Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 15, 2020 (the "Application"). The Landlord sought:

- Compensation for damage caused by the tenant, their pets or guests to the unit or property
- Compensation for monetary loss or other money owed
- To keep the security deposit
- To recover the filing fee

This matter came before me January 07, 2021 and an Interim Decision was issued January 08, 2021. This matter came before me again May 13, 2021 and an Interim Decision was issued May 14, 2021. This decision should be read with the Interim Decisions.

At the May 28, 2021 hearing, M.M. appeared as agent for the Landlord. The Tenant appeared and called H.L. and S.B. as witnesses during the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties and witnesses provided affirmed testimony.

Pursuant to the Interim Decision issued January 08, 2021, the Landlord was required to re-serve evidence on the Tenants. The Landlord submitted this further evidence to the RTB January 17, 2021. This further evidence is 79 pages of material. The Landlord also submitted registered mail receipts and photos of the packages sent to the Tenants. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the

packages were sent January 16, 2021, notice cards were left January 20, 2021 and January 26, 2021 and the packages were unclaimed and returned.

The Tenant took issue with the fact that the Landlord sent two packages of evidence despite the direction in the Interim Decision to send one package. This is a non-issue. The Landlord did send the further evidence in one package as directed. The Landlord simply sent one package of evidence to Tenant R.L. and the same package of evidence to Tenant N.L. which was both acceptable and in compliance with rule 3.5 of the Rules.

The Tenant testified that the Tenants did not receive the packages sent January 16, 2021. The Tenant testified that the Tenants did not receive notice cards for the packages. The Tenant testified that the Tenants submitted evidence to support that they did not receive notice cards including their own email and a letter from their property manager.

There was no letter from the Tenants' property manger in evidence before me.

I accept that the Landlord served the further evidence on the Tenants in accordance with section 88(c) of the *Residential Tenancy Act* (the "*Act*") based on the customer receipts, photos of the packages and Canada Post website information. The Tenants cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the packages January 21, 2021.

The Tenants can rebut the deeming provision; however, were required to submit compelling evidence to rebut the deeming provision. I do not accept that the Tenants did not receive notice cards for the packages because the Canada Post website shows the Tenants received four notice cards. I find the Canada Post website information more reliable and credible than the Tenant's testimony about notice cards. The Tenants have not submitted compelling documentary evidence showing that the notice cards were not received. I would not find the Tenants' own email on this point to be compelling evidence. As stated, there is no letter from the Tenants' property manger in evidence before me.

Given the above, I was satisfied of service of the Landlord's evidence and the 79-page package is admissible.

The parties were permitted to serve one further package of evidence as stated in the Interim Decision issued January 08, 2021.

The Landlord submitted a further package of evidence February 02, 2021. The Landlord submitted registered mail receipts and photos of the packages. The registered mail receipts show the packages were sent February 02, 2021. I find the Landlord complied with the Interim Decision in relation to the timing of service. The Tenant acknowledged receipt of the packages and therefore they are admissible. I again note that the Tenant raised the issue of a total of four packages being sent to the Tenants. As stated above, the Landlord simply served each of the Tenants with the further evidence which was both acceptable and in compliance with the Rules.

The Tenants submitted numerous separate documents to the RTB as their further evidence on February 08, 2021, February 10, 2021 and May 12, 2021. The Tenant testified that the further evidence was posted to the Landlord's door February 08, 2021. M.M. testified that the evidence was received February 12 or 13, 2021 on the floor. M.M. testified that the only further evidence served was a Victim Impact Letter. I understood the Tenant to take the position that all further evidence submitted was served. The Tenant relied on an Affidavit of Service in evidence and an email from the Landlord to show more than the Victim Impact Letter was served.

The Affidavit of General Service submitted shows that a letter from H.L. dated January 2021 was served on the Landlord. There is an email in evidence that seems to indicate that the Landlord received more than the Victim Impact Letter as the email states "Also, you failed to date a number of your letters/documents properly."

I accept that the Landlord received the Victim Impact Letter as M.M. acknowledged this. I accept that the Landlord received the letter from H.L. dated January 2021 as the Affidavit of General Service states this. I am not satisfied the remaining documents uploaded were served on the Landlord given the conflicting testimony and lack of documentary evidence to support this. I accept based on the Affidavit of General Service that the two documents noted above were posted to the Landlord's door February 08, 2021. I find the Landlord was served in accordance with section 88(g) of the *Act*. I find the Tenants complied with the Interim Decision in relation to the timing of service and the two documents noted above are admissible.

I note that both parties submitted further documents about service of evidence and other issues after they submitted the one further package of evidence permitted in the Interim Decision issued January 08, 2021. I have not considered these further documents either because I am not satisfied of service of them as stated above or because the submission of them does not comply with the Interim Decision in relation to what further evidence was permitted.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused by the tenant, their pets or guests to the unit or property?

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

3. Is the Landlord entitled to keep the security deposit?

4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Microwave hood	$547.22
2	Fridge temperature panel	$602.56
3	Labour cost for fridge repair	$201.60
4	Freezer service appointment	$167.99
5	Hardwood floor repair	$682.50
6	Hardwood 1 box	$585.39
7	Dryer vent cleaning	$198.45
8	Loss of rent September 2020	$2,200.00
9	Pain and suffering	$29,500.00
	TOTAL	**$34,685.71**

The parties agreed there were three written tenancy agreements between them from 2017, 2018 and 2019. The tenancy started August 01, 2017. The Tenants paid a $1,100.00 security deposit. The last tenancy agreement shows rent was $2,200.00.

The parties agreed the tenancy ended August 31, 2020.

The parties agreed the Tenants provided a forwarding address on the Condition Inspection Report (the "CIR") on September 02, 2020.

The parties agreed the CIR submitted is accurate in relation to the move-in inspection details.

The parties agreed the CIR submitted is accurate in relation to the move-out inspection details; however, I note that the Tenants did not agree with the condition of the rental unit at the end of the tenancy as stated on the CIR.

#1 Microwave hood $547.22

M.M. submitted that the Tenants damaged the microwave throughout the tenancy. M.M. submitted that the microwave had to be replaced. M.M. submitted that the Tenants sent an email stating they expected to pay for the microwave repairs or replacement. M.M. submitted that Tenant N.L. agreed to pay for the damaged microwave.

The Tenant submitted that the Landlord came and looked at the microwave and fridge, which were not working properly, in February. The Tenant submitted that the Landlord did not do anything about repairing these appliances. The Tenant submitted that the Tenants sent a formal repair request July 15th. The Tenant submitted that the Tenants had appliance repair people and licensed property managers look at these appliances and it was determined that the issue was with internal components and not the fault of the Tenants. The Tenant denied that Tenant N.L. agreed to pay for the damaged microwave.

I do not see where in the emails referred to by M.M. the Tenants state that they agree to pay for the microwave repairs or replacement. The Landlord did submit a signed statement by the Landlord, M.N. and M.M. stating that Tenant N.L. agreed to pay for the damaged microwave on February 03, 2020. The Landlord also submitted a signed statement by Tenant N.L. denying that they agreed to pay for the damaged microwave. Tenant N.L. also submitted a statement about the events on February 03, 2020.

The Landlord submitted photos from February 03, 2020 of the microwave. There is no physical damage to the microwave.

The Landlord submitted an email from the Tenant dated July 15, 2020 about repairs to the microwave and fridge. The email chain includes an email from D.K. from an

appliance repair company. D.K. states in their email that the fridge has a bad control board and that these problems are mostly due to power outages or voltage spikes. D.K. states that "the microwave needs to have its high voltage components replaced." D.K. also states that the "microwave has a high voltage problem and requires extensive repairs."

The Landlord submitted an email from the Tenant dated July 16, 2020 which refers to a request to repair the malfunctioning appliances including the microwave and fridge.

The Landlord submitted an email from the Tenant dated July 20, 2020 which includes an email from D.K. which states the following in relation to the microwave and fridge:

> Both appliances are esthetically in good condition, when the technician diagnosed and inspected the appliances there was no damages other than regular wear. No issues can be accumulated for vital internal components from damage to the frame or body (there was none).

The Landlord submitted a text message from the Tenant dated February 03, 2020 about the microwave not working as it turns on but does not heat the contents.

The Landlord submitted an invoice and receipt in relation to replacing the microwave.

The Landlord submitted photos of the microwave being replaced September 22nd.

The Tenants submitted a letter from H.L. dated January 2021 about the condition of the rental unit at the end of the tenancy stating that the rental unit was "impeccably well maintained by the tenant, including flooring, walls, and appliances".

The Tenants submitted a letter from M.S. dated August 31, 2020. I understand from the letter that M.S. works for an appliance repair company. The letter states that M.S. examined the microwave and fridge in the rental unit on August 30, 2020. The letter states as follows:

> I note that the microwave oven and the fridge were both in excellent cosmetic condition with no sign of any damage, abuse, or over-use.
>
> The microwave oven turned on and operated but did not produce any heat, and the digital temperature control in the fridge was unresponsive.

> In the case of the microwave at least the magnetron would require replacement, and in the case of the fridge the temperature control board would require replacement.
>
> In my professional opinion, the failure of the internal components in the microwave oven and the fridge in this case could not have been caused by the tenant's use of the appliances.

The Tenants submitted an invoice for the service call by M.S.

The Tenants submitted a letter from H.L. dated August 14, 2020 with a Condition Inspection Report completed by H.L. August 30 or 31, 2020. The letter states that H.L. visited the rental unit on two occasions. The letter states that the rental unit was in excellent condition including walls, flooring and appliances. The letter states that H.L. noticed that the microwave turned on and operated but did not produce heat. The letter states that it was apparent to H.L. that an internal component of the microwave had failed. H.L. states in the letter that the internal component failures of the appliances could not have been caused by the Tenants. I note that the attached Condition Inspection Report shows the rental unit was generally in good condition and clean but also notes areas where there were marks and that a light bulb was burnt out.

The Tenants submitted a letter from S.B. dated August 05, 2020 stating that S.B. examined the rental unit August 09, 2020. The letter states that all appliances were in excellent condition with no sign of damage or misuse. The letter notes issues with the fridge, freezer and microwave. The letter states that the dryer filter was clean. The letter states that flooring was in excellent condition with no damage.

The Tenants submitted photos of the microwave, fridge and freezer taken from August 06 to 08, 2020.

The Tenants submitted a letter from J.Z. dated August 08, 2020 about the condition of the rental unit. I have not relied on this letter given it is not signed and J.Z. did not appear as a witness. I do note that there is also an email from J.Z. in evidence.

The Tenants submitted a letter from S.B. dated August 12, 2020 about his inspection of the rental unit stating that the rental unit was in excellent condition. The letter notes issues with the microwave and fridge but states that, in the opinion of S.B., "given the excellent cosmetic condition of the appliances, these internal component failures could not have been caused by the tenant's use of the appliances."

#2 Fridge temperature panel $602.56

M.M. submitted that the temperature board of the fridge was damaged by the Tenants through misuse and overuse. M.M. pointed out that the fridge was brand new at the start of the tenancy. M.M. submitted that the Tenants used the fridge as a garbage can which lead to excessive opening and closing of the fridge door. M.M. submitted that the Tenants agreed to pay for the fridge. M.M. submitted that the Landlord heard about the broken fridge for the first time July 15th.

The Tenant denied that the Tenants damaged the fridge. The Tenant submitted that the Tenants did not use the fridge or freezer as a garbage can, they kept compost in a sealed container in the freezer as is suggested. The Tenant relied on the documentary evidence submitted from appliance repair people. The Tenant submitted that the fridge was in excellent condition as shown in the photos, documentary evidence of the appliance repair people and documentary evidence of the property managers. The Tenant submitted that he only agreed to pay for the fridge if the Landlord was willing to settle issues between the parties and stated that the damage was not the Tenants' fault. The Tenant submitted that the Landlord was aware of the fridge issue in February.

In reply, M.M. submitted that the Tenants are relying on property managers and not electricians for their position about the appliances.

The parties submitted documentary evidence relevant to the fridge issue which has been outlined above.

The Landlord submitted an email dated January 06, 2021 following up about replacement of the fridge temperature board.

The Landlord submitted photos of someone repairing the fridge on November 21st.

The Tenants submitted photos of the fridge and freezer. There is no apparent damage to the fridge or freezer in the photos.

#3 Labour cost for fridge repair $201.60

The parties relied on their testimony in relation to item #2 for this item.

#4 Freezer service appointment $167.99

The parties relied on their testimony in relation to item #2 for this item.

The Landlord submitted a receipt and service appointment information showing that a service to address ice build up on the bottom of the freezer was done September 09, 2020 and cost $167.99.

#5 Hardwood floor repair $682.50
#6 Hardwood 1 box $585.39

M.M. submitted that there was a large blue stain on the hardwood floor in the bedroom at the move-out inspection. M.M. submitted that the Tenants had someone fix the wood floor and that these people damaged the floor further. M.M. referred to the photos in evidence. M.M. submitted that only the damaged portions of the floor were replaced.

The Tenant acknowledged there were scratches on the hardwood floor where furniture rubbed against it. The Tenant submitted that the Tenants had a company attend and fix the floor. The Tenant submitted that the property managers looked at the floor and could not see where the floor had been fixed unless the Tenant pointed it out to them. The Tenant submitted that the Landlord has unreasonable expectations and that there will be wear and tear on a floor after a three-year tenancy.

In reply, M.M. stated that the Tenants' photos show a blue stain on the hardwood floor.

I note that the Tenant stated that the Landlord's photos of the damaged floor are black and white, which is not correct. The Tenant referred to photos submitted by the Tenants.

The Landlord submitted photos dated September 02nd of a blue stain on wood floor.

The Landlord submitted an estimate for floor repair showing a cost of $682.50.

The Landlord submitted an invoice for materials and freight in relation to one box of hardwood showing a cost of $585.39.

The Tenants submitted documentary evidence relevant to the flooring issue which has been outlined above.

The Tenant submitted an invoice for a floor plank repair which cost $255.00.

The Tenants submitted photos of a wood floor showing no obvious issues with it.

#7 Dryer vent cleaning $198.45

M.M. submitted that the Tenants refused to clean the dryer vent during the tenancy and said it was not the dryer vent for the rental unit when the issue was raised with them. M.M. submitted that the photos show the dryer vent was not cleaned. M.M. submitted that a company came and cleaned out the dryer vent. M.M. relied on photos and an invoice in evidence.

The Tenant submitted that the dryer filter was cleaned during the tenancy and relied on photos submitted. The Tenant submitted that the Landlord never did routine maintenance of the dryer vent. The Tenant submitted that the property managers state that they looked at the dryer filter and it was clean. The Tenant questioned when the Landlord's photos were taken and submitted that there is a lack of evidence from a third party to support the Landlord's position. The Tenant submitted that RTB Policy Guideline 01 states that cleaning the dryer vent is the responsibility of the Landlord.

The Landlord submitted photos of people cleaning the dryer vent in the rental unit.

The Landlord submitted the invoice for the dryer vent cleaning.

The Landlord submitted a photo of two vents on the outside of the house showing one of the vents, indicated as the rental unit vent, has lint coming out of it and below it.

The Tenants submitted a photo of the lint screen in the dryer showing it is clean.

#8 Loss of rent September 2020 $2,200.00

M.M. submitted that the rental unit could not be re-rented for September due to damage in the rental unit. M.M. submitted that the Landlord posted the unit for rent August 14, 2020 and re-rented the unit for January of 2021. M.M. submitted that the Tenants did not let the Landlord know about the damage in advance and tried to hide the damage.

The Tenant submitted that the property managers noted in their documentary evidence that the rental unit could be re-rented immediately after the microwave was replaced and that the rental unit was in excellent condition.

#9 Pain and suffering $29,500.00

M.M. submitted that the Tenants were aggressive, argumentative and intimidating during the tenancy. M.M. submitted that the Tenants caused the Landlord anxiety and stress. M.M. submitted that the Tenants discriminated against the Landlord.

The Tenant denied the allegations made by M.M. and the Landlord in relation to this item.

Witness H.L.

H.L. provided the following relevant testimony in response to questions from the Tenant and M.M. There was no physical damage to the appliances. The rental unit was very clean. There was an interior problem with the microwave and fridge. The unit could have been re-rented quickly if the Landlord fixed the microwave and fridge. The filter inside the dryer was clean. There was no furniture in the rental unit when H.L. inspected it.

The Tenant testified that the Tenants moved their furniture out of the rental unit prior to H.L. or S.B. attending.

Witness S.B.

S.B. provided the following relevant testimony in response to questions from the Tenant and M.M. S.B. visited the rental unit August 09, 2020. The rental unit was clean and well cared for. There was nothing out of the ordinary in the bedrooms in relation to the flooring. Nothing stood out to S.B. in relation to damage or cleanliness issues. S.B. did not see scratches under the bed in the bedroom. S.B. did not take photos. The rental unit was rentable, and the appliances could have been fixed. S.B. did not notice that dryer vents were clogged.

M.M. submitted that the statements of the witnesses are not supported by photos. M.M. submitted that the witnesses did not look at the dryer vent. M.M. submitted that H.L. contradicted himself in his testimony and that his report shows three different dates which calls into question the reliability and credibility of the report. M.M. submitted that

many things could have happened between when the witnesses attended the rental unit and the move-out inspection. M.M. submitted that the documents of the witnesses are backdated.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I am satisfied based on the testimony of the parties and CIR that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for dryer vent cleaning, loss of rent and pain and suffering.

Based on the testimony of both parties, I accept that the tenancy ended August 31, 2020.

Based on the testimony of both parties, I accept that the Tenants provided a forwarding address on the CIR on September 02, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. The Landlord had 15 days from September 02, 2020 to repay the security deposit or claim against it. The Application was filed September 15, 2020, within time. I find the Landlord complied with section 38(1) of the *Act* and was permitted to claim against the security deposit when the Application was filed.

Compensation

Section 7 of the *Act* states:

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> **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:
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> - 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.
>
> (emphasis added)

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 32 of the *Act* states:

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the *Act* states:

> (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…

I note at the outset that the parties disagreed about whether the Tenants were responsible for each item claimed. I am not satisfied based on the documentary evidence, or testimony of the parties and witnesses, that I can prefer the testimony of either M.M. or the Tenant over the other. Therefore, I have focused on what documentary evidence from a third party is before me in relation to each item claimed. I emphasize that it is the Landlord who has the onus to prove the claim. Therefore, where the parties have provided conflicting testimony, I have focused on what documentary evidence from a third party supports the Landlord's position. Further, I acknowledge that M.M. took issue with the evidence of H.L. and S.B.; however, as is clear from the below, I have not focused on the evidence of H.L. or S.B. in this decision.

#1 Microwave hood $547.22

The parties disagreed about whether the Tenants damaged the microwave.

I do not see an email in evidence where the Tenants state that they expect to pay for the microwave repairs or replacement.

The parties disagreed about whether Tenant N.L. agreed to pay for the damaged microwave. I would expect agreements between the Tenants and Landlord about the Tenants paying for damage to an appliance to be in writing given the importance of these types of issues and agreements during a tenancy. There is no written communication between the parties showing Tenant N.L. agreed to pay for the damaged microwave before me. Nor is there other compelling documentary evidence

to support the Landlord's position before me. Further, the Tenants were only responsible for paying for damage to the microwave if they caused that damage.

The photos submitted show that there was no physical damage to the microwave which supports that the damage was to internal components.

There is documentary evidence from third parties before me in relation to the microwave damage including the evidence of D.K. and M.S., both appliance repair people. I am satisfied D.K. and M.S. are qualified to give their opinion about the damage to the microwave given they are appliance repair people. The evidence of D.K. and M.S. supports that the microwave was in good physical condition, that the problem was with internal components and that the damage was not the fault of the Tenants.

The Landlord did not submit documentary evidence from a third party to support the Landlord's position that the Tenants caused the damage to the microwave.

In the circumstances, I have conflicting testimony from the parties about whether the Tenants caused the damage to the microwave, documentary evidence from third parties to support the Tenants' position and no documentary evidence from the third parties to support the Landlord's position. Given this, the Landlord has failed to meet their onus to prove the Tenants caused the damage to the microwave in breach of section 37 of the *Act*.

This claim is dismissed without leave to re-apply.

#2 Fridge temperature panel $602.56
#3 Labour cost for fridge repair $201.60
#4 Freezer service appointment $167.99

The parties disagreed about whether the Tenants damaged the fridge and freezer.

I do not accept that there is compelling evidence of the Tenants misusing or overusing the fridge or freezer before me. I understood the Landlord to take the position that the Tenants storing their compost in the fridge or freezer is what caused the damage to the fridge and freezer. There is no obvious connection between the Tenants storing compost in the fridge and freezer and damage to the fridge or freezer. I find it reasonable that the Tenants stored compost in the fridge or freezer. I am not satisfied based on the evidence provided that the Tenants misused or overused the fridge or freezer.

I acknowledge that the Tenant offered to pay for the fridge damage in an email. However, I accept based on the wording of the email that the Tenant offered to pay for the fridge as a broader offer to settle issues between the parties. I am not satisfied based on the evidence provided that the parties did settle the issues between them. I also note that the Tenant specifically stated in the email that the fridge damage was not the Tenants' fault.

The photos submitted show that there was no physical damage to the fridge or freezer which supports that the damage was to internal components.

There is documentary evidence from third parties before me in relation to the fridge damage including the evidence of D.K. and M.S. I am satisfied D.K. and M.S. are qualified to give their opinion about the damage to the fridge given they are appliance repair people. The evidence of D.K. and M.S. supports that the fridge was in good physical condition, that the problem was with internal components and that the damage was not the fault of the Tenants.

The Landlord did not submit documentary evidence from a third party to support the Landlord's position that the Tenants caused damage to the fridge or freezer.

In the circumstances, I have conflicting testimony from the parties about whether the Tenants caused damage to the fridge and freezer, documentary evidence from third parties to support the Tenants' position and no documentary evidence from the third parties to support the Landlord's position. Given this, the Landlord has failed to meet their onus to prove the Tenants caused damage to the fridge or freezer in breach of section 37 of the *Act*.

These claims are dismissed without leave to re-apply.

#5 Hardwood floor repair $682.50
#6 Hardwood 1 box $585.39

The parties disagreed about whether the Tenants damaged the flooring in the bedroom beyond reasonable wear and tear.

I find the Landlord's photos show an obvious blue stain on the flooring in the bedroom. However, the Tenants also submitted photos of the flooring. I understand the Tenants' photos to be of the same spot as the Landlord's photos because M.M. submitted that the blue stain can be seen in the Tenants' photos. However, I do not agree that there is

an obvious blue stain shown in the Tenants' photos. Based on the photos submitted, I am not able to determine the extent of the blue stain or whether the Tenants damaged the flooring beyond reasonable wear and tear. Given this, the Landlord has failed to meet their onus to prove the Tenants damaged the flooring in breach of section 37 of the *Act*.

These claims are dismissed without leave to re-apply.

#7 Dryer vent cleaning $198.45

Policy Guideline 01 at page 5 states:

> FIREPLACE, CHIMNEY, VENTS AND FANS
>
> …
>
> 4. The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

Pursuant to Policy Guideline 01, it was the Landlord's responsibility to clean out the dryer exhaust pipe and outside vent and therefore the Tenants are not responsible for paying for this item.

This claim is dismissed without leave to re-apply.

#8 Loss of rent September 2020 $2,200.00

The CIR completed by the Landlord shows the following issues at the end of the tenancy:

- Microwave damage
- Fridge damage
- Freezer damage
- Stained hardwood
- Dryer needs duct cleaning

As stated, I am not satisfied the Tenants caused the damage to the microwave, fridge or freezer. As stated, I am not satisfied the Tenants damaged the flooring beyond reasonable wear and tear. Further, even if I had found the Tenants stained the flooring

beyond reasonable wear and tear, I would not accept that this resulted in the Landlord not being able to re-rent the unit as this would not have made the rental unit unlivable. As stated, the Landlord was responsible for cleaning the dryer duct. In the circumstances, I am not satisfied the Tenants left the rental unit damaged such that the Landlord could not have re-rented the unit for September.

This claim is dismissed without leave to re-apply.

#9 Pain and suffering $29,500.00

Compensation is only awarded when there is a breach of the *Act*, *Regulations* or tenancy agreement. The *Act* protects a tenant's right to quiet enjoyment in section 28. However, the *Act* does not have a similar section outlining a landlord's right to quiet enjoyment. I find that the remedy in the *Act* for a landlord who has a tenant who is aggressive, argumentative or intimidating or acting in a way that causes anxiety and stress is to end the tenancy pursuant to section 47 of the *Act*.

Given the above, I am not satisfied the Landlord is entitled to compensation without pointing to a section of the tenancy agreement that the Tenants have breached in relation to the alleged behaviour. I have reviewed the tenancy agreements submitted and do not see a section that addresses the behaviour of the Tenants as it relates to the Landlord or the allegations made. In the circumstances, I am not satisfied the Landlord has pointed to or proven a breach of the *Act*, *Regulations* or tenancy agreement and therefore am not satisfied the Landlord is entitled to compensation for this issue.

This claim is dismissed without leave to re-apply.

Filing Fee

Given the Landlord was not successful in the Application, the Landlord is not entitled to recover the filing fee.

Security Deposit Return

Given the Landlord has not proven entitlement to compensation, the Landlord must return the security deposit to the Tenants. The Tenants are issued a Monetary Order for the security deposit in the amount of $1,100.00. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

The Application is dismissed without leave to re-apply.

The Tenants are issued a Monetary Order for the security deposit in the amount of $1,100.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it 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: June 25, 2021

Residential Tenancy Branch