Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for compensation for monetary loss or other money owed in the amount of $5,037.21; and for a monetary order for damage or compensation under the Act in the amount of $6,400.00, and to recover the $100.00 cost of his Application filing fee.

The Tenants, Z.G.-S., H.G., A.S., and S.G., and the Landlord, M.C., appeared at the teleconference hearing and gave affirmed testimony. The Landlord's claim was detailed and complicated, and therefore, it was necessary to adjourn the hearing after the first hour and a half session and continue in a reconvened hearing that lasted another 80 minutes.

At the start of the first hearing, I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. The Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party and my questions. 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.

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.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served each Tenant with the Notice of Hearing documents by email, which he said he did, "right after I filed with the Branch," but he said he did not know the exact date. The Tenants confirmed receipt of the Landlord's Application, hearing documents, and evidentiary submissions.

The Tenants said that on July 3, 2020 at 5:20 p.m. they attached a plastic bag containing a USB stick with their evidence to the front door of the Landlord's residence. The Tenants said that they also emailed the Landlord that day to confirm that he received the USB stick. They said that on July 5, they also tried to telephone the Landlord about their evidence at three or four different telephone numbers, but they said he would answer and hang up.

The Landlord said that on July 6, 2020, he emailed the Tenant, Z.G.-S., to say that he was unable to open the USB on four different computers – both PC and Mac. He said even with instructions on how to open the zip files, he was still unable to access the Tenants' evidence. The Tenants said that on July 7, they emailed the Landlord with a list of evidence that was contained in the USB, and offered the hard copies of the contents. The Tenants said that on July 8 at 1:45 p.m., the Landlord said he was not home and to courier the evidence to the city where he was. The Tenants said they made every effort to accommodate the Landlord and make it possible for him to view the evidence.

I find I agree with the Tenants that they went to a lot of trouble to get the evidence to the Landlord and to assist him in accessing it. It raises questions in my mind about the Landlord's intention to receive and view the Tenants' evidence.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Similarly, I find that it is more likely than not that the Landlord intentionally avoided accessing the Tenants' evidentiary submissions on their USB, and with their offers of other assistance. Accordingly, I find the Tenants served their evidence on the Landlord in compliance with the Act. I, therefore, admitted both Parties' evidentiary submissions, and I continued to hear their testimony in the hearings.

Preliminary and Procedural Matters

The Parties confirmed 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.

Again, 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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the Landlord was subletting the rental unit to the Tenants, after having lived there for 5 – 6 years. The Landlord said he had a good relationship with his own landlord of the rental unit. He said his landlord agreed to a renovation costing $40,000.00, and the right to sublet the residential property. The Landlord said he stressed to the Tenants that the residential property was situated in a quiet, safe neighbourhood. He said he agreed to rent to the Tenants, because they were university students and athletes, getting up early to train every morning, which, he indicted, impressed him.

The Parties agreed that the periodic tenancy began on May 17, 2017, with a monthly rent of $2,800.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,400.00, and no pet damage deposit. They agreed that the Landlord returned the security deposit to the Tenants in full on May 11, 2018. The Parties said that on January 26, 2018, they agreed that the tenancy would end on May 1, 2018. The Landlord applied for dispute resolution on April 15, 2020, within the two-year deadline under section 60 of the Act.

The Landlord said the residential property was “40-something” years old and that it has six bedrooms and 2½ bathrooms. The Parties agreed that the Landlord conducted a condition inspection of the rental unit with the Tenant, Z.G.-S. at the start of the tenancy, and that the Landlord gave the Tenants a copy of the resulting condition inspection report (“CIR”). However, the Tenants said that it was not completed – not all the rooms were checked off as reviewed in the CIR.

The Parties agreed that the Landlord did a condition inspection of the rental unit at the end of the tenancy, although he did not use the same form to compare the inspection at the beginning of the tenancy to that at the end. Rather, the Landlord submitted a handwritten list of items 37 items that he said were damaged and/or unclean at the end of the tenancy (“Move-out Inspection”).

The Landlord’s claims are set out on the following monetary order worksheet.

	Receipt/Estimate From	For	Amount
1	Estimate	Mirror – broken hanger	$20.00 Est
2		Bar/kitchen stool	$249.00
3		Carpet cleaning	$953.02 Est
4		Clean 2 mattresses	
5		Clean red 6-seater couch	
6	Estimate	Oven handle	$50.00 Est
7		Clean dirty walls	$870.00 Est
8		Clean bathrooms	
9		Clean Oven	
10		Clean refrigerator	
11		Clean windows	
12		Clean dishwasher	
13		Clean electric kettle	
14		Clean both verandas	
15		Clean house overall	
16	Estimate	Replace a closet door	$100.00 Est.
17	Estimate	35 Flower Pots dead – no water	$525.00 Est
18	Estimate	Window mosquito cover broken	$40.00 Est
19	Estimate	Return heavy furniture in place	$60.00 Est
20	Estimate	Clean air ducts & furnace filter	$240.00 Est
21	Estimate	Curtains main floor	$30.00 Est
22	Estimate	BBQ thrown out; bought new one	$100.00 Est
23	Estimate	Light bulbs	$16.00 Est
24	Estimate	Painting Repair	$30.00 Est
25	Estimate	Repair dining chairs	$459.20 Est

26	Estimate	Replace shower rod	$25.00 Est
27		Stove burned above	$0.00
28	Estimate	Replace mattress	$358.39 Est
29	Estimate	Restore Garden	$150.00 Est
30		Dryer	$761.60
31		2 months' lost rent	$5,600.00
32		Lost rent reduced 4 months	$800.00
		Total monetary order claim	**$11,387.21**

The Landlord said that one of the Tenants signed a paper indicating that the Tenants agreed to having caused the damage that the Landlord has claimed in his Application.

The Tenant, Z.G.-S., said "Yes, I signed the paper, but it was under the pretext of threat against my roommate, [A.S.], so I remember it being under duress." H.G. also said that she was in the room with A.S. and a boyfriend. She said:

> I was in the room at the time, and I, as well, filed a police claim – see our evidence 1. [A.S.] and myself and a boyfriend were in the room when [the Landlord] threatened us, as admitted in the previous hearing. To our recollection, he said: 'I'm so angry I can shoot you.' That's where I signed off on the first list that [the Landlord] had. He clearly had a temper and I didn't want to add fuel to the fire. When [Z.G.-S.] went back, [Z.G.-S.], [S.G..], and myself - when we went back, we had every intention of making it as quick as possible. Because of his anger and frustration, we just wanted to be done with it. He gave us our security deposit in full on May 11; we were under the impression that it was over.

The Tenants submitted a police report that resulted from their having called the police after a post-tenancy meeting with the Landlord. Within this police report dated May 29, 2018, A.S. told the officer:

> On May 1st, 2018, my roommates and I were moving out of [rental unit address]. The landlord was very upset with the house not being perfectly cleaned and about a couple neighbour complaints. He said to me 'I'm so mad I want to shoot you' as well as 'your friends are retarded', 'they look like they have downs syndrome.' As he was threatening me and verbally abusing me, he kept approaching me making me extremely uncomfortable & unsafe. I was hoping

> since he had given our damage deposit back we would be done with him and I could put it in the past, however he has recently asked us for our new address and is continuing to antagonize us.
>
> ("Police Statement")

The Landlord said the following regarding the alleged threat:

> I never threatened [A.]; you will see that they are not the kind of person that gets threats. I said 'somebody will shoot you', not 'I will shoot you'. There are a lot of dangerous people around. I didn't say I will shoot you.

The following are the claims that we reviewed in the hearings.

#1 Downstairs mirror has broken hanger → $20.00 Estimate

The Landlord said that this mirror was approximately five years old and that he fixed it himself. He said:

> I put the price. I fixed it. The technicians told me – I even reduced it. They told me, how you got to do these things. I have no receipt for this particular item. I don't have them, because it has been recorded, accepted damage.

H.G. replied to the Landlord's comments about the mirror damage, as follows:

> I would like to make an overarching comment re his list. The lists of damages were both signed by myself and [Z.G.-S.] - signed under the pretext of threats made against [A.S.]. The first list was made on the same day he said: 'I am so angry I could shoot you.' They were signed under the context of threats. We signed them to appease him. We have no recollection of this item being damaged. We don't know which mirror. It would be regular wear and tear, but we don't recall this mirror, and as you've stated, it's just an estimate or charge with no receipt and no repair.

There is no mention of this mirror in the pre-tenancy CIR. This is the first item listed in the Move-out Inspection. The latter states: "Mirror downstairs has broken hanger".

#2 Bar/Kitchen Stool → $249.00

The Landlord said:

> This stool was 1½ years old. I was surprised, because in May they said ‘We broke it. If you can fix it, fix it.’ They broke the seat. I bought a different kind, but if I could buy this one, I would have bought it. But the store says $249.00 each with a minimum order of two. Both stools cost over $300.00
>
> It cannot be fixed. We bought new ones. Unfortunately, this was sold as a pair. $249 each, but we had to buy two. This specific one is the price. You have to buy two and bring two. I have no receipt for this.

H.G. said:

> The stool, to our knowledge, was not new; it was likely more than a year and a half old. It was glue binding the actual pole stand. We let him know on April 12, 2018. We offered to buy him a new one. It was never discussed. It was from wear and tear of the glue.

In an email dated April 18, 2018, submitted by the Tenants, Z.G.-S. contacted the Landlord, and in her email, she said:

> Throughout the year the moulding on one of the back high chairs has been slowly becoming looser. Recently, the moulding came apart completely. How would you like us to proceed with this?

In the hearing, H.G. continued, saying that the Landlord bought a better chair to replace the one that was broken. H.G. said: “I am concluding that he did not buy the same stool; it was a better one.”

The Landlord pointed to his “Evidence6 _Kitchen_Stool.pdf”. This document shows a picture of two high stools with the model number, the price and delivery information. However, it is not a receipt indicating that the Landlord purchased the stools.

H.G. said that the two stools are of differing qualities. She said: “Our primary statement on the kitchen stool was not the stool itself, but that no receipt was provided to us. Not a receipt – no proof of purchase.”

The kitchen stool is not identified in the CIR, but in the Move-out Inspection it states: “Bar chair damage – broken”.

#3 - 5 Cleaning: Carpets, Two mattresses, Red Couch → $953.02

The Landlord said that these items needed cleaning, and that he called a number of people to find the best price for this work to be done. However, the Landlord did not get a receipt for the work that he said he had done. Rather, he said he relied on the estimate that they gave him as evidence of the value of this work. The Landlord said:

> It took like a week to clean them. It was dirty. They were the definition of dirty. That's why [Z.G.-S.] signed this, but in addition, in evidence #3, she wrote the mattress is ripped. She understood this and is now claiming frustration.

The Landlord submitted a note he said that the Tenant, Z.G.-S., signed, labelled in his submission: Evidence3_SignedList-of-Damages.pdf. This note contains the following statements:

> The mattress has been ripped.
>
> I understand [S.G.] has to make arrangements to pick up her furniture & I understand that [the Landlord] lost his tenant because the house needs cleaning.

Both of these statements were signed by Z.G.-S. The Tenants said this note was signed under duress, because they were afraid of the Landlord by this point, given what he agreed he said to A.S. in a previous post-tenancy meeting.

The Landlord continued:

> I called quite a few people to clean them. They cleaned carpets and mattresses and the red couch. It took them like a week to clean. Not to justify the money and time, but the reviews I read. I was here watching all the time. I don't have a receipt. They gave me a receipt. I know it was $953.02, because they gave me an estimate. This is all the evidence two years later. I know, because I called quite a few. I called them, and they came over. It was the best estimate. The most reasonable.

The estimate that the Landlord submitted included the following:

QTY	Description	Price	Amount
572 [sq. ft.]	Res. Carpet Synth.	0.62	354.64

3	Res. Mattress – measured by shortest edge	25.00	75.00
4	Res. Mattress – measured by shortest edge	25.00	100.00
14	Res. Upholstery-Synth	27.00	378.00
		SUBTOTAL	$907.64
		TAX	$45.38
		TOTAL	$953.02

The Tenant said:

> Once again, to reiterate, the list that he has been referencing was made under the threat on May 1, 2018, to [A.S., and A.S.'s] boyfriend, and myself. The cleaning hasn't been provided with a receipt or proof of purpose. On moving out, we vacuumed cleaning. . . maybe we missed behind the bed.
>
> Under BC *Tenancy Act*, the lease was less than a year, so it's not our responsibility. There were only three bedrooms and the stairs that were carpeted, not the entire home. Some were marked as in fair condition. See evidence #22 – a picture of carpets before we moved into the house full time. The tenants did have a dog prior to us living in the house.
>
> Two mattresses were cleaned, but we were also charged for the cost of a new mattress. There's no receipt.
>
> There was a small stain on one mattress. In his picture, it's quite a small and unnoticeable stain. We left two free mattresses, brand new in September. The couch was vacuumed by us and there were no notable stains or damage upon moving out.
>
> Again, there's no proof of purchase - just an estimate.

The CIR indicates that all of the carpets were in "good" condition, except for "Bedroom (2), which was noted as having: "Painting spot", but otherwise it was in "fair" condition. The CIR notes that in bedrooms 3 and 4, the carpet was in "fair" condition. The Move-out Inspection states: "Carpets dirty", but it does not indicate which carpets in which rooms, as it does in the CIR.

The remainder of the items were reviewed in the reconvened hearing. I started off by

asking the Landlord if he had any receipts for any of the remaining claims in his Application. I advised him that receipts for costs incurred are the best evidence to support the compensation sought. I noted that we had a lot to go through, so we focused on those items first.

#28 Replace mattress → $358.39

The Landlord said that one of the mattresses was ripped and that Z.G.-S. signed a note acknowledging that the Tenants were responsible for it. Again, the statement that this Tenant signed said: "The mattress has been ripped."

The Landlord said that he purchased a new mattress at an international wholesale warehouse, which he said was the best price.

The Tenants said that they first wanted to confirm which mattress in which room was ripped. Z.G.-S. said: "Yes, I signed the paper, but it was under the pretext of threat against my roommate, [A.S.], so I remember it being under duress. It was not ripped to my recollection."

The Landlord said:

> We have to solve these things. We cannot go on like this. She signed it; she came 11 days after they moved out. She signed all the damages, and happily, because she saw all the damage.
>
> In the first day when we came from a trip overseas, all I was able to see the same day was in the evidence called: Evidence4-SignedList-of-Damages.pdf. Evidence 4 is signed by [H.G.]. Quite a few things were damaged the first day, that's why [Z.] came back and signed the rest of them. If you think this is because of threatening, we can stop and take this to the civil court. I do not imagine someone questioning it to me. They signed it and they say . . . .

H.G. said:

> I was in the room at the time when [A.] was threatened, and I, as well, filed a police claim. [A.] and myself and [A.'s] boyfriend were in the room when [the Landlord] threatened us, as admitted in the previous hearing. To our recollection, 'I'm so angry I could shoot you.' That's why I signed off on the first list that [the Landlord] had. He clearly had a temper, and I didn't want to add fuel to the fire.

> When [Z.] went back, [Z., S.G.], and myself, when we went back, we had every intention to making it as quick as possible. We did not, based on his anger and frustration, we just wanted to be done with it.

H.G. went on to say:

> He claims two mattresses were cleaned, and now a new mattress …; the mattresses were in good condition at the start of the tenancy - not new or perfect – there was a small stain in the master bedroom. Now we know that it was the mattress in [Z.'s] room that was replaced. It was a twin mattress; he replaced it with a double. The mattress he provided is dated August 25, 2018 – three months after the tenancy ended. We believe this was done prior to new tenants many months later. We believe this mattress was purchased as a better suite, better bed. The purchase of this new mattress - why so many months later? Also, to be noted, we left two free mattresses, both brand new in 2018. We offered to remove them or leave them. We left them and they did not pay for them. Mine was roughly $150.00. [S.G.'s] mattress – it was roughly $150.00.
>
> To reiterate, the mattress receipt was well over three months after tenancy ended, and it was for a double replacing a twin. He doesn't decrease the cost.

The Landlord said that he purchased a double mattress, "…because that is the size of the mattress that was there. I am stunned about hearing these childish excuses. This is the cheapest mattress in [the store]. It's not something firm for $700.00. I bought the mattress that was fit for the bed."

#30 Dryer → $761.60

The Landlord said that the dryer was six or seven years old at the start of the tenancy, and that he had to replace it after the tenancy ended. He said that H.G. told him that they had to use the dryer several times to dry one load. The Landlord said he had a technician attend to investigate the problem, but that the technician said it was not worth fixing. The Landlord said the technician told him that "you don't repair them." He said he did not have insurance for this.

H.G. said:

> As [the Landlord] said at the time we moved out, when he started compiling that list; he asked if we had had any issues with the house. I volunteered that the

> dryer hadn't been working effectively.

H.G. pointed to the Tenants' evidence of two photos of dryer filter taken two months After the tenancy ended and two minutes apart. The first photograph shows the dryer filter filled with lint and with a notice saying it was 28.2% clean. The filter was cleaned, and the dryer turned on again, and two minutes later the filter was still at 28.2% clean. It is not clear how the Tenants obtained these photos of the rental unit dryer two months after the tenancy ended.

H.G. said: "[The Landlord] said he needed to replace it. He didn't personally pay for the dryer, the homeowner did." She pointed to their evidence #13, which contains an email exchange between A.S. and the homeowner, M.M., dated May 9, 2020. As part of the exchange, A.S. asked if the Landlord paid for the dryer or if M.M. did. The homeowner said that the Landlord had told him that the dryer was not working properly, so M.M. replaced it with a new one in May 2018 for $729.00.

H.G. said:

> It is our opinion that the Landlord should replace the dryer from reasonable wear and tear. There was a second dryer that we never used, which was broken from the start. He is trying to charge us for things he did not pay for.

#31 Lost Two Months' Rent @ $2,800/mth → $5,600.00

In the reconvened hearing, the Landlord said the following about this claim:

> You can decide if it's legitimate to ask for the money according to the Tenants' behaviour. This is not about money; this is about trust and faith that this country is civilized to protect its citizens from such criminal behaviour of some people. They accepted, and I hear all kinds of excuses - we don't have to pay because of threatening…, or not done in the year. The character of the Tenants: they are wolves under lamb's clothing. I didn't have any intention to take them to court. I was so ashamed of the damage they caused to the neighbourhood. I was afraid they were going to hit back. See my evidence #14 on the second page. See the email dated January 12, 2018 at 10:36 p.m. Read the whole email, not just the circled parts.

This email from "J." to the Landlord stated:

> This evening we've had another incident with your tenants. They were having another party, which included loud music (shaking our house, two properties away), kids smoking in cars on the driveway, and lots of screaming and profanity.
>
> In the past, I have been very friendly when asking for things to settle down. This time I was not. Your tenant was also rude. She laughed at my concerns and explained that she felt she that her friends have the right to be as loud as they want, as long as it is before 11 pm. She also felt it was my duty to text her to ask her to quiet down, before getting upset. I do not agree with either of these comments.
>
> I've gone to the door a handful of times previously, asking very nicely for them to respect the quiet family neighbourhood that we live in. To have to keep asking is not acceptable.
>
> In addition to the parties, there are kids coming and going at all hours, cars parking all over the place, and the lawn is a mess with stuff strewn everywhere.
>
> How much longer is this going to continue for? What recourse do we have as neighbours who are fed up?
>
> Thank you,
> J.
>
> (I appreciate you not directly forwarding my email to your tenants as I do not wish them having my contact information)

The Landlord continued:

> Unbelievable. We are talking about criminals here. Asking them to respect the quiet family neighbourhood. There are kids coming and going at all hours, cars parking all over the place. How much longer is this going to continue for?
>
> I was feeling ashamed at the damage they caused to the neighbourhood. Unless that's a common thing for young people today. If that's the case, then obviously I don't know and getting frustrated and upset . . . If I don't send you what I want you to understand . . .that's why I don't have any receipts. They had left even poop inside the toilet.

> I am devastated for having chosen these girls as tenants. This to me is what is going on. You know as to the neighbours; they destroyed the garden. They destroyed the hard work we lived in. They had boys living there, while out of the province. They sublet, and boys were living in the place and the neighbours were wondering what was going to happen in September. Wolves in a sheep's skin… Such lovely girls when I first met them.

The Tenants stated:

> [A.] was in the house as she said she would be … It is a university students' house. We had friends over. We shut things down by 11. We had very few interactions with the neighbours. It was the neighbour yelling at [A.]…. The neighbour said she was going to call the cops, to which we said: 'Please do', because it was not 11 o'clock yet. We made more of an attempt to be quiet. They made no attempt to reach out to us.
>
> In addition, he claimed he lost two months of rent – he was clearly living in the upper portion and lower portion was uninhabitable because there's no kitchen. He made no attempt to rent the house when we moved out. Any alleged damage was not large and did not prevent further rentals. [The Landlord] only intended to rent out the lower portion of the house after we moved out and after he did the renovations. He admitted that he threatened [A.] in our move out inspection – this is why we signed his lists. There are no receipts for cleaning or repairs.
>
> We are prepared to offer $66.00: $50.00 for the oven handle and $16.00 for the lightbulbs. We will pay this in good faith. The costs are reasonable. We do not believe that we owe anymore than this amount and we do not want to settle. We'll leave it to your discretion.
>
> I forgot to mention, but several times over the course of the tenancy, the actual owner came to see the state of the house. We had a phenomenal relationship with [the owner]. He at no point had any concerns. He came on April 30 or 31, very shortly before we moved out, and he never voiced any concerns. He is the legitimate owner of the house.

#32 Lost monthly rent reduced rent (4 months – May – Aug @ $200/mth → $800.00)

The Landlord did not present any evidence in the hearing to support this claim.

The Landlord acknowledged that he did not have any receipts to prove the value of the rest of his claims in this Application. However, in their final statements in the reconvened hearing, the Tenants agreed to pay **$50.00** for the oven handle and **$16.00** for the burned-out lightbulbs. As such, I award the Landlord recovery of these claims and I dismiss the other estimate-only claims for insufficient evidence to prove the value of the damage.

Analysis

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

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, meeting this standard of proof.

I let the Parties know how I would be analyzing the evidence presented to me. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

(“Test”)

Much of the Landlord’s claims are estimates of the damage he said he incurred. Without receipts for the cost of damaged items, I find the Landlord has failed to provide sufficient evidence to establish an objective value for the losses he claimed in the case of the estimates. The Landlord relied on estimated amounts without providing evidence of the cost incurred in these instances. The Landlord has had nearly two years since the end of the tenancy to make or have repairs done and gather receipts; however, he relied primarily on estimates. However, I have addressed the matter of aggravated and nominal damages later in the Decision.

#1 Downstairs mirror has broken hanger → $20.00 Estimate

I find that the Landlord has provided insufficient evidence of how this item was broken, that it was broken during the tenancy, or that it was not merely normal wear and tear, given the age of the item. I, therefore, find that the Landlord has not proven the first three steps of the Test, and as a result, I dismiss this claim without leave to reapply.

#2 Bar/Kitchen Stool → $249.00

The Tenants said that the stool, "…is likely more than a year and a half old." However, they did not provide any evidence or reasons to support this statement. Based on the Parties' submissions on this point, I find that it is more likely than not that it was a relatively new chair. I find it unlikely that a relatively new chair would break in this way from reasonable wear and tear. I find on a balance of probabilities that the Landlord has established the first two steps of the Test.

However, without a receipt for the purchase, I find the Landlord has not provided sufficient evidence to prove that he purchased the new chairs for this amount of money. Further, without evidence of the Landlord having searched for the same chair elsewhere or evidence that the same chair is no longer available, I find that the Landlord has failed the fourth step to mitigate or minimize the damage suffered. Accordingly, I find that the Landlord has failed the last two steps of the Test, and therefore, I dismiss this claim without leave to reapply.

#3 - 5 Cleaning: Carpets, Two mattresses, Red Couch → $953.02

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant or other persons the tenant permits on the property. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 ("PG #1") helps interpret these sections 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.

As set out in Policy Guideline #16 (“PG #16”), “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.”

This claim in the Landlord’s Application focuses on the uncleanliness of the carpets, two mattresses, and a sofa in the rental unit.

Regardless of the condition of the carpets in rental unit, PG #1 states the following:

> **CARPETS**
>
> 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
>
> 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
>
> 3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
>
> 4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

During the hearing, while reviewing the terms of the tenancy, the Parties agreed that the tenancy started on May 1, 2017, and that it ended on May 1, 2018. As such, I find that the tenancy lasted a year and that the Tenants were responsible for steam cleaning or shampooing the carpets in the rental unit. The Tenants testified that they vacuumed the carpets; however, they did not state or direct me to evidence that they had the carpets steam cleaned or shampooed at the end of the tenancy. Accordingly, I find that the Landlord is eligible for reimbursement of the cost of such cleaning throughout the rental unit.

The Landlord said that he called "a number of people to find the best price for this work to be done", however, he did not provide a list of names or of prices that he gathered in his research. In addition, and again, the Landlord provided only a quote or estimate of what it cost him to have this work done. The Landlord claimed $354.64 for the cost of steam cleaning the rental unit, which I find to be reasonable in the circumstances. However, without a receipt or evidence of having paid this amount, I am reluctant to award the Landlord with the entire amount. The evidence before me is that the Tenants lived in the residential property for approximately one year and that they did not have the carpets steam cleaned. In this set of circumstances, and based on the evidence before me in this claim, I find it more likely than not that the Landlord arranged to have the carpeting throughout the residential property steam cleaned. Pursuant to PG #16, I award the Landlord a nominal amount of **$300.00** for having to steam clean the rental unit at the end of the tenancy.

In terms of the mattresses, I find there is insufficient evidence before me that the Parties agreed to have the mattresses cleaned at the end of the tenancy. Further, section 20(1)(g) of the *Residential Tenancy Act* Regulation ("Regulation") states:

> **Standard information that must be included in a condition inspection report**
>
> **20** (1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:
>
> **. . .**
>
> (g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;
>
> [emphasis added]

I find that while the Landlord may have wished to advise subsequent tenants that the

mattresses were professionally cleaned after the tenancy before me, I am unaware of any legislation or agreement between the Parties that the Tenants were responsible for this cost at the end of the tenancy. Further, there is no evidence before me that the CIR contained any information as to the state of the furnishings in the rental unit, as is required by section 20(1)(g) of the Regulation. As a result, I dismiss the Landlord's claim for recovery of cleaning costs for the mattresses without leave to reapply.

In terms of the Landlord's claim for the cleaning of the couch, again, there is no evidence before me of the condition of the couch at the beginning of the tenancy in the CIR or otherwise. Given this and the Landlord's failure to submit a receipt evidencing that he paid to have this done, I dismiss this claim without leave to reapply.

#28 Replace mattress → $358.39

There is no agreement before me between the Parties as to whether a mattress was ripped during the tenancy. The Landlord provided a note, in which one of the Tenants signed beside the sentence: "The mattress has been ripped." However, I find that this is not equivalent to an admission that the Tenants were responsible for having ripped a mattress. Further, the Tenants said they signed the damage lists the Landlord provided, because they were afraid of him. The Landlord qualified what the Tenants claimed was a threat; however, the Landlord did not deny having said that "someone will shoot you" to A.S. during a meeting on May 1, 2018. I find it more likely than not that this supports their contention that the Landlord had a temper, that he was angry during this meeting, and that they were afraid of him. While adults are responsible for what they sign their name to, I find on a balance of probabilities that a person in this situation might sign handwritten lists like that presented to them by the Landlord. As such, I find that the signed damage lists do not equate to the Tenants having taken responsibility for that which the Landlord claimed was damaged in the rental unit. Rather, I have analyzed the evidence before me overall for these items when making my findings.

Unfortunately, the Landlord did not direct my attention to a photograph of a ripped mattress. This would have illustrated that it happened, how big the rip was, and the size of the mattress to be replaced. Further, the Landlord did not respond to the Tenants' queries about why it took three months to replace the mattress. These considerations raise questions in my mind about the reliability of the Landlord's evidence in this regard.

Based on the evidence before me on this matter, I find that the Landlord has not provided sufficient evidence to establish that a mattress was, in fact, ripped , that it could not be repaired, nor that it was a double mattress. As a result, I find that the

Landlord has not established the first two steps of the Test on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

#30 Dryer → $761.60

There is no evidence before me as to the condition of the dryer at the start of the tenancy, other than the word “good” written in the CIR. The dryer was six or seven years old at the start of the tenancy, according to the Landlord’s testimony in the hearing. If the dryer did not work properly at the start of or during the tenancy, it raises the question in my mind as to why the Tenants would not have told the Landlord it was problem. However, the burden of proof is on the party claiming compensation from the other party to prove on a balance of probabilities that the other party caused the damage deliberately or by neglect.

PG #1 states that the following about parties’ responsibility for major appliances in the rental unit:

> **MAJOR APPLIANCES**
>
> 1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
>
> 2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.
>
> 3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

There is no evidence before me that the dryer was tested at the beginning of the tenancy during the move-in condition inspection. There is no evidence before me from a technician saying something like the Tenants had over-filled the dryer, leading to the problem. I find on a balance of probabilities that the Landlord has not provided sufficient evidence to prove this claim. I find it more likely than not that the dryer had to be replaced due to normal wear and tear. Accordingly, I dismiss the Landlord’s claim in this regard, without leave to reapply.

#31 Lost Two Months' Rent @ $2,800/mth → $5,600.00

The Landlord did not address the merits of this claim, other than to describe the Tenants' behaviour as being uncivilized in the quiet neighbourhood in which the residential property sits. The Tenants did not deny that they had parties that bothered the neighbours. I cannot award damages for this claim, because the Landlord did not address the specifics of the application for two months' lost rent. As a result, I dismiss this Application without leave to reapply.

#32 Lost monthly rent reduced rent (4 months – May – Aug @ $200/mth → $800.00)

As the Landlord did not present any evidence to support the merits of this claim, I dismiss it without leave to reapply.

Nominal and Aggravated Damages

PG #16 state that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not straightforward. It states:

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

- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

The Landlord did not specifically ask for Aggravated damages, therefore, I cannot award him them; however, I find in this set of circumstances, that he has proven on a balance of probabilities that the Tenants disregarded the value of the residential property and the neighbourhood by using the rental unit as a party house for university students. The Tenants did not deny the Landlord's evidence in this regard. As a result, I find it appropriate to award the Landlord with 10% of the total he claimed as Nominal damages of $1,138.72, because the Tenants did not treat the residential property with

the due care with which they should have. Further, I find that the Landlord has established the first two steps of the Test in certain claims, but failed in the third or fourth steps; I find he proved that the Tenants caused damage to the residential property, for which he should receive some compensation. I find the Landlord is owed more than I can award him under the Act, other than in the form of Nominal damages. I, therefore, award the Landlord with recovery of **$1,138.72** in Nominal damages, pursuant to PG #16 and section 62 of the Act.

Summary

	Receipt/Estimate From	For	Amount
1	Estimate	Mirror – broken hanger	$0.00
2		Bar/kitchen stool	$0.00
3		Carpet cleaning	**$300.00**
4		Clean 2 mattresses	$0.00
5		Clean red 6-seater couch	$0.00
6	Estimate	Oven handle	**$50.00**
7		Clean dirty walls	$0.00
8		Clean bathrooms	
9		Clean Oven	
10		Clean refrigerator	
11		Clean windows	
12		Clean dishwasher	
13		Clean electric kettle	
14		Clean both verandas	
15		Clean house overall	
16	Estimate	Replace a closet door	$0.00.
17	Estimate	35 Flower Pots dead – no water	$0.00
18	Estimate	Window mosquito cover broken	$0.00

19	Estimate	Return heavy furniture in place	$0.00
20	Estimate	Clean air ducts & furnace filter	$0.00
21	Estimate	Curtains main floor	$0.00
22	Estimate	BBQ thrown out; bought new one	$0.00
23	Estimate	Light bulbs	**$16.00**
24	Estimate	Painting Repair	$0.00
25	Estimate	Repair dining chairs	$0.00
26	Estimate	Replace shower rod	$0.00
27		Stove burned above	$0.00
28	Estimate	Replace mattress	$0.00
29	Estimate	Restore Garden	$0.00
30		Dryer	$0.00
31		2 months' lost rent	$0.00
32		Lost rent reduced 4 mths	$0.00
	Arbitrator's discretion	Nominal Damage Award	**$1,138.72**
		Total monetary award	**$1,504.72**

I also award the Landlord with recovery of the **$100.00** Application filing fee for a total monetary order of **$1,604.72**.

Conclusion

The Landlord's claim for compensation is partially successful. However, he relied on estimates for most of his claim, which are insufficient to establish the value of the damage he incurred at the hands of the Tenants under the Act and Policy Guidelines. The Landlord is successful in being granted a monetary award of $1,504.72, plus recovery of the $100.00 Application filing fee for a total monetary order of **$1,604.72** from the Tenants.

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

As the Tenants were jointly and severally liable during the time that they were joint

Tenants, the Landlord may enforce the Monetary Order against any one or all of them.

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: September 17, 2020

Residential Tenancy Branch