Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S MNDCL FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Landlord pursuant to the *Residential Tenancy Act* (the "Act"). The Landlord applied for the following:

- a monetary order for compensation to make repairs that the Tenant, her pets or her guests caused during the tenancy pursuant to section 67;
- a monetary order for compensation for monetary loss or other money owed pursuant to section 67;
- authorization to keep the Tenant's security and pet damage deposits under section 38; and
- authorization to recover the application fee for the Application from the Tenant pursuant to section 72.

Two agents ("TB" and "CN") for the Landlord and the Tenant attended the hearing. The Co-Signor of the tenancy agreement did not attended the hearing. For the purposes of this decision, I will refer to the Tenant and the Co-Signor as the Respondents. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witness ("CC") was called during the hearing to provide testimony on behalf of the Tenant.

TB stated the Landlord served the Notice of Dispute Resolution Proceeding and its evidence (collectively the "NDRP Package") on the Respondents by registered mail on April 8, 2022. TB submitted into evidence a copy of the Canada Post receipt and the

two tracking numbers for service of the NDRP Package on the Respondents. When I asked where the Landlord obtained the Respondents address for service, TB stated the forwarding address was provided in the Tenant's written notice to end tenancy. PS acknowledged each of the Respondents received the NDRP Packages by registered mail. As such, I find the NDRP Package was served on each of the two Respondents pursuant to sections 88 and 89 of the Act.

The Tenant stated she her evidence on the Landlord's door on July 20, 2022. TB acknowledged the Landlord received the Tenant's evidence. I find the Landlord was served with the Tenant's evidence pursuant to the provisions of section 88 of the Act.

Issues to be Decided

- Is the Landlord entitled to monetary order for compensation to make repairs that the Tenant, her pets or her guests caused during the tenancy?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposits?
- Is the Landlord entitled to recover the filing fee for the Application from the Respondents?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

TB submitted into evidence a signed copy of the tenancy agreement between the Landlord and Tenant together with a signed copy of Co-Signor Rental Application between the Landlord and the Co-Signor in which the Co-Signor agreed to beheld fully responsible for the tenancy agreement if the Tenant breaks the terms of the tenancy agreement. The parties agreed the tenancy commenced on August 1, 2021, with a fixed term ending July 31, 2022, with rent of $1,965.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of $940.00 and a pet damage deposit of $940.00 by May 19, 2021. TB acknowledged the Landlord received the security and pet damage deposits from the Tenant and that the Landlord was holding the deposits in trust for the Tenant. TB stated the Tenant did not have any rental arrears when the tenancy ended. TB acknowledged the Tenant provided a written notice to end tenancy for March 31, 2022. The parties agreed the Tenant vacated the rental unit on March 31,

2022. Based on the foregoing, I find there was a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

TB stated the Landlord scheduled a move-in and move-out condition inspection of the rental unit. TB stated the rental unit was renovated before the Tenant moved into the rental unit. TB submitted into evidence a copy of the move-in and move-out inspection reports. TB stated the rental unit was brand new when the Tenant took possession of the rental unit. The move-in inspection report stated that all components of the rental unit were in excellent condition. The move-in inspection report was signed by the Tenant and a representative of the Landlord. The move-out condition report stated a number of items required cleaning, all the walls of the rental unit required patching and painting and that a U-Haul damaged a steel railing in the parking lot. The move-out inspection was signed by CN but was not signed by the Tenant. The signature section of the move-out inspection report stated:

> Resident handed keys and left said she had a long drive. Resident was not there at the time of inspection. [First name of Tenant] handed me the keys and said she had to go.

TB stated the Landlord was seeking compensation of $605.00 for cleaning the rental unit and $1,282.50 for damages that the Landlord alleges the Tenant caused to the residential property, calculated as follows:

Damage Claimed	Amount Claimed
Decking and Railing	$682.50
Painting of Rental Unit	$600.00
Total:	$1,282.50

TB stated the Tenant did not leave the rental unit in reasonably clean condition and, as a result, the Landlord was required to clean the rental unit for the next tenant. TB stated the Tenant did not clean (i) the lint trap for the dryer; (ii) the inside top of the washer; (iii) several cupboards; (iv) the patio floor; (v) the oven; (vi) the drawer for the electric range; (vii) the lower front door of the refrigerator; (viii) behind and under the refrigerator and electric range (ix) the filters for the air conditioner; (x) the tops of the baseboards; and (xi) the inside of the dishwasher. TB submitted photographs of the foregoing items to corroborate her testimony that the Tenant did not leave the rental unit in reasonably clean condition when they vacated it. When I asked, TB stated the refrigerator was on wheels but the electric range was not on wheels.

TB stated the Tenant made holes in the walls and damaged the wood frame and trim arounds the entrance door of the rental unit. TB submitted into evidence photos of eight holes around a television outlet on a wall, four holes on the sides of a windows for mounting a curtain rod and three nails on walls. TB submitted into evidence photographs of the rental unit that showed damage as follows:

Nature of Damage
Heavy Damage to wood trim and frame and side of entrance door of rental unit
9 holes around television outlet
2 holes on each side of upper window frame
2 holes in another wall
3 nails in walls

TB stated the Tenant damaged a steel railing in the parking lot of the residential property with a U-Haul truck. TB did not submit any photos, video recording, witness statements or call any witnesses, to corroborate her testimony that the Tenant damaged the steel railing with a truck.

The Tenant denied a move-out condition inspection was performed in her presence. The Tenant stated the Landlord scheduled an inspection of the rental unit for 11:00 am on March 31, 2022. The Tenant stated CN arrived on time but testified he told her that he was unable to do the inspection at that time as he had other inspections to do. The Tenant stated she could not wait until later to do the inspection with CN because she had a 4 to 5 hour drive and had to catch a ferry.

The Tenant admitted she did not clean inside the washing machine, clothes dryer or electric range. The Tenant stated the inside and outside of the refrigerator were spotless. The Tenant stated the inside of the dishwasher was dirty because it stopped operating. The Tenant stated she made a request to the Landlord for the dishwasher to be repaired. The Tenant stated she cleaned the balcony floor the best that she could but she was restricted from doing a more thorough cleaning because of ice and snow and because the rules prohibited tenants from using water as it could come off the deck. The Tenant stated she did not think all of the photos submitted by the Landlord were taken in the rental unit. The Tenant stated all the rental units were identical and suggested that some of the photos were taken in another unit. The Tenant admitted that she made holes in the wall around the television outlet and on the sides of a window to hang a curtain rod. The Tenant also admitted she had put several nails in the walls to

hang pictures. The Tenant did not provide any evidence that she had obtained the Landlord's prior written consent to making the holes or placing the nails in the walls.

CN was called to provide testimony on behalf of the Landlord. CN stated he met with the Tenant and CC outside of the building in which the rental unit is located and he observed everything was loaded on the truck. CN stated the Tenant handed over the keys and said everything is clean, that she didn't have the time to do the inspection because she had a four to five hour drive and then the Tenant and CC left. On cross-exam, the Tenant asked CN who was present at time this occurred to which CN stated the Tenant was present and CC. The Tenant then asked if a move-out inspection was done at that time to which CN stated "no, you said I have to get going, I have a four to five hours drive so you can just do it". The Tenant then asked CN if he stated to her that he couldn't do the inspection at that time because CN had another building full of people moving in and he wasn't available to which CN responded no. CN then stated, "You handed me the keys and said I have a four to five hour drive, everything is clean and away you went". The Tenant stated she recalled giving CN the keys because she remembered CN telling her that he wasn't available as he had other scheduled appointments and he was too busy to do it. The Tenant stated she told him she had to catch a ferry and they couldn't wait any longer.

The Tenant called CC as a witness. CC stated the Tenant rented a U-Haul truck the night before the move out and she picked him up at the airport. CC stated the U-Haul was backed into a handicap parking stall. CC stated he did not recall the U-Haul hitting anything and that he did not recall there being a railing in front of the building. CC stated the Tenant had done the last of the cleaning of the rental unit by 11:00 am on March when CN arrived. CC stated it was perfect timing because the Tenant had just completed all the cleaning of the renal unit so the inspection could be performed and then they get on the road. CC stated he and the Tenant had a long drive ahead of them as it was their goal to be in Victoria and parked before dark. CC stated that he, the Tenant were standing in front of the building and the Tenant told CN the rental unit was cleaned out and ready to go and CN then told them he didn't have time to do the inspection. CC stated CN told the Tenant he had another whole building to move in, or something like that, so he wasn't available to do the inspection. CC stated CN also said his partner was unavailable to do the inspection at the scheduled time.

The Landlord admitted there was a work order for the repair of the dishwasher.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus of proof**
>
> 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.

Sections 7, 37(2) and 67 of the Act state:

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

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
>
> [emphasis in italics added]

Based on the foregoing, the Landlord must prove either or both that the Tenant did not leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).
>
> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 of the Act.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As well, given the contradictory testimony and positions of the parties, I must also weigh the credibility of the parties. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. Based on these observations, I placed limited weight on the testimony of the Tenant and CC in making my findings of fact.

1. Condition Inspection Report

Sections 23, 24, 36(1) and 38(1) of the Act state:

23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) *having complied with section 23 (3), does not participate on either occasion*, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

38.1(1) A tenant, by making an application under Part 5 *[Resolving Disputes]* for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

(a) the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;

(b) there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;

(c) there is no agreement under section 38 (4) (a) applicable to that portion.

(2) *In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).*

[emphasis in italics added]

The Tenant stated CN arrived at 11:00 am on March 31, 2022 and told her that he could do the inspection at that time because he had other inspections to perform. The Tenant stated she could not wait to do the inspection later because she had a four to five hour drive to the ferry for Vancouver Island. The Tenant stated she gave the keys for the rental unit to CN. CN testified he met with the Tenant and CC at 11:00 am on March 31, 2022 outside of the building where the rental unit is located. CN stated that the Tenant handed over the keys and said everything was clean. CN stated the Tenant told him that she did not have the time to do the inspection because she had a four to five hour drive and she left and CC left. CC stated that he was present with the Tenant when CN arrived at 11:00 am on March 31, 2022. CC stated CN told him and the Tenant that he

wasn’t available as he had other scheduled appointments and he was too busy to do it. CC stated he heard the Tenant tell CN that se could not wait to do the inspection later as she had a long drive to catch a ferry and they couldn’t wait any longer. It is the responsibility of the Landlord to ensure that its agent participate in the inspection at the scheduled time and for the Tenant and the Landlord’s agent sign the inspection report. CN stated the Tenant failed to perform the inspection at the scheduled time while the Tenant and CC stated CN failed to perform the inspection at the scheduled time.

Section 36(2) of the Act provides the right of a landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord fails to participate in the move-out condition inspection. However, in the present case, the Landlord’s claim not only included compensation for damages to the rental unit but also a claim for compensation for cleaning the rental unit. As such, the right of the Landlord was not extinguished by the failure of the Landlord’s agent to perform the condition inspection with the Tenant and to complete the move-out condition inspection report in accordance with the regulations. Furthermore, as the right of the Landlord to claim for compensation for cleaning was not extinguished by the failure of performing a move-out condition inspection report, the Tenant is not entitled to the return of double the security deposit pursuant to section 38.1(2) of the Act. Lastly, while the failure of a Landlord to perform a move-in or move-out condition inspection report will extinguish the Landlords right to make a claim against the security deposit, it does not vitiate the right the Landlord to make a claim for damages. As such, the Landlord had the right to claim against the security deposit in respect of its claim for compensation for cleaning as well as make a claim for damages to the rental unit in the Application.

2. Failure of Landlord to Return Pet Damage Deposit

In addition to payment of a security deposit of $940.00, the Tenant also paid $940.00 as a pet damage deposit. The Landlord did not make a claim for damage to the rental unit that was caused by a pet.

Section 1 of the Act defines a pet damage deposit and security deposit as:

> "pet damage deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord *that is to be held as security for damage to residential property caused by a pet*, but does not include
>
> (a) a security deposit, or
> (b) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

> "security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, *but does not include* any of the following:
>
> (a) post-dated cheques for rent;
> (b) *a pet damage deposit;*
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

Residential Tenancy Policy Guideline 31 ("PG 31") provides

PG 31 states in part:

> […]
> *The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet.* The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing.
> […]
>
> [emphasis in italics added]

As the Landlord did not seek compensation for damages caused by a pet, the Landlord did not have the right to retain the Tenant's pet damage deposit. As such, the Landlord was required, pursuant to section 38(1)(c) of the Act, to return the pet damage deposit to the Tenant within 15 days of the end of the tenancy. The Landlord failed to comply with section 38(6) of the Act. As such, I find the Landlord must pay the Tenant double the amount of the pet damage deposit of $940.00 for a total of $1,880.00.

3. Claim for Compensation for Cleaning

TB stated the Landlord was seeking $605.00 for cleaning the rental unit. TB stated the Landlord was required to clean the rental unit for the next tenant. TB stated the Tenant did not clean (i) the lint trap for the dryer; (ii) the inside top of the washer; (iii) several cupboards; (iv) the patio floor; (v) the oven; (vi) the drawer for the electric range; (vii) the lower front door of the refrigerator; (viii) behind and under the refrigerator and electric range (ix) the filters for the air conditioner; (x) the tops of the baseboards; and (xi) the inside of the dishwasher. TB submitted photographs of the foregoing items to corroborate her testimony.

CN, CC and the Tenant all agreed the Tenant told CN that she had a longer trip of four to five hours to catch a ferry to Vancouver Island. Based on this testimony, I find it more likely than not that the Tenant did not give herself sufficient time to do the required cleaning so that the rental unit was in reasonably clean condition when she vacated it. The Tenant admitted she did not clean inside the washing machine, clothes dryer or electric range. The Tenant stated the inside and outside of the refrigerator were spotless. The Tenant stated the inside of the dishwasher was dirty because it stopped operating. The Tenant stated she made a request to the Landlord for the dishwasher to be repaired. The Tenant stated she cleaned the balcony floor the best that she could but she was restricted from doing a more thorough cleaning because of ice and snow and because she was told that absolutely no water was permitted to come off the deck. When viewing the photograph of the patio deck, there is no evidence of ice and snow. It appears the Tenant could have used a wet mop or damp rag and brush to clean the patio deck without water running off the patio. As such, I find the Tenant did not reasonably clean the patio deck. The Landlord admitted that a workorder had been made to repair the dishwasher. As such, I find the Tenant was not required to clean the inside of the dishwasher.

TB stated the floors under and behind the refrigerator and electric range were not cleaned. The Landlord stated there are wheels under the refrigerator and range. However, from the photograph of the back of the electric range, the adjustable feet for the stove are visible but there are no wheels. Similarly, an examination of the photograph of the front and side of the refrigerator reveals the refrigerator is not raised from the floor enough to suggest that there are wheels on that appliance. As such, I find there are no wheels under the electric range or the refrigerator.

Residential Tenancy Policy Guideline 1 (“PG 1”) provides guidance on, among other things, the responsibilities of the landlord and tenant regarding maintenance, cleaning and repairs of the residential property. PG 1 states in part:

> If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

As I have indicated above, I placed less weight on the testimony of the Tenant and CC. I find the photographs submitted by TB were all taken in the rental unit and not of another rental unit as suggested by PS. As the electric range and refrigerator do not have wheels, the Tenant was not responsible for cleaning behind and underneath those appliances. The photograph of the lower door of the refrigerator shows it was not reasonably cleaned. The photograph of the inside of the refrigerator shows it was reasonably cleaned. Based on the testimony of TB and the Tenant, together with the photographs submitted into evidence, I find the Landlord has demonstrated, on a balance of probabilities, that the Tenant did not reasonably clean all of the items listed by TB, except for the cleaning of the dishwasher, the cleaning under and behind the refrigerator and electric range and the cleaning of the inside of the refrigerator. As such, I deduct $150.00 from the Landlord's claim for cleaning the dishwasher and underneath and behind the electric range and refrigerator and the inside of the refrigerator, leaving a balance of $455.00 for cleaning. Based on the foregoing, I order the Tenant to pay $455.00 to the Landlord for cleaning the rental unit as a result of the Tenant's failure to comply with section 37(2)(a) of the Act. Pursuant to section 72(2) of the Act, the Landlord may deduct $455.00 from the Tenant's security deposit of $940.00 in satisfaction of this monetary order.

4. ***Claim for Compensation for Damages to Residential Property***

TB stated the Tenant's U-Haul hit a railing in the parking lot of the residential property and caused $682.50. The Landlord did not submit into evidence any photographs or video, or call any witnesses, to establish that the Tenant's U-Haul was the vehicle that caused the damage to the railing. The Tenant denied she damaged the railing and her testimony was corroborated by CC. I find, on a balance of probabilities, that the Landlord has not established the Tenant was responsible for damage to the railing. As such, I find the Landlord is not entitled to any compensation for this part of its claim for damages.

TB stated the rental unit was brand new when the Tenant took possession of it. The parties agreed a move-in inspection was scheduled and a move-in condition inspection report was completed and signed by the parties at the commencement of the tenancy. TB testified the move-in condition inspection report stated the rental unit was in excellent condition. TB testified that the move-out inspection was performed by CN in the absence of the Tenant. TB provided a copy of the move-out inspection report that was not signed by the Tenant. As the rental unit was new at the time the Tenant took possession, I find that any damages to the rental unit would have been caused by the Tenant.

TB stated the Tenant made holes in the walls and damaged wood trim arounds doors. TB submitted into evidence photos showing a total of 15 holes in the walls, eight of which were around a television outlet on a wall, four holes on the sides of a window for mounting a curtain rod, three holes on two other walls and three nails on several walls. TB submitted photographs of the rental unit that show a few holes and three nails in the walls and significant damage to the door frame and trim of the entrance door of the rental unit.

Sections 32(1) and 32(4) of the Act state:

> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> […]
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

PG 1 states in part:

> […]
> Nail Holes:
>
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.
> […]

Paragraph 14 of the tenancy agreement between the Landlord and Tenant stated in part:

> Hooks, nails, tapes or other devices for hang (sic) pictures or plants, or affixing anything to the rental unit or residential property, will be of a type approved the landlord and used only with the landlord's prior written consent.

The Tenant admitted that she made holes in the wall around the television outlet and on the sides of a window to hang a curtain rod. The Tenant also admitted she had put several nails in the walls to hang pictures. The Tenant did not provide any evidence that she had obtained the Landlord's prior written consent to making the holes or placing the nails in the walls. As such, I find the Landlord has established, on a balance of probabilities, that the Tenant made the holes and inserted the nails in the walls and is responsible for this damage. However, I find the Landlord is not entitled to claim for painting the entire rental unit but entitled to only recover for filling and repainting the walls which were damaged by the Tenant. As such, I find the amount claimed by the Landlord for repainting is excessive and find that must pay compensation to the Landlord for filling the holes in the walls. I find the Tenant caused substantial damage to the door frame and trim and the side of the entrance door of the rental unit. I have viewed the photographs of the damages walls provided by TB and find the damage to the door frame and trim and the side of the entrance door goes beyond reasonable wear and tear.

Of the $600.00 claimed by the Landlord for filling and painting, I find that $300.00 is a reasonable amount of compensation to fill and paint the walls where the Tenant made holes and inserted holes and paint the door frame and trim and the entrance door to the rental unit. I find that the Tenant is not responsible for the other items of damage alleged by the Landlord on the basis those damages represent reasonable wear and tear of the rental unit by the Tenant. As such, I order the Tenant to pay $300.00 to the Landlord for compensation for the damages proven by the Landlord. Pursuant to section 72(2)(b), the Landlord may deduct $300.00 for compensation for damages

to the rental unit from the Tenant's security deposit of $940.00 in satisfaction of this monetary order.

5. Filing Fee for Application

As the Landlord has been substantially successful in the Application, pursuant to section 72 of the Act, I award the Landlord $100.00 for the filing fee of the Application. Pursuant to section 72(2) of the Act, the Landlord may deduct $100.00 for the filing fee of the Application from the Tenant's security deposit of $940.00 in satisfaction of this monetary order.

Conclusion

I order the Landlord to pay the Tenant $1,965.00 as follows:

Purpose	Amount
Compensation payable to Landlord for cleaning	$455.00
Compensation payable to Landlord for damages	$300.00
Filing fee of Landlord's Application	$100.00
Less: Tenant's Security Deposit	-$940.00
Less Double the Tenant's Pet Damage Deposit of $940.00	-$1,880.00
Total:	$1,965.00

The Tenant must serve the Monetary Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 13, 2022

Residential Tenancy Branch