# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages in the amount of $4,931.00, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of their Application filing fee.

The Tenant, D.I., and the Landlords, R.K. and L.H., appeared at the teleconference hearing and gave affirmed testimony. The hearing was adjourned after the Parties had given testimony, because we were not able to cover all of the Landlord's claims in the first hearing. The Parties were canvassed as to their availability in the ensuing months and both indicated that they did not have anything preventing their attendance. A Notice of Hearing for the reconvened hearing date was emailed to the Parties with the new date and contact numbers. However, the Tenant did not attend the reconvened hearing.

In the first hearing, 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 Landlords were given the opportunity to provide their evidence orally and to 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.

The Landlord, R.K., said that he sent his Notice of Hearing, Application, and documentary evidence to the Tenant via registered mail on June 10, 2020. The Landlord provided a registered mail tracking number as proof of this service. The Landlord said that everything he submitted to the RTB was included in the package sent to the Tenant. However, the Tenant said that she did not receive the Notice of Hearing, and that she received only the photographic evidence submitted by the Landlord. However, given the Tenant's contact with the RTB, as well as her evidentiary submissions, I find that she would not have known about the hearing and the need and

process for submitting evidence, or the hearing call-in details, if the Landlords had sent her only their evidence. Accordingly, I find it more likely than not that the Tenant received the Notice of Hearing and the Landlords' Application with their evidentiary documentation. I, therefore, find that the Tenant was properly served with the Landlords' documents, pursuant to the Act.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application, and the Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I asked for the Parties' names in this matter, as one of the Landlords identified on the Application was different than the last name which the Landlord, L.H., stated in the hearing. L.H. advised me of her correct name, therefore, I amended this Applicant's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

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.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the residential property is a rural house on an acreage, which was approximately 28 years old, but which was renovated 8 to 10 years prior to the end of the tenancy. They advised that the rental unit has three bedrooms and an office and four bathrooms.

The Parties agreed that the fixed-term tenancy began on February 1, 2020, and was to run to February 1, 2021, and then operate on a month-to-month basis. They agreed that the Tenant paid the Landlords a monthly rent of $3,950.00, due on the first day of each

month. The Parties agreed that the Tenant paid the Landlords a $1,975.00 security deposit. They agreed that the Tenant paid the Landlords no pet damage deposit, although the tenancy agreement required the Tenant to pay a $1,975.00 pet damage deposit. They confirmed that this was never paid to the Landlords.
The Parties agreed that the tenancy ended when the Tenant moved out on May 30, 2020, pursuant to a Settlement Agreement the Parties reached in another hearing on April 28, 2020. I find that this Settlement Agreement did not address the issues raised in this proceeding.

The Parties agreed that they conducted an inspection of the condition of the rental unit at the start of the tenancy, and that the Landlord gave the Tenant a copy of the condition inspection report ("CIR"). They agreed that they conducted a condition inspection at the end of the tenancy, as well, although two friends of the Tenant represented her and signed on her behalf.

In his Application, the Landlord said:

> The renter caused damage to the plumbing and appliances by not following the directions of the landlord, and removed the filter for the water supply and allowed black sand to run through the system for 24 hours. She was asked to vacate the property by May 31, 2020. She was not required to pay rent for April or May. The grass was not cut before she vacated the property. Horses caused damage to the lawn. The septic system was damaged. An interior door was damaged. A false gas leak was reported.

The following MOW sets out the Landlord's claims of damage done by the Tenant to the residential property:

| | Receipt/Estimate From | For | Amount |
|---|---|---|---|
| 1 | [B.V.] Heating | Hot water tank | $1,575.00 |
| 2 | International Hardware retailer | 5 toilet valves/kitchen faucet | $330.00 |
| 3 | [C.] Appliances | Dishwasher/Washer (Used) | $500.00 |
| 4 | [P.Q.] | Lawn Cutting/Weed Eating | $719.25 |
| 5 | [P.Q.] | Horse damage to lawn | $2,514.75 |
| 6 | [M.R.] Tank | Septic tank pump out | $350.00 |

| | | | |
|---|---|---|---|
| 7 | [F.T.] Interiors | Interior Oak Door refinishing | $417.90 |
| 8 | [B.V.] Heating | False gas leak report | 346.50 |
| 9 | Estimate | Insulation/Gyprock Rain damage | $300.00 |
| | | **Total monetary order claim** | $7,053.40 |

**#1 Hot Water Tank → $1,575.00**

This claim took most of the first hearing to review. The Parties' positions are set out below. The move-in CIR did not have any notations as to the condition of the water heater at the start of the tenancy, to compare to that at the end of the tenancy.

When asked about the details of this claim, the Landlord said:

> Black sand. Basically, a filter was moved from the water system, which was not authorized, and that allowed black sand to run through the hot water tank and appliances - a multitude of other appliances.
>
> You can't buy a used hot water tank. There's more going on than a gas hot water tank. [C.] appliances is based on used prices, but I couldn't find it.

When asked if he tried to have it repaired, the Landlord said: "We took it out and drained it, and it had sludgy, black sand in it, and the guy said it wasn't worth repairing."

The Landlord said that the hot water tank was ten years old.

The Tenant said:

> When I moved in, in January, the water contained sand. I noticed it in the master bathtub. It was ignored. The pressure was increasingly low – not high enough to run the dishwasher. He came and cleaned it, but it still wouldn't run. There was a trickle in the evening. . .I filed an emergency dispute identifying all the issues with water.

The Tenant submitted photographs of the inside of a toilet tank, and the toilet bowl, all of which had what looked like black sand in them (other photographs were too blurry to make out). The Tenant said:

> My friend raised the issue of sand . . .. The Landlord said he had filters to deal

> with that, but [the Landlord] did nothing, even though the filters were obviously not working. I had horses that needed to drink the water. I retained [J.T. of P.P. Systems], as I wasn't able to water the animals, shower, or use the washing machine. Nothing would work properly. The water would come on a little, then not at all.
>
> [J.T.] came and examined it and did a report. The water line was not being filtered properly because of over-pumping of the sand in his well, which is the problem. I never put anything in his system. [J.T.] replaced the filter with the proper filter. The problem with the well was that it was not adequately serviced. It was pumping too much sand. The existing filter did not fit – Exhibit 6 has an invoice for service.

The items listed on this invoice include:

> Attended site to inspect well pump system.
> -possible pump failure.
> -sand in the bath tub and shower.
> -no water pressure in house.
> Upon inspection of system.
> -found pump functioning correctly.
> -further inspection.
> -found whole house sediment filter completely plugged with dark grey black sand.
> -flushed out cannister of all debris.
> -replaced filter.
> -tested system, system functioning correctly.

The Tenant said that her Exhibit #7 is a photo of sand and sand in the filter. She said: "It didn't have anything to do with the well. I didn't know where [the well] was on the property."

The Tenant said:

> The sediment issue predated my tenancy. It resulted in inadequate water. The pump serviced the rental unit and [the Landlord's] unit. [The Landlord] had full control over the system. These issues were already in issue when I moved in.
>
> I told the Landlord about the pump specialist. I did an emergency dispute and

there are also police files.

The Landlord, L.H., said:

On April 14, [R.K.] got an email that there were emergency repairs to be done. [The Tenant] refused to allow him entry. The outside contractor was not authorized, but he came in to change the filter. That's when the black sand came into the appliances – into his suite – so he put in an emergency dispute to end the tenancy. There was an April meeting and that is where the agreement was ended when she would move out. She lived here two months without paying rent. That filter – it wasn't in for 24 hours before being put in.

The Landlord said:

The contractor took the filter and didn't have a replacement. I have a text message from [the Tenant] saying he had to go away and buy one. He came in the next day and put in the proper filter. I had proper filters. They were properly specked for that tank. The problem was she didn't let me come in and put one back in. She said she didn't have any pressure – I change the filter every month, and the water pressure does drop off. That's the nuts and bolts of it.

I don't remember her coming to me. I texted her saying that I had to change the filters out, because I could tell the water pressure was dropping. She denied me entry and said it was Covid-related. We called the police, but they couldn't do anything.

The Tenant said:

Yes, he did ask… it had already been done at that point. It was dealt with on the 15th and the police came on the 16th.

All the other issues were in that other claim. There were three filters sitting there. We rinsed it out and it went back in. But [the Landlord] had only lived there in the house for a couple months. It was not put in properly, my Dad said [J.T., her step-father]. It never went without a filter. There was a ton of sand everywhere. [The Landlord's] not a professional; he's not a pump specialist. He wasn't looking out for my best interests. There was not even proper water without sand, which I wasn't told.

> Unfortunately, Covid was awful. I work in film, I lost my job, I was home a lot cooking and baking, the gas in the oven was blowing out 200 pounds per unit. Everything was so old and needed repairs. It's not my fault and it's really unfair to put it on me.
>
> I was paying almost $4,000.00 for a house not in working order. I wasn't told that in the beginning.

The Landlord said:

> I don't know what filter they used. I bought filters … I have a company […Contracting] – I've been a contractor for 40 years. I've worked with municipalities all over BC  I have made my living working for municipalities – boilers. . ..
>
> Re the tenant doing maintenance, we got her to maintain the pool with the chemicals, but then Covid hit. But I never expected her to do any maintenance on the house. Regardless, even if you find that the Tenant can do this from the tenancy agreement, I specifically gave her a stop work order re doing work on the house on April 15.

The Tenant said: "There was no walk-through for any of the appliances. Every day he would change the lease to every little thing."

On a submission labelled: [Tenant]_Move_Out_Report, the Landlord said that the cost he claims for this matter is based on a quote from a heating company.

I adjourned the hearing at that point, as the time was a little past the end of the hearing hour. I surveyed the Parties availability, and both said they were available for a reconvened hearing in the weeks and months to follow.

**#2 5 Toilet Valves/Kitchen Faucet → $330.00**

The Landlord said:

> The toilets are at least ten years old; it was an old house. There are four toilets in here and the valve part was $20 - $25 bucks, but because of the black sand there was no way you could fix that. It was an old toilet, but it had black sand

> through the valve. I did it myself and I didn't charge for my time. It was five valves at $19.27 per valve.

The Landlord submitted a receipt for five toilet valves from an international hardware retailer. The receipt indicates that they were $19.27 each (before tax).

The Landlord said:

> The faucets are a little more expensive. Where I could cut corners, I would cut corners. You can't get the black sand out of the faucet. I'm not a plumber. That was a replacement item. You can't clean it - it had to be replaced. It cost $194.25. [plus tax]

In her written submission, the Tenant said:

> At no time did I cause sediment to enter the waterlines. At no time did I have anything to do with the well or the well pump. The sediment issue predated my tenancy and actually resulted in inadequate water supply for myself and my 2 sons during the time I resided at the Rental Property.
>
> The water supply and pump serviced my Rental Property and [the Landlord's] residence which is located on the property itself. At all relevant times, [the Landlord] had full control over this system.

**#3 Dishwasher/Washer (Used) → $500.00**

The Landlord said that he had to replace the dishwasher and the washing machine, because the black sand entered the water system and ruined these appliances. He said:

> The dishwasher was $250.00, and the washing machine was $250.00. I bought used appliances to replace the other ones that were full of black sand. There are no receipts, because I bought it off [an online used retail platform], buying for cash.

The Landlord said he did not know how old these appliances were, "…maybe ten years." In the move-in CIR, there is a hand-written note saying: "Laundry Room = no damage (wear & tear on wall)." However, there are no specific notes about the condition of the washing machine.

In her written submissions, the Tenant said:

> The dishwasher and the washing machine were over 20 years old when I moved into the Rental Property. The dishwasher did not work when I first moved in. I did not break it. This problem predated my tenancy.

**#4 Lawn cutting/Weed Eating → $719.25**

The Landlord said:

> She never mowed the lawn, ever. She moved in on February 1 and out on May 31 and not once did she mow the lawn. It was roughly an acre and a half of lawn. There are pictures in the file that show the property layout and how long it was. There are some pictures when the industrial mower did a couple passes; no normal lawn mower could cut this. [My brother's company P.Q.] did the mowing.

The Landlord submitted invoice # 900129 from [P.Q.] for the following:

> Mowing approx. 1 acre of high grass with commercial mowers
>
> | | |
> |---|---|
> | 1st mower, mulching cut | $250 |
> | 2nd mower, cut displacing deck | $250 |
> | Weed eating edges & perimeter | $185 |
> | | 685 |
> | | 34.25 |
> | | $719.25 |

On a sheet attached to the tenancy agreement, which the Tenant initialed, it states that the Tenant's duties on the residential property include grass cutting.

The Landlord submitted a copy of a cheque he wrote to his brother's company [P.Q.] for $719.25.

In her written submission, the Tenant said:

> When the snow/ice receded on the grounds of the Rental Property, I was disappointed to note that the 'grass area' was all moss and not grass as had been represented to me.

> This was a significant problem for me as I rented the property in part to house my horses.
>
> Despite the poor condition of the lawn, I attempted to follow my part of the Rental Agreement by cutting what little grass existed. I asked [the Landlord] where I could find the lawn mower which he was supposed to provide. He told me he was purchasing a ride-on lawn mower for use on the property and he never did.
>
> [The Landlord] told me to put my horses on the grass to bring the level of the lawn down as an alternative to mowing. I followed his instructions.
>
> It is important to note that [P.Q.] is [the Landlord's] own company and I dispute the validity of the invoice and doubt he ever paid these amounts.

**#5 Horse Damage to Lawn → $2,514.75**

The Landlord said that this claim is for the re-instatement of the lawn area, which he said was damaged by the Tenant's horses. The Landlord said:

> Also, we included photographs of the paddock areas that were damaged. This is quite lengthy. Basically, we signed a tenancy agreement and she said she had three small horses the size of dogs. I wrote that into the tenancy agreement. But when they arrived, they were full-sized horses. She couldn't take the fencing down. I offered construction fencing and said that would be the horse area. She brought her fencing in unauthorized. There were 50-foot circles; the horses turned it into 6 – 8 inches of mud. They just destroyed it. We had to reinstate the yard, although there is one area that is still too wet to reinstate. As a footnote, we don't know the damage to the septic field either. She let them run loose all over, and even on the septic field. I haven't put a claim on the septic field, because you can't quantify that. But the impact of the horses on the fields. We charged for the immediate damage. We didn't include the horse dung clean up. I feel we did the minimal amount to reinstate it.
>
> The Landlord submitted a copy of a cheque that was written to his brother's company, [P.Q.] for $2,514.75, with a note saying "invoice # 900130". However, the Landlord did not submit a copy of this invoice; rather, he submitted two copies of invoice # 900129

The tenancy agreement states:

> A pet damage deposit of $1,975 (not to exceed half a month's rent) for 3 small dogs & 3 small horses. (number and kind of pets). Pets may be prohibited or restricted in size, kind, or number. There may also be rules created for the tenant's pet. If there are rules, they should be written and a copy signed by tenant and landlord must be attached to the tenancy agreement. See Schedule " " for pet rules.

No Schedules were attached to the tenancy agreement.

The Landlord submitted five photographs of areas of the grassy yard that he said were trampled by the Tenant's horses. Two of the photographs show a sizeable area which appears to be muddy, rather than covered in grass.

In her written submissions, the Tenant said:

> I was permitted to keep my horses on the property as a term of my Rental Agreement. At no time did my horses damage the lawn in any way. After the snow melted, I seeded the entire lawn during my tenancy, and it looked better when I left than when I first moved in.
>
> The photos [the Landlord] provided were not taken after I moved out as this was not what the lawn looked like after I moved out.
>
> [The Landlord's] photo is of his own water table which has nothing to do with my horses or my area on the property. Again, the invoice was paid by [the Landlord] to his brother and I dispute the validity.

**#6 Septic Tank Pump Out → $350.00**

The Landlord said that the he was not sure when the septic tank was last pumped out prior to the tenancy; however, he said that he usually does it every five years. He said:

> We didn't actually pump that out. There's garbage in the septic tank and I didn't pull the trigger to pump it out. I phoned [M.R.] Septic Cleaning. I haven't done that because – how far do you go? I'm waiting to see what happens here and if it's accepted or not accepted. At this point it's working. I have a field, too, that I don't know how compromised it is. I've had people come out and they can't tell at this point. It's a wait and see program.

In her written submission, the Tenant said:

> At no time did I put anything in the septic tank or have any involvement with the septic tank during my tenancy. During my tenancy, I did not even know how to access the septic tank.

**#7 Interior Oak Door Refinishing → $417.90**

In the hearing, the Landlord said that he had not had this damage fixed yet. He said:

> I'm living in the house with my daughter now since June, but what I'm saying is that we needed the dishwasher and . . . we needed the washer - certain things, but the scratches on the door is not our priority now. But I have the pictures on my phone, and I have dates to go with it, so the Tenant's evidence - it's easily disputed.

When asked what caused the scratches, the Landlord said:

> Her three Chihuahuas – to both sides of the door. They reached up on their back feet, it's an interior door in the living room. They would just scratch until they got in. She never paid the pet deposit. It was to be paid on April 1st, but it was never paid.

In her written submissions, the Tenant said:

> I did not scratch an oak door in the Rental Property. I enclose evidence from my movers that this scratch was not there when I left the Rental Property. Attached as Exhibit #8 is evidence from my movers.

The Tenant submitted an email from [G.S. of R. Moves], which said:

> Hi [Tenant], In regards to our previous conversation about the damages to the door. Those damages were not present when we did the walk through at the end of the move and must have happened at a later date.

The Landlord said:

> Her evidence is that the movers said there were no scratches on the door, so it must have happened after the fact. Why do the movers have credibility, and

> which door? It's an email from [G.S.] and he said regarding damages to the door, that these were not present when we did the walk through. It's a pretty weak argument.
>
> It's not the kind of damage that happens shortly – it's thousands of scratches done by the dogs. I got a quote from [F.C.] Cabinetry to re-sand and stain the door and whatever they do for a final coat.

The Landlord submitted a photograph of an oak door that has multiple scratches in the bottom third of the door.

**#8 False Gas Leak Report → $346.50**

The Landlord submitted an invoice from [B.V.] Heating & Sheet Metal Ltd. for a service call with the total being $346.50

The Landlord, L.H., said:

> That's a big can of worms. Prior to when [the Tenant] was supposed to be out, all the doors were open in the house. After she moved out, she said she was in the hospital with carbon monoxide poisoning, and that [the gas company] said something was leaking from the stove.
>
> When [the Landlord] contacted [the gas company], they said they had come, and they felt that there was venting from the stove. He had [B.V.] came to inspect, and they said there was no gas leak in the house. The problem with the stove was that it was run without the fan. The only evidence she has of medical affect, was a wrist ban.
>
> [The Landlord] had [B.V.] come and he gave that report to the City. It was okay for moving back in. There were never any gas issues in the 30 years that [the Landlord] lived in the house, and there have not been any gas issues since then. So, we don't know where her claim of carbon monoxide is coming from. There's no medical documentation for this poisoning.

In her written statement, the Tenant said:

> The kitchen oven leaked gas when in operation. As a result of this leak, I became ill and was hospitalized for carbon monoxide poisoning in May 2020. After

> leaving the hospital, I had [the gas company] attend the residence to inspect the stove. [The gas company] performed an inspection and determined that there was a leak and deemed the appliance dangerous on May 19, 2020. Attached as Exhibit #9 is documentation from [the gas company].

The documentation from [the gas company] gives the rental unit address, the Landlord's name, that the oven/stove was being inspected, and that a hazardous condition was found. The condition found was said to be "Other", with the following hand-written comment:

> Over 200 ppr Co from oven. Strong Aldehyde smell – needs service.

This report was dated May 19, 2020.

The Landlord said:

> Just so you know, she's also got litigation going on that, so maybe she doesn't want to talk about it, as she said last time. I was actually quite shocked with [the gas company], who came out with a meter. They turned the oven on, and the meter picked up 250 parts per million. But that was just the stove in use. Stoves are vented and operate through 200 to 800 parts per million, which isn't enough to harm anyone.
>
> My point is that [the gas company] caused a whole bunch of problem, because they don't know how a stove works. It was working in its proper range. I see some of the blame should be on [the gas company's] shoulders, because they initiated it.
>
> There have been no gas issues, since we moved back in.

**#9 Insulation/Gyprock Rain Damage → $300.00**

The Landlord said that this claim is because the Tenant "…threw the contents of the mechanical room thrown out in the rain." The Landlord said:

> At some point in time, I'd say like . . . it was end of March, . . . 2½ months in, she's paid the rent twice and was looking for . . .anyway, there was a mechanical room that was by the pool. I had some of my stuff in there. At the end of the day she tossed it all outside on the road and didn't inform me that she did that, and it

sat there in the rain. This is the cost to replace the gyprock that was damaged. That's an estimated quote of what the stuff is worth. I didn't replace it, it's an estimate of the insulation and the gyprock; there is other stuff in there, too.

She was mad because she thought that was her space, and I had my stuff in there. But it's written right in the tenancy agreement – pool storage room and pool mechanical room not to be used. . . She just took it upon herself . . ..

In the Addendum to the tenancy agreement it states "Note Pool storage room and pool mechanical room and to be left clear of any personal items." The Tenant initialed her agreement with this Addendum.

The Tenant did not provide any submissions on this claim.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.
Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said 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, the Landlord must prove:

1. That the Tenant 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")

**#1 Hot Water Tank → $1,575.00**

Policy Guideline #40 ("PG #40") 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 domestic hot water tanks is ten years. The evidence before me is that the hot water tank was ten years old at the end of the tenancy and had no years or 0% of its useful life left.

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 hot water tank was due for replacement at the end of the tenancy, anyway. Further, the Landlord did not incur the cost to replace the hot water tank at the time of the hearing, as he only went as far as obtaining a quote for a replacement, and he did not have an invoice from having purchased one.

Based on the evidence and authorities before me, I find that the Landlord is not eligible for compensation for a hot water tank that had fully depreciated. Therefore, I dismiss the Landlord's claim without leave to reapply.

However, for the sake of other claims that are connected to the hot water tank issue, I will analyze the claim further on that basis.

Based on the evidence before me overall, I find that there was sand in the plumbing/ water system before the tenancy started. However, I find that the issue before me is whether the Tenant has any culpability for having caused black sand to enter the hot water tank and run through the other appliances and fixtures. The Landlord based his allegation of responsibility on the Tenant having retained [J.T.] to repair the sand issue in the water system. The Landlord said that [J.T.] removed the plugged filter, but did not

replace it with a new one for 24 hours. The Landlord claims that as a result, there was no filter to keep the black sand from circulating in the appliances connected to the water system.

The Parties' evidence consistently indicates that black sand entered the toilets and other plumbing fixtures after [J.T.] removed the filter, and until it was replaced. Based on the evidence before me overall in this matter, I find it is more likely than not that the [J.T.'s] removal of the water system filter for 24 hours, resulted in black sand entering the residential property water system. I find this goes beyond normal wear and tear.

**#2 5 Toilet Valves/Kitchen Faucet → $330.00**

I have found that black sand was introduced into the water system by the Tenant's maintenance person having left the water system filter out for 24 hours. I find it more likely than not that the toilet valves and the kitchen faucet were negatively affected by the black sand in this time period, that they had to be replaced.

However, I note that the Landlord said that there were four toilets in the rental unit; however, he bought five toilet valves. I find it is more likely than not that the Landlord bought himself an extra toilet valve, which the Tenant should not have to pay for.

Accordingly, I find that the Tenant is responsible for replacing four toilet filters at $19.27 plus $2.31 tax, equals $21.58 times four valves equals $86.32.

I find that the Landlord had to replace the faucet, due to the black sand, which cost him $194.25, plus tax, which equals $217.56. I find that the Tenant is responsible for the cost of the faucet replacement and the toilet valves. I, therefore, award the Landlord with **$303.88** from the Tenant pursuant to section 67 of the Act.

**#3 Dishwasher/Washer (Used) → $500.00**

In PG #40, the useful life of a dishwasher is ten years. The evidence before me is that the dishwasher was at least ten years old at the end of the tenancy; therefore, it was at the end of its useful life. I find that the dishwasher was due for replacement at the end of the tenancy, and therefore, it had fully depreciated. Based on the evidence and authorities before me, I find that the Landlord is not eligible for compensation for a dishwasher that had fully depreciated. As such, the Landlord's claim is dismissed without leave to reapply.

In PG #40, the useful life of a washing machine is 15 years. The Landlord's evidence before me is that the washing machine was approximately ten years old at the end of the tenancy and had five years or 33% of its useful life left. The Tenant said that the washing machine and dishwasher were "over 20 years old" at the start of the tenancy; however, she did not provide any evidence as to how she knew the age of these appliances; therefore, I give little weight to the Tenant's evidence in this regard.

The washing machine is not listed on the move-in CIR; therefore, there is no starting condition to compare to the appliance's condition at the end of the tenancy. Accordingly, I accept the Landlord's evidence of the age of the washing machine, as it is more likely than not that he would know the age of the appliances better than would the Tenant.

The Landlord has claimed $250.00 for this appliance and I find that he is eligible for recovery of 33% of this machine, as that was the useful life left in the appliance. I, therefore, award the Landlord with **$83.33** from the Tenant pursuant to section 67 of the Act.

**#4 Lawn cutting/Weed Eating → $719.25**

The tenancy agreement states that the Tenant is responsible for cutting the lawn; however, her evidence is that the Landlord did not provide a lawn mower with which to cut the lawn.

There is contradictory evidence before me about the Landlord having told the Tenant to use the horses to "mow the lawn", since he did not have a lawn mower. The Landlord's evidence is that the grass was too high at the end of the tenancy to use a standard household mower, and that he had to hire his brother's company to cut it with industrial sized machines. If this is the case, it appears that the horses failed to keep the grass height under control.

As the Landlord did not address the Tenant's evidence that there was no lawn mower for the Tenant to use during the tenancy, I find that he did not provide sufficient evidence to fulfill his burden of proof on a balance of probabilities. I find it more likely than not that the Tenant was unable to cut the lawn, because there was no lawn mower for her to use. As a result, I dismiss this claim without leave to reapply.

**#5 Horse Damage to Lawn → $2,514.75**

I find that the tenancy agreement allowed the Tenant to have three "small" horses on

the residential property; however, the agreement did not specify where the Tenant was allowed to keep the horses. Further, I find it more likely than not that three small horses could do damage to grass if kept in an area for four months. Therefore, I find this aspect of the Landlord's evidence is not relevant to this matter.

Section 37(2) of the Act requires tenants to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." I find that the damage to the lawn of the residential property by the horses is not "reasonable wear and tear". I find this is damage for which the Tenant is responsible for remediating.

The Tenant said that her horses did not damage the lawn; however, she also said that she re-seeded the lawn when the ice and snow cleared. She said the lawn looked better than it did when she started the tenancy; however, she also said it was covered in ice and snow when she moved in on February 1, 2020. Further, the Tenant did not provide a photo of the lawn at the end of the tenancy to compare/contrast with the Landlord's photographs. I find the Tenant's evidence to be internally inconsistent; therefore, I give little weight to her evidence when I consider all the evidence before me in this matter.

I find on a balance of probabilities that the Tenant breached section 37 of the Act by allowing her horses to trample the lawn, and I find that she did not provide sufficient evidence to establish that she repaired this damage.

I find that the Landlord incurred a cost in having to repair the lawn, himself, which meets the first two steps of the Test. The Landlord submitted evidence establishing a value for repairing the damage, but again, I find that the Landlord did not provide sufficient evidence to establish that his brother would provide the best cost option. As a result, I decrease the award to the Landlord for this claim by ten percent or $251.48 to reflect the benefit he could have obtained by price-shopping for this service. I award the Landlord with the remainder of his claim of **$2,263.27**.

**#6 Septic Tank Pump Out → $350.00**

According to the Landlord's testimony, the septic field is working now, and he has not had the tank pumped out. The Landlord did not explain what the Tenant did to require work to be done on the septic tank and/or the septic field. Accordingly, I find that the Landlord did not provide sufficient evidence that the Tenant caused damage to this aspect of the residential property. Therefore, I dismiss this claim without leave to reapply.

**#7 Interior Oak Door Refinishing → $417.90**

I find that the Tenant's evidence from the mover is weak, in that the mover would have been looking for evidence of damage done by his staff, while moving the Tenant's possessions out of the rental unit. I find it unlikely that a mover would have turned his attention to the condition of every door in the rental unit. Further, his evidence does not identify a particular door that had no damage.

I find that the Tenant is responsible for this damage done to the Landlord's oak door in the rental unit. I find that the Tenant breached section 37 of the Act in not leaving the rental unit undamaged at the end of the tenancy. I find that the Landlord incurred a loss in that his property is left damaged by the Tenant's actions (or those of her dogs). The Landlord provided a quote from a refinishing company for the cost or value to repair the damage. I find that the Landlord is entitled to compensation for this claim in the amount of $417.90, to have the door sanded, stained and completed to bring it back to its condition prior to this tenancy. I, therefore, award the Landlord **$417.90**.

**#8 False Gas Leak Report → ~~$850.00~~ $346.50**

Based on the evidence before me, I find that the Landlord provided sufficient evidence that the oven/stove was not leaking gas, such that it would cause carbon monoxide poisoning. Perhaps if there were a report before me indicating that the hospital staff had determined that the Tenant had carbon monoxide poisoning, the matter would be more easily resolved in the Tenant's favour. However, I find on a balance of probabilities from the evidence before me that the Landlord provided sufficient evidence on a balance of probabilities that the Tenant's report of a gas leak was not persuasive; therefore, I award the Landlord with **$346.50** from the Tenant in this matter.

**#9 Insulation/Gyprock Rain Damage → $300.00**

The Landlord's undisputed evidence is that the Tenant emptied items out of the mechanical room that belonged to the Landlord, and left them out in the rain, which caused damage to this property. I find that the Landlord has provided sufficient evidence in this matter to meet his burden of proof on a balance of probabilities. I, therefore, award the Landlord with **$300.00** from the Tenant for this claim.

Summary and Set Off

The following table summarizes the Landlords' awards.

| | Receipt/Estimate From | For | Amount |
|---|---|---|---|
| 1 | [B.V.] Heating | Hot water tank | $0.00 |
| 2 | International Hardware retailer | 5 toilet valves/kitchen faucet | $303.88 |
| 3 | [C.] Appliances | Dishwasher/Washer (Used) | $83.33 |
| 4 | [P.Q.] | Lawn Cutting/Weed Eating | $0.00 |
| 5 | [P.Q.] | Horse damage to lawn | $2,263.27 |
| 6 | [M.R.] Tank | Septic tank pump out | $0.00 |
| 7 | [F.T.] Interiors | Interior Oak Door refinishing | $417.90 |
| 8 | [B.V.] Heating | False gas leak report | $346.50 |
| 9 | Estimate | Insulation/Gyprock Rain damage | $300.00 |
| | | **Total monetary order claim** | **$3,714.88** |

Given his success in his Application, I also award the Landlord with recovery of the $100.00 Application filing fee, pursuant to section 72 of the Act. I authorize the Landlord to retain the Tenant's $1,975.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a monetary order in the amount of $1,839.88 for the remainder of the monetary award, pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in his claim for compensation from the Tenant, as I found he provided sufficient evidence on the claims noted to meet his burden of proof in this matter. The Landlord is awarded $3,714.88 from the Tenant. The Landlord is also awarded recovery of his $100.00 Application filing fee for a total award of $3,814.88.

The Landlord is authorized to retain the Tenant's $1,975.00 security deposit in partial satisfaction of this award. I grant the Landlord a monetary order in the amount of **$1,839.88** from the Tenant for the remainder of the award.

This Order must be served on the Tenant by the Landlords 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: December 18, 2020

Residential Tenancy Branch