Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: MNDL-S, MNDCL-S, FFL
For the tenants: MNSD, MNDCT, FFT

Introduction

This was a cross application hearing that dealt with the landlords' application pursuant to the *Residential Tenancy Act (*the *Act)* for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- an authorization to retain the tenants' security deposit under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- an order for the landlord to return the security and pet damage deposit (the deposits) pursuant to section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the June 02, August 07 and September 21, 2020 hearings. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were assisted by counsel GG. Witness NN for the tenants also attended all the hearings.

This decision should be read together with interim decisions dated June 14 and August 14, 2020.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials) for both applications. Based on the

testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Are the landlords entitled to:

1. a monetary award for compensation for damages caused by the tenants?
2. an authorization to recover the filing fee for this application?

The landlords applied for compensation for damage related to the septic system and the correlated expenses of repairing the irrigation system and soil replacement (items 1 to 6, 11 and 14 in the monetary order worksheet dated June 01, 2020), drywall repairs (item 7), loss of rental income (item 9), cleaning (item 12) and hardwood floor repairs (item 13). The total amount the landlords are seeking is $29,245.00.

Are the tenants entitled to:

1. an order for the landlords to return double the deposits?
2. an authorization to recover the filing fee for this application?

The tenants applied for the return of double the deposits and compensation for expenses related to two expert reports (items 2 and 4 in the monetary order worksheet dated June 10, 2020) and attorney fees (item 3). The amount the tenants are seeking is $4,944.05 (considering only the value of the deposits held by the landlords, not double).

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their applications.

I note the three hearings extended for 293 minutes, approximately 60 documents were entered into evidence for both applications and one of them contains approximately 100 pages.

Both parties agreed the periodic tenancy started on December 01, 2017 and ended on January 31, 2020. Monthly rent was $2,100.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $925.00 and a pet

damage deposit of $925.00. The landlords still hold the $1,850.00 in trust. A copy of the tenancy agreement was submitted into evidence. The two-page addendum states the tenants are responsible for the upkeep of the front and south yards.

The parties also agreed the tenants' forwarding address was received by the landlord in writing on February 01, 2020. The landlords application was submitted on January 31, 2020 and the tenants application was submitted on June 08, 2020.

Both parties also agreed the rental unit is the upper floor of two-unit rental property and it has 3 bedrooms and 1.5 bathrooms. The landlord explained the lower unit has 1 bedroom and 1 bathroom and it was built in 2010 without a permit, but in accordance with the building code. A copy of the 2020 notice of property tax assessment was submitted into evidence indicating the rental property was built in 1983 and it contained at the time 4 bedrooms and 3 bathrooms.

The landlord affirmed the tenants were negligent with the rental unit and caused damage to the septic system, water damage to the drywall of the ceiling of the lower unit and damage to the hardwood floor. The tenants repeatedly flushed wipes in the toilet during the tenancy.

The landlord submitted into evidence a septic service history chart indicating that until November 2017 the septic system was functioning perfectly. On January 31, 2018 the first emergency pump service was performed. During the tenancy a total of 6 services were performed in the septic system.

The landlord also submitted into evidence photographs showing wipes that were removed during the septic system services on January 31, 2018 and November 20, 2019 and photographs of the wipes box found in the upper tenant bathroom of the same brand of wipes found in the septic system. The photographs of the wipes box in the tenants' bathroom were taken on November 20, 2019 during an inspection. The landlord said there are several wipe brands on the market and the wipes found in the septic system are identical to the wipes photographed in the tenants' bathroom. A wipe pattern comparison document containing several photographs comparing the wipes patterns was submitted into evidence.

The landlord claims the tenant repeatedly flushed wipes in the toilet and this caused the septic system to fail. The landlord submitted a 3-page written statement from the tenants that says: "January 31,2018: He [the landlord] reminds us that no foreign

objects are to be flushed down the toilet. We were all aware of this as we lived for 5 years at previous house on septic with no issues".

The lower tenant swore an affidavit on December 20, 2019 (submitted into evidence) stating she and the other occupant of the lower unit never flushed a wipe and that since December 2017 she has seen empty boxes of baby wipes in the upstairs tenants recycling bin. The lower tenant also stated:

> Due to the fact that one of the upstairs tenant's runs a nail/spray – tanning/microblading business out of one of the bedrooms upstairs, there is an unreasonable amount (minimum of 1-2 loads a day) of laundry that is being done on a daily basis. That coupled with the fact that several of her clients appear to shower on the premises created a huge strain on the septic system, which causes our toilet to back up, especially in the winter, even when the septic was functioning properly. We have verbally informed the landlord of this issue and as well wrote a formal complaint dated June 25, 2019.

The landlord also submitted into evidence a 17-page document with several quotations about the dangers of flushing wipes and that one single wipe may clog a septic system.

On November 26, 2019 the landlord served a one month notice to end tenancy for cause to the tenants because the tenants were repeatedly flushing wipes. The tenants applied to cancel this notice (the file number is on the cover page of this decision). However, they were unsuccessful, and an order of possession effective on January 31, 2020 was issued. The landlord emphasized parts of the previous arbitration decision dated January 27, 2020:

> Notwithstanding the tenants' arguments that baby wipes could not and did not harm or do damage to the septic system, I find the landlord submitted sufficient evidence to support they did do damage or harm to the system.
> In reaching this conclusion, I relied on the statements provided by a professional engineer and construction manager from a sewage solutions company, submitted into evidence by the landlord. The professionals here state that wipes can cause a blockage, resulting in a back-up, wrap around a filter and cause pre-mature plugging of "effluent filter". They also said in their opinion, wipes that do not break down are the number one cause of septic tank blockages.
> The landlord also submitted proof, that when dealing with repairs to the septic system due to the complaints by the lower tenants, the repair companies found wipes in the system, in January 2018 and again in November 2019.
> I also find the landlord submitted sufficient evidence to prove that the tenants flushed these wipes in the toilet. While tenant AB said she had never flushed a wipe, the

> tenants' position changed during the hearing. The later testimony of the tenants disagreed that only 2 wipes would not be enough to cause damage but did not deny flushing them.
> […]
> Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant or a person permitted on the residential property by the tenants have put the landlord's property at significant risk.

The tenants affirmed they denied flushing wipes in the toilet during the prior arbitration hearing and continue to deny this. However, the tenants do not deny that 2 wipes were found in the septic tank that serves both rental units and claim the 2 wipes did not cause any damage to the septic system.

The landlord submitted the following invoices related to the septic system (the numbers below are the same ones in the landlords' monetary order worksheet):

1. January 31, 2018, in the amount of $1,303.05. It states baby wipes were found in the tank and recommends field cleaning;
2. March 21, 2018, in the amount of $672.00. It states: "D-box was full of liquid and lid had cracks through and broke upon placing it back down; heavy sand and sediment in all lines" and it recommends: "regular maintenance".
3. January 20, 2019, in the amount of $241.50. It states: "Suspect field was overloaded during recent heavy rains" and it recommends: "Further work to upgrade/replace field if problem persists".
4. November 20, 2019, in the amount of $433.13. It states: "pumped out 650 galloons, high tank levels. Owner not at home suggest getting in touch with owner so he can get a tech to check it".
5. December 06, 2019, in the amount of $616.88. It states: "Run back from field. Recommendations: Field investigation".
6. December 19, 2019, in the amount of $18,973.50. This amount is for the service explained on the quote dated December 12, 2019 for option 2, which includes:
    - Install new 1000 L Gal plastic 2 chamber septic tank with a second effluent filter
    - Polylok risers and lids to surface on the new plastic septic tank.
    - Septic tank retention time will meet today's standards. Field portion will remain a repair

11. Irrigation quote dated February 02, 2020 in the amount of $630.00, for irrigation and landscaping repairs in the backyard needed as a consequence of the December 19, 2019 service.
14. Typed quote in the amount of $ 1,038.44 for soil replacement needed as consequence of the December 2019 service.

The landlord stated the soil replacement service has not been completed yet due to Covid19 pandemic and the garden where the septic tank was located was of exclusive usage of the upper tenant.

On February 16, 2019 the tenant received an email from the landlord about the septic services and water usage:

> I've gotten the report back from the septic company and after inspecting the system they've found that everything is working properly however it is not able to process the large amounts of water being used. […] This is the second time since you've moved in that we've had the lower suites plumbing start to overflow and had to service the system due to overuse.
> This overuse is reflected in water bills as well. Since December 2017, water usage has increased 33% when compared to the previous year.
> […]
> We will cover the septic system service charges as well as the water bill overages incurred tot his date, however, any charges going forward due to your negligence will be your responsibility as state above.

The landlord explained that the septic system service charges mentioned in the above referenced emails is the item 1 in the landlords' monetary order worksheet. At the time the landlords were not sure if the tenants were responsible for the septic system issues, so they decided to cover this cost. However, as the septic system continued to have issues and the landlords learned the tenant were flushing wipes they decided to charge for the septic system service referenced in item 1.

The tenants affirmed the cause of the septic system failure (which served both rental units, home to 5 tenants), is that it was overloaded and past its life expectancy.

The tenants affirmed the invoices (items 1 to 6) submitted by the landlord indicate that the septic system services pumped out as much as 850 gallons, but the tank only holds 600 gallons. Invoice 2 indicates there were heavy sand and sediment in all lines. Invoice 3 indicates once again the septic system was overloaded. Thus, the septic system was overloaded. Furthermore, between March 2018 and January 2019 the landlord failed to monitor the septic system and maintain it.

The tenants also claim the wipes the landlords claim that were found in the tank could not have damaged the septic tank.

The tenant affirmed, in accordance with Residential Tenancy Branch Policy Guideline 40, a septic system has a useful life of 20 years and the rental unit's system was installed 35 years before the tenancy started.

The tenants stated the landlords informed them on December 08, 2019 that the septic system will be repaired and upgraded, thus the landlords asked the tenants to refrain from using the back yard and reduce the water consumption for the next days.

The Condition Inspection Report (the report), signed by both parties in the move in and move out inspection, was submitted into evidence.

Regarding the services referred in documents 11 and 14, the tenants argued that both the irrigation and landscaping and the soil replacement services are related to the septic system upgrade performed in December 2019. The report does not mention any damage to the landscaping and the landlord failed to mitigate their losses. The landlord agreed these services are directly related to the septic system and that is why the necessity for these services is not mentioned in the report.

Tenant's witness NN stated:

- He has worked in the septic industry for 30 years;
- The original septic system was installed in 1982 and it was built for a 3 bedroom home;
- The wipes found in the septic tank did not damage the system, which failed only because of its age and the extra usage due to the suite added in 2010;

In response to the landlord's questioning, NN agreed he is not a certified septic system inspector. The landlord argues that NN never attended the rental unit and he assumed the rental unit has more bedrooms than what it does. Because of these reasons NN's testimony should not be considered.

In cross-examination the landlord stated once again that the wipes found in the septic system are responsibility of the tenants and the problems with the septic system only started when the tenants moved in.

The landlord pointed to an article brought into evidence by the tenants that says: "I've seen a septic drainfield [SIC], a large one in good soil with a well maintained septic tank, last for more than 50 years." The landlord affirmed that he never needed to replace the septic system in his other rental units.

The landlord stated on February 19, 2019 the tenants clogged the toilet and the drywall in the lower suite had to be replaced. A verbal quote for this service was obtained in the amount of $892.50 (item 7 in the landlords' monetary order worksheet). The typed quote states: "10ft2 of ½ Inch Drywall removed, replaced, mudded, taped, sanded, primed and painted 10ft2 x $85 / ft2 = $850 x 5% = $892.50".

This service has not been completed as the lower suite is tenanted. 3 photographs showing the drywall damage in the lower suite was also submitted.

The tenant affirmed the damage caused to the lower unit drywall was a small incident with water overflowing only in the bathroom and the quote brought by the landlord is not accurate. Further to that, the landlord failed to mitigate his losses because the incident happened in September 19, 2019 and the repair has yet to be completed. Nevertheless, the tenant consents to pay $50.00 for the repairs needed.

The landlord is claiming for one month of loss of rental income (item 9) in the amount of $2,100.00. The landlord did not advertise the rental unit before the tenancy ended on January 31, 2020 because the tenant disputed the one month notice to end tenancy, and the landlord did not know what condition the unit would be returned. The landlord started advertising the rental unit on February 03, 2020 and was able to sign a new tenancy agreement on February 21, 2020 for a tenancy starting on March 01, 2020. The tenant affirmed the landlord failed to submit any evidence of efforts to re-rent the unit.

The landlords spent $60.00 to clean the rental unit and submitted an invoice (item 12). The tenants agreed to pay this amount.

The landlord submitted 7 photographs showing damage to the hardwood floor along with a floor repair quote in the amount of $1,258.32 (item 13). The landlord affirmed there was no damage to the floor when the tenancy started and when the tenancy ended there were scratches in the living room, in the third bedroom and on the stairwell. The repairs have not been conducted as the rental unit is occupied. The landlord stated some of the damage may have been caused by water and/or pets and the treads and landings in the stairwell were damaged when the tenancy ended.

The report states the living room floor was in good condition when the tenancy started, and damaged with chips and scratches when it ended. The extra bedroom floor is also marked as damaged when the tenancy ended with scratches. The report also states: "Chips and scratch LR Floor, damage to stair tread and post, […], scratch in wood floor closet 2nd bedroom".

The landlord explained the damage to the hardwood floor to a floor specialist in an email dated June 01, 2020:

> I have a prefinished oak hardwood floor with some scratches and chips throughout multiple rooms (pictures 3, 4 and 5) as well as liquid damage that has ruined the finish and swollen the wood in random patterns covering roughly half of a 9.5' x 15.5' room (pictures 6 and 7). The chips and scratches could be filled but the liquid damaged room will need to be sanded and refinished to match the flooring that carries on into the adjoining hallway.
> I also have stairs and a railing post that were finished in place (Bona water based) that have damage (pictures 1 and 2).
> The house is tenanted and I would like to receive written estimate based on the attached pictures before arranging time to have it looked at in person.
> Could you please provide a written estimate based on the attached pictures?

The floor specialist replied to the email stating that "You would have to sand the whole floor. Doing half will not work. I charge 8 dollars a square foot and up in [anonymized] city for that kind of floor."

The tenant affirmed the report does not mention any water damage, the landlord was very meticulous during the move out inspection and the repair quote is for water damage. The landlord affirmed the tenant did not oppose to the floor damage in the report.

The landlords submitted a previous application which was scheduled to be heard on March 19, 2020 (the file number is referenced on the cover page of this decision). The landlords served this application to the tenants and later withdrew it and did not notify the tenants.

The tenants, in preparation for the March 19, 2020 hearing, incurred the following expenses:

2. Septic system expert NN in the amount of $685.10 (invoice 1271, item 2 in the tenants' monetary order worksheet).
3. Counsel fees in the amount of $1,522.50 (invoice 5871-12).
4. Septic report in the amount of $887.50 (invoice 8681).

The tenants called the Residential Tenancy Branch on March 19, 2020 and were on hold for 1.5 hours until they were told the landlords withdrew the application three days earlier.

The tenants affirmed they are entitled, at least, to double the pet damage deposit, as there was no damage caused by pets. The landlord stated the floor damage may have been caused by the tenants' pets.

The landlord affirmed he withdrew the March 19, 2020 application by telephone, and he was not told he needed to notify the tenants. The landlord explained he withdrew the prior application because he could not amend it to make monetary claims and the rules of procedure do not require an applicant to notify a respondent when an application is withdrawn. The landlord submitted emails into evidence with his communications with the Residential Tenancy Branch.

Analysis

Section 7 of the Act state:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Landlords' claim for septic system (items 1 to 6, 11 and 14)

Section 37(2) of the Act states:

> 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

Residential Tenancy Branch Policy Guideline 01 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set put in the Residential Tenancy Act.
> […]
> SEPTIC, WATER AND OIL TANKS
> **1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.**
> 2. The landlord is responsible for winterizing tanks and fields if necessary.
> 3. The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.
>
> (emphasis added)

Based on the landlord's testimony, the septic system history chart, and the 2020 notice of property tax assessment, I find the rental property was built in 1983 and the original septic system was in use until December 2019, when it was replaced. Based on both parties' testimony I find the landscaping service and soil replacement service (items 11 and 14) are a direct consequence of the septic system replacement.

Residential Tenancy Branch Policy Guideline 40 indicates the useful life of a septic tank is 20 years and a sanitary system is 25 years. The rental unit's septic system was 34 years when the tenancy started and a new septic system was installed as a consequence of the failure of the septic system during the tenancy.

Based on the landlords' cohesive testimony, the photographs showing wipes removed from the septic tank and wipe boxes in the tenants' bathroom and the lower tenant's affidavit, I find the tenants flushed wipes at least twice during the tenancy, this is not a reasonable wear and tear and it's a breach to section 37 of the Act.

Residential Tenancy Branch Policy Guideline 16 states:

> 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 accordance with sections 37 and 67 of the Act and Residential Tenancy Branch Policy Guideline 16, I award the landlords nominal damages in the amount of $1,000.00.

I noticed that in the January 27, 2020 decision the arbitrator concluded the tenants flushed wipes and this was a reason the end the tenancy. In this arbitration the landlords (applicants) must prove, on a balance of probabilities, the tenants are responsible for the damage caused to the septic system. Flushing wipes may be a reason to end a tenancy. However, given the circumstances of this case, I find it is not a reason to grant the compensation the landlords are seeking due to the septic system being well beyond its useful life.

Landlords' claim for drywall repair (item 7)

The tenants agreed they are responsible for the drywall damage caused to the lower unit.

The landlord is seeking a compensation in the amount of $892.50 and the tenant is agreeing to pay only $50.00.

Residential Tenancy Branch Policy Guideline 05 provides information about the duty to minimize the loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

• remove and dry the possessions as soon as possible;

• promptly report the damage and leak to the landlord and request repairs to avoid further damage;

• file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

Based on the photographs of the damage and the testimony of both parties, I find the amount the landlord is seeking to repair the drywall damage is not reasonable. Thus, I award the landlord $200.00 in compensation for this loss.

Landlords' claim for loss of rental income (item 9)

Residential Tenancy Branch Policy Guideline 5 sets conditions for loss of rental income claims. It states:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be

reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

C. WHEN A NOTICE TO END TENANCY IS GIVEN
If a landlord issues a notice to end tenancy and is entitled to claim compensation for lost rental income, the landlord has a duty to minimize the loss by attempting to rent out the rental unit or site once the time limit for the tenant to dispute the notice expires.
If a tenant disputes the notice, the landlord is obligated to attempt to rent the unit or site after:
• the date the decision or order is received, and the time limits for a review application have passed; or,
• if the tenant applies for a review consideration of the decision or order, the date the landlord receives the review consideration decision.

(emphasis added)

Based on the cohesive testimony of the landlord, the arbitration decision dated January 27, 2020 and the report, I find the landlords served a one month notice to end tenancy for cause on November 26, 2019, the landlords were successful in upholding the notice, the periodic tenancy ended on January 31, 2020, the move-out inspection happened on February 01, 2020, the landlords advertised the rental unit on February 03, 2020 and were able to re-rent it on February 21, 2020 for a tenancy starting on March 01, 2020.

As such, I award the landlords the amount of $2,100.00 for loss of rental income for the month of February 2020.

Landlords' claim for cleaning (item 12)
The tenants agreed to pay $60.00 for cleaning. As such, I award the landlords a compensation in the amount of $60.00.

Landlords' claim for floor repairs (item 13)
Residential Tenancy Branch Policy Guideline 01 states:

CARPETS
1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

> 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
> 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
> 4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The report indicates the living room and second bedroom floor were in good condition when the tenancy started and damaged when it ended, as well as the treads and landings of the stairwell. The 7 floor damage photographs submitted substantiate the damage reported.

Regulation 21 states:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the testimony of the tenant does not outweigh the evidentiary value of the signed condition inspection report and the photographs.

Thus, in accordance with the report, the photographs, the quote and the landlord's testimony, I award the landlords $1,258.32 in compensation for this loss.

Landlords' filing fee and summary

As the landlord were partially successful in this application, I find that the landlords are entitled to recover the $100.00 filing fee paid for this application.

In summary, the landlords are entitled to:

Expense	**$**
Nominal damages for septic system repair	1,000.00
Drywall repair	200.00
Loss of rental income for February 2020	2,100.00
Cleaning	60.00
Floor repair	1,258.32

Sub-total	4,618.32
Filing fee	100.00
Total	**4,718.32**

Tenants' claim for litigation expenses (items 2, 3 and 4)

The tenants are claiming compensation for three expenses related to two expert reports and counsel fees to assist them in a prior arbitration.

I find that the tenants' reports and counsel services are not recoverable claims under the Act. Accordingly, I dismiss these claims.

Tenants' claim for return of the deposits (item 1) and filing fee

Based on the parties undisputed testimony, I find the landlords received the tenants' forwarding address on February 01, 2020 and applied for dispute resolution on January 31, 2020, within the timeframe of section 38(1)(d) of the Act.

As the landlords were partially successful in their application and are entitled to a compensation in an amount higher than the deposits, the tenants are not entitled to the return of the deposits. It is not necessary to determine if some of the damage was caused by pets to reduce the value of the monetary award being issued to the landlord.

The tenants must bear the cost of their filing fee, as they were not successful in their application.

Set-off

Residential Tenancy Branch Policy Guideline 17 states:

> The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlords are authorized to retain the $1,850.00 from the deposits to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act. Over the period of this tenancy, no interest is payable on the landlords' retention of the deposits.

In summary:

Landlords' monetary compensation	$4,718.32
Deposits	$1,850.00
Landlords' monetary award	**$2,868.32**

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlords to retain the $1,850.00 deposits in partial satisfaction of losses incurred and grant the landlords a monetary award pursuant to sections 38 and 67 of the Act in the amount of $**2,868.32**

The landlords are provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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

Dated: October 01, 2020

Residential Tenancy Branch