Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $2,699.33 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the $100.00 cost of their Application filing fee.

The Tenants, L.M. and J.M., and the Landlords, P.P. and M.P., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

Preliminary and Procedural Matters

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

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence submitted to the RTB,

to which they pointed or directed me in the hearing.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began on November 15, 2017, with a monthly rent of $4,000.00, due on the fifteenth day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $2,000.00, and no pet damage deposit. They agreed that the rental unit is a single-family dwelling of approximately ten years old, with four bedrooms and three and a half bathrooms. They agreed that the Tenants vacated the rental unit on November 14, 2019, and provided their forwarding address to the Landlords in a text message dated November 26, 2019.

The Parties agreed that they did a move-in inspection of the rental unit; however, they did not record the results of the inspection on a condition inspection report ("CIR"). The Landlords said they produced photo logs of the condition of the rental unit at the beginning and the end of the tenancy.

The claims are set out in the following monetary order worksheet provided by the Landlords

	Receipt/Estimate From	For	Amount
1	Estimate	Sharp 50" flat screen TV - refurbished	$425.59
2	Images 2058, 2060, 2069	Landscape – fall clean up	$855.75
3	Image 2079	Window cleaning in/out	$280.00
4		Furnace & duct cleaning	$509.25
5		Concrete sealant – material only	$428.74
6	Images 0278, 0273	Garage door cleaning by landlord	$50.00

7	Images 2083, 2075	Garage floor cleaning by landlord	$50.00
8	Images 2094, 2095	Clean cloth coach & stains	$100.00
		Total monetary order claim	**$2,699.33**

The Landlords said that they emailed the Tenants to propose a settlement of these concerns for $1,400.00; however, the Tenants did not accept the Landlords' proposal. Accordingly, I reviewed the Parties' evidence regarding these items, which are set out below.

#1 Sharp 50" flat screen TV – refurbished → $429.59

The Landlords said this item was missing from the rental unit at the end of the tenancy.

I noted that the Landlords had initially identified a specific television and claimed $400.20 for it. I asked them what has changed – why the amount on their monetary order worksheet is higher, and from where they obtained the amount they claim for this item.

The Landlords said that the amount initially claimed on the Application was a typographic error. They said their original television was used – they said it was approximately ten years old - so they decided that a refurbished television would be an appropriate replacement. They said they searched for a refurbished television of this vintage at a national retailer who sells televisions. The Landlords provided a quote for what it would cost to replace this item, rather than a receipt, as they said they had not replaced the television.

The Tenants said that the television was not missing, but that it had stopped working. They said:

> We took responsibility to take it off the wall and put up a new TV on the wall. We used our own TV. The most used television was in the living room. We didn't keep the old one, as it was garbage, so when we did a clean up, we offered to leave our TV on the wall for him, but he didn't accept that offer.

The Landlords said that they only learned of the disposal of their television at the move out meeting they had. They said:

> We were never advised that it had failed or broken, other than when we went

> back to the house. They said ‘you can buy it, if you want; we’d give you a deal.’ You threw it away – what permission did you have to do this?

The Tenants said:

> Like everything else, if there was an issue, we took care of it. When the dishwasher was breaking – we got it replaced; same as water filters and what-not, if there was a plumbing issue. We didn’t bother him, which was the protocol going forward. We didn’t bug him for anything throughout the term of the lease. He was completely fine with that. If the water filters needed replacing, he was always good with that. We’re spending four grand a month [on rent]. It’s an old TV; we were generous to offer a good TV at way less than we paid for it.
>
> The water sprinklers were leaking, we took care of it. Same thing toward the end of the lease. We took care of it, if it was broken. It’s just a procedure we had in place. He appreciated that we didn’t phone him every two weeks with an issue.

#2 Landscape – fall clean up → $855.75

In the hearing, the Landlords said the tenancy agreement has specific clauses that require the Tenants to do certain things at the end of the tenancy. The Landlords referenced clauses 25 through 28, in particular, which they said oblige the Tenants to clean the windows and reseal the driveway, among other landscaping activities.

In terms of landscaping, clause 28 states:

> 28. Tenant will be responsible to maintain the landscaping and grass areas that includes weed control, cutting grass, trimming grass edges and seasonal pruning of trees and plants. Tenant to ensure water service is available/turned from inside house between April – October for the irrigation system to water grass and plants as required to maintain a healthy yard.

The Landlords said that there is a gap in understanding. They asked: “Does the *Residential Tenancy Act* tell the tenants they don’t have to do this? We have a clear contract with the Tenants. They advised us that they don’t have to do any of this stuff, because that’s not the way that a tenancy works.”

In the hearing, the Tenants said:

> On the landscaping, I think we did a pretty good job on keeping it up. We did all the pruning and stuff before the fall, and we cleaned up on the site. He came two weeks later in the season – the trees drop their leaves and that's not our fault.
>
> We were told when it came to the landscaping, my biggest thing on that was, if we blow out the irrigation - blow out the pipes - that's a system on the house. Same with the ducts – if there's a crack in the drywall – it's a system on the house that would be very expensive to replace. I don't know if it was done prior to us coming in. You can't be responsible for that, because you don't own it.
>
> We were never told a standard to which the pruning was supposed to happen. There was no standard set, so it was difficult for us to know. It looked pretty good, since it's fall. In his pictures there are leaves on the lawn, but the time that these pictures were taken was way earlier in the season. There were no leaves on the trees when he took his pictures at the end of November.
>
> As for the driveway sealing, if I put the wrong sealer on there. . ., if there were roller marks. . ., that's the whole sealing on the driveway. Am I responsible for painting the house, too? It's just normal wear and tear.

The Landlord submitted an invoice for the amount of gardening work he was expecting the Tenants to carry out. When I asked the Landlord how he chose the gardening company to do the work, he said:

> We obtained referrals from the neighbourhood. The costs [in the invoice] are of what we spent for the fall clean up. I referenced the receipt of what we spent and what we were expecting them to bring it to at the end of the tenancy. We've actually had two rounds of clean up there since then. I did it myself and had contractors come in to do some of the heavier work, and to have the trees trimmed right down.

The Tenants said:

> The only thing we were ever given, we never did a walk around noting that this tree has a diameter of . . . we never had that kind of detail. He just gave us pictures that he had taken at some point, with no frame of reference of when the pictures were taken. He sent us a bunch of pictures.
>
> When he sent us his documents, on the second page – he took the picture of the

> back of the house - but it's clearly at two different times, which is misleading. One time the night time lights were on and you can see the perfectly sealed patio. The next picture is clearly at a different time of day. If we were to sit down with him and look at these pictures, I would have said… we never went through that; and landscaping is such a subjective thing - his standards are different. I think we did a good job with it. Two weeks later, there are leaves on the trees in one set of pictures and not in his end pictures. Frankly, if I prune a tree and it dies. . . there are too many variables to comment on. We left it as tidy as it was the whole time we were tenants.

#3 Window Cleaning – In and Out

The Landlord said: "I had the windows cleaned, and I ended up doing it all myself. I submitted the receipt to show the value it was when done on October 30, 2017 – that's the value." The Landlords said that the tenancy agreement includes a term requiring the Tenants to clean the windows – inside and out – at the end of the tenancy, if the tenancy runs longer than one year, which it did in this case.

The Tenants said:

> The windows - we obviously cleaned them on the inside, it's even noted in his pictures that show the streaking, which is on the outside pane. We're not responsible for the outside windows. I'm a clean freak when it comes to windows.
>
> Even if we had cleaned the outside of the windows, there would have been water streaks. We cleaned off finger prints on both sides. I'm not going to let [L.M.] go on a ladder and risk her falling, when I'm away. We did the windows on the outside on the patio, where the bulk of the traffic was.

The Landlord said that there are "very clear sections in the lease with requirements to do windows." Paragraph 26 of the tenancy agreement states in this regard:

> If the term is longer than 1 year the tenant will also need to include proof of professional cleaning of carpets, windows (in and out) and furnace system & ducts.

#4 Furnace & duct cleaning → $509.25

The Landlords said that the lease requires the Tenants to have this cleaning work done by professionals at the end of the tenancy.

The Tenants said:

> The comment I can make is that we took it upon ourselves to not bug the Landlords; we have tenants ourselves. We have a tenant who takes care of the little things, and we compensate them for it. We had the furnace cleaned and maintained twice in the time of our tenancy. We took it upon ourselves to clean the filters… we did all that to be good tenants. We took on those costs, ourselves.
>
> As for the ducts, a family member told us the reason he got out of the business was because it cracked drywall. I don't think we should be responsible for digging into a duct system with someone we don't know. I don't see what benefit there is. I felt this was asked for and pressured on us when we signed. But we feel we shouldn't be responsible for the systems of the house. We were under pressure to move forward. We jumped at it. But when we looked at the *Residential Tenancy Act,* it said we are not responsible for those types of things.

#5 Concrete sealant – material only → $428.74

The Landlords said that the requirement for the Tenants to take care of this is in clause 27 of the tenancy agreement. Clause 27 states:

> 27. Tenant will be responsible to maintain the property driveway and garage concrete areas free of oil and other stains. These areas will be documented and photographed on move in. Cost related to cleaning, removing stains and re-sealing concrete will be the tenants' responsibility.

The Landlord also submitted a copy of an invoice for materials he said he purchased to do this work, himself in October 2017. The costs on this invoice included the following:

> 2 x Prem Seal Cure (18.9L) at 175.00 each = 350.00
> Prem 701 High Gloss Sealer

1 x Sharks Grip non-skid additive at 32.80 each =		32.80
	Sub-total	= $382.80
	Tax	= 45.94
	Total	$428.74

The Tenants said:

> The receipt we're looking at is from 2017 – is there a receipt for what he bought in 2019? All receipts are from before we were in the house. I noted the pictures the Landlord sent us of the driveway, which was freshly sealed, but they noted marks in it. When it comes to the actual sealant, I don't think we're responsible. It's part of the wear and tear - part of the $100,000.00 we have given him [in rent].

The Tenants submitted copies of the Landlords' photographs of the driveway that were taken prior to the tenancy in October 2017. The Tenants' comments hadwritten beside the photograph are as follows:

> In this move in picture, the landlord clearly left out the main area of the drive way entrance which is where the majority of the black tire marks and concrete spalling is located as in the below picture. The landlord took this picture from further away than the move out pictures. The landlord was very selective and deliberate in his choice of pictures and perspective of the pictures he used. We were not given any means of disputing the pictures as there was no mutual move in report.

The Tenant also made the following comments on another of the Landlord's move-in photographs of the driveway:

> Black mark clearly visible in this move in picture, landlord noted black marks in his move out picture but clearly on his move in picture. This would have been noted in a move in and move out condition report had we been allowed to do one as we were told by the landlords, the pictures were all he was going to provide us. We were not given opportunity to dispute pictures at the start of the rental term.
>
> Major concrete spalling in the move in picture that the landlord noted in the move out picture he provided and implied that we caused this, clearly we did not.

The Landlord said his pictures of the driveway were taken on October 30 and 31, 2017.

The Tenants said:

> If it was very important to use that for inspection; the time stamps should have been on them. We should have initialled the pictures. There was no time for any dispute at that point. If we would have went through each picture and validated the pictures; they were two weeks before we moved in. Had we been able to do that, then there would be less confusion. Here's what we had the day you moved in and the day you moved out, not two weeks after.

#6 Garage door cleaning by landlord → $50.00

The Landlord said that there were marks on the garage door that looked like kids had been playing hockey there. The Landlord said: "it took me close to two hours to clean all the panels."

The Landlord submitted a worksheet that lists some cleaning costs that correlated to specific photographs of the garage door. These photographs illustrated marks across at least half of the doors, to which the Landlord referred.

However, the photographs of the garage doors are not dated, and there were no photograph numbers in the worksheet pointing to photographs of the condition of the doors at the start of the tenancy.

The Tenant said: "I could barely see them in the pictures. I have no idea if they're hockey ball marks or if there were any there to start with. His perspective of pictures was quite a distance away."

#7 Garage floor cleaning by landlord → $50.00

The Landlord said that he talked to the Tenants about some areas that were cleanable, although he said that some areas were permanently stained. He said: "I pressure washed the garage floor. It took about two hours – I basically had to pressure wash it and squeegee it out."

The Tenants said:

> There were spots that he had to take a pressure washer to. Those pictures they

> sent to us - we scrubbed that and couldn't get it up. It was just one small part of the garage floor. . . that type of stuff would have been noted on a condition inspection. This wasn't noted, until we got the pictures, and his saying it is permanent. We cleaned it, as best we could. It's a garage, there are tire marks . . . whatever marks are in there, we can't compare to before, so how are we supposed to know what we did, and what was there before. I would not use a pressure washer, because it could take the coating off that he has on it.

The Landlords submitted photographs of the garage floor that show one area that has a lot of dirt that looks like mud. Another photograph is of stairs leading to a door with a doormat. Given the pattern on the stair tiles, it is difficult to see what is dirty in this photograph.

#8 Clean cloth couch & stains → $100.00

The Landlord said that a fabric couch in the lower level had food and stains, or something had melted on it. "We had it cleaned before they moved in, so we talked about it to [L.M.], and we basically had to rent a small cleaning machine and clean it out, and it looks good again now."

The Landlords submitted photographs of the stains on the couch that they said were taken at the end of the tenancy. The first photograph is a close up shot of something brown with a cream-coloured stain. The second photograph is of similar coloured sofa cushions with marks on them.

The Landlords submitted a copy of emails between the Parties at the end of November 2019, in which the Landlords raised the remaining issues with the tenancy. They indicated that these were for the Tenants to take correct, themselves, or to pay the Landlords to take care of them.

In the email dated November 22, 2019, the Landlord, P.P., wrote to the Tenant, L.M., saying:

> Hello, [L.M.], as discussed today at our move out inspection with you, please see below my list of remaining move out issues.
>
> 1. Items included in your lease agreement that you have indicated you are willing to address are:

-Fabric sofa cleaning

. . .

In response, L.M. said in an email dated November 23, 2019: “Fabric sofa cleaning, agreed”.

The Landlord said that the cost of the machine to do the cleaning and the cost of their labour comes to $100.00.

The Tenants said:

> With the couch – this was on the underside of the cushions; we discovered those a few weeks on moving in. He said he’d cleaned the house, but if we moved furniture or lifted a cushion, it was not clean. It is clearly on the underside and I have no idea if it was there before we moved in or we caused it. We didn’t get pictures showing the couch and underside of cushions. . . I can’t honestly say if it was there when we moved in or not. Yes, they definitely cleaned the house. It was clearly dirty and dusty behind their dresser, we just cleaned it. It’s a 10-year-old couch that was used for 8 years before us, and used by many tenants before us. We didn’t flip any cushions. This is a little nit picky to be honest.

The Landlord said that “The couch is about 10 years old, and it took a couple hours to clean it; we rented a machine to clean the couches.” The Landlord did not provide photographs of more than one couch, as far as I could tell.

Analysis

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

Before they gave testimony, I advised the Parties of how I would be analyzing the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlords to incur damages or loss as a result of

the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

(“Test”)

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

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. **It is up to the party claiming compensation to provide evidence to establish that compensation is due**.” [emphasis added]

The standard of proof in an RTB hearing is set out in Rule 6.6:

> **Rule 6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of

probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#1 Sharp 50" flat screen TV – refurbished → $429.59

The Landlords did not provide any documentary or photographic evidence of the condition of their television at the start of the tenancy. Further, they did not explain why they did not minimize or mitigate their loss, pursuant to step four of the Test by accepting the Tenants' offer for the television with which they had replaced the Landlords' broken unit. The television was ten years old at the start of the tenancy and it would have been twelve years old at the end of the tenancy.

I find on a balance of probabilities that the demise of the television was as a result of normal wear and tear. I find that the Landlords did not establish that the Tenants' violated the Act, regulations, or tenancy agreement in this matter. I find that the Landlords have not established any of the steps of the Test in this regard. Therefore, I dismiss this claim without leave to reapply.

#2 Landscape – fall clean up → $855.75

Policy Guideline #1 ("PG #1"), entitled: "Landlord & Tenant – Responsibility for Residential Premises" clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities. PG #1 interprets sections 27, 32 and 37 of the Act and regulations, and addresses parties' responsibilities for property maintenance, as follows:

> **PROPERTY MAINTENANCE**
>
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
>
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
>
> **3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the**

flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow, and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

[emphasis added]

Section 5 of the Act states that “Landlords and tenants may not avoid or contract out of the Act or the regulations.” And that “any attempt to avoid or contract out of this Act or regulations is of no effect.”

The Landlords cited an amount they had paid a gardening company to do yard work in October 2017. However, rather than hiring this company again, the Landlords did a lot of the work themselves, other than heavier work for which they said they contracted out. The Landlords did not direct my attention to any calculations of the amount of time they spent doing the yard work, nor to an invoice from the contractors they say they retained.

In terms of the Test noted above, I find that the Landlords have not provided sufficient evidence of specifically how the Tenants breached or violated the tenancy agreement in ways that are consistent with the requirements of a Tenant under the Act. There was no condition inspection report completed for the landscaping prior to the tenancy beginning, nor at the end of the tenancy.

The Tenants said they did pruning and other landscaping before the fall, and that they cleaned up the site, as best they could. This is despite the Act and Policy Guidelines saying that landlords are responsible for activities such as pruning and tree cutting.

I find that the Tenants were not given a standard (consistent with the Act), to which landscaping activities should have been done. Further, the Tenants said the Landlords took photographs of the yard two weeks after the end of the tenancy; therefore, in the meantime, leaves would have fallen onto the yard, for which the Tenants could not have been responsible. I find that the Landlords have not fulfilled their obligation for the first two steps of the Test.

I also find that the Landlords have not fulfilled the third step of the Test to prove on a balance of probabilities the value of any cost they incurred in doing what landscaping they thought the Tenants should have done at the end of the tenancy.

Based on the evidence before me overall in this matter, I find that the Landlords have not provided sufficient evidence to prove their claim on a balance of probabilities. Therefore, I dismiss this claim without leave to reapply.

#3 Window Cleaning – In and Out

PG #1 states the following about parties' responsibilities for windows in the tenancy:

> **WINDOWS**
>
> 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.
>
> 2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

The Landlords did not direct my attention to any evidence of unclean inside windows at the end of the tenancy. As a result, I accept the Tenants' evidence that they cleaned the inside of the windows, as well as the patio windows inside and out. I also accept the Tenants' evidence that they cleaned off their fingerprints on the inside and outside of windows.

The Act does not require tenants to have the rental unit windows cleaned professionally. Therefore, I find that this condition in the tenancy agreement is inconsistent with the Act and, therefore, is void and of no force or effect.

I find that the Landlord has not supported this claim with sufficient evidence. I therefore, dismiss this claim without leave to reapply.

4 Furnace & duct cleaning → $509.25

PG #1 states:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

2. The tenant is responsible for cleaning floor and wall vents as necessary.

The evidence before me is that the Tenants had the furnace cleaned and maintained twice during their tenancy, despite this not being their responsibility under the Act. I find that the Landlords are not authorized to charge tenants for doing this work for furnaces or ducts; therefore, I find that this requirement in the tenancy agreement is void and of no force or effect. Accordingly, I dismiss this claim without leave to reapply.

#5 Concrete sealant – material only → $428.74

Pursuant to sections 23 and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that any damage occurred, as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

In the absence of a CIR, a party may provide other evidence, such as photographs of the condition of the residential property at the beginning and the end of a tenancy, although, such evidence will be examined and analyzed for reliability and relevance.

In the case before me, the Tenants have used the Landlord's evidence of the move-in photographs to argue that the Landlord is trying to claim for damage that was already in place at the start of the tenancy. Further, the Landlord did not provide evidence of what it cost him to do these repairs at the end of the tenancy; rather, he submitted cost evidence that was obtained from doing this work before the tenancy began.

When I consider the evidence before me, overall, I find that the Landlords did not provide sufficient evidence to establish that the Tenants were responsible for marks or spalling on the driveway, which would satisfy step one of the Test. Accordingly, the Landlords did not establish the second step, either, nor did they provide sufficient

evidence to set out what costs were incurred at the end of the tenancy in this matter. As a result, I dismiss this claim without leave to reapply.

#6 Garage door cleaning by landlord → $50.00

Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." The Tenant has referred to the Landlords' claim in this matter as "reasonable wear and tear", which I infer, acknowledges that the marks were made during the tenancy. I disagree with the Tenants position on this item; I find that the marks on the garage doors were not "wear and tear". Rather, I find that the Tenants were responsible for cleaning these marks off the garage doors prior to the end of the tenancy. I find that the Tenants violated section 37 of the Act in this regard and that the Landlords incurred costs or damages, as a result of this violation I find this is consistent with the first two steps of the Test.

The Landlord, P.P., said it took him approximately two hours to clean the garage door panels, which would mean he billed his efforts at $25.00 per hour, which I find is a reasonable cost to charge for cleaning activities. I find that the Landlord provided sufficient evidence to establish the value of the violation, pursuant to step three of the Test. Further, I find that by doing the cleaning himself, rather than hiring a professional to do it, the Landlord minimized the costs he incurred, as is consistent with step four of the Test.

Based on the evidence before me overall, I find the Landlords provided sufficient evidence to support their claim in this regard. I, therefore, award the Landlords with recovery of **$50.00** from the Tenants for this claim.

#7 Garage floor cleaning by landlord → $50.00

The Landlords submitted undated photographs they said were of the garage floor at the end of the tenancy. One photograph shows clear dirt on the floor, but I find that the second photograph was not helpful in this regard. The Tenants acknowledged that there was dirt left on the floor, which led them to try to wash it off. However, the Landlord found that he needed a pressure washer to clean this dirt from the garage floor, which the Tenants were reluctant to use, given the damage they feared it could cause.

Based on the Parties' evidence in this regard, I find that it is more likely than not that

these stains or dirt occurred during the tenancy and that it was not reasonable wear and tear. Pursuant to section 37 of the Act, I find that the Tenants failed to bring the floor to a state of reasonable cleanliness, in violation of section 37 of the Act.

The Landlord said that it took him about two hours to clean the garage floor, which would mean he billed his efforts at $25.00 per hour, which I find is a reasonable cost to charge for cleaning activities. I find that the Landlord provided sufficient evidence to establish the value of the violation, pursuant to step three of the Test. Further, I find that by doing the cleaning himself, rather than hiring a professional to do it, the Landlord minimized the costs he incurred, as is consistent with step four of the Test.

Based on the evidence before me overall, I find the Landlords provided sufficient evidence to support their claim in this regard. I, therefore, award the Landlords with recovery of **$50.00** from the Tenants for this claim.

#8 Clean cloth couch & stains → $100.00

I find that the Tenants agreed to the “fabric sofa cleaning”, which could be interpreted as agreeing to be responsible for the cleaning costs of any fabric sofa in the rental unit. I find that the Landlords have established on a balance of probabilities that the Tenants violated their obligation under section 37 of the Act in this regard, given the marks or stains evident on the couch in the photographs. I find that the Landlords have provided sufficient evidence to establish the first two steps of the Test on a balance of probabilities.

The Landlords did not direct my attention to a receipt for the cost of the machine used to do this cleaning, and it was not contained in their document of invoices/receipts. Further, without evidence of how many couches required cleaning, I find that the Landlords have not established why this process took “a couple hours” to clean the couch(es), which seems unreasonably high for this type of activity.

Based on the evidence before me in this matter, I find that the Landlords did not provide sufficient evidence to establish step three of the Test – the value of this claim. I, therefore, dismiss this claim without leave to reapply.

Summary and Set Off

The following is the table from above with the amount awarded for each item claimed.

	Receipt/Estimate From	For	Amount awarded
1	Estimate	Sharp 50" flat screen TV - refurbished	$0.00
2	Images 2058, 2060, 2069	Landscape – fall clean up	$0.00
3	Image 2079	Window cleaning in/out	$0.00
4		Furnace & duct cleaning	$0.00
5		Concrete sealant – material only	$0.00
6	Images 0278, 0273	Garage door cleaning by landlord	$50.00
7	Images 2083, 2075	Garage floor cleaning by landlord	$50.00
8	Images 2094, 2095	Clean cloth coach & stains	$0.00
		Total monetary order claim	**$100.00**

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of $2,000.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain $100.00 of the Tenant's security deposit, and return the remaining $1,900.00 to the Tenants, as soon as possible.

I grant the Tenants a monetary order in the amount of $1,900.00 representing the return of the remainder of their security deposit after set-off from the amount awarded to the Landlords.

Given that the Landlords were predominantly unsuccessful in their claims, I decline to award them recovery of the $100.00 Application filing fee.

Conclusion

The Landlords are predominantly unsuccessful in their Application, having been awarded $100.00 for two claims. Given their relative lack of success in this matter, I

declined to award the Landlords recovery of the $100.00 Application filing fee.

The Landlords are authorized to deduct $100.00 from the Tenants' $2,000.00 security deposit. The Tenants are awarded a Monetary Order in the amount of $1,900.00 from the Landlords for the remainder of the security deposit owing to the Tenants after the Landlords' award was satisfied.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 28, 2020

Residential Tenancy Branch