Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, MNDCL, FFL

Introduction

These hearings were convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $320.00 for damages, retaining the security deposit to apply to the claim; a monetary order for unpaid rent of $7,300.00; a monetary order of $3,025.00 for damage or compensation under the Act; and to recover the $100.00 cost of their Application filing fee.

The Tenant, A.S., attended the first, but not second teleconference hearing, and gave affirmed testimony. The Landlords, M.G. and M.J., and a property manager, R.L. ("Agent"), appeared at both teleconference hearings and gave affirmed testimony; however, M.J. did most of the talking for the Landlords in the hearing. As neither Tenant attended the reconvened hearing, there are responses to the Landlords' claims for only the first few items we covered in the first hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Early in the hearing, we reviewed service of the Notice of Hearing documents by the Landlord, as well as service of the Parties' respective evidence on each other. The Tenant said that she did not receive the Landlords' Notice of Hearing or evidence. The Landlords submitted copies of two registered mail tracking numbers dated October 9, 2021, for the packages they sent to the Tenants. The Landlord also submitted a copy of the email dated October 18, 2021, that they sent to the Tenants with the Notice of Hearing documents and their evidence. The Canada Post website indicates that two notices of the registered mail packages were delivered, but that no one attended the

post office to pick up the packages, so they were returned to the Landlords.

I find that the Landlords served the Tenants with the Notice of Hearing in compliance with section 88 of the Act, sent via registered mail on October 9, 2019. They provided tracking numbers and upon checking the Canada Post tracking guide, I discovered that the Tenants had failed pick up the packages after having received two reminder notices from Canada Post. According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find that the Landlords served the Notice of Hearing and their evidence to the Tenants on October 14, 2021, five days after it was sent by registered mail.

However, the Landlords said that they did not receive any evidence from the Tenants. The Tenant said: "I sent him a link to google support, so that they can scan and upload some things without risking a virus. He has checked this link in the past. The Landlord said he received an email from the Tenant, but could not open it, because they received an error message about a virus. At the end of the first hearing, I Ordered the Tenants to re-serve the Landlord with their evidence to the Landlord.

The Tenants did not attend the reconvened hearing, and the Landlords said that they were not served with any documents from the Tenants between hearings, so they have not received any response evidence from the Tenants. Based on the evidence before me on this matter, I find it is more likely than not that the Tenants failed to serve the Landlords with the Tenants' evidence, and therefore, it would be administratively unfair and against the Rules for me to consider the evidence that the Tenants uploaded to the RTB. I have not, therefore, considered the Tenants' evidence in making my Decision, beyond the Tenant's testimony in the first hearing.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application, and they confirmed these addresses in the first hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the first hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 1, 2021, and was scheduled to run until June 30, 2022, and then operate on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlords a monthly rent of $3,650.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $1,825.00, and no pet damage deposit. They agreed that the tenancy ended on September 25, 2021, when the Tenants vacated the residential property. The Parties agreed that the Tenants did not give the Landlords their forwarding address in writing at the end of the tenancy. The Landlord confirmed that they kept the Tenants' security deposit to apply to this claim.

The Parties agreed that they conducted a move-in condition inspection of the residential property at the start of the tenancy. They also agreed that the Landlord provided the Tenants with a copy of the condition inspection report ("CIR") after the move-in inspection. However, they also agreed that they did not conduct a move-out inspection at the end of the tenancy. The Landlord said he emailed the Tenants proposing doing a move-out inspection on September 14, 24, and 27th; however, the Tenants did not participate in these opportunities.

The Tenant said that A.S. had already returned to the United States when it came time to do the move-out inspection; but that the Tenant indicated that she was not comfortable doing the inspection by herself with the Landlord. She said he told her that he would not be returning the security deposit; therefore, the Tenant said she did not understand the point of participating in the move-out inspection, if there were not chance of getting the security deposit back. The Landlord disputed the Tenant's claim that she had any reason to be afraid of him. I note that the Tenant could have had a friend or family member with her for the inspection, in order to be able to participate in this important part of a tenancy.

The Landlords submitted monetary order worksheets setting out their claims, which claims we reviewed consecutively in the two hearings.

#1 FINDING A NEW TENANT → $1,825.00

The Landlord started off by explaining that their claims arise from the Tenants having breached the Parties' fixed-term tenancy in the third month after they moved in. The Landlord said he was forced to find new tenants in short order.

In the hearing, the Tenant said:

> I mean I'm not responsible for him hiring another person. Apart from that – he lost one month of rental income. We gave the notice on 10th or 11th of September. He said we have to empty it out at end of September. He asked us to move out earlier than our first notice date. It was his asking us to move out earlier. Even me having to find something quickly.

The Tenant indicated that they had given the Landlord notice to end the tenancy on September 11, 2021, with a tenancy end date of October 10, 2021. However, the Landlord responded by advising the Tenants that he could only rent the unit for October, if the new tenancy started on October 1st, 2021. As such, the Landlord responded to the Tenants' notice to end the tenancy with a letter dated September 14, 2021. This letter included [reproduced as written]:

> I am writing this letter due to your email for termination of the tenancy agreement (on Sep 11th, 2021) only 2.5 month after signing the contract.
>
> My agent and I set up the ad one hour after getting your email and trying to find the right tenant to replace with you. We have some people who are interested and are negotiating, but only one of them wanted to view the property. Thanks for letting us for showing on this Monday Sep 13th, 2021.
>
> Your email shows you are going to vacant the property by October 10th, however this potential tenant wants to make sure that they can have the property exactly on Oct 1st and you need to vacant the property on Sep 30th at 1:00 pm. The property should be professionally cleaned and it must be fully vacant to be able to re-rent it to the new potential tenants. If you approve this time to give me the keys, I would be ale to send the application to them and continue the negotiation.
>
> Also regarding your damage deposit, I will keep it for 15 days after your moving and filling the move-out form together. We can set-up a move-out meeting together in the property on Sep 30th at 12pm to fill the form. Please bring your

move-in form to compare the items together.

At the end, please provide the address of your new place that you are planning to move. I need the address for both of you in US and Canada along with your phone numbers to be able to reach at you easily.

Regards,
[Landlords' names and signatures]

The Tenant continued:

The final move out date was September 25. On that very day they gave us another notice, saying they were not giving the security deposit back, and that he wants the rent for October. We had an agreement and he changes it and goes back on his word. October 10 was the original move-out date, and we knew we would have had to pay October rent.

The Landlord said:

They email me and they're not even giving official notice. It was an informal email and they just told me on September 11th 'We are leaving October 10th'. Right after the email, I talked to [the property manager] and hired her to help me. I start my hard work right after the email.

What she is saying is not correct, because what I asked her and [her husband] – I told them, let me bring whoever we can find to show the house and we will have a new rental agreement. After 5 or 6 showings, they sent an email: 'Someone is announcing us here. We can't work'. That's their words. I told them I found someone very interested, but she wants to be in on October 1st . If you give me another rental, I'm good, but just decide your plan. I can't rent out for October 10th. They said: 'We are going to go September 30th. I sent them another notice and okay.

We are doing our job; we had many showings and messages and channels to find a new tenant. What's your plan, if you want to move out Sep 30, let me know and I can write it in my advertisement: 'It's vacant for October 1st". I can't rent it out for October 11 – no one accepts it. I told them, clearly, just let me know when you want to move out. Even September 25 – I didn't know she's moved out. I just called them and emailed them. One time [A.S.] called me and said: 'You can't be

> going in my house. I called the police. They said to call the Tenancy Branch'. They told me if you have an email that they left, you can go in. I even didn't change the keys, because I didn't know what was happening.

The Tenant said that the Landlord found someone to rent the unit starting on October 15, 2021, therefore, they lost two weeks rent payment for October 2021.

#2 EARLY CONTRACT BREAK FINE → $1,200.00

In the reconvened hearing, the Landlord directed me to clause 25 of the Parties' tenancy agreement. He said: "This states that an early termination of the lease requires them to pay one full month of notice, subject to a penalty of $1,200.00 and lost rent."

Clause 25 in the tenancy agreement states:

> **25.** Additional Terms and Conditions
> (a) No Airbnb/short term rentals of room or entire place while on vacation or otherwise
> (b) Early termination of lease requires 1 full months' notice and is subject to a penalty of $1,200 plus lost rent (lost rent applies if less than 1 months' notice given)
>
> The Tenant agrees to provide the Landlord a minimum of one full month notice to end tenancy to minimize the potential loss of rent from vacancy.
>
> All tenancies are to end on the last day of the month.
>
> (Unless included in writing, the tenant is responsible for all other utilities and services. The Tenant is responsible for replacement of all consumables and accessories to include but not limited to light bulbs, batteries for smoke detectors and fire alarms, change of furnace filters at least every 3 months, pad locks, fireplace screens).

Further, the Landlords also have a liquidated damages term in clause 12 of the tenancy agreement addendum, which states:

> **12.** Liquidated Damages: In the event the tenant terminates this agreement during the fixed term, the tenant will reimburse the owner for all costs associated with re-renting the suite including but not limited to, advertising and loss of rental

income during the duration of the remaining term.

#3 RENT LOSS PER SEP 10th NOTICE → $3,650.00

The Agent explained this claim, as follows:

> This is because they haven't given one full month notice. If look at clause 25 (b), it shows exactly one full month notice is required. But they sent the notice on September 10, for end of the month – just an email, not proper notice even - regarding they're leaving by October 10. So that's why.

I asked the Landlords what they did about finding a new tenant, once they received the Tenants' notice to end tenancy. The Landlord said that they hired the Agent to manage finding a new tenant. The Landlord also said that this happened at a particularly difficult time in his life regarding his family's health, so he said it was "really hard" to deal with this, too. The Landlord referred me to emails they had with the Agent about showing and re-renting the suite. He said that the Tenants were not happy with that. "We were interrupting their work. I said 'We're helping you to get a new tenant.' The Landlord continued:

> Long story, but to answer, [the Agent] helped, me and we found a really good tenant. They moved in at end of October, but our contract stated October 15th. We lost half a month's rent. This is for a full month and it's not half a month, but based on the original contract, they are responsible for a full month.

#4 NOT RETURNING ALL KEYS (and social media advert.) → $100.00

The Landlord said that the Tenants did not return all of the keys provided to them at the start of the tenancy. This included returning the wrong mail key, which the Landlord had to have replaced by Canada Post. The Landlord submitted a video of someone unsuccessfully trying the returned keys in the residential property lock.

The Landlord said:

> It wasn't just that key; it was including another key for back door that they didn't provide. So, two keys plus a [social media platform] advertisement, because at the time [the Agent] was looking for new tenants and I was dealing with personal matters.
>
> I changed the whole lock on the back door, and it cost about $50.00 plus my

[social media advertisement] of about $50.00, so it was $100.00. I merged them together, because there were not enough lines on the RTB's monetary order worksheet form.

The Landlord said that he had advertised for a new tenant on a social media platform, and that it cost him "about $50.00". The Landlord submitted copies of payment receipts to the social media platform, although, the receipts do not indicate the reason for the advertisement. However, the Landlord also submitted copies of the advertisements he posted on the social media platform. The amounts claimed for the social media advertisement summed to $40.73, not $50.00. They were incurred on the following dates:

$ 9.45	September 26
$ 9.45	September 29
$ 1.81	October 1, 2021
$12.60	October 15, 2021
$ 7.42	November 1, 2021
$40.73	**TOTAL**

The Landlords did not direct me to a copy of the cost to re-key the rental unit, nor the post office box.

#5 PROVIDING FAKE KEY → $25.00

The Landlord has referenced this matter in the previous claim(s), and he confirmed that he did not submit a receipt for the new mail key from Canada Post. The Landlord said that I had told the Parties that they may not submit any further evidence between the first and second hearings. This is because the hearing could have been completed in the first hearing, and that all evidence had to have been submitted by the start of that hearing. The Landlords did not indicate why they could not submit the receipt prior to the first hearing, since it was scheduled so long after this cost was incurred.

#6 MISSING LIGHT BULBS → $25.00

The Landlord said in the hearing: "They were missing some bulbs and those cost me about $25.00. Whatever I say receipt here, I've posted the receipt." The Landlord said the receipt from an international hardware store should be before me. The Landlord submitted a photograph of a burned out light bulb in the ceiling of the residential property; however, I could not find a receipt for this claim in the Landlords' evidence.

#7 MOWING AND GARBAGE → $300.00

The Landlord said that the Tenants were responsible for **mowing** and that this is set out in the tenancy agreement.

Clause 24 of the tenancy agreement addendum states

> **24.** In the case of a single-family property:
>
> - The Tenant at his cost is responsible to mow the lawn for the whole property, keeping weeds under control by applying weed and feed or other applicable lawn treatment periodically. The Tenant is responsible for his own lawn mower and gardening tools. In the event the lawn is not cared for as agreed. The Landlord has the option to make arrangement for the mowing of the lawn and lawn care treatment, and the Tenant agrees to reimburse the Landlord upon written request for the work done.
>
> - The Tenant at his cost is responsible to keep the surroundings of the property in a neat and clean condition and is responsible for snow removal. In the event the Tenant does not carry out his duties, the Landlord has the option to make arrangement for the cleaning of the surrounding of the property and snow removal, and the Tenant agrees to reimburse the Landlord upon written request for the work done.
>
> - The Tenant is responsible for snow removal for access to the property and surrounding the property.

The Landlord said:

> And [the Tenant] told me that he's going to move all the stuff and make everything clean. They just left the lawn; the yard was dirty, the garbage was full, and they weren't using the right things in the blue bins, even green bins, and some recyclables. We got notice from the City. Our neighbours told us this is not the first time. I gave them all information about the City collection at the first.
>
> I hired someone to do all the garbage and everything and he charged me $300.00. I have the invoice attached. The evidence is in clause 24 in the tenancy agreement – they are responsible for the lawn treatment, and responsible for their own tools.

The Landlord submitted photographs of the yard; however, other than a hose that was not tidied up, there was no indication of what was wrong in the photographs. Further, I was unable to find a receipt for this claim in the Landlords' evidence.

Regarding **garbage**, the Landlord submitted photographs of notices received from the City for the residential property garbage mistakes the Tenants made in putting the wrong type of material in the wrong bin(s). However, if this is part of this claim, the Landlord has not provided copies of any fines incurred from the City notices. Further, I could not find a receipt for $300.00 for mowing and/or for garbage-related costs.

#8 SCREEN REPAIR → $262.50

The Landlord said that the Tenants had an air conditioning unit, which damaged the window screen in the residential property. He said: "I just sent them an email with photos. I hired someone to fix that for me. I attached the invoice." The Landlord clarified that they did not have to buy a new screen for the window, as the original frame was re-used in repairing the Landlords' screen.

The Landlords submitted a copy of the move-in CIR, which indicated that "windows" were in good condition at the start of the tenancy, although there is no reference to screens in this document at the start or end of the tenancy.

The Landlords submitted photographs showing a hole in the middle of the screen, and of frayed screen at the bottom of the frame. The Landlords submitted an invoice from a local window company which describes the work as: "Screen window" $250.00 plus $12.50 in GST for a total of $262.50.

#9 GUTTER CLEANING → $390.68

I asked the Landlord why the Tenants are responsible for this claim. The Agent said: They just left the property without leaving the key and then keeping the door open and I was really worried about this issue, and I didn't trust them, maybe they put something in the gutters. They weren't accessible for me, so I hired a company who came and went through all the gutters. I brought someone to do it.

And for the fireplace, I had someone look at it so there was nothing clogging it. But I didn't charge them for this.

The Landlords submitted an invoice from a local company that charged $372.08 plus

tax for “Interior Gutter Cleaning”. The total bill with GST came to $390.68.

#10 FURNACE NOISE → $340.12

The Landlord explained this claim, as follows:

> I sent them email after moving. I said the furnace is noisy – ‘what’s the issue?’ I was really worried about everything. I had someone fix the noise for us. Something was wrong and they fixed it for us and charged me this.
>
> They didn’t say anything to me before. Two days before they left, I was on the property, and there was no noise. They didn’t do any move-out inspection with me and when I saw anything, I was suspicious about it. So, when I was hearing noises from furnace. I thought they did something. I hired someone to fix it.

I asked the Landlord if the contractor had said what was making the noise, but the Landlord said he did not know.

The Landlord submitted an invoice from a heating and cooling company dated October 16, 2021. The invoice indicates that the technician inspected the furnace, checked the ignition, checked the inverter fan, and concluded that the furnace was “okay”. The Landlords were charged $349.12, including tax.

#11 POSTAGE FEES FOR SERVICING DOCUMENTS → $28.56

As I explained in the hearing, the legislation does not authorize recovery of these costs in this proceeding.

#12 TOILET REPLACEMENT → $230.00

The Landlord explained this claim, as follows:

> I didn’t realize this in the move-out inspection we did, but the new tenants told us. I went to fix it at [an international hardware store], who said I have to change whole toilet. They said there is no glue…. When it has a small crack, they can’t fix that at all. I even when to Habitat to get a second hand toilet, but it cost that much.
> I didn’t charge them for toilet, just the labour to remove and install the new one. I didn’t charge them for the toilet, just $230.00 for the labour not the toilet.

The Landlord did not provide evidence of who was responsible for the crack in the toilet.

The Landlord submitted an invoice for the removal of the old toilet and the installation of a new one. The technician charged $230.00 for this cost.

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 that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 7 of the Act states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results. Policy Guideline #16 sets out that damage or loss is not limited to physical property only, but also includes less tangible costs, such as loss of rental income that was owing under a tenancy agreement.

Policy Guideline #3 states that an award of damages is intended to put the affected party in the same position, as if the other party had not breached the Act, regulation, or tenancy agreement. In the case of breaching a fixed term tenancy agreement, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Policy Guideline #5 states that where a party breaches a term of the tenancy agreement or the Act or regulation, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This is commonly known as the duty to minimize the loss. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be reimbursed for a loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be “reasonable” in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss or incur excessive costs in the process of

mitigation. If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been save

#1 FINDING A NEW TENANT → $1,825.00

Section 45 (2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement [emphasis added]

In this case, I find that the Tenants ended a one-year, fixed term tenancy over nine months early, contrary to section 45 (2) of the Act and the tenancy agreement. I find that this breach deprived the Landlord of two weeks' of rental income in October in the amount of $1,825.00. Pursuant to sections 7 and 67 of the Act, I find that the Tenants are required to compensate the Landlord for this loss of rental income.

However, the Landlords also had a duty to minimize that loss by re-renting the unit as soon as possible. I find that the Landlords started to advertise for new tenants in within an hour of having received the Tenants' early end to the tenancy. The Landlords hired a property manager to arrange to re-rent the suite for the same rent, as soon as possible.

I find that the Landlords did what was reasonable in the circumstances, despite having to suddenly find new tenants for a fixed-term tenancy that had just started. As a result, I do not decrease the Landlords' claim for recovering rental income from the Tenants, due to a failure on the Landlords' part to minimize the damage.

Based on the undisputed evidence before me, I find that the Landlords are entitled to recovery of two weeks' rental income of $1,825.00, and therefore, I **award the Landlords with $1,825.00** from the Tenants pursuant to sections 45 and 67 of the Act.

The remainder of the Landlords' claims were reviewed in the reconvened hearing, in which the Tenants were absent.

#2 EARLY CONTRACT BREAK FINE → $1,200.00

Regarding the Landlords' claim per section 25 of the tenancy agreement addendum, for

an additional $1,200.00 for breaking the fixed-term tenancy agreement, the Policy Guidelines help clarify rules.

Policy Guideline #3, “Claims for Rent and Damages for Loss of Rent”, states:

> **C. Tenancies ending early and compensation**
>
> A tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the RTA (section 38 of the MHPTA) set out how a tenant may unilaterally end a tenancy agreement.
>
> Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.
>
> Similarly, when a landlord ends a fixed term tenancy early as a result of the tenant’s actions (such as not paying rent or most of the grounds for cause), the landlord may also be able to claim the loss of rent for the remainder of the term of the tenancy agreement.

RTB Policy Guideline #4, “Liquidated Damages” (“PG #4”), includes the following guidance with respect to the interpretation of such clauses:

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. <u>The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable</u>. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into. .
>
> [emphasis added]

The Landlords already have a liquidated damages term in clause 12 of the tenancy agreement addendum, which states:

> **12.** Liquidated Damages: In the event the tenant terminates this agreement

> during the fixed term, the tenant will reimburse the owner for all costs associated with re-renting the suite including but not limited to, advertising and loss of rental income during the duration of the remaining term.

I find that the "early contract break fine" set out in clause 25 of the residential tenancy agreement addendum is actually a penalty clause inserted for the benefit of the Landlords, but not associated to any costs incurred by the Landlords. The Landlords drafted the clause in the addendum calling for payment of $1,200.00, which they said: "Is subject to a penalty of $1,200 plus lost rent" [emphasis added]. Accordingly, I find that clause 25 requiring the Tenants to pay a penalty of $1,200.00 for breaking the fixed-term tenancy agreement is not a liquidated damages clause, and is a penalty clause, which is not authorized under the Act. As such, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#3 RENT LOSS PER SEP 10th NOTICE → $3,650.00

Again, the Landlords are trying to penalize the Tenants for breaking the fixed-term lease. However, the Act and Policy Guidelines state that tenants who break a fixed-term lease are responsible for compensating the Landlord to the point at which the Landlord has a new tenant to continue the tenancy. As noted above, the purpose of compensation is to put the person who suffered the loss in the same position as if the damage or loss had not occurred.

As the affected person has a duty to minimize or mitigate their losses, pursuant to Policy Guideline #5, "Duty to Minimize Loss" ("PG #5"). PG #5 states:

> **B. REASONABLE EFFORTS TO MINIMIZE LOSS**
>
> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually, this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.
>
> In general, a reasonable effort to minimize loss means taking practical and common sense steps to prevent or minimize avoidable damage or loss…. .
>
> [emphasis added]

I find that due to the Landlords' required mitigation of their loss of rental income, they were able to find a new tenant starting on October 15, 2021. Further, the Landlords

were compensated for the lost income from October 1 – 14, per the first claim above. I find that the Landlords have not provided sufficient evidence to establish the validity of this claim on a balance of probabilities. As such, I **dismiss this claim without leave** to reapply, pursuant to section 62 of the Act.

#4 NOT RETURNING ALL KEYS (and social media advert.) → $100.00

Based on the evidence before me in these matters, I find that the Landlord did not provide sufficient evidence of the value of having to change the locks to the residential property. As such, I dismiss this claim without leave to reapply.

Regarding the social media advertisement, I find it more likely than not that the Landlords have claimed amounts for social media advertisements that were not reasonable. The new tenant started paying the Landlord as of October 15, 2021, and therefore, I find it unreasonable that the Landlords should have incurred advertising fees for October 15 and November 1, 2021.

In addition, the Landlords did not bother to calculate the amounts they incurred for these claims, but rather, they estimated it at “about $50.00” each. The latter two findings reduce the reliability of the Landlords’ claims in this matter. Given this conclusion, and because I find that the Landlords’ receipts for these claims are missing or unreliable, I **dismiss this claim without leave to reapply**.

#5 PROVIDING FAKE KEY → $25.00

As the Landlords did not provide any proof of the cost that they incurred in this regard, I **dismiss this claim without leave to reapply,** pursuant to section 62 of the Act.

#6 MISSING LIGHT BULBS → $25.00

Again, the Landlords failed to prove the third step of the Test by not providing any receipts for purchases of new bulbs. Further, the Landlord did not know how many bulbs had to be replaced. As the Landlords have not provided sufficient evidence to prove this claim, I **dismiss it without leave to reapply**, pursuant to section 62 of the Act.

#7 MOWING AND GARBAGE → $300.00

Based on the evidence before me in this matter, I find that the Landlords did not provide

sufficient evidence to establish that the Tenants failed to comply with their requirements under clause 24 of the Addendum. The photographs revealed a yard that did not appear to be overgrown or messy, besides one hose that was not wound up.

Further, the Landlord has not directed me to any submissions that cover these costs. The Landlord has not provided any information regarding how much of the $300.00 claimed relates to mowing and how much relates to garbage issues. As a result, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#8 SCREEN REPAIR → $262.50

Based on the undisputed evidence before me in this matter, I find that it is more likely than not that the Tenants damaged the window screen in the residential property, such that it would have to be repaired. I find the Landlord has proven all four steps of the Test with this claim, as I find he proved that the Tenants damaged the window screen, and that he had to incur a cost to have it repaired. The Landlords submitted a copy of the invoice for this charge, which I find proves the third step of the Test. And finally, I find that instead of buying a new screen in a frame for the residential property, the Landlord had the damaged screen repaired using the original frame. I find that this demonstrates mitigating their losses.

Based on the evidence before me overall, and pursuant to section 67 of the Act, I **award the Landlords with $262.50** from the Tenants for reimbursement of the cost of repairing the damaged window screen.

#9 GUTTER CLEANING → $390.68

Policy Guideline #1, “Landlord & Tenant – Responsibility for Residential Premises” (“PG #1”) states:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

   The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet ‘health, safety and housing standards’ established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site, and

property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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 refers 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.

PG #1 states:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow, and weeding

flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

Gutter cleaning is not mentioned in PG #1; however, I find that cleaning the gutters of a residential property fits into clause 5 above, in that it is a major project to do annually or semi-annually. There is danger associated with this task, as well as the need to dispose of the gutter contents. Further, the Landlord did not direct me to a clause in the tenancy agreement, nor the addendum in which it states that tenants are responsible for cleaning the gutters.

Based on this consideration of the evidence before me, I find that gutter cleaning was not the responsibility of the Tenants, and therefore, I find the Landlords' claim in this regard to be unreasonable. I, therefore, **dismiss this claim without leave to reapply**.

#10 FURNACE NOISE → $340.12

In PG #1 it states:

> **FURNACES**
>
> 1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.
>
> 2. The tenant is responsible for cleaning floor and wall vents as necessary.

I find that the Landlord has failed to prove the steps of the Test on a balance of probabilities. I find that servicing a furnace is a landlord's responsibility, and in this case, I find it more likely than not that if the Tenants had noted something wrong with the furnace during the tenancy that the Landlords would have arranged to have it fixed at the Landlords' expense.

There is no indication from the Landlords and Agent - other than suspicion - that the Tenants did anything to damage the furnace. The Landlord did not enquire with the technician as to why the furnace was making noise. I find the Landlords have not provided sufficient evidence and authorities to prove this claim on a balance of probabilities. I, therefore, **dismiss this claim without leave to reapply**.

#11 POSTAGE FEES FOR SERVICING DOCUMENTS → $28.56

The legislation does not authorize reimbursement of postage costs to serve documents

for the dispute resolution proceeding. Therefore, **this claim is dismissed without leave to reapply**.

#12 TOILET REPLACEMENT → $230.00

Referring to the Test, I find that the Landlords have not proven this claim on a balance of probabilities. There is no indication that the crack was not in the toilet at the start of the tenancy. Ordinarily, I would turn to the CIR for evidence in this regard; however, the Landlord said even he missed noting this damage at the end of the tenancy. It was not until the new tenants mentioned it that the Landlord became aware of it.

I find there is just as much chance that the new tenants damaged the toilet, as there is that the Tenants before me did the damage. As such, I find that the Landlord has not proven this claim on a balance of probabilities, and I **dismiss it without leave to reapply**.

Summary and Set Off

	For	Amount
1	Finding a new tenant	$1,825.00
2	Breaking contract fine	$0.00
3	Rent loss per early end tenancy	$0.00
4	Not returning all keys	$0.00
5	Providing fake key	$0.00
6	Missing light bulbs	$0.00
7	Mowing and Garbage removal	$0.00
8	Screen repair	$262.50
9	Gutter cleaning	$0.00
10	Furnace noise	$0.00
11	Postage for serving documents	$0.00
12	Replacing toilet	$0.00
	Total monetary order claim	**$2,087.50**

Given that the Landlords were predominantly unsuccessful, I decline to award them with recovery of their $100.00 Application filing fee from the Tenants.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' **$1,825.00 security deposit** in partial satisfaction of the Landlords' monetary awards. The Landlords are granted a Monetary Order of **$262.50** from the Tenants pursuant to sections 62 and 67 of the Act.

Conclusion

The Landlords are marginally successful in their Application, as they provided sufficient evidence to prove two of their claims on a balance of probabilities. The other claims are dismissed without leave to reapply, as set out above.

The Landlords are awarded **$2,087.50** from the Tenants, and the Landlords are authorized to retain the Tenants' **$1,825.00** security deposit in partial satisfaction of this award. The Landlords are granted a Monetary Order of **$262.50** from the Tenants. This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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

Dated: September 8, 2022

Residential Tenancy Branch