Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(T) A.B.	210031681	CNR, MNDCT
(L) D.Q., K.C.	210032293	MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 4, 2021 ("10 Day Notice"); and
- a Monetary Order for damage or compensation under the Act of $5,000.00.

The Landlords filed claims for:

- a Monetary Order for unpaid rent of $1,450.00;
- a Monetary Order for damages of $1,200.00, retaining the security deposit to apply to these claims; and
- recovery of their $100.00 application filing fee.

The Tenant and the Landlords, D.Q. and K.C., appeared at the first teleconference hearing and gave affirmed testimony. The Parties testified about the Tenant's claims; however, there was insufficient time to review the Landlords' claims, therefore, we adjourned and reconvened at a later date. The Tenant and the Landlords attended the reconvened hearing, as well.

In the first hearing, the Parties agreed that the Tenant vacated the rental unit on March 31, 2021; therefore, the Tenant's first claim to cancel the 10 Day Notice is no longer

relevant. It is dismissed without leave to reapply.

At the onset of the first hearing, I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearings, the Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party and to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; ("Rules") however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I surveyed the Parties on how and when they served their respective Notices of Hearing, applications, and evidence to the other Party. The Tenant said she had received and reviewed the Landlords' documents with sufficient time before the first hearing.

In the first hearing, the Landlords said that they received the Tenant's Notice of Hearing by email, but not until June 1, 2021. They said they received these documents 14 days prior to the first hearing, and not within three days of the Tenant receiving the Notice of Hearing package from the RTB. The Tenant said she emailed the documents to the Landlords on March 17, 2021.

In the second hearing, the Landlords confirmed that they received an email from the Tenant on March 15, 2021, which contained the dispute notice. This is still not within three days of the package being made available to the Tenant by the RTB; however, it is also different from June 1, 2021, which the Landlords said in the first hearing.

Rule 3.1 requires an applicant to serve each respondent with copies of their Notice of Hearing package within three days of the RTB making this package available to the applicant. Our records show that the RTB emailed the Tenant this package on March 11, 2021. The Tenant's evidence is that she emailed this to the Landlords on March 17, 2021, or six days after it was made available to her. The Landlords said they received something from the Tenant on March 17, 2021, and also that they did not receive anything from the Tenant until June 1, 2021, which was 13 days prior to the hearing.

The purpose of the Rules of Procedure are to document the rules of administrative fairness set out in the common law. The timelines are in place to allow parties sufficient time to consider and respond to the other party's claims and evidence. Unless the Landlords can explain how they were unable to respond to the Tenant's submissions, the reality of this situation is that the Landlords were not prejudiced by the Tenant's

delay in this regard. Therefore, I find it appropriate and administratively fair in the circumstances to consider the Tenant's documentary submissions, as well as her testimony in making my Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their Application filing fee?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 18, 2020, with a monthly rent of $1,450.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of $500.00, and a $500.00 pet damage deposit. The Landlords confirmed that they still hold these deposits in full.

The Parties agreed that they did a condition inspection of the rental unit prior to the tenancy starting, and a move-out inspection at the end of the tenancy. Further, they agreed that the Landlords gave the Tenant a copy of the condition inspection report ("CIR")

TENANT'S MONETARY CLAIM → $5,000.00

In the hearing, the Tenant explained how she thought the Landlords had violated the Act, Regulation and/or tenancy agreement, leading to the Tenant's claim before me. The Tenant said:

> The right to peace and quiet. When we first talked about the unit, the basement was not included, because it was unfinished. They said they would be doing some renovations in the basement, but they turned out to be major construction. When I asked them, they agreed they would work on it when I'm not home.
>
> Sometimes it was six days a week - full days – no insulation for sound. They were drilling, and there was so much noise. It carried on all day for months. This is not working for me. I have no place to go to get away from the noise. They said 'yeah we're trying.'
>
> That's all these hazardous things they're doing. I had to clean the furnace filter. I

started to cough; there are cracks in the stairs, and everything was coming up. This is not a good situation and I decided to move out and gave notice. According to the RTB – you should have given us four months' notice – with the last month free. I was unable to pay rent and move, and so they then served me with a 10 Day Notice.

I asked the Tenant why she is claiming $5,000.00 for this claim. She said:

That was a bit of an estimate. We're also not clear with part of the utilities they should share. The house was a one-family unit. They claimed it's two separate units – an unfinished basement. But I paid for all the utilities for the entire place. The workers are using my power. They did most of construction in winter - all on my bill. They didn't want to pay anything. The Landlords claimed that all of the tools were battery powered. So, we couldn't agree, so that is how we're here – I hope we can sort out utilities and a rent reduction here.

The Landlords responded, as follows:

I have many points. The Tenant was fully aware of what our plans were, what boundaries were, our intention to build a suite down there. We didn't do any work in 2020, because of Covid. When we got down to it, we gave her a date and a plan, but she said she didn't want to share space, and will move out when that is finished.

We started [renovation] work full-time in January 2021 and aimed for completion in March. The idea that there was a surprise is not true. There were repeated accusations of illegal activities - irresponsible behaviour was her go-to.

There were no hazardous materials used – no permit was needed until late January, when we got it. We asked when she intended to be at work. She would be leaving to go skiing around 9, so that's when we started. As long as we're not doing it at unreasonable hours – late at night, early a.m., that's our obligation to maintain her quiet enjoyment. She said she was planning to be away from Monday to Thursdays between 9 a.m. and 4:30 p.m., so that's when we worked.

Once I was there until 5:30 p.m. – that was the latest ever. Some trades are unavailable until the weekend – but not in the morning and not in the evening. Sawing was done outside the house. We taped off - even the Tenant's photos show a shared HVac system completely sealed off from upstairs.

Building a suite is not a quiet activity, but we did everything possible to be there at reasonable hours, and to keep the dust to a minimum. We put a second electrical meter in the basement – used to determine the amount of electricity used by the renovations.

As for utilities, in November she said she would like to share the bills – we got no response or refusal. We asked again in December, but there was no response, and a refusal – same in January. Based on service costs – we shared that – a generous calculation of energy use – if the power saws were running all day (only 20 minutes a day, really) - this used $1.00 a month in the month after the Tenant moved out.

Her refusal of that offer left with us failing to pay her any utilities, because she refused us. She cancelled her utilities account, and therefore, she owes us for one month. We'd be willing to cancel those out, although she owes us more than we owe her - $250.00. We started renovations in mid-January, until the end of March. 2021.

We frequently called the RTB to make sure everything we were doing was okay. We do want to do what is okay and legal. We asked very clearly about noise in the time periods of 8:00 a.m. to 5:00 p.m.

Like someone running a jack hammer over long periods of time – trying to minimize the noise; there would have been some noises that she didn't like hearing. But she knew that we would be renovating that basement into a second suite. She uses 'major construction' versus 'renovation'. The idea of all this risk and exposure to minors is fully unwarranted. Our experience with this renter is lots of accusations and unfounded assertions.

The main thing, the Tenant was planning to move out when the suite was finished, anyway – she was very aware of the new suite and timelines for five or six months.

At one point, [the Tenant] said we were not allowed to go onto the property, which initiated my first phone call to RTB. But since it is stated both in the tenancy agreement and verbally that the basement is not part of agreement – we were allowed access to that place. No work was going on in the rented portion.

The hearing was adjourned at that point. I started the reconvened hearing with the

Tenant, offering her an opportunity to present her notes about what the Landlord had said at the end of the first hearing. The Tenant said:

> It's a long time ago. I have to say that there's no proof that the damage was done by us that they claim. I just want my security deposit and one month compensation for the renos and . . . only two things, nothing else say, to tell the truth.

LANDLORDS' MONETARY CLAIMS → $2,750.00

A. MONETARY ORDER FOR UNPAID RENT OF $1,450.00

The Landlords said that the Tenant refused to pay rent for March 2021, and the Tenant confirmed that she did not pay them this rent. The Tenant said she thought she was eligible for the last month of her tenancy free, because of the renovations.

The Landlords said they had consulted the RTB about this and that they were told that rent is a separate issue from the construction/renovation dispute. The Landlords said that the Tenant refused to "come to the table" to work out their disputes.

B. COMPENSATION FOR LOSS OR OTHER MONEY OWED → $1,200.00

The Landlords submitted a monetary order worksheet setting out their claims in this matter, as follows (with names changed for privacy purposes).

	Receipt/Estimate From	For	Amount
1	[Siding company]	Vinyl siding destroyed by pucks	$393.75
2	[Window supplier]	Window smashed by puck	$441.94 est.
3	Landlord 8 hrs @ $40.00/hr	Clean cat feces – crawl space	$320.00
4	[hardwood flooring company]	Sand/Refinish scratched oak floors	$787.50
5	Landlord 3 hrs @ $40.00/hr	Repair drywall (stairwell)	$120.00
6	[National hardware retailer]	Porch carpet – pet hair/urine	$291.20
7	Remove/replace porch carpet	Remove cat feces under porch	$480.00 est.
		Total monetary order claim	**$2,834.39**

#1 VINYL SIDING REPAIR → $393.75

The Landlords said that the Tenant's son would shoot hockey pucks outside, which did some damage when it would hit the vinyl siding.
The Tenant said that "One panel of the vinyl siding had some damage." She asked if the Landlords replaced the whole side of the house. The Landlords said that there are multiple cracks, not just one to the vinyl siding. They said: "We are waiting to see if we get to keep the deposits."

The exterior siding was not noted as having had any damage in the move-in portion of the CIR. However, on the move-out portion, it is noted that it has "…cracks in siding back of car port".

In their "Summary of Claim Concerns" document submitted, the Landlords said:

> Upon end of tenancy condition inspection on March 27, 2021, [the Tenant] sent a representative to walk through, it was noted that there was the following damages:
>
> > 1: 50 square feet of vinyl siding destroyed by hockey puck impacts (block circles of puck impact visible in photos around cracks)

The Landlords submitted photographs of vinyl siding and the window frame from the outside with cracks and breaks visible.

The Landlords submitted an estimate of the cost to repair the vinyl siding damaged during the tenancy. This estimate was to "supply & install – replace vinyl & rims & corner. Install & travel". The estimate was for $375.00 plus tax totalling $393.75.

#2 WINDOW REPAIR → $441.94 (estimate) [incl $200.00 installation]

In their document, "Summary of Claim Concerns", the Landlords said the following about this claim:

> 2: Porch window smashed by hockey puck, and renter removed existing original solid wood window frame when she vacated the premises for some reason, requiring purchase of entire new window, instead of just replacing glass.

In the hearing, the Tenant said: "I honestly don't remember that. There was no window."

The Landlord said:

> It was [the Tenant] who brought it to my attention. [Her son] broke it, and we had an agreement that she would have it repaired. . . . She took the frame with her. She was very aware of it, and she was going to repair it instead of me. The problem is that she took the frame with her.

The entry window was not noted to have any damage in the move-in portion of the CIR; however, on the move-out portion, it is noted that it was "missing window frame and glass".

The Landlords submitted a quote from a local window company that estimated the cost of the window to be $241.94, including taxes. The Landlords noted on their monetary order worksheet that they were also charging $200.00 for installation of the window. The installation charge is not included on the window company's quote, and the Landlords did not indicate the source of the installation charge quoted.

#3 CLEAN CAT FECES – CRAWL SPACE → $320.00

In their written summary, the Landlords said the following about the pet damage deposit.

> Damage and pet deposit of $700 and $500 was received from [the Tenant] upon tenancy start up. At this time [K.C.] verbally confirmed face to face with [the Tenant] on March 18, 2020, that 1 dog was allowed, and any additional pets would require permission AND additional pet deposit of $500 per pet if permission was granted.
>
> **. . .**
>
> This crawlspace was free of cat waste when [the Tenant] moved in, as [D.Q.] had wedged in under there to do some work in early March, 2020 just prior to [the Tenant's] tenancy.
>
> [emphasis in original]

The Landlords submitted the Tenant's rental application form that indicated that she had "1 dog". There was no indication that she would have a cat, as well.

In the hearing, the Landlords said:

> We had written communication that she had a cat, and that a cat door to the porch had been removed…. There was no cat feces in the crawl space when she

> moved in.

The Tenant said: “First, I don’t own a cat. It has always been neighbouring cats.”

The Landlords said that they understood that the Tenant would be taking the neighbourhood cat with her. The Landlords submitted a document dated February 28, 2021, which was signed by the Tenant, and which states: “The outside cat will move with tenants on or before March 31, 2021.”

In their monetary order worksheet, the Landlords indicated that they were charging the Tenant $40.00 per hour for eight hours of work cleaning up the cat feces in the rental unit crawl space. In their summary, they said: “Photos included of the piles of cat feces – there is a complete coverage of cat waste over approximately 200 square feet of crawl space.” I was able to view photographs from under the porch, where the Landlords said there was cat feces, as well; however, I did not find photographs of a crawl space with cat feces. However, the Tenant did not openly dispute this claim.

#4 SAND/REFINISH SCRATCHED OAK FLOORS → $787.50

In their summary document, the Landlords said the rental unit has 300 square feet of oak flooring, which they said was “freshly refinished” before the Tenant moved in. They said it was “completely destroyed by dog claw scratches” at the end of the tenancy.

In the hearing, they said:

> Damage to the floor – it was not a new floor - but it had been sanded down and new finish put on, and was shiny when she moved in. But it was all scratched up when she moved out. Dog scratches in the floor are not normal wear and tear. No attempt made with mats or anything to minimize it.

The living room floor was not noted to have any damage in the move-in portion of the CIR; however, on the move-out portion, it is noted that it was “scratched by dog nails”. The Landlords submitted photographs of hard wood floor showing significant scratch marks.

In the hearing, the Tenant said:

> That floor was very damaged already. Yes, there were new scratches, and I had one dog. I didn’t hang up any pictures or anything in the part of the house that

> was renovated. I left the suite in really, really good state. There was no damage in the suite at all. Wear and tear – they were superficial scratches on a really, really old floor. I've rented many times and I've never had problems like this.

The Landlords submitted a quote from a hardwood flooring company that estimated the cost of the repair to be 200 units to be sanded and finished at $3.75 per unit for a total of $750.00 plus GST, totalling $787.50.

#5 REPAIR DRYWALL (Stairwell) → $120.00

In the hearing, the Landlords said that this claim refers to gouges in the wall of the stairwell. The Landlords further explained:

> I'm assuming that she moved her laundry machines out from the basement – there were big gouges in the wall. In the rental agreement, it said the basement is not part of the agreement. Another assumption on her part. I'm assuming it was from the laundry machines. We decided to fill in the gouges and paint it - there are photos of all that. The stairwell was brand new at the start, and it was gouged at the end.

The Landlords included a photograph of drywall with one nick or tear in the drywall. The Landlords stated that they completed this repair and charged $40.00 an hour for three hours of work. The Tenant did not comment on this claim in the hearing.

#6 PORCH CARPET – CLEAN PET HAIR AND URINE → $291.20

In their written summary, the Landlords said the following about this claim and the next:

> This inspection took place in winter when the ground and the porch were still cold and frozen, and when things thawed in April, a fermenting mountain of cat feces and urine was revealed under the front porch. This crawlspace was free of cat waste when [the Tenant] moved in, as [D.Q.] had wedged in under there to do some work in early March, 2020 just prior to [the Tenant's] tenancy.
>
> Now the front porch is not useable, the smell is so nauseating, and the prevailing wind wafts the very strong odour of fermenting cat feces and urine out into the carport, rendering it unusable as well. Photos included of the piles of cat feces….
>
> The urine odour is also in the exterior carpet of the porch as well, which is also

> irreparable and woven with a mat of dog and cat hair. It will need to be replaced due to this, as well as it will be required to be removed to access the crawlspace to remove the cat feces (it is less than 8-12 inches high in some spots, and not accessible for anything larger than a cat.)
>
> This was not noted in the inspection report as all the above was still frozen, and not yet fermenting.

The Agents said they contacted multiple vacuum and restoration companies, but none was willing to even consider providing a quote for this work.

The Agents said that the porch had to be demolished to clean out the cat feces and urine beneath it. Also, they said that the dog-hair-filled carpet had to be replaced because it was glued down to the porch, which had to be cut to access the space to clean it.

The Agents submitted a photograph of a sign for a "12' x 10' Vista Grey Carpet" with a price of $130.00. In their monetary order worksheet, they indicated that they needed two of these carpets to replace the damaged one on the porch. When tax is added, the total comes to $291.20.

#7 REMOVE CAT FECES UNDER PORCH → $480.00

The "garage or parking area" was not noted to have any damage in the move-in portion of the CIR. However, on the move-out portion, it is noted that "cat feces + urine under porch – Found after thaw – April 10th, 2021."

In response to the Landlords claims in this matter, the Tenant said:

> There was one stray cat. There was no access to under the porch. What they're claiming is all open. It's under the porch. I overheard that it was rat smell and not cat. At some point I even saw that he brought a rat trap to the car port

The Landlord said:

> There was an agreement that she would ask about the pets, and it would affect the pet security deposit. The dog was not friendly. We couldn't enter the house unless you know that that dog was not there. We're claiming the least of the concerns we had. It was super upsetting for my husband to have to tear that

> porch apart. The cat feces was not there at the start of the tenancy. She lived in the half of the house that was completely freshly renovated. The other side of the house was more of an aged home.

In the hearing, the Landlords said:

> There's a porch that has a door and that porch is screened in but not heated, and this had to be fixed because of the cat and dog. She asked if she could dog sit a few times, but it became more. She had a second dog there that we didn't approve, and a cat there that we didn't approve.

On their monetary order worksheet, the Landlords estimated the cost to replace the porch as $480.00, consisting of $40.00 per hour for 12 hours. They indicated that this would include, "…the need to remove to vacuum mountain of fermenting cat feces from under porch."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the burden of proof and onus of proof in this administrative hearing. Rule 6.6 states:

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In the case before me, I find that the burden of proof is on each Party in their role as applicant; therefore, they both have burdens of proof in this proceeding.

Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the

burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party as applicant**,** must prove:

1. That the other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

TENANT'S MONETARY CLAIM → $5,000.00

The Tenant claimed in her application that the Landlords owe her money for utilities. However, at the start of the reconvened hearing, she said: "I just want my security deposit and one month compensation for the renos." She did not comment on utilities. Further, the Tenant did not direct me to any evidence she had submitted providing a calculation of how much she was overcharged by the Landlords for this claim. I find that the Tenant did not provide sufficient evidence to support her burden of proof in this matter; I, therefore, dismiss this aspect of the claim without leave to reapply, pursuant to section 62 of the Act.

The Tenant claims that her right to quiet enjoyment of the rental unit was breached by the construction work the Landlords did in the basement of the residential property. The basement was not part of the rental unit, but the noise was not restricted to the basement of the residential property where the work was being done.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

The Parties agreed that the Landlords did construction work in the basement of the residential property during the last three months of the tenancy.

The Landlords argued that the Tenant knew about the planned renovation/construction work in the basement before her tenancy started. They also said that none of the construction work was done in the Tenant's rental unit; therefore, I infer they concluded

that they had negated their obligation to protect the Tenant's right to quiet enjoyment of the rental unit. The Landlords stated: "As long as we're not doing it at unreasonable hours – late at night, early a.m., that's our obligation to maintain her quiet enjoyment."

Policy Guideline #6 ("PG #6") provides guidance in this matter. PG #6 states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
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> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> . . .
>
> **Compensation for Damage or Loss**
>
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). 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.
>
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. .
>
> [emphasis added]

The Landlords said they started work in January 2021. The work was still going on when the Tenant moved out on March 31, 2021. They said they consulted the Tenant, who told them that she would be away from the rental unit on Mondays to Thursdays between 9:00 a.m. and 4:30 p.m. They said that they strove to limit the work to between these hours on these days, because that is when the Tenant said she would be away. However, the Landlords also said that they required work to be done on the weekends, sometimes, because that is when the trades were available.

The issue before me is whether the Landlords infringed the Tenant's right to freedom from unreasonable disturbance. The Landlords acknowledged the noise they created when they testified that "Building a suite not a quiet activity".

The Tenant said that the amount she is claiming was "a bit of an estimate", and she did not provide any additional testimony or direct me to any evidence that clarifies this calculation further.

Based on all the evidence before me, overall, on a balance of probabilities, I find that the Tenant is eligible for compensation for a breach of her quiet enjoyment of the residential property. The Landlords' claimed that because the Tenant knew this was going to happen, and because it was not in her suite, that they did not violate her right to quiet enjoyment of the rental unit. However, they acknowledged that they were responsible for what I find to be unreasonable noise in the residential property.

The problem I face is that the Tenant provided no explanation of how she calculated the amount she claims. Accordingly, and I turn for guidance to Policy Guideline #16 ("PG #16"), "Compensation for Damage or Loss". PG #16 states:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward.
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Given the Tenant's lack of evidence on how she calculated her loss, I award the Tenant with nominal damages of **$600.00** for the violation of her right to quiet enjoyment of the rental unit. This is calculated at $200.00 per month for January through March 2021. This award is made pursuant to sections 28 and 67 of the Act, and PG #16.

I find that the Tenant only made passing reference to her claim for utilities; therefore, I find that she has provided me with insufficient evidence to grant her an award for this claim. This claim is dismissed without leave to reapply.

LANDLORDS' MONETARY CLAIMS → $2,750.00

A. MONETARY ORDER FOR UNPAID RENT OF $1,450.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." The Tenant believed that she had a right to not pay her rent for the last month of the tenancy, because of the renovations in the residential property.

The Tenant believed that she had a right to not pay the rent in March 2021, but she did not direct me to any authority for her to do this. The Tenant may have been confused by the sections of the Act that require a landlord to provide free rent to a tenant who they are evicting for major renovations, which require vacant possession of the rental unit. However, the Landlords did not evict the Tenant, and they said their work did not involve the Tenant's rental unit. As a result, I find that the Tenant did not have a right to deduct anything from her payment of rent in March 2021.

Based on my consideration of all of the evidence before me on this point, I award the Landlord with **$1,450.00** from the Tenant, pursuant to sections 26 and 67 of the Act. I make this award, because the Tenant failed to pay rent in March 2021, without authorization to do so.

B. COMPENSATION FOR LOSS OR OTHER MONEY OWED → $1,200.00

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

#1 VINYL SIDING REPAIR → $393.75

I find that the Landlords submitted undisputed sufficient evidence to demonstrate that their vinyl siding was damaged by the Tenant's son shooting hockey pucks against it. I say "undisputed", because the Tenant acknowledged that there was damage done to the outside of the residential property in this manner. However, the Tenant disputed that she should be charged to replace much of the vinyl, as it was limited damage.

Based on the evidence before me overall on this point, I find that the Parties agree that the Tenant's son damaged part of the vinyl siding of the residential property and that this is more than normal wear and tear. I find that the Landlord's photographs do not show extensive damage; however, I find it is sufficient evidence of damage to indicate the need to replace the damaged section.

I find that the description in the estimate is consistent with the damage illustrated in the Landlords' photographs, and as such, I find that the Landlords have not sought a quote for more repair work than is needed for the demonstrated damage. Accordingly, based

on the estimate, I find it reasonable to award the Landlords with recovery of **$393.75** from the Tenant, pursuant to sections 32 and 67 of the Act.

#2 WINDOW REPAIR → $441.94 (estimate)

As noted above, a tenant is responsible for repairing damage that occurred during the tenancy, beyond normal wear and tear. I find that the photographs of the outside of the window damaged by hockey puck hit(s) establish that this is more than mere wear and tear. While the Tenant denied remembering anything about window damage, I find it more likely than not that this damage did occur, and that it was likely caused by her son having hit hockey pucks in that direction.

I find that the Landlords provided sufficient evidence of the cost to have a new window and window frame supplied; however, I find that the Landlords provided insufficient evidence to prove that it would cost $200.00 to have it installed. I, therefore, award the Landlords with recovery of **$241.94** from the Tenant for this claim, pursuant to sections 32 and 67 of the Act, and I dismiss the installation claim without leave to reapply.

#3 CLEAN CAT FECES – CRAWL SPACE → $320.00

Based on all the evidence before me on this matter, I find that during the tenancy, the Tenant allowed a neighbourhood cat to enter the rental unit through the cat door she had opened, and that the Tenant, ultimately, took this cat with her when she moved. I find it more likely than not that the Tenant allowed this cat to defecate in the rental unit crawl space and that the Tenant did not clean it out prior to vacating the rental unit.

Pursuant to section 37 of the Act, I find that the Tenant was responsible for cleaning up the cat feces in the rental unit before she moved out, but I find that she did not do this. Therefore, I find that the Landlords are eligible for compensation from the Tenant for this matter.

However, regarding the cleaning rate they charged, I find that a more standard rate for professionals to clean a residential property is $25.00 to $30.00 per hour. I find that the amount the Landlords charged per hour is 30% higher than a standard cleaning rate. Further, the Landlords did not say, nor did they direct me to any documentary submissions setting out how they knew it took eight hours to clean the crawl space of cat feces, or why they should be granted $40.00 per hour to do the cleaning. However, I infer from the Landlords' evidence and from common knowledge of crawl spaces, that it is usually challenging for an average adult to enter a crawl space. Further, I find that to

clean up cat feces and urine would be an especially unpleasant and challenging task. As a result of these considerations, I grant the Landlords $40.00 per hour for this task.

I find that the Landlords are eligible for compensation in this regard; however, given their lack of evidence on the time it took to clean the crawl space, I award them four hours of cleaning time at $40.00 per hour for a total of **$160.00**, pursuant to sections 37 and 67 of the Act.

#4 SAND/REFINISH SCRATCHED OAK FLOORS → $787.50

Section 32 of the Act applies to this claim, as it does to previous claims of damage remaining at the end of a tenancy. The Tenant did not deny that she had a dog she kept inside the rental unit, and that there were scratches on the floor at the end of the tenancy; however, the Tenant referred to these as “superficial scratches”.

Policy Guideline #31 states that a pet damage deposit, “…is to be held by the landlord as security for damage caused by a pet.”

Based on the evidence before me, overall, on this matter, I find that the Landlords provided sufficient evidence on a balance of probabilities to prove that the hardwood flooring in the rental unit was damaged by the Tenant’s dog. As a result, I award the Landlords recovery of the cost to refinish the flooring of **$787.50**, pursuant to sections 32 and 67 of the Act.

#5 REPAIR DRYWALL (Stairwell) → $120.00

Section 32 applies in this situation, as the Tenant was responsible for repairing the damage to the stairwell drywall that occurred at the end of the tenancy. I find on a balance of probabilities that the Landlords are eligible for compensation from the Tenant, as a result. However, I find that the Landlords did not explain the basis for charging $40.00 an hour to do this work themselves. The Landlords did not indicate that either of them is a drywall professional or that drywallers charge this much to do the work. However, if the Landlord was able to do this work, and is not a drywall professional, it raises questions in my mind about how much drywallers charge, if a non-expert can do the work themselves.

As a result of these considerations of the evidence before me overall in this matter, I find it appropriate to grant the Landlords three hours of work at $30.00 per hour. I, therefore, award the Landlords **$90.00** for this claim, pursuant to sections 32 and 67.

#6 PORCH CARPET – CLEAN PET HAIR AND URINE → $291.20

Pursuant to sections 32 and 37 of the Act, I find that the Tenant was responsible for repairing and cleaning or replacing the porch carpet. I find that the Landlords had to replace this carpet, given the work they had to do for the next claim. Accordingly, I award the Landlord with recovery of **$291.20** from the Tenant for this claim, pursuant to sections 32 and 67 of the Act.

#7 REMOVE CAT FECES UNDER PORCH → $480.00

Pursuant to sections 32 and 37 of the Act, I find that the Tenant was responsible for cleaning the cat feces from under the porch, because she encouraged the neighbourhood cat to frequent the residential property. This is emphasized by the evidence that the Tenant decided to take this cat with her when she moved. I find the Tenant is responsible for the mess left on the residential property by her cat.

As a result, I award the Landlords with recovery of the cost to replace the porch and clean out the cat feces and urine from under the porch. I award the Landlords with **$480.00** from the Tenant in this matter, pursuant to sections 32 and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security and pet damage deposits of $1,200.00 in partial satisfaction of the Landlord's monetary claim.

	PARTY	CLAIMS	Amount Awarded
	Tenant	Compensation	($ 600.00)
1	Landlord	Unpaid rent	$1,450.00
2	[Siding company} Estimate	Vinyl siding repair	$ 393.75
3	[Window supplier] estimate	Window repair	$ 241.94
4	Landlord	Clean Crawl Space	$ 160.00
5	[Hardwood company estimate	Hardwood flooring repair	$ 787.50

6	Landlord	Drywall refinishing	$ 90.00
7	[National hardware chain]	Porch carpet – pet hair/urine	$ 291.20
	Remove/replace porch	Remove cat feces under porch	$ 480.00
		Sub-total	**$3,294.39**
		Less security and pet damage deposits	($1,200.00)
		TOTAL	**$2,094.39**

The Tenant is awarded **$600.00** for her claim for loss of quiet enjoyment of the rental unit. The Landlords are awarded **$3,294.39**, which includes a deduction of $600.00 to set off the Tenant's award.

The Landlords are authorized to retain the Tenant's **$700.00** security deposit and her **$500.00** pet damage deposit in partial satisfaction of the monetary award, pursuant to section 72 (2) of the Act.

Given their success in this matter, the Landlords are awarded recovery of the **$100.00** Application filing fee, pursuant to section 72 of the Act.

Based on the evidence before me overall in these applications, I grant the Landlords a Monetary Order of **$2,194.39** from the Tenant in complete satisfaction of their monetary awards, and pursuant to section 67 of the Act.

Conclusion

The Parties are both partially successful in their respective applications. The Tenant is awarded $600.00, and this is deducted from the Landlords monetary awards totalling $3,894.39. The Landlords are also awarded recovery of their $100.00 Application filing fee from the Tenant.

The Landlords are authorized to retain the Tenants $700.00 security deposit and her $500.00 pet damage deposit in partial satisfaction of their monetary awards. The Landlord is granted a Monetary Order from the Tenant of **$2,194.39** in complete satisfaction of the awards.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 27, 2021

Residential Tenancy Branch