



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

A hearing was convened on March 07, 2017 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 13, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and I therefore find that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Landlord stated that on February 15, 2017 an Amendment to the Application for Dispute Resolution, 58 pages of evidence, and 184 photographs were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was therefore accepted as evidence for these proceedings.

On February 27, 2017 the Tenant submitted 55 pages of evidence and 26 photographs to the Residential Tenancy Branch. The Tenant stated that on February 27, 2017 these documents were personally delivered to a male at the Landlord's residence, who identified himself as a friend of the Landlord. The Landlord stated that she does not know the male the Tenant allegedly served his evidence package to. The Landlord stated that she received these documents from her mother, who found them on her doorstep. The Tenant stated that she does not know when her mother received the evidence but she was out of town and she did not receive them from her mother until she returned on March 03, 2017.

A tenant is required to serve evidence to the landlord in a manner that complies with section 88 of the *Act*. As there is no evidence that the Tenant served his evidence to an adult who resides with the Landlord, I find that the Tenant's evidence was not served in accordance with section 88 of the *Act*. As the Landlord acknowledges receiving the evidence from her mother, however, I find that the evidence has been sufficiently served pursuant to 71(2)(c) of the *Act*.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a respondent must serve evidence to the applicant not less than 7 days prior to the hearing. As the Tenant has failed to establish that he served his evidence in accordance with section 88 of the *Act* at least 7 days prior to the hearing, and the Landlord did not receive the evidence until March 03, 2017, I cannot conclude that the evidence was served in accordance with the timelines established by the Rules of Procedure.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that I may consider evidence that is not served on time if the evidence is relevant. I find that the evidence submitted by the Tenant is highly relevant and that it should be accepted as evidence for these proceedings.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure further stipulates that I may consider evidence that is not served on time if accepting the late evidence does not unreasonably prejudice one party. As the Landlord did not serve any evidence regarding her claims to the Tenant until February 27, 2017, which is more than five months after she filed her Application, I find that she is not unreasonably disadvantaged by the late evidence that was subsequently served to her.

In determining that the Tenant's evidence should be accepted I was further influenced by the fact the Landlord was out of town when the Tenant's evidence was delivered to her home and that she would not likely have received the evidence until March 03, 2017 even if the Tenant posted it on her door on February 27, 2017, which he is permitted to do pursuant to section 88(g) of the *Act*.

On March 06, 2017 the Landlord submitted 27 pages of evidence to the Residential Tenancy Branch. The Landlord stated that on March 06, 2017 this evidence was personally served to the Tenant. The Tenant stated that he received this evidence package but he returned it to the Landlord's mail box because he determined it was not served on time.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that an applicant must serve evidence to the respondent not less than 14 days prior to the hearing. I find that the evidence the Landlord served to the Tenant the day before the hearing was not served in accordance with the timelines and I did not accept this evidence as evidence for the proceedings.

In determining that the evidence should be excluded, I was influenced by the fact the most of the evidence was, or could have been, served to the Tenant long before March 06, 2017. In my view it would be highly unfair to the Tenant to accept any "new" evidence that was only served one day before the hearing, as the Tenant did not have a reasonable opportunity to submit evidence in response to "new" evidence.

There was insufficient time to conclude the hearing on March 07, 2017 so the hearing was adjourned. The hearing was reconvened on April 11, 2017 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 29, 2013;
- the Tenant agreed to pay monthly rent of \$2,700.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,350.00;
- a condition inspection report was completed prior to the Tenant moving into the rental unit;
- the tenancy ended on August 31, 2016; and
- the Tenant gave the Landlord a forwarding address, in writing, on September 07, 2016.

The Landlord stated that the parties met on August 31, 2016 for the purpose of completing a final inspection of the rental unit. She stated that a condition inspection report was not completed on that day because she believed the rental unit required additional cleaning and the Tenant asked for more time to clean the unit. She stated that on August 31, 2016 she did not schedule a time for a subsequent inspection; that she was unable to schedule a time for a subsequent inspection after August 31, 2016 because their communications “broke down”; that the Tenant was never served with a Notice of Final Opportunity to Schedule a Final Inspection; and that a final condition inspection report was completed in the absence of the Tenant.

The Tenant stated that when he met with the Landlord on August 31, 2016 to complete the final inspection he did not ask for additional time for cleaning and after the inspection the Landlord told him that he had fifteen days to complete the condition inspection report. The Landlord denies telling the Tenant he had fifteen days to complete the condition inspection report.

The Landlord submitted a copy of an email, dated September 13, 2016, in which she declares that she would “like to extend one final invitation for you to come to the house, see the damage and give you another chance to sign the Condition Inspection Report”. The Landlord submitted a copy of the Tenant’s response to this email, in which he

declared that they met on the inspection on August 31 and that the Landlord refused to sign the inspection report.

The Landlord is seeking compensation, in the amount of \$175.77, for cleaning the carpets in the rental unit. The landlord stated that the carpets had a strong odour at the end of the tenancy so she rented a carpet cleaner and attempted to eliminate the odour with a variety of products. The Landlord submitted a receipt for the cost of renting a carpet cleaner and receipts for purchasing a variety of cleaning products, which total \$175.77.

The Tenant stated that the carpets were professionally cleaned at the end of the tenancy and that the carpets did not have an odour at the end of the tenancy. The Tenant submitted an invoice that indicates the carpets were cleaned on August 29, 2016.

The Landlord submitted a letter from the person who was paid to clean the house at the end of the tenancy, who declared that the unit had a bad odour at the end of the tenancy. The cleaner stated that she continued to clean the home on a bi-weekly basis after the tenancy ended and that in January of 2017 the smell was still lingering. The cleaner speculated that the smell will remain in the unit until the cupboards are replaced.

The Landlord submitted a letter from a contractor who has worked at the rental unit periodically. He stated that he went to the rental unit during the tenancy and noticed that there was a strong smell of ethnic food during the tenancy and at the end of the tenancy.

The Tenant submitted letters from acquaintances who declare they were in the rental unit visiting the Tenant and they did not notice any bad odours.

The Landlord is seeking compensation of \$6,604.00 for replacing the carpets in the rental unit. The Landlord stated that after using a rented carpet cleaner she determined that the carpets in many areas were still very dirty/smelly and could not be properly cleaned, so she determined that the carpets should be replaced. She stated that the carpet was snagged in three places; that the damage occurred during the tenancy; and that the damage contributed to her decision to replace the carpets.

The Tenant stated that the carpets were clean and did not need replacing. The Tenant stated that the carpet was snagged in three places at the start of the tenancy and that they were not damaged during the tenancy. He stated that the snags were not noted on the condition inspection report that was completed at the start of the tenancy because the damage was minor.

The Landlord contends that her photographs # 68 and #32, and the Tenant's photographs #12 and #13 show the carpet was dirty; her photograph # 57 shows the amount of dirt that was removed from the carpet during her cleaning; and her

photograph #67 demonstrates how the carpet was snagged. The Tenant contends that none of the photographs submitted in evidence show that the carpet was dirty.

The Landlord stated that the carpets were replaced 6 months prior to the start of the tenancy.

The Landlord is seeking compensation of \$500.00 for replacing the stove in the rental unit. The Landlord stated that the stove was so greasy it could not be cleaned and she determined that it needed to be replaced. She stated that the stove elements seemed burned "beyond repair", which contributed to her decision to replace the stove. She stated that the stove was approximately ten years old at the end of the tenancy.

The Landlord submitted several photographs of the condition of the stove at the end of the tenancy. The Tenant acknowledges that the photographs fairly represent the condition of the stove at the end of the tenancy, although they did not pull the stove out so he does not know what the sides of the stove looked like. He stated that the elements were discoloured at the start of the tenancy and became increasingly worse during the tenancy.

In the letter from the cleaner that was submitted in evidence the cleaner stated that she cleaned the home on a bi-weekly basis before the tenancy began the stove was "a normal stove, well maintained and clean."

The Landlord is seeking compensation of \$234.65 for replacing the range hood fan and venting. The Landlord stated that the fan and venting were so greasy they needed to be replaced. The Landlord submitted several photographs of the interior of the range hood and the interior of the venting.

The Tenant stated that the exterior of the range hood fan was cleaned prior to the end of the tenancy. He stated that he did not dismantle the hood fan or the venting so he does not know if the photographs fairly represent the condition of the fan/vent at the end of the tenancy. He stated that the grease inside the fan and venting could have accumulated prior to the start of his tenancy. The Tenant submitted photographs of the range hood, although they are taken from further away than the photographs submitted by the Landlord.

The Landlord is seeking compensation of \$5,290.00 for replacing the blinds in the rental unit, which the Landlord stated were new in 2006 or 2007.

The Landlord stated that the blinds needed replacing because they had strong cooking odours on them and they were damaged by grease stains in several places. The Landlord submitted photographs (#165-167) that depict the type of stains on the blinds.

The Landlord stated she spoke with a blind cleaning expert and was told the blinds could not be cleaned. She stated that she did not submit any documentary evidence from a cleaner to show the blinds could not be cleaned.

The Tenant stated that the blinds did not have an odour and he does not recall seeing any stains on the blinds.

In the letter from the cleaner that was submitted in evidence the cleaner stated that the fabric shades in the kitchen/family room were "greasy, yellow, and stinky".

The Landlord is seeking compensation of \$44.00 for dump fees. The Landlord stated these were costs she incurred when she was disposing of the old carpets, blinds, range hood fan, and venting.

The Landlord is seeking compensation of \$27.50 for disposal fees. The Landlord stated the Tenant left a large amount of garbage in the garbage cans at the rental unit. She stated that she has to buy tickets for each bin picked up at the curb and that she had to pay for disposing of 6 cans of garbage. She stated that in addition to the garbage left in the bins that are shown in her photograph #81, she had to throw a few items into the bins, such as those items shown in photographs #54, #55, and #137.

The Tenant acknowledged leaving the items in photographs #54, #55, and #137. He stated that the cleaning products were left in the unit at the start of the tenancy; that he left the light bulbs for the Landlord; and that he forgot to discard the flower pots. He acknowledges leaving the garbage cans full at the side of the house, as curbside pick-up was not scheduled until September 05, 2016.

The Landlord is seeking compensation of \$171.50 for replacing the base of the cabinet below the kitchen sink. The Landlord and the Tenant agree that the Tenant's photograph #25 reflects the condition of the base at the start of the tenancy and the Landlord's photographs #49 and #50 reflect the condition of the rental unit at the end of the tenancy.

The parties agree that the kitchen faucet leaked on two occasions during the tenancy. The Tenant stated that the base of the cabinet was damaged as a result of the leaks. The Tenant stated that he first noticed the additional damage to the base after the first leak in 2013.

The Landlord stated that the first leak was repaired within 24 hours of the leak being reported and that this leak could not, therefore have caused the damage to the base of the cabinet. The Tenant stated that the leaks were reported as soon as they were noticed and that the leak that was reported in June of 2016 was not repaired for several days after the leak was reported.

The Tenants submitted a series of text messages exchanged by the parties in June. On June 15, 2016 the Tenant reported the leaking sink, via text message, and on June 21, 2016 the Landlord scheduled a time for a repair.

The Landlord is seeking compensation of \$620.00 for cleaning the rental unit. The Landlord stated that the rental unit required significant cleaning at the end of the tenancy. She stated that she spent 10 hours cleaning the unit, for which she is seeking compensation of \$200.00.

The Landlord submitted an invoice that indicates she was charged \$420.00 to clean the unit at the end of the tenancy. The Landlord submitted a letter from the cleaner that outlines the cleaning that was required.

The Tenant stated that the rental unit was left in a clean condition. The Tenant submitted an invoice that indicates the unit was cleaned on August 29, 2016.

The Tenant submitted several photographs of the rental unit that show the rental unit was left in reasonably clean condition. The Landlord submitted numerous photographs of the rental unit that show additional cleaning was required.

The Landlord is seeking compensation of \$288.75 for cleaning the windows in the rental unit. The Landlord stated that the windows were covered in grease and had not been cleaned. The Tenant stated that the windows were cleaned inside and out, with the exception of a skylight which could not be reached. He stated that they were unable to clean the inside of the skylight as they did not have a ladder that reached the skylight.

The Landlord stated that she was unable to take a photograph that depicts the dirt on the windows, with the exception of the dirt on the skylight.

The Landlord is seeking compensation of \$79.77 for replacing 6 vents in the kitchen, which she contends were damaged by grease. The Landlord stated that all of the vents were stained by grease and could not be cleaned. The Landlord submitted photographs of 2 vents, which she stated are representative of the stains.

The Tenants stated that he cleaned and vacuumed the vents; that he did not “zoom in that close”; and that he does not recall the vents being stained.

The Landlord submitted receipts for 6 vents, in the amount of \$79.77.

The Landlord is seeking compensation of \$2,756.25 for repainting the kitchen cupboards. The Landlord stated that the cupboards need to be repainted because they were stained with grease and they had a strong cooking odour.

The Landlord stated that the cupboards were repainted in 2013 and were in good condition at the start of the tenancy.

The Tenant submitted photographs of the rental unit at the end of the tenancy, in which the cupboards appear clean and in good condition. The Landlord also submitted photographs of the cupboards, many of which show that the cupboards are clean and in good condition.

The Landlord stated that her photograph #177 shows grease stains on the base of a cupboard that was to the right of the stove and that her photograph #176 shows a stain on the inside of the cupboard. She stated that these stains are permanent and that attempts to clean them have been unsuccessful.

The Tenant stated that the cupboards were clean and in good condition at the end of the tenancy and that he never noticed the stains depicted in the Landlord's photographs.

The Landlord is seeking compensation of \$488.25 for replacing the tiles behind the stove, which she contends were damaged by cooking grease. The Landlord submitted photographs that show the stains on the tiles. She stated that attempts to clean the tiles were unsuccessful.

The Tenant stated that the tiles were stained from cooking, which he contends is normal wear and tear. He stated that he spoke with an employee of a popular home renovation store, who advised him that those tiles are porous and should be sealed every year to prevent cooking stains.

The Landlord stated that she does not know if the tiles are to be sealed every year and they have not been sealed since the tiles were installed in 2013.

The Landlord submitted an estimate for replacing the tiles, in the amount of \$488.25. The Landlord submitted a letter from a contractor who declared that the tiles were installed in February of 2013.

The Landlord is seeking compensation of \$1,711.50 for replacing the shower door. The Landlord and the Tenant agree that the shower door came off the tracks and therefore scraped against the adjoining door when it was opened and closed. The Tenant contends this was normal wear and tear and the Landlord argued that if the problem had been reported in a timely manner the tracking could have been repaired before the glass was damaged.

The Landlord stated that the shower doors were new in 1988.

The Landlord is seeking compensation of \$3,906.00 for landscaping.

The Landlord submitted an estimate for landscaping, in the amount of \$3,470.48. The Landlord stated that she did not use this company to install bark mulch so she negotiated, and paid, a reduced price of \$3,024.00. The estimate is for garden bed edging, weeding, pruning, and general clean up.

The Landlord submitted a receipt for bark mulch, in the amount of \$882.00.

The Landlord stated that during the tenancy she expected the Tenant to do basic lawn maintenance. When she was asked how any of the aforementioned landscaping costs relate to basic lawn maintenance she referred to the cost of edging the lawn.

The Landlord stated that she does not believe that the Tenant properly cared for the yard during the tenancy. She noted that there was a path worn into the grass where the Tenant's father regularly walked and there were several worn areas on the lawn.

The Tenant stated that he understood he was required to water and mow the lawn during the tenancy, which he did. He stated that he also applied fertilizer to the lawn, which he does not believe he was required to do.

The Landlord submitted several photographs of the yard that the parties agree fairly represent the condition of the yard at the start of the tenancy. (Photographs #84 – 90 are representative, although more were submitted)

The Landlord submitted numerous photographs of the yard that the parties agree fairly represent the condition of the yard at the end of the tenancy. (Photographs #104-110 are representative, although more were submitted)

The Tenant also submitted photographs of the yard that the parties agree fairly represent the condition of the yard at the end of the tenancy. (Photographs #104-110 are representative)

The Landlord stated that she believed the Tenant was also responsible for maintaining the garden beds, although she acknowledged that there is nothing in their tenancy agreement that required the Tenant to maintain the beds and she did not produce any documentary evidence to show the Tenant agreed to weed, prune, or maintain the garden beds. The Tenant stated that he did not agree to maintain the garden beds.

The Landlord is seeking compensation for replacing 13 light bulbs that burned out during the tenancy. The Tenant agreed that one or two light bulbs burned out during the tenancy and were not replaced.

The Landlord stated that the Tenant's photograph #8 that shows a light bulb burned out in the kitchen. The Tenant stated that the kitchen lights were on two switches and the light that is not working in the photograph was operated by a different switch.

The Landlord submitted a photograph (#78) that shows a light bulb burned out in a bathroom. The Tenant acknowledged this light bulb burned out during the tenancy.

The Landlord submitted a receipt to show that she paid \$76.06 to purchase 13 light bulbs.

Analysis

Section 35(1) of the *Residential Tenancy Act (Act)* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. On the basis of the undisputed evidence I find that the rental unit was jointly inspected on August 31, 2016, which was the end of the tenancy.

Section 35(3) of the *Act* stipulates that the landlord must complete a condition inspection report in accordance with the regulations. On the basis of the testimony of the Landlord I find she did not comply with section 35(3) of the *Act* when she did not complete a condition inspection report during the final inspection on August 31, 2016.

Section 35(4) of the *Act* stipulates that the landlord may make the inspection and complete and sign the report without the tenant if the landlord has provided the tenant with two opportunities to participate in the final inspection and the tenant does not participate on either occasion. As the Tenant did participate in the inspection on August 31, 2016, I find that the Landlord did not have the right to complete the condition inspection report in the absence of the Tenant.

Section 36(2)(c) of the *Act* stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations, as is required by section 35(3) of the *Act*. As I have concluded that the Landlord failed to comply with section 35(3) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits and she received a forwarding address for the Tenant, in writing, in September of 2016.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord

did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

In adjudicating this matter I have placed no weight on the Landlord's testimony that the Tenant asked for more time to clean the rental unit. I have placed no weight on this submission because the Tenant refutes the submission and the Landlord submitted no evidence that causes me to conclude that the parties mutually agreed to inspect the rental unit for a final time at another date or time.

In adjudicating this matter I considered the emails exchanged on September 13, 2016, in which the Tenant declared that they met for the inspection on August 31 and that the Landlord refused to sign the inspection report. There is nothing in this email exchange that would cause me to believe that the parties jointly agreed to conduct a second inspection after August 31, 2016, as the Landlord contends.

A landlord retains the right to seek compensation for damage to the rental unit even if they have extinguished the right to claim against the security deposit. I will, therefore, consider the Landlord's claim for compensation for damage to the rental unit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find, on the balance of probabilities, that the rental unit had a strong odour at the end of the tenancy. I favoured the testimony of the Landlord, who declared there was a strong odour, over the testimony of the Tenant, who testified there was no odour, in part because the Landlord mentions the odour in an email she sent to the Tenant on September 01, 2016.

I favoured the testimony of the Landlord over the testimony of the Tenant in regards to the odour in the home, in part, because an individual who is familiar with the odours in his/her home is not likely to recognize those odours.

I favoured the testimony of the Landlord over the testimony of the Tenant in regards to the odour in the home, in part, because her testimony is corroborated by the written submissions of the person who was paid to clean the house at the end of the tenancy and a contractor who periodically works for the Landlord. While these parties are not entirely unbiased witnesses, they are professionals who appear to be at arm's length from the Landlord.

I have placed less weight on the written submissions of the Tenant's acquaintances because they were in the rental unit while the unit was occupied and they may not have noticed the odours because of competing odours. In my opinion the most reliable third party evidence is the evidence provided by professionals who were in the rental unit after the unit was vacated.

I do not believe that the Tenant was attempting to mislead the proceedings by stating that there were no odours in the unit at the end of the tenancy. I find it highly likely that the Tenant simply did not notice the odours due to his familiarity with them.

On the basis of the photographs submitted in evidence by the Landlord, particularly #32, I find that the some areas of the carpet were dirty at the end of the tenancy.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to fully clean and eliminate the odours from the rental unit. I therefore find that the Landlord is entitled to compensation for \$175.77 she paid to clean the carpet in an attempt to clean the carpet and eliminate the odours.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In determining that the carpets were not left in reasonably clean condition at the end of the tenancy I placed little weight on the invoice that shows the carpet was professionally cleaned on August 29, 2016. On the basis of the photograph #32, I find that this cleaning was insufficient.

Even if the carpet was snagged in three places during the tenancy, as the Landlord contends, I would not conclude that the Tenant is responsible for repairing that damage. On the basis of the photograph submitted in evidence I find that damage to be very minor and, as such, I find that it constitutes normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I cannot conclude that the Tenant is obligated to pay for replacing the carpet as a result of that minor damage.

Even if the carpet was still dirty and had an odour after the Landlord cleaned the carpet, I would not conclude that the Landlord is entitled to compensation for replacing the carpets. In reaching this conclusion I was heavily influenced by the absence of evidence from a carpet cleaning specialist who declares any remaining odour or dirt cannot be eliminated through additional cleaning.

In concluding that the Landlord is not entitled to compensation for replacing the carpets as a result of the odour/dirt I was further influenced by the fact that the Landlord cleaned the carpets by herself with the aid of a rented carpet cleaner. I find that this method of cleaning is less likely to be an effective method of cleaning the carpet and that any remaining odour/dirt may have been eliminated by a deep professional cleaning.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is obligated to pay for the costs of replacing the carpet and I therefore dismiss that claim.

On the basis of the photographs submitted in evidence I find that the stove required additional cleaning at the end of the tenancy and that the stove elements were discoloured at the end of the tenancy.

I favour the Landlord's evidence that the stove elements were not discoloured at the start of the tenancy over the Tenant's evidence that they were discoloured at the start of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed at the start of the tenancy, which does not indicate any damage to the stove stop, with the exception of a broken knob.

In determining that the stove elements were discoloured at the start of the tenancy I was further influenced by the declaration of the cleaner, who declared that the stove was "a normal stove, well maintained and clean."

I find that the Tenants failed to comply with section 37(2) of the Act when they failed to repair the damaged stove.

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 in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of a stove is 15 years. The evidence shows that the stove was approximately 10 years old at the end of the tenancy. I therefore find that the stove had depreciated by 67% and that the Landlord is entitled to 33% of the cost of replacing the stove, which in these circumstances is \$165.00.

On the basis of the photographs submitted by the Tenant, I find that the range hood was left in reasonably clean condition at the end of the tenancy. On the basis of the photographs submitted by Landlord, I accept that grease had accumulated inside the venting and the interior of the venting. I do not find that leaving a unit reasonably clean includes cleaning inside the workings of a fan or venting for a fan, as that would involve dismantling equipment which is well beyond the ability of many tenants. As the Landlord has submitted insufficient evidence to establish that the fan was not left in reasonably clean condition, I dismiss the Landlords' claim for replacing the fan and the venting.

In adjudicating the claim for replacing the fan and venting I was influenced, to some degree, by the absence of evidence to show that the fan was used for a purpose for which it was not intended. I find it reasonable to conclude that grease will accumulate inside fans and venting that are used above a stove.

Even if I accepted the Landlord's submission that the blinds in the rental unit needed to be replaced because they could not be cleaned, I would dismiss the claim for replacing

the blinds on the basis of the age of the blinds. Residential Tenancy Policy Guidelines show that the life expectancy of blinds is 10 years.

The Landlord estimated that the blinds were new in 2006 or 2007. I therefore find it reasonable to conclude that the blinds were new in the middle of 2006, which is June of 2006. As this tenancy ended on August 31, 2016, I find that the blinds in the rental unit had exceeded their life expectancy by the time this tenancy ended. As the blinds had exceeded their life expectancy, I find that the Landlord would not be entitled to compensation for replacing the blinds, even if I concluded that they needed to be replaced.

As the Landlord has failed to establish that the Tenant was obligated to pay for the costs of replacing the carpet, the range hood fan/venting, and the blinds, I find that he is not responsible for fees associated to disposing of those items. I therefore dismiss the Landlord's application for dump fees of \$44.00.

On the basis of the tenancy agreement submitted in evidence by the Tenant, I find that garbage disposal was included in the tenancy. I therefore find that it was reasonable for the Tenant to leave garbage in the cans at the end of the tenancy, given that garbage would not be collected until five days after the tenancy ended. I therefore dismiss the Landlord's application for disposal fees of \$27.50.

On the basis of the undisputed evidence I find that the base of the cabinet below the kitchen sink was damaged during the tenancy. On the basis of the undisputed evidence I find that the kitchen faucet leaked on two occasions during the tenancy. On the basis of the photographs submitted in evidence I find that the damage to the base of the cabinet was likely damaged when the faucet leaked.

A Tenant is only obligated to repair damage caused by his actions or neglect. As there is no evidence that the Tenant caused the kitchen faucet to leak as a result of misuse, I cannot conclude that his actions damaged the base of the cabinet. As there is no evidence to support the Landlord's submission that the Tenant delayed reporting the leak or to refute the Tenant's testimony that the leak was reported as soon as it was noticed, I cannot conclude that he is responsible for repairing the cabinet base as a result of his neglect. I find it entirely possible that a tenant would not notice a leak under a kitchen sink for several days.

As the Landlord has failed to establish that the cabinet base was damaged by the actions or neglect of the Tenant, I dismiss her claim for repairing the base.

On the basis of the photographs submitted in evidence by the Landlord and the letter from the person who cleaned the unit at the end of the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not leave the rental unit in reasonably clean condition.

I find that the photographs submitted by the Landlord are more compelling than the photographs submitted by the Tenant, as the Landlord's photographs are taken from a closer range. I find that the closer range of the Landlord's photographs provides more detail of the true cleanliness of the unit. I find that many of the photographs submitted by the Landlord show additional cleaning was required including, but not limited to, photographs: 33, 35, 39, 41, 45, 54, 65, 71, 178, and 180

As the rental unit was not left in reasonably clean condition, I find that the Landlord is entitled to compensation for the cost of a professional cleaner, in the amount of \$420.00, plus \$200.00 for the time she spent cleaning the unit.

Residential Tenancy Branch Guideline #1, with which I concur, suggests that a tenant is responsible for cleaning the inside and outside of the balcony doors at the end of the tenancy; the tenant is responsible for cleaning the inside of the windows at the end of the tenancy; and the landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

I find that the Landlord submitted insufficient evidence to show that the windows in the unit required cleaning, with the exception of a skylight. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that they were dirty or that refutes the Tenant's submission that all windows, except the skylight, had been cleaned. As the Landlord failed to establish that the windows needed cleaning, I find that the Landlord is not entitled to compensation for cleaning the windows.

On the basis of the undisputed evidence I find that the Tenant did not clean the skylights at the end of the tenancy. As the Tenant is not required to clean the exterior of windows, with the exception of the balcony doors, I cannot conclude that the Tenant was obligated to clean the exterior of the skylight. As there is no evidence that the Landlord provided the Tenant with a ladder that reaches the skylight, I find that there can be no reasonable expectation that the Tenant would clean the interior of the skylight. I therefore find that the Landlord is not entitled to compensation for cleaning the skylight.

On the basis of the testimony of the Landlord and the Landlord's photographs #37 and #72 I find that there were some permanent grease stains on the vents in the kitchen. As the Tenant does not recall seeing the stains, which are clearly evident, I find it reasonable to rely on the Landlord's testimony that they existed. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he did not remove these grease stains and that the Landlord is entitled to compensation of \$79.77 for replacing the vents.

On the basis of the testimony of the Landlord and the Landlord's photographs #177 and #176 I find that there were some permanent grease stains on the base of a kitchen cupboard on the inside of a cupboard at the end of the tenancy. As the Tenant does not recall seeing the stains, which are clearly evident, I find it reasonable to rely on the

Landlord's testimony that they existed. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he did not remove these grease stains.

I find, however, that the Landlord's claim for repainting all of the cupboards in an attempt to remove the stains is excessive. Rather, I find it possible that the problem would be rectified by simply painting the specific areas that are stained.

I find that the Landlord has submitted insufficient evidence to convince me that all of the cupboards need to be repainted to eliminate the odour in the rental unit. I find that the cleaner's declaration that the "cabinets are going to keep to that smell until they get replaced" is highly speculative. I find that the cleaner does not know, and could not know, whether or not painting the stained areas of the cupboards will not fully eliminate the odour.

In adjudicating the claim for painting the cupboards I was further influenced by the cleaner's declaration that the "smell is lingering but not strong". This declaration further convinces me that simply painting the stained areas of the cupboards may fully eliminate the remaining odour.

As I do not have a photograph of the entire kitchen it is difficult for me to determine what percentage of the cupboards need to be repainted to cover all the stains, but I find it reasonable to conclude, based on the information I have, that 15% of the cupboards need to be re-painted to cover the stains and, possibly, fully eliminate the odour in the unit.

I therefore find that the Landlord is entitled to 15% of the cost of repainting the cupboards, which is \$413.44.

On the basis of the photographs submitted in evidence by the Landlord, I find that the tiles behind the stove are significantly stained and that the staining exceeds normal wear and tear. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he did not remove those stains.

In adjudicating the claim for removing the stains I have placed little weight on the Tenant's testimony that the tiles should be sealed every year to prevent staining, as he submitted no evidence to corroborate that testimony.

As the Tenant did not clean/replace the stained tiles, I find that the Landlord is entitled to compensation for replace those tiles. Residential Tenancy Branch Guidelines Residential Tenancy Policy Guidelines show that the life expectancy of tiles is 10 years.

The evidence shows that the tiles were installed in February of 2013 and I therefore find that they were approximately 3.5 years old at the end of this tenancy. I find that the tiles had depreciated by 35% and that the Landlord is entitled to 65% of the cost of replacing the tiles, which is \$317.36.

Even if I accepted the Landlord's submission that damage to the glass of the shower doors would have been prevented if the Tenant had reported that the shower door came off the tracks, I would dismiss the claim for replacing the shower doors on the basis of the age of the doors. Residential Tenancy Policy Guidelines do not specify the life expectancy of shower doors, but they do show that the life expectancy of tubs, toilets, and sinks is 20 years. I find it reasonable, therefore, to conclude that the life expectancy of shower doors cannot be more than 20 years.

The evidence shows that the shower doors were new in 1988. I therefore find that the doors had long exceeded their life expectancy and I find that the Landlord would not be entitled to compensation for replacing the doors, even if I concluded that the Landlord did not report a problem with the doors in a timely manner.

On the basis of the undisputed evidence, I find that the Tenant was required to maintain the grass during the tenancy. Typically, maintaining the grass at a rental unit means mowing and watering the lawn. It does not typically involve applying fertilizer or insecticides.

On the basis of the testimony of the Tenant and the photographs submitted in evidence I find that the Tenant did maintain the grass during the tenancy and that it was in reasonably good condition at the end of the tenancy. A tenant is not obligated to maintain a yard to standards that are exceedingly high, even if the standards of the landlord or the Arbitrator are exceedingly high. Although I accept that the lawn was in better condition at the start of the tenancy than it was at the end of the tenancy and that the Landlord was not satisfied with the condition of the lawn at the end of the tenancy, I find that the Tenant has not breached his duty of care.

As the Landlord has failed to establish that the Tenant did not comply with his obligation to maintain the lawn during the tenancy, I find that she is not entitled to compensation for any work done to the lawn after the tenancy ended.

Generally a tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting the 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. As there is no evidence to corroborate the Landlord's submission that the Tenant agreed to maintain the flower beds or to refute the Tenant's submission that he did not agree to maintain the flower beds, I find that the Landlord is not entitled to compensation for any of the costs associated with maintaining the flower beds, including edging the flower beds.

On the basis of the Tenant's photograph #8 I find that there was likely one light bulb burned out in the kitchen. I find, on the basis of this photograph, that the light that is working is likely operated by the same switch that is operating the other lights in that area.

On the basis of the undisputed evidence I find that a light bulb burned out in the bathroom during this tenancy.

I find that the Landlord submitted insufficient evidence to establish that more than 2 light bulbs burned out during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that more than 2 light bulbs burned out of that refutes the Tenant's submission that only 1 or 2 light bulbs burned out.

I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace two light bulbs and I find that the Landlord is entitled to compensation for replacing two light bulbs. On the basis of the evidence that shows the Landlord paid \$76.06 to purchase 13 light bulbs, I find that she is entitled to compensation of 2/13 of that amount, which is \$11.70.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established the right to the return of double the security deposit, which is \$2,700.00.

The Landlord has established a monetary claim, in the amount of \$1,883.04, which includes \$175.77 for cleaning the carpet; \$165.00 for replacing the stove; \$620.00 for cleaning, \$413.44 for painting cupboards, \$317.36 for replacing tiles, \$11.70 for replacing light bulbs, \$79.77 for replacing vents in the kitchen, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

After offsetting the two claims I find that the Landlord owes the Tenant \$836.96 and I grant the Tenant a monetary Order for that matter. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 14, 2017

Residential Tenancy Branch