Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL (Landlords)
MNSD, MNETC, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application February 17, 2022, and sought the following:

- Compensation for damage to the rental unit
- To keep the security and pet damage deposits
- To recover the filing fee

The Tenants filed their application July 20, 2022, and sought the following:

- Compensation for loss or other money owed
- Compensation pursuant to section 51 of the *Residential Tenancy Act* (the "*Act*")
- Return of double the security and pet damage deposits
- To recover the filing fee

This matter came before me October 06, 2022, and was adjourned. An Interim Decision was issued October 07, 2022, and should be read with this Decision.

The Landlords appeared at the reconvened hearing. The Landlords called B.B. and S.T. as witnesses at the reconvened hearing, despite not identifying these individuals as witnesses at the first hearing. I allowed the Landlords to call B.B. and S.T. as witnesses because they were relevant to the section 51 claim, which was not yet addressed at the first hearing due to time constraints. I found there was no unfairness to the Tenants in allowing the Landlords to call B.B. and S.T. as witnesses and that it would have been

unfair to not allow the Landlords to call these witnesses. The Tenants raised an issue about not having called witnesses given the Interim Decision; however, the Tenants could not identify any witness they would have called had the limitation bot been stated in the Interim Decision and so again, I did not find there to be unfairness to the Tenants.

The Tenants appeared at the reconvened hearing. Tenant S.S. appeared with K.C. to assist them. Tenant D.S. said they might call a witness at the second hearing; however, it was determined that the testimony of this witness was not relevant to the issues before me and therefore I did not hear from them.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties and witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service at the first hearing. The Landlords acknowledged receipt of the Tenants' Monetary Order Worksheet and confirmed they were prepared to address the issues raised. The Landlords confirmed receipt of the Tenants' evidence. The Tenants confirmed receipt of the hearing package and evidence for the Landlords' application. At the second hearing, the parties initially confirmed there were no service issues. However, an issue later arose in relation to whether all of the Landlords' evidence had been served on the Tenants. The Landlords advised that all of their evidence was served. The Tenants took issue with receipt of some of the specific documents; however, the Tenants' testimony was not clear on this issue. I am satisfied the Tenants received the Landlords' evidence because they acknowledged this at the first hearing and their testimony about this issue at the second hearing was unclear and inconsistent.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?

2. Are the Landlords entitled to keep the security and pet damage deposits?

3. Are the Landlords entitled to recover the filing fee?

4. Are the Tenants entitled to compensation for loss or other money owed?

5. Are the Tenants entitled to compensation pursuant to section 51 of the *Act*?

6. Are the Tenants entitled to return of double the security and pet damage deposits?

7. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started October 01, 2019. Rent was $3,100.00 due on or before the first day of each month. The Tenants paid a $1,550.00 security deposit and $1,000.00 pet damage deposit.

The parties agreed the tenancy ended January 31, 2022.

The parties agreed the Landlords received the Tenants' forwarding address in writing on February 01, 2022.

The Landlords testified that they kept the pet damage deposit for urine stains in a bedroom as well as scratches and claw marks on the stairs. The Landlords did say at one point that the damage to the stairs was caused by Tenant D.S. pulling a grocery cart up them. The Tenants agreed there was a pet-related stain in a bedroom but disagreed that damage to the stairs was caused by a pet.

The parties agreed the Landlords did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security or pet damage deposits.

A Condition Inspection Report (the "CIR") was submitted and the parties agreed it is accurate. The parties agreed the move-in CIR was given to the Tenants a couple days after the inspection and a copy of the move-out CIR was provided immediately.

I told the Landlords during the hearing that they filed against the security and pet damage deposits late. The Landlords said they thought both Tenants had to provide a forwarding address before the timeline to file against the deposits was triggered. The Landlords asked that it be considered that they were only one date late.

Landlords' Application

The Landlords sought the following compensation:

Item	Description	Amount
1	Flood - Insurance deductible	$2,500.00
2	Flood - Loss of "No Claims Discount"	$829.00
3	Flood - Dehumidifiers	$336.00
4	Flood - Heater in storage container	$292.00
5	Flood - Storage container drop-off and rental	$397.86
6	Flood - Storage container rental	$106.40
7	Flood - Storage container rental and pick-up	$349.30
8	Flood - Reimbursement for Monetary Order from May 2021	$1,658.88
9	Move-out Damage - Repair flooring	$1,583.40
10	Filing fee	$100.00
	TOTAL	**$8,152.84**

The parties were involved in a prior hearing on RTB file ending 6817. The prior file was the Tenants' application for compensation in part due to loss of use or quiet enjoyment relating to a flood that occurred in the rental unit December 21, 2020. The Tenants sought $1,983.90 in compensation for loss of use of the basement from December 2020 to March of 2021. The Tenants took issue with how long remediation of the flood damage took. The Landlords agreed to pay the Tenants $58.88 for the cost of the Landlords running dehumidifiers in the rental unit following the flood. The Tenants sought a further $300.00 for loss of quiet enjoyment during remediation of the flood damage.

The Arbitrator on file 6817 made the following findings:

> With respect to the Tenants' claims relating to the flood, I find that the Tenants provided insufficient evidence to demonstrate that the drain was faulty. I accept that once the leaves were cleared from the drain, the water drained, indicating it

> was working properly. I find that the Landlords have not breached any Section of the Act.
>
> I accept that there was a large rainstorm on December 21, 2020 which caused a flood in the rental unit. I find this to be an act of nature. While I find that the Tenants were not the cause of the flood, I find that they were a contributing factor to the flood occurring, as they did not clear the leaves from the drain, nor did they immediately notify the Landlords as soon as they noticed the water was pooling at the back door which was likely to cause a flood in the rental unit. I find that the Tenants' actions to mitigate the likelihood of the flood occurring were not as fulsome as they could have been. The Tenants should have reported their concerns to the Landlords immediately…
>
> I find that the Tenants are entitled to some compensation for loss of use of a portion of the basement during the remediation. As I have found that the Tenants were a contributing factor to the flood occurring, I find that they are not entitled to the full amount of compensation that they are seeking. In this case, I award the Tenants compensation in the amount of $1,500.00 for loss of use and loss of quiet enjoyment of the rental unit during the remediation of the basement following the flood.

I am bound by the above findings because they relate to the same issue that is before me, the flood on December 21, 2020. The parties cannot re-argue what caused the flood or whether the Tenants contributed to the flood. I cannot re-decide or change the above Decision. Therefore, I am bound by the findings that the drain at the back door of the rental unit was working properly, the Landlords did not breach the *Act*, regulations or tenancy agreement in relation to the flood, the flood was caused by an act of nature and the Tenants contributed to the flood occurring. I am bound by the finding that the flood was caused in part by nature and in part by the Tenants. The prior Arbitrator did not specifically state what percentage each of nature and the Tenants were at fault for in relation to the flood. However, the Tenants sought $2,283.90 and were awarded $1,500.00 and therefore it can be reasoned that the prior Arbitrator found the Tenants 35% responsible and nature 65% responsible because the Tenants were only awarded 65% of what they had sought.

The amounts sought by the Landlords are for 100% of their costs associated with the flood. In other words, the Landlords have not apportioned amounts sought to account for the flood being caused by both nature and the Tenants. The Landlords argued that

the Tenants were 50% responsible for the flood. The Landlords did not provide documentary evidence from an independent source or professional about the contribution to the flood by both nature and the Tenants. The Landlords sought to rely on Landlord D.R.'s own opinion about the contribution to the flood by both nature and the Tenants.

The Tenants submitted that their contribution to the flood occurring was minimal because there was flooding all around the area and the Landlords did not check the drain at the back door of the rental unit. The Tenants submitted that there was clearly a drainage issue at the property.

#1 Flood - Insurance deductible $2,500.00

The Landlords sought compensation for an insurance deductible they had to pay due to the flood and damage to the rental unit.

The Tenants submitted that there is no proof provided that the Landlords paid this amount. The Tenants said flooding in the rental unit was an ongoing issue and the Landlords had to replace the drain after the flood. The Tenants submitted that they had minimal responsibility for the flood and really it was due to the drain, nature and the Landlords failing to come check the drains despite knowing there was a drainage issue.

#2 Flood - Loss of "No Claims Discount" $829.00

The Landlords sought compensation for their insurance premium increasing due to losing their discount for having no insurance claims which they lost due to the flood and damage to the rental unit.

The Tenants did not add further relevant submissions from those outlined above in relation to this claim.

#3 Flood – Dehumidifiers $336.00

The Landlords sought compensation for renting dehumidifiers to try to mitigate the damage to the rental unit caused by the flood.

I note that the prior RTB Decision dealt with dehumidifiers; however, that related to hydro use paid for by the Tenants due to the dehumidifiers running in the rental unit.

The Tenants submitted that the Landlords having to rent the dehumidifiers was just part of being a landlord because the Landlords were responsible for cleaning out the water in the rental unit.

#4 Flood - Heater in storage container $292.00
#5 Flood - Storage container drop-off and rental $397.86
#6 Flood - Storage container rental $106.40
#7 Flood - Storage container rental and pick-up $349.30

The Landlords sought compensation for costs associated with renting a storage container for Tenant S.S. to put their belongings in while the rental unit was being remediated. The Landlords testified that Tenant S.S. asked for a storage container and demanded it have a heater in it so that their belongings did not get ruined. The Landlords testified that they ran power to the storage container from their house for 73 days and are seeking $292.00 for this being $4.00 per day for 73 days. The Landlords explained that the costs claimed include having the storage container dropped off and picked up as well as the rental of the storage container for the period the rental unit was being remediated. The Landlords testified that the Tenants would not move out of the rental unit for the remediation and the remediation could not proceed until the Tenants' belongings were out of the rental unit.

The Tenants testified that Tenant S.S. had actually already arranged for a storage container and the Landlords went ahead and had one dropped off before the Tenants' container arrived and therefore it is the Landlords' responsibility to pay for their storage container. The Tenants said there is no documentary evidence showing that Tenant S.S. asked the Landlords to rent a storage container because Tenant S.S. did not ask the Landlords to rent a storage container. The Tenants testified that Tenant S.S.'s uncle was going to supply a storage container and that their uncle had talked to the Landlords about this. The Tenants testified that they would not have agreed to the Landlords providing the storage container given the cost and that the Landlords provided it on their own accord. The Tenants acknowledged that once the storage container was in place, Tenant S.S. asked for it to be heated so their belongings would not get damp and moldy.

In reply, the Landlords could not point to documentary evidence showing Tenant S.S. asked the Landlords to arrange for a storage container for them.

#8 Flood - Reimbursement for Monetary Order from May 2021 $1,658.88

The Landlords seek compensation for the amount awarded to the Tenants in the prior RTB Decision.

#9 Move-out Damage - Repair flooring $1,583.40

The Landlords sought compensation for damage to the hardwood floors in the rental unit and relied on photos in evidence for this. The Landlords testified that they hired a company to refinish two bedrooms and the stairs due to pet damage and damage from a chair. The Landlords testified that the floors were installed around 1967 but were covered in carpet when the Landlords purchased the rental unit. The Landlords testified that the floors were refinished in 2017 and relied on an invoice in evidence to show this. The Landlords relied on two invoices in evidence in relation to the most current refinishing of the floors.

Tenant S.S. said Tenant D.S.'s grocery cart caused the damage to the stairs in the rental unit. Tenant S.S. said the groove marks on the stairs were deep and could not be caused by their pet. The Tenants submitted that they did not take possession of the rental unit until three years after the last refinishing of the floors. The Tenants disputed that the entire floor in the rooms or on the stairs needed to be refinished and said just a patch could have been refinished. The Tenants submitted that the damage to the floors was normal wear and tear. The Tenants submitted that the Landlords should have gotten more than one estimate for the cost to refinish the floors. In the Tenants' written materials, they raise the issue of whether the floor refinishing was actually completed.

In reply, the Landlords pointed to the CIR as evidence of the state of the floors at move-in and move-out. The Landlords said one patch of floor could not be refinished given fading to the rest of the floor from sun. The Landlords testified that they used the same company that refinished the floors previously in 2017.

Tenants' Application

The Tenants sought the following:

Item	Description	Amount
1	Return of double the security and pet damage deposits	$5,100.00
2	Flea inspection	$267.68
3	Loss of use of fenced yard and back entrance	$950.00
4	Section 51 compensation	$37,200.00
5	Filing fee	$100.00
	TOTAL	**$43,617.68**

I note that the above is a higher amount than that requested on the original application because the original application only sought Tenant S.S.'s portion of the security and pet damage deposits and section 51 compensation. The *Act* sets out what must be awarded to the Tenants in relation to the security and pet damage deposits and section 51 compensation and therefore the above reflects the correct amounts (see Interim Decision for further details). I note that the amount sought exceeds the RTB jurisdiction of $35,000.00; however, this is not an issue here because it is the section 51 compensation that puts the amount over and the section 51 compensation amount is not included in the $35,000.00 limit (see RTB Policy Guideline 27 at page 4).

#1 Return of double the security and pet damage deposits $5,100.00

The Tenants seek return of double the security and pet damage deposits on the basis that the Landlords filed against the deposits one day late.

#2 Flea inspection $267.68

The Tenants sought this compensation for the Landlords asking for a flea inspection upon move-out. The Tenants agreed to have the flea test done and allege that the Landlords disturbed the testing procedure thus making the test pointless. The Tenants submit that the Landlords should have to pay for the test because it was a waste of time. The Landlords did not ask the Tenants to have another test done. The Tenants could not explain a legal basis for this claim.

#3 Loss of use of fenced yard and back entrance $950.00

The Tenants seek compensation for the Landlords taking part of the fence down and therefore the Tenants loosing use of a fenced yard for their pets. Tenant S.S. also sought compensation for loss of use of the back door to the rental unit while work was being done to the drain by the back door. In the written materials, Tenant S.S. states that they had to use the front entrance to the house rather than the back entrance due to work being done at the back door.

The Landlords testified that the fence was not removed, a gate was removed and the Tenants never asked for the gate to be put back on otherwise the Landlords would have done this. In the written submissions, the Landlords say the back door was never blocked or inoperable while work in that area was being done.

#4 Section 51 compensation $37,200.00

The Tenants submitted a Two Month Notice (the "Notice") dated November 25, 2021, with an effective date of January 31, 2022. The grounds for the Notice were that the Landlords would occupy the rental unit.

The Landlords testified that they did cosmetic renovations to the rental unit starting January 31, 2022, and moved into the rental unit February 26, 2022. The Landlords testified that they still live in the rental unit. The Landlords testified that they previously lived in the neighbouring house to the rental unit but rented that house out starting March 01, 2022, as shown on the tenancy agreement in evidence. The Landlords called B.B. and S.T. as witnesses. One of the witnesses is the Landlords' house cleaner and the other is their tenant who lives in the neighbouring house. Both witnesses testified that the Landlords and their family live in the rental unit and have done so since February of 2022.

The Tenants disputed that the Landlords lived in the rental unit starting in February of 2022 and relied on photos showing the house is dark and windows are open. The Tenants testified that they saw Landlord D.R. coming out of the neighbouring house in March of 2022 and that D.R. jumped behind something when D.R. saw the Tenants. The Tenants acknowledged the Landlords eventually moved into the rental unit but questioned whether they moved into it February 26, 2022, as claimed. The Tenants submitted that extensive renovations were done in the rental unit after they moved out and the Landlords should have issued them a Four Month Notice.

In reply, the Landlords denied that D.R. saw the Tenants in March and jumped behind something.

Both parties provided written submissions and evidence which I have reviewed in detail and will refer to below as necessary.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

I do not find it necessary to decide whether the Landlords extinguished their rights in relation to the security or pet damage deposits because extinguishment relates to whether the deposits should be doubled and this is addressed below.

The tenancy ended January 31, 2022.

The Landlords received the Tenants' forwarding address in writing on February 01, 2022.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date they received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlords had until February 16, 2022, to repay the security and pet damage deposits or file a claim against them. The Landlords filed their application February 17, 2022, one day late. I find the Landlords failed to comply with section 38(1) of the *Act.*

Based on the testimony of the parties and my finding above, I find that none of the exceptions to section 38(1) of the *Act* set out in sections 38(2) to (4) of the *Act* apply.

Pursuant to section 38(6) of the *Act*, the Landlords must pay the Tenants double the security and pet damage deposits ($5,100.00). There is also interest owed on the original amount of the deposits ($10.90). The total owing to the Tenants is **$5,110.90.**

I note that the Landlords are not relieved of their obligations under section 38(1) of the *Act* because they thought both Tenants had to provide a forwarding address before they were required to deal with the security and pet damage deposits. The Tenants were co-tenants and one or both could seek return of the security and pet damage deposits. It is up to the Tenants to apportion the security and pet damage deposits between themselves. As soon as the Landlords had a forwarding address from one of the Tenants, they had to deal with the security and pet damage deposits in accordance with section 38(1) of the *Act.*

I do not accept that the Landlords should be relieved of their obligation to pay the Tenants double the security and pet damage deposits because they were only one day late in filing their application. The Landlords filed their application late because they did not know their obligations as they relate to security and pet damage deposits and co-tenants. Not knowing one's obligations is not an excuse for failing to comply with the *Act* and does not justify extending timelines. It is completely reasonable to expect the Landlords to know their obligations.

The Landlords are still entitled to claim for compensation and I consider that now.

Landlords' Application

As stated, I am bound by the prior RTB Decision stating the flood was caused in part by nature and in part by the Tenants. The Landlords are permitted to seek compensation for the portion of the flood and resulting damage caused by the Tenants, which was not

addressed in the prior RTB Decision. As stated, I find the prior Arbitrator apportioned blame between nature and the Tenants as 65% nature and 35% the Tenants. I use these same percentages because the Arbitrator already decided the cause of the flood and it can be reasonably inferred how the Arbitrator apportioned blame. Further, the Landlords have not provided compelling evidence to support that the Tenants are 50% responsible for the flood and resulting damage. As well, the Tenants cannot argue that they are not at all responsible for the flood because the prior Arbitrator already found they were.

Section 7 of the *Act* addresses compensation and RTB Policy Guideline 16 sets out the four-part test for compensation as follows:

> 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:
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> - 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.

#1 Flood - Insurance deductible $2,500.00
#2 Flood - Loss of "No Claims Discount" $829.00

The Landlords have not provided any documentary evidence showing that they made an insurance claim, that they paid a $2,500.00 insurance deductible or that their insurance premiums increased due to the flood and resulting damage. The Landlords have failed to prove the claimed loss or damage and failed to prove the amount or value of the damage or loss. This claim is dismissed without leave to re-apply.

#3 Flood – Dehumidifiers $336.00

The Tenants are responsible for costs proven to be resulting from the flood pursuant to section 32 of the *Act*. I find it clear that dehumidifiers were required due to the flood. Based on the invoice submitted, I accept that the Landlords paid $336.00 to rent the

dehumidifiers. I find the amount reasonable and award the Landlords 35% of the amount being **$117.60.**

#4 Flood - Heater in storage container $292.00

The Tenants are responsible for costs proven to be resulting from the flood pursuant to section 32 of the *Act*. I accept that Tenant S.S. asked that heat be hooked up to the storage container once it was in place because Tenant S.S. acknowledged this. I accept that the storage container, and heat, was needed and used because of the flood. The Landlords provided a calculation for how they arrived at the amount sought and I find the calculation reliable because it is a BC Hydro cost calculator. I find the amount sought reasonable in the circumstances and award the Landlords **$102.20.**

#5 Flood - Storage container drop-off and rental $397.86
#6 Flood - Storage container rental $106.40
#7 Flood - Storage container rental and pick-up $349.30

The parties disagreed about whether Tenant S.S. asked the Landlords to arrange for the storage container. I find the parties have both provided equally probable versions of what occurred in relation to the storage container. The Landlords could not point to documentary evidence showing Tenant S.S. asked them to rent a storage container and therefore I am not satisfied Tenant S.S. did. I am not satisfied the Tenants are responsible for the costs associated with renting the storage container because I am not satisfied based on the evidence provided that the Landlords had to rent the storage container because of the flood and damage to the rental unit. I am not satisfied the Landlords could not have simply left it to the Tenants to arrange for a storage container. I find the Landlords failed to mitigate their loss in relation to these claims. I dismiss these claims without leave to re-apply.

#8 Flood - Reimbursement for Monetary Order from May 2021 $1,658.88

The Landlords are in effect asking that I reverse the prior RTB Decision. I cannot reverse the Decision. If the Landlords believed the Decision was wrong, they should have sought judicial review of the Decision. The Landlords cannot attempt to “overturn” the Decision by requesting an order that the Tenants now pay them what they had to pay the Tenants pursuant to the Decision. There is no legal basis for this request and it is dismissed without leave to re-apply.

#9 Move-out Damage - Repair flooring $1,583.40

Section 37 of the *Act* sets out the Tenants' obligations in relation to the state of the rental unit at the end of the tenancy.

The CIR shows the flooring in the rental unit was fine on move-in. The Landlords' photos also show the flooring was generally in good shape. However, the photos do show scratches and a stain on the flooring in the bedrooms. I find the scratches and stain to be beyond reasonable wear and tear. I also find the damage to the stairs is beyond reasonable wear and tear based on the photos and because Tenant S.S. acknowledged Tenant D.S. caused the damage with their grocery cart and that the marks were deep. I find the Tenants breached section 37 of the *Act* in relation to damage to the flooring in the rental unit.

I accept that the Landlords had to have the flooring in the bedrooms and on the stairs refinished due to the damage. Based on the invoices in evidence, I accept it cost the Landlords $1,583.40 to refinish the flooring. I find this amount reasonable and note that the Tenants did not provide their own estimates showing the amount is not reasonable.

I do consider that the flooring in the rental unit is very old and was last refinished in 2017 meaning the Landlords had five years of use of the refinished floors. The useful life of hardwood flooring is 20 years (see RTB Policy Guideline 40 at page 5) and considering this I award the Landlords **$1,187.55.**

#10 Filing fee $100.00

The Landlords have been partially successful in their claim and therefore are entitled to $100.00 for the filing fee pursuant to section 72(1) of the *Act*.

Tenants' Application

#1 Return of double the security and pet damage deposits $5,100.00

The Tenants are awarded double the security and pet damage deposits as outlined above and are awarded **$5,110.90.**

#2 Flea inspection $267.68

I decline to award the Tenants compensation for this. The basis of the compensation request is that the Landlords disrupted the flea test they required. There is no issue that the Tenants were required to do a flea test. There is no issue that the Tenants agreed to do a flea test. I find it irrelevant that the Landlords disrupted the flea test because they did not require the Tenants to have a further test done and therefore the cost claimed would have been incurred in any event. There is no legal basis for this claim and it is dismissed without leave to re-apply.

#3 Loss of use of fenced yard and back entrance $950.00

Section 28 of the *Act* includes the right for the Tenants to have use of the rental unit.

I decline to award the Tenants compensation for loss of use of the backyard because I am not satisfied the Tenants asked the Landlords to put the gate back in. The Tenants did not point to documentary evidence showing they asked the Landlords to put the gate back in. I do not see documentary evidence in the materials showing the Tenants asked the Landlords to put the gate back in. I find the Tenants failed to mitigate their claimed loss. This request is dismissed without leave to re-apply.

I decline to award the Tenants compensation for loss of use of the back door because the Tenants could still enter the rental unit through the front door and have provided no compelling evidence of actual loss or damage. I dismiss this claim without leave to re-apply.

#4 Section 51 compensation $37,200.00

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy under section 49 of the *Act*. Section 51 compensation is awarded when landlords fail to follow through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice or fail to use the rental unit for the stated purpose for at least six months.

I accept that the Landlords moved into the rental unit February 26, 2022, and have lived there since. I find the two witnesses, B.B. and S.T., as well as the tenancy agreement for the Landlords previous house to be compelling evidence supporting the Landlords' position. Further, I do not find the Tenants' evidence to be compelling evidence that the

Landlords did not move into the rental unit as stated. I accept that the Landlords moved into the rental unit 26 days after the effective date of the Notice.

I find 26 days to be within a reasonable period. I accept that the Landlords did cosmetic renovations to the rental unit before moving into it. RTB Policy Guideline 50 (page 3) contemplates landlords being permitted to do some renovations prior to moving into the rental unit. I do not find 26 days to be a lengthy period. I do not find that section 51 of the *Act* is meant to capture this situation where the Landlords moved into the rental unit 26 days after the effective date of the Notice and have lived in the rental unit since.

This claim is dismissed without leave to re-apply.

#5 Filing fee $100.00

I decline to award the Tenants the filing fee because they have only been successful on their claim for double the security and pet damage deposits which would have been decided on the Landlords' application in any event.

Summary

The Landlords are entitled to:

Item	Description	Amount
1	Flood - Insurance deductible	-
2	Flood - Loss of "No Claims Discount"	-
3	Flood - Dehumidifiers	$117.60
4	Flood - Heater in storage container	$102.20
5	Flood - Storage container drop-off and rental	-
6	Flood - Storage container rental	-
7	Flood - Storage container rental and pick-up	-
8	Flood - Reimbursement for Monetary Order from May 2021	-
9	Move-out Damage - Repair flooring	$1,187.55
10	Filing fee	$100.00
	TOTAL	**$1,507.35**

The Tenants are entitled to:

Item	Description	Amount
1	Return of double the security and pet damage deposits	$5,110.90
2	Flea inspection	-
3	Loss of use of fenced yard and back entrance	-
4	Section 51 compensation	-
5	Filing fee	-
	TOTAL	**$5,110.90**

The Tenants are owed $5,110.90. The Landlords can deduct the $1,507.35 owing to them from the $5,110.90 owing to the Tenants. The Tenants are issued a Monetary Order for $3,603.55 pursuant to section 67 of the *Act*.

Conclusion

The Tenants are issued a Monetary Order for $3,603.55. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: March 21, 2023

Residential Tenancy Branch