Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNDCT, DRI-ARI-C, CNL, LRE, OLC, FFT
For the landlord: OPL, MNDCL-S, MNDL-S, FFL

The hearing was originally convened on July 15, 2022 and adjourned to December 08, 2022. Tenants JT (the tenant) and MB and landlord BM (the landlord) attended both hearings. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This decision should be read in conjunction with the interim decision dated July 18, 2022.

The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67;
- an order for the landlord to return the security and pet damage deposit (the deposits), under section 38 of the Act;
- an order to dispute a rental increase, pursuant to section 43; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, under section 67;
- an authorization to retain the deposits, pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order for loss?
2. an order for the landlord to return the deposits?
3. an authorization to recover the filing fee for this application?

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

The hearings lasted a total of 2 hours and 30 minutes, the landlord submitted a total of 52 pages into evidence and the tenant submitted 85 pages into evidence.

Both parties agreed the tenancy started on September 01, 2019 and ended on June 30, 2022. Monthly rent in the amount of $2,030.00 was due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $1,000.00 and a pet damage deposit of $300.00. The landlord currently holds in trust the deposits in the total amount of $1,300.00.

The tenant did not authorize the landlord to retain the deposits. The tenant is claiming for the return of the deposits.

The landlord confirmed receipt of the forwarding address in writing on June 30, 2022. The landlord submitted her application on May 16, 2022. The landlord confirmed that the total amount she is seeking compensation is $887.49.

Both parties attended the move in and move out inspection. The landlord submitted a copy of the move out inspection report. The tenant refused to sign the move out inspection because she did not agree with the landlord's remarks.

The tenant affirmed the rental unit was a single family house on a 70-acre property and the tenant was authorized to use a wood shed and the remaining 70 acres.

The landlord stated the rental unit was the single family house and a fenced backyard with approximately ¾ of one acre. The tenant was not authorized to use the wood shed or the remaining 70 acres.

The tenant is claiming $1,000.00 for extra electricity consumption, as the electricity bill paid by the tenant for the single family house was used to run a water pump to provide water to other tenants living on the 70 acres. The tenant estimates the total amount of electricity paid during the tenancy is $1,000.00. The tenant submitted BC Hydro bills indicating the daily electricity usage:

- $4.50 between September 01 and Octobre 29, 2019;
- $4.77 between February 28 and Mach 27, 2020;
- $10.51 between December 30, 2021 and January 27, 2022;
- $12.52 between January 28 and February 28, 2022;

The landlord testified the tenant agreed to pay for the extra electricity consumption for the water pump in the tenant's rental unit to provide water to the other tenants that lived on the 70 acres. The landlord said the extra electricity consumption for the water pump is a small amount and would not cost $1,000.00.

The tenant affirmed she did not agree to pay for the extra electricity consumption for the water pump in the tenant's rental unit to provide water to the other tenants that lived on the 70 acres.

The tenant is claiming $500.00 for loss of quiet enjoyment, as the landlord entered the rental unit 3 times per day without written notice, constantly harassed the tenant, and allowed other tenants to move to the 70 acres without notifying the tenant.

The landlord stated she did not enter the tenant's rental unit without written notice and that she did not harass the tenant.

The tenant submitted security camera footage showing the landlord on the 70 acres area on April 20, 22, 23, 26, 27, May 16, 17, 25, 28, June 1, 2 and 11, 2022. The landlord testified these photos are on the remaining 70 acres, which the tenants were not authorized to use.

The tenant is claiming $500.00 for loss of quiet enjoyment, as the landlord restricted the tenant's use of the wood shed and removed the tenant's belongings from the wood shed located on the remaining 70 acres. The tenant said she used the wood shed since the beginning of the tenancy, the landlord was aware and did not oppose the tenant using the wood shed to store her belongings. The landlord submitted into evidence emails dated May 21, 2022:

> LANDLORD: Please remove all the wood, tires, lawnmower and other items from the shed by May 28, 2022, as I will be filling it with fire wood for the upcoming winter season.
> TENANT: I just want to clarify with you that we will not be moving out on May 31. According to the Residential Tenancy Branch we stay living here until (paying our rent as usual) after the hearing that is scheduled July. The RTB will make a final decision regarding the eviction after the hearing.

The tenant affirmed she did not comply with the May 21, 2022 emailed because she disputed the 2 month notice to end tenancy served by the landlord and a hearing was pending at the Residential Tenancy Branch (RTB).

The landlord stated she never authorized the tenant to use the wood shed. On May 31, 2022 the landlord transferred the tenant's belongings from the wood shed to the rental unit.

The tenant is claiming $500.00 for loss of quiet enjoyment, as there was a constant smell of sewer since the summer of 2021. The tenant asked the landlord to address the sewer smell but the landlord did not take action. The tenant submitted a photograph showing an open septic waste and a letter dated March 14, 2022 from the neighbours that lived on the 70 acres:

> Around June 25th 2021 I went to empty the black water tank from out 5th wheel into the septic system that was proved for the trailer pads, it had completely backed up. I immediately contacted [landlord] about the issue and it wasn't until two days later that her husband brought this tractor up dug a big open pit where the drain field was and left it like that for roughly 2 weeks. The septic did drain at this point but there was raw sewage exposed in a hole about 10' behind the back of our home. After three days I wen to [landlord] to express my concern about the smell that came directly into our home. The smell was so bad that we could not go outside. It remained an open septic pit for about three weeks.[…]

The landlord testified the June 25, 2021 smell incident mentioned was repaired in two weeks and thee was no further sewer smell issue.

The tenant did not submit an application to the RTB seeking an order for the landlord to repair the sewer because she was not aware that she could do so.

The tenant is claiming $300.00 for compensation because the landlord restricted the tenant's access to the fire pit. The tenant said she was authorized to use the fire pit since the beginning of the tenancy and used it almost every weekend and the landlord removed the fire pit on May 22, 2022. The fire pit is located on the remaining 70 acres.

The landlord affirmed she removed the fire pit because the tenant was using it without her authorization.

The tenant is claiming $500.00 for loss of quiet enjoyment, as there was a constant smell of creosote from the rental unit's chimney. The tenant stated the smell was constant and bad, and the tenant had to keep the windows open and clean the rental unit 3 or 4 times per day from April 18 to June 30, 2022.

The tenant emailed the landlord on April 18, 2022 asking her to repair the chimney:

> Tenant: I just wanted to let you know the woodstove is leaking. With this heavy rain we are getting today that the woodstove in the living room is leaking and spooling onto the floor. Here are some pictures for your reference.
> Landlord: Yes, as I mentioned in one of my letters the liner is probably damaged the amount of creosote build up. I have scheduled June 1, for the chimney professionals to come in. […]

The landlord testified that she was not able to hire a chimney cleaner before June 30, 2022 and that it was too expensive to hire a chimney cleaner.

The tenant stopped using the chimney after she noticed the creosote smell.

The tenant is claiming $675.00 because the landlord increased rent by $150.00 per month from September 01, 2021 to January 31, 2022, as the tenant's son lived in the rental unit during this time. The tenant paid the rent increase because the landlord required it and because she was not aware that the landlord could not increase the rent when an extra person occupies the rental unit.

The landlord said that the rental agreement indicates that the only occupants of the rental unit are the two tenants and one children. As a new children occupied the rental unit from September 01, 2021 to January 31, 2022, the landlord increase rent by $150.00 per month.

The tenant affirmed that the tenancy agreement does not indicate the occupants of the rental unit.

The landlord is claiming $210.00 because the tenant failed to clean the rental unit's carpet when the tenancy ended. The landlord obtained an estimate from a cleaning company that it will cost $210.00 to clean the 3 bedroom, 2,400 square feet rental unit's carpet.

The move out inspection states the carpet had stains in the bedrooms. It states:

> Damage to the rental unit – end of tenancy: carpet cleaning […]
> I, tenant, do not agree that this report fairly represents the condition of the rental unit because the carpets were cleaned June 27, 2022 by dirt buster.

The landlord submitted nine photographs showing the rental unit's carpet when the tenancy ended.

The tenant stated the carpet was clean when the tenancy ended. The tenant submitted a receipt indicating the carpet was professionally cleaned on June 27, 2022. The tenant submitted nine photographs showing the rental unit's carpet when the tenancy ended.

The landlord is claiming $157.00, as the tenant damaged the wood stove handle. The landlord submitted into evidence an estimate indicating the wood stove handle cost is $157.00.

The tenant testified the damaged wood stove handle is regular wear and tear. Later the tenant said she purchased a new handle to replace the damaged one, but it only arrived after the tenancy ended.

The landlord is claiming $520.00, as the tenant stored two vehicles on the 70 acres area from August to November 2020 and one vehicle from December 2020 to April 2021. The landlord did not authorize the tenant to store the vehicles on the 70 acres area and informed the tenant that she would have to pay $40.00 per month per vehicle. The landlord submitted into evidence an invoice showing a charge of $40.00 per month per vehicle.

The tenant affirmed she never agreed to pay a fee for storing the vehicles on the 70 acres area and that she only received the invoice with the evidence for this application.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.

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 the case is on the person making the claim.

Deposits

I accept the uncontested testimony that the landlord received the forwarding address in writing on June 30, 2022, the landlord retained the deposits in the amount of $1,300.00 and submitted an application claiming for a total amount of $887.49.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

> (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.
> […]
> 6)If a landlord does not comply with subsection (1), 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.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

> B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep

> some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
> […]
> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.
> […]
> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> -if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> -if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

As the landlord only claimed for an authorization to retain $887.49 and retained the full deposits in the amount of $1,300.00, in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of $2,600.00 ($1,300.00 x 2).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

Rental unit

The parties offered conflicting testimony about the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant did not provide documentary evidence to prove that she was authorized to use the wood shed and the remaining 70 acres as part of the rental unit. The tenant did not call any witnesses.

I find the tenant failed to prove, on a balance of probabilities, that the tenant was authorized to use the wood shed and the remaining 70 acres.

Electricity

I accept the uncontested testimony that the tenant paid for the extra electricity consumption for the water pump in the tenant's rental unit to provide water to the other tenants that lived on the 70 acres.

The landlord did not provide documentary evidence to prove her response argument that the tenant agreed to pay for the extra electricity.

I find the landlord failed to prove, on a balance of probabilities, that the tenant agreed to pay for the extra electricity.

RTB Policy Guideline 1 states:

> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
> 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Based on the testimony offered by both parties I find the tenant proved, on a balance of probabilities, that the landlord breached an unconscionable term of the tenancy agreement, and the tenant suffered a loss by paying for the extra electricity consumption.

I turn to the amount of the loss suffered.

I find the BC Hydro bills indicating the daily electricity usage between September 01, 2019 and February 28, 2022 do not prove the amount of the tenant’s loss. The tenant did not specify when the other tenants moved in. The tenant admits that the amount of $1,000.00 is an estimate.

I find the tenant failed to prove, on a balance of probabilities, the amount of the loss.

RTB Policy Guideline 16 states that 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.

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the tenant is entitled to nominal damages in the amount of $100.00.

Quiet enjoyment – notice to enter

Section 28 of the Act states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (a)reasonable privacy;
> (b)freedom from unreasonable disturbance;
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

RTB Policy Guideline 6 states:

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

Based on the landlord's undisputed testimony, I find the security camera footage submitted by the tenant shows the landlord on the remaining 70 acres.

As indicated in the heading 'rental unit', the tenant did not prove, on a balance of probabilities, that she was authorized to use the remaining 70 acres as part of the rental unit.

The tenant failed to provide evidence that the landlord entered the rental unit 3 times per day and constantly harassed the tenant.

Based on the tenant's vague testimony, I find the tenant failed to prove how the tenants living on the remaining 70 acres breached the tenant's right of quiet enjoyment.

I dismiss the tenant's claim.

Quiet enjoyment – wood shed

As indicated in the heading 'rental unit', the tenant did not prove, on a balance of probabilities, that she was authorized to use the wood shed located on the remaining 70 acres.

As the tenant was not authorized to use the wood shed, the tenant is not entitled to compensation for loss of quiet enjoyment related to the wood shed.

I dismiss the tenant's claim.

Quiet enjoyment – sewer

Based on the tenant's convincing testimony and the March 14, 2022 letter, I find the tenant proved, on a balance of probabilities, that the landlord failed to repair the open septic waste and the tenant suffered a loss due to the bad smell since the summer of 2021.

RTB Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> 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. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
>
> (emphasis added)

As the tenant was aware of the septic smell in the summer of 2021 and only submitted an application in March 2022, I find the tenant did not mitigate her losses.

I dismiss the tenant's claim for compensation for loss of quiet enjoyment due to the sewer smell.

Fire pit

The parties offered conflicting testimony about the use of the fire pit.

The tenant did not provide documentary evidence to prove that she was authorized to use the fire pit located on the remaining 70 acres.

I find the tenant failed to prove, on a balance of probabilities, that she was authorized to use the fire put.

I dismiss the tenant's claim for compensation because the landlord restricted the tenant's access to the fire pit.

Quiet enjoyment – chimney

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Based on the tenant's convincing testimony and the April 18, 2022 email, I find the landlord was aware that the chimney was not functioning properly and did not repair the chimney between April 18 and June 30, 2022. I find that the unrepaired chimney unreasonably disturbed the tenant due to the constant smell of creosote. I find the

landlord breached sections 28(b) and 32 of the Act by not repairing the chimney between April 18 and June 30, 2022.

In consideration of the quantum of damages, I refer again to Residential Tenancy Branch Policy Guideline 6:

> **In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.**
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> (emphasis added)

I find the tenant was able to live in the rental unit but was significantly deprived of her right to live peacefully because the landlord did not repair the chimney.

In view of the circumstances, I find it is reasonable to award the tenant compensation in the amount of $500.00.

Pursuant to sections 7 and 67 of the Act and considering Residential Tenancy Branch Policy Guideline 6, I award the tenant compensation for loss of quiet enjoyment in the amount of $500.00.

Rent increase

The parties did not submit the tenancy agreement into evidence.

The landlord did not provide documentary evidence to prove her response argument that the parties agreed the only occupants of the rental unit are two tenants and one children.

I find the landlord failed to prove, on a balance of probabilities, her response argument that the tenancy agreement authorizes the landlord to charge an extra amount per new occupant of the rental unit.

Regulation 9 states:

> (1)The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
> (2)The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
> (2.1)Despite subsection (2) of this section but subject to section 27 of the Act [terminating or restricting services or facilities], the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.
> (3)If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

RTB Policy Guideline 13 states:

> If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.
> **Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants.**
>
> (emphasis added)

I find the landlord was not authorized to charge an occupant fee, as the tenancy agreement did not include this term.

I accept the uncontested testimony that the tenant paid an extra $675.00 from September 01, 2021 to January 31, 2022 because her son also occupied the rental unit during that period.

I award the tenant compensation in the amount of $675.00.

<u>Carpet cleaning</u>
Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 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

Residential Tenancy Branch Policy Guideline 1 states:

> 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.

I find the photographs submitted by the tenant show the rental unit's carpet with more details than the photographs submitted by the landlord.

Based on the photographs submitted into evidence, I find the rental unit's carpet was reasonably clean when the tenancy ended.

I dismiss the landlord's claim for compensation for carpet cleaning.

Wood stove handle

I find that a damaged wood stove handle is not wear and tear, as the tenant purchased a new handle to replace the broken one.

Based on the landlord's more convincing testimony and the estimate, I find the landlord proved, on a balance of probabilities, that the tenant breached section 32 of the Act by damaging the wood stove handle and the landlord suffered a loss in the amount of $157.00 to replace the handle.

I award the landlord compensation in the amount of $157.00.

Vehicle storage

I accepted the uncontested testimony that the tenant stored two vehicles on the 70 acres area from August to November 2020 and one vehicle from December 2020 to April 2021.

The landlord failed to prove, on a balance of probabilities, that the tenant agreed to pay a monthly fee of $40.00 per vehicle.

I dismiss the landlord's claim for compensation for vehicle storage.

Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

The tenant is awarded:

Item	**Amount $**
Deposits	2,600.00
Electricity	100.00
Chimney	500.00
Rent increase	675.00
Total	**3,875.00**

The landlord is awarded $157.00

RTB Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

In summary, the tenant is awarded $3,718.00.

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I grant the tenant a monetary award in the amount of $3,718.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 14, 2022