Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDL-S, MNDCL-S
MNSDS-DR, FFT

Introduction

This hearing originally convened on October 4, 2022 and was adjourned to February 6, 2022. The October 4, 2022 Interim Decision should be read in conjunction with this Decision. This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

> Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Both parties were advised that they were required to present their evidence and that evidence not presented may not be considered. In this decision I will only refer to evidence presented in the hearing.

The tenants confirmed their email addresses for service of this Interim Decision. The landlord confirmed her mailing address for service of this Decision.

Preliminary Issue- Res Judicata

Both parties agree that in a previous application for dispute resolution, a different arbitrator made findings on the alleged damage to the washing machine. The file number for the previous decision is located on the cover page of this decision. In the previous decision the tenants sought reduced rent for the landlord's failure to fix the washing machine and cancellation of a One Month Notice to End Tenancy for Cause.

The previous decision was entered into evidence. The file number for the previous application is located on the cover page of this decision.

The previous decision states:

> Policy Guideline #1 states at 1-3, "The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant."
>
> While I find the tenants have sufficiently demonstrated that they were without the use of laundry for the time frame cited in their application, I do not find any evidence that laundry was provided for in the terms of their tenancy agreement. I do however accept that it was an implied term of their tenancy. The landlord did not object to their use of laundry provided (had it been working properly) and forward no argument that laundry did not form part of their tenancy.
>
> I find the landlord made some reasonable efforts to fix the laundry but the fact remains that the tenants were without the use of laundry for a significant period

> of time. Further, no specific cause of the laundry issues was identified and recorded by any repair person who attended the property.
>
> I find that a nominal award as described by Policy Guideline #16 would be appropriate in this case. These are described as, “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 therefore grant the tenants half of their monetary award, specifically an award of $300.00.

The arbitrator in the above decision quoted from Policy Guideline #1 as follows:

> The landlord is responsible for repairs to appliances provided under the tenancy agreement **unless the damage was caused by the deliberate actions or neglect of the tenant.”**
>
> [Emphasis added]

The arbitrator found in favour of the tenants and awarded them damages for the failure of the landlord to fix the washing machine in a reasonable amount of time. The necessary finding implied above, is that the damage to the washing machine was not caused by the deliberate actions or neglect of the tenants; otherwise, the landlord would not have been required to pay damages to the tenants. If the tenants caused the damage, the tenants would have been obligated to fix the washing machine and would not have been granted damages for the landlord’s failure to fix the washing machine on time.

It is my determination that the matter of whether or not the tenants caused the damage to the washing machine has already been heard and decided on, I find that I am not able to re-hear the matter as it is res judicata.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Former adjudication is analogous to the criminal law concept of double jeopardy. I find that while the claim is different in this hearing than the previous hearing, the issue of who is responsible for

the washing machine repair/replacement was decided in the last hearing and cannot be re-heard.

Issues

1. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to authorization to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?
6. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
7. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background/ Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and the tenants moved out on January 31, 2022. At the end of the tenancy, the tenancy was month to month. Monthly rent in the amount of $2,283.75 was payable on the first day of each month. A security deposit of $1,125.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants personally served the landlord with their forwarding address in writing on January 31, 2022. The landlord filed for authorization to retain the tenants' security deposit on February 15, 2022.

Both parties agree that they completed a joint move in condition inspection report on September 1, 2020. Both parties agree that the landlord provided the tenants with a copy of that report on September 25, 2020 via email. The move in condition inspection report was entered into evidence and is signed by both parties. The move in condition inspection report states that the tenants agreed with the contents of the report.

The landlord testified that she didn't send the condition inspection report until September 25, 2022 because the tenants had not yet signed the addendum to the tenancy agreement.

Both parties agree that they both attended a move out condition inspection of the subject rental property on January 31, 2022. Both parties agree that the landlord alone filled out the move out condition inspection report. The tenants testified that the landlord refused to let them see the move out condition inspect report and did not provide them with a copy of the move out condition inspection report until February 15, 2022. The tenants testified that they did not agree with the contents of the move out condition inspection report.

Tenant C.O. testified that the tenants don't believe the comparisons between the move in and move out condition inspection reports are valid because of the way the reports were completed.

The landlord testified that she told the tenants what she was putting on the move out condition inspection report as she filled it out and that the tenants refused to sign it. The landlord agreed that she provided the tenants with a copy of the move out condition inspection report on February 15, 2022. The move out condition inspection report was entered into evidence and is signed by the landlord alone.

The landlord testified that the tenants caused the landlord to suffer the following losses:

Item	**Amount**
Loss of rental income	$2,283.75
Unpaid utilities	$88.66
Carpet cleaning	$393.75
Window coverings	$89.58
Doorknob	$36.90
Lightbulbs	$15.41
Light fixture	$29.98

Fridge crisper	$76.50
Paint supplies	$241.02
Labour to repair drywall and paint property	$378.00
Cleaning	$125.00
Office chair	$75.00
Window locks	$15.00
Kitchen drawers	$300.00
Total	**$5,031.17**

Loss of rental income

Both parties agree that on December 13, 2022 tenant C.O. emailed the landlord as follows:

> Hi [landlord],
>
> [Tenant J.S., tenant R.R.], and I will be moving out on January 31, 2022. This will be the end of our month-to-month tenancy. We have also sent you notice in the mail.
>
> -[Tenant C.O.]

The landlord emailed the tenants on December 22, 2021:

> …Your house BC hydro statement total amount of $675.47/6=$112.60 per person is due for the period of October 10th, 2021. Since all of you are moving out on January 31, 2022. From December 11/2021 to Jan 31st/2022 there is 52 days BC hydro prorated amount for your suite calculated as below:…

The landlord emailed the tenants on January 3, 2022 as follows:

> It's January 3, 2022, I check the PO box and your 30 day notice hasn't showed up yet. When did you mail it?

Tenant C.O. replied the same day that their notice to end tenancy was mailed on December 13, 2022. On January 4, 2022 the landlord emailed the tenant and stated that the notice still had not yet arrived. On January 5, 2022 tenant C.O. sent the landlord

the written Notice to End Tenancy as an attachment in an email. The above emails were entered into evidence.

Tenant C.O. testified that she sent the landlord written notification to end the tenancy via regular mail on December 13, 2021 in addition to the December 13, 2021 email. The landlord testified that she received the December 13, 2021 email ending the tenancy but not the notice ending the tenancy sent through the mail. The tenants did not provide any proof of service documents pertaining to the December 13, 2021 mailing.

Both parties agree that the tenants returned one of three keys to the subject rental property on January 1, 2022 and the other two keys on February 8, 2022. The landlord testified that the tenants owe the landlord rent for February 2022 because they still had a means of access to the subject rental property until February 8, 2022 and because the tenants provided less than one month's written notice to end the tenancy.

Unpaid utilities and carpet cleaning

The landlord's original application for dispute resolution claimed $117.20 in unpaid utilities. During the hearing both parties agreed that the tenants owe the landlord $88.66 in unpaid utilities, not $117.20.

Both parties agree that the tenants owe the landlord $393.75 for carpet cleaning.

Window coverings

The landlord testified that the window coverings in the subject rental house were new at the start of 2020 and were in good condition at the start of the tenancy. The landlord testified that the window coverings in tenant J.S.'s room were stained at the end of the tenancy and required replacement. The landlord testified that at the end of the tenancy the tenants took some of the window coverings with them and when she asked for their return, the tenants returned all but one. The landlord testified that she had to purchase two new window covering sets (each set contained two panels) to replace the missing one and the stained one. The landlord entered into evidence a receipt for two window coverings in the amount of $89.58.

The move in condition inspection report states that the window coverings in tenant J.S.'s room are in good condition. The move out condition inspection report states that the window covering in tenant J.S.'s room is damaged by a stain. The move out

condition inspection report states that two window coverings are missing. The landlord entered into evidence photographs of the stained window covering.

Tenant J.S. testified that she does not remember making the stain and did not notice it until moving out. Tenant J.S. testified that the stain did not warrant the window coverings being replaced.

Tenant C.O. testified that when they moved out, they accidentally took three window panels with them and that when the landlord asked for their return, the tenants returned them.

Tenant C.O. testified that the landlord is inconsistent about the number of curtains that she states were missing from the suite. Tenant C.O. testified that in an email to the upstairs tenants and Tenant R.R. the landlord asks for the return of “3 window curtains”. The aforementioned email dated February 6, 2022 was entered into evidence. Tenant C.O. testified that all three curtain panels were returned. The tenants entered into evidence an email from the landlord dated February 11, 2022 which states that on February 8, 2022 the tenants returned “3 curtain panels out of 4 panels”. The landlord entered into evidence a photograph of items returned to the landlord on February 8, 2022. In the photograph three curtain panels can be seen.

Doorknob

Both parties agreed that in September of 2021 the tenants informed the landlord that the doorknob stopped working. The tenants testified that they did not damage it, it just “gave up the ghost”. Both parties agree that in September of 2021 the landlord had the doorknob replaced.

The landlord testified that the tenants broke the door knob and are responsible for its replacement. The landlord entered into evidence a receipt for a door knob dated January 31, 2022 in the amount of $36.90. The landlord testified that she does not have the receipt for the doorknob replacement which occurred in September of 2021. The landlord did not provide testimony regarding the cost of the original replacement or if the doorknob purchased on the January 31, 2022 receipt was the same or similar to the door knob purchased in September 2021. No further evidence pertaining to the door know was presented by the landlord in the first hearing. The testimony in the above hearing was provided in the first hearing.

In the second hearing the landlord testified that the lock broken in September 2021 cost $40.50 to repair but that she did not claim the cost of replacing that lock. The landlord testified that the January 31, 2022 receipt is for the replacing the locks on January 31, 2022 after the tenants moved out because they did not return the keys right away at the end of the tenancy.

The landlord testified that she is seeking monetary compensation for February 2022 because the tenants did not return the keys until February 8, 2022 and had access to the subject rental property until that date. The landlord was not able to answer me in the hearing when queried how the tenants had access until February 8, 2022 if the locks were changed on January 31, 2022.

Lightbulb

The landlord testified that at the end of the tenancy six of the 26 light bulbs in the subject rental property were either burnt out or missing. The landlord entered into evidence a receipt for six lightbulbs in the amount of $15.41.

Both parties agree that the move in condition inspection report notes that some bulbs are burnt out and that the landlord replaced those bulbs in September of 2020. The move out condition inspection report states that four bulbs are missing or burnt out.

Tenant C.O. testified that none of the light bulbs were burned out at the end of the tenancy. The landlord entered into evidence photographs of two fixtures, each missing one light bulb and four photographs of unilluminated bulbs. Tenant C.O. testified that the photographs do not prove anything other than that the light was turned off when the photograph was taken, and the lights taken out.

Tenant J.S. testified that the tenants should not be responsible for new light bulbs at the end of a tenancy.

Tenant C.O. testified that all of the photographs entered into evidence of the landlord completing the move out condition inspection report show that all of the lights are on and functional.

Light fixture

The landlord testified that the light fixture in tenant J.S.’s room was in good condition at

the start of this tenancy and was cracked at the end of the tenancy. The landlord entered into evidence a photograph of the damaged light fixture. The move in condition inspection report states that the light fixture is in good condition and the move out condition inspection report states that the light fixture is cracked. The landlord entered into evidence a receipt for a new light fixture in the amount of $29.98. The landlord testified that the light fixture was new in January of 2018.

Tenant J.S. testified that she didn't damage the light fixture and that it may have cracked because the light bulb heated it up.

Fridge Crisper

The landlord testified that the fridge crisper was in good condition at the start of the tenancy and cracked at the end of the tenancy. The landlord testified that she paid $76.50 to replace the crisper. The landlord entered into evidence a receipt for same. The landlord entered into evidence a photograph of the broken crisper. The move in condition inspection report states that the fridge crispers are in good condition. The move out condition inspection report states that a crisper is broken.

Tenant J.S. testified that the crisper was already broken when they moved in. Tenant J.S. testified that they did not look inside the fridge during the move in condition inspection report.

Painting

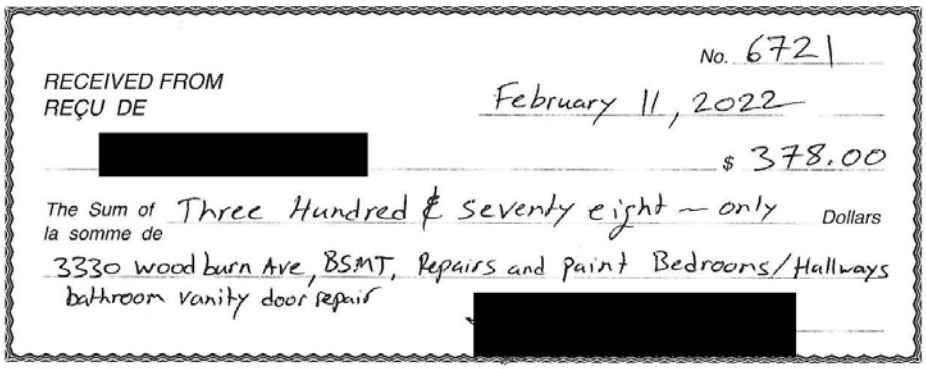
The landlord testified that the subject rental property was painted in June of 2019 and required partial re-painting after the tenants moved out. The landlord testified that the tenants left puttied holes in the walls which required repainting. The landlord testified that she hired a handyman to do the required repairs as this was cheaper than repainting the entire property. The landlord entered into evidence receipts for paint in the amount of $241.02 and a receipt from a handyman for his labour in the amount of $378.00.

The move in condition inspection report states that the walls in every room except the hallway, bedroom #2 and #3 are in good condition. The move in condition inspection report states that the hallway wall, bedroom #2 and #3 each have a scuff. The move out condition inspection report states that all the walls are in good condition except the

hallway, master bedroom, bedroom #2 and #3. The move out condition inspection report states that the master bedroom is patched with drywall mud, the hallway walls are dented and the drywall is damaged at five areas and patched, bedroom #2 has patches of mud on the walls and bedroom three has drywall damage near the door. The landlord entered into evidence photographs showing the various drywall mud patches described above.

Tenant C.O. testified that they submitted a number of photographs taken during the move out condition inspection which show pictures of undamaged walls. The tenants entered into evidence photographs of walls that do not show the patches seen in the landlord's photographs; however, given the angle of the photographs it is not possible to determine if the photographs are off the same walls seen in the landlord's photographs.

Tenant C.O. testified that she does not believe that painting was required. Tenant C.O. testified that the receipt from the handyman does not state at name or business and that the tenants believe the receipt is invalid. The receipt in question is reproduced below. I redacted the landlord's name at the top of the receipt and the signature at the bottom of the receipt for privacy.



No. 6721

RECEIVED FROM
REÇU DE [redacted] February 11, 2022

$ 378.00

The Sum of Three Hundred & seventy eight — only Dollars
la somme de

3330 Woodburn Ave, BSMT, Repairs and paint Bedrooms/Hallways
bathroom vanity door repair [redacted]

The landlord did not provide testimony on what portion of the above receipt was for bathroom vanity door repair. No claim for same was made in this application for dispute resolution.

The landlord testified that the receipt is legitimate and that she chose a handyman and not a major company because it was cheaper.

Cleaning

The landlord testified that the tenants did not clean the fridge, vent hood or oven at the end of the tenancy and that she spent five hours cleaning the above and is seeking

$25.00 per hour for that cleaning for a total of $125.00.
The landlord entered into evidence photographs showing dirty areas under the stove coils and a dirty oven door. The move out condition inspection report states that the following areas in the kitchen are dirty:

- Stove/stovetop,
- Oven,
- Exhaust hood and fan, and
- Taps, sink and stoppers.

Tenant C.O. testified that the fridge was clean at the end of the tenancy. The tenants entered into evidence a photograph of the inside of the fridge taken at the end of the tenancy. The fridge appears clean. The tenants entered into evidence picture of the stove/oven which appears to have been wiped down. The tenants entered into evidence a picture looking into the oven which appears clean inside, the oven door cannot be clearly seen. Tenant C.O. testified that they cleaned the oven to the best of their abilities with the supplies they had.

Tenant C.O. testified that the landlord asked them during the move out condition inspection report to come back to clean some areas of the subject rental property but they declined because they didn't think it was necessary.

Replacement chair

Both parties agreed that the subject rental property came partly furnished including a desk chair. The landlord testified that during the tenancy the tenant covered it in duct tape making it unusable. Photographs of a desk chair covered in duct tape were entered into evidence. The landlord testified that she purchased a used replacement chair and paid $75.00 in cash and did not have a receipt.

The tenant testified that the chair was in poor condition at the start of the tenancy and that the plastic upholstery was peeling off. The tenant testified that she covered it in duct tape to make it usable during her tenancy.

Window locks

The landlord testified that the tenants damaged five window locks at the subject rental property and those locks had to be replaced. The move in condition inspection report does not note any damage to window locks. The move out condition inspection report

states that two window locks in the living room, two window locks in the dining room and one window lock in master bedroom are broken. The landlord entered into evidence photographs showing five broken window locks. The landlord entered into evidence the following receipt for same:


TAX REG. NO.
ORDER NO. DATE Feb 14/22
SOLD TO [redacted]
ADDRESS
SHIP TO 580 - 5069
ADDRESS
SHIPPED DATE | VIA | TERMS | BUYER | SALESPERSON
5 night locks
15 00
TOTAL
789472
SIGNATURE
SALES ORDER

The landlord's name has been redacted for privacy. The landlord is claiming $15.00 for the window locks.

Tenant C.O. testified that the tenants are not sure what the landlord is referring to. Tenant C.O. testified that the receipt lacks adequate information. Tenant C.O. testified that all the window locks were functional when the tenants moved out.

<u>Kitchen drawers</u>

The landlord testified that the tenants caused water damage to the bottom of three kitchen drawers. The landlord testified that the liners couldn't be replaced because they would not match the liners in the other drawers. The landlord testified that she replaced three drawers at a cost of $300.00. No receipt for same was entered into evidence. The landlord testified that a receipt was provided on page 8; however, the landlord's evidence did not have any consistent numbering systen and page 8 could not be located. In the hearing the tenants testified that they were also not able to locate the aforementioned receipt.

Tenant C.O. testified that the tenants did not damage the drawers and that they were in the same condition on move out as on move in.

Analysis

Damages

Section 67 of the *Act* states:

> 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Useful life of building elements

Residential Tenancy Guide #40 (PG #40) states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and

> determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
>
> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the 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 or replacement.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord. I find that when items are repaired, a useful life calculation is not required because the repair will not likely increase the useful life of the repaired item but will return it near or to its pre-damaged state.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 21 of the Residential Tenancy Act Regulation states:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the move in condition inspection report, which was signed by both parties, and in which the tenants agreed to the contents of the report, was completed in accordance with the *Act* and the Regulations. I find that the move in condition inspection report is compelling evidence of the state of repair and condition of the subject rental property on the date of the inspection.

The tenants did not sign the move out condition inspection report and did not agree with its contents. I find that the move out condition inspection report is not as compelling evidence of the state of repair and condition of the subject rental property on the date of the move out inspection as the move in condition inspection report. I will rely on the move out condition report as well as additional evidence supplied by the parties in making a finding on the move out condition of the subject rental property.

Both parties agree that the move in condition inspection and inspection report was completed on September 1, 2020 and that the landlord provided the tenants with a copy on September 25, 2020.

Section 23 of the *Act* states:

> **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.

Section 18 of the Regulation states:

18 (1)The landlord must give the tenant a copy of the signed condition inspection report

(a)of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, a

I find that the landlord did not provide the tenants with a copy of the move in condition inspection report in accordance with section 18(1)(a) of the *Act* as the landlord provided the tenants with the move in condition inspection report 25 days after the move in condition inspection report was completed.

Section 24(2)(c) of the *Act* states:

(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

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

Since I find that the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for **damage** arising out of the tenancy is extinguished.

Based on the testimony of both parties, I find that the landlord was served with the tenants' forwarding address on January 31, 2022, in accordance with section 88 of the *Act.*

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award,

pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have 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 claimed against the deposit for **damage** to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, the landlord is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the *Act.* However, the extinguishment provisions only apply to claims for **damage**, not for claims for unpaid ren or loss of rental income. I find that the landlord was entitled to hold the tenants' security deposit until the outcome of this decision as part of the landlords' claim is for unpaid rent/ loss of rental income. The tenants are therefore not entitled receive double their security deposit.

Loss of Rental Income

Residential Tenancy Branch Policy Guideline #3 (PG #3) states:

> A tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the RTA (section 38 of the MHPTA) set out how a tenant may unilaterally end a tenancy agreement.
>
> Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the

date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a)is not earlier than one month after the date the landlord receives the notice, and

(b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(4) of the *Act* states:

(4)A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

(a)be signed and dated by the landlord or tenant giving the notice,

(b)give the address of the rental unit,

(c)state the effective date of the notice,

(d)except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e)when given by a landlord, be in the approved form.

Section 68(1) of the *Act* states that if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that

(a)the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b)in the circumstances, it is reasonable to amend the notice.

I find that the landlord was sufficiently served for the purposes of this *Act,* with the December 13, 2021 written email notice to end tenancy, pursuant to section 71 of the *Act* because the landlord referenced the end of tenancy date provided in the December

13, 2021 email in the landlord's December 22, 2021 email. The December 13, 2021 written email notice to end tenancy was dated, and stated the effective date of the notice.

I find that the landlord knew or should have known the address of the subject rental property as it is her property, and she is aware of which tenants live in her property. Pursuant to section 68(1) of the *Act,* I amend the December 13, 2021 notice to end tenancy to include the address of the subject rental property.

At the end of the December 13, 2021 email notice to end tenancy, tenant C.O. typed her name. While this is not a handwritten signature, I find that the landlord knew or should have known that the tenant C.O.'s name was a form of digital signature. I find that a digital signature is equivalent to a signature, for the purposes of section 52 of the *Act.*

I find that the tenants provided one clear month's notice to end tenancy to the landlord in accordance with section 45(1) of the *Act*. The landlord is therefore not entitled to loss of income for February 2022 based on late notice to end tenancy.

I find that the landlord is not entitled to one month's rent due to the late return of two of the three sets of keys. The landlord testified that she replaced the lock at the subject rental property on January 31, 2022 and so the late return of the keys would have had minimal impact.

If the landlord didn't change the locks on January 31, 2022, then I find that charging the tenants an entire month of rent instead of changing the locks is a failure to mitigate damages as changing the locks is considerably less costly than a full month's rent. I find that the landlord has failed to prove how the late return of the keys resulted in a loss and if a loss of one month's rent was incurred, the landlord failed to take obvious steps to mitigate the loss.

Pursuant to my above reasons, the landlord's claim for loss of rental income is dismissed without leave to reapply.

Unpaid utilities and carpet cleaning

As both parties agree that the tenants owe the landlord $88.66 in utility charges, and $393.75 for carpet cleaning, pursuant to section 63 of the *Act,* I award the landlord $482.41.

Window coverings

Based on the move in condition inspection report and the photographs of the stained window coverings, I find that the window coverings in tenant J.S.'s room were in good condition at the start of the tenancy and were damaged at the end of the tenancy contrary to section 37(2)(a) of the *Act.*

As noted earlier in this Decision, the onus is on the person making the claim, in this case, the onus is on the landlord to prove the claim. The February 6, 2022 email states that three curtains were missing. The February 11, 2022 email states that three curtains were returned out of four. The photograph of the returned materials includes three curtains. The move out condition inspection report states that two curtains are missing. I find that the landlord has not proved, on a balance of probabilities, that the tenants took four window covering panels and only returned three of them as the landlord's February 6, 2022 email states that three panels were missing, not four as is later alleged in the February 11, 2022 email. As the landlord has not proved that the tenant's took one of the window panels and did not return it, I dismiss this portion of the claim.

Residential Tenancy Branch Policy Guideline #40 (PG #40) states that drapes and venetian blinds have a useful life of 10 years (120 months). I accept the landlord's testimony that the window coverings were new at the start of 2020. I find that at the time the tenants moved out, the window coverings were approximately 25 months old. Therefore, at the time the tenants moved out, there was approximately 95 months of useful life that should have been left for window coverings in tenant J.S.'s room. I find that since the stained window covering required replacement after only 25 months, the tenants are required to pay according to the following calculations:

> $89.58 (cost of two sets of window coverings) / 2 = $44.79 (cost of one set of window covering)
>
> $44.79 (cost of one set of window coverings) / 120 months (useful life of window coverings) = $0.37 (monthly cost)
>
> $0.37 (monthly cost) * 95 months (expected useful life of window coverings after tenant moved out) = $35.15.

Doorknob/lock

I find that the testimony of the landlord regarding the alleged loss to the doorknobs at the subject rental property to be inconsistent between hearings. In the first hearing the landlord did not mention the replacement of the doorknob/lock on January 31, 2022 and only discussed the September 2021 replacement.

In the second hearing the landlord testified that she is not seeking the cost of the September 2021 replacement. In the second hearing the landlord testified that she changed the locks on January 31, 2022 because the keys were not returned on time. In the first hearing the landlord testified that because the tenants did not return the keys until February 8, 2022 that they had access to the rental unit until that date. If the landlord replaced the locks on January 31, 2022, then the tenants would clearly no longer have access to the subject rental property.

I find that due to the inconsistent testimony, the landlord has not proved, on a balance of probabilities, that she changed the locks at the subject rental property on January 31, 2022. The landlord's claim for the cost of replacing the lock/doorknob is dismissed.

Lightbulbs

Residential Tenancy Branch Policy Guideline #1 states that tenants are responsible for replacing bulbs burnt out light bulbs during and at the end of a tenancy.

I prefer the landlord's testimony that the tenants left burnt out lights bulbs/missing bulbs at the subject rental property because it is supported by photographs, the move out condition inspection report (which I understand is disputed by the tenants) and a receipt for new light bulbs. I find it unlikely that the landlord would fabricate all of the above items for a claim totalling $15.41.

I note that the move out condition inspection report states that 4 light bulbs were missing or burnt out, not six. As the move out condition inspection repot is supposed to be evidence of the condition on move out and as it was completed by the landlord, I find that the landlord is only entitled to the cost of 4 light bulbs as follows:

$15.41 (cost of 6 bulbs) / 6 = $2.57 (cost per bulb) * 4 (bulbs) = **$10.28**

Light fixture

Based on the move in condition inspection report which was signed by both parties, and whose contents were agreed to by both parties, I find that the light fixture in question was in good condition at the start of this tenancy. Based on the photograph of the cracked fixture, I find that it was cracked at the end of this tenancy. I find, on a balance of probabilities, that the tenants were responsible for this damage and that the light fixture did not crack on its own or due to heat. Light fixtures are usually made to withstand the heat of bulbs and no credible evidence to the contrary has been provided. I find that the tenants damaged the light fixture, contrary to section 37 of the *Act.*

PG #40 states that the useful life for a light fixture is 15 years (180 months). I accept the landlord's testimony that the light fixture was new in January of 2018. I find that at the time the tenancy ended, the light fixture was approximately 49 months old; therefore, at the time the tenants moved out, there was approximately 131 months of useful life that should have been left for the light fixture of this unit. I find that since the light fixture required replacement after only 49 months, the tenants are required to pay according to the following calculations:

> $29.98 (cost of light fixture) / 180 months (useful life of light fixture) = $0.17 (monthly cost)
>
> $0.17 (monthly cost) * 131 months (expected useful life of light fixture after tenants moved out) = **$22.27**

Fridge Crisper

Based on the move in condition inspection report I find that the crisper was in good condition at the start of this tenancy. I find that the tenants have not provided a preponderance of evidence to contradict the move in condition inspection report. Based on the photographs entered into evidence by the landlord and the testimony of both parties, I find that the crisper was broken at the end of this tenancy. I find that the tenants breached section 37(2)(a) of the *Act* by leaving the crisper broken at the end of the tenancy.

I find that the replacement of the crisper is more in the nature of a repair to the fridge and a useful life calculation is not necessary as the new crisper will not likely increase the useful life of the fridge but will return it to its pre-damaged state. I find that the

landlord has proved the value of the loss suffered as a result of the tenant's breach of the *Act.* Based on the receipt entered into evidence, I award the landlord $76.50 for the crisper replacement.

Painting

Based on the move in condition inspection report I find that the walls in the subject rental property were in good condition with a scuff in the hallway, and bedroom #2 and #3. Based on the photographs entered into evidence by the landlord, I find that the tenants left the property with numerous puttied up holes that required painting. I find that the tenants photographs of the walls do not prove that they were all in good condition at the end of the tenancy as only some walls were seen in the photographs and the tenants have not proved that the photographs taken are of the same areas taken by the landlord.

I accept the landlord's testimony that she did not have the entire property re-painted and that only areas damaged by the tenants were painted. I find that the patchwork repair does not require a useful life calculation as the paint of the entire unit was not replaced, but areas were repaired.

I do not find the form and content of the receipt to be an issue. I accept the testimony of the landlord that she hired a handyman who provided the receipt entered into evidence.

I find that the landlord has proved that she suffered a loss in the amount of $241.02 for the cost of painting supplies as evidenced by the receipts entered into evidence. The receipt for labour entered into evidence was for repairing the walls/painting and repairs the bathroom vanity door. I find that the landlord has not proved what portion of that labour was for the painting and what portion was for the vanity repair, and so the landlord has not proved the value of the loss claimed.

Residential Tenancy 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. I find that the landlord has proved that she suffered a loss for the labour taken to re-paint the unit as a result of the tenants breach of section 37(2)(a) of the *Act,* but has not proved the amount. I award the landlord $200.00 in nominal damages for the labour to repair the paint job.

Cleaning

Based on the landlord's photograph, I find that the landlord has proved that the tenants did not clean the oven door properly or the stovetop. No other photographs of the alleged dirty areas were presented in the hearings. Based on the tenants' photograph of the fridge, I find that it was clean at the end of the tenancy. No photographs of the exhaust hood and fan or taps, sink or stoppers were entered into evidence, I find that the landlord has not proved that they were dirty at the end of the tenancy.

As the landlord has not proved that the tenants failed to clean the fridge, or vent hood, I find that the landlord is not entitled to recover costs for cleaning those items. The landlord did not provide testimony as to what portion of time she spent cleaning the oven and stovetop, I find that the landlord has therefore not proved the value of the loss suffered; however, I am satisfied that the landlord has proved that a loss was suffered. I award the landlord nominal damages for cleaning in the amount of $25.00.

Replacement chair

No receipts were entered into evidence for the alleged replacement chair. I find that the landlord has failed to prove the value of her claim for a replacement chair as the receipt for same was not entered into evidence, nor was any other form of valuation. I dismiss the landlord's claim for the chair.

Window locks

Based on the move in condition inspection report, I find that the window locks at the subject rental property were functional at the start of the tenancy. Based on the photographs entered into evidence by the landlord, I find that five window locks were damaged at the end of the tenancy, contrary to section 37(2)(a) of the *Act.*

I do not find the form and content of the receipt to be an issue, not all receipts are printed and provide substantive details about the business who sold the product. I accept the testimony of the landlord that she purchased five window locks for $15.00. I find that the landlord has proved that she suffered a loss caused by the tenants' breach of section 37(2)(a) of the *Act* in the amount of $15.00.

Kitchen drawers

No receipts were entered into evidence for the alleged kitchen drawer replacement. I find that the landlord has failed to prove the value of her claim for the replacement of three drawers as the receipt for same was not entered into evidence, nor was any other form of valuation. I dismiss the landlord's claim for the kitchen drawers.

Filing fees

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the $100.00 filing fee from the tenants, pursuant to section 72 of the *Act.*

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of $1,125.00 to be offset against the landlord's monetary claim.

I find that the tenants are not entitled to the return of their security deposit due to the damages caused to the subject rental property by the tenants. As the tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the $100.00 filing free, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Utilities	$88.66
Carpet cleaning	$393.75
Window coverings	$35.15
Light bulbs	$10.28
Light fixture	$22.27
Crisper	$476.50

Painting supplies	$241.02
Labour for painting	$200.00
Window locks	$15.00
Filing fee	$100.00
Less security deposit	-$1,125.00
TOTAL	**$57.63**

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: February 8, 2023

Residential Tenancy Branch