



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MND MNDC MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on July 19, 2022, November 24, 2022, and August 31, 2023.

The Landlord and the Tenants were both present at the hearings and provided affirmed testimony. In general, all parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Landlord's application

The Landlord testified that she sent her Notice of Dispute Resolution Proceeding and most of her evidence by registered mail in late 2021/early 2022, well in advance of this hearing. The Landlord include printed documents and evidence on a USB stick. The Tenants confirmed they received this package and were able to view the contents of the USB stick. The Landlord provided registered mail tracking information to show she sent a second package to the Tenants, on June 24, 2022. Although the Tenants stated they did not receive this package until on or around July 11, 2022, I find the Tenants are deemed served with this package 5 days after it was sent, pursuant to section 90 of the Act. The Landlord also sent a 3rd evidence package to the Tenants, by registered mail (tracking number provided) on June 27, 2022. Although the Tenants stated they did not receive it until July 17, 2022, I find the Tenants are deemed served with this package 5 days after it was sent, pursuant to section 90 of the Act. I find the Landlord sufficiently served the Tenants with all of her evidence and documents, as it was all served well in

advance of the evidence deadline under the Rules of Procedure (respondent to receive or deem to have received evidence no later than 14 days before the hearing).

Tenants' application

The Tenants stated they sent 3 packages to the Landlord. The first was their evidence in response to the Landlord's application, which was sent by registered mail on June 7, 2022. Tracking info was provided. Pursuant to section 90 of the Act, I find this package is deemed served to the Landlord 5 days after it was sent. The Landlord received the above noted package. The Tenants sent their second package, by registered mail (tracking number provided) on June 17, 2022 which contained the Notice of Dispute Resolution Proceeding and monetary order worksheet for their cross application. The Landlord confirmed receipt of this package on or around June 24, 2022. The Tenants sent a third package, which contained two USB sticks of evidence (for their claim, and in response to the Landlord's claim) by registered mail on June 23, 2022 (mail tracking info provided). The Landlord acknowledged receiving this package on or around June 25, 2022. I find the Tenants sufficiently served all their evidence and did so within the allowable time frames under the Rules of Procedure.

I note the Landlord took issue with the fact that the Tenants took so long to submit and serve their evidence, since none of the evidence is new. I note Rule 3.11 which states:

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

The Tenants stated that they had to leave the country for a period of time, to return to Ukraine, where one of the Tenants has family. The Tenants stated that this impacted their ability to provide evidence sooner, and to file their application sooner. Although the Tenants could likely have filed their application and served their evidence sooner, I am not satisfied that they unreasonably delayed the service. I accept that the Tenants had significant family obligations and that this would have contributed to the delayed service, and I find the delay is not unreasonable, given the totality of the situation.

I find both parties sufficiently served each other with all documents and evidence for the purposes of this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Tenants

- Are the Tenants entitled to monetary compensation for damage or loss under the Act?
- Are the Tenants entitled to the return of double their security and pet deposit?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on or around July 15, 2021, and ended on at the end of September 2021, which is when the Tenants vacated the property. The Tenants stated they vacated the rental unit on September 30, 2021. However, they did not email the Landlords or inform them of their departure until October 1, 2021. The Tenants paid a security deposit of \$1,047.50 at the start of the tenancy, and this amount was not returned at the end of the tenancy. The Tenants signed a 1 year fixed term lease, ending on July 31, 2022.

Following the end of the tenancy, the Landlord filed an application against the Tenants' security deposit on October 13, 2021. A hearing was held on November 26, 2021, and a decision was rendered on November 30, 2021. As outlined in that decision, there were several issues with respect to service of the documents and evidence, for both parties. A discussion was also held regarding re-applying, and giving both parties a chance to submit further evidence, and file their own applications. At the hearing, the parties agreed to allow the Landlord to retain the security deposit, without penalty, provided they re-apply against their monetary claim against the Tenants' deposit within 15 days of the date of that decision (by December 15, 2021). Subsequently, the Landlord's filed this application against the security deposit on December 13, 2021.

Condition Inspection

The parties agree that the Tenants moved into the rental unit on July 15, 2021. The Landlord explained that they had agreed to meet the Tenants at the rental unit, do the move-in condition inspection on July 15, 2021. However, part way through the inspection, and before the Landlord had completed the inspection report document, the Tenants stated they had to leave to go and pickup their U-Haul truck.

The Tenants stated that the Landlord never finished doing the move-in inspection, and they take issue with the fact that the Landlord came back several days after they had moved in (and after there was an issue with smoke/fire in the unit) and tried to get them to sign the report. The Tenants assert that it is unlawful for the Landlord to insist they conduct and complete the move-in condition inspection report after the tenancy has already started. As such, the Tenants refused to sign the document when the Landlord returned a few days later.

The Landlord explained that no move-out inspection was conducted because the Tenants abandoned the rental unit at the end of September 2021, without any notice, and they indicated they would not be back. The Landlords provided a copy of the email sent by the Tenants on October 1, 2021, confirming this.

The Landlord also provided a copy of a condo inventory document, which lists all of the items that were present at the start of the tenancy. The Landlord stated she indicated whether or not the items were present at the end of the tenancy by way of a check mark, or an x mark. This document is undated, and unsigned. The Tenants stated that they were never shown a copy of this inventory document, and only ever saw it as part of this proceeding.

Tenant's Application

The Tenants are seeking the following items as per their monetary order worksheet:

1) \$130.00 – Fire Report

The Tenants are seeking this amount which was paid to obtain a fire report from the local fire department, following the fire in the rental unit. The Tenants assert that the report shows that the fire alarm was broken.

The Landlord stated that this was a report that the Tenants chose to obtain, and it is not the Landlord's responsibility to pay for this. The Landlord also pointed out that there is a line item in the report that says the alarm was "not activated" but the report is not clear in that it doesn't speak to any other issues that could have led to the alarm not going off. The Landlord also pointed out that even if the alarm had gone off, the outcome would not have been any different because the Tenants were out running errands at the time, and the fire department would have still had to break the door down, and there still would have been smoke damage. The Landlord pointed out that they do the annual fire inspections as is required by the strata.

2) \$5,237.50 – Loss of quiet enjoyment

The Tenants are seeking all of their rent back that they paid for their 2.5 month tenancy for loss of quiet enjoyment.

The Tenants provided a printout of some medical appointments one of the Tenants, AT, had from July 21, 2021, until September 2021, indicating that AT was suffering from anxiety and panic attacks due to alleged issues with her landlord. A couple of prescriptions were provided. The Tenants provided a copy of an email chain in early August, regarding duct cleaning and who was to be present for the work.

The Tenants detailed some of their interactions with the Landlord in an email from July 22, 2021, where they allege the Landlord showed up at their door, in hysteria, demanding copies of keys, and threatening eviction. The Tenants also feel the Landlord threatened them by saying she was going to come and perform an inspection only 2 days later. The Tenants also feel the Landlord pressured them to sign the move-in inspection report a week after the tenancy started. The Tenants assert that the Landlord visited the unit 4 times within the week, and sent numerous emails and text messages.

There are a series of text messages provided by the Tenants speaking to interactions around July 18, 2021. The Tenants also provided a copy of a letter they sent to the Landlord asking her to stop the “harassment” on July 28, 2021. At this time, the Tenants asked for monetary compensation, to communicate with the other Landlord only, and for air conditioners.

The Tenants provided 3 notices of access to the property. The first being on July 21, 2021, to assess fire damage. The second being on August 17, 2021 to oversee duct cleaning. The third being on September 2, 2021, to oversee strata fire inspection. The Tenants provided a recording of the Landlord taking issue with the locks being changed, and that by not providing her a key it may be grounds for eviction.

The Landlord stated that asserts that the Tenant, AT, had a pre-existing anxiety issue given the medical documentation, and it is not her fault the Tenant had a negative reaction. The Landlord also pointed out that the Tenants are the ones who caused the fire, and were potentially liable for large amounts of damage, yet they failed to explain this to the doctor, and make it part of the medical record. The Landlord also notes that we do not have a full copy of the medical records to know whether this was a pre-existing anxiety issue. The Landlord also strictly denies “harassing” and stated that she only went to the rental unit 4-5 times over the entire tenancy, and only to deal with important matters after the fire in the apartment. The Landlord stated that there is no email or text message chain to prove harassment, and the videos provided by the Tenants do not show any harassment, only her asking for certain things to be done (provide new key to lock that the Tenants changed). The Landlord asserts she was always direct and she denies violating the Act.

3) \$2,095.00 – double security deposit

The Tenants are seeking double the security deposit. The Tenants assert that the Landlord failed to apply against their deposit within the allowable time frame, and they also failed to complete a condition inspection report, in writing. The Tenants stated that the day after they moved out, on or around October 2, 2021, they emailed the Landlord with their forwarding address. The email was provided into evidence, as was a response from the Landlord, via email, confirming that she knew of the Tenant’s forwarding address. The Landlord responded to this email on October 5, 2021. The Tenants then updated their forwarding address via email on October 6, 2021, to their USA address.

The Landlord referred me to a previous dispute resolution (noted on the front page of this decision), whereby she filed that application against the deposit on October 13, 2021. That hearing was held on November 26, 2021, and that decision states the following:

Although the Tenants agreed the Landlord may retain the deposits temporarily, in order to re-apply without penalty under section 38(6) of the Act, I do not find the Landlord can retain the deposit indefinitely. I order that the Landlord must re-apply to the RTB, filing a claim against the deposit, within 15 days of the date of this decision(November 30, 2021), or send the security deposit back to the Tenants, in full, at their forwarding address. Failure to do so may be considered a breach of section 38(6) of the Act, which could entitle the Tenants to double the security deposit.

The Landlord filed this application against the deposits on December 13, 2021. The Landlord stated that a move-in inspection was completed but it was not signed by the Tenants, due to a disagreement, and it was also done by video.

4) \$36.54 – Medication costs

The Tenants are seeking to recover the above noted costs because one of the Tenants had to obtain medication to manage the stress and anxiety she felt from dealing with issues from this tenancy. The Tenants pointed to medical documentation detailing visits and prescriptions. The Tenants blame the Landlord for the stress and anxiety and their fear of eviction.

The Landlord does not feel they should have to pay for this item as the Tenant appears to have a pre-existing anxiety issue. Further, the Landlord pointed out that the Tenant has provided an incomplete medical record and had told her doctor an incomplete story to paint the Landlord as the enemy. The Landlord stated that she was always clear and direct with the Tenants, especially following the fire, so it is not her fault the Tenants were stressed out by this as she denies doing anything wrong.

5) \$95.55 mail costs, \$100.00 filing fee, and \$7.48 printing costs

The Tenants are seeking these costs they incurred for preparing their dispute.

The Landlords do not feel they should have to pay this.

Landlord's Application

The Landlord provided a monetary order worksheet specifying the following items:

- 1) \$1,695.75 – Door replacement

The Landlord stated that only two days after the Tenants moved in, they left a pot on the stove, and went out to run errands, which caused nearly caused the apartment to set fire. The Landlord explained that the while the Tenants were out shopping, a significant amount of smoke filled the apartment, and caused the building fire alarms to sound. The Landlord stated that one of the neighbours called the fire department, and they came shortly thereafter and had to break the front door in to gain access to the rental unit. The Landlord stated that the fire department used force to enter the suite, and in doing so, they cracked the door, vertically, broke the lock, and cracked the frame.

The Landlord pointed to photos of the door showing a vertical crack in the door itself, as well as damage to the trim. The Landlord provided a copy of an invoice showing they spent the above noted amount to replace the door. The Landlord stated that the Tenants tried to repair the door, but all their repairs were superficial, and the structural integrity of the door was compromised, and is not repairable. The Landlord provided photos of the door repairs the Tenants did, and it shows a visible crack still present, but that it was patched and painted over.

The Tenants pointed to the fire report they provided into evidence (from Vancouver Fire). This report shows the following:

E13 took stairs to 5th floor.
Report of smoke coming from suite 507.
Forced door, found suite fully charged with smoke.
Found pot on the stove.
Removed pot to balcony and filled with water.
Opened balcony door and windows for ventilation.
E20 set PPV fan for ventilation into stairwell.
Met with owner, advised owner to have smoke detector serviced.
E13 reset pull station.
E20 reset alarm panel and elevators.
No further action required

The Tenants assert the smoke alarm wasn't functioning properly, and never went off when the pot started smoking. The Tenants assert that the damage would have been less if their alarm was working, as the issue could have been addressed sooner. The Tenants also stated that they repaired the door sufficiently, and they hired a handyman

to do the repairs, and replace the lock. The Tenants stated that the door was opening and closing fine when they moved out, and the Tenants' witness corroborated this. The Tenants' witness stated that he mostly just had to "fill the cracks on the door itself, and didn't have to do much else.

2) \$28.52 – Smoke alarm

The Landlord stated that when the firefighters arrived on scene, and after they forcibly gained access to the rental unit, they removed the fire alarm. The Landlord stated I "guess" it was broken, and she stated she is not sure how old the fire alarm is.

The Tenants assert that the smoke alarm was old and not functioning correctly before the incident occurred, and they shouldn't be responsible for replacing it.

3) \$1,874.25 – Painting

The Landlord stated that when the Tenants moved out, there was still a smoke smell in the rental unit, despite lots of cleaning, and portions of the rental unit needed to be repainted in order to cover up the smell. The Landlord pointed to videos she took from July 21, 2021, where she was present with one of the Tenants, talking about the smoke smell, in various parts of the rental unit. The parties had numerous discussions about varying degrees of smoke smell on different surfaces, and the Tenant offered to further clean the surfaces if smells were persistent.

The Landlord stated that they hired a local "master painter", and paid the above noted amount to repaint a portion of the rental unit to rid the walls of smoke smell. The Landlord provided an invoice into evidence, and the invoice lists the GST number of the contractor, as well as the business address. The Landlord stated that the rental unit was last repainted about 2 years ago.

The Tenants assert that the rental unit no longer smelled of smoke when they vacated, and when the Landlord came to the rental unit on September 2, 2021, she didn't mention anything about the smoke smell. The Tenants also question the person the Landlord stated she hired, as when her name is "googled" she comes up as a wellness coach, not a painter. The Tenants noted that there is no itemization of the costs.

The Landlord confirmed that the person they hired is in fact a wellness coach as well, but she has been a painter for 20 years, and she did in fact do the work, despite what

the Tenants are asserting. The Tenants pointed to a portion of their video which shows the Landlord commented on the smoke smell not being as obvious in a portion of the living room wall.

4) \$1,080.80 – Fridge replacement

The Landlord stated that they attended the rental unit on October 2, 2021, 1 day after the Tenants emailed them to say they vacated, and when they attended, they noted that the fridge was not closing properly. The Landlord provided a video of this issue, showing the fridge was not closing and sealing properly. The Landlord stated that she was quoted at least \$131.25 to have an appliance repair technician come to look at the fridge, and then it would likely have been a couple hundred in parts after that. The Landlord asserts that it did not make sense to spend this amount, potentially \$500.00, to simply repair a seal/hinge on this fridge. The Landlord also stated that waiting for parts would have cost rental revenue. The Landlord also stated that they did their best to mitigate the rental loss, so it was much quicker to buy a new fridge, and it only cost about double what a repair may have.

The Landlord pointed to the video taken after the Tenants vacated, and to the invoice showing what they paid for this replacement. The Landlord stated she was unsure as to how old the fridge was, but it “might” have been 6-8 years old. The Landlord provided a photo of the old refrigerator serial number which shows the fridge was from 2011.

The Tenants stated the fridge was already quite old at the start of their tenancy, and was around 12 years old, at least. The Tenants stated that the Landlord even admitted this at the move-in inspection on the first day of the tenancy. The Tenants also stated that the Landlord could have just replaced the seal on the fridge, which would be nominal in comparison to replacing the whole fridge. The Tenants do not feel they should have to pay for the replacement of the entire fridge.

5) \$120.00 – Toilet repair

The Landlord stated that when the Tenants abandoned the rental unit, they left behind a filthy bathroom, and a plugged toilet. The Landlord explained that the Tenants left feces and toilet paper in the toilet, in addition to a plugged toilet. The Landlord stated that when they went to flush the toilet, it backed up, and was blocked. The Landlord stated she hired a plumber to come and fix the blocked toilet, and an invoice for the above noted amount is provided into evidence.

The Landlord also provided a video she took after the Tenants vacated the rental unit, which shows a dirty toilet, and surrounding area, but does not show any toilet paper or solid fecal matter in the toilet. The Landlord also provided an invoice from the plumber showing they attended the unit to unclog the toilet.

The Tenants stated that they a video on September 30, 2021, which was the day they vacated the rental unit. The Tenants do not feel this item is warranted, and pointed to their video to support this.

6) \$223.99 – Office chair

The Landlord provided and pointed to a video taken of the office chair, included as part of the tenancy, at the start of the tenancy. The video shows a couple of small areas where the veneer was delaminating on the back rest, but otherwise it was visibly intact. The Landlord stated that the chair appeared “shredded” at the end of the tenancy, and so she replaced it with a chair of equal quality at the end of the tenancy. The Landlord provided a photo of the chair at the end of the tenancy, along with an invoice for its replacement.

The Tenants stated that they worked from home, and used this chair in a normal fashion for several hours per day. They assert that it was already failing at the start of the tenancy, and the finish on the chair kept disintegrating over the course of the tenancy.

7) \$156.99 – Replace missing art

The Landlord stated that this item is for a missing porcelain bird that was provided to the Tenants at the start of the tenancy as part of their furnished rental. The Landlord stated that she could not find an exact replacement for this item. However, she pointed to a screenshot taken from her video taken on the first day of the tenancy to show the presence of the porcelain bird on the wall. The Landlord also pointed to a screenshot of what she considers a similar bird on Wayfair, which is where she got the above noted replacement cost.

The Tenants assert that when they were in the other room, they heard the bird fall off the wall, and when they came into the room where the bird fell off the wall, they noticed it had broken. The Tenants deny that they ever touched it, and stated it must have been improperly hung. The Tenants also stated that they were able to find an identical

replacement bird online for around \$13.00, and they also pointed out that the price tag on the bottom of the bird that fell off the wall was only \$16.00, as per the photo they took.

8) \$100.00 – Replace various items

The Landlord stated that this amount is replace a variety of items that the Tenants took with them when they moved out of the rental unit. The Landlord reiterated that the rental unit was furnished, with the items noted on the inventory document provided into evidence. The Landlord generally referred to items such as ice cube trays, dishes, and stated that items on the inventory documented denoted with an “x” were missing at the end. The Landlord estimated that it would cost her the above noted amount to replace the missing items. The Landlord did not provide any evidence to breakdown these amounts further.

The Tenants stated that this is the first time they are seeing the inventory report, and this list was never discussed or reviewed at the start of the tenancy. The Tenants deny they took any of the above items.

9) \$14.85 – BC Hydro bill for October 2021

The Landlord is seeking this amount for electricity that was consumed in the rental unit for the month of October 2021. The Landlord stated that the Tenants left suddenly at the end of September, and didn't notify the Landlord until October 1, 2021, that they had left. Following this, the Landlord stated she had to put the electricity under her name for the month of October while they cleaned up and repaired the damages left by the Tenants. Further, they needed the power on to effectively show the rental unit to prospective Tenants. The Landlord stated they were able to find new Tenants effective November 1, 2021, which is why this bill only covers the one month.

The Tenants do not feel they should be responsible for this item because when they left, they closed their hydro account and since this is in the Landlord's name, it should be paid by her.

10) \$300.00 – Cleaning costs

The Landlord explained that they hired cleaners to come and clean the rental unit on October 6, 2021, given the amount of dirt and debris left behind by the Tenants. The

Landlord pointed to the video they took the day after the tenancy ended to show the food in the fridge, the stains on appliances, the dirty toilet and bathroom area, and several other areas. A copy of the Landlord's invoice for this item was provided into evidence, which shows that the cleaning company spent at least 7.5 hours cleaning up the rental unit.

The Tenants pointed to the tenancy agreement addendum to show that there is a term in the agreement that says they will potentially be liable for cleaning, but only up to an amount of \$200.00. The Tenants provided a copy of the term, and it is as follows:

- Tenant(s) agrees that \$200 will be deducted from the damage deposit to hire professional cleaners if they end their tenancy prior to 12 months.

11) \$78.75 – Lock Rekeying

The Landlord is seeking the above noted item because the Tenants failed to return all keys to the rental unit at the end of the tenancy. The Landlord stated that the Tenants left the fobs, and most of the keys on the counter. However, since they left suddenly, and without a chance for the Landlord to come and collect the keys, the Tenants took a set of keys (to the main door) with them so secure the unit when they abandoned it. The Landlord stated that the Tenants mailed the key back a week later, but they needed the locks changed right away to protect the unit and ensure no further damage was caused. A receipt for this item was provided to change the tumbler on the front door lock.

The Tenants stated that they left all the keys on the counter when they left and mailed the remaining key back to the Landlord the same day they left. The Tenants stated that they sent the Landlord's an email informing them of such, so they didn't need to change the lock.

12) \$1,265.00 – Packing and overseeing workers

The Landlord stated that when the Tenants abandoned the rental unit, they left behind many of their belongings, which had to be packed into bags, and moved. The Landlord stated that she owns and operates a professional organizing and moving company and when the Tenants abandoned the unit, along with many of their belongings, she did the work herself and billed this at her corporate rate of \$110.00 per hour for 11 hours. The Landlord explained that this 11.5 hours is comprised of the following:

SERVICES:

Packing date: October 2, 2021, 1:30 pm - 4:30 pm - packing home contents (3 hours)

Work day 1: October 4, 2021, 2 pm - 7 pm - Overseeing cleaners and repairing rental unit - replacing lightbulbs, removing garbage, doing laundry, cleaning, researching fridge, contacting locksmith, contacting strata (5 hours)

Work day 2: October 5, 2021, 11 am - 12 pm - Overseeing locksmith, continuing to take items to the garbage (1 hour)

Work day 3: October 6, 2021, 12 pm - 2:30 pm - Overseeing cleaners and repairing rental unit - replacing lightbulbs, doing laundry, cleaning (2.5 hours)

The Tenants do not feel it is reasonable that they have to pay for the Landlord's hourly rate of \$110.00 and do not feel they should be liable for this item.

13) \$1,815.00 - Hearing preparation and time

14) \$61.62 – Postage costs for hearing

The Landlord stated she is seeking this amount to compensate her for the time (and mail costs) she spent to prepare for this dispute resolution. The Landlord stated she spent at least 16.5 hours compiling and preparing for this hearing, and she is seeking her corporate hourly rate of \$110.00.

The Tenants do not feel they should be liable for the Landlord's time, particularly at her corporate hourly rate, and also given she hasn't fully broken down her time spent.

15) \$2,095.00 – October 2021 rent

The Landlord is seeking compensation for October 2021 rent, in the amount of \$2,095.00. The Landlord explained that the Tenants were under a fixed term tenancy of 1 year, expiring July 31, 2022. The Landlord stated that they had no idea the Tenants were planning on vacating in the manner they did, without advance written Notice on September 30, 2021. The Landlord stated she only became aware that the Tenants had abandoned and vacated the rental unit on October 1, 2021, when she received the email from the Tenants. The Landlord stated that as per the email provided into evidence, the Tenants informed her that as of October 1, 2021, they had vacated the rental unit, and "would not be returning".

The Landlord explained that she immediately re-posted the ad online for rent, as of October 2, 2021, through Facebook for \$2,195.00. The Landlord stated that after not

receiving any responses for a couple days, she immediately reduced the rent to the amount the Tenants were paying, \$2,095.00, and within around a week, the Landlord signed new Tenants, effective November 1, 2021.

The Tenants stated that they moved out with such short notice because it was an “unbearable tenancy”, and they did not feel they had sufficient quiet enjoyment of the unit.

16) \$100.00 – Filing fee

The Landlord is seeking the recovery of her filing fee paid for this application.

Analysis

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

For each of the applications before me, the applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

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

Tenant's Application

The Tenants are seeking the following items as per their monetary order worksheet:

1) \$130.00 – Fire Report

I have reviewed the testimony and evidence on this matter. I find this was predominantly a report that the Tenants voluntarily chose to obtain. I am not satisfied this was a requirement, or that the Landlord ought to be liable for the costs on this matter. I note that the expenses incurred to obtain reports, and prepare the dispute are not recoverable under the *Act*. I decline to award this item.

2) \$5,237.50 – Loss of quiet enjoyment

I have reviewed the testimony and evidence on this matter.

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

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

I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16

(Compensation for Damage or Loss)

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- **Loss of quiet enjoyment;**
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

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

The Residential Tenancy Branch Policy Guideline # 6

(Entitlement to Quiet Enjoyment)

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.

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

I acknowledge that the tenancy was fraught with challenges, from the start. I note the Tenants left a pot on the stove, while they were out running errands, 2 days after they moved in, which caused smoke and other damage. Emergency crews were involved and the rental unit suffered various damages. I find it more likely than not that the bulk of the issues and stress felt by both parties was fuelled and exacerbated by the incident with the fire department and the pot on the stove only two days after the tenancy started. Although the interactions between the Landlord and the Tenants were somewhat intense and hostile in the following days, and weeks, I am not satisfied that the Tenants have sufficiently demonstrated that the Landlord's actions are largely to blame for this. I acknowledge that the Tenants found the interactions with one of the Landlord's stressful. However, I am not satisfied that that it qualifies as "harassment" as alleged. I note the Landlord was also trying to navigate issues resulting from the fire/smoke damage, and I am not satisfied any of this was in bad faith. I am not satisfied that there has been a meaningful or sustained breach of section 28 of the Act. Further, I note the Tenants are seeking 100% of their rent back, which I find is unreasonable, given they were still residing in the rental unit during the material time.

In the case before me, I find the Tenants have failed to sufficiently demonstrate that they should be entitled to compensation on this matter. The Tenant's application is dismissed, without leave to reapply.

3) \$2,095.00 – double security deposit

I have reviewed the testimony and evidence on this matter. Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the Act sets out specific requirements for dealing with a security deposit at the end of a tenancy.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the Act because

extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for cleaning and loss of rent, neither of which are damage.

I find the tenancy ended on September 30, 2021, the day the Tenants abandoned the rental unit. I am satisfied the Landlord received the Tenants' forwarding address no later than October 5, 2021, which was the day she responded to the email containing the Tenants' forwarding address. She applied against the deposit on October 13, 2021, which was within the allowable 15 days. Further, as per the decision on the previous file, the Landlord had 15 days from November 30, 2021, to apply again against the deposits. She applied on December 13, 2021, which was within the timeline ordered. I find the Landlord complied with the orders made and with the timing requirements under section 38 of the Act. I decline to award double the security deposit. The Landlord still holds the original deposit, which will be addressed further, alongside the other claims on this application.

4) \$36.54 – Medication costs

I have reviewed the testimony and evidence on this matter. I accept that one of the Tenants, AT, sought medical attention for anxiety and stress she was suffering from following the fire and following her negative interactions with the Landlord. However, I do not find there is a sufficiently complete medical history to decipher how much of this was pre-existing anxiety and how much was from the fire (which the Tenants caused), and how much was from the Landlord's behaviour. I find the Tenants have failed to sufficiently detail this item and why the Landlord should bear the costs for this, in full. I decline to award this item.

5) \$95.55 mail costs, \$100.00 filing fee, and \$7.48 printing costs

I have reviewed the testimony and evidence on this matter. However, as the *Act* does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the *Act*, I dismiss the Landlord's claim for compensation for time spent preparing for this dispute resolution (or for mail costs), without leave to reapply

Landlord's Application

The Landlord provided a monetary order worksheet specifying the following items:

1) \$1,695.75 – Door replacement

I have reviewed the testimony and evidence on this matter. It is not in dispute that the Tenants left a pot on the stove, with the element on, when they went out running errands. I accept that there may not have been an actual fire, with active flames. However, it is clear that there was a large amount of smoke in the rental unit, such that outside observers believed the apartment was on fire. However, regardless of the fact that there was just smoke, and no fire, I find the Tenants are directly responsible for this incident. The Tenants were not home at the time, and regardless of whether or not there was a functioning smoke alarm in the rental unit (or whether it was offline for some reason) I find it more likely than not that the fire department would have still had to use force to gain access to the rental unit, given the emergent situation and the extreme risk for further damage/harm.

I note this expense was incurred to pay for the replacement and install of the new door only (Tenants paid for the lock). A receipt was provided. I find the Tenants are liable for this item, in full. I accept that the door would have been structurally compromised in a material way, given the large crack visible in the photos. The crack in the door appears structural, and I am not satisfied it would be sufficiently fixed by filling the crack. I award this item, in full.

2) \$28.52 – Smoke alarm

I have reviewed the testimony and evidence on this matter, and I found the Landlord's statements on this matter lacked clarity and were not compelling. She stated she guessed the alarm was broken because of the fire department, and because the Tenants had a fire related incident. However, I find her explanation unclear and I also note the Landlord had no idea how old the smoke alarm was, such that I could be satisfied it still had any useful life expectancy left. The policy guideline provides that fire alarms will likely need replacing at least every 15 years. Ultimately, the Landlord failed to demonstrate that the Tenants are liable for this item.

3) \$1,874.25 – Painting

I have reviewed the testimony and evidence on this matter. There is no dispute that there was a lot of smoke in the rental unit on or around July 17, 2021, which is the day the Tenants left a pot on the stove while they went out running errands. Given the nature of the incident, I am satisfied there would have been enough smoke built up in

the rental unit to infiltrate and permeate the majority of surfaces in, at least, the kitchen and living room area. I note the parties both agree there was residual smoke smell after the date of the incident but the Tenants assert they cleaned up, washed surfaces, and successfully treated the affected areas shortly after the incident took place.

The Landlord does not feel this was sufficiently done, which ultimately led to the need to repaint the affected part of the rental unit. Although proving the existence and persistence of a smell can be difficult, I find it more likely than not that, given the nature of the incident, there could easily have been lingering smoke smells and smoke particulate/residue on wall surfaces. I find this issue was directly caused by the Tenants' accident, and I find they ought to be liable for repainting the affected areas. I note this invoice was not to repaint the entire suite, but only to paint the necessary parts, near the kitchen. I am not compelled by the Tenants' assertion that the invoice is suspect, and that the proprietor may have other businesses which call into question the work that was done.

Given the rental unit had not been repainted for around 2 years, I have utilized *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains, and what is reasonable for compensation amounts. This guideline states as follows:

This guideline is a general guide for determining the useful life of building elements for 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.

[...]

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.

The useful life expectancy for interior painted walls is 4 years. Accordingly, I reduce the amount of the Landlord's claim to 50% of the amount claimed, given the walls were around halfway through their useful life expectancy. I award \$937.13.

4) \$1,080.80 – Fridge replacement

I have reviewed the testimony and evidence on this matter. I note the Policy Guideline #40 estimates that the useful life expectancy for refrigerators is around 15 years under normal use. I note the Landlord has provided a photo of the serial number from the fridge that was needing repair. This photo shows the fridge was manufactured in 2011, which means the fridge was around 10 years old at the end of the tenancy. It appears the main issue with the fridge, at the end of tenancy, was that it had a broken/failing main seal for door. I note this is a plastic component, and without evidence that this fridge was misused, I do not find it would be unreasonable or odd that a component of this nature could fail 2/3 of the way through the overall lifespan of the appliance. Further, I do not find it is reasonable to replace the entire fridge, due to the failure of a door seal, given the repair would have cost much less than the cost to replace the fridge.

I acknowledge that the Landlord felt the costs could have ended up being \$500.00, after paying for parts and labour. However, I am not satisfied the Landlord sufficiently mitigated her loss on this item, as I am not satisfied the fridge required replacement, or that repairs to the door seal weren't economically viable. I dismiss this item, in full.

5) \$120.00 – Toilet repair

I have reviewed the testimony and evidence on this matter. I note the Landlord's video, taken after the Tenants moved out shows a very dirty and poorly maintained toilet area. This is also consistent with the dirt present in the Tenant's video taken the day they moved out. I note the Landlord opined that there was feces in the toilet. However, I find the presence of feces is unclear. In any event, I find the toilet was dirty, and poorly maintained/cleaned by the Tenants.

Neither party provided a video of the toilet flushing (or attempting to). However, I accept that, based on the evidence provided by the Landlord in the form of a plumbing invoice, the toilet was blocked and required servicing, as this is what the plumber indicated he had to remedy. The invoice clearly shows the toilet was needing to be unplugged. I find it more likely than not that the Tenants left the toilet plugged at the end of the tenancy,

and that the Landlord incurred the above noted amount to address this matter. I award this item, in full.

6) \$223.99 – Office chair

I have reviewed the testimony and evidence on this matter. There is no dispute that the chair degraded over the course of the tenancy, as shown by the photo and video evidence from the Landlord. Although there was some damage clearly present at the start of the tenancy, I find the amount of damage on the chair goes beyond what is permissible under section 37 2(a) which indicates that the Tenant may be liable if the damage goes beyond reasonable wear and tear.

I note the tenancy was only a couple of months long, and although the Tenants stated they used the chair to work, almost daily, I find the extent of wear is not reasonable, as the chair was extensively damaged considering the duration of the tenancy. I find the Tenants are liable for some of this damage, due to the breach of section 37(2) of the Act. However, I also note there is no evidence showing how old the chair was, such that I could determine any residual useful life expectancy. Given this, I find a nominal award is appropriate.

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award a nominal award of \$50.00 for the chair.

7) \$156.99 – Replace missing art

I have reviewed the testimony and evidence on this matter. The Tenants do not dispute that the bird fell off the wall when they were in the rental unit, although they deny being responsible for it, or causing it to fall. Regardless of the cause of the broken porcelain bird, I am not satisfied that the Landlord's attempts to locate a replacement bird represents a reasonable attempt at mitigation and I am also not satisfied that the Landlord has sufficiently demonstrated the value of her loss. I note the original price tag was on the item that broke, and it is nowhere near the price of the replacement bird the Landlord found. Further, the birds are markedly different in appearance. In any event, I am not satisfied that seeking the above noted amount for this item qualifies as

reasonable mitigation and the Landlord has not sufficiently demonstrated the value of her loss on this item. I dismiss this item in full.

8) \$100.00 – Replace various items

I have reviewed the testimony and evidence on this matter. I accept that this was a furnished rental, and that the Landlord provided some items as part of the tenancy. However, I find it important to note that there is no evidence showing this inventory list was ever presented, signed, or agreed to, either as part of the move-in inspection or otherwise. I place little weight on the inventory document, as it has not been signed and dated by both parties. Ultimately, the Landlord bears the onus to prove the Tenants are responsible for these items and I find they have failed to meet this test. Further, I am not satisfied the Landlord has sufficiently demonstrated the value of her loss, as there is no corroborating information or explanation as to how this amount was arrived at. For these reasons, I dismiss this item, in full.

9) \$14.85 – BC Hydro bill for October 2021

I have reviewed the testimony and evidence on this matter. I note that the Tenants were under a fixed term tenancy agreement at the time they abandoned the rental unit. Also, the Tenants did not give the Landlord any clear notice, in writing, that they would be moving out, before they actually did at the end of September 2021. Given how the tenancy ended, and given that there was significant cleaning and repairs that were required to prepare the unit for re-rental, I find the Tenants ought to be liable for this item. This amount may not have been incurred, or it may have been substantially lower, had the rental unit been left free of damage, and debris. I award this item, in full.

10) \$300.00 – Cleaning costs

I have reviewed the testimony and evidence on this matter. I acknowledge that the Tenants assert that there is a term in their addendum which limits the amount the Landlord can claim for cleaning, up to \$200.00. However, I do not find this acts as a cap on amounts incurred above and beyond this amount. This item appears to refer to the extra cleaning costs associated with an early end to the tenancy, and additional time/work associated with a premature turnover of the rental unit. I do not find this term means that additional costs cannot be recovered, as it does not specifically address this point. I note the following section of the Act:

Leaving the rental unit at the end of a tenancy

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,

As evidenced in both the video taken by the Tenants at the end of their tenancy, and by the video taken by the Landlord after the Tenants had left, I find there was significant dirt and debris left behind on many different appliances and fixtures. I do not find the rental unit was left in a reasonably clean state. I award this item, in full.

11) \$78.75 – Lock Rekeying

I have reviewed the evidence and testimony on this matter. I note the following portion of the Act:

Leaving the rental unit at the end of a tenancy

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

(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

It is not in dispute that the Tenants left, on the counter in the rental unit, all but one key to the front door. Although the Tenants mailed the key shortly after abandoning the rental unit, I still find this is a breach of section 37 2(b), as they left the rental unit on September 30, 2021, without having given all keys or means of access back to the Landlord. The Tenants chose to mail the keys, rather than deliver them in a more timely manner, and I do not find it is unreasonable for the Landlord to take steps to secure the property by way of a basic lock change on the front door, given the contentious relationship and the apparent damage/issues with the rental unit. This could have been avoided had the Tenants not suddenly abandoned the rental unit, with no advance notice, and if they had taken steps to ensure the keys are returned to the Landlord in a more timely manner that does not involved waiting for mail delivery. I award this item, in full.

12) \$1,265.00 – Packing and overseeing workers

I have reviewed the testimony and evidence on this matter. I note that under section 7 of Act a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Act, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of compensation that is due; and order that the responsible party pay compensation to the other party.

In this case, I find the Tenants failed to leave the unit reasonably clean and free from their belongings at the end of the tenancy, which is a breach of section 37 2(a) of the Act. As a result, I find the Tenants ought to be liable for some of the above noted amounts, particularly the amounts related to cleaning, moving left behind items and replacing lightbulbs. However, I find the Landlord is not entitled to monetary amounts for her time to “oversee” other qualified trades, such as cleaners and locksmiths. I am unclear why supervision of these trades was warranted, particularly at such a substantial hourly rate. I also do not find the Tenants ought to be liable for the Landlord’s corporate hourly rate of \$110.00.

It is not clear, based on the breakdown above, how much time was spent to oversee other tradespeople versus doing actual cleaning, moving, or replacement of light bulbs. This makes it difficult to determine what amount of award the Landlord should reasonably be entitled to.

I note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I award a nominal award of \$200.00.

- 13) \$1,815.00 - Hearing preparation and time
- 14) \$61.62 – Postage costs for hearing

I have reviewed the testimony and evidence on this matter. However, as the Act does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the Act, I dismiss the Landlord's claim for compensation for time she spent preparing for this dispute resolution (or for mail costs), without leave to reapply

15) \$2,095.00 – October 2021 rent

I note the following portion of the Act:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

Tenant's notice

45 (2)A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,

(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I have reviewed the testimony and evidence on this matter. I note the tenancy was fraught with challenges, despite it being relatively short. It appears the seminal issue between the Landlord and the Tenants was the incident where the Tenants left a pot on the stove, unattended, and caused property damage only a couple days after they moved in. Although the Tenants felt the tenancy was unbearable, and they did not have quiet enjoyment of the suite, which is why they left, I am not satisfied the dysfunction between the parties was such that the Tenants had sufficient cause to end the tenancy in the manner they did, abruptly and without advance notice while under a fixed-term tenancy. I am not satisfied the tenancy was frustrated, or that the Tenants' alleged loss of quiet enjoyment was such that their only option was to move, rather than seek dispute resolution and continue the tenancy, or to attempt to come to an agreement with the Landlord to mutually agree to end the tenancy early, prior to the end of the fixed term. I find the tenancy ended when the Tenants vacated and abandoned the rental unit on September 30, 2021. I note the Landlord suffered a loss of rent for this month, given the damage, and the short and unlawful notice. I find the Tenants ought to be liable for this amount, in full. Further, I am satisfied the Landlord sufficiently mitigated her loss on this matter, as she was able to successfully re-rent the unit for the following month. I award \$2,095.00.

16)\$100.00 – Filing fee

Pursuant to section 72 of the Act, I award the Landlord the recovery of the filing fee she paid for this application, given she was mostly successful.

Section 72 of the *Act* also allows me to authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. Interest is payable on the deposits, but only for 2023. The total deposit that is held by the Landlord is \$1,061.12 based on the \$13.62 of interest that is owed on the deposit.

Landlord's application entitles them to:

- \$5,491.48 for the total of the above noted items, plus \$100.00 for the filing fee
- Subtotal: \$5,591.48
- Less: 1,061.12
- Total: \$4,530.36

The Landlord is entitled to the following monetary order for this amount, \$4,530.36.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of \$4,530.36. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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

Dated: September 13, 2023

Residential Tenancy Branch