



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPM, MNDL, MNDCL, MNRL, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Mutual Agreement to End Tenancy, pursuant to sections 44 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The applicant, respondent S.K. (S.K.) and respondent H.H. (H.H) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

### **Preliminary Issue- Order of Possession**

Both parties agree that the respondents have already moved out. I therefore dismiss the landlord's application for an Order of Possession because this remedy is no longer necessary.

Preliminary Issue- Naming of Parties

Both parties agree that the landlord and S.K. entered into a written tenancy agreement starting August 31, 2017. Both parties agree that only S.K. was listed on that tenancy agreement as a tenant. Both parties agree that H.H. also moved into the subject rental property on August 31, 2017 as a roommate to S.K. and that other roommates also lived at the subject rental property. Both parties agree that S.K. paid the landlord the total amount of rent due each month. S.K. testified that the roommates paid him their portion of rent.

Both parties agree that the landlord and S.K. entered into a new written tenancy agreement starting November 1, 2018 (the "renewal agreement"). The renewal agreement was entered into evidence and lists only S.K. as a tenant on page one of the renewal agreement on RTB Form #1. Only S.K. and the landlord signed the tenancy agreement. The renewal agreement has a Schedule of Parties, RTB form 26, attached and lists H.H. as a tenant; however, it is not signed by H.H. An addendum to the renewal agreement is also attached to the renewal agreement and is signed by the landlord and S.K. The above documents were all signed on October 28, 2018.

The landlord testified that H.H. also signed another copy of the addendum to the tenancy agreement on October 28, 2018. The addendum was entered into evidence. H.H. testified that she did sign the addendum but that it was signed substantially after October 28, 2018 and that the landlord asked her to backdate it. The addendums signed by S.K. and H.H. are separate forms, their signatures are not on the same copy of the addendum. The landlord denied that he asked H.H. to backdate the addendum. Both parties agree that S.K. continued to be the sole person paying the landlord rent after signing the renewal agreement.

Both parties agree that in April of 2019 S.K. informed the landlord that the commute to his work was too long and that S.K. wanted to move out. Both parties agree that the landlord agreed to allow S.K. to move out. Both parties agree that S.K. moved out of the subject rental property at the end of June 2019.

S.K. and H.H. testified that after S.K. moved out S.K. asked the landlord to transfer the lease to H.H. S.K. testified that after he moved out, S.K. no longer made rent payments. Both parties agree that after S.K. moved out H.H. paid the landlord rent on behalf of herself and some of her roommates while one roommate paid the landlord directly.

The landlord testified that that S.K. instructed him to keep the lease the same and that no new tenancy agreement was required. Both parties agree that the landlord and H.H. did not sign a new written tenancy agreement after S.K. moved out.

The landlord filed this application for dispute resolution against both S.K. and H.H. for damage to the subject rental property, unpaid rent and loss of rental income.

Residential Tenancy Branch Policy Guideline 13 states:

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Based on the testimony of the parties and the 2018 renewal agreement entered into evidence, I find that from August 31, 2017 to June 30, 2019, S.K. was a tenant and H.H. was a roommate, not a co-tenant. In determining who was a tenant at the above time period, I rely on the renewal agreement signed by the landlord and S.K. which was not signed by H.H. I find H.H.'s signature on the addendum does not prove that she was a tenant and this finding is supported by the fact that S.K. continued to pay the entire rent to the landlord at this point in time and testified that H.H. was a roommate until he moved out.

I find that the tenant informed the landlord that he was moving out and that the landlord gave his permission for the S.K. to move out. I find that when S.K. moved out, the tenancy between S.K. and the landlord ended. I find that a new tenancy started between H.H. and the landlord on July 1, 2019. As stated in section 1 of the *Act*, tenancy agreements can be written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that because S.K. and H.H. were never co-tenants, they are not joint and severally liable for damages to the subject rental property. S.K. is liable for damages to the

subject rental property from August 31, 2017 to June 30, 2019 and H.H. is liable for damages to the subject rental property from July 1, 2019 May 1, 2021. Since the respondents are not joint and severally liable, they cannot be listed jointly on this application for dispute resolution. At the time H.H.'s tenancy ended, S.K. was not a tenant.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that it should have been known by the landlord, H.H. and S.K. that at the time H.H.'s tenancy ended, S.K., who moved out two years prior, was no longer a tenant and is not liable for damages occurring in H.H.'s tenancy. As S.K. is not liable for damages occurring in H.H.'s tenancy, S.K. should not have been named as a respondent in this application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the landlord's application to remove S.K. as a tenant.

#### Preliminary Issue- Service

The landlord testified that he applied for and received an Order for Substituted Service on H.H. for service via email. The Substituted Service Decision on file and entered into evidence confirms same. The landlord testified that H.H. was served via email on July 30, 2021. H.H. testified that she received the landlord's application for dispute resolution a day or so after it was sent. I find that H.H. was served in accordance with the Substituted Service Decision dated June 2, 2021.

#### Preliminary Issue- Late Evidence

Both parties agree that they received the other's evidence for this application for dispute resolution within the timeframes set out by the Residential Tenancy Branch Rules of Procedure, except for one package of evidence served on the tenants by the landlord on August 22, 2021. The landlord testified that the August 22, 2021 evidence responds to the tenant's evidence which he received on August 20, 2021. H.H. testified that she has not had time to review and respond to the August 22, 2021 evidence package.

In the hearing I found that while H.H.'s evidence was served on the landlord in accordance with the *Rules*, it was served so close to the deadline that the landlord was not provided with enough time to respond to that evidence. To allow time for H.H. to review the evidence and for the evidence to be considered I offered to adjourn the hearing. The landlord testified that he would rather exclude the August 22, 2021 evidence from consideration than adjourn the hearing. Based on the landlord's request, this hearing will not be adjourned, and the late evidence will not be considered.

### **Issues**

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of \$2,750.00 was payable on the first day of each month. No security or pet damage deposits were paid by H.H.

The landlord and H.H. agree that they signed a Mutual Agreement to End Tenancy effective at 1:00 p.m. on May 1, 2021. The Mutual Agreement to End Tenancy was entered into evidence.

The landlord and S.K. testified that they completed a move in condition inspection report at the start of S.K.'s tenancy. The move in condition inspection report was entered into evidence. The landlord testified that he did not complete a move out condition

inspection or inspection report when tenant S.K. moved out. Both parties agree that they did not complete a move in condition inspection report when H.H.'s tenancy started.

Both parties agree that the landlord and H.H. agreed to meet at the subject rental property at 1p.m. on May 1, 2021 to complete the move out condition inspection report. Both parties agree that on May 1, 2021 the tenant asked the landlord for an extension and the landlord agreed to complete the move out condition inspection report on May 1, 2021 at 4:00 p.m.

The landlord testified that he attended the subject rental property on May 1, 2021 at 1:00 p.m. and saw H.H. drive away. The landlord testified that he waited at the subject rental property until after 4:00 p.m. but H.H. did not return and did not answer her phone when he called to enquire as to her whereabouts.

The tenant testified that she injured herself while moving and went to see a doctor on May 1, 2020 and so was unable to attend the move out condition inspection or access her phone. No medical evidence to substantiate the above testimony was provided. The tenant testified that if she didn't injure herself, she would have continued cleaning, removing garbage and would have taken her food out of the fridge.

The landlord testified that he completed the move out condition inspection report after 4 p.m. in the absence of the tenant on May 1, 2021. The move out condition inspection report was entered into evidence.

The landlord is seeking the following damages/compensation from H.H.:

<b>Item</b>	<b>Amount</b>
Repair patio screen door	\$67.86
Weed removal	\$280.98
Lawn repair	\$542.97
Paint interior	\$2,524.48
Cleaning	\$775.00
Replace hoses and hose reel	\$160.82
Replace security camera and SD card	\$61.42
Replace carpet	\$530.41
Junk removal	\$884.00
April rent	\$2,750.00

May loss of rental income	\$2,750.00
Filing fee	\$100.00
<b>Total</b>	<b>\$11,427.00</b>

#### Repair patio screen door

The landlord testified that at the start of S.K.'s tenancy the screen door had a minor tear next to the handle and that at the end of H.H.'s tenancy the screen door was completely ripped out at the bottom. The landlord testified that the screen door was one year old at the start of S.K.'s tenancy.

The landlord testified that he is seeking \$17.86 for the cost of a new screen door and two hours of labour at a rate of \$25.00 per hour for its installation. The total claim for repairing the screen door is \$67.86. A receipt for a new screen was entered into evidence.

S.K. testified that the screen door was significantly damaged when he moved in as marked on the move in condition inspection report. The move in condition inspection report states that the patio door screen is damaged. S.K. testified that his dog ran through the screen door making the damage worse. This testimony was agreed to by H.H.

#### Weed removal

The landlord testified that lawn care was the tenants' responsibility as set out in the addendum to the renewal agreement which states at section 5:

The tenant, will be required to maintain the grounds listed on the agreement. To maintain tenant safety, property value, and not violate grass ordinance, the grounds must be reasonably maintained. This includes picking up sticks, debris, trash, and cutting the grass. The grass should be moved when it reaches a height of 4 inches but shall not be permitted to grow taller than 8 inches, and shall not be cut shorter than 1-1/2 inches. Once the grass exceeds 10 inches it may be cut by the Landlord, or his designee or municipality, with or without notice. The charge for lawn maintenance is to be billed to the tenant and due along with the following months' rent. This section covers the address listed in the agreement throughout the full term of said lease.

The landlord testified that at the start of S.K.'s tenancy the yard was clean and weed free and at the end of April 2021 you could not see grass, only weeds. The landlord testified that it took three applications of the weed killer and then the physical removal of the weeds to repair the lawn. The landlord testified that the weed killer cost \$55.98 and that it took him 9 hours to complete the above work. The landlord is seeking the cost of the weed killer and labour at a rate of \$25.00 per hour for a total claim of \$280.98. A receipt for weed killer was entered into evidence.

S.K. testified that at the end of his tenancy the yard was in good condition and was not full of weeds. H.H. testified that when S.K. lived at the subject rental property S.K. maintained the yard and that she struggled to do so after he moved out. S.K. testified that she thought the yard work was not essential and that weeds were ok so she did not weed the yard or mow it frequently. H.H. testified that the landlord gave a rent reduction for the purchase of a used lawn mower and that after three or four uses it stopped working. The tenant testified that she informed the landlord but he did not fix it and so she did not mow the lawn or maintain it.

The landlord entered into evidence an email quote for the cost of lawn weed spray and yard cleanup in the amount of \$775.00. The landlord testified that he did not hire the author of the quote to keep costs down as he could do it cheaper himself.

#### Lawn repair

Both parties agree that after S.K. moved out H.H. installed a pool without the landlord's consent. Both parties agree that the pool killed the grass underneath the pool. The landlord entered into evidence photographs of same. The landlord entered into evidence photographs of the lawn where the pool used to sit. There is a large earth circle where it is evident the grass has died.

The landlord testified that he had to manually turn over the soil where the pool rested and re-seed it. The landlord testified that the seeding materials cost \$167.97. A receipt for re-seeding materials in the amount of \$159.97 plus tax was entered into evidence. The landlord testified that it took him 15 hours of labour to repair the lawn damaged by the pool and is seeking compensation from the tenant at a rate of \$25.00 per hour. The total claim for lawn repair is \$542.97.



The landlord entered into evidence an email quote for the repair of the swimming pool area for \$200.00

### Paint interior

The landlord testified that the subject rental property was last painted in September of 2016. The landlord testified that at the start of S.K.'s tenancy, aside from a few small patches, the walls were in good condition. The landlord testified that at the end of H.H.'s tenancy the entire property required re-painting because S.K. and H.H. and their roommates smoked in the subject rental property. The landlord entered into evidence an email from the cleaner hired by the landlord to clean the property which states:

I witnessed and can verify,

Weed roaches on floor  
Heavy cigarette smoke/smell in basement  
Ruined flooring (I.e chipped and gauged floors)  
Animal feces of floor  
Heavy odor of cat urine

The landlord entered into evidence a video of the subject rental property taken on May 1, 2021 after 4:00 p.m. The video shows that the walls in the subject rental property are filthy and damaged.

The landlord testified that he obtained a quote for painting the unit but decided to do it himself because he could do it cheaper. A painting quote in the amount of \$4,860.00 was entered into evidence. The landlord testified that he purchased paint and painting supplies totalling \$524.48, receipts for same were entered into evidence. The landlord testified that it took him 80 hours to paint the subject rental property and he is seeking \$25.00 per hour for labour for a total of \$2,000.00. The total claim is \$2,524.48.

S.K. testified that he is allergic to smoke and there was no smoking in the subject rental property when he lived there.

The agent testified that the landlord has not submitted any proof that the subject rental property was last painted in September of 2016 and that the landlord wants the property painted not because of damage but to attract new tenants.

H.H. testified that when S.K. moved out the paint was in poor condition. H.H. testified that it was so thin in some areas, you could see the previous paint colour below. H.H. testified that the walls were in the same condition when she moved out as when S.K. moved out and that there was no severe damage, just a couple of holes where pictures were hung up and some scuffs by the stairs.

### Cleaning

The landlord testified that the subject rental property was very dirty at the end of H.H.'s tenancy. The landlord entered into evidence a video of the subject rental property taken after 4 p.m. on May 1, 2021. The video showed that H.H. left large quantities of garbage throughout the subject rental property and the floors, walls, cabinets, and bathrooms were all filthy. Some personal possessions of no monetary value were also left at the subject rental property. An overflowing cat litter box full of fecal matter can also be seen in the video. The oven in the video is extremely filthy.

The landlord testified that he hired a junk removal company to remove the garbage left by H.H. A receipt in the amount of \$784.00 for junk removal was entered into evidence. The landlord's claim also seeks compensation for four hours of labour for assisting with the junk removal at a rate of \$25.00 per hour.

The landlord testified that the vinyl in the laundry room had to be removed and the concrete underneath it had to be bleached to get ride of the cat urine left by H.H.'s cat. The landlord testified that the dirty litter boxes seen in the video were in the laundry room. The landlord testified it took him 10 hours of labour to clean the cat pee in the laundry room and is seeking compensation for his labour at a rate of \$25.00 per hour for a total of \$250.00.

H.H. testified that had she been allowed to stay longer at the subject rental property she would have cleaned it and it would not have been a problem. H.H. testified that she left the dirty litter boxes but did her best to sweep and clean. H.H. hypothesized that the laundry room was stinky from a previous furnace flood and that this may have mixed with the kitty litter. H.H. testified that the cat was her, not S.K.'s. H.H. and S.K. testified that cats did not live at the subject rental property when S.K. lived at the subject rental property.

Replace hoses and hose reel

The landlord testified that at the start of the tenancy the subject rental property had two hoses and one hose reel. The landlord testified that at the end of the tenancy the hoses were missing and the hose reel was broken. The landlord testified that the hoses and hose reels were new in September 2016.

S.K. testified that to the best of his recollection the hoses and hose reel were in good condition and at the subject rental property when he moved out.

H.H. testified that both hoses were in the back yard, attached together, at the end of her tenancy and that the reel just broke and that she did not break it.

The landlord entered into evidence a video of the yard taken at 2:46 p.m. on May 1, 2021. A pile of hoses can be seen in the video at the bottom the stairs to the deck. The landlord entered into evidence receipts for two hoses and a hose reel totalling \$110.82. The landlord testified that it took him approximately two hours to purchase the new hoses and hose reel and set everything up. The landlord testified that he is seeking compensation at a rate of \$25.00 per hour for a total of \$50.00. The total claim for the hoses and hose reel including labour is \$160.82.

Replace security camera and SD card

The landlord testified that due to some break ins in the area the landlord purchased two security cameras for the subject rental property in June of 2020. The landlord testified that one of the security cameras and the S.D. card that was inside it was missing at the end of this tenancy.

The landlord entered into evidence a receipt for two new security cameras in the amount of \$85.52. The landlord is claiming the cost of one security camera in the amount of \$42.76.

The landlord entered into evidence a receipt for a three pack of S.D. cards in the amount of \$55.99. The landlord testified he is seeking \$18.66 from the tenant, the cost of one S.D. card.

H.H. testified that she accidentally took one of the security cameras with her when she moved out.

### Replace carpet

The landlord testified that the carpets were in good condition at the start of S.K.'s tenancy and were covered in cat urine and scratched by cats at the end of the tenancy. The landlord testified that he did not know how old the carpets were at the start of S.K.'s tenancy because he purchased the property in September of 2016 and they were already installed at that time.

S.K. testified that when he moved out the carpets did not have cat urine stains on them and were not scratched by cats. S.K. testified that no cats lived in the subject rental property during his tenancy. This testimony was not disputed by H.H.

H.H. testified that her cat scratched the carpets and that she did not think there was a urine smell but could have been nose blind.

### Rent

The landlord testified that H.H. requested April 2021's rent for free. The landlord testified that he told H.H. that if she left the subject rental property clean and paid the outstanding security deposit, H.H. would not have to pay for April 2021's rent. The landlord testified that H.H. did not leave the subject rental property clean and did not pay the outstanding security deposit and so is not entitled to April 2021's rent for free.

H.H. testified that there were no conditions on the free rent for April 2021 and that the landlord agreed to give her free rent for April 2021 because he told her his parents were moving in and tenants are entitled to one month's free rent if they are evicted for family use. The landlord testified that he told the tenant that his parents may move in and that he was considering his options, not that they would move in.

H.H. entered into evidence a text message from the landlord dated April 4, 2021 which states:

....It's 2 months with the last one free, when landlord needs access to property for themselves or close family. I'm trying to move my parents in that house and need to clean it up.

So with the notice I gave you on March 15, you can, if you want, stay until end of May but you only get one month free and you'd need to pay rent for April. So I even gave you an option there and agreed to April 30<sup>th</sup> with a rent free April.

Let me know which you prefer. Either way, I'll work with you. But I need to get the place ready for my parents. Thank you!

The landlord testified that he was not able to advertise the subject rental property for rent after H.H. moved out because of the condition of the subject rental property. The landlord testified that the subject rental property could not be shown to prospective renters until May 15, 2021 due to its dirty and damaged condition. The landlord testified that he lost out on May 2021's rent in the amount of \$2,750.00 and is seeking this loss of rental income from H.H. The landlord testified that a new tenant was found for June 1, 2021.

#### Agent Submissions

The agent submitted that the landlord has not proved the hours of labour claimed for repairing the alleged damaged and that the number of hours of labour is extravagant. The agent submitted that the landlord has not shown how the hourly rate is arrived at and that it is excessive.

#### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

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

#### Repair patio screen door

I find that the landlord has not proved the condition of the screen door at the start of H.H.'s tenancy, that being July 1, 2019. I find that the landlord has not proved, on a balance of probabilities that the damage to the screen door occurred during H.H.'s tenancy as S.K. testified that his dog ran through the screen door prior to the start of H.H.'s tenancy. I find that H.H. is not responsible for damage done to the screen door prior to the start of her tenancy. The landlord's claim for compensation pertaining to the screen door is therefore dismissed without leave to reapply.

#### Weed removal

Based on the testimony of both parties I find that H.H. was aware that lawn care and maintenance was her responsibility when her tenancy started as she, at some point in time signed the addendum stating same. This finding is also supported by the tenant's testimony when she stated that she was aware during S.K.'s tenancy that lawn care was S.K.'s responsibility and that after he moved out she tried to do the lawn care but

struggled with it. I find that lawn care was a verbal and or implied term of this tenancy agreement.

Based on the testimony of S.K. and H.H. I find that the lawn of the subject rental property was not full of weeds at the start of H.H.'s tenancy. Based on the landlord's video evidence and testimony and the testimony of H.H. I find that the yard was full of weeds at the end of this tenancy.

The addendum does not mention any responsibility of the landlord to supply lawn care tools. I find that even though the lawn mower broke, the tenant was still required to maintain the lawn, including mowing and weeding.

I find that the landlord has proved, on a balance of probabilities, that the tenant breached a term of the tenancy agreement, suffered a loss by this breach which is evidenced by the landlord's receipts and accounting of time spent remedying the damage. I find that the hours of labour claimed by the landlord to apply three coats of weed killer to the lawn and then physically remove them to be reasonable. I find the hourly rate of \$25.00 per hour to be reasonable and is lower than most cleaning and handyman rates. I find that the landlord mitigated his damages because the quote from a professional to do the same work was more expensive. I therefore find that the landlord is entitled to recover \$280.98 claimed from tenant H.H.

#### Lawn repair

Based on the testimony of both parties I find that the during H.H.'s tenancy, H.H. damaged the lawn by installing a pool in the backyard which killed the grass underneath the pool. I find that H.H. did not repair the lawn and left it in a damaged state contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of the loss suffered in the amount of \$542.97 by way of receipts and the landlord's accounting of time spent repairing the lawn. However, I find that the landlord failed to mitigate his loss as the landlord entered into evidence an email quote for \$200.00 to repair the area damaged by the pool and elected to complete the repair himself at a higher cost. I find that the landlord is only entitled to collect \$200.00 from H.H. because this work could have been done more economically.

### Paint interior

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Residential Tenancy Branch Policy Guideline #40 states that the useful life of interior paint is four years. The landlord testified that the subject rental property was last painted in September of 2016, which would equate to three months of useful life being left on the paint. The agent disputed the date the subject rental property was last painted. I find that the landlord has not proved, on a balance of probabilities, that the subject rental property was last painted in September of 2016 as no documentary evidence supporting this testimony was provided and it is contested by the agent. In any event, even if the subject rental property was painted in September of 2016, the useful life of the paint had all but expired. Pursuant to my above findings, the landlord's claim for the cost of painting is dismissed without leave to reapply.

### Cleaning

Based on the undisputed video evidence and the testimony of the landlord I find that H.H. left the subject rental property in a filthy condition and full of garbage, contrary to section 37(2)(a) of the *Act*. I find that H.H.'s breach of the *Act* resulted in a quantifiable loss to the landlord which is evidenced by the landlord's receipts for cleaning and junk



removal. I accept the landlord's testimony regarding the quantity of hours required to remove junk and clean the subject rental property and find the hourly rate of \$25.00 per hour to be reasonable. I find that the landlord acted reasonably to clean the mess left by tenant H.H. I find that the landlord is entitled to recover \$884.00 for junk removal and \$525.00 for cleaning.

I find that tenant H.H. has not proved that she was injured on the date of her move out as no medical documents evidencing same were entered into evidence. I find, on a balance of probabilities, that the tenant did not attend the move out condition inspection because of the filthy condition of the property she left. I find that the tenant was not entitled to return at a later date to clean the subject rental property and remove her food. H.H. signed a Mutual Agreement to End Tenancy effective at 1:00 p.m. on May 1, 2021. H.H. was required to have moved out, cleaned and repaired any damage to the subject rental property by 1:00 p.m. on May 1, 2021 and failed to do so. H.H. is responsible for the costs to clean what she left behind.

Based on the testimony of S.K. and H.H. I find that H.H. brought a cat into the subject rental property after S.K. moved out. Based on the unclean state of the litter box as seen in the videos, I accept the landlord's testimony that cat urine got under the vinyl and had to be treated with bleach. I find that in leaving the laundry room soaked in cat urine tenant H.H. breached section 37(2)(a) of the *Act*. I accept the landlord's testimony that it took him 10 hours of labour to clean the cat urine from under the vinyl. I award the landlord \$250.00 for cleaning the cat urine.

#### Replace hoses and hose reel

In the video of the exterior of the property taken by the landlord on May 1, 2021, a pile of hose(s) can be seen. The landlord testified that the hoses were missing and H.H. testified that the hoses were at the subject rental property. Based on the video, I find that hoses were left at the subject rental property by the tenant. The landlord's claim for the hoses is therefore dismissed without leave to reapply.

The tenant testified that the hose reel broke on its own and that she did not break it. I find that the landlord has not proved that the tenant or the tenant's negligence is responsible for the damage to the hose reel. I therefore dismiss the landlord's claim for the cost of a new hose reel.

Replace security camera and SD card

Based on the testimony of both parties I find that H.H. is responsible for the cost of a new security camera and S.D. card because she took the landlord's security camera and S.D. card with her when she moved.

Residential Tenancy Policy Guideline #40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

Security cameras are not in the table in Policy Guideline #40. I will use the useful life of an intercom, which is also an electrical device, as the useful life of a security camera. I accept the landlord's testimony that the security camera and S.D. card were purchased in June of 2020, during H.H.'s tenancy.

The useful life of an intercom is 15 years (180 months). Therefore, at the time H.H. moved out, there was approximately 169 months of useful life that should have been left for the security camera and S.D. card. I find that since the camera and S.D. card required replacing after only 11 months, H.H. is required to pay according to the following calculation:

$\$61.42 \text{ (cost of new camera and S.D. card)} / 180 \text{ months (useful life of new camera and S.D. card)} = \$0.34 \text{ (monthly cost)}$

$\$0.34 \text{ (monthly cost)} * 169 \text{ months (expected useful life of new camera and S.D. card after tenant moved out)} = \$57.46.$

Replace carpet

Based on the testimony of S.K. and H.H. I find that the carpet was not scratched by a cat or covered in cat urine during S.K.'s tenancy. I accept S.K.'s testimony that no cats resided in the subject rental property during his tenancy. Based on H.H.'s testimony, I find that her cat damaged the carpet by scratching.

The landlord testified that he did not know how old the carpet was. I find that I am not able to complete a useful life calculation without knowing the age of the carpet and I am not able to determine if the carpet had any useful life left. The exact loss suffered by the landlord is therefore unattainable.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proved that H.H.'s cat damaged the carpet. I find that the landlord is entitled to nominal damages for the carpet in the amount of \$100.00.

### Rent

Based on the text message entered into evidence by H.H. I find that the landlord agreed to give H.H. free rent for the month of April 2021. I find that the landlord has not proved that this free rent was conditional on H.H. cleaning or paying the security deposit. I therefore dismiss the landlord's claim for April 2021's rent.

Residential Tenancy Policy Guideline #3 states:

... if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I find that the subject rental property was unrentable after H.H. moved out due to the filthy condition in which it was left. I accept the landlord's evidence that the subject rental property could not be shown until May 15, 2021 and that a new tenant was not found until June 1, 2021. I find that the landlord completed the repairs in a timely manner. I find that H.H. is responsible for the landlord's loss of rental income for May 2021 in the amount of \$2,750.00.

### Filing fee

As the landlord was successful in this application for dispute resolution I find that the landlord is entitled to recover the \$100.00 filing fee from H.H., pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

<b>Item</b>	<b>Amount</b>
Weed removal	\$280.98
Lawn repair	\$200.00
Cleaning	\$775.00
Junk removal	\$884.00
Replace security camera and SD card	\$57.46
Replace carpet- nominal damages	\$100.00
May loss of rental income	\$2,750.00
Filing fee	\$100.00
<b>Total</b>	<b>\$5,147.44</b>

The landlord is provided with this Order in the above terms and H.H. must be served with this Order as soon as possible. Should tenant H.H. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: September 01, 2021

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Residential Tenancy Branch