Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDCL-S, FFL
MNETC, RPP, FFT

Introduction

Five hearings were held with the parties and four interim decisions were issued. For the sake of brevity, I will not repeat here the matters covered in those interim decisions. As a result, the interim decisions must be read in conjunction with this decision

The parties submitted a large volume of documentary evidence, and they, their agents, and their witnesses provided a large amount of oral testimony and submissions at the hearings. I therefore advise the parties that this decision is not a full record of the proceedings, or the evidence and testimony provided for my consideration, nor is it intended to be. It is a summary of only the most relevant and determinative facts and evidence before me on the matters to be decided, and an explanation of what I decided and why.

As only MA.B. is listed as a landlord in the tenancy agreement, and MA.B. stated that they are the owner of the rental unit, only MA.B. will be named as the Landlord. MO.B. was removed as a named applicant as only tenants and landlords have rights and obligations under the Act, and MO.B. is neither in relation to this tenancy. In this decision Landlord will therefore refer only to MA.B.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent or utilities?

Is the Landlord entitled to compensation for damage caused by the Tenant, their pets, or their guests?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to compensation in the amount of 12 times their rent under section 51(2) of the Act because the tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) and the unit has not been used for the stated purpose?

Is the Tenant entitled to the return of personal property or compensation for its replacement?

Who is entitled to retention or return of the security and pet damage deposit?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

A total of five hearings were held over a period of more than 10 hours between March 28, 2023, and December 4, 2023. The parties submitted an exceptionally large volume of evidence. 229 files were uploaded for my consideration. These files were comprised of 428 pages of documentary evidence, such as photographs, statements, and reports, and 13 videos. These numbers do not include documents excluded from consideration, if any, or those determined to be duplicate files by the dispute management system. I have therefore done my best to succinctly summarized below the positions and evidence of the parties, their agents, and their witnesses.

There was no dispute that a tenancy existed between the Landlord and the Tenant, or that the Act applies. The parties also agreed that the tenancy ended on August 31, 2022, due to a Two Month Notice issued under section 49(3) of the Act, because MO.B., who is the Landlord's daughter, was allegedly planning to occupy the rental unit.

However, there was significant disagreement between the parties and their witnesses about:

- whether the rental unit was used after the end of the tenancy for the purpose set out in the Two Month Notice;
- whether the Tenant owes outstanding utilities, and if so, the amount owed;
- whether the rental unit was left reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear;
- whether items rented to the Tenant under the tenancy agreement were removed and retained by the Tenant after the end of the tenancy;
- whether the Landlord retained a painting belonging to the Tenant after the end of the tenancy, which has not been returned; and
- who is entitled to the security deposit.

The parties provided a significant amount of affirmed and opposed testimony in relation to the above, with each vehemently denying the allegations against them from one another. The parties also focussed a large amount of hearing time on attacking each other's character and credibility, as well as the credibility of documentary evidence and witness testimony. The Landlord, MO.B., and the Tenant had to be cautioned throughout the various hearings about their behaviour and tone, and reminded to behave appropriately and respectfully to one another and myself during the proceedings.

The parties disputed whether condition inspections were properly scheduled and completed at the start and end of the tenancy. The Landlord argued that they were, and

the Tenant argued that they were not. The Landlord and MO.B. argued that the Tenant damaged the rental unit, which was provided to them in excellent condition, and failed to leave it reasonably clean at the end of the tenancy, or to replace the burnt-out lightbulbs. The Landlord therefore sought $8,175.00 for damage, and the cost of cleaning the unit and replacing the lightbulbs. The Landlord also sought $990.88 for the cost of inspectors they state that they were “forced” to hire due to flood damage in the rental unit and to conduct an inspection at the end of the tenancy.

The Landlord stated that they scheduled a licensed home inspector to attend the rental unit at 1:00 PM on August 31, 2022, the end date for the tenancy, and that when the inspector arrived, the Tenant and their cleaners were still in the rental unit. Below is a list of items allegedly damaged:

- the porcelain cooktop;
- blinds;
- newly installed garburator;
- walls;
- baseboard heaters;
- wood shelf;
- a sprinkler head;
- floors and trim;
- interior and closet doors;
- hallway mirror;
- leather couch and chairs;
- glass coffee table;
- shower head;
- sliding door to the balcony;
- balcony and balcony frame; and
- bathtub soap holder.

The Landlord also stated that the following items rented to the Tenant as part of the rental unit were missing:

- a fridge shelf;
- bedroom curtains;
- 3 laundry room shelves;
- Two art prints; and
- a desk and chair.

The Landlord accused the Tenant of installing a countertop in the “living room/kitchen” without permission, causing damage to the wall and floor, and stated that the superficial repairs completed by the Tenant to the damaged wall were insufficient. The Landlord stated that the Tenant also installed an AC unit without permission, causing damage to

the sliding door tracks from glue, as well as damage to the frame and floor of the balcony. The Landlord stated that as the AC unit leaked, it also caused damage to the rental unit and another unit below.

The Tenant denied causing damage to the rental unit, other than cracking the soap holder in the combined shower and bathtub. Although the Tenant acknowledged having an AC unit that caused minor water damage to another strata unit, they stated that it caused no damage to the rental unit as the water dripped off a hose extending off the balcony, ran down the exterior of the building and then leaked into the other unit via the sliding glass door. The Tenant stated that as a result, there was no water damage to the rental unit as alleged, and that they amicably resolved the matter with the owner of the affected unit. The Tenant accused the Landlord of failing to complete routine maintenance and repairs to the rental unit over an extended period of time, and then refurbishing the rental unit for the purpose of sale and fraudulently attempting to pass those costs along to them.

The Tenant accused the Landlord of submitting doctored photographs of the rental unit from a time prior to their tenancy. The Tenant stated that the Landlord printed out a series of photographs from a photo gallery, covered the date of the photographs/gallery with a piece of paper, then wrote in their own date. The Tenant stated that the Landlord knew the photographs were not taken during their tenancy, and wanted to mislead me. Although the Tenant acknowledged that their movers took the Landlord's curtains in error, and stated that they emailed the Landlord to advise them of this and arrange for their return, but the Landlord never responded. A copy of this email was submitted.

The Tenant denied failing to leave the rental unit reasonably clean at the end of the tenancy, stating that they hired two cleaners to clean the rental unit for a total of five hours. The Tenant stated that they also hired a professional home inspector to complete an inspection, and that they received a detailed report, which they have submitted for my consideration.

The parties agreed that the Tenant still owes $70.00 in unpaid hydro bills, and that they provided a forwarding address in writing after the end of the tenancy. The Tenant stated that it was sent to the Landlord by registered mail on February 7, 2023, and the Landlord acknowledged receipt a few days later.

MO.B. stated that they began moving their possessions into the rental unit the first week of September 2022, and that renovations and repairs to the rental unit were then ongoing for approximately 1.5 – 2 months. Quotes and invoices were submitted in support of this. During that time MO.B. stated that they were going back and forth between the rental unit and their mother's home, until they moved into the unit full time. First, they stated that they moved into the unit full-time in September, but they later changed their testimony stating that it was the middle of October 2022. MO.B. stated that they still reside in the rental unit. MO.B. and the Landlord pointed to several witness statements in support of their position that the rental unit was used for the required

purpose both within a reasonable period after the effective date of the Two Month Notice, which was August 31, 2022, and for at least six months duration thereafter. Although MO.B. stated that they had submitted confirmation from the strata regarding their elevator booking, they could not point me to that document in the evidence before me, I was unable to locate it myself, and the Tenant denied its receipt and existence.

The Tenant called J.J. as a witness. J.J. stated that they are a licensed private investigator and are authorized to provide limited scope legal advice and services under the law society of BC's innovation sandbox initiative. J.J. stated that they were initially hired by the Landlord to assist them with matters related to this tenancy, such as the conduct of a condition inspection associated with an alleged flood, and service of the associated notice(s) of entry. J.J. stated that while the Landlord was at their office, they overheard a conversation between the Landlord and a person identifying themselves as a doorman for the building in which the rental unit is located. During this conversation they heard the Landlord direct the doorman to disconnect the fobs that give the Tenant access to the building and mailbox. J.J. stated that this was very concerning, as there was an ongoing tenancy. As a result, they cautioned the Landlord about the potential consequences of those actions and advised them not to proceed with them. J.J. stated that this caused strain on their business relationship, and as a result, they sent another employee of theirs, M.R. to conduct the condition inspection.

J.J. stated that the condition inspection revealed that the rental unit was in immaculate condition with no water damage and no other damage beyond reasonable wear and tear. They stated that the Landlord was displeased with the condition inspection report, as they wanted the report to reflect water damage, uncleanliness, evidence that the rental unit was being used as an AirBnB, and statements that the Tenant was being uncooperative. J.J. stated that this could not be reflected in the report, as there was no visible water damage or evidence of an AirBnB during the inspection, the rental unit was clean, and the Tenant had not been uncooperative. J.J. stated that the Landlord also misunderstood the purpose and scope of a condition inspection under the Act, and were perhaps looking for something more akin to a home inspection for the sale of the property, which is a service they do not provide.

J.J. stated that because of the Landlord's displeasure with the outcome of the condition inspection provided, they refused to pay the invoice, resulting in the need for a hearing at the Civil Resolution Tribunal (CRT), where the Landlord was ultimately ordered to pay for the services rendered. J.J. stated that during preparation for the CRT hearing, they also investigated whether MO.B. had moved into the rental unit, as the Landlord had made statements to both them and their employee M.R. that they wanted to evict the Tenant because of a previous unfavorable decision from the Branch where an arbitrator agreed with the Tenant that the monthly rent amount had been permanently reduced. J.J. stated that during these conversations, Landlord stated that after evicting the Tenant they would leave the rental unit vacant, move in themselves, or move in their daughter MO.B. J.J. stated that during their investigation they discovered evidence that MO.B. had not moved into the unit, such as photos and video's of MO.B. teaching yoga

abroad during the six month period during which they were supposed to be occupying the rental unit.

The Landlords called J.J.'s credibility into question, accusing them of forging Landlord's signature on the retainer agreement. They also alleged that J.J. was hired by the Tenant, and therefore lacking in impartiality. J.J. denied both allegations, stating that the Tenant has simply asked them to appear as a witness.

During a brief break where the teleconference was still being recorded, the Landlord and MO.B. called one of their intended witnesses on speaker phone, apparently unaware that they had not muted themselves and could be heard. MO.B. could be heard speaking with the landlord's former realtor M.M. MO.B. stated "all we need you to say", followed by a list of things they wanted their witness to corroborate, such as the untidiness of the rental unit and the Tenant's refusal to schedule or allow showings, which they stated were the reason the unit did not sell. M.M. could be heard repeatedly advising the Landlord and MO.B. that they could not corroborate those things as they are inaccurate and asking if they really thought their testimony would be helpful to their case.

M.M. was ultimately called by the Landlord as a witness and provided affirmed testimony. M.M. stated that the rental unit was not unclean during showings but was obviously lived in, as it was tenanted. They stated that the Tenant was cooperative with showings and that the rental unit was ultimately unlisted because it received no offers, likely because there were more updated units with better view and a better price for sale in the building. They also stated that because the unit was listed during the COVID moratorium on evictions, the unit was only marketable to an investor who did not want to immediately occupy it.

The parties both submitted evidence of the state of the rental unit at the end of the tenancy to support their respective positions, such as photographs, videos, reports, quotes, and receipts.

Analysis

Although I have considered all documentary evidence, testimony, and submissions in making this decision, I have referred only to the relevant and determinative facts, evidence, and issues in this analysis.

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

Is the Landlord entitled to recovery of unpaid rent or utilities?

As the parties agreed that the Tenant owes $70.00 for unpaid hydro bills, I grant the Landlord $70.00 under sections 7 and 67 of the Act.

Although the Landlord sought recovery of registered mailing costs and a filing fee, these costs are associated with a previously filed Application for Dispute Resolution (Application) that was heard and decided by another arbitrator. Had the Landlord wished to seek recovery of those costs, they needed to have done so as part of the related Application. In any event, the matter of the filing fee was addressed by the arbitrator in that decision, and the landlord was awarded its recovery via withholding $100.00 from the security deposit. The matter of the filing fee therefore cannot be re-heard or re-decided by me in this Application. I therefore dismiss both these claims without leave to reapply.

Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant, their pets, or their guests?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying party must:

- compensate the other party for any damage or loss that results; and
- do whatever is reasonable to minimize the damage or loss.

Section 32(3) of the Act states that a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted in the unit by the tenant.

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

The parties provided opposing testimony and evidence about whether the rental unit was left reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear. For the following reasons, I find the Tenant's documentary evidence and testimony, and the testimony of their witness J.J. more compelling and reliable in this regard.

Although the Landlord submitted photographs of the rental unit allegedly taken at the end of the tenancy, many of them are black and white and of poor quality. They also overwhelmingly lack date stamps, and I find the Landlord's handwritten dates insufficient. The Tenant called this evidence into question, stating that the Landlord was intentionally misrepresenting old photographs of the rental unit as being photographs taken at the end of their tenancy. Further to this, the excerpts of what the Landlord called a professional inspection report, were incomplete, and of poor quality. Some of them were blurry, many of them had sections cut-off, and there was no indication when

the document from which the excerpts were taken was authored, or by whom. These excerpts were also mixed-in by the Landlord with their own evidence and photographs, making it impossible to follow and to distinguish what sections comprised the report.

In contrast the Tenant submitted many high-quality photographs of the rental unit at the end of the tenancy, as well as date stamps showing when they were taken. The state of the rental unit shown in these photographs aligns with not only the Tenant's testimony, but the testimony provided by their witness J.J. and the Landlord's witness M.M. Further to this, the Tenant submitted a detailed 35-page report from I Find It Inspections Inc. The report was authored by M.O. and their CPBC number is listed on the report. The report also states that the inspection occurred on August 31, 2022, at 1:00 pm on behalf of the Tenant and provides the rental unit address. The report is extremely detailed, containing photographs, a summary of testing done and the related results, and comprehensive comments and assessments on the state of the rental unit and the functionality of appliances.

The report overwhelmingly supports the testimony of the Tenant, their witness J.J. and the Landlord's witness M.M. It demonstrates to my satisfaction that the rental unit was left reasonably clean and undamaged by the Tenant at the end of the tenancy, except for things that may reasonably constitute wear and tear or be the result of long-term lack of maintenance or repair, such as a leaky shower head, and the broken soap holder. I also find it important to note that the photographs of the rental unit shown in the report are markedly different from those submitted by the Landlord, lending significant weight to the Tenant's testimony that the Landlord's photographs are not only inaccurate, but were intentionally submitted to mislead me.

As a result of the above, I therefore dismiss the Landlord's claim for cleaning costs and all repairs except for the broken soap holder. Although the soap holder is included as part of a $250.00 charge on a repair invoice, the replacement of a shower head and light bulbs are also included. As no itemized breakdown was given, I therefore award the Landlord only $100.00 for its replacement, which I deem to be a reasonable amount.

While I accept that the Tenant's movers mistakenly took curtains and an art print from the rental unit, emails exchanged between the parties shortly after the end of the tenancy satisfy me that the Tenant attempted to arrange their return. At the hearing, the Tenant stated that the Landlord never responded. I therefore find that the Landlord failed to mitigate their losses in relation to the curtains and art print by not responding to the Tenant's offer for their return. As a result, I dismiss their claim for replacement costs for these items without leave to reapply. I do not accept that any other items belonging to the Landlord were taken from the rental unit as there is insufficient evidence from the Landlord to substantiate this.

Is the Landlord entitled to compensation for monetary loss or other money owed?

Although the Landlord argued that they were “forced” to hire several agents to complete inspections, I am not satisfied that this is the case. J.J.’s testimony satisfies me that the Landlord chose to hire them to complete obligations under the Act in relation to the tenancy on their behalf, such as serving a notice of entry and completing an inspection of the rental unit under sections 29 and 32 of the Act. Nothing before me from the Landlord satisfies me that they were “forced” to do this by the Tenant or the Tenant’s actions, as alleged. Further to this, landlords cannot hire agents to complete the obligations incumbent upon them under the Act or a tenancy agreement and then seek to recover those costs from the tenant. I therefore dismiss the Landlord’s claim for recovery of cost associated with hiring J.J. and their employee M.R. without leave to reapply.

I also dismiss their claim for recovery of costs incurred to hire a “professional” home inspector due to alleged damage to the rental unit caused by the Tenant. I have already found above that except for the soap holder, I am not satisfied that the Tenant caused any damage to the rental unit. As a result, I find that the Tenant bears no responsibility for this cost. Further to this, I am not even satisfied that a “professional” home inspection was completed on behalf of the Landlord on August 31, 2022, as claimed. Although excerpts from something that may or may not be a home inspection report were submitted by the Landlord, no complete report was provided for my consideration. The excerpts submitted were also often blurry, incomplete, and partially cut-off, and contained no information about who the report was from, what their qualifications are, or when it was completed. The only other evidence submitted was a screen shot of an email from “Inspect Building Consultants Inc.” dated August 31, 2022, thanking the Landlord for a payment of $393.75. Although there is a link shown to access the full invoice, a copy was not provided for my consideration. Neither was a complete copy of a report, or any proof of what services were provided and paid for, or when.

For the above reasons I dismiss the Landlord’s claim for recovery of $990.88 cents paid for inspectors without leave to reapply.

Is the tenant entitled to compensation in the amount of 12 times their rent under section 51(2) of the Act because the tenancy ended because of a Two Month Notice to End Tenancy for Landlord’s Use of Property (Two Month Notice) and the unit was not used for the stated purpose?

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, the landlord must pay the tenant an amount that is equal to 12 times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant is entitled to the compensation sought funder section 51(2) of the Act or the reasons set out below.

A previous arbitrator found that $2,200.00 in rent was due under the tenancy agreement each month. The parties agreed that the tenancy ended due to a Two Month Notice issued by the Landlord so that their daughter MO.B. could occupy the unit. Based on the documentary evidence before me and the testimony of the parties, I am satisfied that the tenancy ended on the effective date of the Two Month Notice, August 31, 2022.

The parties provided contradictory evidence and testimony regarding whether MO.B. ever occupied the rental unit as required. Overall, I found MO.B.'s testimony in this regard inconsistent. MO.B's testimony during the hearing about when they moved into the rental unit full-time was inconsistent. MO.B. provided inconsistent testimony about when they began occupying the rental unit full-time, and the renovation timelines mentioned during the hearings do not align with either of the occupancy timelines provided by MO.B.

There was also a significant and concerning lack of the type of documentary evidence normally presented to show occupancy of a property, such as:

- renter's or homeowner's insurance documents in their name for the property;
- vehicle registration documents listing the property as their address;
- utility bills in their name for the property;
- a copy of government issued identification listing the property as their address;
- copies of mail sent to them at the property address from places such as banks or other financial institutions;
- moving invoices; or
- date stamped photographs or videos of them and their possessions in the property during the required period.

Although MO.B. stated that proof from the strata regarding their move-in elevator booking was submitted for my consideration, they could not point me to where it could be found in their own documentary evidence, I could not locate any such document myself in the evidence before me, and the Tenant denied both the existence and receipt of such a document. While the lack of the above noted evidence normally presented in these circumstances is not determinative on its own, it is nevertheless concerning to me, given the following:

- the testimony of J.J. and the Tenant;
- MO.B.'s acknowledgement that they were abroad in December of 2022;
- the documentary evidence submitted by the Tenant showing that MO.B. was working as a yoga instructor abroad during at least some of the six-month occupancy period required by the Act; and
- the fact that the only documentary evidence submitted to corroborate MA.B. and MO.B.'s testimony that MO.B. moved into the rental unit, were several emails from friends stating either their belief that the rental unit is MO.B.'s residence, or

acknowledging that they brought things to the unit for MO.B., or met them outside the building.

Neither MO.B.'s testimony nor the witness statements submitted on their behalf were compelling or persuasive regarding whether MO.B. occupied the rental unit as required. MO.B's testimony was contradictory and the documentary evidence submitted to corroborate it sparse. The sparse evidence submitted was also lacking in detail and credibility, as the emails were brief and appear to have been authored many months after the events, they allege to support. The emails were also unsigned, and nothing to corroborate the identities of the witnesses was submitted.

In contrast, both the Tenant and their witness J.J., provided consistent and uncontradictory testimony under affirmation that MO.B. never occupied the rental unit for residential purposes both within a reasonable period after the effective date of the Two Month Notice and for at least six months duration thereafter. At the hearing on November 9, 2023, J.J. stated that they are a licensed private investigator and a person permitted by the law society of BC's innovation sandbox initiative to provide limited scope legal advice and services. As there is no evidence before me to the contrary, I accept this as fact. J.J. provided affirmed testimony that the Landlord told both them and their employee M.R. that they wanted to evict the Tenant and that they may leave the rental unit vacant. They also stated that they investigated whether MO.B. had moved into the rental unit, and determined that they had not. Further to this, the Tenant provided significant documentary evidence showing that MO.B. has lived and worked abroad for an extended period of time, is employed by a company in Vienna, and was teaching yoga in Vienna within the six-month period immediately following the end of the tenancy.

Although MO.B. stated that their work with the company abroad is remote, evidence to corroborate this was not submitted. MO.B. also acknowledged teaching yoga in Vienna in December of 2022. Although they stated that they were on vacation, and invited to teach there by a friend while visiting, no documentary or other evidence was submitted to corroborate this, such as plane tickets showing their departure and return, copies of travel insurance documents, or statements from the yoga studio about how long they were there to teach for and why. As a result, and given my findings above on MO.B.'s credibility and lack of evidence proving occupancy of the rental unit, I am not persuaded that this is accurate.

Based on the above, I find it more likely than not that MO.B. did not occupy the rental unit for residential purposes either within a reasonable period after the effective date of the Two Month Notice, or for at least six-months duration thereafter. No evidence was provided that the Landlord should be exempted from owing compensation under section 51(2) of the Act due to extenuating circumstances, as provided for under section 51(3) of the Act. Further to this, none of the documentary evidence or testimony before substantiates that an exemption would be warranted, regardless of whether one was requested by the Landlord. I therefore find that section 51(3) of the Act does not apply.

I find that the Tenant is entitled to $26,400.00 under section 51(2) of the Act. This amount represents 12 times the amount of rent payable each month at the end of the tenancy, which a previous arbitrator already found to be $2,200.00.

Is the Tenant entitled to the return of personal property or compensation for its replacement?

Although the Tenant argued that the Landlord stole a painting from them, nothing before me from the Tenant satisfies me on a balance of probabilities that this is the case. First, the Landlord denied stealing the painting. Second, I do not find proof that the painting was purchased and in the rental unit at or near the end of the tenancy, and an allegation to the Landlord over email about its theft compelling evidence that it was stolen, or by whom. The Tenant's evidence is simply insufficient to satisfy me that the painting was stolen by the Landlord.

I therefore dismiss their claim for the return of the painting or reimbursement for its cost without leave to reapply.

Who is entitled to retention or return of the security and pet damage deposit?

I am satisfied by the tenancy agreement and Applications that the Landlord was originally paid a $1,250.00 security deposit and a $300.00 pet damage deposit. The Landlord was previously authorized by the Branch to withhold $100.00 from the security deposit for recovery of a filing fee. No evidence was presented that any other amounts were authorized to be withheld or returned to the Tenant. I therefore find that the Landlord currently holds $1,478.85 of the Tenant's deposits in trust, broken down as follows:

- $1,150.00 for the remaining balance of the initial security deposit paid, plus $22.88 in interest; and
- $300.00 for the initial pet damage deposit paid, plus $5.97 in interest owed.

I am satisfied by the testimony of the parties, and the Tenant's documentary evidence, that their forwarding address was sent to the Landlord by registered mail on February 7, 2023, and subsequently received by the Landlord. As the Landlord could not recall the exact date of receipt, I deem it received five days later, on February 12, 2023, pursuant to section 90(a) of the Act.

The tenancy ended on August 31, 2022, I have deemed the Landlord served with the Tenant's forwarding address in writing on February 12, 2023, and the Landlord filed their Application seeking retention of both deposits on September 26, 2022. This Application contained claims of various types including but not limited to physical damage. I therefore find that the Landlord complied with section 38(1) of the Act regarding the security deposit, and that the doubling provision set out under section 38(6) of the Act does not apply, regardless of whether the Landlord extinguished their

right to claim against it for physical damage under either section 24(2) or 36(2) of the Act.

However, I do not make the same finding in relation to the pet damage deposit. Pursuant to section 1 of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #31, pet damage deposits may only be claimed against in an Application for Dispute Resolution for pet damage. From the Landlord's Application, evidence, and testimony I am not sure what pet damage, if any, they are claiming for. As a result, I find that they were not entitled to retain it pending the outcome of their Application and were required to return it to the Tenant, along with any interest owed, by February 27, 2023. As they did not do so, I find that the Tenant is entitled to $605.97 for double its amount, plus $5.97 in interest owed on the base deposit amount, pursuant to section 38(6) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the following amounts from the Tenant's security deposit and interest:

- $70.00 for the agreed upon overdue hydro bill amount; and
- $100.00 for the broken soap holder.

I order the Landlord to return the remaining balance of $1,002.88 to the Tenant

Are the parties entitled to recovery of their respective filing fees?

As the vast majority of the Landlord's claims were dismissed without leave to reapply, I decline to grant them recovery of their filing fee.

As the majority of the Tenant's claims were granted, I award them recovery of one $100.00 filing fee, pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain $170.00 from the Tenant's security deposit for recovery of the agreed upon overdue hydro bill amount and damage to the soap holder. The remainder of the Landlord's claims are dismissed without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenant a $28,108.85 Monetary Order for the following things:

- $26,400.00 in compensation under section 51(2) of the Act;
- $1,608.85 for the return of their deposits and interest; and
- $100.00 for recovery of one filing fee.

The remainder of the Tenant's claims are dismissed without leave to reapply.

The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this

Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

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

Dated: January 4, 2024

Residential Tenancy Branch