RE-HEARING DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL, MNSD, FFT

Introduction

A re-hearing was scheduled pursuant to a decision and order issued by Madam Justice Horsman on August 13, 2021 in response to the landlord's petition for Judicial Review of the decision issued by a different Arbitrator on September 2, 2020. Madam Justice Horsman ordered the Arbitrator's decision and Monetary Order of September 2, 2020 be set aside and the matter set for a re-hearing with the Residential Tenancy Branch.

The landlord and the tenant appeared at all of the scheduled re-hearing sessions. The landlord and the tenant were affirmed.

The re-hearing was held over six dates. Five Interim Decisions were issued with respect to the re-hearing and they should be read in conjunction with this final decision.

Preliminary and Procedural Matters

The landlord was accompanied by another individual at every re-hearing session. This person identified himself as the landlord's lawyer at some of the re-hearing dates but then advised me he was merely acting as the landlord's interpreter on other dates. I was not provided an explanation as to the reason the lawyer was only acting as the landlord's interpreter at times. In any event, I instructed this person to not add anything to the landlord's testimony if he were merely interpreting. Despite assurances, there were some occasions that I noted the landlord's interpreter was trying to assist the landlord and shout out an argument on behalf of the landlord. As noted in one of the Interim Decisions, the tenant also informed me that she speaks the same language as the landlord and the landlord's interpreter was saying more than a mere translation. Audio recordings were made by the Residential Tenancy Branch for the re-hearings held on and after October 6, 2022 but not prior. The audio recordings are available should one of the party's request a copy after this decision is issued.

In filing the landlord's application, the landlord had sought recovery of unpaid rent in the amount of $23,723.91. The landlord did not submit or serve an Amendment but sought to increase the amount of the unpaid rent to $26,723.91 by way of an "updated"

Monetary Order Worksheet. At the first re-hearing session, I denied the landlord's request to increase the unpaid rent claim as he had not served an Amendment to the tenant in accordance with the Rules of Procedure. The landlord subsequently tried to increase the unpaid rent claim to $30,941.29 by way of a new Monetary Order Worksheet uploaded after the re-hearing had already commenced, on January 4, 2022. The landlord was attempting to increase his claim after the re-hearing had already commenced and did not comply with the Rules of Procedure that require an Amendment to be served at least 14 days before the hearing. Accordingly, I did not permit the landlord's application to be amended. In any event, for reasons set out later in this decision, I had concluded the tenant owes the landlord much less rent than any of the amounts put forth by the landlord. As such, my decisions to deny the landlord's requests to amend the unpaid rent claim are inconsequential.

Also of note is that the tenant has two applications before me where she seeks the same remedy, return of double the security deposit. I informed the parties that I would only consider the tenant's request for return of double the security deposit one time and the tenant confirmed that is what she is seeking. Upon further review of the materials submitted for this re-hearing and the Residential Tenancy Branch records, I note that the tenant's application ending in file number *****6459 is based upon a forwarding address provided to the landlord by email on January 6, 2020 and the tenant had made another application, file number ending in *****4374 and recorded on the cover page of this decision, whereby the tenant relied upon the same email. A decision was made by an Adjudicator that a forwarding address provided by way of the email on January 6, 2020 was insufficient service since the Director of the Residential Tenancy Branch had not yet issued a Standing Order to allow service by email. As such, I find a final decision has already been made with respect to the forwarding address provided on January 6, 2020 via email and I shall not consider it again. The tenant had also submitted an Amendment on June 20, 2020 to seek other damages or loss under file *****6459; however, during the re-hearing the tenant confirmed she was only seeking return of double the security deposit and she did not pursue those other claims any further. Therefore, I dismiss file ****6459 in its entirety, without leave to reapply, and I shall consider the tenant's request for return of double security deposit under the file ending in *****6883.

In reviewing the previously filed Applications for Dispute Resolution in the Residential Tenancy Branch records, I also found a previous Landlord's Application for Dispute Resolution, filed on September 19, 2019 (file number ending in ****3470 and recorded on the cover page of this decision). The landlord applied for an Order of Possession and a Monetary Order for unpaid rent that the landlord described as: "$21850.11: It is

the balance of unpaid rent for four months on June 1, July 1, August 1, September 1 and some other cost/invoice/estimate". A hearing was held on November 19, 2019 and a decision issued by an Arbitrator that same day. The Arbitrator dismissed the landlord's application without leave to reapply. Part 5, section 77(3) of the Act provides that decisions are final and binding, subject to review, correction or clarification provisions contained in Part 5. The landlord did not file for review consideration under Part 5 of the Act to seek a review hearing. As such, I find that a final and binding decision has already been made with respect to unpaid rent up to an including the month of September 2019 and I was not presented any arguments or reasons why the matter should be reconsidered. Therefore, I have limited the landlord's claim for unpaid or loss of rent to the period of October 1, 2019 through January 6, 2020.

With respect to jurisdiction, I heard from the landlord and the tenant that the tenant rented the main living unit in the house but the basement suite was not rented to the tenant under the tenancy agreement. I heard that the basement suite was used to house the landlord's nephew and rent rooms to other individuals. The tenant was involved in the basement room rental business; however, the tenant's role was in dispute. The tenant treated the parties' agreement with respect to the basement room rentals as an employment contract whereas the landlord described the parties' agreement as partnership, business arrangement or contract for services at various times throughout the re-hearing. In any of the above described circumstances, I do not have jurisdiction to resolve disputes pertaining to employment, business or service contracts between parties even if the parties also have a landlord/tenant agreement.

One of the claims made against the tenant by the landlord was for $1,412.00 for missing furniture in the basement and rental income from one of the basement suite occupants and the landlord confirmed the claim pertained to the parties' basement room rental business. Therefore, I declined to hear that claim any further and the landlord is at liberty to pursue that claim in the appropriate forum.

It should be noted that I was provided a significant amount of submissions, arguments and evidence, both in writing and orally, all of which I have considered; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and evidence and I only reference that which is most relevant and necessary to understand my decision.

Finally, section 77(1)(d) of the Act provides that the director, as delegated to me, must provide a decision within 30 days after the proceedings conclude. I acknowledge that the date of this decision exceeds 30 days since the proceeding concluded; however, as

I informed the parties during the last re-hearing session, section 77(2) provides that the validity of a decision is not affected if a decision is given after the 30 day period.

Issue(s) to be determined

1. Has the landlord established an entitlement to unpaid rent and if so, how much is the landlord entitled to receive by way of this proceeding?
2. Has the landlord established an entitlement to compensation for damage to the rental unit in the amount claimed?
3. Is the tenant entitled to doubling of the security deposit?
4. Is the landlord authorized to retain the tenant's security deposit or should it be returned to the tenant?
5. Award of filing fee(s).

Background and Evidence

The parties executed a written tenancy agreement on November 5, 2018 for a tenancy set to commence on December 1, 2018. The tenant paid a $3,000.00 security deposit and the rent was set at $6,000.00 payable on the first day of every month.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on July 21, 2019. The tenant filed to dispute the 10 Day Notice and a hearing was held on September 24, 2019. The Arbitrator presiding over that proceeding upheld the 10 Day Notice and issued an Order of Possession to the landlord. The landlord subsequently applied for a Writ of Possession and the tenant applied for a stay. The tenant vacated the rental unit on January 6, 2020 on her own volition.

Landlord's claim for Unpaid rent

In filing his application, the landlord requested recovery of unpaid rent in the amount of $23,723.91. Although the landlord claims that the unpaid rent owed to him was greater than that, as seen in the two "updated" Monetary Order worksheets he submitted after filing, with the most recent calculation being made in January 2022 that the tenant owed him $30,941.29 in unpaid rent as of January 6, 2020.

The tenant's position was also varying. In a written submission, the tenant acknowledged that she owed the landlord rent for the four months of September 2019 through December 2019 plus 6 days in January 2020 which the tenant calculated to be $20,967.74. However, in her oral submissions and references to the evidence and

various spreadsheets, the tenant submitted that she owed the landlord even less than that.

In arriving at their various positions, the parties' provided very conflicting evidence and submissions. Not only did the parties disagree with the amount of the monthly rent, but also the payments received by the landlord from the tenant or on behalf of the tenant and whether payments received by the landlord were for rent, furniture purchased from the landlord, or earnings from the basement suite rentals. The parties provided various spreadsheets and listings of amounts paid and received throughout the tenancy that they prepared themselves. The landlord did not engage a forensic accountant to determine the sources of income from the various payments received by the landlord and I cautioned the parties that was not my role.

The landlord maintained that the monthly rent was $6,000.00 per month and it did not change. The tenant submitted that the landlord had orally agreed to reduce her monthly rent to $5,000.00 to reflect he was overcharging for the rental unit.

The parties had been to a dispute resolution hearing on September 24, 2019 to deal with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") issued by the landlord on July 23, 2019 and disputed by the tenant (file number ending in ****0290 and recorded on the cover page of this decision. The Arbitrator dismissed the tenant's application and granted the landlord an Order of Possession effective two days after service. Also in the decision, the Arbitrator recorded and found that the monthly rent was $6,000.00.

At the time of the September 24, 2019 proceeding, the Act did not permit an Arbitrator to issue a Monetary Order for unpaid rent under a tenant's application. As described in the "Preliminary and Procedural Matters" section, the landlord had applied for a Monetary Order for unpaid rent owing for months up to an including September 2019 and the Arbitrator presiding over that hearing dismissed the landlord's claim without leave.

A significant discrepancy between the parties' records was payments from a third party (whom I refer to as "EC"). The parties were in agreement that the funds were deposited in the landlord's bank account by EC but the payment from EC was in the tenant's name and EC deposited the funds in the landlord's bank account based on instructions from the tenant. However, the parties were in dispute as to what the payments represented.

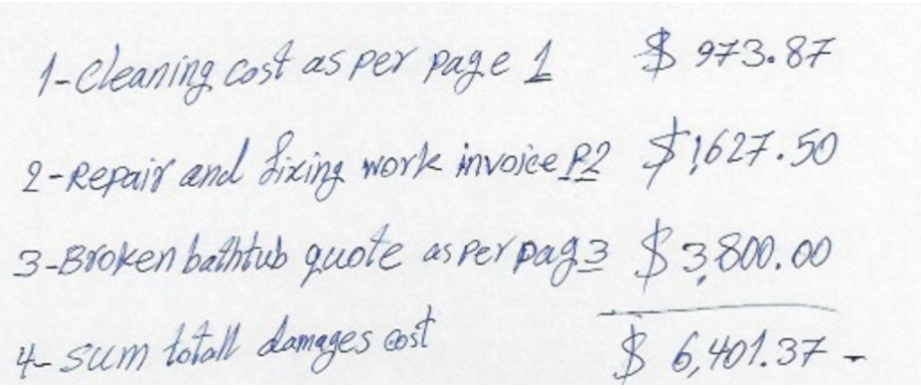
The tenant submitted that she provided rooms to students in her rental unit that came through EC. The tenant instructed EC to send the payment for her services to the landlord so as to offset some of her rent obligation. The tenant provided letters from EC describing their liability to pay the tenant for her services, not the landlord. The tenant provided payment details that were issued by EC in the tenant's name. The tenant provided a letter from her accountant stating she declared the income from EC on her tax return.

The landlord submitted that the payments from EC were for room rentals in the basement; however, when I asked the landlord as to the source of funds for the basement suite room rentals, the landlord responded that he was unaware of the identity of parties that paid for room rentals in the basement except for one individual who had paid him directly.

There were also cash payments reflected on the tenant's spreadsheet that the landlord denied receiving. The tenant acknowledged in her testimony concerning the basement suite room rentals that she did not actually give cash to the landlord as reflected in her spreadsheet but that she had "earned" those amounts by working for the landlord and she deducted her earnings from her rent obligation.

Landlord's damage claim

In filing his application, the landlord requested $6,401.37 for damage to the rental unit. The landlord's submission included the following breakdown:


1-Cleaning cost as per page 1 $ 973.87
2-Repair and fixing work invoice P2 $1,627.50
3-Broken bathtub quote as per pag3 $ 3,800.00
4- sum totall damages cost $ 6,401.37 -

1. ***Cleaning***

The landlord seeks $973.87 for cleaning the interior of the house. The landlord testified the parties inspected the house on January 5, 2020 and the tenant agreed to pay for

cleaning costs although no specific amount was agreed upon. The landlord pointed to photographs and provided an invoice from a cleaning company dated January 26, 2020 in support of this claim.

The tenant submitted that she left the house clean. The tenant testified that she asked the landlord to do a move-out inspection with her in the evening of January 5, 2020 and the landlord declined, stating he wanted to do it with more light. On January 6, 2020 the tenant tried contacting the landlord several times but he did not respond to her. The tenant put the keys in the mailbox and a move-out inspection was not done together.

2. Damage (except bathtub)

The landlord requested recovery of $1,627.50 for the items itemized on an invoice dated January 28, 2020 by a construction company as follows:

Item	description	Amount
1	Repaired kitchen cabinets: (changed some of the broken hinges , Fixed and adjusted almost all of cabinet doors)	
2	Fixed door handles for bedrooms. (3 of them)	
3	Removed divider woods from living room and patched, sanded and painted.	
4		
5	Repaired and fixed damaged walls in all over the house by patching, sanding and painting .	
6	Repaired scratched hardwood floor in 3 portions.	

The landlord submitted that all of the above repairs were required due to damage caused by the tenant and/or persons the tenant permitted to occupy the rental unit. The landlord testified the house had been renovated prior to the tenancy; however, the landlord's testimony as to when the house was last renovated changed from 16 years prior to 8 years prior to the tenancy. The landlord testified that the tenant had dividers installed to make the six bedroom rental unit into an eight bedroom rental unit.

The tenant acknowledged that she had wardrobes installed to create a study room for students that was separate from the living room. She had the landlord's contractor install the dividers to prevent any damage to the walls and ceiling. The gap between the wardrobes and the walls and ceiling was filled with foam and there was no damage caused when the wardrobes were removed. The tenant took issue with the contractor

taking photographs of the walls after he already started working in the rental unit after the tenancy ended.

The tenant also testified that there were issues with the hinges being loose earlier in the tenancy and she showed this to the landlord. The landlord responded that he did have the hinges repaired early in the tenancy as he believed it was his obligation to perform minor repairs.

The president of the same construction company that provided an invoice in January 2020 also provided a signed letter dated July 12, 2020 whereby the president states he inspected the rental unit in January 2019 and July 2019 to address any deficiencies and he performed the following tasks:

(a) Fixed any doors loose handles, fixed any kitchen cabinet hinges problem, Etc.

(b) Checked and fixed all bathroom's issues like paper holders and faucets problems.

(c) Checked and maintain some drains problem.

3. Damage to bathtub

The landlord submitted that the tenant damaged the bathtub by cracking the bottom of the tub. The landlord pointed to an email the tenant sent to him on October 19, 2019 where she informs the landlord the tub is broken and she will replace it. The crack was not repairable and the bathtub required replacement. The landlord provided a quotation from his contractor to replace the bathtub in the amount of $3,800.00.

The landlord acknowledged that he never did replace the bathtub. Rather, the landlord testified that he sold the house and the purchaser deducted $2500.00 from the purchase price for "the repairs" which the landlord explained was the bathtub damage. The landlord submitted into evidence an Addendum to the Contract of Purchase and Sale that was prepared by the purchasers and executed by both parties on June 12, 2020. The Addendum provides for the following agreement:

Both the Seller and the buyer agree that the completion date will be changed to June 18, 2020. Subsequently the adjustment date will be changed to June 19, 2020 and possession date will changed to 10 am on June 19, 2020. All other terms and conditions of the contract will remain the same. Time is of essence.

For the consideration of the above changes the Seller agrees to credit the buyer on completion date the amount of $2,500.00 for the partial cost of the repairs. Also on the Buyer will have vacant possession.

The tenant denied responsibility for cracking the bottom of the bathtub. The tenant acknowledged there was some damage to the side of the tub, but the bottom was not damaged. Also, the tenant claimed the bathtub was older. As far as the email she sent to the landlord the tenant explained she was referring to replacing the faucet/showerhead as those had broken and they could only bathe in the tub until the repair was made.

The tenant submitted that after the house sold, she spoke with the new owner and the new owner renovated the bathroom, including installation a new walk in shower rather than a bathtub.

Tenant's claim for double security deposit

The tenant submitted that she provided her forwarding address to the landlord on January 6, 2020 via email and the landlord came to her new house in the days that followed.

Both parties were in agreement that they met at the tenant's new house with a view to settling the amount owed by the tenant. I was provided varying submissions as to the date the landlord came to the tenant's house but the parties provided consistent testimony that the tenant issued a cheque to the landlord in the amount of $13,075.00 dated January 16, 2020 for "rent + damage". It was also undisputed that when the landlord went to cash or deposit the cheque it was not honoured.

The parties were in dispute as to whether the amount of $13,075.00 was calculated after making a deduction for the security deposit held by the landlord.

The landlord testified the amount of $13,075.00 was calculated after deducting the security deposit. The landlord pointed to an email of January 14, 2020 whereby the tenant states the landlord may deduct the security deposit from the amount owed to him so that the landlord does not need to issue a separate cheque to her.

The landlord was of the position the cheque plus the $3,000.00 security deposit the tenant authorized him to keep was to compensate him a total of $16,075.00. I asked the landlord how $16,075.00 was calculated and who calculated the amount. Not only did the landlord had difficulty recalling how this amount was calculated but he was unresponsive to multiple questions from me as to who calculated the amount. Eventually the landlord testified that it was the tenant who estimated the amount owing and that it was comprised of $10,075.00 fore rent and $6,000.00 for damage.

The tenant acknowledged sending the email of January 14, 2020 but explained that the parties had met on January 12, 2020 and it was the landlord that determined the amount of $13,075.00 for rent and damage and the landlord informed the tenant he would issue a separate cheque for return of the security deposit but that he did not have his chequebook on him at the time. After giving the landlord the cheque for $13,075.00 the tenant thought it did not make sense for the landlord to send her a cheque for the security deposit when the security deposit could be deducted from the amount owed so she tried contacting the landlord twice but he did not respond to her. Nor, did she receive a refund cheque for the security deposit. As such, when the bank contacted her when the landlord tried cashing the cheque, she instructed the bank to not cash it.

The tenant filed the application that is before me under file number *****6459 on February 6, 2020 to seek return of the security deposit. As previously stated in the Preliminary and Procedural Matters section of this decision, I have dismissed this application as a decision has already been made with respect to the forwarding address being provided by email on January 6, 2020 as being insufficient.

The tenant sent her forwarding address to the landlord again via email on April 17, 2020 after learning the Director of the Residential Tenancy Branch had issued an Order authorizing service by email due to the Covid-19 pandemic.

The landlord made his claim on May 12, 2020 to seek compensation and authorization to retain the tenant's security deposit.

On May 13, 2020, the tenant made another Application for Dispute Resolution (file number ending in *****6883 that is before me) seeking return of the security deposit based on the forwarding address sent to the landlord via email on April 17, 2020.

The landlord's interpreter, as he identified himself at the last hearing session, argued the tenant had not withdrawn the consent she gave via email for the landlord to retain the security deposit. The tenant responded that she did communicate that she was withdrawing consent in filing her Application for Dispute Resolution on February 6, 2020 whereby she requests return of the security deposit.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the applications before me.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Except for specific provisions under the Act, such as claims for return of deposits made under section 38 of the Act, awards for compensation are provided in section 7 and 67 of the Act. As provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* the claimant must prove the following, on a balance of probabilities:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

Unpaid rent

The tenancy agreement provided as evidence shows the tenant was required to pay rent of $6,000.00 on the first day of every month. The tenant submitted that the landlord had verbally authorized her to reduce her monthly rent to $5,000.00 per month. However, I find the tenant's position is not supported by other evidence. The landlord provided copies of cheques the tenant had given to the landlord for rent for the months of August 2019 through November 2019 and they are in the amount of $6,000.00 each. Also, the tenancy agreement provides that any changes to the agreement must be in writing. Therefore, I find the preponderance of evidence before me points to the monthly rent being $6,000.00.

The tenancy was found to be at an end pursuant to the hearing held in September 2019; however, the tenant undisputedly remained in possession of the rental unit until January 6, 2020. Accordingly, I hold the tenant liable to compensate the landlord for loss of rent from October 1, 2019 through to January 6, 2020. For reasons described in the "Preliminary and Procedural Matters" section of this decision, the landlord had made a previous claim for unpaid rent up to an including the month of September 2019 and

that claim was dismissed without leave to reapply. As such, I limit the landlord's award for unpaid and/or loss of rent to the months after September 2019.

The parties were in dispute as to the payments received by the landlord from the tenant or on behalf of the tenant. Both parties provided various spreadsheets and calculations going back to the start of the tenancy. As I informed the parties at the hearing, it is not upon me to take on the role of their forensic accountant.

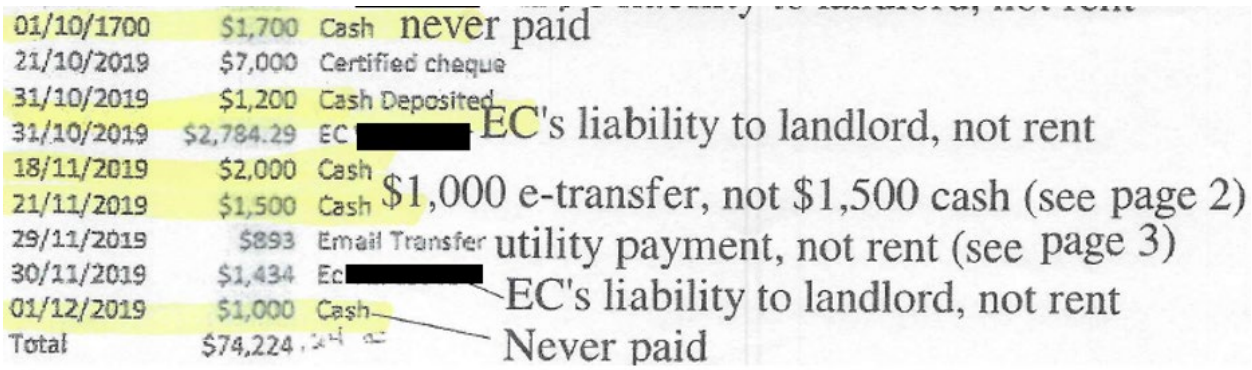
For reasons already provided, I have limited the landlord's claim for unpaid and/or loss of rent to that incurred in October 2019 and later. As such, I have applied the payments the landlord received in October 2019 and onwards against the loss to calculate the landlord's net loss of rent.

The landlord presented a spreadsheet showing the following payments received from the tenant in October 2019 and later as follows (name of landlord redacted by me for privacy reasons):

Oct. 21, 2019	Deposite to CIBC chequing	$7000.00
Oct. 31, 2019	Deposite to CIBC chequing	$1200.00
Nov. 18, 2019	Cash to [redacted] against receipt	$2000.00
Nov. 21, 2019	E-transfer to CIBC	$1000.00

The above payments total $11,200.00

The tenant also provided a listing of the payments made to the landlord in October 2019 and later from herself and EC (EC's name redacted by me for privacy purposes) as follows (the larger type is the landlord's response):



01/10/1700	$1,700	Cash	never paid
21/10/2019	$7,000	Certified cheque	
31/10/2019	$1,200	Cash Deposited	
31/10/2019	$2,784.29	EC [redacted]	EC's liability to landlord, not rent
18/11/2019	$2,000	Cash	
21/11/2019	$1,500	Cash	$1,000 e-transfer, not $1,500 cash (see page 2)
29/11/2019	$893	Email Transfer	utility payment, not rent (see page 3)
30/11/2019	$1,434	Ec [redacted]	EC's liability to landlord, not rent
01/12/2019	$1,000	Cash	Never paid
Total	$74,224		

As for the payments sent to the landlord from EC, the tenant provided documentary evidence to demonstrate the money was payable to the tenant but deposited into the landlord's bank account. The landlord does not deny receiving the payments from EC but takes the position the money was earned due to the parties' business relationship for rentals of rooms in the basement.

In support of the tenant's position that the funds paid by EC were for earnings of the tenant, the tenant provided documentary evidence to show that the tenant provided housing for students to EC under an agreement between the tenant and EC. EC's remittance advice also identified the tenant as the only recipient of the payment. In the letter written by EC, EC confirms they did not have any liability or obligation to the landlord and the money they sent to the landlord was pursuant to instruction by the tenant. The tenant also provided an explanation as to why she directed payments to the landlord, to reduce the amount of rent she would have to directly pay to the landlord.

In gathering more information from the landlord concerning the business for the basement room rentals, I asked the landlord if he knew the identity of the payors for the basement room rentals and the landlord responded that he did not know. I find this testimony contradicts the landlord's earlier testimony that payments from EC were attributable to the basement room rentals. The landlord did not have any documentation t demonstrate EC was remitting payment due to services provided by the landlord or a partnership between him and the tenant.

In light of the above, I find the preponderance of evidence points to the EC deposits as being for services provided to EC by the tenant and the deposits received by the landlord are to be credited as partial payments toward rent.

As for the cash payments identified on the tenant's listing that the landlord denied receiving, I do not apply those payments against the rent. The tenant acknowledged that the cash was not actually given to the landlord but she recorded the payment in recognition of her work for the landlord in the basement room rental business. As I stated previously in this decision, I do not have jurisdiction to resolve disputes concerning employment contracts, contracts for services or business/partnership disputes and such disputes are to be resolved in the appropriate forum.

As for the $893.00 etransfer to the landlord that was recorded on the tenant's listing of payments, the landlord submitted this payment was for utilities. Included in the landlord's evidence was a copy of the etransfer dated December 1, 2019 in the amount of $892.70 and the message included with the etransfer is "utility payment acc 122090". When I turn to the tenancy agreement, I see that there were no utilities included in the monthly rent payment. The tenant had provided evidence that the Fortis gas account and the BC Hydro account were in her name; however, those account numbers do not correspond to 122090. As such, I find it likely the utility payment of $892.70 is for another utility such as water, garbage or sewer that was not in the tenant's name. Therefore, I find this payment is not a payment toward rent and I do not deduct it from the amount of rent owing.

Based on my findings and reasons provided above, I award the landlord unpaid and/or loss of rent from October 1, 2019 through to January 6, 2020 is as follows:

Rent for October 2019 - December 2019 ($6,000.00 x 3 months)	$18,000.00
Plus: Rent for January 1 – 6, 2020 ($6,000.00 x 6/31 days)	1,161.29
Equals: Gross amount of unpaid and/or loss of rent	$19,161.29
Less: Payments received from/on behalf of the tenant in Oct 2019 - Jan 6, 2020	
Payments from tenant acknowledged by landlord	(11,200.00)
EC payments to landlord ($2,784.29 + $1,434.00)	(4,218.29)
Equals: Net rent owing to landlord for Oct 1, 2019 – Jan 6, 2020	**$ 3,743.00**

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Reasonably clean is a standard that is less than perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant or a prospective buyer. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds "reasonably clean" the tenant is not responsible for the cost to do so.

The parties were in dispute as to whether the tenant left the rental unit clean when she vacated the property. The landlord did not prepare a move-out inspection report, as he was required to do under section 35 of the Act. However, the landlord provided photographs and a cleaning invoice for me to review. The photographs are of the interior of the property but they appear to be provided in an effort to demonstrate damage to the property as I do not see areas that require cleaning. When I turn to the cleaner's invoice, it is dated January 26, 2020 which is 20 days after the tenant vacated and it does not provide any detail as to what was cleaned other than to describe the job as being for cleaning the interior of the house. Also, the property address is listed as the site for cleaning and it is undisputed that the basement suite did not form part of the tenancy agreement. As such, I find there is insufficient evidence before me to conclude the tenant owes the landlord over $900.00 to bring the rental unit up to a "reasonably clean" condition and I dismiss this portion of the landlord's claim against the tenant.

Damage (other than bathtub)

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The landlord provided photographs, an invoice in support of his claim for damage, and a written letter from the contractor.

It was undisputed that the tenant had installed wardrobes to create separate rooms. Although the tenant claims that the installation and removal of the wardrobes did not cause damage to the walls and ceiling, from the photographs it is evident that they left marks on the ceiling and damaged the walls. Therefore, I hold the tenant responsible for damaging the walls and ceiling where the wardrobe dividers had been installed.

The landlord included a photograph of a broken or detached hinge on a cabinet door in the kitchen; however, the invoice indicates that several cabinet doors had to be realigned and adjusted. The tenant testified that she complained of loose hinges earlier in the tenancy and the landlord testified that he had repaired hinges earlier in the tenancy as he thought it was his obligation to do so. The president of the construction company also wrote that he had to repair and adjust lose hinges and doorknobs early in the tenancy and near the end of the tenancy. Accordingly, I find it more likely than not that the hinges and doorknobs become lose over time with use and this is a maintenance issue associated to wear and tear as opposed to damage. Therefore, I do not hold the tenant responsible for costs to rectify the hinges and doorknobs, whatever that may be.

As for the balance of the landlord's damage claim, I see evidence of wall scuffs and wall damage in other locations, and a stain on the wood flooring and a scuff on another area of the wood flooring. The tenant did not dispute these items. Therefore, on a balance of probabilities, I accept that the wall damage and the floor stain and scuff is damage caused during the tenancy and I hold the tenant responsible for this damage.

In light of the above, I hold the tenant liable to compensate the landlord for the wall and ceiling damage and a stain and scuff on the floors. However, the contractor's invoice provides a single charge for various different repairs. Nor, does the contractor's invoice provide a breakdown of hours spent on various repairs. The difficulty in obtaining such an invoice does not leave me a way to accurately determine the costs for the repairs I hold the tenant liable to pay. Thus, I am left with either dismissing the claim or providing an approximation of the landlord's loss. In this case, I grant the landlord 50% of the amount claimed, or **$813.75** [$1,627.50 x 50%] rather than dismiss the claim.

Damage to bathtub

The parties were in dispute as to whether the tenant, or a person permitted on the property by the tenant caused the bathtub to be cracked on the bottom. The landlord relies upon a photograph the tenant had texted the landlord in October 2019 saying the bathtub is broken.

The landlord also relies upon the letter written by the president of the construction company that performed repairs to the property in January 2019 and July 2019 whereby the preside writes the bathtub was not damaged then.

The tenant explained that in sending the text message to the landlord she was referring to the faucet and/or shower head being broken; however, I find it unlikely that a tenant would take a photograph of a bathtub, without including the faucet or showerhead, if the tenant was only referring to the faucet and/or showerhead being broken.

In light of the above, I find on a balance of probabilities, that the damage occurred while the tenant was in possession of the rental unit and the tenant is responsible to compensate the landlord for the loss associated to the damage.

The landlord obtained a quote of $3,800.00 to remove the old tub and tiles and install a new tub and tiles; however, the landlord did not proceed to make the repair and sold the house. Therefore, I deny the landlord's claim for $3,800.00 as compensation for bathtub damage.

The landlord pointed to an Addendum to the Contract of Purchase and Sale to demonstrate he did suffer a loss of $2500.00 by having to compensate the buyers of the property for "the repairs".

While I am not blind to the fact that the Addendum to the Contract of Purchase and Sale does not specify the nature of "the repairs", I note the amount of $2,500.00 within reason compared to the quotation the landlord received and I accept the landlord suffered a loss of $2,500.00 due to the bathtub damage for which the tenant is responsible.

The tenant testified the bathtub was old and replaced by the purchasers with a new walk in shower. Based on the photograph of the bathtub, and having heard the rental unit was last renovated several years prior, I accept that the bathtub was older; however, the bathtub had been functional prior to the damage and likely had a number of years of life left had it not been damaged. Therefore, I find that an award to the landlord of **$2,500.00** sufficiently takes into account the depreciation of the former bathtub since the amount is significantly less than the estimated replacement cost.

Security Deposit

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, or make an Application for Dispute Resolution to claim against it if the tenant has not given the landlord written consent to retain it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenant provided her forwarding address to the landlord on multiple different occasions.

On January 6, 2020 the tenant sent her forwarding address to the landlord via email. The tenant's Application for Dispute Resolution filed on February 6, 2020 (file *****6459) to seek return of the security deposit is based on the email of January 6, 2020 but as previously explained under the "Preliminary and Procedural Matters" section of this decision, an Adjudicator issued a decision under file *****4374 finding that giving a forwarding address via email on January 6, 2020 did not meet service requirements at the time. The Adjudicator also wrote, in decision *****4374, the following, in part:

> Therefore, I dismiss the tenant's application for the return of double the security deposit on the basis of the forwarding address dated January 6, 2020, without leave to reapply.
>
> If the tenant wants to apply through the Direct Request process, the tenant may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act* or, if reissuing the forwarding address by e-mail, provide sufficient evidence to demonstrate that the e-mail service complies with the Director's Order dated March 30, 2020.

I interpret the Adjudicator's dismissal, without leave, to apply to the tenant relying upon the January 6, 2020 email; but, the Adjudicator left it open to the tenant to give the landlord another forwarding address in one of ways permitted at the time and the right to re-apply based on the new forwarding address.

After the decision was issued under file *****4374, on April 17, 2020 the tenant sent her forwarding address to the landlord again via email but this time, email was a permissible method of service pursuant to the Director's Order issued on March 30, 2020 due to the Covid-19 pandemic. The Director's Order also deemed a person to have received an email three days after it is sent. On May 13, 2020 the tenant filed an Application for

Dispute Resolution seeking return of double the security deposit based the forwarding address being provided via email sent on April 17, 2020.

On May 12, 2020 the landlord filed his Application for Dispute Resolution seeking compensation from the tenant and authorization to retain the security deposit.

The landlord does not dispute receiving the tenant's forwarding address via email sent on April 17, 2020 or make any arguments that the landlord filed against the tenant's security deposit within 15 days of receiving the forwarding address. Rather, the landlord argued the tenant provided consent to retain her security deposit, via email he received in November 2019 and on January 14, 2020 to be used towards amounts owed to the landlord. The landlord's interpreter also shouted out during the hearing that the tenant did not withdraw that consent.

In order for a landlord to obtain a tenant's consent to retain a security deposit, the tenant must give the landlord written consent. I would also expect that a tenant's written consent would contain the tenant's signature. As such, a document granting consent to retain the security deposit is required to be given in one of the permissible ways. Just as a tenant's forwarding address had to be given to the landlord in one of the permissible ways. Section 88 of the Act provides for the ways a document must be given to the other party. Prior to the Director's Order of March 30, 2020 service by email was not permissible. Therefore, I find the tenant did not give the landlord written consent to retain her security deposit in one of the permissible ways in November 2019 and January 2019.

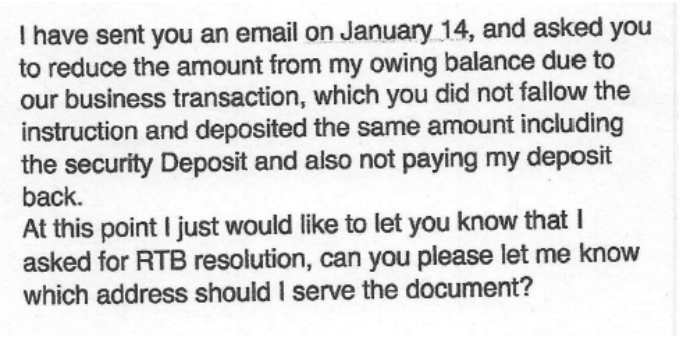
The tenant did issue a cheque to the landlord in the amount of $13,075.00 in January 2020 and both parties describe the cheque as representing a settlement at that time; however, neither party was willing to accept that amount as a fair resolution of the disputes before me. Further, the parties were in dispute as to whether $13,075.00 was calculated after deducting the security deposit and, other than the cheque itself, there appears to be no written documentation as to how the amount was calculated. The cheque indicates $13,075.00 is for "rent + damage" on the memo line but there is no mention of the security deposit.

I would have expected that in arriving at a settlement involving the security deposit, the parties would have prepared a document when they met in person and reflected the calculation, showing a deduction for the security deposit and having it signed by the tenant so that written consent would be given in one of the permissible ways.

Unfortunately, no such document was prepared, and not surprisingly the parties now disagree as to how the amount was calculated.

The landlord testified that the amount of $13,075.00 was the net amount after deducting the security deposit; however, when pressed to explain how the amount was determined the landlord testified that it was based on the tenant's estimation of rent and damage that she owed. I find it very unlikely the tenant would have had sufficient information to estimate damage to the rental unit especially considering the landlord's invoices for damage, cleaning and quotation for the bathtub replacement were not received by the landlord until late January 2020. Therefore, I do not find the landlord's oral explanation as to how the amount was determined to be credible.

As for putting the landlord on notice that she was withdrawing the consent given by email in November 2019 and on January 14, 2020, I find the tenant's actions did convey withdrawal. The tenant had put a stop to the cheque that she had issued in the amount of $13,075.00; the tenant also sent a subsequently email to the landlord on February 2, 2020 that stated:



I have sent you an email on January 14, and asked you to reduce the amount from my owing balance due to our business transaction, which you did not fallow the instruction and deposited the same amount including the security Deposit and also not paying my deposit back.
At this point I just would like to let you know that I asked for RTB resolution, can you please let me know which address should I serve the document?

The tenant went on to file two Applications for Dispute Resolution's seeking return of the security deposit, in February 2020 and March 2020, before making her third and final one that is before me.

I find the above actions would sufficiently communicate to a reasonable person that the tenant had withdrawn any consent that had been given by email, if it had been given. Accordingly, upon receiving the tenant's forwarding address that was sent on April 17, 2020 and deemed received by the landlord three days later on April 20, 2020, I find the landlord was already on notice the tenant had not given consent or had withdrawn consent for the landlord to retain the security deposit and the landlord had until May 5, 2020 to comply with section 38(1) of the Act by filing an Application for Dispute Resolution. The landlord did not file an Application for Dispute Resolution to claim

against the deposit until May 12, 2020 which is more than 15 days after receiving the forwarding address. Therefore, I find the landlord did not comply with section 38(1) and the tenant is entitled to doubling of the deposit, or **$6000.00**.

Section 38(1) also provides that a landlord must pay interest on the security deposit calculated in accordance with the Residential Tenancy Regulations. Using the Residential Tenancy Branch interest calculator, I calculate the interest on the single amount of the deposit to be **$53.69** as of today's date.

Filing fees

As for filing fees, I find both the landlord's application and the tenant's application had merit. Thus, I order both parties to bear the cost of their respective filings and I make no order for recover of the filing fee from the other party.

Monetary Order

Pursuant to section 72 of the Act, I offset the awards given to both parties with this decision and I provide the landlord with a Monetary Order in the net amount of:

Unpaid and/or loss of rent	$3,743.00
Damage to walls and flooring	813.75
Damage to bathtub	2,500.00
Total awarded to landlord	$7,056.75
Less: double security deposit + interest	(6,053.69)
Net monetary order for landlord	**$1,003.06**

Conclusion

The landlord was partially successful in his claims against the tenant. The tenant was successful in her claim against the landlord. The tenant's award has been off-set against the landlord's awards and the landlord has been provided a Monetary Order for the net amount of $1,003.06 to serve and enforce against the tenant.

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 1, 2023

Residential Tenancy Branch