



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDCT, FFT  
                             MNDL-S, MNRL, MNDCL, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for a monetary order for return of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord has applied as against 1 of the tenants for a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The hearing did not conclude during the time scheduled and was adjourned to continue. My Interim Decision was provided to the parties.

The landlord and an agent for the landlord attended the hearing on both scheduled dates, and both tenants also attended on both scheduled dates accompanied by a note-taker, who observed only and did not testify or take part in the hearing.

The landlord and the landlord's agent, and both tenants gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The record shows that the tenants' claim is \$875.00 for return of the security deposit or pet damage deposit; recovery of 12 months' rent, or \$20,400.00; and recovery of the \$100.00 filing fee; for a total claim of \$21,375.00.

The record shows that the landlord's claim is \$19,902.00 for damage caused by the tenant or pets or guests to the rental unit, site or property and the security deposit is withheld for those damages. The landlord's claim also includes unpaid rent in the amount of

\$2,750.00; and \$2,417.00 as compensation for monetary loss or other money owed, which is not specified in the application.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issues to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to maintain the rental unit?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first tenant** (CAS) testified that this tenancy began on October 15, 2019 and ended on September 1, 2020. The rental unit is a single family dwelling.

A copy of a tenancy agreement has been provided for this hearing which states that the tenancy is on a month-to-month basis but also states that is a fixed-term until October 15, 2020. The tenant testified that she received a copy on June 30, 2020. It shows that rent in the amount of \$1,750.00 per month was payable, but does not indicate a date that rent is due. The tenant paid the landlord a security deposit of \$850.00 at the outset of the tenancy however, the tenancy agreement specifies a security deposit of \$875.00.

The tenant further testified that the other named tenant is her adult son, and he was to be the tenant and his agreement was with the landlord's agent. The tenants did not see the state of the rental home when the tenancy agreement was signed in August, 2019. The landlord said that if they didn't sign it, they wouldn't be able to get the house. The tenant

only had 1 page of the agreement to sign and never saw the entire lease when she signed it, believing she was agreeing to rent in the amount of \$1,700.00 per month and a security deposit of \$850.00. The other tenant had his copy of the signing page, which he signed,

The tenant asked about a move-in condition inspection but the landlord kept saying 3 times that it wasn't necessary, so the tenant took photographs of items that needed repair and made a list. Photographs and emails have been provided as evidence for this hearing, and the tenant testified that the photographs were taken after moving in and on different dates. A move-in condition inspection report has been provided for this hearing, but it is not signed by a tenant at move-in. A copy of a move-out condition inspection report has also been provided, but is not signed by the landlord or by a tenant.

Rent was paid to June. On October 1, 2019 the tenant paid \$1,200.00; \$1,600.00 in November and \$2,300.00 to mid-December, and because the tenants took possession on the 15<sup>th</sup> of the month, the tenant believed rent was due on the 15<sup>th</sup> of each month.

On June 9, 2020 the landlord texted the tenant and the parties worked out a date to do a rental inspection, and the parties progressed around the house. A number of issues were raised by the tenant. The tenant mentioned the furnace and water tank, which was wobbly, and the landlord said that they sometimes are. The parties also talked about keys and locks and the tenant asked that the locks be changed, but nothing was done about that. The door to the porch would not shut unless locked or tied, and the tenant asked the landlord to have that dealt with as well before June 13, and that wasn't done either. The tenant told the landlord later that in order to lock it up, the tenants put a dead-bolt on, which is an outside door coming into the porch. Also, the switch for the ceiling fan in the bathroom didn't always work, was loud and sometimes wouldn't turn off. That was also mentioned when the tenants moved in and again in November.

The tenants have also provided for this hearing an email addressed to the landlord's agent (PMC) dated July 10, 2020 setting out rent payments for June and July, 2020. It also states that the furnace was not working and that the tenant had recently found out that she was the only person on the lease.

Another email to the landlord's agent (PMC) dated August 19, 2020 from the tenant states that the tenancy runs from October 15, 2019 to October 15, 2020, so rent due on 15<sup>th</sup>. It also states that 2 requests were made for copy of the tenancy agreement. The tenant obtained one from the landlord's porch and a copy has been provided for this hearing which contains an Addendum dated August 13, 2019 signed by the landlord on behalf of the landlord's agent, and contains the tenant's name (CAS) but no signature of the tenant.

During the June 9 inspection the tenant showed the landlord items that the tenant had moved into the master bedroom closet, such as a coffee table with a broken leg. The tenant also asked the landlord to dispose 2 large car batteries in the kitchen. The landlord agreed to remove them, but didn't and the tenants took them to the dump.

The tenant also told the landlord that the lawn mower was still at the rental house and she might want to look at it. The tenant told the landlord that the tenants had their own mower and weed-eater, and didn't notice the landlord's mower till the snow melted. The mower ended up behind the shed again after the tenant moved it out to show the landlord, and the tenant does not know who moved it again.

The fridge door handle was broken and glued before the tenants moved in, and then it broke again. The landlord took the handle with her and the tenants were still waiting for it to be replaced but that wasn't done by the time the tenants moved out.

The tenant also reminded the landlord that the spray on the kitchen sink was leaking and dripping down under the cupboard and that the tenant was doing her best to keep it dry.

The dryer broke in February, and the tenants replaced it. The landlord said she would negotiate the cost but then said that since the tenants got it for free, she wouldn't pay for it. The tenants felt \$200.00 or \$250.00 was reasonable, but never heard back from the landlord about it. The dryer was left in the house and the old one sat in the kitchen for a number of months, and the tenants took it to the dump.

The tenant provided the landlord with a forwarding address on a form obtained from the Residential Tenancy Branch, which the tenant signed on September 29, 2020 and sent it by registered mail to the landlord the same day. The tenant has provided a copy of the document and a Registered Domestic Customer Receipt and Canada Post cash register receipt bearing that date.

Numerous photographs and strings of emails have been provided as evidence for this hearing.

The tenants claim the equivalent of 12 months' rent, or \$20,400.00 for the landlord's failure to maintain the rental home. The tenant testified that she didn't sleep well due to the gas water heater, and there was no pan under it. The tenant has anxiety disorder and was worried about it falling through the floor. The tenants feel entitled to some compensation due to the landlord's disinterest in doing something with the house. The tenants also claim \$875.00 for return of the security deposit.

The tenants have also provided a copy of a One month Notice to End Tenancy For Cause dated July 29, 2020 with an expected date of vacancy of September 30, 2020. The reason for issuing it states: "Tenant is repeatedly late paying rent," and is not signed by a landlord.

**The second tenant** (NTS) testified that the only portion of the tenancy agreement that he received from the landlord on August 14, 2019 was 1 page for each of himself and his mother to sign. He was told that he had to decide that day, and that's the way it was going to be.

The tenants hadn't seen the condition of the rental unit but knew it was old. At move-in, the landlord said that she had been successful in a previous arbitration with a previous tenant, and funds from that would be used for repairs. Once the tenants got in, they noticed furniture in disrepair and mattresses were disgusting. There were earwigs, mouse droppings, spiders, farrell cats living in the crawl space and no proper upkeep. The parties made a verbal agreement that the landlord would do some work and the tenant would do some work, but that didn't happen.

The tenants spoke to someone at the Residential Tenancy Branch who said to put a dollar value on the claim, and it was a horrible place, definitely not suitable for kids. The tenant had his 2 kids at the rental home for 1 of every 2 weeks, and there were slices and slivers in floors requiring everyone to wear foot-wear in the house for their own safety. There were bugs in the beds, an odor, and the tenant was concerned about safety of his kids and the landlord seemed to indicate that the 1978 water tank was more important than the safety of the tenant's kids, and the safety of the kids was disregarded even though things were promised. The landlord agreed that the water tank had to be replaced; and it was growing organic matter and the gas line ran under the tank and the floor was rotten.

Someone prior to this tenancy stuffed pillows and quilts into the furnace as a filter. The tenant asked the landlord to have a professional inspect because it needed to be dealt with. The landlord told the tenant to get a quote for the hot water tank, and the contractor noticed that the furnace was not up to code; the cold air return was non-existent and he said it was not adequate. On November 8, 2019 the tenant sent an email to the landlord with a quote and description of what needed to be done about the hot water tank and furnace, and nothing happened.

The tenant definitely disagrees with the landlord's claim for cleaning. When the tenants first moved in, previous tenants were still there, and it's so old that it couldn't be cleaned.

The tenant didn't know there was a lawn mower on the property. The battery wasn't stored and there was no proper storage for the mower. The landlord's agent used the storage space for his own use and the tenants weren't permitted to use the shed. It was locked and the tenants had no access. The only weed-eater on the property belonged to the tenant and he took it with him at the end of the tenancy.

With respect to the landlord's claim for the coffee table, the tenant testified that it looked like a teen-agers project and had a broken leg. The tenants put it in a closet.

The rental unit was meant to be furnished, but the furniture was soiled, torn up, mattresses were soiled and decades old. The tenants needed 3 beds and the tenant took one out and put it in a storage tent which was shared with the landlord and landlord's agent. The tenant replaced it with his own bed. The one that he put in the tent was left there at the end of the tenancy. The parties were friends, and the landlord had given the bed to the tenant prior to this tenancy and then claimed it.

With respect to the landlord's claim for painting, the tenant testified that it would have needed painting and any discussion about it went to the way-side. The place is horrible, and the tenant estimates that the rental unit hasn't been painted for over 10 years.

With respect to the landlord's claim for lost rent, the landlord wanted the tenants out and they left. It smelled of feces and was horrible.

With respect to the water heater repair, the quote provided was only for a service call. The tenant sent the bill to the landlord and it's still pending. The tenant spoke to the technician this week.

On September 1, 2020 the utilities were transferred and it was a few days after that when the tenants moved out.

The tenant further testified that the bedroom doors were fine when they left.

The tenants paid rent to the end of August, but none for September, 2020. The tenants understood that rent was \$1,700.00 and the tenants paid a security deposit of \$850.00 which was half the rent, and didn't get a copy of the tenancy agreement, so the tenant was not sure when rent was due.

With respect to the landlord's claim for a security camera, the tenant testified that a property manager across the street had a security camera, but there was none on the rental property.

The tenant testified that their rights as tenants were completely dismissed; they had legitimate complaints and didn't have the same rights as others.

**The landlord's agent** (PMC) testified that \$2,750.00 is owed for rent. The security deposit was \$875.00 but the tenants only paid \$850.00. The landlord's agent didn't do anything about it at the time. Over a 12 month period the tenants should have paid \$21,875.00 for rent at \$1,750.00 per month, but paid \$19,125.00. Rent was paid by way of direct deposit to the landlord's agent's bank account or by e-transfer, and a spreadsheet and a bank statement from October 1, 2019 to October 30, 2020 have been provided for this hearing.

No move-in condition inspection was completed because the tenants moved in on the 1<sup>st</sup> instead of the 15<sup>th</sup> of October, 2019. The landlord's agent told the tenants that he would hire a cleaner on October 13 or 14, which was booked, but the tenants said they had to move in that day. Their lease was up and they had nowhere to go and they wanted to do cleaning themselves. The landlord's agent tried to schedule a move-out condition inspection but the tenants ignored all emails and texts.

On September 6, 2020 the landlord's agent received an email from the tenants saying they had moved out on September 1, 2020 and moved out early without notifying the landlord and would not return the keys. Locks had been changed so the landlord's agent contacted the tenants to get the keys returned, but they were not returned until the 11<sup>th</sup>, after the landlord had the locks changed.

The tenant had told the landlord's agent that he caused a hole in a wall trying to move furniture, and in a closet. Light fixtures and switches were broken as well as the fan at the top of the stairs.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$22,317.85, in addition to the \$100.00 filing fee:

- \$1,601.25 for the water heater;
- \$8,986.69 for furnace repair;
- \$1,075.00 for labour;
- \$850.00 for labour;
- \$3,000.00 to the landlord's husband for installing floors and maintenance;
- \$400.00 for cleaning;
- \$558.88 for the lawn mower and weed-eater;
- \$129.92 for a coffee table;
- \$1,174.88 for a bed;
- \$400.00 for painting;

- \$2,400.00 for lost rent;
- \$129.00 to recover payment for the technician;
- \$16.95 for a hydro bill;
- \$245.28 for a bedroom door;
- \$350.00 for pick-up/delivery; and
- \$1,000.00 to install a security camera.

Due to the age of the hot water tank, the landlord withdraws that portion of the claim. However, within 2 days of moving in the tenant asked to have it replaced due to its age, but the landlord refused unless there was an issue. Then in October, 2019 the landlord was told that it might have a leak, so the landlord sent a plumber. However, the tenant brought in someone so the landlord's agent cancelled his plumber. The landlord was asked to pay the tenant \$129.00 so he could pay the plumber, but the landlord never received a bill.

The furnace technician found blankets and other linens blocking the air intake of the furnace, which was installed in 2005. On July 7 or 8 the tenant texted saying it was not working so the landlord had a plumbing company look at it in July who said it required replacing because it wouldn't light. The repair was booked in August, 2020 and the tenants were offered space heaters, which were refused. When the installers arrived, the tenants wouldn't allow access, so it didn't get done until the tenants moved out.

The claim of \$1,075.00 for labour refers to the bathroom fan, trim that had been removed, broken hinges off cupboards, and the person helped to install new flooring and other various things. No Invoice has been provided for this hearing for that labour claim or for the \$850.00 labour claim.

The landlord's husband had his own flooring company and the landlord claims \$3,000.00 for new flooring and maintenance. No invoice has been provided for this hearing.

The entire house needed cleaning at the end of the tenancy. Photographs have been provided for this hearing however they are distorted and are not visible of what they are meant to depict.

The lawn mower and weed-eater were in good working order and the tenants were provided storage for them. The weed-eater was new but cannot be found. The lawn mower was battery operated and the tenants were told to take the battery out for winter, but they didn't do so, it remained out in the snow all winter, and it froze and no longer works. A copy of an advertisement from Rona has been provided for this hearing estimating the total for replacement at \$558.88.



The coffee table was an antique and was in the house at the beginning of the tenancy but could not be found at move-out. The landlord has not yet purchased a new one, and the amount claimed was taken from multiple stores showing that one that similar in quality and at the lowest rate was \$129.92. A copy of an advertisement from The Brick has been provided for this hearing.

There were 3 beds when the tenants moved in and at move-out one was missing. A copy of an advertisement for a new bed has been provided for this hearing with an estimated cost of \$1,174.88.

The current tenants completed some of the painting in the bathroom and 1 bedroom and the landlord exchanged that for rent. The rental unit was last painted about 5 years ago.

The landlord's agent further testified that due to the condition of the rental unit, he was unable to re-rent until October 15, 2020 for \$2,400.00, and the landlord reduces the claim for loss of rental revenue to half a month's rent. The landlord advertised in September in a local internet site as well as word-of-mouth. New tenants wanted to move into the rental unit on October 1, 2020 but there was still work to be done and it was not ready to move into until October 15, 2020.

The hydro bill payment has been provided for this hearing. It shows that the \$16.95 bill was due on November 9, 2020 but does not indicate the billing period.

When an inspection was done at the end of the tenancy, the door on the master bedroom was different than the one that was there at the beginning of the tenancy. The frame and door need replacing, neither of which has yet been done. The landlord claims \$245.28 and has provided an advertisement from Rona for a cost of \$219.00.

The pick-up/delivery claim is for disposal of a dryer and various items, plus the landlord's time.

The landlord also claims \$1,000.00 to install a security camera because the tenant had been found on the landlord's personal property and she had to install a camera.

Rent was constantly late, incomplete and a headache. In July the landlord's agent talked to the tenant (CAS) on the phone and she and her husband wanted the landlord's agent to sign a new lease with her son, but the landlord's agent didn't want to. A couple weeks later, they said there were many issues that had not been brought up before. Any time the landlord or landlord's agent sent repair people; they were refused access. Text messages and emails have been provided for this hearing, and the landlord's agent testified they

were threatening. The landlord and landlord's agent tried to be accommodating, but ran into issues trying to get things done.

**The landlord** (KW) testified that the parties had discussions about the tenancy verbally and by text in July, 2019, and the parties agreed to a tenancy beginning on the 1<sup>st</sup> of October instead of the 15<sup>th</sup>. Esthetic maintenance needed to be done, but wouldn't be finished by the 1<sup>st</sup>. Text messages have been provided for this hearing. A walk-through was completed and some painting was needed as well as patching on the ceiling. The tenants were well aware of what needed to be done.

The tenants advised in writing that they didn't want a cleaner, and a copy has been provided for this hearing; that was their choice.

The rental unit was rented to tenant (CAS) and the landlord understood that her husband would move in around March, 2020, but not the tenant (NTS).

The landlord purchased new locks in September, 2019 and the tenant (NTS) installed them while the landlord was there, so to say that they needed to purchase new ones is not right.

The tenant had called the technician for the hot water tank, who was a friend of the tenant. The bill was received by the tenant and he sent it to the landlord. The landlord was under the assumption that the hot water tank was fixed, and the landlord paid the \$129.00 to the tenant to pay the technician.

The landlord contacted a furnace repair company on July 7, and they assessed the furnace on July 9, recommending upgrading because they couldn't light the pilot. They were denied access by the tenants on August 26, 2020 and the furnace was replaced on September 18 and 19 after the tenants vacated.

Another contractor was also denied access for repairs to the bathroom fan and closet door.

With respect to the tenancy agreement, the landlord testified that she gave a copy of the tenancy agreement to the tenant (NTS) on August 14, 2019. Then on June 3, 2020 the tenant (CAS) asked for the original, but the landlord refused and said she would give a copy. The landlord received another text and the landlord apologized for not sending it, and the tenant's husband retrieved it on June 6, 2020.

The landlord does not deal with the rent however the landlord told the tenant (NTS) that the security deposit was \$850.00, but that was wrong information at that time.

### Analysis

I have reviewed all of the evidence of the parties, including all photographs, strings of emails and text messages.

Firstly, with respect to the tenancy agreement, I have been provided with several copies by the parties, none of which include a signature of either tenant on the Addendum. The tenants both testified that they only received the signing page prior to the commencement of the tenancy. It totally baffles me why a person would sign a contract without seeing the contract, however the tenants testified that the landlord required that it be signed and decide immediately or the tenants would not get the rental unit.

Having been through hundreds of pages of evidence by all parties, albeit some of which is duplicated, there is no evidence to support that the tenants were given a copy of the tenancy agreement until June, 2020. A landlord is required to give a copy of a tenancy agreement to a tenant within 21 days of the parties entering into the agreement. The landlord testified that she gave a copy to the tenant (NTS), but other testimony states that he was not a tenant and was not supposed to be residing in the rental unit. If he was not a tenant or a person that the landlord knew would be living there, I am not satisfied that the landlord has given a copy to the tenant named in the tenancy agreement within 21 days as required.

I also consider the undisputed evidence that the tenants paid a security deposit in the amount of \$850.00 although the tenancy agreement specifies \$875.00. The landlord's agent testified that he just didn't do anything about it, and the landlord testified that she told the tenant(s) the security deposit was \$850.00 but was wrong. Neither is a professional act by a landlord.

Considering the evidence and the testimony, I am not satisfied that the tenancy agreement provided to the tenant in June, 2020 was the agreement made at the commencement of the tenancy. I find that the parties agreed to a standard tenancy commencing October 15, 2019 on a month-to-month basis for rent in the amount of \$1,700.00 per month, payable on the 15<sup>th</sup> day of each month and a security deposit of half a month's rent, being \$850.00.

The tenants filed the Application for Dispute Resolution on October 28, 2020 and the landlord filed on November 12, 2020 after the tenant's application was filed. Therefore, I heard from the tenants first, but I find it useful to deal with the landlord's claim first in this Decision.

Dealing with the landlord's claim for unpaid rent, the *Residential Tenancy Act* requires a tenant to give notice to end a periodic tenancy before the date rent is payable under the tenancy agreement and must be effective on the last day of that rental period. The notice must also be in writing and must contain a signature of the tenant. The landlord's agent (PMC) testified that he received an email from the tenant on September 6, 2020 stating that the tenants had vacated on September 1, 2020. The tenants' evidence shows that the tenants returned after that a few times. Regardless, the tenants clearly did not give sufficient notice to end the tenancy. The landlord gave a notice to end the tenancy effective September 30, 2020 but did not know the tenants vacated at the beginning of the month. I find that any legal notice the tenants could have given at that time would not have taken effect until October 14, 2020. The landlord's agent testified that the rental unit was re-rented for October 15, 2020.

I have also reviewed the landlord's ledger of payments made, which shows that the September 15 payment at the end of the tenancy was not made, which would be a payment to the end of the period, October 14, 2020. However, the payments made in the ledger include the \$850.00 security deposit, and I find that the tenants paid the sum of \$18,275.00 for rent during the tenancy. Having found that the parties had agreed to rent in the amount of \$1,700.00 per month, I find that the landlord has established that the tenants ought to have paid \$20,400.00 for the 12 month period of October 15, 2019 to October 14, 2020, and the landlord has established a claim for the difference in the amount of **\$2,125.00**.

The *Act* also puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. Regardless of whose fault it was that the inspections didn't happen in accordance with the law, I am not satisfied that the landlord has complied at all with the regulations or the *Act* and I find that the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also specifies that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. Given that the reports were not completed with either of the tenants present, I find that the reports cannot be relied upon.

However, the landlord's right to claim for damages is not extinguished. In order to be successful, the onus is on the landlord to establish the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the tenants' failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

Although the landlord's agent withdrew the claim for the hot water tank, I find it to be ridiculous to claim for a 40 year old tank at all. The landlord is fortunate that no damages were caused.

A landlord is required to maintain, meaning to have a furnace inspected annually in accordance with the manufacturers' specifications. Considering the photographs, I am satisfied that the blankets and other items stuffed into the furnace were there prior to this tenancy and the cobwebs and dust are evidence that they have been there a very long time. I find that the landlord has not sufficiently had it inspected or the items would have been noticed. I dismiss the landlord's claim for the furnace.

The landlord's claim for \$1,075.00 and \$850.00 for labour have not been substantiated by any supporting evidence, and I dismiss those claims.

Further, there is no evidence to substantiate the amounts of \$3,000.00 to install flooring, or that flooring was required as a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss that portion of the landlord's claim.

The tenants did not dispute that they didn't clean the rental unit at the end of the tenancy, testifying that it was so horrible it couldn't be cleaned. I have also considered a letter from a cleaner provided in the landlord's evidence that at the beginning of the tenancy it was the only time the cleaner wasn't hired by the landlord. Although there is no receipt, I find the amount to be reasonable for a single family dwelling, and I do not accept the tenant's testimony that it couldn't be cleaned. I find the landlord has established a claim of **\$400.00** for cleaning.

The parties disagree about the lawn mower and weed-eater, and I am not satisfied that the landlord has established that any loss exists. Where it boils down to one person's word over another, the claim has not been proven, and I dismiss the landlord's \$558.88 claim.

The parties also disagree as to what happened to the coffee table. The landlord testified it was an antique and the tenant testified that it looked like a teenager's project, and both tenants testified that it had a broken leg and they put it in a closet. Any award for damages is meant to put the claiming party in the same position as the party would be if no damage or loss had occurred. In other words, to provide the landlord with a new coffee table, the

landlord would have a new coffee table when the landlord certainly wouldn't have a new coffee table if it had been located. I dismiss the landlord's claim of \$129.92 for the coffee table.

The tenant also testified that the beds were in poor shape, and I am not satisfied that whether or not one is missing, the landlord is entitled to a new bed or that the bed that's missing was a new or newer bed and I dismiss the landlord's \$1,174.88 claim for a new bed.

The tenant testified that the rental unit had not been painted for 10 years considering the condition of the home during the tenancy. The landlord testified that it was last painted about 5 years ago, but there were holes in the walls. I am not satisfied that the landlord has established that there were no holes in the walls at the beginning of the tenancy. I refer to Residential Tenancy Policy Guideline #40 - Useful Life of Building Elements, which puts the life of interior paint at 4 years. I am not satisfied that the requirement to paint at the end of the tenancy wasn't already at its useful life, and I dismiss the landlord's claim of \$400.00 for painting.

I accept the undisputed testimony of the landlord's agent that the tenant was given **\$129.00** to pay the first technician but didn't do so, and I find the landlord has established that claim.

The landlord has provided a copy of a hydro payment which he testified is for September, but a copy of the bill has not been provided. It shows that the payment due date is in November, and I am not satisfied that the landlord has established what period the payment covers, and I dismiss the \$16.95 claim.

The tenants did not dispute the landlord's testimony that the door on the master bedroom was different than the one that was there, and that the frame and door need replacing. The landlord has provided an advertisement of the cost to replace it, and I accept the **\$245.28** claim as against the tenant.

With respect to the landlord's claim of \$350.00 for pick-up and delivery, the landlord's agent testified that the claim is for disposal of things, such as a dryer and various items, plus the landlord's time. The parties do not disagree that the dryer wasn't functioning and the tenant replaced it, and I find that it was the landlord's responsibility to dispose of it. No receipt has been provided for any pick-up or delivery, and I dismiss the landlord's claim in that regard.

To order the tenant to pay for a security camera for the landlord's personal property is not the responsibility of a tenant, and does not satisfy the test for damages, and I dismiss the \$1,000.00 claim.

Dealing with the tenants' claim for return of the security deposit, a landlord is required to return a security deposit in full to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must repay double the amount. Although the landlord's right to claim against the security deposit for damages is extinguished, the landlord's right to claim against the security deposit for unpaid rent is not extinguished.

The parties agree that the tenants left the rental unit close to the beginning of September, 2020, and I have evidence of the tenants providing the forwarding address in writing by registered mail on September 29, 2020 which is deemed to have been received 5 days later, or October 4, 2020. I have also made a finding that the tenants were obligated to pay rent to October 15, 2020. The landlord filed the Application for Dispute Resolution on November 12, 2020, which is well beyond the 15 days of either the date the tenancy actually ended or the date the tenants were obligated to pay rent to, or the date the landlord received the tenant's forwarding address. Having found that the security deposit amount was \$850.00, I find that the tenants are entitled to double the amount, or **\$1,700.00.**

The tenants also claim the equivalent of 12 months' rent, and the application specifies \$20,400.00 for the landlord's failure to maintain the rental unit, which is equivalent to rent payable in the amount of \$1,700.00 per month.

In order to be successful, the tenants are required to establish that the tenancy was devalued by the entire amount of rent by the landlord's failure to comply with the *Act*, and that the tenants suffered a loss as a result, and what efforts the tenants made to mitigate any such damage or loss.

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupancy by a tenant, and the landlord's obligation in that regard exists even if the tenant knew of a breach of that section when the tenancy agreement was created:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The landlord's evidentiary material describes the rental home as a 100 year old home with original wood flooring and other characteristics. The tenant (NTS) testified that it was horrible. Having found that the landlord has failed to maintain the hot water tank and furnace, I am satisfied that the landlord has breached Section 32, and the testimony of the landlord that the tenants "were well aware of what needed to be done," does not negate any obligation. She also testified that the home required some esthetic maintenance at the beginning of the tenancy but the tenants wanted to move in right away. Some painting was required and the ceiling needed patching.

I also consider the text messages and the testimony of the landlord's agent that the tenant (NTS) was threatening, which is also very unprofessional, before the tenancy ended as well as after. That is not mitigation. Nor is any attempt by the tenant to refuse entry to make repairs.

The tenant (CAS) testified that nothing was done by the landlord about locks or repair to the porch door, which wouldn't shut unless locked or tied. The landlord didn't fix the switch for the ceiling fan in the bathroom or remove 2 car batteries from the kitchen, replace the fridge door handle. The tenant also testified that she didn't sleep well due to the gas water heater and that it had no pan under it, and the tenant has an anxiety disorder and worried about it falling through the floor.

I am satisfied that the tenants have established that due to the landlord's failure to deal with the hot water tank and furnace, thereby potentially risking the health of the tenants, the tenancy has been devalued, but I am not satisfied that the tenants have established that the entire rent should be returned.

The *Act* does not permit me to make a monetary award to punish a party for any wrongdoing, but does permit me to make a nominal award for damages where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find that no significant loss has been proven. The tenants have provided evidence of the landlord's previous neglect which has



devalued the tenancy, and I find that the tenants are entitled to recover the equivalent of 1 month's rent from the landlord, or **\$1,700.00**.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees.

Having found that the landlord has established claims totaling \$2,899.28 (\$2,125.00 for rent; \$400.00 for cleaning; \$129.00 for the hot water tank technician; \$245.28 for the door); and the tenants have established claims totaling \$3,400.00 (\$1,700.00 for double the security deposit and \$1,700.00 for damage or loss), I set off those amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$500.72.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$500.72.

This order is final and binding and may be enforced.

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: January 26, 2021

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Residential Tenancy Branch