

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlord attended the hearing for the Landlord.

The Tenant attended the hearing for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

### **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

## Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that:

- this tenancy began on May 15, 2019
- monthly rent of \$1770.36 was due on the first day of each month
- the Tenant paid a security deposit of \$850.00

Both parties agreed that in a previous dispute resolution proceeding the Landlord was awarded an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause. The Decision in which the Order of Possession was granted is dated December 29, 2022. The file number for the previous dispute is located on the cover page of this decision.

The Landlord testified that a bailiff attended at the subject rental property to return possession to the Landlord on January 10, 2023. The Landlord testified that the Tenant attended at the property when the bailiff arrived and that they still had some possessions in the subject rental property. The Tenant testified that they moved out on January 4, 2023 and nothing was left in the unit on January 10, 2023.

Both parties agreed that they completed a joint move in condition inspection report on May 10, 2019. The move in condition inspection report was signed by both parties and was entered into evidence.

The Tenant testified that they gave the Landlord their forwarding address on January 12, 2023 via email. The Landlord testified that he received the forwarding address soon after it was sent. The Landlord filed this application for dispute resolution on January 23, 2023.

The Landlord entered into evidence a move out condition inspection report dated January 12, 2023 that is not signed by the Tenant. The Landlord testified that given how the tenancy ended and the extreme bad feelings, the Tenant was not asked to attend for a move out condition inspection report.

The Landlord testified that the Tenant damaged the subject rental property. The Landlord is seeking the following damages from the tenants:

Item	Amount
Repair door jams and windowsills	\$270.00
Replace blinds	\$886.31
Clean carpets	\$190.00
Replace cracked window	\$420.99

Replace stove	\$495.00
Clean underneath fridge and stove	\$75.00
Repair walls in kitchen	\$100.00
Repair and replace screens	\$375.00
Replace wall plugs	\$5.00
Repair wall in entrance and stair area	\$250.00
Repair fireplace	\$175.84
Replace garage door opener	\$61.60
Replace garage light fixture	\$175.00
Damages for overholding	\$1,071.08

### Repair door jams and windowsills

The landlord testified that the master bedroom and kitchen door jams in the subject rental property were in good condition at the start of this tenancy and were left scratched at the end of the tenancy. The move in condition inspection report does not note any damage to the kitchen and master bedroom door jams. The move out inspection report states that they are scratched. The landlord entered into evidence photographs taken at the end of the tenancy which show significant scratch marks on the master bedroom and kitchen door jams showing that the paint was scratched off.

The landlord testified that he had to sand and repaint the door jams. The landlord testified that he is seeking \$75.00 per door jam. The landlord did not submit a calculation on how the claim of \$75.00 was arrived at but testified that the sum includes compensation for the time and materials it took to refinish each door jam and for the time it took him to drive from a neighbouring city where he lives to the subject rental property to complete the repairs. The landlord testified that it took him roughly one hour per door jam to complete the repairs. The landlord testified that he does not know the last time the door jams were painted.

The tenant testified that she does not agree that she caused any damage to the door jams. The tenant testified that there were chip marks on the door jams throughout the property on move in. The tenant testified that she has children and implied the marks were reasonable wear and tear. The tenant testified that the paint on the door jams was chipping off due to age.

The tenant testified that in regard to the kitchen door jam, the blinds to the door were closed when she completed the walk through, and she did not check the condition of the door jams at that time.

The landlord testified that the windowsills were in good condition at the start of the tenancy and were scratched at the end of the tenancy. Photographs of the scratches were entered into evidence. The landlord testified that he is seeking \$120.00 for the time and labour it took to sand and re-paint the windowsills in the living room. The landlord testified that he does not know when the windowsills were last painted.

The tenant testified that the windowsills were in horrible condition on move in and had not been recently painted. The tenant questioned when the last time the windowsills were painted.

The move in condition inspection report does not note any damage to the living room windows and screens. The move out condition inspection report states that the bay windows are scratched.

#### Replace blinds

The landlord testified that the tenant damaged all of the blinds in the subject rental property and so they all had to be replaced. Photographs of damaged blinds were entered into evidence. The landlord testified that he purchased the subject rental property in 2003 and the blinds were in the unit at that time. The landlord testified that the subject rental property was building 1993. The landlord entered into evidence receipts for new blinds totalling \$886.31.

The tenant testified that the blinds were already cracked and broken on move in.

#### Clean carpets

The landlord testified that the tenant did not clean the carpets at the end of this tenancy. The landlord testified that he did not have the carpet cleaned, but instead ripped out the carpet and installed laminate instead. The landlord testified that he is seeking \$190.00 for what it would have cost to have the carpets cleaned. No receipts or estimate were entered into evidence.

The tenant testified that the carpets were old on move in.

#### Replace cracked window

The landlord testified that in bedroom #2 the tenant cracked a window. The landlord testified that it cost him \$420.99 to replace the cracked window. No receipts were entered into evidence. The Landlord testified that he purchased the property in 2003 and does not recall if the window in question was replaced since he purchased the property or if it was original to the building built in 1993.

The tenant testified that the window was cracked on move in. The move in condition inspection report does not note any damage to the windows in bedroom #2, the move out condition inspection report states that the window is cracked.

#### Replace stove

The landlord testified that the tenant damaged the handle of the stove. The landlord testified that he does not know how old the stove was at the end of the tenancy. The landlord testified that the stove was not reparable, and he replaced it with a stove he

had in his garage that he purchased at auction. The landlord testified that he does not know the age of the stove he replaced the broken one with. The landlord testified that he is seeking \$495.00 for the replacement of the stove which is what he estimates the average charge of changing the stove to be. No receipts or estimates were entered into evidence.

The tenant testified that the stove was old on move in and that the handle was placed so lightly in the bracket it fell out. The tenant testified that the handle could have been broken by herself or her daughter but the stove was old on move in.

#### Clean underneath fridge and stove

The landlord testified that the tenant did not clean underneath the fridge and stove at the end of this tenancy. Photographs of same were entered into evidence. The landlord testified that he cleaned these areas and is seeking \$75.00 for this cleaning. The landlord testified that the fridge and stove were on rollers. The landlord testified that it took approximately one hour to clean.

The tenant testified that the fridge and stove were not on rollers and she was not able to safely pull the stove and fridge out to clean underneath them. Rollers cannot be seen in the photographs entered into evidence by the landlord.

#### Repair walls in kitchen

The landlord testified that the tenant scratched the walls in the kitchen. The landlord testified that the walls required repainting. The landlord testified that he re-painted the walls and is seeking \$100.00 for the cost of paint and his labour. No receipts were entered into evidence. The landlord testified that he has had a number of tenants and does not recall when the property was last painted.

The tenant testified that the mark on the kitchen wall was from her kitchen table chair rubbing on the wall. The tenant testified that a magic eraser would have taken it off.

#### Repair and replace screens

The landlord testified that the patio screen in the kitchen was damaged by the tenant. A photograph of same was entered into evidence. The landlord testified that he is seeking \$175.00 for its replacement which is his best guess as to what it would cost to replace. No receipts or evidence were entered into evidence. The landlord testified that he does not know the age of the screen at the end of the tenancy as he does not know if the prior owner replaced them.

The tenant testified that the screen had holes in it on move in. The move in condition inspection report does not note any damage to the windows and screens. The move out condition inspection report shows that something was written pertaining to the screen and windows but it is illegible.

### Damaged wall plugs

The landlord testified that the tenant damaged two plug coverings which he replaced. The landlord entered into evidence photographs of two broken plug coverings. The landlord testified that he is seeking \$2.50 per plug covering. No receipts or estimates were entered into evidence. The landlord did not testify as to the age of the plug coverings.

The tenant testified that the plug coverings were cracked on move in. The move in condition inspection report does not note any damage to the plug coverings. The move out condition inspection report states that a plug covering in the kitchen and living room were damaged.

### Repair walls in entrance and stair area

The landlord testified that the walls in the entrance and stair area were in good condition at the start of this tenancy and that at the end of the tenancy in the entrance hallway there was an area 1 foot square where it appeared someone had tried to repair damage to the wall by mudding it. The landlord testified that the had to sand it down and apply two coats of paint. The landlord is seeking \$150.00 for this work and supplies. No breakdown of costs was entered into evidence.

The landlord testified that there was another area at the top of the stairs approximately 9-10 inches square that looked like someone had attempted another drywall repair. The landlord testified that that the had to sand it down and apply two coats of paint. The landlord is seeking \$150.00 for this work and supplies. No breakdown of costs were entered into evidence.

The move in condition inspection report does not note any damage to the above described walls. The move out condition inspection report states that there is a muddled area at the top of the stairs and between the bedrooms. The landlord entered into evidence photographs of two muddled areas.

The tenant testified that at the end of the hallway a picture fell causing damage to the wall and her boyfriend mudded and sanded the area. The tenant testified that above the stairs the paint was already chipping on move in. The tenant testified that the landlord told her numerous times during the tenancy that it needed to be repainted. The tenant testified that there was no hole at the top of the stairs.

### Repair fireplace

The landlord testified that the fireplace was in good condition at the start of this tenancy and one of the panes of glass on the left side was broken at the end of the tenancy. The landlord testified that he paid \$175.84 to replace the glass. The landlord entered into

evidence a quote for same. The move in condition inspection report does not note any damage to the fireplace.

The tenant testified that the glass on the left side of the fireplace was broken on move in and later the glass fell and shattered. The tenant testified that the landlord was verbally told of the problem.

#### Replace garage door opener

Both parties agree that the tenant returned the keys to the rental property to the bailiff on January 10, 2023. The landlord testified that the garage door opener was not returned at this time so he purchased a new garage door opener which cost \$61.60. A receipt for same was entered into evidence.

The tenant testified that she left the garage door opener in the garage. The landlord testified that he couldn't say if this were so just that it wasn't returned with the keys and he did not immediately find the garage door opener so he ordered a new one.

#### Replace garage light fixture

The landlord testified that the tenant removed the light fixture that was installed in the garage and replaced it with her own. The landlord testified that at the end of the tenancy the tenant took her light fixture with her and did not reinstall the original light fixture. The landlord testified that he did not see the original light fixture so he purchased a new one for \$175.00. The landlord testified that he did not submit the receipt into evidence. The landlord testified that he later found the original light fixture but didn't know if it still worked. The landlord testified that it was easier for him to purchase a new light fixture and have it installed. The landlord testified that he has no idea how old the light fixture in the garage is.

The tenant testified that the landlord did not need to buy a new light fixture as she left the original one in the garage.

#### Damages for overholding

Both parties agree that the tenant did not pay any money for rent or use and occupancy for any time in January 2023.

The Tenancy Agreement entered into evidence states:

Overholding: If the tenant remains in possession, contrary to this agreement or unlawfully, then the landlord may claim from the tenant over holding compensation of \$50 per day plus pro rata rent.

The landlord testified that he is seeking to collect from the tenant pro-rated rent for use and occupancy from January 1-10, 2023 in the amount of \$571.08 and \$50.00 per day for that same period as per the Tenancy Agreement above.

The tenant testified that the Order of Possession was for December 29, 2022 and that she applied for Review Consideration of that Decision which was dismissed on January 3, 2023. The tenant testified that she emailed the landlord on January 4, 2023 informing him that she wanted to move out by the end of the weekend (Sunday January 6, 2023). The tenant testified that her friend was at the rental property on January 10, 2023 removing garbage from the rental property and her friend informed her that the bailiff was there. Both parties agree that the keys to the subject rental property were given to the bailiff on January 10, 2023.

The January 4, 2023 e-mail was entered into evidence and states:

We have pretty much everything out. I'm planning on being completely out of the house by the weekend!

The landlord testified that he did not have possession of the rental property until January 10, 2023 and is entitled to compensation from January 1-10, 2023.

The tenant testified that she did not want to pay the landlord any rent for January 2023 and that since she was mostly moved out by January 4, 2023 she should not have to pay for 10 days of January 2023.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

### **Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other presented evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it. As the landlord did not provide the tenant with an opportunity to complete a move out condition inspection report contrary to section 35 of the *Act* I will not rely on the move out condition inspection report, but will rely on the other evidence presented by the parties.



Section 67 of the *Act* states:

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

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

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

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

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

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

#### Useful life of building elements

Residential Tenancy Guide #40 (PG #40) provides a guide for determining the useful life of building elements for determining the quantum of damages. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. When applied to damages caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

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

#### Sand and repaint door jams and window sills

Based on the move in condition inspection report and the photographs entered into evidence by the landlord from the end of the tenancy, I find that the living room windowsills, master bedroom and kitchen door jams were in good condition at the start of this tenancy and were damaged at the end of the tenancy. I find that the marks on the door jams and window sills appear to be scratch marks that do not resemble regular wear and tear. I find, on a balance of probabilities, that the tenant or a person or animal permitted on the property by the tenant caused the damage. I thus find that the tenant breached section 37(2)(a) of the *Act*.

The landlord testified that he is seeking \$75.00 for each door jam and \$120.00 the living room window sills for his labour, supplies and driving time. I find that the landlord is not entitled to recover his travel costs as the landlord elected to have a rental property in a different city than he resides, and he chose to complete the work himself. I find that it would be unreasonable for the tenant to be liable for the landlord's travel costs.

The landlord did not provide a breakdown of his hourly rate, the cost of materials, or the proportion of costs attributed to driving versus completing the repair work. The landlord also did not know when the door jams or window sills were last painted. The useful life for interior paint is four years. I find that the landlord has not proved that there was any life left on the paint of this unit and has thus not proved the value of the loss he suffered. I find that the landlord is therefore not entitled to recover costs for painting the door jams or windowsills.

Based on the photographs I find that the damage caused by the tenant and or those permitted on the property by her resulted in the need for the landlord to sand the door jams and windowsills before repainting them as paint had been scratched off. I find that even if the useful life of the paint had expired, the landlord would not likely have had to sand the door jams and windowsills had the tenant or person or animal permitted on the property not scratched them.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the landlord has proved that the tenant breached section 37(2)(a) of the *Act* but has not proved the value of that loss. In accordance with Residential Tenancy Policy Guideline #16, I award the landlord nominal damages totalling \$75.00 for the sanding the landlord had to do before painting the door jams and windowsills.

### Replace blinds

Residential Tenancy Policy Guideline #40 states that the useful life of blinds is 10 years. I find that at the end of the tenancy the blinds were at least 19 years old and were beyond their useful life. I therefore find that the landlord is not entitled to damages for their replacement.

### Clean carpets

Based on the testimony of the landlord I find that the landlord did not have the carpets cleaned at the end of the tenancy. The landlord therefore did not suffer a loss for carpet cleaning and is not entitled to damages for a loss that was not suffered. This claim is dismissed without leave to reapply.

### Replace cracked window

The landlord testified that he does not know if the window in question was replaced since he purchased the property. Residential Tenancy Policy Guideline #40 states that the useful life of windows is 15 years. I find that the landlord has failed to prove that the window was less than 15 years old. I therefore find that the landlord is not entitled to damages for the window's replacement.

I also note that the landlord failed to prove the value of the alleged loss as no receipts were entered into evidence.

### Replace stove

Residential Tenancy Policy Guideline #40 states that the useful life of a stove is 15 years. I find that the landlord has not proved, on a balance of probabilities, that the stove was less than 15 years old at the end of the tenancy. As the landlord has not proved that there was any useful life left on the stove, I find that the landlord has not proved that a monetary loss was suffered when it was replaced. This claim is therefore dismissed without leave to reapply. I also note that the landlord failed to prove the value of the alleged loss as no receipts were entered into evidence.

### Clean underneath fridge and stove

Residential Tenancy Policy Guideline #1 states that if an appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

The parties provided conflicting testimony on the presence of rollers. I find that the evidence presented does not clarify the issue. The burden of proof rests with the landlord. I find that the landlord has not proved, on a balance of probabilities, that the appliances were on rollers or were safe for the tenant to move. I therefore dismiss the landlord's claim for cleaning under the appliances.

### Repair walls in kitchen

Residential Tenancy Policy Guideline #40 states that the useful life of interior paint is 4 years. I find that the landlord has not proved, on a balance of probabilities, that the paint in the subject rental property was less than four years old as the landlord does not recall the last time it was painted. I find that the landlord is not entitled to damages for painting as the landlord has not proved that there was any useful life left on the paint in this unit.

### Repair and replace screens

Residential Tenancy Policy Guideline #40 states that if a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table. Residential Tenancy Policy Guideline #40 does not provide a useful life for screens but states that blinds have a useful life of 10 years. I find that as blinds and screens are both types of window coverings, they likely have a similar useful life.

The landlord testified that he does not know if the previous owner changed the screens. I therefore find, on a balance of probabilities, that the screens the landlord is alleging were damaged were in the subject rental property when he purchased it in 2003. I therefore find that at the end of the tenancy they were at least 19 years old. I find that the screens did not have any useful life left in them at the end of the tenancy and the landlord is therefore not entitled to damages for their replacement.

### Damaged wall plugs

I find that the landlord has not proved the value of the loss claimed as no receipts for same were entered into evidence. This claim is therefore dismissed without leave to reapply. I find that the landlord has also not proved that there was any useful life left on the wall plugs as the landlord did not provide testimony regarding their age.

### Repair walls in entrance and stair area

Based on the landlord's testimony and the move in condition inspection report, I find that the entryway walls and the wall at the top of the stairs were in good condition at the start of this tenancy and had been mudded over at the end of this tenancy. I accept the landlord's testimony that the walls required sanding and repainting. I find that in leaving mudded areas that required sanding at the end of the tenancy, the tenant breached section 37(2) of the Act.

As stated earlier in this decision, the landlord is not entitled to the costs for repainting as the landlord has not proved that there was any useful life left on the paint of this unit. The landlord did not provide a breakdown of how he arrived at the sum of \$150.00 per damaged area. I find that it is not possible to determine the amount attributable to sanding alone. I find that the landlord has therefore not proved the value of his claim. Nonetheless I find that the landlord has proved that a loss was suffered due to the

tenant's breach of the Act. I award the landlord nominal damages of \$25.00 per area requiring sanding for a total of \$50.00.

#### Repair fireplace

Based on the move in condition inspection report I find that the fireplace was undamaged on move in. Based on the testimony of both parties and the photograph entered into evidence I find that the fireplace was damaged on move out contrary to section 37(2)(a) of the Act. I find that since the fireplace was repaired rather than replaced, a useful life calculation is not necessary as the repair is not likely to increase the useful life of the fireplace itself but will return it to its pre-damage state.

I find that the landlord has proved the value of his loss by way of the quote for \$175.84 which the landlord testified he paid. I accept this testimony. I award the landlord \$175.84 for the repair to the fireplace.

#### Replace garage door opener

Section 37(2)(b) of the Act states that when a tenant vacates a rental unit, the tenant must 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.

I find that at the end of this tenancy, the tenant returned the keys to the landlord by way of the bailiff, but not the garage door opener. I find that it is unreasonable to expect the landlord to hunt through the subject rental property looking for an item that he was not directed to.

I find that in not returning the garage door opener to the landlord or the bailiff at the end of this tenancy, the tenant breached section 37(2)(b) of the Act. I find that leaving the garage door opener in the garage without informing the landlord of its presence does not meet the requirements of section 37(2)(b) of the Act. I find that the landlord has proved that he suffered a loss of \$61.60 as a result of the tenant's above breach of the Act as set out in the receipt for same. I award the landlord \$61.60.

#### Replace garage light fixture

I find that the landlord has not proved the value of his alleged loss as no receipts for same were entered into evidence. I am also not satisfied that there was any useful life left in the garage light fixture as the landlord had no idea how old the light fixture that was replaced was. I also find that the landlord failed to mitigate his damages by checking the original light fixture to see if it worked rather than purchasing a new. For all of my above reasons, I dismiss the landlord's claim for the cost of a new light fixture, without leave to reapply.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?**

Damages for overholding

I find that the tenant overheld the rental property from January 1 -10, 2023. I find that the tenant did not return possession to the subject rental property until January 10, 2023 when a bailiff attended at the rental property and the tenant or the tenant's friend turned the keys over to the landlord.

I find that tenant had not fully vacated the rental property until January 10, 2023. I find that the presence of the tenant's friend at the property removing garbage on January 10, 2023 is supportive of this finding. If the tenant had fully vacated the rental property before January 10, 2023 no garbage would remain. I also note that since the tenant had the keys to the rental property until January 10, 2023, the tenant maintained possession even if most or all of her belongings were not longer in the unit.

Residential Tenancy Policy Guideline #3 (PG #3) states that if a tenant continues to occupy the rental unit after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the *RTA*. This includes compensation for the use and occupancy of the unit or site on a *per diem* basis until the landlord recovers possession of the premises.

In accordance with PG #3 and section 57(3) of the Act, I find that the landlord is entitled to per diem compensation for the period of January 1-10, 2023 for over holding as per the following calculation:

$$\begin{aligned} \$1,770.36 \text{ (rent)} / 31 \text{ (days in January)} &= \$57.10 * 10 \text{ (days of tenant possession} \\ &\text{in January)} = \mathbf{\$571.00} \end{aligned}$$

Residential Tenancy Policy Guideline #16 (PG #16) states that 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.

I find that the landlord is not entitled to recover the \$50.00 per day compensation described in the tenancy agreement in addition to the per diem amount awarded above because such an award would put the Landlord in a better position than had the tenant not overheld. As set out in PG #16 the purpose of compensation is to put the person who suffered damage in the same position as if the damage had not occurred. I therefore dismiss the landlord's claim for \$50.00 per day for January 1-10, 2023 without leave to reapply.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$1,033.44** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	\$362.44
a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$571.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,033.44</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: January 30, 2024

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Residential Tenancy Branch