Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) under the *Residential Tenancy Act* (the *Act*), on November 14, 2020, seeking:

- Compensation for monetary loss or other money owed;
- Compensation for damage cause by the Tenant, their guests, or their pets to the rental unit, site, or property;
- Unpaid rent;
- Authorization to withhold the Security Deposit; and
- Recovery of the filing fee.

As set out in the interim decision dated March 8, 2021, this hearing also dealt with an Application for Dispute Resolution that was filed by the Tenant (the Tenant's Application) under the *Act*, on February 13, 2021, seeking:

- Recovery of their security deposit and/or pet damage deposit;
- Recovery of costs incurred for emergency repairs made by the Tenant during the tenancy;
- Compensation for monetary loss or other money owed, which includes aggravated damages; and
- Recovery of the filing fee.

Two previous hearings were held before me in relation to the above noted Applications on March 8, 2021, and June 29, 2021. As a result, two previous Interim Decisions were also rendered by me, copies of which were sent to the parties by the Residential Tenancy Branch (the Branch). For the sake of brevity, I will not repeat here the numerous and lengthy matters covered or the orders made by me in the previous Interim Decisions. As a result, the Interim Decisions should be read in conjunction with this Decision.

The final hearing was reconvened before me by telephone conference call on July 12, 2021, at 9:30 AM and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony.

While I have considered the documentary evidence and the testimony before me for review and consideration, not all details of the submissions and arguments are reproduced here. Only the relevant and important aspects of the claims and my findings are set out below.

Preliminary Matters

Preliminary Matter #1

Although the parties were advised at the start of the hearing that inappropriate, disrespectful, and disruptive behaviour would not be tolerated, pursuant to rule 6.10 of the Rules of Procedure, the Landlord had to be cautioned during the second hearing that continued inappropriate behavior, most notably laughter at the Tenant's testimony, would not be tolerated and would result in exclusion from participation at the proceedings by way of being muted, or expulsion from the hearing. The Landlord responded by stating that they did not think we could hear them. I advised the Landlord that it is not appropriate for them to be laughing at the testimony of the other party, regardless of whether they think we can hear them, as such behaviour is inappropriate and disrespectful.

Preliminary Matter #2

At approximately 11:26 AM during the second hearing, the Tenant disconnected from the teleconference without notice, returning approximately one minute later. During the time the Tenant was absent for the proceeding, no testimony was given or accepted. During the third hearing the Tenant was in a loud work environment which made it difficult for the Landlord and I to hear them, and each other. Although the Tenant was asked to find a quieter environment for the hearing, this was not possible, so the Tenant resolved the issue by first muting themselves while not speaking, and later removing the headphones connected to their phone, which resolved the issue.

Issue(s) to be Decided

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

Is the Landlord entitled to compensation for damage cause by the Tenant, their guests, or their pets to the rental unit, site, or property?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to withhold the Security Deposit and/or Pet Damage Deposit, or any portion thereof, and if not, is the Tenant entitled to the return of all, some, none, or double their amounts?

Is the Tenant entitled to recovery of costs incurred by them for emergency repairs made during the tenancy?

Is the Tenant entitled to compensation for monetary loss or other money owed, including aggravated damages?

Is either party entitled to recovery of their filing fee?

Background and Evidence

The written tenancy agreement in the documentary evidence before me, signed by the Tenant on October 10, 2019, and the Landlord on October 29, 2019, states that the fixed term tenancy commenced on October 1, 2019, and was set to end on October 30, 2020. However, the parties disputed whether this end date was correct, with the Tenant arguing that it was and the Landlord arguing that it was an error and that the end date should have been September 30, 2020. The tenancy agreement states that rent in the amount of $4,800.00 was due on the first day of each month, which the parties agreed was correct. Although the tenancy agreement states that a 1 page addendum containing 5 terms forms part of the tenancy agreement, a copy of which was provided for my review, the parties disputed whether the Tenant had altered the addendum in their favour without the Landlords consent, and fraudulently signed it on the Landlord's behalf.

The Landlord argued that the Tenant did not sign and return the tenancy agreement or addendum in a timely fashion, and that when it was eventually returned to them, it was illegible. The Landlord stated that they finally received a legible copy from the Tenant in November of 2019, and that it had been changed by the Tenant without their knowledge or consent. The Landlord also argued that the Tenant had forged their signature on it. The Tenant denied both allegations, stating that they and the Landlord had discussed

the changes to the addendum and agreed upon them and that they had not signed the Landlord's signature as alleged.

The parties agreed that a $2,400.00 security deposit and a $2,400.00 pet damage deposit were required and paid. Although the Landlord argued that the Tenant was initially short on the deposits, they acknowledged that the Tenant eventually paid the full amounts due. The parties also agreed that the Landlord still holds both deposits.

The parties agreed that the Tenant vacated the rental unit on October 30, 2020, in compliance with a move out clause in the tenancy agreement. The Tenant stated that they provided their forwarding address to the Landlord by email on November 4, 2020, and November 7, 2020, and then again by registered mail on November 14, 2020. The Tenant provided me with the registered mail tracking number, which has been recorded on the cover page of this decision. The Tenant also provided me with the address used for the forwarding address. The Canada Post tracking system shows that the registered mail was sent on November 14, 2020, that a notice card was left on November 19, 2020, and that final notice was left on November 24, 2020, before the registered mail was returned to sender.

Although the Landlord denied receipt of the registered mail, and could not recall the date upon which it was received, the Landlord acknowledged having the Tenant's forwarding address at the time they filed their Application on November 14, 2020, as the Tenant's forwarding address was used in the Landlord's Application.

The parties disputed whether move-in and move-out inspections and reports were completed as required. The Landlord stated that the Tenant was to complete the move-out inspection with the previous occupants, on the Landlord's behalf as the Landlord is abroad, and to also complete their own move-in inspection and report. However, the Landlord stated that the Tenant only completed the move-out inspection and report for the previous occupants, and never completed a move-in inspection for their own tenancy or sent the Landlord a copy of their own move-in condition inspection report as agreed. Although the Tenant agreed that they had completed the move-out condition inspection and report with the previous occupant on the Landlord's behalf, as this had been agreed to with the Landlord, the Tenant denied any agreement to complete their own move-in inspection and report on the Landlord's behalf. The Tenant stated that when the Landlord advised them to complete it themselves, they declined, advising the Landlord that it was their obligation to complete it with them, or to arrange for an agent to complete it with them on the Landlord's behalf. The Parties made the same arguments with regards to the move-out condition inspection and report, with the Tenant

acknowledging that they completed the move-out inspection and report for the basement suite occupants, as they had rented out the basement suite, and the move-in condition inspection and report for the new occupants upstairs, but not their own move-out condition inspection or report.

In their Application the Landlord sought $870.00 in compensation for monetary loss or other money owed, $446.23 for pest control and $423.77 in unpaid utilities. However, during the hearing the Landlord stated that they were seeking $700.00 in relation to pest control. The Landlord stated that the Tenant never properly paid their utilities, but the Tenant disagreed. Although the Tenant acknowledged that there may be some utilities outstanding between September 2020 – October 2020, they stated that the utilities were fully paid between October 2019 – August 2020. The Tenant also stated that the Landlord never properly billed them and as a result, there was a lot of confusion over what was owed and when throughout the tenancy. The Tenant stated that they were fully willing to pay any outstanding balance for September and October of 2020, once they received proper verification of what was still owed and a copy of the relevant bill(s), which were in the Landlord's name. Although the Landlord stated the utility bills go directly to the house and therefore the Tenant would always have had access to them, the Tenant stated that it is a crime to open other people's mail and therefore they never opened any of the Landlord's mail.

The Landlord alleged that the Tenant breached their duties with regards to rodent remediation by not regularly cleaning up dog feces in the yard, which they categorized as a rodent attractant, and by not putting out bait stations and not plugging areas of ingress into the home as agreed upon. The Landlord also stated that the Tenant had refused entry to pest remediation companies. The Landlord sought $700.00 in compensation related to pests, which they state is the amount they were quoted to resolve the pest issue at the property.

The Tenant denied any responsibility for the rodent issue at the property, stating that it was an ongoing issue from the start of the tenancy and was unrelated to dog feces, which they stated were regularly picked up in any event. The Tenant also denied any responsibility for dealing with it, stating that she had never agreed to purchase and put out rat bait stations or be responsible for pest control at the property. Nevertheless, the Tenant stated that they attempted to prevent rodent ingress by stuffing holes with steal wool and contacting the Landlord. Finally, the Tenant stated that the Landlord never gave proper notice under the *Act* or received agreement from them, for any pest control companies to attend. As a result of the above, the Tenant stated that they are not responsible for any costs associated with pest control.

The Tenant filed a counter claim in relation to the pest control issue seeking $600.00 in compensation, calculated at $200.00 per month for three months, for the inconvenience and loss of quiet enjoyment suffered by them for the ongoing pest control issue, which they categorized as hazardous and severe from January 2020 until the end of April 2020. The Tenant stated that despite making the Landlord aware of the pest control issue on January 18, 2020, the Landlord blamed them for the issue and incorrectly transferred responsibility for dealing with the pest control issue to them. The Tenant stated that although they attempted to mitigate the rodent infestation by covering holes with steel wool, this was not sufficient. The Tenant stated that the issue of rats was very serious as they were heard scratching through the walls which disturbed their right to quiet enjoyment. The Tenant also stated that on April 9, 2020, a professional tradesperson described the severe and hazardous nature of the situation in an email to the Landlord.

The Landlord stated that the Tenant also failed to leave the rental unit undamaged, except for pre-existing damage and reasonable wear and tear at the end of the tenancy as required, and sought $3,500.00 in compensation for dog damage to the living room entrance door and frame, front window ledge, and screens; damage to the door to the suite; damage to walls and flooring allegedly damaged by dog urine; and damage to the deck. The Landlord also sought $260.14 in cleaning costs, as they stated that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy as required, $165.00 for an electric lawnmower the Landlord stated was left in the rain by the Tenant, $250.00 for a missing fireplace screen, $167.90 for fire extinguishes and rat bait, and $30.00 for a missing fireplace remote. The Landlord stated that although their repair costs will far exceed the amounts claimed, they have only claimed for portions of the rental unit damaged by the Tenant, their pets, or their guests.

The Tenant argued that the Landlord’s claims are neither reasonable nor grounded in evidence and filed a counter claim for the return of their $2,400.00 security deposit and their $2,400.00 pet damage deposit. The Tenant also explicitly stated during the hearing that they do not waive the doubling provision, should it apply. The Tenant stated that they left the rental unit in the same condition as it was in at the start of their tenancy, after being paid to clean the rental unit after the end of the previous tenancy, and that as the Landlord did not do a move-in condition inspection with them or complete a move-in condition inspection report at the start of the tenancy, it is now unreasonable for the Landlord to assert that the condition of the rental unit at the end of the tenancy was not the same as the condition at the start. The Tenant pointed to an email in which the Landlord referred to the state of the rental unit as nice. The Tenant also stated that

the Landlord had paid them to clean the rental unit after the end of the previous tenancy, and to complete emergency repairs shortly after they moved in, which demonstrates that the condition of the rental unit was not good at the start of the rental unit as alleged by the Landlord at the hearing.

Although the Tenant acknowledged completing emergency repairs, they stated that this does not mean that they repaired all damage to the rental unit, and stated that there was already a lot of pre-existing damage, as evidenced by the move-out condition inspection report they completed with the previous occupants on the Landlord's behalf. The Tenant denied damaging the rental unit or the lawnmower, or taking a fireplace screen or fireplace remote. The Tenant stated that they cared for the rental unit and yard throughout the tenancy and that the damage now referred to by the Landlord as being caused by them, their pets, their roommates, or their guests is actually the result of years of neglect and lack of regular maintenance by the Landlord as well as wear and tear.

Although the Tenant acknowledged taking safety equipment, including fire extinguishers, with them at the end of the tenancy, they stated that they had purchased these themselves at the Landlord's request, but had never been reimbursed for them. As a result, the Tenant stated that they were not the Landlord's possessions. Although the Tenant filed a counter claim seeking reimbursement for them at a cost of $146.39, they offered to return them to the rental unit if the Landlord reimbursed them. The Landlord stated that they do not wish for the items to be returned as they have since replaced them at a cost of $167.90.

Further to the above, the Tenant argued that the Landlord was an "absentee Landlord" who failed to properly maintain the property. In support of this allegation the Tenant pointed to photographs of the rental unit at move-in, and an email from May 2013, authored by a previous property manager for the Landlord, stating that the property was unmaintained and had numerous hazards. The Landlord denied these allegations, stating that they just spent over $15,000.00 on the property and are putting on a $20,000.00 roof and therefore it is unreasonable to conclude that they are an "Absentee Landlord" with no interest in maintaining the property. The Landlord also stated that the property has a legal suite, which was inspected by the municipality without issue.

Finally, the Landlord sought $1,200.00 for rent they claim was unilaterally deducted by the Tenant without approval with regards to parking, at a cost of between $100.00 - $200.00 per month. The Landlord stated that the Tenant expressed that they no longer needed the parking spot, which was included in the cost of rent, and that they had

attempted unsuccessfully to rent it out for the Tenant despite having no obligation to do so. The Landlord stated that there was always a car parked there, despite the Tenant's assertion that they did not need the parking spot, which made it impossible to rent out. Further to this, the Landlord stated that parking was included in rent, not a separate fee under a separate agreement, and therefore the Tenant was not entitled to a rent reduction because they no longer wished to use the parking stall included in their rent.

Although the Tenant sought recovery of emergency repair costs in their Application, they acknowledged at the hearing that they had already been reimbursed. The Tenant also acknowledged that they had inadvertently deducted some emergency repair costs from rent twice, but stated that they had already repaid the amount they had mistakenly deducted, and pointed me to documentary evidence in support of this statement. The Tenant stated that the Landlord had agreed via email that they could terminate their parking upon one months notice and that the Landlord had agreed that the Tenant could terminate their parking for a rent reduction, effective December of 2019. The Tenant stated that they therefore began deducting $100.00 per month from rent starting in December of 2019 as a result. The Tenant stated that it was not until the Landlord's Application was served on them that they ever heard from the Landlord that this was unacceptable or that the Landlord wished to recover this amount. The Tenant also denied using the parking spot on all but one occasion, after December 2019.

In their counter claim the Tenant sought the return of $579.44 in overpaid rent. Although the Landlord acknowledged that the Tenant overpaid rent by this amount, they stated that they had kept it towards outstanding utilities. The Tenant stated that there were no outstanding utilities owed by them at the time, and therefore the Landlord should have returned the amount. The Tenant also stated that they have fully paid all outstanding utilities up to and including August 2020, and that the Landlord has neither provided them with sufficient proof of any additional outstanding utilities, or proof that this $579.44 rent overpayment was ever used towards utility amounts owed by the Tenant to the Landlord. As a result, the Tenant sought its return.

The Tenant also sought $1,350.00 for loss of quiet enjoyment, at a cost of $150.00 per month of the tenancy, for what they stated were an excessive number of emails from the Landlord, 270 over the course of the 13 month tenancy, many of which they characterized as rude, inappropriate, unprofessional, slandering, and threatening in nature. The Tenant also stated that the Landlord repeatedly failed to give proper notice of entry for tradespeople attending the property, leaving them feeling unsafe and violated. On one such occasion the Tenant stated that they were just out of the shower in the morning in the kitchen, which is fully open via south facing windows directly onto

the deck, and there was a strange man on the deck looking in at them. As a result, the Tenant stated that they felt violated and unsafe and had to call a friend to come over and stay with them. The Landlord stated that the Tenant repeatedly “ghosted” them, refusing to respond to text messages, phone calls, and emails. The Landlord stated that as the Tenant was also out of the country for extended periods of time and failed to provide reliable contact information for their roommates, there was no way to contact the Tenant for entry.

The Tenant sought $400.00 in compensation, calculated at $100.00 per month over a 4 month period, for issues related to repeated dryer vent malfunctions which they deemed to be hazardous and improperly dealt with by the Landlord; $100.00 in compensation, calculated at $50.00 per week, for loss of use of the yard over a two week period during which they stated roofing materials left in the yard impacted their use and enjoyment of it; and $100.00 for loss of use of a back deck they state they were ordered not to use by both a professional tradesperson and the Landlord. The Landlord denied responsibility for these costs, stating that the Tenant and/or their roommates repeatedly damaged the dryer vents, and the deck, and that there was no inconvenience or loss of use caused by the roofing materials as they were in a small corner of the yard, for a short period of time, during cool and rainy weather.

Finally, the Tenant sought $500.00 in aggravated damages due to harassment they state they suffered from the Landlord due to the number and nature of the emails sent to them by the Landlord, threats utter in relation to their employment by the Landlord, the Landlord’s repeated attempts to evade their responsibilities under the *Act*, and the Landlord’s repeated attempts to end their fixed term tenancy early, contrary to the *Act*. The Landlord denied harassing the Tenant and stated that their repeated communications were prompted by the Tenant’s lack of communication and response. The Landlord also accused the Tenant of being a “pathological liar”, deleting their advertisements online and/or reporting them for removal, and engaging in illegal activity in the rental unit.

A large volume of documents was submitted for my review and consideration by the parties, consisting largely of lengthy email communications between them, many of which were duplicates. Photographs, witness statements, videos with audio, copies of the tenancy agreement and addendum(s), copies of condition inspection reports, receipts and invoices, copies of bank records, and written statements, were also submitted for my review and consideration, among other things.

Analysis

Based on the affirmed testimony and documentary evidence before me, I am satisfied that a tenancy agreement to which the *Act* applies existed between the parties. I am also satisfied that the fixed term tenancy started on October 1, 2019, and ended on October 30, 2020, that rent in the amount of $4,800.00 was due on the first day of each month, including water, sewage disposal, storage, garbage, recycling, and kitchen scraps collection, the provision of a refrigerator, stove, oven and dishwasher, and parking for 1 vehicle as set out in the written tenancy agreement before me, which was signed by both parties. Based on this tenancy agreement and the testimony of the parties, I am also satisfied that the Tenant rented the entire single family dwelling from the Landlord, and was responsible for the cost of gas and electricity at the rental unit during the course of their tenancy, which were billed in the Landlord's name.

Although the Landlord argued that the tenancy agreement should have had an end date of September 30, 2020, and that the Tenant ought to have known that October 30, 2020, actually meant September 30, 2020, as October has 31 days, I do not agree. The written tenancy agreement before me states that the end date is October 30, 2020, and I therefore find that it was reasonable for the Tenant to rely on this date, as it was in writing and both parties had signed the agreement as written. Since neither party signed the addendum submitted by the Landlord, and the Landlord argued that the Tenant had altered the addendum without their consent and committed fraud by forging their signature on it, I find that I cannot be satisfied that either addendum was properly agreed to by both parties. As result, I find that neither addendum forms part of the tenancy agreement.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

Residential Tenancy Policy Guideline (Policy Guideline) #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the Act, regulations, or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven 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.

Utilities

In their Application the Landlord sought $423.72 in outstanding utilities. However, in an email to the Tenant dated December 1, 2020, they stated that only $271.26 was outstanding. Contrary to this, the Tenant submitted copies of email chains with the Landlord, wherein the amounts of utilities due at various points during the tenancy were discussed. The Tenant also submitted proof, by way of bank records, that the amounts discussed in the emails were paid. Specifically, the Tenant demonstrated to my satisfaction that $1,170.87 was paid to the Landlord on May 15, 2020, for gas and electricity usage between October 2019 and April 2020, and that a further $428.57 was paid to the Landlord on September 6, 2020, for gas and electricity usage between April – August 2020. Although the Tenant agreed that they owe utilities for the period of September and October 2020, they argued that the Landlord had not provided them with a proper accounting of what was owed for those months or copies of the appropriate bills for that period, and therefore no amounts have been paid towards these bills.

Although the Landlord has satisfied me that the Tenant has failed to comply with their tenancy agreement with regards to the payment of utilities for September and October of 2020, and that a loss has resulted to the Landlord as a result, the Landlord has failed to satisfy me of the value of that loss, as they could not provide me with a proper accounting of what was owed and did not provide me with complete copies of the outstanding utility bills for September and October. Further to this, I dismiss the Landlord's claims that the Tenant owes outstanding utilities for any other period of the tenancy as they have failed to provide me with sufficient evidence that this is the case, contrary to the Tenant's documentary evidence which strongly suggests that utilities up to and including August 2020 were paid in full by the Tenant. Although the Landlord blamed the Tenant's erratic utility payments on their inability to substantiate their claim, I find that it is the Landlord's own lack of adequate recordkeeping and the lack of proper proof of what was owed and paid by the Tenant from the Landlord, that is fatal to the

Landlord's claim for outstanding utilities over the vast majority of the tenancy, not the pattern of the Tenant's utility payments.

Despite the above, and as the Tenant agreed that they owed utilities for September and October of 2020, and the Landlord submitted a partial bill showing that at $83.07 for electricity was due on October 8, 2020, I therefore award the Landlord only $83.07 in outstanding utilities. Although the Landlord also submitted a partial electricity bill with a billing date of December 9, 2020, in the amount of $255.30, as the complete bill was not submitted I find that I cannot determine which portion of this bill might be attributable to the Tenant in the period between the last billing date and the date the tenancy ended on October 31, 2020. I therefore decline to grant the Landlord compensation for any portion of this bill and I dismiss the Landlord's claim for any further outstanding utilities without leave to reapply.

Rent

The parties agreed that the Tenant made a rent overpayment in the amount of $579.44. Although the Landlord stated that they kept this overpayment thinking it was for outstanding utilities, the Landlord has failed to satisfy me that any utilities were outstanding at that time, or that this amount was ever attributed by them to any amounts owed by the Tenant for utilities. As a result, I find that the Tenant is entitled to the return of this amount.

Damage

Although the Landlord submitted numerous photographs of the property and items such as the lawnmower, the vast majority of the photographs are not dated and do not contain any other verification of the dates upon which they were taken. As a result, I find that I am not satisfied that the majority of these pictures were taken after the end of the tenancy as alleged by the Landlord. Further to this, there is no move-in condition inspection report for this tenancy, the move-out condition inspection report for the previous occupants indicates that there is pre-existing damage, and the parties were in agreement that the Tenant was paid by the Landlord to complete some repairs and to clean the rental unit at the start of their tenancy. The Tenant also denied that they, their roommates, their guests, or their pets, damaged the rental unit. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that there was damage to the rental unit at the end of the tenancy which did not either pre-exist or would not meet the definition set out in Policy Guideline #1. Similarly, the Landlord has failed to satisfy me on a balance of probabilities that the Tenant damaged a lawnmower

and took a remote and fireplace screen, as the Tenant denies these allegations and the Landlord has not submitted evidence to satisfy me that these items were included as part of the tenancy and damaged or missing at the end. As a result, I dismiss the Landlord's claims for compensation in the amount of $3,500.00 for damage, $165.00 for a lawnmower, $250.00 for a fireplace screen, and $30.00 for a fireplace remote, without leave to reapply.

Cleaning Costs

The Landlord stated that the rental unit was not left reasonably clean at the end of the tenancy, necessitating professional cleaning at a cost of $260.14. The Landlord also submitted an invoice for these costs, showing two cleaners were hired for two hours. Throughout the hearing the Tenant repeatedly stated that they had left the rental unit at the end of their tenancy in a better state than it was in at the start. However, I find that this is not the standard of cleanliness required under the *Act*. Section 37(2)(a) of the *Act* requires that a tenant leave the rental reasonably clean at the end of the tenancy, not simply in a similar state of cleanliness as it was in at the start. Given the above testimony of the Tenant with regards to the state of cleanliness at the end of the tenancy, the Landlord's cleaning invoice, and a lack of evidence from the Tenant to establish that the rental unit was left reasonably clean at the end of the tenancy, I find that I am satisfied by the Landlord's evidence on a balance of probabilities, that the rental unit was not left reasonably clean at the end of the tenancy, as required by the *Act*. I therefore grant the Landlord the $260.14 sought for cleaning costs.

Pest Control

Although the Landlord alleged that the Tenant was responsible for a rodent problem on premises, the Tenant denied these allegations and the Landlord has not submitted anything other than their own personal opinion, with regards to the cause of the rodent issue, such as a report from a qualified pest control company stating the cause of the infestation. As a result, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that any rodent or pest issues at the rental unit were caused by the Tenant's actions or inactions The Landlord stated that contractors, including pest control companies, were required to attend the property on numerous occasions but could not complete work due to the amount of dog feces in the yard, resulting in fees for call-outs where work could not be completed. However, the Tenant denied ever having been properly notified of any required entries.

Section 29 of the *Act* clearly sets out the requirements for landlords wishing to gain access to a premise rented to a tenant, either for themselves or service providers. Based on the documentary evidence and testimony before me for consideration, I am not satisfied that the Landlord complied with section 29 of the *Act* with regards to the above noted entries for which they are seeking compensation from the Tenant. As a result, I find that neither the Landlord nor their contractors were entitled to enter the property on those occasions. Based on the above, I therefore dismiss the Landlord's claims for compensation related to those entries and all pest control costs, without leave to reapply.

Parking

While I agree with the Landlord that the cost of parking is included in rent as set out in the tenancy agreement in the documentary evidence before me, an email submitted for my review and consideration by the Landlord, authored by the Landlord and sent to the Tenant on November 3, 2019, specifically states that if the Tenant does not want the parking spot, they need to give one month's notice so that it may be rented out. In that email the Landlord also asks the Tenant if they would like to give notice. Although the Landlord later asserted at the hearing that the Tenant could not cancel parking, I find this argument incongruous with the Landlord's own documentary evidence, specifically the email noted above dated November 3, 2019. Based on the email sent to the Tenant on November 3, 2019, I find that the Landlord expressly allowed the Tenant to terminate their parking arrangement, even though parking was included in rent under the tenancy agreement, upon one month's notice.

Although the Landlord stated that they were unable to re-rent it and accused the Tenant of continuing to use it, the Tenant denied this allegation. As the agreement from the Landlord in writing to allow the Tenant to withdraw their need for a parking space contained no caveats that the Landlord be able to re-rent the parking spot, I therefore find that it was not later open to the Landlord to change their mind about this agreement after the Tenant had already given notice that they no longer required the parking spot, because they had difficulty re-renting it, or as a penalty for the Tenant's "bad behavior" as indicated in an email dated Friday February 26, 2020. At the hearing and in their documentary evidence, the Tenant indicated that it was verbally agreed with the Landlord that parking would cease in December 2019, and bank records submitted from the Tenant show that they started paying $100.00 less per month in rent, effective December 2019. As there is no evidence before me from the Landlord which I find reliable and compelling to indicate that this rent reduction was not the result of the Tenant giving proper notice to end their parking arrangement, as set out in the

Landlord's above noted email, I find that the Tenant was therefore entitled to end their parking arrangement effective December 2019, and to deduct $100.00 from the amount of rent set out in the tenancy agreement as a result. I therefore dismiss the Landlord's claim for reimbursement of amounts related to this rent reduction, without leave to reapply.

Loss of Use and Quiet Enjoyment

The Tenant broke their claim for loss of use and loss of quiet enjoyment down into four separate categories as follows:

- $1,350.00 loss of quiet enjoyment related to harassment;
- $400.00 for issues related to repeated dryer vent malfunctions;
- $100.00 for loss of use of the yard over a two week period;
- $100.00 for loss of use of a back deck; and
- $600.00 for pest control issues.

However, I find that there is significant overlap between the claims and that most of the above noted claims relate to both loss of use and loss of quiet enjoyment. As a result, I have addressed these claims together.

Section 27 of the *Act* states that a landlord must not terminate or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation or a material term of the tenancy agreement, and sets out requirements for terminating or restricting other services and facilities, and includes provisions for notice of termination and rent reductions. Section 28 of the *Act* states that a Tenant is entitled to quiet enjoyment, including but not limited to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purpose, free from significant interference.

Although I am satisfied based on the documentary evidence and testimony before me, that there were ongoing issues at the rental unit related to rats, several issues with the dryer vents of the rental unit, and some loss of use related to the deck and a small portion of the yard, I am not satisfied that these issues were as significantly disruptive to the Tenant's use and quiet enjoyment of the rental unit as alleged by the Tenant at the hearing. Policy Guideline #6 states that frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment, but temporary discomfort or inconvenience does not. It goes on to say that in determining the amount by which the value of the tenancy has been reduced,

the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I am satisfied that the issue in relation to loss of use of the yard was minimal, given the amount of area affected, the time of year, and the temporary nature of the loss of use. I have also kept in mind that, pursuant to Policy Guideline #6, the Landlord's obligation to repair and maintain the rental unit must be balanced with the Tenant's right to use and quiet enjoyment. Similarly, I am not satisfied that there was a significant loss of use or loss of quiet enjoyment related to the deck. While I am satisfied that there were repeated issues with the functionality of the dryer vent, I am not satisfied that the issues were as frequent, serious, or disruptive as alleged by the Tenant and I find that they significantly overstated the seriousness of the issue by referring to it as "rendering the living conditions unfit" during the hearing. Although I acknowledge that there were also ongoing issues related to pest control, I disagree that the Landlord failed to take action, as there is evidence before me that they responded to the Tenant's complaints, albeit not to the Tenant's satisfaction, and hired, on more than one occasion, pest control specialists in relation to the rental unit. As a result, I find that the Landlord's actions in relation to the pest control issue at the rental unit to be insufficient, rather than entirely lacking.

Based on the above, I am satisfied that the Landlord did breach the *Act* in relation to the Tenant's right to use and quiet enjoyment, that the Tenant suffered a loss as a result, and that the Tenant mitigated their loss by contacting the Landlord about these issues and by attempting to prevent further rodent infestation by plugging holes with steel wool. However, I am not satisfied that the Tenant suffered a loss of $1,200.00 as a result, I therefore award the Tenant only $600.00 in compensation for these losses, the equivalent of half of the amount claimed.

Having made this finding, I will now turn to the Tenant's $1,350.00 claim. I am satisfied that at various points throughout the tenancy the Landlord was sending the Tenant daily or almost daily emails which I find largely to be rude, demeaning, demanding, threatening and inappropriate. The Tenant stated in their submissions that the Landlord had sent them 270 emails over the course of the 13 month tenancy, and while I do not have the full record of all communications by email between them before me for consideration, from the considerable volume of emails submitted by both parties for my review, I find on a balance of probabilities, that this number is likely accurate. I am also satisfied that the Landlord repeatedly failed to provide proper notice of entry for persons hired by them to attend the property, which resulted in significant inconvenience to the

Tenant and feelings of violation and loss of safety and security. Further to this, I find that the Landlord threatened to have a family member interfere with the Tenant's employment for reasons entirely unrelated to their employment, which I find to be particularly egregious. Finally, I am satisfied that the Landlord also attempted to end the fixed term tenancy early, without authority to do so under the *Act*, and harassed the Tenant when the Tenant exercised their rights under the *Act* to stay in the rental unit until the end date for the fixed-term.

As a result, I am satisfied that the Landlord breached section 28 of the *Act*, that the Tenant suffered a loss of $1,350.00 as claimed as a result of a devaluation of their tenancy due to a loss of quit enjoyment, and that the Tenant mitigated their loss by repeatedly attempting to deal amicably and respectfully with the Landlord with regards to tenancy issues, repeatedly requesting that the Landlord treat them with respect, and repeatedly attempting to have the Landlord reduce the volume of emails sent. As a result, I grant the Tenant compensation in the amount of $1,350.00 for loss of use and loss of quiet enjoyment.

Aggravated Damages

In their Application the Tenant sought $500.00 in aggravated damages due to harassment they state they suffered from the Landlord due to the number and nature of the emails sent to them by the Landlord, threats uttered in relation to their employment by the Landlord, the Landlord's repeated attempts to evade their responsibilities under the *Act*, and the Landlord's repeated attempts to end their fixed term tenancy early, contrary to the *Act*.

Policy Guideline #16 states that aggravated damages are for intangible damage or loss and may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money, or services. It states that aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence and that this type of compensation is rarely awarded and must specifically be asked for in the application.

While the Tenant specifically requested aggravated damages in their Application, I find that the nature of the claims made by them in relation to aggravated damages are either the same or significantly similar to, those made in relation to the above noted $1,350.00, claim for loss of quiet enjoyment. As I have already granted the Tenant $1,350.00 in relation to these claims, I find that the Tenant has already been fully

compensated for them. As a result, I dismiss the Tenant's claim for aggravated damages without leave to reapply.

Deposits and Set Off

Having dealt with the monetary claims of both parties, I will now turn my mind to the matter of the Tenant's security deposit and pet damage deposit. The parties agreed that the Tenant paid a $2,400.00 security deposit and a $2,400.00 pet damage deposit, both of which the Landlord still holds. The parties agreed that the tenancy ended on October 30, 2020, but disputed whether the Tenant had provided the Landlord with their forwarding address in writing. The Tenant submitted copies of email correspondence sent to the Landlord on November 4, 2020, and November 7, 2020, wherein they provided the Landlord with their forwarding address and I note that the November 7, 2020, email was sent in response to an email that same date from the Landlord. I also note that the Landlord used the forwarding address provided by the Tenant in the above noted emails as the Tenant's address when filing their Application for Dispute Resolution on November 14, 2020. In a November 14, 2020, email from the Landlord to the Tenant, the Landlord indicates that the Tenant's provision of their forwarding address by email is insufficient and states that the Tenant is required to provide their forwarding address in wiring on the move out condition inspection report. Although I find the Landlord's interpretation of the *Act* with regards to the provision of a forwarding address inaccurate, I take this email and the use of the Tenant's forwarding address by the Landlord in their Application for Dispute Resolution as evidence that the Landlord received the Tenant's forwarding address. As email is a form of written communication, I find that the Tenant provided their forwarding address to the Landlord in wiring on November 4, 2020, and that the Landlord was deemed to have received this forwarding address three days later, on November 7, 2020, if not earlier, which is the date they responded to the Tenant's email chain.

In any event, I am also satisfied by the documentary evidence provided by the Tenant, including a registered mail receipt and photographs, that a copy of the RTB-47 Tenant's Notice of Forwarding Address for the Return of Security and/or Pet damage Deposit, was sent to the address listed for the Landlord on the tenancy agreement, by registered mail, on November 14, 2020, and deem it received 5 days later in accordance with section 90(a) of the *Act*, if not earlier received.

As the tenancy ended on October 30, 2020, and I am satisfied that the Landlord was deemed to have received the Tenant's forwarding address in wiring on November 7, 2020, at the earliest, and the Landlord's Application seeking retention of the Tenant's

deposits was filed with the Branch on November 14, 2020, I therefore find that the Landlord filed their Application seeking retention of the deposits within the timeframe set out under section 38(1) of the *Act*. However, for the following reasons I am also satisfied that the Landlord extinguished their right to claim against the deposits for damage, as set out under section 38(5) of the *Act*. Although the Landlord provided excuses for failing to comply with the requirements set out under section 23 of the *Act* with regards to completion of a move-in condition inspection and report with the Tenant, and provision of a copy of the move-in inspection report to the Tenant in compliance with the regulations, I nevertheless find that the Landlord was required to comply with section 23 of the *Act*. Although the Landlord argued that the Tenant was to act as the Landlord's agent with respect to their own condition inspection report, the Tenant denied such an agreement and submitted numerous copies of correspondence with the Landlord near the start of the tenancy where they refute the Landlord's claims that such an agreement existed.

In accordance with section 24(2) of the *Act*, I therefore find that the Landlord extinguished their right to claim against both the security deposit and the pet damage deposit in relation to damage to the rental unit. Further to this, Policy Guideline #31 states that a landlord may apply to keep all or a portion of the deposit but only to pay for damage caused by a pet. As a result, I find that the Landlord was not entitled to retain and claim against the Tenant's pet damage deposit as I have already found that the Landlord extinguished their right to claim against both deposits for damage. I find that the Landlord was therefore required to return the Tenant's pet damage deposit to them by November 22, 2020, the timeline set out under section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, and the provisions of Policy Guideline #17, section C3, I find that the Tenant is therefore entitled to $4,800.00, double the amount of their $2,400.00 pet damage deposit.

Despite the above, I find that the Landlord was still entitled to withhold and claim against the Tenant's $2,400.00 security deposit for monetary claims made in their Application unrelated to damage to the rental unit, such as unpaid utilities and cleaning costs. Policy Guideline #17, section B8 states that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As I am satisfied that the Landlord extinguished their rights in relation to both the deposits with regards to damage to the rental unit or property at the start of the tenancy by not properly offering two opportunities or completing either the inspection or report with the Tenant as required, I find it unnecessary to determine if the Tenant later also extinguished their rights under either section 24 or 36 of the *Act*.

Based on the above and pursuant to Policy Guideline #17, Section D, and sections 67 and 72(2)(b) of the *Act*, I therefore grant the Landlord authorization to withhold $343.21 from the Tenant's security deposit and I grant the Tenant a Monetary Order in the amount of $9,386.23 as follows: $4,800.00 for the return of double the pet damage deposit, $2,056.79 for the return of the balance of the security deposit after deductions, and $2,529.44 for compensation related to loss of use and loss of quiet enjoyment.

Filing fees

Since both parties were only partially successful in their respective Applications, I decline to grant either party recovery of their filing fee.

Conclusion

Pursuant to section 72(2)(b) of the *Act*, the Landlord is entitled to retain **$343.21** from the Tenant's security deposit. Pursuant to section 67 of the *Act*, the Tenant is entitled to a Monetary Order in the amount of **$9,386.23**, and I order the Landlord to pay this amount to the Tenant. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to issue them, is affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

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

Dated: September 16, 2021

Residential Tenancy Branch