bird poo and during an inspection of the subject rental property in February 2022. The tenants testified that the balcony was unusable due to the poo.

The tenants testified that they are seeking 1/3 of all rent paid because that's what they thought was fair.

The landlord testified that the anti-seagull measures that were put in place after the tenants moved out were completed by strata and not herself. The landlord testified that the first time the tenants told her that they were unable to use the balcony due to the amount of poo on it was during the move out condition inspection on April 1, 2022. The landlord testified that during the tenancy the tenants never mentioned sea-gulls or their poo.

The agent testified that during the February 2022 inspection, the landlord brought up the amount of seagull poo on the balcony, not the tenants, and at that time the tenants did not mention any inability to use the balcony.

The landlord testified that the tenants did not end their tenancy due to the bird poo, but because they got a large dog that was not allowed by strata. The landlord testified that before she agreed to an early end to tenancy, she arranged for the February 2022 unit inspection and was dismayed by the tenants' lack of care and cleaning of the balcony and agreed to end the tenancy early because she did not want the tenants to live in her unit anymore. The only document accepted into evidence pertaining to the end of the tenancy was RTB Form #8.

Tenant E.G. testified that she wanted to end the tenancy before the end of the fixed term tenancy agreement because of the bird poo. Tenant E.G. testified that when the landlord was not receptive to ending the tenancy due to the bird poo, she informed the landlord about her dogs as another way to get out of the lease.

The agent testified that there could not have been loss of quiet enjoyment of the balcony in the winter and that the tenants only used the balcony to store their bike. The agent testified that the tenants never put furniture outside.

The tenants testified that they sent an email to the landlord about the bird poo on February 23, 2022. The February 23, 2022 email was not entered into evidence.

### Landlord's Claim

#### Shower Curtain and Hooks

Both parties agree that at the end of this tenancy the tenant took the landlord's shower curtain and hooks with her. Both parties agree that when advised of same the tenant attempted to return the shower curtain and hooks, but the landlord would not accept them. The landlord testified that she did not want the above items because the relationship between the parties was hostile and she did not wish to have further contact with the tenants. The landlord entered into evidence a receipt for the shower curtain and hooks that were taken by the tenant. The receipt is dated August 30, 2021 in the amount of \$54.31 which the landlord is seeking from the tenants.

#### Paint Repairs

The landlord testified that the walls and paint in the subject rental property were in excellent condition at the start of this tenancy. The landlord testified that the property

was last painted by herself in July or August of 2021. The landlord testified that she had a quote for a person to come in and repair the walls in the amount of \$280.75. The quote was not in the accepted evidence. The landlord testified that she did not hire someone to repair the walls and that she did it herself and that she did not recall how long she spent repairing the walls. The landlord testified that she had to repaint the entire entranceway and a door.

Tenant E.G. testified that she left three to four dime size scuffs from the walls of the subject rental property which is reasonable wear and tear.

The move in condition inspection report states that all walls in subject rental property are in good condition. The move out condition inspection report states the following walls/paint are damaged:

- entry
- main bathroom, and
- front door.

No photographs of the alleged damage were in the landlord's accepted evidence. The tenants did not submit photographs of the interior of the subject rental property at the end of the tenancy.

#### Carpet replacement

The landlord testified that she is seeking \$1,455.47 for the cost of replacing the carpet in the bedroom. The landlord testified that the carpet was in good condition at the start of this tenancy other than a few burn marks in the bedroom carpet. The landlord testified that at the end of the tenancy she rented a steam cleaner and an ozone machine too attempt to clean the carpets and remove the smell but was unsuccessful. The landlord testified that the bedroom carpet needed to be replaced because of the smell and heavy staining between the closet and the bed.

The landlord testified that she did not know how old the carpet was and that it was likely original to the subject for rental property when it was built. The landlord testified that she did not know when the subject rental property was built and that the carpet was in the subject rental property when she purchased it. The landlord entered into evidence a quote in the amount of \$1,455.47 for the replacement of the bedroom carpet. The invoice notes that a deposit of \$750.00 was paid and that an outstanding balance of

\$705.47 is owed. The invoice is dated April 14, 2022. The landlord testified that she continued with the quote and paid the full total of \$1,455.47.

Tenant E.G. testified that the carpets were already stained when she moved in and that the smell was also already present. Tenant E.G. testified that the carpets were old and musty when she moved in.

The move in condition inspection report states that the master bedroom floor is in good condition. The move out condition inspection report states that the floor is stained. Neither party provided evidence such as photographs to support their version of the condition of the Subject rental property on move out.

### Cleaning

The landlord is claiming \$420.00 for the interior cleaning of the subject rental property excluding the windows and blinds. The landlord testified that the tenant did not clean the interior of the subject of the property at the end of this tenancy. The landlord testified that she phoned around and contacted different cleaning companies and they quoted her \$420.00 to clean the subject rental property. The landlord testified that she did not hire a cleaning agency and cleaned the subject property herself. The landlord testified that she does not know how many hours she spent cleaning and that if she had to pull a number out of her head she would say 20 hours of cleaning and painting.

The landlord testified that the following areas were left dirty:

- kitchen cupboard tops,
- kitchen cupboard interiors,
- behind the stove,
- oven,
- bathroom walls,
- fridge, and
- freezer.

The move in condition inspection report states that the kitchen is in good condition and the main bathroom is in good condition. The move out condition inspection report states that the following areas are dirty:

- kitchen cabinets and doors,
- stove/stove top,
- oven,

- exhaust hood and fan,
- fridge door,
- living room trim,
- dining room trim,
- bathroom trim,
- bathroom door,
- master bedroom walls and trim,
- master bedroom floor, and
- master bedroom mirrors.

The landlord testified that the tenant did not clean the windows at the end of the tenancy. The landlord testified that it took her five hours to clean the windows at the subject rental property and the landlord is seeking reimbursement at the rate of \$40 per hour for a total of \$200.00.

The move in condition inspection report states that the windows at the subject rental property are all in good condition. The move out condition inspection report states that windows in the following rooms are dirty:

- living room,
- dining room
- master bedroom, and
- balcony doors.

No photographs of the alleged dirty glass were entered into evidence by the landlord. The tenant entered into evidence photographs of the dirty balcony railings.

The landlord testified that the tenant did not clean the blinds in the subject rental property and that she spent five hours cleaning the blinds and is seeking reimbursement at a rate of \$40.00 per hour for a total of \$200.00.

The move in condition inspection report states that the blinds at the subject rental property are all in good condition. The move out condition inspection report states that the blinds in the following room are dirty:

- living room,
- dining room, and
- master bedroom.



No photographs of the alleged dirty blinds were entered into evidence by the landlord. The tenants entered into evidence photographs of the dirty balcony railings.

Tenant E.G. testified that she cleaned the subject rental property from top to bottom and that she spent over 10 hours cleaning it. The tenant testified that she cleaned all the appliances, the bathroom, the floors, the windows and the blinds. The tenant testified that the only thing that she did not clean was the balcony because she was concerned about the health effects of cleaning bird poo.

No photographs of the interior of the subject rental property were provided by the tenants or the landlords.

#### Bedroom Transition Strip

The landlord testified that she is seeking \$20.00 for the replacement of a transition strip to the bedroom. No receipts were entered into evidence. The landlord testified that the transition strip was original to the subject rental property and that she did not know when the rental property was built. The landlord testified that the transition strip was in good condition at the start of this tenancy and cracked at the end of this tenancy.

The tenant testified that she did not notice any damage to the transition strip during the tenancy. The tenant testified that the landlord did not bring her attention to a broken transition strip during the move out condition inspection.

The move in condition inspection report does not note any damage to the transition strip. The move out condition inspection report does not note any damage to the transition strip. No photographs of the transition strip were entered into evidence.

#### Damaged Bamboo Plants

The landlord testified that two bamboo plants were included in this tenancy and that the tenants neglected the plants leaving them in ill health at the end of the tenancy. The landlord testified that she has removed the ill bamboo plants and is trying to nurse them back to health but they are not doing well.

The landlord testified that bamboo plants are expensive and are valued at \$150.00 per plant. No receipts or quotes for same were entered into evidence. The landlord is seeking the tenants to pay \$300.00 for the damage done to her bamboo plants. They move in and out condition inspection reports are silent on the bamboo plants.

The tenant testified that the plants were alive when she left and that she did not neglect them and watered them as instructed. The tenant testified that no other care instructions were provided.

### Loss of Rental Income

The landlord testified that she is seeking \$2,150.00, one months rent, for loss of rental income for the month of April 2022. The landlord testified that it took her one month to clean up the subject rental property and return it to a rentable state.

The tenant testified that it did not need to take the landlord one month to get subject rental property into a rentable state. The tenant testified that the landlord did not try to rent the subject rental property for April 2022 and that she should not be responsible for the landlord's delay.

## **Analysis**

### Tenants' Claim

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

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

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet

enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 32(1) of the *Act* states:

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

I find that the tenants have not proved, on a balance of probabilities, that they informed the landlord of any loss of use of their balcony due to bird poo until April 1, 2022, the day of the move out condition inspection. In making this finding I note that the tenants did not provide any documentary evidence to prove that they informed the landlord that they had any issue with the bird poo prior to the end of this tenancy. I find that the tenants cannot expect the landlord to rectify a problem they did not make the landlord aware of. I find that in failing to notify the landlord of the bird poo problem, the tenants failed to mitigate their damages, and therefore, pursuant to section 67 of the *Act* and PG #16, the tenants are not entitled to compensation.

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

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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.

Both parties agreed on the contents of the move in condition inspection report. No mention of bird poo was made on the move in condition inspection report. I find that at the start of the tenancy the balcony was clean.

The landlord testified that she was concerned about the subject rental property due to tenants' failure to clean the balcony during the February 2022 condition inspection. I find that while the tenants have proved that there was bird poo on the balcony of the subject rental property, I find that the amount of bird poo seen was likely accumulated over the course of the tenancy and that the tenants had an obligation to keep the balcony reasonably clean during the tenancy and failed to do so. I note that the unit below the subject rental property was free of noticeable amounts of bird poo and would likely be hit just as often as the tenants' balcony. I find, on a balance of probabilities, that the tenants did not regularly clean the balcony which lead to the accumulation of bird poo, contrary to PG #1.

Compensation pursuant to section 51 of the act stems from the issuance of a notice to end tenancy for landlord's use of property. In this case no such notice to end tenancy was served on the tenants and therefore the tenants are not entitled to compensation under section 51 of the *Act*.

I find it likely that the tenants filed for compensation in error under section 51 of the *Act* and so I will consider if the tenants are entitled to a monetary order for the return of \$1,075.00 under section 67 of the *Act*.

I find that the tenants freely agreed to end this tenancy via RTB Form #8 and that in compensation for ending the tenancy early the tenants agreed to pay the landlord 1/2 month's rent. I find that the parties were permitted to so contract and that this contract does not seek to contract out of the *Act*, tenancy agreement or Regulation. As the tenants have not proved that the *Act* tenancy agreement or Regulation were breached, I find that the tenants are not entitled to compensation pursuant to section 67 of the *Act*. The tenants' application for the return of \$1,075.00 is dismissed without leave to reapply.

I note that whether or not the landlord immediately sought to re-rent the subject rental property is not relevant to the above described agreement freely entered into by the parties. The parties are bound by the agreement they made.

As the tenants' were not successful in their application for dispute resolution, I find that the tenants are not entitled to recover the \$100 filing fee from the landlord pursuant to section 72 of the *Act*.

### Landlord's Claim

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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

### Useful life of building elements

Residential Tenancy Guide #40 (PG #40) states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord.

As both parties signed the move in condition inspection report and agreed with its contents, I accept its contents as definitive proof of the condition of the subject rental property on move in.

The parties did not both sign the move out condition inspection report and the contents of the report are disputed by the parties. I do not accept the contents of the move out condition inspection report as definitive proof of the move out condition of the subject rental property. Additional evidence is required to determine the move out condition of the subject rental property.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

### Shower Curtain and Hooks

I find that in failing to accept the return of the shower curtain and hooks from the tenant the landlord failed to mitigate her damages. The landlord would not have suffered loss if she had accepted the return of the shower curtain and hooks. For failure to mitigate her damages the landlord's claim for the cost of shower curtain and hooks is dismissed without leave to reapply.

### Paint Repairs

I find that the walls in the subject rental property were in good condition at the start of this tenancy. The landlord and the tenant provided conflicting evidence on the move out condition of the walls and paint. The tenant testified that the marks were the results of normal wear and tear and that painting was not necessary.

The landlord did not provide documentary evidence such as photographs of the alleged damage to the subject rental property. I find that the Landlord has not proved, on a balance of probabilities, that the damage to the walls was above and beyond reasonable wear and tear as permitted under PG #1. I also find that the landlord has not proved the value of the alleged loss as no estimates were accepted for consideration and the landlord was not able to definitively state how long it took her to repair the alleged damage. For the above reasons the landlord's claim for the cost of painting is dismissed without leave to reapply.

### Carpet replacement

Based on the move in condition inspection report I find that the carpet in the subject rental property was in good condition at the start of this tendency and as agreed by both parties, was stained at the end of this tenancy. The tenant testified that the staining was already present at the start of this tenancy; however, the move in condition inspection report does not note any staining to the bedroom carpet. I find, on a balance of probabilities, that the tenant stained the carpet in the bedroom.

I find that I am not able to complete a useful life calculation regarding the replacement of the carpet because the landlord did not know how old the carpet was. I find that the landlord has not proved on a balance of probabilities that the carpet had any useful life

remaining as the age of the carpet was not provided in the hearing. The landlord's application for recovery of the cost of replacing the carpet is therefore dismissed without leave to reapply for failure to prove the value of her loss.

### Cleaning

The parties provided conflicting evidence regarding the cleanliness of the subject rental property at the end of the tenancy. Neither party provided documentary evidence such as photographs of the subject rental property showing the cleanliness level at the end of the tenancy. I find that the landlord has not met the required burden of proof to prove that the subject rental property, other than the balcony, was left dirty. The Landlords application for the cost of cleaning the subject rental property, the blinds and the windows of the subject rental property are therefore dismissed without leave to reapply.

Based on the testimony of both parties and the photographs entered into evidence I find that the tenants left the balcony and railings covered in bird poop, contrary to section 37 of the act. The landlord did not provide testimony on how long specifically it took her to clean the bird poo on the subject rental property. Nonetheless I find that the landlord has proved, on a balance of probabilities, that she suffered a loss due to the tenant's breach of section 37 of the *Act*.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I award the landlord \$200 in nominal damages for the cleaning of the balcony.

### Bedroom Transition Strip

I find that the landlord has not proved that the transition strip at the subject rental property was damaged at the end of the tenancy as no supporting documentary evidence establishing same was accepted for consideration. The landlord's application for same is therefore dismissed without leave to reapply.



### Damaged Bamboo Plants

I find that the landlord has not proved the value of the alleged loss as no receipts or estimates for the value of the bamboo plants were entered into evidence. I also find that the landlord has not proved that a loss has been suffered as she testified that the bamboo plants are still alive. Pursuant to my above findings I dismiss the landlord's claim for the cost of a new bamboo plants without leave to reapply.

### Loss of Rental Income

I dismiss the landlords claim for loss of rental income in the amount of \$2,150.00 as I have found that the landlord has not proved that the tenants damaged the subject rental property or left it unreasonably unclean, except for the balcony. I find that a dirty balcony is not an unrentable condition. The landlord's claim for loss of rental income is dismissed without leave to reapply.

### Security Deposit and Filing Fee

Pursuant to section 18(1)(b) of the regulation the landlord was required to provide the tenant with a copy of the move out condition inspection report within 15 days of the later of the completion of the move out condition inspection report and the tenants provision of a forwarding address in writing. I find that in providing the tenants with a copy of the report on April 19, 2022, the landlord breached section 18(1)(b) of the Regulation.

I find that the breach of section 18(1)(b) of the Regulation resulted in the extinguishment of the landlord's right to retain the tenant security deposit for damage pursuant to section 36(2)(c) of the *Act*. However, as the landlord's application for dispute resolution also contained a claim for loss of rental income, the landlord was still permitted to retain the security deposit as that claim was not for damage to the subject rental property.

As I have determined that the landlords right to retain the security deposit for damage has been extinguished under section 36(2)(c) of the *Act* I decline to consider if it is extinguished under any other section of the *Act*.

As the landlord was partially successful in the landlord 's application for dispute resolution I find that the landlord is entitled to recover the \$100 filing fee from the tenants pursuant to section 72 of the act.

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

I find that the landlord owes the tenant the following interest on the security deposit as calculated by the Residential Tenancy Branch interest calculator:

2021 \$1075.00: \$0.00 interest owing (0% rate for 16.71% of year)  
2022 \$1075.00: \$0.00 interest owing (0% rate for 100.00% of year)  
2023 \$1075.00: \$6.95 interest owing (1.95% rate for 33.14% of year)

### **Conclusion**

The landlord is entitled to retain \$300.00 from the tenants' security deposit.

I order the landlord to return the remaining \$781.95 (security deposit balance plus interest), to the tenants.

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: May 2, 2023

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Residential Tenancy Branch