



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL, MNDL

### Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on August 31, 2018, wherein the Landlord requested monetary compensation from the Tenants for damage to the rental unit and loss of rent and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 4, 2018, 9:30 a.m. on February 14, 2019 at 9:30 and completed on March 29, 2019. In total the hearing occupied over four and a half hours of hearing time.

Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

### *Preliminary Matter—Date of Decision*

Due to the length of the hearing and the evidence filed by the parties this Decision is being rendered beyond the 30 days provided for in section 77 of the *Residential Tenancy Act*. I confirm, pursuant to section 77(2) that I have not lost authority to make this Decision, nor is the validity of this Decision affected by the fact the Decision is being rendered beyond the 30 day deadline.

### *Preliminary Matter—Evidence submitted after Initial hearing, and contrary to Interim Decisions*

As the hearing occurred over several days, on January 4, 2019 and February 14, 2019 I rendered interim Decisions wherein I specifically ordered that neither party submit any further evidence. Any evidence submitted by either party contrary to those orders is not admissible and was not considered in making my Decision.

Preliminary Matter—Landlord's Evidence

The Landlord failed to submit any receipts supporting the amounts claimed. She stated that she believed I would request original copies during the hearing. She claimed to have relied on Rule 3.8 of the *Residential Tenancy Branch Rules of Procedure* which reads as follows:

**3.8 Original evidence**

At any time during the dispute resolution process, the parties must be prepared to supply an original of any document if requested to do so by the arbitrator.

The arbitrator may direct that the original be placed into evidence, rather than a copy, or may accept as evidence a legible copy of the document.

As I repeatedly explained to the Landlord during the hearing, *Rule 3.8* cannot be read in isolation. *Rule 3.8* references “original of any document”, which means any document already submitted as evidence in the proceedings. For example, in the event one party claims that a condition inspection report has been altered, *Rule 3.8* allows an Arbitrator to request the original report.

Parties to a dispute are obligated to submit any and all evidence upon which they intend to rely before the hearing. In the case of the Applicant, that evidence is to be submitted at the time of filing, or within three days of receiving the Notice of Hearing. At the very latest, the Applicant may submit evidence 14 days prior to the hearing. In the case of a Respondent, they have until seven days prior to the hearing. These timelines are set out in the *Rules of Procedure*; for clarity, I reproduce those *Rules* as follows:

**3.1 Documents that must be served**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the Arbitrator will apply Rule 3.17.

### **3.15 Respondent's evidence**

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].

See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

### **3.16 Respondent's proof of service**

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that each applicant was served with all their evidence, as required by the Act.

### **3.17 Consideration of new and relevant evidence.**

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute*]

Timely exchange of evidence is to ensure a fair hearing for both parties. One of the principals of Natural Justice is that a party to a dispute is entitled to know the claim against them, which includes having an opportunity to review and respond meaningfully to any evidence submitted by the applicant, as well as an opportunity to appear and answer to any claims made against them.

This tenancy ended in September of 2016. The evidence of the receipts for was clearly in existence at the time the Landlord filed her application in August of 2018 and could have been filed prior to the original hearing date of January 4, 2019. As such, that evidence does not meet the definition of “new and relevant evidence” as contemplated by *Rule 3.17*.

To allow the Landlord to submit further evidence at the time of the hearing which had not been filed and served on the Tenant in accordance with the *Rules of Procedure* would offend the principals of natural justice and would deny the Tenant an opportunity for a fair hearing.

I have reviewed all oral and admissible written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for damage to the rental unit?
2. Is the Landlord entitled to monetary compensation for loss of rent?
3. Should the Landlord recover the filing fee?

### Background and Evidence

#### ***Landlord's Evidence***

The Landlord testified that the tenancy began August 2010 and ended in September of 2016. Monthly rent was \$700.00 although the Tenants were only obligated to pay \$670.00 as the Tenant, J.S., was credited \$30.00 per month for general maintenance of the property.

The Landlord confirmed that she did not take a security deposit from the Tenants.

In the claim before me the Landlord sought monetary compensation for damage to the rental unit as well as loss of rental income. The Landlord testified that due to the condition of the rental unit left by the Tenants she was not able to re-rent the rental unit until December 2016. She confirmed that the new Tenant, who was also the Landlord's son, paid \$800.00 per month in rent.

Nearly two years after the tenancy ended, the Landlord applied for dispute resolution in August of 2018. The Landlord stated that she was destitute at the end of the tenancy as a result of the cost to repair the rental unit and property and was not able to afford to apply earlier. She also stated that she lives in a remote island community where there is no service B.C. office and as such she was unable to apply earlier.

The Landlord did not complete a move in condition inspection report. She argued that the condition of the rental unit was as described in an appraisal which was done September 23, 2011. In this appraisal the writer describes the interior of the rental unit as "Average" on a scale of "Good-Average-Fair-Poor".

The Landlord also stated that prior to the tenancy beginning she made the following improvements to the rental property:

- all of the flooring (aside from the linoleum in the entry way and the bathroom -- which had been replaced the year prior) was replaced with laminate flooring;
- the entire rental unit was painted; and,
- the entire rental unit was cleaned top to bottom.

The Landlord stated that at the start of the tenancy the appliances were not new, but in “great shape”. She testified that the clothes washing machine and dryer were two years old at the start of the tenancy and that the fridge was three years old and the stove was four years old.

In terms of the condition of the rental unit at the beginning of the tenancy, the Landlord also provided an affidavit from J.P., sworn December 17, 2018, which attaches a letter dated December 15, 2018. In this letter, J.P. writes that they were hired by the Landlord to paint and clean the rental unit. J.P. provides their observations of the rental unit at that time indicating it was clean and tidy. J.P. also wrote that all appliances were in working order.

J.P. also wrote that she observed the rental unit at the end of the tenancy when the Landlord “gained access to the rental unit” in September of 2010 (presumably this was a typographical error as 2016 was the year the Landlord gained access to the rental unit). J.P. writes that she attended the home in September of 2016 and observed the following:

- mounds of garbage, beer cans and bottles throughout the yard;
- cat scratches on the exterior siding;
- a sagging porch because of the weight of a planter;
- holes in the living room ceiling due to a plant;
- dozens of punch holes in the walls;
- one wall was completely destroyed;
- substantial damage to the interior walls from cat scratching, drag marks and dents;
- electrical switch plates were broken;
- spills on the walls which were also on the floor and caused the laminate to swell;
- the living room linoleum had pulled away from the baseboards and bubbled in the middle;
- missing bathroom door, closet doors and blinds;
- the kitchen table was thrown in the yard to rot;
- the queen bed was missing;

- the walk in area/bathroom was painted green and damaged;
- no dishwasher in the kitchen and obvious water damage;
- the kitchen cupboards and fridge were filthy, full of stains and rotten food;
- the oven was “disgusting”;
- garbage thrown out the back window resulting in truckloads of garbage being taken to the dump;

The Landlord confirmed that the first time she saw the condition of the rental property was near the end of the tenancy at which time she was appalled by its condition. She testified that when the tenancy ended she took photos of the rental unit which were submitted in evidence; those photos depict the following:

- dirty light fixtures, most missing the covers;
- a large hole in the wall as well as photos of the repair to the drywall;
- numerous photos of other walls with scratches, dents and holes (many of which looked like they were made by fists);
- bottles, cans, juice containers, plastic bags and other garbage and piles of wood in the yard;
- damaged laminate flooring;
- linoleum which was not cleaned, showing rust stains, and pulled up from the floor;
- significant dirt and debris on the floors;
- significant dirt and mold in the bathroom;
- window sills damaged by water;
- an improperly installed wood stove;
- a photo of “creosote” from the chimney upon which the Landlord wrote “creosode was never emptied when cleaning the chimney it was 5 ft thick”
- rotten food in the kitchen cupboards;
- stained and swollen kitchen cupboards;
- a drawer full of plastic shopping bags;
- the unclean refrigerator and freezer;
- the side and bottom drawer of the stove showing significant grease and dirt;
- the underside of the stove burners showing significant grease and burned food;
- the oven door caked with grease; and,
- the dryer lint screen covered in dryer lint.

The Landlord also submitted an affidavit from her spouse, W.B., sworn December 2, 2018, who writes that he was involved in the renovation to the rental unit prior to the

tenancy beginning, as well as the negotiations with the Tenants when they first moved in. W.B. also provided information regarding the refinance in 2011 when the roof was leaking. Finally, W.B. provides his observations of the rental unit at the end of the tenancy, including but not limited to:

- water stains on the wood window sills;
- damaged kitchen cupboards due to a leaking dishwasher;
- damage to the walls;
- chipped and water damaged laminate flooring;
- damaged linoleum flooring in the living room;
- food left in the kitchen;
- the wood stove was removed and left in the shed to rust;
- a large hole in the wall due to the installation of a satellite TV;
- exterior scratches due to pets;
- lack of yard maintenance;
- a sunken patio due to a large planter;
- moisture and mold in the spare bathroom and back room; and,
- “disgusting” stove/oven and fridge requiring replacement.

W.B. also wrote that the following items were missing:

- all light covers in the interior halls, bedrooms, kitchen and walk in;
- bathroom door;
- kitchen table and chairs;
- queen bed and dresser set;
- all closet doors;
- two sets of matching living room blinds; and,
- window coverings for the patio and bedrooms.

W.B. also wrote of the heaps of garbage in the shed and back yard including pallets, bike frames, rotten tarps, broken glass and liquor bottles and cans.

The Landlord also provided testimony before me which mirrored the observations of J.P. and W.B. as to the above damage and stated that it appeared as though the Tenants simply threw their garbage out their back window.



In terms of the amounts claimed, the Landlord also included in evidence a handwritten document setting out the amounts she spent to repair the rental unit at the end of the tenancy. This document includes the following:

Fridge	\$626.22
Washer	\$976.04
Dryer	\$676.03
Stove	\$350.00
Amounts paid to "B." (contractor) for replacing baseboards, repairing the lino/prime/paint/cleaning: <ul style="list-style-type: none"> <li>• \$750.00</li> <li>• \$885.00</li> <li>• \$1,400.00</li> </ul>	\$3,035.00
Building supplies (paint, prime, mud, gyproc, switch plates, and all reno supplies) <ul style="list-style-type: none"> <li>• \$1,143.27</li> <li>• \$46.21</li> <li>• \$101.93</li> </ul>	\$1,291.41
7 trips to municipal waste yard	\$80.00
H.G. Forest P.	\$384.20
Amounts paid to D.K. (contract)	\$500.00
Replacement of hose	\$36.95
C. Supply <ul style="list-style-type: none"> <li>• \$156.00</li> <li>• \$331.24</li> </ul>	\$487.24
H.G. Forest	\$364.35
A.M.S.	\$43.50
D. Supply	\$54.66
Ink for evidence	\$54.66
N.C. Supply	\$125.40
H.W. store	\$67.78
Door lock	\$53.75
Cleaners etc.	\$242.11
Co-op	\$50.99
Registered mail	\$22.68
AMS	\$139.95
<b>TOTAL</b>	<b>\$9,630.20</b>

The Landlord also sought compensation for wages and rental loss and detailed these amounts as follows:

7 loads to the dump x 28 km. x .52/km (fuel)	\$101.92
14 return trips from the Landlord's residence to the rental property 114 km x 2 x 14 x .52	\$1,659.84
3.5 months at \$800.00 in lost rental income	\$2,800.00
Wages paid to B.K. for carpentry/mud/cleaning	\$1,385.00
2 adults (Landlord and her spouse) 14 trips x 8 hour days at \$25.00 per hour	\$5,600.00
Wages paid to J.R. at \$15.00 per hour for 8 hours	\$120.00
<b>TOTAL CLAIMED</b>	<b>\$11,665.92</b>

The Landlord also sought the following administrative costs:

Ink for evidence	\$118.70
Registered mail	\$22.68
AMS (registered mail)	\$8.28
Cost to swear affidavit	\$20.00
Service B.C.	\$16.80
<b>TOTAL CLAIMED</b>	<b>\$186.46</b>

In total the Landlord sought the sum of \$21,482.48 from the Tenants for the above noted expenses:

The Landlord failed to provide copies of the receipts for building supplies and materials. She stated that she was not able to introduce copies of the receipts as they were so faded they could not be photocopied. As noted in the introduction of this my Decision, the Landlord stated that she believed she would be able to submit the originals during the hearing.

The Landlord confirmed that this is her only investment property and she was not doing work on any other property at the material time such that all the amounts spent related to repairing the rental unit.

The Landlord testified that due to the condition of the rental unit and the extensive work required to clean and repair she hired others to assist her.

The Landlord claimed that she hired B.K. to remove garbage and items left by the Tenants. She also stated that he repaired the drywall including, cutting out the drywall and did the initial mudding and taping. B.K. also tore down the damaged front porch and built a smaller porch for the Landlord as she could not afford to replace the porch with the original size. She confirmed that she did not provide copies of the invoice from B.K. for \$1,385.00 because she did not want to provide "partial receipts".

The Landlord also stated that there were some plant pots on the porch which rotted out the porch supports. She said that the Tenant, J.S., was supposed to replace 24 boards during the tenancy, but never did and left the boards to rot. The Landlord provided in evidence photos of the deck which showed the rotting boards.

The Landlord stated that because the rental unit is in a small town and she knew the Tenants' parents, she trusted them and therefore did not come by the rental unit often to inspect its condition.

In terms of the amounts claimed for damage to the yard, the Landlord stated that the entire yard was full of garbage and was taken over by bramble and blackberries such that the yard needed to be scraped by a machine down to the roots so the lawn could be replanted. She claimed the sum of \$500.00 which she claimed to have paid to D.K. this work.

The Landlord stated that she also paid her adult son, J.R., the sum of \$15.00 per hour for 8 hours of his time cleaning the garbage from the yard as well as driving to the dump. She stated that he is a different son from the one who lives in the property, and further stated that J.R. was home from university and they paid him for his time.

The Landlord denied that the amounts claimed related to improvements, rather than repair. She further stated that she did not have the money to bring the property back to the condition that it was, she simply did what she could to bring it up to a rental state.

In terms of maintenance during the 6 year tenancy, the Landlord testified as follows:

- she replaced the roof in 2011;
- she also had the toilet repaired twice, once in 2012 and in 2015;
- she installed a wood stove in 2011; and,
- she repaired the sink in 2012.

The Landlord reiterated that she did not regularly attend the rental unit as she had a good relationship with one of the Tenant's mothers. She also stated that they always paid their rent on time and they had good communication. She denied any knowledge of the condition of the rental unit until the tenancy ended.

In cross examination, the Landlord confirmed that the Tenants were aware of the purpose of the appraisal in 2011 and they were involved to the extent that they facilitated the appraiser attending the property.

In cross examination the Landlord confirmed that she did not complete a condition inspection report at the end of the tenancy because although the Tenants paid their rent and gave notice, she did not know when they actually moved out, or where they moved to. She also stated that after they moved out, they changed their phone number they blocked her on social media. Having no means to reach the Tenants she also claimed that she had to go through a window to gain access to the rental unit. The Landlord stated that eventually she had to take the locks off the door. She said that she tried to get in touch with the Tenants to do a move out but they avoided her.

The Landlord noted that she even had a hard time serving this application because she did not know where they lived.

Counsel for the Tenants asked the Landlord what evidence she had to prove when the photos of the property were taken. The Landlord reiterated that she took the photos with the camera on her phone at the time the tenancy ended.

### ***Tenants' Response***

In response to the Landlords' claims, the Tenant, F.S., testified as follows.

F.S. stated that the Landlord's claim that the rental unit was in the same condition at the start of the tenancy as when the appraisal was done is fair.

F.S. further agreed that the following repairs were done as the Landlord testified:

- she replaced the roof in 2011;
- she also had the toilet repaired twice, once in 2012 and in 2015;
- she installed a wood stove in 2011; and,
- she repaired the sink in 2012.

F.S. stated the Landlord was present in 2012 when the sink was replaced such that her claim that she was not at the rental unit during the tenancy was false.

F.S. further stated that the Landlord was by the rental property frequently throughout the tenancy which she described as once a month, or a couple times a week. She explained that the porch was sloping because the neighbour next door made the creek higher to build a waterfall and this impacted the rental property, in that it was undermining the rental property. F.S. claimed that the Landlord wanted to sue the neighbour, or the municipality and as a result the Landlord was at the property frequently.

F.S. denied the rental unit was in the condition as claimed by the Landlord. She stated that when she moved out they took everything with them and they cleaned the entire property. She also claimed that her mother in law cleaned for 10 hours.

In terms of the wood stove, F.S. stated that the woodstove was not installed properly and always leaked smoke. She stated that they took it out and put it in the shed during the tenancy and then moved it back in the house as requested by the Landlord.

In terms of the Landlord's claim that she could not reach the Tenants after the tenancy ended, F.S. stated that she still lives in the same town, she still works at the hospital, and she still has the same phone number such that the Landlord could have gotten in touch with her when she moved out. She admitted, however, that she blocked the Landlord on social media because she continually received messages from the Landlord regarding furniture in the house. The Tenant denied that the Landlord brought up the condition of the rental unit with her in these messages.

F.S. denied leaving the property in the condition alleged by the Landlord. She said at no time did they leave garbage on the property as depicted in the photos. F.S. further stated that the photos submitted by the Landlord do not, at all, accurately depict the condition in which the property was left. She admitted that she did not submit any photos to show the condition they say it was left in, which she realized was a "mistake".

F.S. stated that the mold issues were due to a leaky roof, not anything they did. She claimed that about a month after they moved in they noticed that the roof was starting to leak quite heavily when it rained. The Tenants told the Landlord about it but she didn't have the money to do anything with it. F.S. stated that this caused water damage in the ceiling and the walls. She noted that she had to wash down the walls frequently and despite this mould accumulated.

F.S. claimed that she and her husband, as well as her mother and her mother in law cleaned. She said there was one pile of empties left because there was a bottle drive at the time.

In terms of the deck the Tenant, F.S., stated that there were two big planters which were already there when they moved in, which she understood were put there by the previous tenants. F.S. stated that it was the creek which destabilized the porch not the planters. F.S. also stated that the Landlord told them during the tenancy that she intended to take the porch down and put a little porch up.

In terms of the Landlords' claims for the replacement cost of the appliances, F.S. stated that a lot of them were not working during the tenancy. She stated that when the dryer stopped working, she told the Landlord that it wasn't working and the Landlord replied that she couldn't afford to repair it so the Tenant replaced it with hers. Further, she claimed that near the end of the tenancy, the fridge started freezing items the Tenants brought this to the Landlord's attention and again she said she could not afford it and wished them "good luck. F.S. stated that she then used her mom's mini-fridge. Finally, F.S. stated that when the washing machine broke down and the Landlord would not fix it they realized they really had to get out of there.

The Tenant J.S. also testified. He stated that the photos submitted by the Landlord do not accurately reflect the condition of the rental property. J.S. stated that they cleaned the property and left it in "livable shape" and cleaned it as best they could considering the water damage from the leaking roof (which he said went on for a year) and the multiple times the pipes burst in the 6 years they lived there.

In terms of the porch, J.S. stated that when they complained about the porch rotting, he helped the Landlord's worker fix the porch by replacing boards. J.S. also testified that the issue with the porch was due to the neighbour building a pool with a retaining wall. It filled up with sediment and then created a water fall, which then created a plunge pool and in turn eroded the deck. J.S. stated that the Landlord was aware of this and that was why she came to the property all the time to yell at the neighbour.

J.S. also stated that in the last six months they were living in the property, the Landlord was there a "handful of times". He claimed she was there for issues with the neighbour and the creek, the stove, the appliances and the mould. J.S. also stated that at no time did the Landlord complain about the condition of the rental property during her visits.

J.S. stated that the garbage depicted in the photos was in fact what was left over from the bottle drive as the people took what they wanted, left the rest and all the bags. He also stated that the photo of the bikes was from the previous tenant which is why it was so overgrown.

In terms of Landlord's claims regarding holes in the walls, the Tenant said there were no holes in the walls when they left. He stated that the linoleum damage was due to leaks in the roof.

In terms of the damage to the dryer, J.S. stated that the dryer photos were likely of the Landlord's old dryer as they replaced hers with theirs when her dryer stopped working.

J.S. also stated that it was B.K. (who was hired by the Landlord) who installed the dishwasher, incorrectly, not the Tenants as alleged by the Landlord.

J.S. stated that the Landlord did not paint during the six year tenancy; he also claimed that the green paint was from the tenant prior as they did not paint during their tenancy.

J.S. stated that shortly after they moved in the roof began leaking and it was not replaced until after the appraisal was done September 23, 2011. He claimed that the roof was leaking in at least six places such that there was significant water damage throughout the property. He noted that despite the water damage, the house was not remediated such that the water damage caused excessive mould.

### ***Landlord's Reply***

In reply to the Tenants' testimony and submissions the Landlord testified as follows.

The Landlord denied that she was at the property regularly. She testified that the creek issue with the neighbour started prior to when the Landlord purchased the property.

The Landlord also denied telling the Tenants that she intended to take the porch down and replace it with a smaller porch.

In response to the Tenants' testimony that the porch was compromised by the water from the neighbour's alterations to the creek the Landlord stated that this was not true. She stated that the area where the planters were is not the same as the area where the

water damaged the post. She confirmed that the porch damaged by the creek was not replaced as the Village is going to rectify this.

In response to the Tenants' submissions that the dryer and fridge did not work and she could not replace it, she stated that was an absolute lie. She noted that there was fresh food left in the fridge as depicted in the pictures.

In response to the Tenants' submissions that the roof was leaking for a year the Landlord stated that was untrue. She testified that she obtained an appraisal and funding to replace the roof and claimed that it was replaced in less than two months. She confirmed that the Tenants informed her in September of 2011 that the roof leaked and the roof was replaced in November 2011. She also stated that the day they told her she tarped the roof, which she described as a 'small little portion' not six places as claimed by the Tenants.

The Landlord confirmed that there was one burst pipe in the winter "one year" and her spouse, W.B., attended and fixed it. She denied that she was informed of any other burst pipes at any other time.

In terms of the Tenants' allegation that the garbage depicted in the photos was the left over from a bottle drive the Landlord stated that was false as it that it was clearly an accumulation of garbage from over the years.

The Landlord confirmed that in January of 2012 she was at the property to deal with the sink because the Tenants improperly installed the sink. She claimed there was snow on the ground and she could not see the condition of the property.

The Landlord confirmed that the tenancy ended in September of 2016. She further confirmed that she attended that month (after F.S. told her the tenancy was ending) but that prior to that she was not at the property at any time other than January 2012 and some other time between January 2012 and September 2016 when they dealt with a burst pipe.

### Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:



**[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I will first deal with the Landlord's claim for compensation for cleaning and repair costs.

The undisputed evidence is that Landlord did not complete a move in and move out condition inspection report when this tenancy began and when it ended.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 of the *Act* as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.) In the case before me, the Landlord did not take a security deposit such that this is not a relevant issue.

Often, the absence of a condition inspection report will prove fatal for a Landlord wishing to establish the condition of the rental unit at the time the tenancy began. However, in this case, the Tenant F.S. conceded that the appraisal submitted by the Landlord accurately depicted the condition of the rental unit at the time the appraisal was conducted. The appraisal confirms that the rental unit was in "average" condition at that time. This is in stark contrast to the condition as depicted in the photos submitted by the Landlord, which show the rental unit significantly damaged when the tenancy ended.

I accept the Landlord's testimony that she took photos of the rental unit at the time the tenancy ended. I further accept that those photos accurately depict the condition of the rental unit at that time.

While the Tenants disputed the Landlord's claims, I am persuaded by the Landlord's testimony, the photos taken at the time, as well as the affidavit evidence submitted by the Landlord with respect to the condition of the rental unit.

I am particularly persuaded by the affidavit of J.P. sworn December 17, 2018. J.P. deposed that they assisted the Landlord in cleaning and painting the rental unit in July of 2010 such that she observed the condition of the rental unit a month before the tenancy began. J.P. further deposed they attended the rental unit in September of 2016 after the tenancy ended. J.P. writes of the stark difference in the condition of the rental, the excessive damage and the profound lack of cleaning.

The information contained in J.P.'s affidavit parallels the information in W.B.'s affidavit sworn December 17, 2018. Having been personally involved in the renovation prior to the tenancy beginning, W.B. was also able to provide information as to the extent of work done by the Landlord prior to this tenancy.

These affidavits support the oral testimony of the Landlord, her written submissions dated December 16, 2018, and are consistent with the photos submitted by the Landlord.

On balance, I prefer the Landlord's evidence as to the condition of the rental unit and find that the Tenants failed to clean and repair the rental unit as required by section 37 of the *Act*.

I will address the Landlord's specific claims for compensation.

The Landlord sought monetary compensation for the cost to replace the washer, dryer, fridge and stove. I am satisfied, based on the photos submitted, as well as the Landlord's testimony, and the affidavit evidence filed in support of her claim, that these appliances required replacement. Aside from the stove, the Landlord sought the replacement cost for new appliances.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item.

In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the 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 or replacement.

*Policy Guideline 40* also provides a table setting out the useful life of most building elements. According to this table, these appliances have a useful building life of 15 years.

The Landlord testified that the clothes washing machine and dryer were two years old at the start of the tenancy, the fridge was three years old and the stove was four years old. I accept the Landlord's testimony in this regard.

As such, when the tenancy ended, the fridge was 9 years old, the washer and dryer were 8 years old and the stove was 10 years old. It would be inappropriate to provide the Landlord with new appliances given the remaining life of those appliances according to *Guideline 40*; accordingly, I discount the Landlord's claim for replacement of the following building appliances as follows.

Fridge \$626.22 claim discounted by 60% (9/15)	\$250.48
Washer \$976.04 claim discounted by 53% (8/15)	\$458.74
Dryer \$676.03 claim discounted by 53% (8/15)	\$317.73
Stove	\$350.00

no discount as Landlord purchased second hand	
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The Landlord also claimed the cost to repair the walls and paint. *Policy Guideline 40* provides that interior paint has a useful life of 4 years. As this tenancy was for 6 years, I find that the Landlord would have incurred the cost to repaint in any event of the tenancy.

That said, I accept that the Landlord incurred additional costs to repair the wall damage caused by the Tenants and their pets. I also find the Landlord incurred the cost to repair the linoleum, replace the electrical switch plates and clean the rental. I am satisfied she retained the services of others to assist her in completing these tasks.

A considerable amount of time was spent by the parties discussing the issue of the porch. The Tenants submit that the porch was damaged due to the neighbour's interference with a creek. The Landlord submitted that the porch which was damaged by the neighbour is to be repaired by the Village in which the rental unit is located; she further submitted that the porch in question, and for which she seeks remediation costs, is a different porch. The Landlord further stated that the subject porch was damaged due to the presence of large planters. In response to this the Tenants testified that the planters were put there by the prior renters.

I am unable, based on the evidence before me, to find that the Tenants damaged the porch as alleged by the Landlord. I therefore dismiss her claim for related compensation.

Clearly, some of the amounts claimed by the Landlord for labour and materials relate to painting and the porch replacement. As I was not provided with a breakdown of expenses to the extent that I can partition out these expenses, I find that the Landlord's entitlement should be reduced to account for any expenses relating to the painting and the porch.

The Landlord sought \$3,035.00 representing the amounts paid to B. for replacing the baseboards, repairing the linoleum, priming, painting and cleaning. As I am unable to determine with specificity the amounts relating to painting or repair of the porch, I reduce the amount claimed by 50% such that I find the Landlord is entitled to the sum of \$1,517.50.

Similarly, and as the Landlord failed to submit copies of the receipts to support her claim for building supplies, I reduce the amount claimed by 50% to account for the cost of paint and any amounts associated with the porch.

Amounts paid to "B." (contractor) for replacing baseboards, repairing the lino/prime/paint/cleaning:	\$1,517.50
<ul style="list-style-type: none"> <li>• \$750.00</li> <li>• \$885.00</li> <li>• \$1,400.00</li> </ul>	
Less 50%	
Building supplies (paint, prime, mud, gyproc, switch plates, and all reno supplies)	\$645.71
<ul style="list-style-type: none"> <li>• \$1,143.27</li> <li>• \$46.21</li> <li>• \$101.93</li> </ul>	
Less 50%	

I find, based on the photos submitted, that the Tenants left a significant amount of garbage at the rental unit. I therefore award the Landlord the \$80.00 claimed for the cost incurred to dispose of those items at the municipal waste yard.

7 trips to municipal waste yard	\$80.00
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The Landlord also claimed \$500.00 for the amounts charged to scrape the land and remove bramble and garbage. I find, based on the photos submitted, and the amount of household garbage strewn about the property that this was a necessary expenses given the likelihood of broken glass in the soil. I therefore award the Landlord the \$500.00 claimed.

Amounts paid to D.K. (contract)	\$500.00
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The Landlord failed to provide submissions regarding the \$384.20 or \$364.35 paid to H.G. Forest P. I therefore find that she has failed to prove the necessity of these expenses and I dismiss this portion of her claim.

The Landlord also claimed compensation for the cost of a hose which she says the Tenants removed from the rental property. This was not disputed by the Tenants. I therefore award the Landlord the \$36.95 claimed.

Replacement of hose	\$36.95
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The Landlord also claimed expenses from various supply stores. I am unable, based on the evidence before me, to determine whether those expenses include cleaning supplies, paint, or administrative costs such as ink (which she notes on one item). Notably, administrative costs such as ink, postage, registered mail costs and time preparing for the hearing are not recoverable under the *Residential Tenancy Act*. As I am satisfied the rental unit required cleaning, I award her the nominal sum of \$500.00 for cleaning supplies only.

Nominal sum for cleaning supplies	\$500.00
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I accept the Landlord's evidence that the Tenants failed to return the keys to the rental unit at the end of the tenancy and I therefore award her the \$53.75 claimed for the replacement of the door lock.

Door lock	\$53.75
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I accept the Landlord's evidence that the condition of the rental unit was such that it could not be rented at the end of the tenancy. The Landlord claimed the sum of \$2,800.00 representing 3.5 months of lost rental income at \$800.00 per month. Notably, this is the sum she charged her son, who was the subsequent tenant.

Although I am satisfied the rental unit required cleaning and repair, I find 4.5 months to be an excessive amount of time to complete these tasks and ready the property for a new tenant. I find one month to be reasonable and therefore award the Landlord the sum of \$800.00 representing loss of rental income for that time period.

Loss of rental income	\$800.00
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In terms of the amounts claimed for wages and time, I find as follows.

While mileage (an amount paid per kilometer driven) may be paid to an employee, I find it is not a recoverable expense under the *Residential Tenancy Act*. I therefore dismiss the Landlord's claim for compensation for the mileage cost to and from the municipal waste yard.

As well, the Landlord's choice to reside in a different community than that in which the rental unit is located is a business choice, the cost of which is not recoverable from the Tenants. I therefore dismiss the Landlord's claim for \$1,659.84 in mileage costs between the Landlord's residence and the rental property.

The Landlord also sought compensation for the amounts paid to B.K. in the amount of \$1,385.00. As I have found the rental unit required cleaning and repair, I accept the Landlord's evidence that she paid this sum to B.K. However, as I have dismissed her claim for compensation for any amounts associated with replacing the porch, I discount her entitlement by 50% such that I find she is entitled to recover \$692.50 from the Tenants.

Wages paid to B.K. for carpentry/mud/cleaning	\$692.50
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The Landlord also sought the sum of \$5,600.00 for her time as well as her spouse related to cleaning and repairing the rental unit after the tenancy ended. The Landlord confirmed that this amount was based on two people working fourteen, eight hour days at a rate of \$25.00 per hour. I find this sum to be excessive. Again, while I find some cleaning and repair was required, I am unable to find the Landlord is entitled to this sum.

As noted earlier, the Landlord is obligated to mitigate her losses. While she and her spouse may have believed they were doing so by completing some of the work themselves, it may also be the case that the work could have been completed faster and more economically if they had hired professionals. As well, I am unable to reconcile the \$25.00 per hour claimed by the Landlord for her time and her spouse's time and the \$15.00 an hour paid to J.R. for similar work. For these reasons, I award her the nominal sum of \$1,000.00 for her time and her spouse's time cleaning and repairing the rental unit.

Nominal sum for the Landlord and her spouse's time cleaning and repairing the rental unit	\$1,000.00
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I accept the Landlord's evidence that she paid J.R. the sum of \$120.00 for this time clearing the yard of debris. I therefore award her the amounts claimed.

Wages paid to J.R. at \$15.00 per hour for 8 hours	\$120.00
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Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Act*. I conclude that this exclusion is intentional and includes disbursement costs such as ink, fees charged for swearing affidavits and registered mailing costs. I therefore dismiss the Landlord's claim for administrative costs in the amount of \$186.46.

I find the Landlord is entitled to recover the filing fee paid for this application and I therefore award her the sum of \$100.00.

### Conclusion

The Landlord is awarded monetary compensation in the amount of **\$7,422.86** for the following:

Fridge \$626.22 claim discounted by 60% (9/15)	\$250.48
Washer \$976.04 claim discounted by 53% (8/15)	\$458.74
Dryer \$676.03 claim discounted by 53% (8/15)	\$317.73
Stove no discount as Landlord purchased second hand	\$350.00
Amounts paid to "B." (contractor) for replacing baseboards, repairing the lino/prime/paint/cleaning: <ul style="list-style-type: none"> <li>• \$750.00</li> <li>• \$885.00</li> <li>• \$1,400.00</li> </ul> Less 50% for paint and porch	\$1,517.50
Building supplies (paint, prime, mud, gyproc, switch plates, and all reno supplies) <ul style="list-style-type: none"> <li>• \$1,143.27</li> <li>• \$46.21</li> <li>• \$101.93</li> </ul> Less 50% for paint and porch	\$645.71
7 trips to municipal waste yard	\$80.00
Amounts paid to D.K. (contract)	\$500.00
Replacement of hose	\$36.95

Nominal sum for cleaning supplies	\$500.00
Door lock	\$53.75
Loss of rental income	\$800.00
Wages paid to B.K. for carpentry/mud/cleaning Less 50% for any amounts relating to the porch	\$692.50
Nominal sum for the Landlord and her spouse's time cleaning and repairing the rental unit	\$1,000.00
Wages paid to J.R. at \$15.00 per hour for 8 hours	\$120.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$7,422.86</b>

In furtherance of this my Decision the Landlord is granted a Monetary Order in the amount of \$7,422.86. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: May 1, 2019

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Residential Tenancy Branch