Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

- For the landlord: MNDL-S, MNRL-S, FFL
- For the tenants: MNSDS-DR, FFT

Introduction

The landlord filed an Application for Dispute Resolution (the "landlord Application") on September 6, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for other money owed. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, the landlord seeks to recover the filing fee for the landlord Application.

The landlord stated they delivered notice of this dispute hearing, including evidence, to each tenant via registered mail on September 16, 2020. Additional evidence followed to each of the tenants later on November 25, 2020. In the hearing, the tenants in attendance confirmed they received this evidence.

The tenant filed an Application for Dispute Resolution (the "tenant Application") on September 12, 2020 seeking an order for the return of the security deposit retained by the landlord since the end of the tenancy. They initially applied for the expedited hearing process; however, this reverted to a cross-application to this hearing, where the landlord had previously filed their landlord Application on the same tenancy issue. The tenant was notified of this shift to a participatory hearing on September 17, 2020.

The tenants provided their evidence to the landlord via registered mail. This was printouts of all images and documents electronically filed. Although the landlord raised the issue of only one named landlord being served this notice and evidence, the tenants accounted for this by stating the landlord Application showed only one named landlord. I find only one of two named landlords in this dispute not being served is not detrimental

and does not prejudice the landlord in any way. Both landlords attended the conference call hearing and were able to speak to all the issues herein fulsomely. There was no gap in the documentary evidence presented by either party here.

The matter proceeded by way of a hearing pursuant to section 74(2) of the Residential Tenancy Act (the "*Act*") on December 17, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage to the rental unit, and/or other money owed, pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee they paid for this hearing, pursuant to section 72 of the *Act*?

Is the tenant entitled to a monetary order for the return of the security or pet damage deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee they paid for this hearing pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed the landlord evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement and spoke to the terms therein. The agreement bears the names of two other additional tenants. The landlord stated these tenants "left early" which the tenants in this matter confirmed. An additional page accompanying the agreement in the landlord's evidence shows each of the four tenants in this hearing matter providing their signatures on July 31, 2019, joining the agreement.

The agreement shows the amount of rent as $4,020 payable on the 30th of each month. The agreement shows the tenants paid a security deposit of $1,800 on August 28, 2019 and a pet damage deposit of $1,800 on that same date.

A number of pages accompany the agreement as an addendum. The tenants referred to the agreement as a 42-page document. The landlord testified that all of these extra pages make up the tenancy agreement. The pages contain abundant detail on all aspects of the tenancy including yard care, and maintenance. The addendum also stipulates the specific carpet cleaner to be used by the tenants at the end of a tenancy.

The landlord's evidence contains an agreement, from March 2020, between the two prior tenants who moved out some time earlier. The landlord stated in the hearing that these tenants agreed that $900 of the initial security deposit was used toward settlement of miscellaneous costs. This appears in the landlord's evidence, with communication between these parties and the landlord, and what the landlord labeled a "binding legal document". In the hearing, the landlord provided that $900 "was used by these two" when they moved out. The landlord's written account provides: "(2) of the tenants left early . . . and . . .reached a private deal, mutually with the landlords. . ." Because of this, the landlord stated that $2,700 of the initial $3,600 remains, as deposits from the tenants. The landlord informed the remaining tenants of this via email that appears in the evidence, dated August 20, 2020. At that time, the remaining tenants asked for clarification on this point from the landlord.

On this same point, the landlord provided a document dated 3/15/2020 that is labeled the "binding legal document A5" between the landlord and the two prior tenants. There is reference to refrigerator damage, and excessive water consumption for October 6, 2019, in the amount of $2,658. The landlord provides the equation dividing this water cost between 6 tenants and 1 landlord, for $379.71 per person. This is the document signed by prior two tenants "legal refrained to litigate, to not come after each other in any way shape or form." This gives the amount of $7,514.21 to be paid in installments by the other two tenants. A copy of the document submitted by the landlord is marked "strictly personal and fully confidential."

The landlord provided a copy of the Condition Inspection Report. This was completed for the tenants' move-in date of August 30, 2019. It provides the tenant move-out date of August 23, 2020, as specified elsewhere in the addendum. Each tenant provided their signature to state "[The tenants] agree that this report fairly represents the condition of the rental unit."

The tenants provided copies of text messages from the landlord to them starting approximately mid-August 2020 before the end of the tenancy. These show various points of dialogue, and by August 19 the landlord stated: “If we, reach agreeance prior to final outgoing condition inspection, in writing, then there will be No final outgoing condition inspection required.” Also: “Our maids will then get the house [for cleaning], and covid 19 massive cleanings, if we reach an agreement.”

The landlord replied to the tenants further queries to say the landlord “must be present and yourselves too to monitor the top high end hard work required” and “You are Not allowed to use any carpet cleaning companies or people, warning.” And: “We will vigerously [*sic*] pursue, yourselves for not working with management or owners. . .” And: “Don’t do any cleanings, nor work until, we email the full proposal.”

The tenants replied to state they would clean the house themselves, as per the *Act*. They provided they had scheduled a professional carpet cleaning, using the service stated by the landlord at the start of the tenancy. In the hearing, the tenants stated they cancelled the carpet cleaning appointment.

The tenants also provided emails from the landlord dated August 20 and 21. These are presumably the “proposal” the landlord mentioned in texts the day prior, containing various services and cleanings required, plus dollar amount costs listed. In one of these text messages, the landlord states: “To save you, tenants from severe serious liabilities, we, can agree to full release yourselves, if you cooperate, Thanks.” The tenants in the hearing described this timeframe as that in which the landlord wanted “use of the security deposit, this was initially an option from the landlord to use it, but then it became more forceful.”

The body of one email contains the following message:

> the leaving this house in a elite, 130% complete test, very high end status Covid 19, CoronaVirus super cleanings, well beyond a normal cleaning for a final outgoing Condition Inspection . . . and the house and property in its fullest capacity to be inside, and exterior super clean, squeaky sanitary and super clean, and fully sanitized, well beyond a medium cleaning
>
> Covid super complete germs, Sanitization elite special treatments due to Pets, dog, etc, odor control, deodorizers, soil removers, Urine control, lift up, and neutralizers, nil odor, and febreeze, and other professional enzyme, citric odor enhancers, technical tech expert, specialized professional Carpet Shampooers, service. 3M scotchguard, etc) $374.50

The tenants sent a comprehensive email to the landlord on August 22 in response to the chief concerns. In regard to cleaning the property, the tenants responded to say they "did a big cleaning of the entire property". They consulted the *Act* and the government Covid-19 web page but did not find information in regard to deeper cleaning.

Further, the tenants responded to the landlord's assertion of $900 security deposit already agreed upon by prior tenants who left. They asked for "adequate proof that this has happened". Additionally, the tenants asked for confirmation on cleaning items remaining. On the topic of the yard, they replied to the landlord to state the landlord had previously stated they would handle remaining bags of leaves on their own.

In another submission labeled "price quotes" the landlord states "Management . . . had to do the dirty hard work, in depth cleanings. . . sanitary in depth proper sanitary cleanings." They list the cost of rate per hour $29.95 and $35 in cleaning supplies for a total of $753.80.

An August 23 text message from the landlord to the tenants shows the landlord bringing the concept of "negligence" into the communication, stating in regard to keeping utilities connected to the unit at the end of tenancy: "this will need to be brought to the attention of our lawyer, for negligence." On that same date: "tenants can get super cleanings done, but management must be present from a 2 meter rule, and monitor the complete cleanings."

On the scheduled day of the move-out inspection meeting, August 25, 2020, the landlord messaged the tenants in advance to state: "only 2 [adults] are allowed. . . [one of the tenants] must leave, [they have] been served a notice to be refrained [*sic*] to enter the property." The tenants provided a witness statement of an individual who attended the same meeting to observe, which the tenants felt was necessary. They described how the landlord "started yelling and threatening lawsuits."

In the hearing, the landlord and tenant each described the condition inspection meeting. The relations between the parties necessitated the police to be present for that meeting. The tenants' account is that this left the meeting rushed where the police guided the interaction, giving a brief visual of each room. They left a written document with their forwarding address on a counter in the rental unit before making their exit. A copy of this document is in the landlord's evidence.

A copy of the same Condition Inspection Report shows the landlord's assessment from the move-out inspection that took place on August 25, 2020. This copy does not bear a tenant signature for the move-out; however, the tenants' forwarding address appears on page 3 of the document. The report itself shows every listed item on the form as "DT", being the notation for 'dirty'. These include: "damaged walls with nail holes and "careless use of bathtub" leaving "ceiling water damage." Further: "the garage, inside, very filthy, unclean, unsanitary, offending bad odours." Also: "the yards were not cared for" and "the water bill was not paid." A letter from a family member of the landlord shows their contribution to cleaning undertaken by the landlords. This includes "$120 cash" paid to a friend to move 6 bags of yard waste.

The landlord's take on the meeting was that the tenants left abruptly, without the full chance for review of all of the unit.

After the meeting and entirely on their own the landlord reviewed the entire unit and took pictures. This was noted to be "unclean, and unsanitary with damage." The landlord provided these pictures as part of their evidence, each labeled clearly with a description.

The tenants provided a series of photos in their evidence. They stated in the hearing that these pictures show the state of the unit immediately prior to the final inspection meeting. They stated in the hearing: "we cleaned the entire house and sanitized, we left no damage."

The landlord's claim is divided into three categories: cleaning neglect; damage; and yard work. The landlord provided a total amount for their claim of $5,181.84. This worksheet, for two items, lists alternate costs to show two different estimates obtained by the landlord for the same amount of work. The landlord's claims as presented in their monetary order worksheet are:

1	cleaning	$748, or $840 based on separate estimates
2	drywall repairs/paint	$840 (alternatively $3,645) from Nov 2020 estimates
3	garage scrub/paint	$560 (this is one-third of the total estimate of $1,680)
4	city water billing	$1,518.84, which is $379.71 for each tenant
5	carpet shampoo	$260, with a receipt
6	yard work	$385, a handwritten receipt shows paid on Sept 5
7	loss of rent	$770, before re-renting the unit, $110 x 7 days
8	filing fee	$100

The total $5,181.84 is arrived at by adding the initial amounts listed – i.e., this does not factor in the alternate estimates of items 1 and 2.

The standard set by the landlord regarding cleaning is set out above. For this item of their claim, the landlord made the stipulation to the tenants throughout the last few weeks of the tenancy that such cleaning was to be "sanitary in depth proper sanitary cleanings." The evidence shows that the landlord undertook the cleaning on their own volition after the tenants moved out. For this portion of the claim, the landlord provided two receipts. These show alternate estimates for cleaning: one receipt dated August 25, 2020 shows a list of services, totalling $748. An alternate cleaning service shows the amount of $840, dated November 13, 2020.

The tenants maintained in their evidence, their messages to the landlord, and their testimony in the hearing that they cleaned thoroughly prior to the move-out inspection meeting. This involved their family members.

For item 2, drywall and paint, the landlord provided that "a lot of it is drywall", and the garage floor. For this portion of their claim, they stated in the hearing that they significantly reduced the monetary amount claim, because a "quote would be very high." In their August 22 comprehensive email to the landlord, the tenants described how they were "unsure when [the landlord] would have seen such alleged damage as it was not visible before we left" – as referenced in the landlord's August 20/21 emails, prior to the move out inspection on August 25, 2020. The tenants also reiterated how the landlord messaged previously and "barred [them] from doing any cleaning."

The landlord provided an estimate from a handyman service, dated November 20, 2020. For repair to walls and paint, this shows an initial estimate of $800 plus GST. This is for "drywall holes throughout the entire house" and "paint touch up areas". The landlord provided a notation elsewhere that this amount is $840.

On item 3, a second receipt from the same firm follows on November 27, 2020, a copy of which contains the landlord's handwritten notes. As listed above, the landlord reduced the amount claimed for damage to the garage floor. This involves patching cracks, coats of paint or epoxy, and a "hardener/defensive coat". The landlord's notation states that "landlords are absorbing taking a $1,300 loss, so only $650 plus GST cost to tenants". In the hearing the landlord did not state whether they undertook hiring the firm to complete this work. On the monetary worksheet they completed, the landlord gave the amount $560. Three photos from the tenants show an empty garage;

a specific photo from the landlord shows “large circle of black paint, paint stains on rug” in the garage.

For irrigation usage (listed item 4), in the hearing the landlord described the “massive” economic loss of $2,658, referring to the excessive water usage measurement in comparison to a normal water usage during that particular two-month period. Dividing the amount proportionally, between 6 tenants and the landlord yields, for four tenants, the amount listed. The landlord’s focus here is on one single day, October 6, 2019.

In this same August 22 reply, the tenants specifically addressed the landlord’s “ludicrous notion” that the water ran for 20 hours on October 6, 2019. They point to the tenancy agreement that states “Sewer, garbage and water is included [in the rent].” They asked for clarification on what possible reason they could have to consume that amount of water in a single day. At this point, the tenants had not seen the bill that covers the period for October 2019, in the year prior to the end of tenancy. Moreover, they had not seen the written agreement between the landlord and two prior tenants with respect to monetary exchange for this water consumption amount.

In their response, the tenants questioned this amount provided by the landlord on August 21/22 emails. They stressed: “We will absolutely need to see this bill you claim to have and will need to see the communications made to [the prior tenants] in regard to the deposits.”

The listed item 5 is for carpet cleaning. The tenants presented through their text messages that the landlord instructed them to not undertake anymore cleaning. In their August 22 email, the tenants re-stated to the landlord that they “hired a carpet cleaning company to come and take care of the carpets”. This was also using the landlord’s company of choice. This was met with the landlord’s response that “threatened via text to pursue [the tenants] legally and that this was somehow violating [their] tenancy agreement.” The tenants reiterated to the landlord that their obligations under the agreement were for their own cleaning of the carpet, hiring a company to do so.

The landlord provided a receipt for the amount claimed, and this shows the date of August 30, 2020.

For item 6, yard work, the landlord provided more detail on the state of the yard, in relation to what they stated was agreed to by the tenants within the tenancy agreement. In the evidence, the addendum part of the agreement (section 19(b)) stipulates the tenants shall handle mowing, watering, as well as “grooming, greening, raking lawns,

weed eating, trimming shrubs, fertilizing lawns. . .” Elsewhere in the addendum shows the tenants may use “29% of garden shed usage, garden composter usage.”

In their August 22, 2020 email, the tenants noted “We brought you our concerns about the yard waste and when we did you said that you would be happy to grab those bags of leaves and dispose of them as it would be no additional trouble to you.” Specific to yard work, the tenants provided six brief witness statements, presumably from neighbours. One witness stated that “the water sprinkler system broke twice and flooded my property in the back.”

Finally, for the incurred loss of rent, the landlord stated they were not able to rent the unit until September 20 because the unit was not showable. They are claiming this amount as a result of the state of the unit left by the tenants at the end.

Regarding the tenants right to the security deposit, the tenants presented a copy of the letter they presented to the landlord at the move out inspection meeting. The landlord provided a copy of the same letter in their evidence. It is dated August 25, 2020 and specifies the return of the $3,600 security deposit. Also: “We vacated the resident on August 25, 2020 without any damages beyond ordinary wear and tear.” They provided a forwarding address and noted “A BC tenancy dispute will be filed if the full amount of the security and pet deposits are not returned within 15 days of the receipt of this letter.” The letter bears all four of the tenants’ names.

Analysis

The relevant portion of the *Act* regarding the return of the security deposit is section 38:

> (1) . . .within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant’s forwarding address in writing;
>
> The landlord must do one of the following:
>
> (c) repay. . .any security deposit. . .to the tenant. . .;
>
> (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant’s written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution on September 6, 2020. This is within 15 days set out in the *Act*. I am satisfied that the tenancy ended on August 25, 2020 and the tenant provided their forwarding address on that same date. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

The *Act* section 37(2) requires that a tenant, when vacating a rental unit, leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To begin, I must establish the correct amount of the security deposit. The landlord and tenants differ on their understanding of what this amount is.

In March 2020, the landlord reached an agreement with two tenants who moved out from the unit. The evidence shows this amount settled was around $7,500, requiring three separate payments from the prior tenants. An arrangement was in existence; however, I find the evidence is clear that this arrangement was unknown to the other four tenants in the unit. The landlord's communication on this includes their withdrawing a dispute resolution application from the Residential Tenancy Branch at this time.

The tenancy agreement signed by the four tenants here stems from August 2019. The tenancy agreement shows an amount of $1,800 for each of the two deposits paid on August 25, 2019. This means the four tenants here have a vested interest in the total amount of the deposits.

To be clear, these tenants are a party to the agreement. The agreement is governed by the *Act*. Without their knowledge or consent, the landlord made a separate agreement with two other tenants concerning the security deposit and dispensed with $900 of that total amount. The four tenants here did not discover that arrangement, nor the amount involved, until mere days before the end of the tenancy.

Additionally, I accept the tenants' testimony that they were in effect blocked when they tried to ascertain the exact agreement made between the landlord and two former tenants. The copy of the agreement provided by the landlord contains the notation "strictly personal and fully confidential" – from this evidence I find it more likely than not that the landlord was not forthcoming with the remaining tenants about dispensation of a set amount of the security deposit. There is no record of the landlord disclosing this agreement to the tenants during the tenancy.

With reference to the *Act*, I consider section 38 set out above. This gives strict rules on the return of the security deposit and pet damage deposit. The landlord did not comply with this section: there was no consent from all tenants regarding repayment of any amount, prior to an end of tenancy.

The *Act* section 5 states that the *Act* itself cannot be avoided:

> (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Given subclause (2) and based on my conclusion that the landlord made an agreement with the other tenants that lands outside of both the tenancy agreement *and* the *Act*, that separate agreement is of no force and effect. Therefore, the dispensation of any part of the security deposit was not consented to by the tenants here, and not authorized by the *Act*. For these reasons, I find the amount of the security deposit is $1,800, as set out in the tenancy agreement.

Turning to the tenancy agreement itself, I find it is in structure fundamentally prejudicial to the rights and obligations of the tenants. There is a 42-page addendum to the agreement written in language that I find is abstruse and overwrought. The obvious effect is that the tenants here are unsure on the extent of their rights and obligations. I find the natural consequence is that the tenants are left to infer their obligations, as well as their rights, under this agreement.

The landlord's practice of documenting the tenancy agreement, advising the tenants of the same, and setting rules in place through an addendum uses stilted, formalistic language that is difficult to comprehend. I find the evidence shows this carries over into the communication between the parties. The issues are obfuscated, and the tenants were not clear on requests or responsibilities. This difficulty reached a peak in the days immediately prior to the end of the tenancy on August 21 and 22 when the landlord attempted to impose hospital-like standards of cleanliness on the tenants. Not being satisfied of the tenants' willingness to commit to these standards – based solely on the

tenants seeking clarification thereof – the landlord forced the tenants to renege on their responsibilities.

With regard to the four points set out above, to establish the landlord's entitlement to compensation, I examine each portion of their claim in detail:

1. cleaning: I find the evidence shows the landlord undertook cleaning on their own. There is no receipt from a cleaning company; rather, the landlord provided estimates. One of the estimates lists services available; the other likewise shows an option for cleaning services. I infer the landlord provided these estimates to show approximate costs. There is no receipt to show the landlord hired outside cleaners to complete cleaning in the unit.

Further on cleaning, I find the tenants completed the cleaning as required by the tenancy agreement. This is despite the landlord imposing higher standards – even to "130%" – that are unrealistic and not in line with what the *Act* provides. The requirements set by the *Act* are nowhere near what the landlord described in their message to the tenants in August. The *Act* requires the unit to be reasonably clean. I find the tenants' evidence in the form of pictures bears this out. This supports the tenants' evidence in the hearing that they undertook significant efforts at cleaning the unit.

I find the indications by the landlord on the condition inspection report for the move out are not accurate. Every single item is listed to be 'dirty' which does not match to the evidence provided by the tenants in the form of pictures of the interior. The tenants provided 62 pictures of the rental unit – I find this is sufficient to establish that the tenants left the unit reasonably clean.

I find the photos provided by the landlord are more in line with the impossibly high standard they provided to the tenants. The landlord's evidence is that they undertook further cleaning. I find this is in addition to the cleaning completed by the tenants. The cost thereof is not established. The landlord has not proven a significant imposition on their time to rectify missed spots of a more inconsequential nature; nor have they shown they individually undertook the meticulous cleaning standards they imposed on the tenants. What they present by way of photos does not nullify the full cleaning the tenants have established as completed.

Given the evidence shown by the tenants that they completed cleaning on their own, and in addition to that of the landlord to rectify any minor flaws, I make no award for

compensation here. The landlord has not established that a monetary loss exists; nor have they established the value thereof. They provided receipts from cleaning firms, with no evidence the firms visited the rental unit to assess or provide an actual cost thereof.

2. drywall repairs/paint: The tenants provided these flaws were of a minor nature, and amount to wear and tear. Their immediate response to the landlord on this was their August 22 comprehensive email to answer to the landlord's standards and demands.

On this, the landlord did not provide evidence that repairs were actually undertaken. The estimate they provided from a handyman is dated November 20, 2020. As such, I find this is not an effort to mitigate the amount of monetary loss. One of the estimates in the amount of $3,645 appears to cover a complete repainting of the entire rental unit.

In sum, there is no evidence the landlord followed through to repair this damage as they have assessed. While there are detailed photos showing nicks and scratches to drywall areas, there is nothing to suggest otherwise than what is revealed is wear and tear. By three months later after the tenants' move out, the landlord was still obtaining estimates. This is not an effort at mitigating any damage involved here. Minus an actual established value, I make no award for these deficiencies that I attribute to wear and tear.

In line with both cleanliness and damage, for these two portions of the landlord's claim I find the tenants took responsibility in two ways. For one, they insisted to the landlord in their August 22 message that they undertake the cleaning on their own as per the tenancy agreement. This was after their extensive review of the agreement and addendums to determine what their obligations were. Secondly, the tenants came to the move out inspection meeting openly, and with the intention to determine any further cleaning or damage.

I find the tenants did not approach these matters in an offhand manner as alleged by the landlord. They took ownership, and this fact receives weight in my consideration of apportionment of damages.

3. garage floor: The landlord claims $560 on their worksheet, as one-third of the cost of $1,680. The source of this total amount, as an estimate, is not known. By November 27, 2020, the landlord provided an amount that is more than this amount, at $650. On this same estimate, the landlord indicates a claimed amount is $995.

Without a clear amount indicated, and not contraindicated by other amounts in the landlord's evidence, I cannot establish the value of the damage. Additionally, the landlord did not provide sufficient evidence to show that any damage to the garage floor was because of the tenants. Finally, the landlord did not present how they arrived at this cost in their determination that the tenants are responsible for one-third of any estimate provided. By late November, very close to the hearing, the landlord was setting out various options for work completed. Because of this I find the landlord has not established a true value of damage or loss.

There is no compensation for this part of the landlord's claim. The amount is not established in the evidence, nor is there sufficient evidence to establish that a damage or loss exists.

4. City water billing: As above in my consideration of the landlord's arrangement with two prior tenants who moved out, I find the landlord did not raise this issue with the tenants here at any point earlier than the last few days of the tenancy. The tenants deny the charge that this cost accumulated on one single day by their actions alone. This is an anomaly, not otherwise explained in the evidence.

By not disclosing this matter to the tenants, I find the landlord has not minimized the cost thereof. The billing date containing this anomaly is October 6, 2019. The landlord had every opportunity to bring this to the tenants' attention in order to resolve the matter. Instead, by March 2020 they made an arrangement to apportion the cost between six tenants, unbeknownst to the four of those tenants who remained in the unit. On disclosure, I accept the tenants' evidence that they did not see a copy of the bill, over which the landlord asserted claims of privacy. The landlord makes this claim to the tenants over one year after the billing date – this plainly is the opposite of any effort to mitigate monetary loss. Intentional or not, this is dishonest on the part of the landlord.

The total amount of the landlord's claim here -- $1,518.84 – is based on an equation not disclosed to the tenants. This means a significant amount for each of the four tenants: $379.71. There is no evidence to show the tenants are responsible for this amount – it is implausible that by the tenants' actions this amount accrued in one single day. Moreover, any agreement made between the other two prior tenants and the landlord is not binding on the tenants that remained. The landlord receives no compensation for this portion of their claim.

5. carpet cleaning: The landlord communicated to the tenants to stop the scheduled carpet cleaning. The tenants willfully asked to complete their contracted obligations for

this part of the move-out. The landlord's communication to the tenants at that point was infused with threats of legal action and was clearly non-appreciative of the tenants' efforts to fulfill the required duties as agreed upon at the outset of the tenancy.

The landlord reneged on the agreement that the tenants were responsible for this piece. Additionally, they blocked this process for the tenants. I find the landlord here has not mitigated their loss. In effect, they relieved the tenants of this duty; therefore, they receive no compensation for this portion of the claim.

6. yard work: For this portion of the claim, the tenants provided evidence counter to that of the landlord, in two forms. For one, the tenants provided statements of six other parties – presumably neighbours or those familiar with the property – who stated they regularly observed the tenants maintaining the lawn and/or yard. Secondly, the tenants provided the August 22 email to the landlord that set out the fact that they prepared yard clean-up, bagging leaves and raking and maintaining the yard on a regular basis. This shows the tenants brought their concerns about yard waste to the landlord who stated they would remove bags of leaves on their own.

I find the tenants fulfilled their obligations for yard work throughout the tenancy. There is evidence that they were "happy to hear [the landlord's] concern and address them immediately." I find the items listed on the receipt from the landlord's family member who undertook this yard work is for items the tenants were willing to complete on their own. As above, they were blocked from completing this work. It is untenable that they should pay compensation to the landlord for this work.

7. loss of rent: The landlord here claimed $700, for 7 days of rent loss. The landlord has not provided sufficient evidence to show that a loss exists. There is no reference to days missed for rent, nor is there any description of income loss. With no evidence from the landlord on this portion of their claim, I am not satisfied that a damage or loss exists. With no proof, there is no award for compensation on this portion of their claim.

8. landlord Application filing fee: With no compensation for any portion of their claimed amounts, the landlord is not successful in this hearing. I find they are not entitled to recompense for the filing fee.

The tenants made their cross-Application in this dispute for the return of the security and pet damage deposits. Above, I found the full amount of the deposits is $3,600. These tenants did not consent to any portion being deducted from the deposits or returned to past tenants.

From the evidence, I find as fact that the tenants provided a forwarding address to the landlord on August 25, 2020. This letter is in both the landlord's and tenants' evidence. The landlord in this hearing did not provide evidence that is contrary to this piece of evidence in any way.

I find the landlord subsequently made a claim to retain the deposit within the legislated timeframe of 15 days. This is in line with section 38; however, I find the landlord is not entitled to any recompense. Therefore, the tenants are entitled to the return of the full amount of the security and pet damage deposits. The landlord must return the security and pet deposits to the tenants. This amount is $3,600.

Because they are successful in their claim for return of the security deposit, I find the tenants are entitled to recover the $100 dispute resolution filing fee.

Conclusion

The landlord's claim for monetary compensation for damages or other money owed is dismissed without leave to reapply.

Pursuant to sections 67 and 72 of the *Act*, I order the landlord to pay the tenants the amount of $3,700. This is the amount of both deposits and includes the tenant Application filing fee. I grant the tenants a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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: December 21, 2020

Residential Tenancy Branch