



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, MNRL-S, MNDCL-S, FFL

For the Tenant: MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross-applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord filed a claim for:

- a monetary order for unpaid rent in the amount of \$1,120.00;
- a monetary order for damages in the amount of \$4,590.27;
- a monetary order for damage or compensation for damage under the Act in the amount of \$2,240.00;
 - retaining the security and pet damage deposits to apply to these claims; and
- recovery of the \$100.00 Application filing fee.

The Tenant filed a claim for:

- a monetary order for damage or compensation for damage of \$13,440.00;
- the return of the Tenant’s security deposit in the amount of \$500.00; and
- recovery of the \$100.00 Application filing fee.

The Landlord, the Tenant, and a witness for the Tenant, E.B., appeared at the first teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their

written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

We adjourned the first hearing, as we were unable to review all of the Parties' evidence, until we reconvened for a second hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 13, 2015, in the one-bedroom, one-bathroom duplex. The Parties agreed they signed new leases in subsequent years. They agreed that the latest lease ran from August 1, 2018, to July 31, 2020, with a monthly rent of \$1,120.00, due on the first day of each month.

The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and a pet damage deposit of \$500.00. They agreed that the tenancy ended when the Tenant vacated the rental unit on April 26, 2020. The Parties agreed that they did a move-in inspection of the rental unit at the beginning of the tenancy, as well as a move-out inspection on April 26, 2020, the last day of the tenancy. They agreed that the Landlord gave the Tenant a copy of the condition inspection report ("CIR").

LANDLORD'S CLAIMS

The Landlord has submitted different monetary order worksheets ("MOW"), the most

recent of which is set out below. The Landlord said that this MOW contains final costs and not just estimates that she had previously provided.

#1 MONETARY CLAIM FOR DAMAGES → \$6,483.60

	Receipt/Estimate From	For	Amount
1	[International hardware chain]	Window blind	\$136.73
2	[Local flooring company]	Refinish bamboo flooring [est.]	\$2,215.50
3	[International hardware chain]	Paint for kitchen & porch	\$127.62
4	[Local painting company]	Painter/labour	\$472.50
5	[Local carpet retailer]	Vinyl sheet for porch	\$585.47
6	[International hardware chain]	Exterior door – supply & install	\$894.12
7	[Landlord]	Custom Cabinet	\$1,050.00
8	[Landlord]	Yard Clean-up	\$500.00
9	Cleaners; 13 hrs x \$30.00/hr	Clean window, walls interior	\$400.00
10	[local municipality]	Water bill	\$101.66
		Total monetary order claim	\$6,483.60

1. Window Blind from [Int'l Hardware chain] → \$136.73

The Landlord said that the blinds in the rental unit were “about three years old” at the start of the tenancy. She said:

It was broken. It wouldn't work and they were all very dirty. They had mould on the bottom, because he had left them in the down position, but I didn't claim for this. The one in the centre was definitely broken.

The Tenant said:

The string that raises and lowers it wore out, that's because it didn't go up and down. Puncture marks from dog.... It was not new when I moved in. It's not equitable that I should replace it.

The move-in CIR states that the window coverings in the living room had no holes and were clean. The move-out CIR says: "3 holes in centre blind totally broken". The Landlord did not direct me to a photograph of the broken blind; however, she submitted a receipt from an international hardware chain that sets out the purchase of five blinds and a deadbolt. The blinds are individually listed as \$121.00 each, plus 12% tax is \$135.52 (the Landlord calculated the PST and GST at 13%, rather than 12%).

2. [Local] Hardwood Flooring → \$2,215.50

The Landlord explained the basis of this claim, as follows:

There were huge gouges in the living room floor. It looked like he had dragged a couch across it. There are photos from before and after. There was normal wear and tear at the start, and water damage from a leak in the wall at the start of tenancy.

I couldn't have it all replaced, so I had it all refinished. All the marks are gone now. Look for photos at pages 8 – 14 for the floor in Part 1. A pdf shows better on the video. He submitted some photos prior to the tenancy showing the pre-existing state of the floor. There were no big gouges in the living room, a little by the door, a little by the watermark in the closet, and the bathroom.

The Landlord said that the flooring was "10 or 12 years old at the start of the tenancy."

The Landlord submitted receipts from an international hardware chain that she said related to the refinishing of the floor.

The Tenant said:

Her evidence in [the photograph labelled] '2B after': the couch in the photo is over top of where the damage is supposed to have existed, and the video clearly illustrates the mat at the front door. There was extensive wear and tear on the floor when I moved in five years ago. They're not hardwood, because they wore. I think we have a different of opinion of what normal wear and tear is.

The CIR on page two lists scratches, as well. In the video, at a certain point she says the closet was at about eight minutes in; at 13½ minutes she says this is damage.

Unfortunately, the Landlord's video would not open for me, so I did not have the benefit of this evidence, but rather, I had the Parties' respective descriptions of it throughout the teleconference hearing.

The Tenant submitted a photograph of a portion of flooring that is labelled "floor_move_in". This photograph shows an aging floor with a lot of dirt or scuff marks across it, but I cannot see any scratches. However, it is not clear if this is the same portion of floor as the other photographs with scratch marks from before and after the tenancy.

The Landlord said:

The couch was not covering the area. If you look at the placement of the lines in the floor, the couch was not covering... it was all buffed out. The repair guy said only the closet damage remained. The guy who re-did the floor said that the water damage was the only thing that he couldn't get out. It's in the closet.

The Tenant said:

If you look at 2B, you can see the end of the couch relative to the window and relative to the cedar; you can see the location of the couch by the window.

The Landlord said:

It's a curved couch; it doesn't go straight across. It might look like it extends over . . . it doesn't hide the damage.

The Landlord submitted a CIR with move-in comments and markings on one side of each page, and those of the move-out inspection on the other side. The move-in portion states that the entry flooring has some scratches and dirt. The move-out portion states: "HUGE Gouge". However, the photographic evidence and the Parties' testimony in the hearing focused on the damage to the flooring in the living room, not the entry way.

3. Paint for Kitchen and Porch → \$127.62

The Landlord said that these parts of the rental unit needed to be painted. She said the kitchen was newly painted at the start of the tenancy, as the kitchen had been renovated just prior to the tenancy starting. The CIR indicates that the "walls and trim" in

the kitchen was in good condition at the start of the tenancy and that there was a “gouge in trim” at the end of the tenancy.

The Landlord said:

There was damage all along one wall, and so you had to do repainting the whole kitchen. The porch needed to be repainted, due to damage from the dog. I had given him an option to do that at our walk-out inspection, but he said he didn't want to do that.

The Tenant said:

The kitchen needed painting when I moved in and the same with the front porch. You can see in the video that there's like a stripe around posts from previous decorations, sticky tape covered in fuzz that circles the complete post, and now she's expecting that I have to pay for repainting when I moved in. And 5 years of living and normal wear and tear. I didn't hang one picture in the entire apartment.

The CIR indicates that the porch or patio was dirty at the start of the tenancy, and there are no notations about it at the end of the tenancy.

4. Painter Labour → \$472.50

The Landlord said that the residential property was built in 1942, but that the kitchen was renovated prior to the tenancy in 2015. She said that this claim is for the kitchen and porch quotes, and is based on payments set out in emails she had with the painter. The Landlord said she chose this painter, because:

It was hard to get anybody with Covid [happening]; I just found him online and it took him awhile. I'm moving in, so I needed it painted. I found someone who was willing to come and paint it. He said: 'I'll paint your kitchen and porch if you buy the paint.'

The Tenant said:

The paint was not new, but it needed to be filled, I had painted the bathroom, but there wasn't time to repaint it. The holes were existing, and I had filled them in.

The paint was coming off the wall, because it had not adhered properly. Again, I feel like she's expecting me to pay for a whole paint job

[H.G.] was the previous tenant. She was at the [E.] Inn and she had lived there just before me, so I'm not sure where [the Landlord] is coming from with no one there before me.

5. Vinyl Sheet for Porch – \$585.47

The Landlord said:

[The Tenant] had a mat on the [porch] floor when we did a walk-through. I lifted up this mat and it's filthy and full of dirt. I left it down during renovations, but at the end of it, I lifted it up because of the damage on the linoleum, and kitchen linoleum, but I can't attribute that to him.... But the one under the mat was definitely the Tenant's damage, and he hid it under a dirty mat. I have a quote there to have it replaced.

When asked if she tried to have that section replaced, the Landlord said:

It's right in the middle of the walk way. The porch isn't that large. It's in a traffic area. It won't be a sustainable patch. And you have to have the material to patch it with. The whole thing needs to be replaced.

I obtained one quote. I ran out of money to get it replaced; I have to get through this [arbitration] first. I have incurred damage and it's going to cost about \$500.00 to repair. This shows the cost of the material and the cost of ripping it up and replacing it.

The Landlord submitted an estimate of what she said was the cost to replace the vinyl porch covering. This included the following costs:

Date: Sept 1, 2020

Proposal and Pricing for unknown

Supply and Install

Tarkett Easy Living Rich Onyx to 6x6.75 area.

Installer to prep as needed and install new sheet vinyl only.

Adhesive	\$ 25.00	
Vinyl	\$286.80	
PST	\$ 21.83	
GST	\$ 15.59	
Labour	\$225.00	
GST	<u>\$ 11.25</u>	
TOTAL	<u>\$585.47</u>	Materials, labour & tax

The Tenant said that it was an oversight not to remove the mat. He said: "I should have swept up the dirt underneath it."

The Landlord said she did not know how old the porch, or the vinyl covering was.

6. Supply & Install Door → \$894.12

The Landlord said:

The steel door was ripped open at the bottom and it was scratched and gouged at the door frame – see pictures in the video. [The Tenant] said the building had settled. He had never advised me that he had an issue with the back door; if he had advised me, I would have done the minor repairs. I don't believe his claim. I suspect that it was his dog. It was a brand-new door – part of the \$20,000.00+ renovation. It's a steel and glass door. I take good care of my property.

The Tenant said:

Yes, at about 20 minutes in the video – it clearly does not fit when she closes the door. At 27 minutes, the person taking the video tells her – he thinks the fit of the door is not my responsibility. She likes to keep her building up? She removes eaves trough and fascia board, but never replaces the down spout. As far as the door goes, I don't even know how to explain it. The bottom part of the door, the sheet metal has come unlaminated; it snags on the side of the door. The dog scratched the metal casing, not the door, which could be repaired with filling and painting. The dog scratched on the wooden frame. The steel door could not be damaged by the dog.

I would concede some of the pet deposit for what the pet did.

The Landlord submitted an order form and a payment receipt for the purchase of an "EXT DOOR SYSTEMS" "Single door unit", which was billed at \$494.12.

Further, in the "Exterior" portion of the CIR, there are no notes about the door having been damaged, other than to refer to a door as having been "dirty" at the start of the tenancy. In addition, in the section of the CIR listing "end of tenancy" "for which the tenant is responsible", there is a note saying "back porch door" without any explanation.

7. Custom Cabinet → \$1,050.00

The Landlord said:

In the porch, I had put a cabinet with beautiful round ends, doors on both sides; when we did the walk through it was gone. What happened to it? He had not advised me that he had arbitrarily removed it, and stored it outside, and damaged it when he did. See the video. When taking it out, I realized that the whole thing was broken. It had warped. It was garbage. In the video I asked him why didn't you contact me? It wasn't his property. If he wanted that out, I am reasonable, I could have stored it.

8. Yard Clean up → \$500.00

The Landlord said:

There was severe deferred maintenance – the lease says the tenants are to maintain the yard. It was not maintained. A lot of deferred maintenance and I'm still doing it. The amount of hours are really hard to establish, because I'm also subdividing the yard. It's at least \$1,000.00 I spent in getting this yard back . . . I split the \$1,000.00 in half, charged each tenant \$500.00.

The Landlord explained "deferred maintenance" to mean:

...weeding, cutting the grass, dog poop - why was it piled in the back corner? Metal pieces. Garbage and pails, dead lamps, all the junk he left in the yard. He had done some trimming in trees - trimmed them once, but didn't take the dead trimmings up. He did not maintain the yard.

The Tenant said:

Some of the junk was there from the previous tenant - there the whole time. There was one steel bar that I will accept responsibility. All of this took place from the end of March to April. I cut the grass on April 7. The other tenant was thanking me for cutting the grass. I looked after the whole property for the whole time. There have been at least four other tenants who never did anything. I did a number of trips to the yard waste facility at end of the street. The trees weren't blooming. I was isolating in [town]. The apple trees are at least 40 years old. I took away a dead lilac. Her idea of how the yard is to be kept is.. . .

In the winter time, the back of the yard is completely flooded – six inches deep. The dog manure was saved to spread it around for compost. I kept up that yard. Never once did she mention the yard not being suitable.

When asked for a receipt for the amount claimed by the Landlord for this work, she said:

This my labour that I spent. I'm under-charging him. I have receipts for the landfill. The trees are still diseased. There are pictures of the yard page 28 to 33. We both keep mentioning the video to see the actual condition of the property.

In answer to how many hours she had worked on this, the Landlord said:

Eight to ten hours a day for months. I still have the whole side of the yard weeded. I'm charging \$30.00 per hour. Am I a professional gardener? I feel like it. No, but they charge \$20.00 to \$40.00, so I'm in the middle there.

There are no notes or markings on the CIR about the condition of the yard at the end of the tenancy.

9. Cleaning → \$400.00

When asked about the source of the amount claimed, the Landlord said:

Basically, that's to clean the inside. It was not cleaned. I did it myself. As detailed in the video, the windows sills, the dog hair on the walls, the toilet not cleaned. The house was not clean. The mat in the front door was not moved for five years, which gives you a good idea. The house was not clean. It was not in the condition when he moved in.

The Landlord said that she did not have a receipt, because she did the cleaning herself.

She said:

I charged \$25.00 per hour and \$50.00 for the stove and \$50.00 for the fridge. A professional cleaner's estimate was \$400.00. During Covid you couldn't get anyone to come out.

Some professional cleaners charge \$20.00 per hour, some charge \$40.00, so I went in between.

I had a tenant that left a unit dirty. What do you charge for a 650 square foot house? The walls had to be washed, the kitchen floor was dirty. I would have had to wash the floors, if they weren't re-sanded.

The Tenant said:

My witness was going to testify that she and her daughter were cleaners. The three of us cleaned the apartment, and prior to April 26. But there's construction at the end of the street; they're putting in a large high rise. The excavation with dump trucks down the street all week. We may have missed a couple spots, yeah, maybe a dog hair chunk left. We cleaned it before we left, with a mop and bucket. The stainless steel in the kitchen is shining.

The Landlord said:

If you look at the video – stainless steel backsplash – grease marks from the stove. It's not shiny, it's full of grease marks.

The items in the move-out CIR which were identified as "DT" for "dirty" were:

- ▶ Kitchen floor,
- ▶ Refrigerator,
- ▶ Main bathroom cabinets and mirror,
- ▶ Toilet,
- ▶ Bathroom Door,
- ▶ Bathroom Lighting fixtures/Ceiling fan/Bulbs,
- ▶ Master bedroom walls and trim,
- ▶ Master bedroom Door, and
- ▶ Master bedroom Lighting fixtures/Ceiling fan/Bulbs

10. Water Bill → \$101.66

The Landlord said that the Tenant had not paid the water bill, as the Landlord checked it when he moved out. She said that it will go on her taxes, if it is not paid.

The Tenant said:

We had a meter reading on April 30, with the billing period is from January 16. The balance for April 30 was paid on May 22 from my chequing account; [number] is the confirmation number. The due date was June 29; the billing date was May 15. I paid it as soon as I got it.

The Landlord submitted a sheet of paper labelled "water_bill_amount_from_city". This sheet of paper contained the following: "Water bill 101.60". The Landlord did not direct my attention to any other evidence of an outstanding amount for the residential property water bill.

#2 MONETARY ORDER FOR UNPAID RENT → \$1,120.00

The Landlord said:

We had signed a document that the tenancy is null and void; anyway, he had had that document for over 24 hours. It says he still has to pay rent. He signs it and he withholds the rent. He didn't pay rent, didn't clean, a few days before the end of the tenancy. He was given the opportunity to return the unit to its usual condition.

He was supposed to pay rent for the last month he was there. We had gone back and forth - just sign off and we'll be done. He had time to look it over and leave it. I thought it was Covid; He didn't figure he had to pay the rent.

The Tenant said:

I paid my rent for March 2020 at the end of February. I never missed the rent. [The Landlord] sent me a handwritten note – my evidence #1 – to advise you I'm not renewing your lease at the end of August. I'm moving back in. If you find a place, give me a 30-day notice to vacate.

This note from the Landlord to the Tenant states:

March 1 2002

Dear: [Tenant]

Re: [rental unit address]

This is a notice to advise you that I am not re-newing your lease at the end of August. I am moving back in & my current house is for sale. If you find a place, I will need a 30 day notice to vacate. Email to follow. [Landlord]

I reasonably infer that the Landlord meant to write "2020" instead of "2002".

The Tenant submitted a copy of a text exchange between the Parties, which says:

2020/03/17

Hello [Tenant]. When can you and I get together and do paperwork for the end of the tenancy?

2020/03/18

Hi [Landlord]. Is it possible for you to leave the notice in the mail box? I can be out by the end of May for sure and it's probable I can be out April 30.

[Landlord]: I would like to sign a mutual release with you. Can I date it for April 30?

Yes.

Okay thanks. I will bring 2 copies and if you could sign them and leave one copy in the mail box I will come tomorrow and pick it up...does that work?

I'm not going to be there today. I'm staying in [another town] at the moment and work has told us to stay put because of the virus stuff.

Can I bring it to you? I'm not working and I have time.

Please leave it in the mail box. There is no need to pressure me. I'll be out. I'll need my deposit back. You can keep the pet deposit.

No pressure I just want to get it done. Deposits are dealt with at the Walk thru and I am fair. I have to let my daughter know for sure and that's why I wanted to

get it done. It's more than just my schedule. We will probably be doing some work in the back yard soon for the storage required for us. Just wanted to let you know.

Hi, I just dropped off the paperwork. Please date and sign both copies. Please leave me a copy in the mail box... Regards [Landlord]

2020/03/19

Paperwork is signed and back in the mailbox.

Thanks.

2020/04/25

What time do you want to do the walk through, this is done with both of us. I am available tomorrow, please advise.

The Landlord submitted a copy of a Mutual Agreement to End a Tenancy, which was dated March 19, 2020 ("Mutual Agreement"), has the rental unit address, sets out the effective vacancy date of April 30, 2020 at 11:59 a.m., and is signed by both Parties.

At the top of the form it states:

This form is not a notice to end tenancy. Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served with a notice to end tenancy. If you have questions about your rights and responsibilities under the *Residential Tenancy Act* . . . contact the Residential Tenancy Branch by using the contact information at the bottom of this form.

The Tenant said that he spoke with the Landlord on March 16, and he submitted a log of his received calls, which included one from the Landlord at 5:38 p.m. The Tenant said the following about this call:

Before she came over, we had a March 16 phone call about the notice she had given me. She said every year we had renewed the lease, and her initial letter was that she was not renewing the lease. On the 16th she was under the

understanding that she had to give two months' notice for landlord's use of property. So that was the phone call that I take to the RTB and her saying, 'I need to give you two months' notice'. That's when that discussion took place at the beginning of the Covid lockdown.

I moved to my girlfriend's place in [another town]. [The Landlord] continues to text me and harass me. . . I said can you leave the notice in the mail box. It's the two-month notice, I was under the impression from the phone call that I was entitled to free rent. I did everything to vacate the property, while I was not staying there.

Then we had a conversation with her saying 'I don't have to give you two months notice. Can I give you a mutual release. . .' Okay, normally you give notice.

The Landlord said:

We had been under negotiations that is true, but we hadn't settled on anything, because of Covid. I never gave him any indication that he would not have to pay rent. He was there for another month; he didn't live there, and he didn't pay rent.

He had to pay rent if he was going to stay there. I'm flexible and want things to work.

The Landlord confirmed in the hearing that it was her plan to move in. She said: "I've moved in, yes. The house needs work. I was trying to be flexible with him, but he didn't pay his rent."

The Tenant confirmed that he paid rent in March, but not April 2020.

TENANT'S CLAIMS

#1 Monetary Order for damage or compensation → \$13,440.00

In his application, the Tenant said:

Landlord fraudulently evicted me. Landlord said she had fallen on hard times and needed to sell her residence and move in to [rental unit address]. Landlord pressured me to sign mutual release documents when she should have given me 2 months notice for landlord's use of property. I vacated unit April 26, 2020. Unit

was advertised on [local online advertising site] June 8, 2020 for rent @ 2500 per month. My rent was 1120 per month. $1120 \times 12 = 13440$

In the hearing, the Tenant acknowledged this and said:

That's correct. That's the reasoning. She's not using the property for herself.

Pick up the timeline after the inspection. On May 15, I get a notice that she's suing me for \$7,000.00 for renos to her house. I am completely shocked by this. I'm digesting this information and we returned to work in the week of June 20-25th or around there. So, then I'm speaking with a co-worker; I said I had moved from [another location]. I work at the military base, so people see my car. I had moved in with my girlfriend.

[The co-worker] said: 'I see your place is up for rent.' I go on [the used advertising site] and it is up for rent – see items 11 and 12. Item 11 shows the photo of the kitchen. It's the same photo from the advertisement when I originally saw the ad. Item 12 shows it posted on June 7, so then you can see in item 13 is my kitchen when I moved back in 2015. It's the same kitchen. So I'm kind of curious.

So on May 15 when I got her initial notice suing me for \$7,000.00, that's when I called the RTB and found out that there was this section of the Act about the renoviction business, and because I work nearby, I continued to drive past the apartment.

I was talking to the girl who lived in the apartment next door, and at the beginning of May, she also got a notice about mutual agreement to end tenancy is what she got. Around that time, I ran into her in a store. I found out that all this reno work taking place was because of the leaking plumbing under the bathtub on my side. [The Landlord] had never repaired the silicone from the initial time I moved in.

So, in June the advertisement shows up. I found out about the renoviction section of the Act. I passed the house periodically. I have pictures in my evidence #21 - February 19 – no fences, then look at item 21; you can see there are fences going up. It really looked to me that she started all of this. I was happily living there, but I agreed to move out. She lays all this damage insinuation on me - insinuates I've done something malicious. We're talking about a light in the

kitchen – she tells me to my face in her video that she installed it. I got a gift card for it.

All those people on the other side, four other tenants. [The Landlord] tried the same thing with her. It just seems to me, first I'm happy to move out, I'm falling on hard times, and next time she's advertising [the rental unit] at \$2,500.00 for my unit that I'm paying \$1,120.00 for. And then I sue her, and the advertisement is gone, and she is living there. I can't believe how over the top [the Landlord] has been. I paid my rent every month on time. It's insulting; it's ridiculous how she's behaving.

The photographs to which the Tenant referred show a front lawn without any fences, and a lot of snow, which was the case in February 2019. A second photograph shows the front of the residential property with a new fence. The Landlord did not deny that these are photographs of the residential property.

A copy of an online advertisement shows a house rental posted June 7, 2020, although there is no address on this advertisement. A second advertisement has a photo of the kitchen, which looks like the same kitchen as the Tenant's photo labelled "my kitchen 2015". This advertisement also states that it is for a one-bedroom house (it says "side by side duplex"), which is available as of July 1, and which the Landlord did not deny was the rental unit.

The Landlord said:

I have no control over people posting things online. That picture was someone who lived here. The Tenant was the first to move in after the renovation. I had no idea what happened. I think it is pretty funny to think that this property was listed for rent - I live here - I have always lived here. I need a place for my daughter to live. I rented out the other side, until my daughter gets back, but that doesn't apply to this. It's Covid.

I do have the other place as a rental, until my daughter gets back. I lived here, I sent you information like my gas bill, my water bill. I always intended to live here. I knew in the Spring when Covid was trying to . . . he turns around and says I owe him \$13,000.00. Prove that I'm not here.

I acknowledge there were advertisements, but I don't know why someone would post it. I didn't know anything about it until I got his things. I knew I was giving

him under market rent.

The Landlord submitted envelopes addressed to her with a national bank logo; however, there is no date on the envelopes. The Landlord also had a retail flyer in the photo that was dated September 11 – 17th, 2020.

#2 RETURN OF THE SECURITY AND PET DAMAGE DEPOSITS → \$500.00

In his application, the Tenant claimed \$400.00 for this matter; however, in the hearing he said he would pay the Landlord \$400.00 for the pet damage and \$100.00 for cleaning. Therefore, I find that the Tenant seeks only \$500.00 of his \$500.00 security deposit and his \$500.00 pet damage deposit. He said:

Why just the \$400.00? I don't dispute that my dog scratched the door frame at the back and damaged it, and so I'm willing to give up my pet security deposit, because that's what happened with the pet. And okay, if you need to spend \$100.00 for someone to clean, I'm willing to give you that too.

The Landlord said:

Yes, his dog did some damage, but there was more damage in this particular residence. Wilful damage on the door that had to be replaced. The unauthorized renovation of the kitchen and the porch. He mentioned that he was intending to paint the kitchen. I don't think he is owed any money back. I think he owes me.

The Tenant said:

I don't think that the condition – the before and after condition - is significantly different for the whole security deposit. The condition of the property was not pristine in the slightest. Her insinuating that what I've done is wilful damage, when I did repairs on the property....

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before they testified, I let the Parties know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the

burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case of cross-applications, each Party, as applicant, must prove:

1. That the other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

LANDLORD'S CLAIMS

#1 MONETARY ORDER FOR DAMAGES → \$6,483.60

1. Window blind from [Int'l Hardware chain] → ~~\$436.73~~ \$135.52

First, I note that the Landlord overcharged the Tenant by 1% tax for this item, having calculated the taxes at 13%, rather than 12%. As such, I start this analysis deducting 1% from the taxes charged for this item.

Policy Guideline #40 ("PG #40"), "Useful Life of Building Elements" is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of venetian blinds is 10 years. The evidence before me is that the blinds were new three years prior to the five-year tenancy; therefore, they were

approximately eight years old at the end of the tenancy and had two years or 20% of their useful life left. The CIR indicates that the blinds were in good condition at the start of the tenancy, but the Landlord said in the hearing that the blind "...wouldn't work and they were all very dirty".

The Tenant acknowledges a role in the condition of the blind, given it was punctured by his dog. Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

I find that the Landlord has provided sufficient evidence to support this claim; however, as the blinds only had two years of useful life left, I find they were depreciated by 80% at the end of the tenancy. Accordingly, I award the Landlord with recovery of 20% of the cost of the new blind, as that is the amount of useful life that was left in the blind at the end of the tenancy. I, therefore, award the Landlord with recovery of **\$27.10** from the Tenant.

2. Hardwood Flooring → \$2,215.50

The Landlord submitted photographs of the flooring before and after the tenancy. The "before" photographs clearly have long scratches, and dirty marks. The "after" photographs show similar scratches. When I consider the evidence before me overall, I find that the Landlord has provided insufficient evidence to establish that the Tenant added damage to the rental unit flooring that was beyond reasonable wear and tear. As a result, I dismiss the Landlord's claim in this regard.

3. Paint for Kitchen and Porch → \$127.62

In PG #40, the useful life of interior paint is four years. The evidence before me is that the kitchen was renovated five years prior to the end of the tenancy; therefore, it was past the time to be repainted at the end of the tenancy. As a result, I find that any damage the Tenant did to the paint in the kitchen was irrelevant, given the useful life of interior paint. As a result, I dismiss this claim without leave to reapply.

Further, given that there are no notations about the patio on the CIR, other than that it was dirty at the start of the tenancy. I also dismiss the Landlord's claim for compensation based on the condition of the porch at the end of the tenancy.

4. Painting Labour → \$472.50

The Landlord said that the residential property was built in 1942, but that the kitchen was renovated in 2015, prior to the tenancy starting.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the kitchen paint was new in 2015, so it was approximately five years old at the end of the tenancy and had no years or 0% of its useful life left. The Landlord indicated that while the kitchen was renovated in 2015, the paint on the porch was older.

As a result of the lack of any useful life left in the kitchen paint, I find that the Landlord would have needed to repaint the kitchen and the porch at this point, anyway; therefore, I find that the Tenant was not responsible for this aspect of the Landlord's expenses. Accordingly, I dismiss this claim without leave to reapply.

5. Vinyl Sheet for Porch – \$585.47

In PG #40, the useful life of vinyl flooring is ten years. The evidence before me is that the porch and its vinyl flooring were of uncertain age; therefore, it is impossible to determine if it had any useful life left in it. However, the Landlord said that the duplex was built in 1942 and that the kitchen was renovated prior to the tenancy. The Landlord submitted photographs of the vinyl flooring in the kitchen and on the porch and given the style and colour, I find it more likely than not that this vinyl was not new five years ago. Regardless, it is the Landlord's obligation to provide sufficient evidence to support her claim in this regard, and she was unable to provide even an approximate date as to when the vinyl would have been new on the porch. As a result, I find that the Landlord did not provide sufficient evidence to support her claim in this regard; therefore, I dismiss this claim without leave to reapply.

6. Supply/Install Door → \$894.12

It is unfortunate that the Landlord's video could not be played on my computer, so that I could see the door damage. I have not come across any other still photographs from the Landlord (or Tenant) with a picture of the door in question. However, I have the Parties' descriptions of what they saw in this video to assist my considerations.

For instance, the Landlord describes the steel door as having been "ripped open at the bottom" and she mentioned there being scratches and "gouges" in the door frame. The Tenant agreed that "...it clearly does not fit when she closes the door". The Tenant also

acknowledged that his dog “scratched the wooden frame”, although he noted that “the steel door could not be damaged by the dog.”

I find that the consistent evidence before me is that the Tenant’s dog damaged the wooden door frame, which may have contributed to the door not fitting into the frame at the end of the tenancy. However, I find it difficult to accept that a dog could destroy a steel door, such that it would need replacing. Further, there are no notes in the move-out CIR about the door having been damaged. There is only a note saying “back porch door” in a section about damaged items, but without any explanation.

I find that the Landlord has established that the Tenant is responsible for damage to the door frame in the rental unit, given the acknowledged damage done by his dog. I find that the Tenant was in breach of sections 32 and 37 in not having repaired this damage at the end of the tenancy.

The third step of the Test is establishing the value of the damage. I find that the Landlord has provided evidence of the value of a new steel door; however, I find that the main issue was the damage that the Tenant’s dog did to the door frame. The Landlord did not direct my attention to an invoice or receipt for having the frame repaired and the new door installed. However, as I have found the Parties to agree about this matter, I find it reasonable to award the Landlord with nominal damages, pursuant to Policy Guideline #16. I award the Landlord with 25% of the amount claimed for a total of **\$223.53**.

7. Custom Cabinet → \$1,050.00

While the Landlord implies that the cabinet was in good shape at the start of the tenancy, there are no photographs before me of what it looked like at the start, how old it was or where the Landlord obtained this claimed amount to repair or replace it. I find that the Landlord has not provided sufficient evidence to establish that the Tenant is responsible for the alleged damage or the basis for the amount claimed in this regard. I find on a balance of probabilities that the Landlord has not provided sufficient evidence to meet the four steps of the Test for this matter. Therefore, I dismiss this claim without leave to reapply.

8. Yard Clean up ... → \$500.00

RTB Policy Guideline #1 (“PG #1”) is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, repairs of residential property,

and obligations with respect to services and facilities. In terms of yard and property maintenance, PG #1 states:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

GARBAGE REMOVAL AND PET WASTE

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

[emphasis added]

The Tenant said that he mowed the lawn, moved yard cuttings and a dead lilac bush to an appropriate disposal site. He acknowledged that he left pet feces in the yard, as the Landlord claimed. However, as PG #1 states, landlords are responsible for most yard maintenance in a multi-unit residential complex, of which this duplex is one.

I find from the testimony and other evidence before me on this matter that the Tenant left metal item(s) in the yard to be cleaned up, as well as the pet feces. I find that the Landlord has met the first two steps of the Test; however, I find that the Landlord has chosen a random amount for the cost that she incurred in cleaning up the yard at the

end of the tenancy. As she said she charged \$30.00 per hour, which I find to be a reasonable amount, this would have taken over 16 hours of yard work for the Tenant's portion of the \$1,000.00 the Landlord said she has charged the tenants.

"PG #16" states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

I find that the Landlord has not provided sufficient evidence to establish the value of the yard work she has done, beyond stating that the Tenant left the yard in a state of disrepair. I find that in this set of circumstances and pursuant to PG #16, the Landlord is eligible for a nominal award of **\$60.00** for extra yard work she had to do, given that which the Tenant acknowledged having left undone. This equates to two hours of yard work, which I find to be reasonable in the circumstances.

9. Cleaning → \$400.00

The Landlord claimed \$25.00 per hour to clean the one-bedroom, one-bathroom rental unit, which means she cleaned for 16 hours. However, she also said that she charged an additional \$50.00 to clean each of the refrigerator and the oven, that leaves \$300.00 to clean the rest of the rental unit. This would mean it took 12 hours to clean the rest of the rental unit.

Based on the testimony and evidentiary submissions, which I find to be, internally consistent from each Party, generally, I find both Parties to be credible overall. As such, I find that the Tenant did some cleaning prior to vacating the rental unit, as he claimed. I also find that the rental unit was not necessarily clean to the Landlord's standards at the end of the tenancy.

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

PG #1 helps interpret sections 32 and 37 of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her

guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

I find it unreasonable that the Landlord should spend approximately 12 to 16 hours cleaning a rental unit of this size, which had already been cleaned by the Tenant. I find that charging \$25.00 per hour is reasonable in the circumstances; however, I find it more reasonable to have spent approximately an hour in each of the kitchen, bathroom, bedroom, living room, and the hall and closets as one unit. This amounts to five hours, plus I add an extra hour for miscellaneous items like the oven, which may have taken extra time in the kitchen. I, therefore, award the Landlord with six hours of cleaning at \$25.00 per hour for a total award of **\$150.00**.

10. Water Bill → \$101.66

The Landlord said she has not checked to see if this bill has been paid, since she checked at the end of April 2020. The Tenant said he paid it as soon as he received the bill, which he said was dated May 15, 2020.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim on a balance of probabilities.

I find I have a she said/he said situation with the evidence before me for this claim. Neither Party uploaded a copy of a water bill with an outstanding amount owing or one with the water bill being up to date. As the burden of proof is on the Landlord in this matter, I find that she has not provided sufficient evidence to meet that burden on a balance of probabilities. As such, I dismiss this claim without leave to reapply.

#2 MONETARY ORDER FOR UNPAID RENT → \$1,120.00

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

The undisputed evidence before me is that the Landlord gave the Tenant a handwritten letter dated March 1, 2020, in which she said she was ending the tenancy, because she needed to move into the rental unit. The Landlord said she was selling the house in which she lived at that point.

On March 19, 2020, the Parties signed the Mutual Agreement to End the Tenancy; however, I find that the Landlord had already signalled the reason for the end of the tenancy with her eviction notice dated March 1, 2020; she said she has, in fact, moved into the residential property. Given that the Parties had already agreed that the tenancy would end, so that the Landlord could move in, I find that the Mutual Agreement was irrelevant. I find that the tenancy ended as a result of the Landlord's notice dated March 1, 2020, which is pursuant to section 49 of the Act.

Section 51 of the Act sets out a tenant's entitlement, if the tenant receives a notice to end the tenancy pursuant to section 49 of the Act. Section 51 states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Accordingly, I find that the Tenant was entitled to have April 2020 free from rent, pursuant to section 51, because the Landlord gave him a Two Month Notice to End the Tenancy for Landlord's Use. I, therefore, dismiss the Landlord's claim in this regard without leave to reapply.

TENANT'S CLAIMS

#1 MONETARY ORDER FOR DAMAGE OR COMPENSATION → \$13,440.00

The Tenant said that this claim is compensation of 12 months' rent at \$1,120.00 per month, pursuant to section 51 of the Act. The Tenant said he applies for this relief, because he was evicted from the property for the Landlord to use it for herself or her family, pursuant to section 49 of the Act. However, the Tenant said that the Landlord did not use the property as she said she intended to in her notice to end the tenancy.

The Landlord's evidence that she is living in the rental unit includes undated bank envelopes addressed to her at the rental unit, with a dated advertising flyer behind the envelopes. I find that it is more likely than not that the envelopes could have been pulled out of the Landlord's banking file and used for this purpose. I find that the Landlord's evidence of the two envelopes and the flyer does not prove that she moved into the rental unit.

Further, the Landlord is claiming she was not the one who posted the advertisement for her rental unit online after the Tenant moved out. She implies that the Tenant did this. It is possible that the Tenant could have placed the advertisement, himself; however, he would have to put his own telephone number for the advertisement, which would lead to a number of unwanted telephone enquiries about the place, unless he posted a fake telephone number.

The issue for me is in terms of who posted the advertisement. I find it more likely than not that *if* the Tenant had posted the advertisement that it would have been more of a nuisance than a benefit. I find it more likely that the Landlord posted the advertisement and that someone else is living in the rental unit now, further to the Landlord having done some renovations.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In the Landlord's testimony about the painter's labour, she said "I'm moving in, so I need it painted". She did not speak in the past tense, such as: "I moved in and I wanted it painted first." Further, I find the Landlord's evidence of the envelopes, rather than a bill of any kind - such as an unpaid water bill with her name on it - to be insufficient evidence of her residence.

When I consider the evidence before me overall on this matter, I find on a balance of probabilities that the Tenant provided sufficient evidence to support his claim in this regard. I, therefore, award the Tenant with \$13,440.00 from the Landlord, pursuant to sections 51 and 67 of the Act.

#2 RETURN OF THE SECURITY AND PET DAMAGE DEPOSITS → \$400.00

I find that the undisputed evidence before me is that Tenant provided his forwarding address to the Landlord on April 26, 2020, and that the tenancy ended on April 26, 2020. Section 38(1) of the Act states the following about the connection of these two dates to the security and pet damage deposits.

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

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

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

The Landlord was required to return the \$500.00 security deposit and the \$500.00 pet damage deposit within fifteen days after April 26, 2020, namely by May 11, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount of the deposits. Further, she applied to the RTB for dispute resolution, claiming against the deposits on May 14, 2020. Therefore, I find the Landlord failed to comply with her obligations under section 38(1).

Since the Landlord has failed to comply with the requirements of section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the deposits. There is no interest payable on the deposits. I, therefore, award the Tenant with recovery of \$2,000.00 for the Landlord's failure to comply with section 38 of the Act. The Tenant had said that he authorized the Landlord to retain \$400.00 of the pet damage deposit for damage to the door frame, and \$100.00 for cleaning. Accordingly, I reduce this award by \$500.00 and award the Tenant with **\$1,500.00** from the Landlord in this regard.

Summary and Set Off

	Receipt/Estimate From	For	Amount
1	[International hardware chain]	Window blind	\$27.10
2	[Local flooring company]	Refinish bamboo flooring [est.]	\$0.00
3	Misc. paint/painting receipts	Paint for kitchen & porch	\$0.00
4	Painters	Painter/labour	\$0.00
5	[Local carpet retailer]	Vinyl sheet for porch	\$0.00
6	[International hardware chain]	Exterior door – supply & install	\$223.53
7	[Landlord]	Custom cabinet	\$0.00
8	[Landlord]	Yard clean up	\$100.00
9	Cleaners; 13 hrs x \$30.00/hr	Clean window, walls interior	\$150.00
10	[local municipality]	Water bill	\$0.00
	Tenant	Rent payable for April 2020	\$0.00
		Landlord's Sub-total	\$500.63
	Tenant's section 51 claim	12 x \$1,120.00	\$13,440.00
	Tenant's claim for deposits	Pursuant to section 38(6)	\$1,500.00
		Tenant's Sub-total	\$14,940.00
		Tenant's Award	\$14,439.37

As both Parties have been partially successful in their claims, I decline to award either with recovery of the \$100.00 Application filing fee.

Pursuant to section 67 of the Act, I award the Tenant with a Monetary Order from the Landlord of **\$14,439.37**.

Conclusion

The Landlord was successful in her Application in the amount of only \$500.63, as she failed to provide sufficient evidence to support the remainder of her claims.

The Tenant is awarded \$13,440.00 pursuant to sections 51 and 67 of the Act, as compensation for the Landlord having failed to comply with her two-month notice to end the tenancy for the Landlord's use. The Tenant is also awarded \$1,500.00 pursuant to section 38(6) of the Act. This award returns to the Tenant, his security and pet damage deposits, which were doubled, because the Landlord failed to comply with her obligations under section 38(1) of the Act.

I grant the Tenant a Monetary Order from the Landlord pursuant to sections 51 and 67 of the Act in the amount of **\$14,439.37**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 26, 2020

Residential Tenancy Branch