



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-S  
                             FFT, MNDCT, MNSD, RPP

### Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution, filed on August 20, 2019, the Landlord requested monetary compensation from the Tenants in the amount of \$12,224.00, authority to retain the Tenants' security deposit and to recover the filing fee. In the Tenants' Application for Dispute Resolution, filed on November 12, 2019, the Tenants requested monetary compensation from the Landlords in the amount of \$18,242.55, return of their personal property and to recover the filing fee.

The hearing was conducted by teleconference on December 12, 2019, February 21, 2020, May 4, 2020 and June 9, 2020 for a total duration of six hours of testimony and submissions. 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—Evidence*

On February 20, 2020, after the original hearing date of December 12, 2019, and a day before the second day of hearing on February 21, 2020, the Landlords uploaded to the Residential Tenancy Branch online service portal a 100-page power point document (the "Power Point Document"). During the hearing on February 21, 2020, the Landlords claimed the Power Point Document was a more succinct summary of their evidence and submissions and which set out their claim in its entirety. S.M. confirmed the Power Point Document was not provided to the Tenants.

Although the Power Point Document was not delivered in accordance with the *Residential Tenancy Branch Rules of Procedure*, I accepted that Landlords' testimony

that this document was a complete summary of their evidence and submission and would therefore provide a more efficient means of dealing with the voluminous evidence they had filed. As such, and pursuant to my Interim Decision dated February 21, 2020 I ordered the Landlord to provide a copy of the Power Point Document to the Tenants by email. I confirmed during the hearing on February 21, 2020, that the admissibility of the Power Point Document would be addressed at the continuation of the hearing.

During the hearing on May 4, 2020, the Tenants confirmed they had reviewed the Power Point Document and discovered the Landlords had added additional evidence to the Power Point Document. The Tenants also stated that the Power Point Document included links to other documents, which were not live and therefore reference had to be made to the actual documents.

At the hearing on June 9, 2020, the Landlord, S.M., conceded that they added a receipt to the Power Point Document which had not been included in their initial submissions; they also confirmed it was their expectation that the Power Point Document would be considered in *addition* to the documents which had been submitted in accordance with the *Rules*. The Landlords confirmed at the hearing that they were prepared to have the Power Point Document excluded from evidence as it did not, in fact, set out their claim in its entirety. I therefore did not consider the Power Point Document in making this my Decision.

The parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

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

#### *Preliminary Matter—Date and Delivery of Decision*

The hearing of these cross applications concluded on June 9, 2020. This Decision was rendered on July 15, 2020. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Preliminary Matter—Issues to be Decided

During the hearing the Tenant, M.A. confirmed they were not seeking an Order that the Landlords be ordered to return the Tenants' personal property, nor were they seeking compensation for items allegedly removed by the Landlords; M.A. conceded that they did not have proof of the existence of these items and therefore did not wish to advance that claim.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlords?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

The tenancy agreement was provided in evidence and which provided that this fixed term tenancy began August 1, 2018 and ended on July 31, 2019. Monthly rent was \$4,800.00 and the Tenants paid a \$2,400.00 security deposit.

Although the rental unit was fully furnished, the parties did not complete an inventory of items in the rental unit prior to the tenancy beginning.

The tenancy agreement provided that the Tenants would vacate the rental property on February 22, 2019 to allow the Landlords to use the property from February 23, 2019 to March 23, 2019 (hereinafter referred to as the "Landlords' Interim Use Period"). During the Landlords' Interim Use Period the Landlords were responsible for all utility charges.

The Landlord testified that during the Landlords' Interim Use Period, the Landlords identified damage to the property caused by the Tenants. The parties discussed the Landlords' concerns and the Tenants paid the sum of \$2,288.09 to the Landlords pursuant to an interim agreement (the "Interim Financial Settlement").

The tenancy ended on July 31, 2019. A copy of the move out condition inspection report was provided in evidence. The move out Condition Inspection Report also referenced an Addendum which included items the Landlords alleged were removed by the Tenants. The Landlord's Agent confirmed that the Addendum was done after the move out condition inspection was completed as the Landlords went back to the property after the Tenants had moved out and created the list which they then sent to the Tenants.

In the claim before me the Landlords sought monetary compensation for the following:

Cost to replace firewood	\$472.50
Window and blind cleaning	\$175.00
Stone floor cleaning	\$189.00
Carpet cleaning	\$210.00
Landscaping	\$600.00
Light bulb replacement	\$205.50
Replacement taps	\$424.26
Colander & sheet tray replacement	\$60.76
Mop, garbage can and hose	\$102.30
Fry pans, coasters and cheese board	\$107.61
Spatula and wooden spoon	\$11.79
Hot tub filters	\$201.35
Couch recovering	\$8,952.33
Speaker cabinet	\$168.00
<b>TOTAL CLAIMED</b>	<b>\$11,880.40</b>

The Landlords' Agent testified on the Landlords' behalf and confirmed that the tenancy agreement made no mention of the firewood.

The Landlords sought monetary compensation from the Tenants for the cost to clean the windows and blinds suggesting the Tenants did an insufficient job of cleaning these items. In support they provided two photos with flies on the windowsill as well as a receipt for the cost of related cleaning.

The Landlords also sought the cost to clean the carpets in the amount of \$210.00. The Landlords' Agent noted that pursuant to section 14(s) the Tenants were to have the carpets professionally cleaned and as they failed to do so this amount is recoverable from the Tenants.

The Landlords' Agent confirmed that pursuant to section 3(b) the Tenants were responsible for the landscaping. The Landlords believed the Tenants did an insufficient job of the landscaping and as a result the Landlords hired others to do this work. In support of this claim, the Landlords submitted several photos of the rental unit depicting the state of the yard at the end of the tenancy.

The Landlords also sought the cost to replace numerous light bulbs, which were noted as burned out on the Move-out Condition Inspection Report.

The Landlords also sought compensation for the cost to replace a faucet. They alleged that the stopper was missing at the end of the tenancy and as it was a single unit, the entire faucet had to be replaced. In this respect the Landlords sought the sum of \$424.26. The Landlords' Agent stated that he was unaware of the age of the taps as he was not able to testify as to whether the rental unit was renovated or when it was built.

The Landlords alleged the Tenants removed several items as noted on the addendum and the Monetary Orders worksheet. For each item allegedly removed by the Tenants the Landlords provided a receipt confirming the replacement cost. The Landlords' Agent confirmed that while photos were taken of the items in the rental unit, there was no detailed inventory prepared by either party when the tenancy began.

The Landlords' Agent stated that the primary concern of the Landlords was damage to their sofa. The Landlords alleged that due to the damage caused by the Tenants the sofa required reupholstering. He stated that the cost to reupholster the sofa pillows was \$4,154.87 and the cost to do the entire sofa was \$8,952.33 (including the \$4,154.87 for the pillows).

The Landlord, S.M. also testified. He initially stated that the cost to replace the sofa was greater than the cost to have it reupholstered, which is why they had it reupholstered. He further stated that subsequent to the hearing they obtained a quote for the replacement cost of the sofa which he testified was \$8,733.06.

S.M. testified that the sofa damage was not covered in the Interim Financial Settlement as it was left as an outstanding item to be resolved at the end of the tenancy.

S.M. also alleged that in clear violation of section 14(c) of the lease, the Tenants were using the rental property for business purposes. He alleged they stored all their business equipment, chef uniforms, etc. at the rental property. He further alleged the

Tenants' staff stayed at the rental property and prepared meals there and that one of the Landlords' missing platters was later found to be at the Tenants' client's house.

In terms of the Landlords' claim for compensation for firewood, S.M. stated that there were three cords of wood at the start of the tenancy and only one cord at move out. He stated that the Landlord used one cord during their stay and therefore only sought compensation for one cord, in the amount of \$472.50.

In terms of the Landlords' claim for window and blinds cleaning S.M. confirmed that the Landlord claimed \$175.00 as the estimate was for five hours and the rest was for other cleaning. He also submitted that pursuant to *Residential Tenancy Branch Policy Guideline 1*, the tenants are expected to leave interior window coverings clean and must clean the inside windows and tracks at the end of the tenancy.

S.M. testified that the stone floors required double cleaning as they were quite dirty at the end of the tenancy.

In terms of the carpets, S.M. stated that they smelled in the master bedroom, suggesting they may have been vacuumed but were not professionally cleaned. S.M. noted that pursuant to section 14(s) of the residential tenancy agreement the Tenants were responsible for professionally cleaning the carpets upon expiration of the lease.

In terms of the landscaping S.M. stated that pursuant to section 3(b) of the lease the Tenants were responsible for maintenance and landscaping. S.M. noted that the yard was professionally cleaned on move in. He also stated that there was no charge for removal of tree, despite Tenants' claim the Landlord tried to charge them for this.

S.M. submitted that the Tenants are also responsible for replacement of light bulbs as per *Policy Guideline 1*. He further noted that the bulbs were burned out as indicated on the move out inspection and provided a receipt for their replacement.

In terms of the replacement faucet, S.M. stated that the plug was missing as noted on the move out inspection. He testified that the faucet was replaced June 2018. He claimed the plumber could not repair without plug and could not find a replacement as such the Landlord had to replace the entire tap to get a plug and now, they don't match.

Although the parties did not prepare a comprehensive inventory of household items, S.M. noted that the colander and sheet tray were new and present at move in and

missing at the end of tenancy. In support the Landlords provided photos of the colander and sheet tray.

In terms of the mop, garbage can and hose, S.M. stated that they were present at move in, as shown in photos, missing and replaced after the tenancy ended. S.M. stated that the hose was not functional at move out because of all the kinks. He also stated that the Tenants concede they took the mop as they thought it was theirs. The Landlords provided copies of the receipts for the replacement of these items.

Similarly, and with respect to the fry pans, coasters and cheese pans S.M. stated that they were present at move in, as shown in photos, and were missing and therefore replaced after the tenancy ended. The Landlords provided copies of receipt for their replacement costs.

As well, and with respect to the spatula and wooden spoon replacement costs, S.M. stated that they were present at move in noted in photos and were replaced after the tenancy ended.

With respect to the duvet cover, silverware set and bowl S.M. testified as follows. He noted that duvet was new at move in and was then blood stained by the Tenants. He noted that the Tenants agreed to take it to the cleaners as part of the Interim Financial Settlement, however the stains could not be removed, and it required replacement. He also testified that there was a full silverware set, but 10 pieces were missing at the end of the tenancy rendering it useless. He noted that the receipt was included in the Landlords' materials and should be reduced by the ones that were paid for in March pursuant to the Interim Financial Settlement. He also testified that one bowl was missing and two chipped at move out.

In terms of the hot tub filters, S.M. stated that there were spare filters in the garage, but they were moved out in the snow by the Tenants. S.M. stated that the Tenants alleged they were not usable as they were not new; S.M. submitted that they were used, but that doesn't render them useless.

The Landlords alleged the Tenants damaged the sofa during the tenancy. In support they provided a photo documenting no damage on the couch at move in and four images taken after the tenancy ended which show I staining on 5 of 6 cushions. During the hearing before me the Landlord testified that four experts were consulted, and all agreed it could not be cleaned as it would damage the sofa.

S.M. stated that the sofa was bought with the house and as such he was not aware of its age. That said, he claimed it was "like new" but had a small orange stain. He also argued that as the company who made the sofa guarantees the sofa for life, it has an infinite lifespan. S.M. further argued that as the Landlord recovered the sofa and did not replace it, its useful life is irrelevant.

In terms of the Landlords claim relating to the speaker cabinet damage the Landlords provided two pictures of speaker at move in and some taken at move out, showing small scratches. S.M. stated that although they provided an estimate of the cost to refinish at \$168.00 the work actually only cost the Landlords \$118.00.

In response to the Landlord's claim and in support of the Tenant's claim, the Tenant M.A. testified as follows. She stated it is a difficult to find long term rentals in the community in which the rental unit is located and as such they agreed to a one-year lease with a one month move out for the owners and an end to lease in order to secure the rental as they were at risk of being homeless.

The Tenants disputed the amounts claimed by the Landlord for missing items and argued that they were not provided an inventory list when they first moved in. She claimed that they always rent furnished units and it is very uncommon for owners not to provide an inventory list.

M.A. also stated that they cleaned the rental unit to a reasonable standard at the end of the tenancy. She also noted that during the Landlord's Interim Use of the property, there was no move in and move out condition inspection. She claimed that they had the rental unit professionally cleaned before the Landlords moved in for the month and returned to a dirty rental.

In their claim before me, the Tenants sought return of the funds paid pursuant to the Interim Financial Settlement. In this respect M.A. stated that on March 21, 2019, while the Landlords were in the rental property, they received a list of complaints from the Landlords' agent including a list of items they believed the Tenants removed. The Landlords' agent asked the Tenants to pay compensation to the Landlords in the amount of \$3,992.79. A copy of this email was provided in evidence before me. M.A. stated that the initial request of \$3,992.79 was reduced to \$2,300.00 after numerous discussions with J.H. On April 26, 2019 J.H. requested \$2,288.09. The Tenants paid \$2,290.00. M.A. claimed that they were lead to believe that if they paid this sum the Landlord would extend their lease.



M.A. stated that the Landlords agent, J.H., told the Tenants that they would have to pay the \$2,300.00, with as little complaint as possible, if they wanted to secure an extension to their lease. M.A. stated that after they had a conversation with the Landlord's agent he sent an email to the Tenants in which J.H. wrote:

*"In terms of a new lease – the owners refuse to even open the discussion prior to this issue being resolved and understanding their situation I would be surprised if they continued to rent the property at all if this doesn't get resolved to their satisfaction... They are more than willing to leave the property vacant moving forward – the resolution to the damages and the ease of how this situation is resolved is of a higher importance".*

M.A. stated that they asked J.H. several times about the possible lease extension and on May 14, 2019 J.H. confirmed the Landlords were not extending the lease.

The Tenants responded on May 20, 2019 and requested return of the amounts paid pursuant to the Interim Financial Settlement. In this email the Tenants also requested compensation for amounts paid to cleaners after the Landlords' Interim Use and write that the Landlords removed many of their personal items. During the hearing before me, M.A. confirmed that they are seeking monetary compensation from the Landlords for cleaning costs in the amount of \$336.00.

M.A. also stated that during the Landlords' Interim Use most of the kitchen items, including many of the Tenants personal items were removed, as well as some furniture. She stated that when they returned there were very little kitchen items. M.A. stated that when they discovered this, they sent communication to the Landlord about this. In their written submissions the Tenants noted that they asked for a written inventory so that there would not be a similar issue when the tenancy finally ended, but such an inventory was never provided.

M.A. stated that on April 24, 2019 the Tenants provided the Landlord with a list of the Tenants' items that were removed. During the hearing before me M.A. confirmed they were not asking for compensation for those items as they have no way of proving it.

M.A. also stated that they claimed \$10,209.00 from the Landlords for "compensation for breach of lease" as the Landlords removed key furniture items and kitchen items from the rental unit during the Landlords Interim Use Period which in their view "changed the deal". The Tenant stated that the rental unit was beautiful and nicely furnished, yet after the Landlords were in occupation, they furnished it with second hand "junk". The Tenant stated that the level of replacement was unsatisfactory and as a result the tenancy was devalued by 50%. In written submissions the Tenants wrote that the rent

paid suggested they were paying for a level of comfort which included the finishes included in the original lease.

The Tenants also sought \$609.46 in compensation for the amounts they paid for cookware and glassware they purchased to replace the items removed by the Landlords. In this respect they provided copies of the receipts for payment. The Tenants confirmed they retained the purchased items.

The Tenants also sought monetary compensation in the amount of "6-12 months" on the basis that they believed they received a 2 Month Notice to End Tenancy for Landlord's Use. In this respect the Tenants confirmed they received an email from the Landlord's agent on May 14, 2019 confirming the Landlords were moving back in and not extending the lease.

The Tenants also sought return of double the deposits paid. M.A. confirmed that when they moved into the rental unit there was a move in condition inspection report as well as when they moved out, however, there was no inspection done at the beginning of the Landlord's interim use, nor when they regained possession after the Landlord's vacated.

M.A. stated that they did not take issue with the move out condition inspection report (which was performed on July 31, 2019) save and except for the fact they were not afforded an opportunity to sign it and did not receive a copy of it until August 14, 2019. She confirmed that she did review the document sufficiently to confirm it was the same document as that which they received on August 14, 2019.

The Landlords applied for dispute resolution on August 20, 2019.

The Tenants provided the Landlords with a copy of their forwarding address on November 5, 2019.

The Tenants argued that they should be entitled to return of double the deposit on the basis that their move out inspection was perfect.

The Tenants completed a Monetary Orders Worksheet in which they detailed their claim as follows:

Cleaning after Landlords' Interim Use	\$336.00
Reimbursement of funds paid to Landlords pursuant to Interim Financial Settlement	\$2,288.09

Compensation for breach of lease (50% reduction for four months due to reduction in value of furnishings)	\$10,209.00
Replacement of items	\$609.46
6-12 months rent	Arb. Discretion
Double damage deposit	\$4,800.00
<b>TOTAL CLAIM</b>	<b>\$18,242.00</b>

In response to the Landlords' claims the Tenants provided a detailed written response and during the hearing they requested that this document be considered as their response. The following is a summary of their responses:

In terms of the Landlords' request for compensation for firewood, the Tenants noted that the replenishment of wood was never included in the tenancy agreement. The Tenants further noted that they replenished the wood for the Landlords' Interim Use period merely as a courtesy.

The Tenant noted that there was no mention of the yard, the window sills, the top of the elevator or the wood when they completed the move out condition inspection report. The Tenants also submitted that the rental unit was professionally cleaned before the Landlords' Interim Use Period as well as when the tenancy ended. The Tenants also claimed the rental unit was left filthy after the Landlords used the home for a month.

In response to the Landlords' request for carpet cleaning and stone floor cleaning, the Tenants reiterated that the Move Out Condition Inspection Report indicated that the floors were left clean. The Tenants also submit that the receipt for cleaning of the floors was dated *after* the Landlords used the rental property again. Further, the Tenants note that the receipt includes sealant which was applied for maintenance purposes which is not the Tenants' responsibility.

As well and in response to the Landlords' claims for carpet cleaning, the Tenants submit that the carpets were not professionally cleaned when the tenancy began. The Tenants also dispute the Landlords' claim that the carpets were smelly noting that they only occupied the rental unit for six months as they were away traveling for a significant period of time. Finally, the Tenants submit that they had a small steam cleaner which they used to spot clean when needed.

In terms of the Landlords' claim for the cost of landscaping, the Tenants submit that the Move-out Inspection Report found no issues with the yard or the exterior of the home. They noted that they only issue was a few dandelions.

In terms of the Landlords' claim for the cost of replacing light bulbs, the Tenants confirm they are agreeable to reimbursing the Landlords **\$50.00** for these bulbs as this was the amount requested by the Landlords' agent.

In response to the Landlords' claim for the cost to replace the faucet, the Tenants submitted that the Landlords were lying. They write that the sink stopper was old and prevented the sink from draining properly with the stopper in place. They removed the stopper and left it in the bathroom drawer along with the bathtub jet parts that were falling apart and would not reattach to the tub. The Tenants also submit that the entire faucet did not need to be replaced as the stopper could have been replaced for \$10.00.

In response to the Landlords' claim for the cost to replace a colander and sheet tray the Tenants deny removing a colander. The Tenants also noted that they already paid the Landlords for the sheet tray as per the Interim Financial Settlement.

In terms of the Landlords claim for the cost to replace a mop, garbage can and hose, the Tenants responded as follows. They acknowledge they removed the mop accidentally as they assumed it was theirs. The Tenants deny removing a small white garbage can. Finally, the Tenants submit that they used their own hose and did not use the Landlords.

In response to the Landlords claim for the replacement cost of a fry pan, coasters and cheese knives the Tenants submitted as follows. They submit that when the Landlords replaced the cookware after the Landlords' Interim Use Period, they used the cookware for a week and then packed it up when they replaced the items. They also submit that the coasters and cheese knives were removed by the Landlords during the Landlords' Interim Use Period and placed in storage such that they argue the Landlords continue to have possession of these items.

In terms of the Landlords request for \$11.79 for replacement of their spatula and wooden spoon the Tenants write that they assumed it was their personal spoon and mistakenly removed it when they left. The Tenants reiterate that such issues could have been avoided had a proper inventory been prepared.

The Tenants write that insufficient details have been provided to them in terms of the Landlords' request for \$512.19 from "Pottery Barn".

In response to the Landlords' claim for \$201.35 for replacement hot tub filters the Tenants write that they bought new filters which they left at the rental unit. They also submit that the filters the Landlords left were second hand, dirty, and left outside.

In response to the Landlords' claim for the cost to recover the sofa the Tenants submit as follows. The Tenants note that the sofa was old and was included in the home when the Landlords purchased the property. They also note that it had a small orange stain on it when the tenancy began. They write that the stain the Landlords claim was not removable, was in fact a milk stain, which the Tenants submit can be removed; in this respect they claimed that they previously removed a similar milk stain with their small handheld carpet cleaner. The Tenants also write that the stain was not noticed at move out but could have been removed had the Tenants been given the opportunity. Finally, they argue that the chemical treatment the Landlords opted to apply to the sofa caused the irreversible damage to the sofa. In all the Tenants dispute the Landlords' claim for related compensation.

In terms of the Landlords' request for compensation for alleged damage to the speaker cabinet, the Tenants submit that the speakers were very old and, in the home when the property was purchased by the Landlords. The Tenants also write that they never moved the speakers, nor did they use them as they had their own wireless speakers. The Tenants also submit the small scratch could be repaired with a black marker, or paint.

During the hearing before me the Tenant, M.A., also noted that there were a number of quotes in the Landlord's evidence rather than confirmation of the actual cost.

G.L. also responded to the Tenant's claims, G.L. testified.

In terms of the Tenants' request for double the damage deposit, G.L. pointed out that the Tenants provided their forwarding address on November 6, 2019 and the Landlords applied for dispute resolution on August 20, 2020.

G.L. also stated that by email dated August 13, 2019, the Tenants confirmed that they received the Move-out Inspection Report and the addendum. When asked to sign off on the documents or reject them, the Tenants responded within that email that they were going to talk to their lawyer.

In terms of the Tenants request for return of the Interim Settlement funds, G.L. pointed out that in his two emails to the Tenants he specifically stated that the owners refused to reopen the discussion until the mid term claim for damages was resolved.

The Tenants declined to cross examine G.L.

S.M. also responded to the Tenants' claims as follows. He noted that the hot tub filters were second hand, but useable, and were only dirty because the Tenants left them outside. He also confirmed that they put a bill in for the actual work done on the yard.

S.M. confirmed that the Tenants agreed to pay \$2,888.00 in "damage or missing items" and that there was no agreement that this was tied to a continuation of the tenancy. S.M. stated that the actual expenditure was \$3,798.00 not included the time to refurbish the unit. He stated that the issues were resolved, not to the mutual satisfaction of each party but they reached a deal.

In terms of the Tenants' request for compensation for items they purchased, S.M. noted that everything the Tenants paid for was damaged and it became their stuff.

In addition, S.M. submitted that the Tenants made a lot of broad statements about the Landlords "stripping the property of valuable items" including: removing the dining room table, living room table, beds and décor, which S.M. characterized as perjury at worst and misleading at best. He stated that all the items which were removed were replaced with similar or better items. The only item the Landlord removed was a linen chest which was used as a coffee table and was replaced with a real coffee table. He further noted that the dresser in bedroom was scratched and was replaced with an identical one. He also stated that the dining room table was severely damaged, (which the Tenants admitted), the Landlord did not request compensation and replaced it with a new one. S.M. noted that there was a "loaner bedframe" when the tenancy first began which was switched to the frame they originally ordered and that in any case, no beds were removed as M.A. testified. He noted that they added custom glass covers on the dining room table and coffee table.

S.M. stated that the only items that were removed were duplicate items; including: 8 bowls; 5 wine glasses; bed sheets and bathtub towels (as the Tenants claimed to be using their own); one picture which the Tenants damaged by leaning a mirror against the picture; and some decorative items including: three small owls, two octopuses, two hurricane lamp, and three vases, (because the Tenants had their own decorative items). S.M. also testified that they removed some old pots and replaced with items from

Amazon, not Walmart as the Tenants' claimed. He further stated that the pots were good for regular "family use", but not for their chef work, which is in violation of the lease in any case.

S.M. stated that they didn't "strip" the house, rather, they improved it as he claimed it was far above any reasonable standard of decoration and repair and the changes bettered the level of comfort.

In response to the Tenants' submissions as to a lack of inventory of household items, S.M. noted that the Tenants stated they were in the rental business and didn't need an inventory. S.M. also claimed that the Landlords maintained a full inventory of their items for insurance purposes (although this inventory was not provided to the Tenants).

In terms of the items the Tenants purchased to replace what they allege was missing, S.M. noted as follows. The Tenants had lots of their own wineglasses, and they bought 16 to replace 5. The Landlords left three different sized drinking glasses, but the Tenants wanted larger quantities for their business. The Landlords also left a full set of kitchen utensils and the Tenants bought a set for "commercial restaurant use" plus stainless steel. As noted, the Landlords left brand new pots, but this was unsatisfactory, and the Tenants bought high end commercial pots which are again for their business.

S.M. also submitted that the Tenants only complained about the condition of the rental unit after the Landlords' Interim Use Period when they found out their lease was not being extended.

In terms of the amounts claimed by the Tenants for cleaning after the Landlords' Interim Use Period, the Landlords testified as follows;

- The half bath toilet could have been used by the maintenance worker or their staff and in any case, the cleaning bill was 11 days after the Landlords moved out, and after the Tenants re-took possession.
- The empty bottles in the wine rack were the Tenants and the Landlords left them.
- There were no crumbs on the floor.
- The stove was left clean and they self cleaned the oven before they left.

- The cutlery drawer was as it was when the Landlords first regained possession of the unit during the Landlords' Interim Use Period.
- There was no dust in the buffet.
- Similarly, there was no dirt in the tub, they used the shower downstairs.

S.M. confirmed that they stored the Tenants items in the garage where some of their other items were. He denied removing any of the Tenants items from the rental property.

In terms of the amounts claimed by the Tenants to replace items they believed the Landlords removed, S.M. reiterated that the Tenants took possession of those items when they moved out such that they suffered no loss.

In reply to the Landlord's response, M.A. stated that the issues related to the Landlords' personal items could have been mitigated if there was a move in and move out inspection during the Landlords' Interim Use Period and if an inventory had been provided; in this respect she noted that they asked for an inventory 9 different times. Emails provided in evidence by both parties confirm the Tenants asked for such an inventory.

M.A. also stated that they had the rental unit cleaned on April 3, 2019, two days after they returned to the rental unit after the Landlords' Interim Use Period, not 11 days as alleged by the Landlord.

M.A. denied using the rental unit for their business. She admitted they had some friends stay with them for a few days, and although they worked from home, they did not have staff working out of the home.

A.M. stated the Landlords' claims are fabricated. A.M. stated that during the move out inspection no issues were raised with the Tenants aside from light bulbs. There was no ability to remedy any of the issues as they were not brought to their attention after they moved out.

The Tenant confirmed they moved out on July 31, 2019. The Move Out Inspection was emailed to them on August 13, 2019. The Tenant argued that this should extinguish the Landlords' right to claim against the deposit.



## 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.

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.

### *Landlords' Claim*

The Landlords claim the cost to replace firewood. The tenancy agreement before me made no mention of firewood. While the Tenants replenished the fire wood during the Landlords Interim Use Period, I find they did so without any legal obligation. Had the Landlords expected the Tenants to replenish the firewood at the end of the tenancy, the Landlords could have provided for this in the tenancy agreement. I therefore dismiss the Landlords' claim for \$472.50 for firewood.

The Condition Inspection Report indicated that the rental unit was left reasonably clean. The standard is that of a reasonable person, it is not the Landlords' standard, nor is it the Tenants'.

While the Landlords may have later decided to clean the windows and blinds more thoroughly, I am not satisfied, based on the photos before me that the Tenants are responsible for this cleaning as I find the photos support a finding that the windows and blinds were left reasonably clean. I therefore dismiss the Landlords' claim for \$175.00 for window and blind cleaning.

The Landlords also seek the cost to clean the stone floors. Again, the move out inspection report indicates the floors were reasonably clean. The receipt provided in evidence indicates the Landlords paid for a protective finish. This, as aptly noted by the Tenants, is a cost of maintenance which is the Landlords' responsibility. I find the cost incurred by the Landlords to clean the stone floors is not recoverable by the Landlords and I therefore dismiss their claim for \$189.00 in related compensation.

The evidence before me indicates the Tenants failed to clean the carpets at the end of the tenancy. While the Tenants may have been absent from the rental property during their holidays, this does not relieve them of the obligation to professionally clean the carpets as per their tenancy agreement. Further, *Residential Tenancy Policy Guideline*

*1: Landlord & Tenant – Responsibility for Residential Premises* provides the following guidance with respect to carpets:

**CARPETS**

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

I therefore find the Landlords are entitled to the **\$210.00** claimed for cleaning the carpets.

The Landlords also sought \$600.00 for landscaping costs. I find this to be an inflated and unsupported claim. The photos submitted in evidence do not support a finding that the Tenants failed to care for the yard, or that the Landlords needed to pay the sum of \$600.00 to bring the landscaping to a reasonable standard. Further, there is no mention of this alleged deficiency in the Move-out Condition Inspection. For these reasons I dismiss the Landlords' claim for related compensation.

The Tenants agreed to reimburse the Landlords **\$50.00** for the cost to replace lightbulbs alleging the Landlords Agent requested this sum. The evidence before me indicates the Landlords paid **\$205.50** for the cost to replace lightbulbs. As the Tenants admitted the light bulbs required replacement and the Landlords provided sufficient evidence that they incurred this cost, I award the claimed amount to the Landlords.

The Landlords sought the replacement cost for a faucet, alleging the plug was removed by the Tenants. The Tenants testified that the faucet was old and the plug was left in a bathroom drawer along with jacuzzi tub jets that fell from the tub. Even had the Tenants removed the plug, I am not satisfied this rendered the bathroom faucet useless. I am also not satisfied the faucet was replaced in 2018 as no documentary evidence was provided to support the Landlord's testimony in this regard. For these reasons I dismiss the Landlords' claim for related compensation.

The Landlords claim the cost of replacing various household items, alleging that they were present when the tenancy began, and missing when it ended.

This tenancy is somewhat unique in that during a period of time the Landlords moved back into the property. The evidence before me indicates that during that time, the Landlords also removed a number of kitchen and household items, some of which were replaced with similar items, and some of which were not replaced.

As an additional consideration, and despite the rental unit being fully furnished, the parties did not complete an inventory of household items. It is somewhat incredulous, based on the hearing before me, the meticulous nature of both the Landlords and the Tenants, and their attention to detail as evidenced in their voluminous evidence submissions, that neither party thought to create such an inventory at the beginning of the tenancy.

The evidence confirms that the Tenants repeatedly asked the Landlords for such an inventory. While the Landlords claimed to have photos of the items, no such inventory was created or provided to the Tenants. As well, although photos were submitted in evidence by the Landlords of items which they claim were present when the tenancy began, they admit to removing some items from the rental unit during the Landlords' Interim Use Period. Further, aside from the mop and wooden spoon, the Tenants deny removing any of the Landlords' personal items.

As the Claimants, the Landlords bear the burden of proving their claim on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In this case, I am unable to find that the Landlords have met this burden.

The Landlords alleged the Tenants used the rental unit for business purposes. In this respect they argue the Tenants used their address as the business address and used the home for the preparation of meals. They point to an instance when the Landlords' platter was discovered at one of the Tenants' client's homes. Presumably, this evidence was tendered to suggest the Tenants might have misplaced some of the household items when using them for their business. I am not convinced of this logical leap as one mistake does not prove the Tenants removed all allegedly missing items.

The Tenants concede they removed a mop and a wooden spoon. Although the Landlords provided evidence of the replacement cost, to award the Landlords the full replacement cost would potentially provide them a windfall; I saw this as I was not

provided with any details as to how old these items were and therefore cannot determine what is a reasonable depreciated value. I therefore award the Landlords the nominal sum of **\$40.00** for these two items.

The Landlords request compensation for the cost to replace the hot tub filters. The Landlords concede the filters they had were used and were stored outside. The Tenants submit that they replaced the filters during their tenancy. While not specifically claimed, they suggest in their response to the Landlords' claim that they should be reimbursed the cost of the filters. As the Tenants used the hot tub during their tenancy, I find it reasonable they purchased filters. In any case, I am not satisfied the Landlords are entitled to reimbursement for the cost of the hot tub filters as I was not provided with any evidence as to when those filters had been replaced prior to the tenancy beginning.

The most significant portion of the Landlords' claim related to their sofa. The evidence confirms the sofa was part of the sale of the home when the Landlords purchased the property. The Landlords could not provide any details as to how old the sofa was. The Landlords argue that as they had the sofa recovered, its useful life span is irrelevant. They also argue that as the sofa has a lifetime warranty, its life span is limitless.

I am not persuaded by the Landlords' arguments in this respect. The Landlords purchased the home with a second-hand sofa. Its age is relevant as to provide the Landlords compensation for the full cost to replace or reupholster the sofa would, in essence, put them in a better position than they would have been had the tenancy not occurred. This is contrary to the principles of tort law generally.

The Tenants concede that they spilled milk on the sofa and argue that the sofa could have been cleaned had the Landlords spot cleaned the sofa rather than adding a protective coating. The evidence also indicates there was a pre-existing orange stain on the sofa.

The Landlords testified that they spoke to professionals about the possibility of cleaning the sofa and were advised it would cause irreparable harm. As such, they relied on this advice and had the sofa reupholstered.

The Landlords seek the sum of \$8,952.33 for the total cost to reupholster their sofa. As it turns out, this amount exceeds the apparent replacement cost. In any event, the Landlords testified that they have paid the cost to have the cushions recovered but had yet to finish the remaining upholstery. I find it reasonable the Landlord would want to reupholster the entire sofa to ensure the cushions match.

That said, I am not persuaded the Tenants are responsible for reimbursing the Landlords the full cost of reupholstering the sofa. As noted, the sofa is of unknown age, and I find that award the Landlords a full reimbursement would be a windfall to the Landlords.

A landlord has a duty to mitigate their losses, and in this respect it is arguable the Landlords could have purchased a less expensive replacement sofa. As I was not provided with evidence of the age of the sofa, I award the Landlords the nominal sum of \$2,000.00 as the Tenants' contribution towards the cost of reupholstering this sofa.

As with the sofa, the speakers were present in the home when the Landlords purchased the property. I was not provided any evidence as to the age of the speakers. The photos submitted by the Landlords show some damage to the cabinets. There is no suggestion that this damage affected the functionality of the speakers.

The Tenants testified that they did not use the speakers as they had their own wireless set. They deny damaging the speaker cabinet and submit that a marker or touch up paint would suffice to repair the small amount of damage.

On balance, I am not persuaded the Landlords are entitled to the amounts claimed for cost to repair the speaker cabinets as I find this to be reasonable wear and tear given the possible age of the speakers.

I therefore award the Landlords the sum of **\$2,455.50** for the following:

Carpet cleaning	\$210.00
Light bulb replacement	\$205.50
Nominal amount for mop and spoon	\$40.00
Nominal amount towards cost to reupholster sofa	\$2,000.00
<b>TOTAL AWARDED</b>	<b>\$2,455.50</b>

### *Tenants' Claims*

In the claim before me the Tenants request reimbursement of the amounts they paid to clean the rental unit after the Landlords' Interim Use Period.

The Tenants also request reimbursement of the funds paid to the Landlords pursuant to the Interim Financial Settlement.

As noted, the unusual nature of this tenancy was that the Landlords regained possession of the rental unit for a period of time during the tenancy. When the Landlords were in occupation, they identified several issues with the property and communicated their concerns to the Tenants.

The parties entered into discussions and settled on a sum to be paid by the Tenants to the Landlords for these issues. These discussions occurred after the Tenants had moved back into the rental unit and regained possession.

While the Tenants were clearly hopeful that their tenancy would be extended beyond the original fixed term, this was not included in their formal negotiations. The Tenants assumed by paying the Interim Financial Settlement this would facilitate an extension of their rental period. They argue that the Landlords' Agent gave them this impression by verbal and electronic communication.

I have had the benefit of the testimony of the parties and the Landlords' Agent in this respect, as well as the email communication between the parties. On balance, I am not satisfied, that the Interim Financial Settlement was contingent on an extension of the rental period. Had that been the case, I find it more likely it would have been included in the formal settlement discussions.

Similarly, the Tenants had already regained possession of the rental unit at the time they discussed the Interim Financial Settlement. Had the Tenants been concerned about the cleanliness of the rental unit, or sought compensation for their cleaning costs, this should have been addressed when they agreed to the Interim Financial Settlement. I am not satisfied the Tenants are entitled to related compensation as I find it was implied in the Interim Financial Settlement.

Based on the evidence before me, I am also not satisfied the tenancy was devalued by 50% due to the Landlords' removal and exchange of furnishings in the rental unit after the Landlords' Interim Use. I accept the Landlord, S.M.'s, testimony as to the items which were exchanged and his assertion that these items were an improvement and did not take away from the tenancy. I found his testimony to be compelling and consistent. Conversely, I found the Tenant's testimony in this regard to be prone to exaggeration.

The evidence confirms the Tenants continued to have full use of the rental property after the Landlords' Interim Use. I find the Tenants submitted insufficient evidence to support a finding that the Landlords removed essential household items and furniture. While the Tenants may not have approved of some of the replacements, this does not

justify such a large award. Rent reductions in the realm of 50% are provided to tenants who lose use of essential rooms, or facilities in the rental unit; this is not such a case. On balance I find they have failed to meet the burden of proving this loss and therefore deny their request for \$10,209.00 for devaluation of their tenancy.

The Tenants also seek compensation pursuant to section 51(2) of the *Act* which provides tenants with 12 months compensation when a landlord does not use a property for the stated purpose on a 2 Month Notice to End Tenancy for Landlords' Use. Such compensation is available to tenants who receive a formal notice to end tenancy pursuant to section 49 of the *Act*; for clarity I reproduce the relevant portions of section 49 as follows:

**49** ... (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

...

(7) **A notice under this section must comply with section 52** [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

...

[emphasis added in **bold**]

As noted in bold above, a notice to end tenancy pursuant to section 49 must comply with section 52 which reads as follows:

**52** In order to be effective, a notice to end a tenancy must be in writing and must



- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) **when given by a landlord, be in the approved form.**

[emphasis added in **bold**]

The undisputed evidence before me is that the Tenants did *not* receive a notice which complies in form and content with section 49 and 52 of the *Act* .

The Tenants rely on an email sent May 14, 2019 by the Landlords' agent confirming their tenancy would not be extended beyond the original fixed term. This email was not "in the approved form", which is #RTB-32. #RTB-32 must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and provide reasons for ending the tenancy. #RTB-32 also provides a tenant with information relating to their right to dispute the notice, as well as applicable timelines, and provides the tenants with further details regarding the landlord's intention with respect to the party. Section 49(7) provides that a notice under section 49 *must* comply with section 52, and section 52 provides that the notice *must* be in the approved form; there is no flexibility with respect to these requirements.

The Tenants may have acted on the email from the Landlords' Agent, purporting to end the tenancy, however, this does give rise to compensation pursuant to section 51(2) of the *Act*. I therefore dismiss the Tenants' claim for compensation based on section 51(2) of the *Act*.

The Tenants also seek return of double their security deposit. In this respect the Tenants submitted that as the rental unit was left reasonably clean (as noted on the Move-out Condition Inspection) they should have received their deposit without delay.

A tenant may be entitled to return of double the security deposit pursuant to section 38(6) of the *Act* if the landlord does not return their deposit or make an application for dispute resolution within 15 days of receipt of their forwarding address. This is provided for in section 38(1) and (6) of the *Act*.

The evidence confirms the Tenants provided the Landlords with their forwarding address by letter dated November 5, 2019. At that time the Landlords had already made their Application for Dispute Resolution. As such, the Landlords complied with section 38(1) and the Tenants are not entitled to compensation pursuant to section 38(6).

The Tenants submit that the Landlords extinguished their right to claim against the deposit by failing to provide them with a copy of the Move-out Condition Inspection Report pursuant to the *Act* and the *Residential Tenancy Regulation* (the "*Regulation*").

The tenancy ended on July 31, 2019. The evidence before me indicates the Landlords' Agent sent the report to the Tenants by email. Documentary evidence indicates that by email dated August 13, 2019, the Tenants confirmed that they received the move out inspection report and the addendum.

While I find the addendum was completed *after* the inspection, and therefore not in accordance with the *Act* and *Regulation*, the Move-out Condition Inspection Report itself was completed in accordance with the legislation.

Section 18 of the *Residential Tenancy Regulation* provides that a landlord must provide the tenant with a copy of the Move-out Condition Inspection within 15 days of the later of, the date the inspection is completed, or the date the landlord receives the tenant's forwarding address.

As noted, the Tenants did not provide their forwarding address to the Landlords until November 5, 2019, and at that time they had already had the benefit of the report for nearly three months. As such, I find the Landlords did not extinguish their right to claim against the deposit.

For these reasons I deny the Tenants' request for return of double their deposit.

As the Landlords have been partially successful in their Application, I award them recover of the \$100.00 filing fee.

### Conclusion

The Landlords are entitled to monetary compensation from the Tenants in the amount of **\$2,555.50** for the following:

Carpet cleaning	\$210.00
Light bulb replacement	\$205.50
Nominal cost of mop and spoon	\$40.00
nominal cost to reupholster sofa	\$2,000.00
Filing fee	\$100.00
<b>TOTAL AWARDED</b>	<b>\$2,555.50</b>

The Tenants claim for compensation from the Landlords is dismissed.

Pursuant to sections 38 and 72 of the *Act*, the Landlords may retain the Tenants' \$2,400.00 security deposit towards the amounts awarded. The Landlords are entitled to a Monetary Order in the amount of **\$155.50** for the balance due. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: July 15, 2020

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Residential Tenancy Branch