Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) F.S.	910038749	MNETC, MNDCT
(Landlord) C.F., S.V.	310048422	MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties. The first hearing was adjourned, because of the complexities of the claims meant that more time was needed for the hearing than was available. The Parties reconvened for second and third hearings, when the Parties completed their submissions.

The Tenant applied for:

- a monetary order of $750.00 for damage or compensation under the Act; and
- $777.00 in compensation from the Landlord related to a Notice to End Tenancy for Landlords' Use of Property dated December 21, 2020 ("Two Month Notice").

The Landlords applied for:

- $8,497.00 compensation for damage caused during the tenancy;
- $1,458.00 to recover unpaid rent;
- $9,245.60 compensation for monetary loss or other money owed – retaining the security deposit to apply to these claims; and
- recovery of the $100.00 application filing fee;

The Tenant and the Landlords, C.F. and S.V., appeared at all three teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. 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; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlords with the Notice of Hearing documents and evidence by Canada Post registered mail packages, sent on June 11, 2022. The Tenant provided Canada Post tracking numbers as evidence of service. The Landlords acknowledged having received service of the Tenant's Notice of Hearing and evidence, although, they denied having received a thumb drive with the Tenant's video evidence.

The Landlords testified that they served the Tenant with their Notice of Hearing documents and evidence by registered mail, although, they said that these documents went undelivered. The Tenant said she did not receive any registered mail packages from the Landlords.

In the first interim decision adjourning the hearing, I Ordered the Parties to re-serve all of their evidence to the other Party.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications and they confirmed these addresses in the 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 hearings, 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 hearings. I also advised the Parties that they are not allowed to record the hearings and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 15, 2018, ran to December 14, 2019, and then operated on a periodic basis. They agreed that the Tenant was required to pay the Landlords a monthly rent of $1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $750.00, and no pet damage deposit.

The Parties agreed that they did an inspection of the condition of the unit at the start of the tenancy; however, they did not use an RTB condition inspection report ("CIR") for the move-in inspection. They did, however, do a move-out inspection in which they completed a condition inspection report. The Landlord included the handwritten move-in inspection notes with their a copy of their move-out CIR.

I started with the Tenant's claims, because she happened to apply for dispute resolution first; however, this gives her no advantage over the Landlords in my considerations.

TENANT'S CLAIMS

#1 COMPENSATION RELATED TO TWO MONTH NOTICE → $777.00

In the hearing, the Tenant explained this claim as being for one month's rent that the Tenant said was owed to her, because of the manner in which the Landlords ended the tenancy – with a Notice to End Tenancy for Landlord's Use of Property. The Tenant referenced sections 49 and 51 in her submissions. I note that section 51 states:

> **51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated December 21, 2020, and which has the rental unit address. The Two Month Notice was served by attaching a copy to the rental unit door on December 21, 2020, with an effective vacancy date of February 28, 2021, and it was served on the grounds that the Landlord or the Landlord's spouse will occupy the rental unit.

The Tenant said she vacated the residential property on March 2, 2021, as she had a new tenancy agreement effective March 1, 2021. The Tenant said the Landlords gave her $629.00 for the last month's rent owing.

The Tenant said that the Landlords prorated the amount they owe her in this regard to March 21, 2021, because that is the date on which the Landlords scheduled the move-out inspection. The Tenant said she “strongly disagrees” with the Landlords’ position in this regard.

The Tenant said that she gave the Landlords her forwarding address in writing on March 8, 2021, and that she was no longer a tenant. In terms of the move-out inspection, the Tenant said:

> Furthermore, they gave me dates - mutually beneficial dates for the move-out inspection – they agreed to these dates. They weren’t very accommodating - only giving weekend times for the dates. That was partly on them, but those were the dates that they gave me.
>
> I also wanted to mention that I did give them the keys – they were placed in the mailbox for the suite. The forwarding address on March 8 was also given by my advocates before this date, as well, but not received; but the fact of the matter is, once that hearing for the eviction was cancelled by both Parties, therefore, I was not a legal tenant after February 28. I was not able to get movers any sooner.

I asked to confirm that she had not moved out by March 1, 2021, and she said:

> Yes, most large items were still there. I was under the impression from my advocate that a few days wouldn’t be a big issue. I was happy that I was getting out of there. I want to point out that this unit was not getting rented to anyone else. It wasn’t because people couldn’t move in, because of it. They were conducting pretty intensive renovations – so it was pretty much uninhabitable. Construction – everywhere….
>
> They hadn’t actually moved in, because the house was uninhabitable at this time. That’s why . . . so, I had to book an AirBnB in December to get a break from the nonstop construction going on upstairs.
>
> I received $600.00 and change from the $1,500.00, but that was prorated from March 20, so what I’m suggesting is that it get prorated to March 2 from when I actually vacated. I know they had access to the suite, because lights were on, and they knew where there were burned out lightbulbs, so I know they had been in the suite. It’s not that they didn’t have access. They knew that I had moved out.

> They're claiming that I owe rent payment. I don't have their evidence; I don't know what they're basing it off of. They are discussing a $450.00 subsidy that I received for February. Usually, it's sent directly to landlords, but it was apparently mailed back, and then they tried to meet with the Landlords. I just want to make it clear that this amount that I haven't paid yet, they took it out of the $1,500.00 owing from the month's reimbursement due to the Two Month Notice.

The Landlords said:

> She's conflating things not part of the claim. We did get the $450.00 cheques to our mail box, but the one for February was not sent to us. We attempted to follow up with the Tenant, but failed; she gave us the number of the person giving these cheques. We followed up with her and tried to go collect, and this person did not show up. That said, we haven't received that cheque, and yes, we used that in dealings of claim #2. $450.00 in February and days in March. The $1,500.00 we thought we owed her, she might not be entitled to, because she left on her own accord, [and not because of the Two Month Notice].
>
> In short, we're not asking for the $450.00 in subsidy that wasn't paid, because it was deducted from the $1,500.00 per the letter from our lawyer.

The Landlords did not explain why they did not make further contact with the person who had the Tenant's $450.00 subsidy cheque for February 2021. Further, the Landlords confirmed that they are not renting the suite to anyone - that they are using the entire residential property for themselves, pursuant to having served the Tenant with the Two Month Notice.

In her documentary submission dated April 30, 2021, the Tenant explained her claim for $777.00 from the Landlords, as follows:

> I vacated the residence on March 2, 2021. Movers can corroborate this, as well as my new tenancy agreement that took into effect March 1, 2021. I do not agree with the dates provided, and therefore, I do not agree to the amount reimbursed. Due to moving out on March 2, 2021, I believe the amount owing for the remainder of the month is $1406 – 629 (amount paid on March 26) = $777.00.

The Landlords said they deducted $450.00 they said was owing from February's rent from the one month's free rent owing, because they say they did not receive this subsidized amount from the Ministry. I infer the amounts the Landlords calculated were, as follows:

$1,500.00 - $450.00 = $1,050.00 - $421.00 = $629.00.
Free rent – Feb. rent = $1,050.00 – 8.7 days in March = amount returned

I infer from these calculations, that the Landlords' payment was retroactive to March 9, 2021, as $421.00 amounts to 8.7 days of rent in March, when the $1,500.00 monthly rent is divided by 31 days.

In their testimony, the Landlords said that the rental unit was not ready until the Parties had completed the move-out inspection on March 21, 2021, which I infer was because they had to leave the unit in the condition in which the Tenant left it for the move-out inspection to reflect what occurred during the tenancy. I infer from the Tenant's comments that the Landlords had suggested earlier inspection dates that were on weekends, which the Tenant rejected.

Regardless, I find that the Landlords did not deduct an amount equal to 21 days in March. Further, the Landlords did not deny that they had been in the rental unit after the Tenant left on March 2, 2021, as the Tenant said she found lights left on, and also, because the Landlords knew where burned out lightbulbs were ahead of the inspection.

In their written submissions, the Landlords said:

> The tenant gave no notice of vacating the suite until an email was sent from the tenant's advocate on March 8, 2021. The suite was not usable until the tenant completed the move-out inspection on March 21, 2021.

The CIR submitted by the Landlords sets out that the move-out inspection was completed on March 21, 2021. It also notes the "move-out" date as March 8, 2021, which was the day on which the Landlords confirmed receipt of the Tenant's forwarding address in writing from her advocate.

#2 COMPENSATION FOR OTHER MONEY OWED → $750.00

In her application, the Tenant explained this claim as being: "The landlords took more than fifteen days to provide the [security] deposit after a forwarding address was given."

Pursuant to section 38 of the Act, a landlord has 15 days from the later of (i) the end of the tenancy, and (ii) receiving the tenant's forwarding address in writing, to either pay back the security deposit in full or to apply for dispute resolution, claiming against the security deposit. As noted above, the Parties agreed that the forwarding address was provided on March 8, 2021, and I have found (below) that the tenancy ended on March

2, 2021. As such, the Landlords had until April 2, 2021, to take one of the actions required of them by section 38 of the Act.

Our records show that the Landlords applied for dispute resolution on September 12, 2021, almost six months after they were supposed to return the security deposit in full or apply for RTB dispute resolution.

In their written submissions, the Landlords asserted that they had an agreement with the Tenant to withhold $1,458.00 from the $1,500.00 due to the Tenant for the last month's free rent. They calculated this, as follows:

	$1,500	→ one month free rent to Tenant
	- 450	→ unpaid rent in February to Landlord
	- 1,008	→ days unit "unusable" until the move-out inspection to Landlord
	$ 42	→ left for the Tenant
Plus	$ 750	→ security deposit to Tenant
	$ 792	→ returned to Tenant?

In the hearing, the Parties agreed that the Landlords returned $629.00 to the Tenant representing approximately 13 days in the month in which the Landlords could use the rental unit after the move-out condition inspection on March 21, 2021. However, given that March has 31 days, there would have been only 10 days remaining after the 21st for which the Tenant should receive free rent, according to the Landlords. This would amount to $480.00.

LANDLORDS' CLAIMS

#1 COMPENSATION FOR DAMAGE CAUSED BY TENANT → $8,497.00

Plumber's Invoice for Emergency Bathroom Fix → $1,775.02

The Landlords explained that in December 2020 there was a leak in the residential property that was determined to be coming from the Tenant's suite. The Landlords said they were unable to contact the Tenant when they were advised of water coming from her suite into another apartment. The Landlords said: "Later, the Tenant called us and informed us of an issue to be resolved immediately. We called someone to have a look, and they identified the toilet was blocked."

I asked the Landlord why the Tenant should pay for a plumber in this situation, and he

said:

> The plumber identified it was coming from that specific toilet. His explanation was that a lot of paper that was not suitable was flushed down, and she did not notify us until it was serious for her.

The Tenant responded:

> At this point, I was legally in the suite, but not residing there. There were significant renovations happening and I had a final exam. And I'm a support worker - I had to go to work in the downtown East side. I did not get home until 3 to 4 in the morning.
>
> Then they would start the renos again at 7 a.m. In December 14 through 24, I stayed at an AirBnB. I was unaware that this was happening on the 23rd. During that day I was at the AirBnB, so when I did get notification, it was late. I work late and sleep late; it was well into the afternoon.
>
> What's going on here – I called the Landlord – he said it looks like the toilet overflowed and there was all this damage. That's weird that there's all this work to be done and it overflowed. He said he wasn't going to get a plumber to fix it until after the holidays. I was not calm cool or collected, now that they're telling me that I'm not going to have the use of my washroom over Christmas. I was rude, yelling and demanded they get a plumber. Or I would call a plumber myself.
>
> It took that - and by the Landlords' own admittance – it took over six hours for the Landlords to call a plumber after I yelled at them to call a plumber. At this point, as for text messages, it was almost six o'clock - if they had called within business hours…. I was told it was to be completed at nine o'clock. He got there at 10 p.m. and I was working on a final exam project due the next day, December 24th. He went into the bedroom to work on that with a friend. They were all gone when I came out at midnight. I went to the AirBnB and returned on the 24th.
>
> As for the plug, first, it's not conclusive. They didn't say conclusively that it was done by me. Also, it's reiterated by their lawyer in their evidence #14 on the second page; their lawyer , as previously stated, said the plumber's evidence is not conclusive. No this is definitely not done by me. I wasn't staying in the suite. I went into the suite three different times for clothes and to do laundry. At no point do I remember if I used the washroom, but I would have remembered if the toilet wasn't working.

> The other thing, in the [R.R. invoice] evidence - one at the very bottom – the water was shut off, but the valve needs to be replaced. I think if there was a flood and it caused damage that this should be something that could have mitigated the damage done. This washroom is - there's a maintenance closet room – laundry machines, fuse box, hot water heater, things like that. There is a door directly to my suite. During this time there were many different trades people. I provided all of the Landlords' evidence and my evidence to this plumber, and he said there's no proof that this was caused by you. Because it happened in the basement.
>
> As per Landlords' own communication, flooding was also coming from the maintenance room. It's closer to the damage on the floor than the washroom is – 10 feet from the toilet to water damage on the flooring. It likely came from the maintenance room.

The Tenant submitted a statement dated June 12, 2022, from [S.D.], who identified themselves as a "fully certified Reed SEAL Plumber with my own plumbing company that is a full-time business." This plumber said they looked at the Landlords' plumbing invoice dated December 23, 2020, and had the following comments:

> I will preface this by saying, it is hard to document exactly what took place at the residence, as I was not physically there to do an inspection. But I will assess the written comments that the plumber made on the invoice.
>
> First, if the water was turned off that day, there would not have been enough water in the toilet tank to cause a flood. It is simply not possible for water that is in the reserve tank in a toilet to cause any significant flood. This leads me to believe that the cause of the flood was not the toilet, as any water damage would have been limited to the amount of water used in one single toilet flush. Secondly, I want to point out that this incident took place in the basement suite of the house. It is important to note that the sewer line is directly underneath the basement with the base of the drain itself being in the basement, so any overflow from the sewer line will come through the basement first. Even if there was an overflow originating from somewhere else in the house, this is where an overflow would occur first.
>
> Third, I would also like to highlight the fact that the plumber recommended that the toilet shutoff be **immediately** replaced, and that it is no longer able to stay in the off position. This could very well be responsible for excess water that was present in the suite, if the water was unable to be shut off. If the toilet shutoff was

> in good working order, the flood damage could have been prevented especially since the plumber was unable to attend the suite for several hours after the flood began.
>
> It is from my experience and something I have personally witnessed, that when renovations are taking place, the water can get turned on by tradespeople without being communicated or turned back off. For example, painters need water in order to be able to work, tradespeople need to use the washroom, and during Covid handwashing is especially important. If the tenant was not living in the suite at this time, and the toilet was working properly prior to her leaving the suite, it is my belief that a tradesperson who was working at the site that day, turned the water back on and this possibly caused a backup that was then exasperated by the malfunctioning toilet shutoff valve. .
>
> [emphasis in original]

The Landlord responded:

> Again, I don't want to drag this on. We have provided evidence, yes, not conclusive, because you can't monitor what another person does in a bathroom – we found human fecal matter. This counters her claim that she never used the suite. We saw her coming in and out.
>
> It was right before Christmas, we tried to get a plumber. We had one on site, but he wouldn't take a look. We actively cleaned up as much of the water as we could immediately. It was the toilet that was flooding, not other parts of the suite. We tried to get a plumber as soon as possible. It was a busy time of the year. When they came and it took them a long time to sort through, because it was very clogged – there was a wad of paper that shouldn't have been in the toilet. The plumber she got a letter from was never in our house, and has no understanding of how our house works. Shutting off the valve was a recommendation, not a cause. My plumber wasn't there when it flooded.

The Landlords' plumber's invoice said:

> Date: 12/23/20
> Backed up sewer line as reported by homeowner. Sewage backed up from basement hot water tank overflow drain, bathtub and toilet. Water damage occurred – homeowner to resolve on own through possible restoration claim. Removed basement toilet to gain access into sewer line from flange. Augered

with mainline to clear blockage. Continued to run hot water from tub while augering. Tested okay. Camera inspected from flange to city main. Sewer line completely clear of any blockage and in good condition. Strong likelihood line was blocked with paper pack i.e. sanitation wipes and products or paper towel since no evidence of grease, roots, piping concerns or physical debris found in line from camera inspection and testing of line. Re-set toilet, installed new wax ring and supply line – tested okay with no leaks.

RECOMMEND: To immediately replace toilet shutoff. No leaks at this time but no longer able to stay in off position.

#2 EST. – REMEDIATION OF FLOOD DAMAGE IN BATHROOM → $5,000.00

In their written summary, the Landlords explained this claim, as follows:

- Improper use of the bathroom resulted in flood damage that cost $1,778.02 for the plumber's visit, and an estimate of $5,000 to remediate as per the inspection conducted by the landlord's insurance company.
- In addition, the tenancy agreement states that there should be no pets in the suite, but the tenant had a cat and the carpets smell of cat urine, which is visible under UV light. The estimate to replace carpets in two rooms is $1,722.00.
- There was also extensive use of heavy-duty screws and sticky hooks that have damaged the drywall. We do not have an estimate for this repair, but we are not seeking compensation for this.

We request $8,497.02 as compensation for the damages caused by the tenant.

In the hearing, the Landlords said: "The flood basically damaged the bathroom and area outside of bathroom leading into the common area. The floors were damaged and need to be replaced."

The Tenant replied:

> I'd like to point out that according to the [technician] from the insurance, that no damage was found in the bathroom. They found moisture in the floors under the hallway. Look at original tenancy agreement – a dehumidifier was left in the hallway, because the previous Landlord said to put it on when I go to work. That suite is incredibly humid. I was at the AirBnB for the most part and that dehumidifier wasn't on during this time.

> Despite this, the [technician] - per the move out inspection – found damage in the bathroom in the floors, but not in the hallway. There was no visible warping of the floors. Those floors covered the moisture in the floors.
>
> And this is an estimate, not a receipt. See the correspondence of their insurance company with [the technician]. They said the floors need to be replaced, so the estimate is based on the Landlords' demand that the floors need to be replaced.

The Landlord responded:

> Document #9 has the move-in inspection from the previous owners. There was no specific issues with the floor. Since the Tenant has left, there are no moisture problems within that unit. We're keeping it for ourselves. We have never had moisture issues. She only has opinion, but she rejects ours. All evidence is attached in the claim.

#3 COMPEN. MONETARY LOSS OR OTHER MONEY OWED → $9,245.60

This claim is for legal fees, and in the hearing, I advised the Parties that the Act does not allow for reimbursement of legal fees. Accordingly, this claim is **dismissed without leave to reapply**, pursuant to section 62 of the Act.

#4 EST. CARPET REPLACEMENT – PET STAINS → $1,722.00

As noted above, the Landlord explained this claim in his written submissions, as follows:

> In addition, the tenancy agreement states that there should be no pets in the suite, but the tenant had a cat and the carpets smell of cat urine, which is visible under UV light. The estimate to replace carpets in two rooms is $1,722.00.

I asked the Landlord how old the carpeting is, and he said it was "at least eight years old".

In the hearing, the Landlord said:

> We signed the agreement with previous owner. In the original tenancy agreement, it said you are not allowed to have pets in the household. We confirmed that there were pets, and there were several stains - pet urine – you can see with a UV light. It was all through the apartment.

During the initial viewing, we had a building inspector do an inspection, and there was a cat in the suite and the place smelled strongly of cats. The owners were not aware that the Tenant had a cat in the suite. In our evidence, see the picture of the cat taken by the inspector.

The Tenant replied:

I'd like to point out that the allegations were not on the move-out inspection. There was a black light, but there was no black light used in the move-in inspection, so it was over and above what the moving in inspection did. So, anything coming up on black light was probably there before my tenancy.

I do not have a cat, and I did not have a cat. A friend of mine had a cat, and the cat had surgery, since I was not in the suite at the time, I said you can keep the cat there. The previous landlord – I had asked. The landlord lived above and I lived below. There was no cat outside of that one week, but there was never another pet. I find it hard to believe from that one week in August that anything would have showed up in the move-out inspection in March. It wasn't mentioned in the move-out inspection, so this is a post move-out inspection claim.

The Landlord said:

Not only do we have evidence of pet damage, we have photographic proof of – she said the cat was in the suite – for a week. We have clear evidence that demonstrates that there was long term damage. There was a cat – there was food for months in the space. She can make up whatever she wants. Pets in the space that did cause the damage.

The owner at that time was shocked that there were pets there. When we took possession there was no cat anymore. The cat was removed.

The Tenant said:

There was no cat, but for a week, and the previous landlord was aware of it, because I had someone visit me the previous year who visited me with a dog for a weekend. Outside of the weekend with the dog and the week with the cat, there were no pets in that suite.

#5 RECOVERY OF UNPAID RENT → $1,458.00

I find that this claim corresponds to the Tenant's claims for the return of her security deposit and her last month's rent free. Accordingly, I refer the Parties to the evidence and analyses in those claims. And I **dismiss the Landlords' claims in this regard without leave to reapply**, pursuant to section 62 of the Act.

Analysis

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

Before the Parties testified, I let them know how I 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, the Landlord must prove:
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 CLAIMS

#1 COMPENSATION RELATED TO TWO MONTH NOTICE → $777.00

The evidence before me is that the Landlords gave the Tenant $629.00 for the last month's rent that was owing, pursuant to the Two Month Notice and section 51 of the Act. They deducted $450.00 that they claim was owed them by a Ministry for a rent subsidy for February 2021. This means the Landlords deducted $871.00 from the $1,500.00 owed to the Tenant for the last month's rent. If the daily amount of rent owing in March is $48.39, this means that the Landlords have retained 8.7 days of rent in March 2021, which is approximately when they received the Tenant's forwarding address.

Whereas, the Tenant said she moved out on March 2, 2021, and therefore, that the

Landlords may retain two days of rent or $96.78, for her having occupied the rental unit until March 2, 2021. The Tenant claims that the Landlords, therefore owe her $1,406.00, less the $629.00 already paid, leaving $777.00 owing.

The Landlords said they did not know the Tenant had moved out until they received her forwarding address on March 8, 2021. This is consistent with the calculation noted above of their retaining 8.7 days of rent from the amount owed the Tenant for the free last month of rent. However, I find that the Landlords did not provide sufficient evidence that they were planning to use the rental unit space in March 2021, as they indicated that they needed to do repairs before moving in.

I find that the Landlords' claim that the tenancy ended on March 8, 2021, and not March 2, 2021, is inconsistent with the Two Month Notice they served to the Tenant, which had a move-out date of February 28, 2021. Based on the evidence before me, overall, I find it more likely than not that the Tenant vacated the residential property on March 2, 2021, not on the day on which the Landlords received the Tenant's forwarding address. As such, I find that the tenancy ended on March 2, 2021.

In the hearing, the Landlords said they did not claim the $450.00 in this application, because it was already approved by their lawyer as a deduction from the $1,500.00 last month's free rent owed to the Tenant. However, the Landlords did not direct me to a copy of any such agreement between the Parties, and I could not find one when I searched through the evidence before me. Further, the Landlords did not explain why they stopped trying to collect the cheque for this amount from their Ministry contact. As a result, I have not awarded the Landlords' with recovery of $450.00 for rent in February 2021.

Accordingly, I find the Tenant's calculation of funds owed to her is more reliable than is the Landlords' in this regard. I find that by dividing $1,500.00 by 31 days in March that the daily amount owing is $48.39. This amount times two days - March 1st and 2nd, equals $96.78. $1,500.00 - $629.00 = $871.00 – 96.78 = $774.22.

Based on the evidence before me overall in this matter, I **award the Tenant** with **$774.22** from the Landlords for this claim, pursuant to sections 51 and 67 of the Act.

#2 COMPENSATION FOR OTHER MONEY OWED → $750.00

Given my difficulty reconciling the Landlords' calculations, I, again find that the Tenant's evidence in this claim is more reliable than is that of the Landlords. I find that the

Landlords have produced insufficient evidence proving on a balance of probabilities that they returned the Tenant's security deposit at all, let alone pursuant to the Act.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

The Landlords were required to return the $750.00 security deposit within fifteen days after March 8, 2021, namely by April 2, 2021, or to apply for dispute resolution to claim against the security deposit by this date, pursuant to section 38 (1). The Landlords applied for dispute resolution claiming against the security deposit on September 12, 2021.

I find there is insufficient evidence before me that the Landlords have returned any amount of the Tenant's security deposit or applied to the RTB to claim against the deposit by April 2, 2021. Therefore, I find the Landlords failed to comply with their obligations under section 38 (1).

Section 38 (6) of the Act states that if a landlord does not comply with section 38 (1) of the Act, then the Landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Given that I have found the Landlords to have failed to comply with the requirements of section 38 (1), and pursuant to section 38 (6) (b) of the Act, I award the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I, therefore, **award the Tenant** with **$1,500.00** from the Landlords, pursuant to sections 38 (6) and 67 of the Act.

LANDLORDS' CLAIMS

#1 COMPENSATION FOR DAMAGE CAUSED BY TENANT → $8,497.00

Plumber's Invoice for Emergency Bathroom Fix → $1,775.02

I find that the evidence before me is circumstantial from both Parties. The Tenant

implied that trades workers from the Landlords' renovations could have used the toilet in her suite; however, it seems odd that the Tenant would leave a door to her unit unlocked, if she were going to be away at the AirBnB for days at a time. However, there is no evidence before me that this door had a lock on it, and I agree with the assertion that workers need access to a bathroom.

I also note that the Tenant has lived in this rental unit since 2018 or nearly four years. I find it more likely than not that if she made a habit of putting inappropriate paper products into the toilet, that it would have blocked long before it did. Further, while the Landlord asserted that the shut off valve was not the problem, just a recommendation, I find the Landlords' plumber's evidence to be revealing, when it states: "RECOMMEND: To immediately replace toilet shutoff. No leaks at this time but no longer able to stay in off position". This is especially noteworthy when considered beside the Tenant's plumber's comments:

> …the fact that the plumber recommended that the toilet shutoff be **immediately** replaced, and that it is no longer able to stay in the off position. This could very well be responsible for excess water that was present in the suite if the water was unable to be shut off. If the toilet shutoff was in good working order, the flood damage could have been prevented especially since the plumber was unable to attend the suite for several hours after the flood began.
>
> [emphasis in original]

When I consider the evidence before me overall in this matter, I find that the Landlords have not provided sufficient evidence to meet their burden of proof on a balance of probabilities. As such, I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#2 EST. – REMEDIATION OF FLOOD DAMAGE IN BATHROOM → $5,000.00

Given my findings above, this claim cannot succeed, either. In addition, even if the Landlords had provided evidence that the Tenant caused the flood, the Landlords advised me that the residential property was built in 2003. In the hearing, the Landlords said that the carpets were "at least eight years old".

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to

a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of vinyl flooring is 10 years. The evidence before me is that the vinyl flooring was new when the residential property was built in 2003. Therefore, the flooring was approximately 18 years old at the end of the tenancy and had no years or 0% of their useful life left.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

Based on these considerations of the evidence before me, **I dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#3 COMPEN. MONETARY LOSS OR OTHER MONEY OWED → $9,245.60

I have already dismissed this claim without leave to reapply, because the legislation does not allow parties to claim legal fees in their applications.

#4 EST. CARPET REPLACEMENT – PET STAINS → $1,722.00

In PG #40, the useful life of carpeting is ten years. The evidence before me is that the carpets were new at least eight years ago, according to the Landlord, therefore, they had approximately two years or 25% of their useful life left. The move-in CIR does not indicate that there was anything wrong with the carpets at the start of the tenancy. However, the Landlord acknowledged that they did not do a UV light analysis of the carpeting at the move-in inspection.

Accordingly, I find that the Landlord has no way to tell if what they were seeing with the UV light in the move-out inspection was from the Tenant's tenancy or a prior tenancy. However, the Tenant acknowledged that she allowed a cat to be in the rental unit for a week of the tenancy and a dog for a weekend.

After viewing the three move-out inspections, I find that the Tenant's behaviour was aggressive, rude, and confrontational. I find that this behaviour indicates that she was not interested in determining the true condition of the rental unit at the end of the

tenancy. She talked over the Landlord constantly, not letting him get a word in. She also threatened the Landlords with putting inappropriate things on their social media sites.

Given the Tenant's behaviour during the move-out inspection, I find the Landlords' evidence about the condition of the rental unit at the end of the tenancy is more reliable than that of the Tenant. I have dismissed most of the Landlords' claims without leave to reapply; however, I find the Parties both provided sufficient evidence that the Tenant breached her tenancy agreement by allowing animals in the rental unit.

I find there is not sufficient evidence to award the Landlords with the full amount they seek; however, PG #16 allows an arbitrator to award nominal damages when establishing the value of the damage is not straightforward. PG #16 states:

> "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.

I find that it is more likely than not that the animals the Tenant allowed in the rental unit – in breach of her tenancy agreement - contributed to the condition of the carpets at the end of the tenancy, and therefore, I **award the Landlords** with **$500.00** in nominal compensation for this claim, pursuant to sections 62 and 67 of the Act, and PG #16.

#5 RECOVERY OF UNPAID RENT → $1,458.00

I find that this claim corresponds to the Tenant's claims for the return of her security deposit and her last month's rent free. Accordingly, I refer the Parties to the evidence and analyses in those claims. As I have made those calculations, I **dismiss the Landlords' claims in this regard without leave to reapply**, pursuant to section 62 of the Act.

Summary and Offset

PARTY	CLAIM	AWARD
Tenant	#1 One Month free rent per Two Month Notice	$774.22
	#2 Return of Double the Security Deposit	$1,500.00
	Sub-total	**$2,244.22**
Landlord	#1 Plumber's Invoice – bathroom repairs	$0.00

	#2 Remediation of flood damage	$0.00
	#3 Reimbursement of Legal Fees	$0.00
	#4 Carpet Replacement – Pet Stains	$500.00
	#5 Recovery of Unpaid Rent	$0.00
	Landlords' Sub-total	**$500.00**
	Total owing to the Tenant	**$1,744.22**

Given the Landlords' limited success in their application, I decline to award them with recovery of their $100.00 application filing fee. The Tenant did not apply for recovery of her application filing fee.

Conclusion

The Parties were both successful in part in their claims; however, the Tenant's monetary awards exceeded those of the Landlord by $1,744.22.

I grant the Tenant a **Monetary Order** of **$1,744.22** from the Landlords. This Order must be served on the Landlords by the Tenant 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: November 23, 2021

Residential Tenancy Branch