



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PAZAZ HOLDINGS COMPANY and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCL-S, MNDL-S, FFL

### **Introduction**

This hearing originally convened on November 8, 2021 and was adjourned to November 22, 2021 due to time constraints. This decision should be read in conjunction with the Interim Decision dated November 8, 2021. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Landlord agents M.R. ("agent M.R.") and S.B. (the "agent S.B") (the "agents") and the tenants attended the first hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. In the first hearing the agents called witnesses T.B. and C.C. who each provided affirmed testimony. The tenants were provided with a full opportunity to cross examine the landlord's witnesses.

The agents and tenant J.S. attended the second hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. In the second hearing the agents called witness D.M. who provided affirmed testimony. Tenant J.S. was provided with a full opportunity to cross examine witness D.M.

Both parties were advised in each hearing that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both

parties testified in each hearing that they are not recording this dispute resolution hearing.

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

#### Preliminary Issue- Late Evidence

Agent M.R. uploaded an email from the police department dated October 27, 2021. Agent M.R. testified that his email was not served on the tenants because the agents received it after the evidence deadline. As this document was not served on the tenants before the second hearing, I find that it is not admissible as the tenants have not had an opportunity to review it.

#### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 5, 2020 and has ended. This tenancy originated as a fixed term tenancy agreement set to end on September 30, 2020 which rolled into a month-to-month tenancy at the end of the fixed term. Monthly rent in the amount of \$2,500.00 was payable on the first day of each

month. A security deposit of \$1,250.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the subject rental property is a house with an upper and lower suite. The tenants resided in the upper suite and B.P. resided in the basement suite.

Both parties agree that they jointly completed a move in condition inspection report at the start of this tenancy. The move in condition inspection report signed by both parties was entered into evidence and is dated March 5, 2021. Both parties agree that on August 30, 2021 tenant J.S. verbally provided agent M.R. with the tenants' forwarding address and agent M.R. wrote it down.

Both parties agree that on July 30, 2021, the tenants gave the landlord written notice to end the tenancy effective August 31, 2021. Both parties agree that agent M.R. and tenant J.S. agreed to meet at the subject rental property to complete the move out condition inspection report in the evening of August 30, 2021.

#### Landlord's Evidence

Agent M.R. testified that when he arrived at the subject rental property to complete the move out condition inspection report tenant J.S. was talking with B.P. Agent M.R. testified that shortly after he arrived tenant J.S. became aggressive and demanded that his security deposit be immediately returned. Agent M.R. testified that tenant J.S. refused to return the keys until the security deposit was returned. Agent M.R. testified that he told tenant J.S. that he could return the keys on August 31, 2021. Agent M.R. testified that he then handed tenant J.S. a one-page hand out from the Residential Tenancy Branch which delineates the rules for the return of the security deposit which tenant J.S. read in full.

Agent M.R. testified that the tenant refused to go inside the subject rental property and complete the move out condition inspection report with himself. Agent M.R. testified that he went inside the subject rental property and looked around. Agent M.R. testified that when he came back outside to speak with tenant J.S., tenant J.S. became increasingly aggressive and insisted the landlord sign the following statement which the tenant wrote on page four of the move out condition inspection report:

Property Address- [subject rental property]. Property Final Inspection Completed at 8:00 pm on Aug 30<sup>th</sup>, 2021. No concerns or issues were noted at the time of tenancy end date. Deposit will be refunded in full within 15 days.

Agent M.R. testified that he signed the above statement under duress to avoid the escalation of the situation. Agent M.R. testified that tenant J.S. took the move out condition inspection report and told agent M.R. that he would send him a copy once the security deposit was returned. Agent M.R. testified that he took a photo of page four of the move out condition inspection report before giving it to tenant J.S. The move out condition inspection report entered into evidence by the tenant is completely blank. Only page four of the move out condition inspection report was entered into evidence by the landlord. Section Z. damage to rental unit or residential property for which the tenant is responsible, is left blank. Page four with the above quoted statement is signed by Agent M.R. and tenant J.S. and witnessed by tenant B.P. Agent M.R. testified that the other three pages of the move out condition inspection report were left blank.

Agent M.R. testified that after the notation on page four of the move out condition inspection report was signed, tenant J.S. returned the keys to the subject rental property. Agent M.R. testified that he then asked tenant J.S. for the garage door opener and that tenant J.S. told him that he does not have it on him and will return it on August 31, 2021. Agent M.R. testified that tenant J.S. left the subject rental property around 8:30 p.m. Agent M.R. testified that no other move out condition inspection reports were made.

Agent M.R. testified that agent S.B. is his wife. Agent S.B. testified that in the evening of August 30, 2021, shortly after agent M.R. came home after the move out condition inspection meeting, she started receiving text messages from tenant J.S. who was angry that his security deposit had not been returned. The agents entered into evidence a statement of fact in which they purport to copy text exchanges between agent S.B. and tenant J.S. The actual text messages were not entered into evidence. The tenants did not dispute the content of the copied messages and referred to them in their later testimony. The landlord's submissions state that at 9:25 PM tenant J.S. texted:

I still can't believe your husband's behaviour, trying to scam money from tenants. I had only had respect for you guys but he stoop so low. I could've just left the place as it, definitely more cost to repair and clean up. There's not even so much deposit left after water bill deduction. I did it just for good ongoing relationship but for it doesn't matter much to some people. Place is all clean and everything taken

care off, I will wait until tomorrow morning 9 am for your calculations and transfer payment. I have the right to that place until 1pm tomorrow, It can some time cost lot more to repair small deficiencies.”

[Reproduced as written]

The landlord’s written submissions state that between 10:14 p.m. 10:23 p.m. on August 30, 2021 the following text exchange occurred between Agent S.B. and tenant J.S.:

- Agent S.B.: [Tenant J.S.], can u drop the garage opener to [landlord agent] and I will talk to the owners to transfer you deposit tomorrow.
- Tenant J.S.: I will.
- Agent S.B.: As far as electric, gas and water is concerned. [Landlord agent] will deduct the water bill from his portion of gas, and electricity and he will pay your portion of the water to the new owners. So that you can directly resolve this issue with [landlord agent]
- Tenant S.J.: Sounds good
- Agent S.B.: We have nothing against you. We do not keep any deposits or rent in our account because it goes directly to the owners and owners pay it back to the tenant directly.
- Agent S.B.: We are not the type of people to keep your money or anyone’s money. So I am sorry you have differently. I always respected you and felt that you will take care of the place.
- Tenant S.J.: That’s how I thought of you guys too, anyway let’s hope I am wrong about this. I don’t have anything against anybody. It was good experience at that place and kids enjoyed our stay.
- Agent S.B.: Ok let us move on from this. Thx [agent S.B.]
- Tenant S.J.: Sure. Thanks

The landlord’s written submissions state that between 11:55 a.m. and 12:17 p.m. on August 31, 2021 the following text exchange occurred between agent S.B. and tenant J.S.:

- Tenant J.S.: Haven’t received refund on deposit yet?
- Tenant J.S.: Heading back to the house.
- Agent S.B.: I will ask the owner when he will be sending it. He might be busy with patients, I will text and wait for his reply.
- Agent S.B.: You will get your money today.

- Tenant J.S.: I understand but it should be done within next 15 minutes, I am not gonna keep chasing it. I am here to drop off keys & garage opener, can't wait long time. It should be done in priority.
- Agent S.B.: I have no control when the funds are sent. So, there is nothing I can do.
- Agent S.B.: That is all I can do
- Tenant J.S.: Ok I am not need the funds after 12:30.

Agent S.B. testified that shortly after receiving the text message from tenant J.S. that he did not need the funds after 12:30 p.m., she received a call from an agent ("D.M.") of the company the landlord hired to clean and stretch the carpets at the subject rental property. Agent S.B. testified that D.M. told her that "everything is out of control" and that tenant J.S. had just attended at the subject rental property and broke two toilets and that the police had been called.

The agents called witness T.B. T.B. testified that D.M. is his boss and that he was hired to clean and re-stretch the carpets at the subject rental property on August 31, 2021. T.B. testified that that when he arrived at the subject rental property on the morning of August 31, 2021 the upstairs was totally empty and had no furniture in it. T.B. testified that the downstairs had some items in it but he was told that the belongings were the new tenants who were moving in on September 1, 2021.

T.B. testified that he was halfway finished stretching and cleaning the carpets when tenant J.S. came to the door claiming to be the current tenant and telling him that he was trespassing. T.B. testified that tenant J.S. told him to leave but that this did not sit well with him, so he called D.M. T.B. testified that D.M. then called the owners who informed D.M. that tenant J.S. is trespassing and should not be let in. T.B. testified that D.M. told him not to let tenant J.S. enter the subject rental property.

T.B. testified that he then told tenant J.S. that he was instructed not to let him in. T.B. testified that tenant J.S. then became flustered and asked him to step outside for five minutes. T.B. testified that he refused and tenant J.S. pushed past him to where he had been cleaning. T.B. testified that J.S. then tried to pick up his carpet cleaning equipment which T.B. then grabbed out of tenant J.S.'s hands. T.B. testified that tenant J.S. then agreed to leave but said that he had to use the bathroom before he left. T.B. testified that tenant J.S. went into the master bedroom bathroom and he waited in the upstairs lobby. T.B. testified that he then heard a big smash coming from the master bedroom ensuite bathroom. T.B. testified that he then ran to the master bedroom ensuite

bathroom and saw that T.B. had smashed the toilet and water was leaking everywhere. T.B. testified that tenant J.S. then went to a second bathroom and smashed that toilet. T.B. testified that he caught a glimpse of tenant J.S. smashing the second toilet.

T.B. testified that the tenant then tried to go to the third bathroom to smash that toilet but T.B. physically blocked tenant J.S.'s way. T.B. testified that when he blocked J.S. from reaching the third bathroom, tenant J.S. pulled the thermostat off the wall. T.B. testified that he then started pushing tenant J.S. towards the door and tenant J.S. was fighting back the whole way. T.B. testified that he was able to get tenant J.S. out of the door but could not close the door because the carpet cleaning hoses were in the way. T.B. testified that tenant J.S. then went towards the backyard. T.B. testified that he stopped J.S. from going to the backyard and guided him to his car. T.B. testified that tenant J.S. then screamed at him using vulgar language. T.B. testified that tenant J.S. then said with a smirk "that's about \$10,000.00 of damage" before leaving.

T.B. testified that he took a picture of tenant J.S.'s licence plate and then turned off the water and called the police. T.B. testified that he gave the police the picture of tenant J.S.'s licence plate when the police arrived approximately 25 minutes later. T.B. testified that there were no water leaks when he started cleaning the carpets and the toilets were not smashed.

D.M. testified that he is the flooring contractor hired by the agents to clean and repair the carpets. D.M. testified that on August 31, 2021 at approximately 9:00 a.m. he and T.B. attended at the subject rental property and that at that time all the toilets were functioning. D.M. testified that he left the subject rental property while T.B. worked on the carpets.

D.M. testified that 12:20 p.m. he received a telephone call from T.B., who informed him that someone was at the subject rental property who asked him to stop working. D.M. testified that he then called agent S.B. who told him that T.B. should continue to clean the carpets. D.M. testified that he relayed agent S.B.'s direction to T.B. via telephone.

D.M. testified that a few minutes later he received a telephone call from T.B. who told him that the person on the site was becoming forceful. D.M. testified that he told T.B. not to engage unless necessary and to call the police if the person became violent. D.M. testified that T.B. called back and informed him that the person was vandalizing the property. D.M. testified that he then instructed T.B. to call the police. D.M. testified that by the time he arrived at the subject rental property the police had arrived.

Agent M.R. testified that crown counsel has approved charges for the above incident against J.S. This was not disputed by tenant J.S.

### Tenants' Evidence

Tenant J.S. testified that the problems started because the agents promised to allow the new tenants to move in before the end of the tenancy, which officially ended at 1:00 p.m. on August 31, 2021. Tenant J.S. testified that the agents demanded he give up the subject rental property early, but he refused. Tenant J.S. testified that agent M.R. was frustrated by this and kept asking for an early inspection. Tenant J.S. testified that he agreed to complete the move out condition inspection report at 8:00 p.m. on August 30, 2021.

Tenant J.S. testified that he was speaking outside with B.P. when the landlord arrived at the subject rental property to complete the move out condition inspection report. Tenant J.S. testified that agent M.R. went inside the subject rental property and inspected it. Tenant J.S. testified that when agent M.R. came back outside agent M.R. informed him that he had no concerns with the condition of the subject rental property.

The tenants entered evidence a witnessed statement from B.P. dated September 6, 2021 which states:

....When [agent M.R.] arrived, he inspected the property, completed the handover paperwork, asked for keys and mentioned that [J.S.] will get his deposit back within 15 days.

At that point [J.S.] got the impression that he was most certainly going to lose his deposit despite property being in acceptable form and firmly insisted that [agent M.R.] tell him if there is anything wrong with property right now or provide him with written confirmation that property is in good shape and deposit will be fully refunded.

At that point, [agent M.R.] went inside, inspected the house again and then signed the statement handwritten by [J.S.] that property is indeed in acceptable shape and money will be fully refunded. I witnessed the statement. [J.S.] wanted to keep the originals to [agent M.R.] took pictures of the documents. [J.S.] mentioned that he will send a copy when he receives his deposit back. At this



point, [J.S.] handed over the keys to [agent M.R.] and drove away with his about 3-year-old-daughter. Then [J.S.] drove away soon after.

**Updated Oct 23, 2021 to add further clarity to the statement above:**

[J.S.] facilitated house inspection by providing open and free access to the house. There's was no threatening behavior from [J.S.] towards [agent M.R.], or force inspection approval in his favor.

[Agent M.R.] remarked 'okay' to house inspection and mentioned that [J.S.] will get his deposit back within 15 days.

At which point [J.S.] asked [agent M.R.] to sign off inspection report to confirm inspection results. When [agent M.R.] suggested that he will indeed get his deposit back and not to worry. That's when I believe [J.S.] became concerned about losing his deposit and insisted that [agent M.R.] tell him if there is anything wrong with the property now. [J.S] told [agent M.R.] that he is free to check the property again and take as much time he needs to evaluate the condition but he needs signed off inspection approval if [agent M.R.] is satisfied with the inspection or list of defects if something needs to be rectified. That's when [agent M.R.] inspected the property again....

I am not aware if [J.S.] had belongings inside the house at the time of inspection as I didn't tour the house to make sure it was empty.

I saw U-Haul truck later same night of August 30<sup>th</sup> outside the house and heard noise of people moving in stuff will about 11 or 12 PM....

Tenant J.S. testified that he only gave agent M.R. the mail key and another key that did not work, on August 30, 2021, not the keys to the subject rental property. Tenant J.S. testified that after the move out condition inspection report agent S.B. texted him asking him to return the keys.

Tenant J.S. testified that he attended at the subject rental property at 11:00 a.m. on August 31, 2021 to remove smart lights and a thermostat that he installed at the subject rental property. Tenant J.S. testified that he had left tools at the subject rental property to remove the final items.

Tenant J.S. testified that when he arrived at the subject rental property, he saw a young kid talking furiously on the phone inside the subject rental property. Tenant J.S. testified that he now knows the kid's name is T.B. Tenant J.S. testified that he asked T.B. to leave because he has the property until 1:00 p.m. J.S. testified that T.B. refused. Tenant J.S. testified that he then asked T.B. to leave for 5-10 minutes so that he could remove his last items. Tenant J.S. testified that T.B. then made a call and after the call refused to leave and asked him to leave.

Tenant J.S. testified that at this point he went to the upstairs bedroom to collect his things. Tenant J.S. testified that T.B. then charged him from behind and he fell down. Tenant J.S. testified that he then got up and took a defensive stance. Tenant J.S. testified that at this point he was uncomfortable and just wanted to leave. Tenant J.S. testified that as he was heading towards the door, T.B. kicked him from behind. Tenant J.S. testified that he ignored this and walked out of the house. J.S. testified that he attempted to call agent S.B. but she would not answer. J.S. testified that he then went to his car and sat in it for five minutes before driving away.

Tenant J.S. testified that he is 40 years old and is 220 pounds and is a trained wrestler. Tenant J.S. testified that T.B. could not have guided him out of the home as T.B. testified given the weight and age difference between them.

#### Landlord's Response

Agent M.R. testified that on August 30, 2021 tenant J.S. gave him four keys and the only key remaining was the garage door opener. Agent M.R. testified that when he viewed the subject rental property on August 30, 2021 there were no big issues except for the paint and carpet. Agent M.R. testified that on August 30, 2021 there was nothing physically left behind, no tools were left at the house. Agent M.R. testified that he gave the keys tenant J.S. had returned to him, to the new tenants on August 31, 2021.

#### Damages Claim

The agents testified that the following losses arose from this tenancy:

Item	Amount
Unpaid water bill	\$1,592.73
Repair and paint walls	\$7,500.00

Lawn repair	\$40.00
Carpet cleaning	\$319.20
Cleaning	\$300.00
Insurance deductible	\$1,000.00
Loss of rental income for September 2021	\$3,000.00
Restoration supervision	\$5,722.50
Garage openers/locks	\$219.59
<b>Total</b>	<b>\$19,695.00</b>

#### Unpaid water bill

Both parties agree that the tenants are responsible for 2/3 of the water/sewage bills. The landlord originally claimed \$1,592.73 in unpaid water/sewage bills. Tenant J.S. testified that only \$1,483.10 was owed. Agent M.R. testified that while he did not believe tenant J.S.'s testimony to be accurate, he would settle for \$1,483.10.

#### Repair and paint walls

Agent M.R. testified that when he viewed the property on August 30, 2021, he observed two tones of paint which made the walls appear as though the tenants tried to patch areas but the colour did not match. Agent M.R. testified that he asked tenant J.S. about this on August 30, 2021 and tenant J.S. told him that the colour would match after the patches had time to dry. Agent M.R. testified that after the patched areas dried, the colour did not match.

Agent M.R. testified that due to the mis-matched paint, the entire subject rental property required re-painting. The agents entered into evidence a quote for repairing and painting the walls at the subject rental property in the amount of \$7,500.00. The quote has attached 9 photographs of the walls of the subject rental property. Mis-matched paint patches can be seen on all the walls shown in the pictures.

The agents called witness C.C. who prepared the above-mentioned quote. C.C. testified that upon walking through the home he observed that nearly every wall had different paint colours. C.C. testified that it appeared that someone did not do a good colour match and the resulting appearance of the walls was like a jig saw puzzle.

C.C. testified that it appeared that who-ever did the patch painting just painted over dings and holes rather than filling them in and sanding them first. C.C. testified that he could not tell when the paint patch job was completed. C.C. testified that he attended at the subject rental property around the first week of September 2021. C.C. testified that at this point, he has not been hired to paint the subject rental property.

In the first hearing agent M.R. testified that the subject rental property has not been painted since it was built four to five years ago. In the second hearing agent M.R. testified that the subject rental property was new in July of 2017.

Tenant J.S. testified that that page 3 of the move in condition inspection report states that at the start of the tenancy painting was a required repair because the mis-matched paint was present at the start of the tenancy. The move in condition inspection report states at section X.

Repairs to be completed at start of tenancy:

- Painting

The move in condition inspection report is signed by both parties.

Tenant J.S. testified that the house was built 10 years ago and he is not responsible for painting damage caused by previous tenants.

Agent S.B. testified that when she showed prospective tenants the subject rental property before the tenants moved out the paint patches were not there, and the walls were covered in children's drawings. Agent S.B. testified that she told the tenants at that time that the walls would have to be repaired.

Tenant J.S. testified that the drawings were made with washable markers and the walls were wiped clean before move out.

#### Lawn repair

Both parties agree that the tenants were responsible for lawn maintenance including grass cutting. Agent M.R. testified that the tenants did not cut the grass in August 2021 and so they paid \$40.00 to have the grass cut. A receipt for same was entered into evidence.

Tenant J.S. testified that they hired professional to care for the lawn. The tenants entered into evidence receipts for same which show that the grass was cut twice per month with the last cut being July 28, 2021. J.S. testified that the grass was too dry to cut in August 2021.

#### Carpet cleaning

Agent M.R. testified that the tenants did not have the carpets professionally cleaned at the end of this tenancy. Agent M.R. testified that it cost \$319.20 for the carpets to be professionally cleaned.

Tenant J.S. testified that they did not have the carpets shampooed at the end of the tenancy but they were clean. Tenant J.S. testified that they were not contractually obligated to shampoo the carpets.

#### Cleaning

Agent S.B. testified that the subject rental property was not left in a clean state at the end of this tenancy and that a cleaner was hired to clean the property. A cleaning receipt for \$300.00 was entered into evidence.

Agent S.B. testified that fridge, cabinets, stove, washer and dryer were not cleaned at the end of this tenancy. Agent S.B. testified that the tenants picked up after themselves but did not wipe the property down.

Tenant J.S. disputed the above testimony. Tenant J.S. testified that agent M.R. inspected the subject rental property and did not find any concerns regarding cleaning.

Agent M.R. testified that he might not have the right eye for determining cleanliness and that agent S.B. has a better eye. A completed move out condition inspection report was not entered into evidence. No photographs of the subject rental property other than those in the painter's quote were entered into evidence.

#### Damages related to broken toilets

Agent M.R. testified that there was over \$40,000.00 in water damage to the subject rental property caused by tenant J.S.'s vandalism of the toilets. Agent M.R. testified that

the landlord's insurance is covering the cost of repairing the damage caused by tenant J.S., but the landlord was charged an insurance deductible of \$1,000.00. The insurance deductible invoice dated September 15, 2021 was entered into evidence. Agent M.R. testified that the landlord is seeking the cost of the deductible from the tenants.

Agent M.R. testified that due to the extensive water damage, the new tenants were not able to move into the subject rental property and the \$3,000.00 the new tenants paid in rent for September 2021 had to be refunded. Agent M.R. testified that the landlord is seeking loss of rental income from the tenants in the amount of \$3,000.00.

Tenant J.S. testified that he did not break the toilets. J.S. testified that the toilets were never broken, and that the landlord has not incurred any losses. J.S. testified that if there had been any actual damages, the photographs from the painting quote would have showed the damage.

Agent M.R. entered into evidence an invoice from his own personal company totalling \$5,722.50 for the following:

- RCMP Visit at site, supervision of water damage assessment, purchase of items needed for repair including two toilets, parts
- Consultation with restoration companies to obtain quotes
- Document preparation for Abbotsford Police Dept., home insurance company Vancouver and head office
- Tenant Placement in hotel for month of September
- Supervising repair work and restoration process
- Travel expenses

A breakdown for each line item was not provided. Agent M.R. did not provide an accounting of hours spent doing the above-described work. Agent M.R. testified that he provided the above invoice to the landlord for reimbursement, but the landlord has not paid the invoice. Agent M.R. testified that the landlord has submitted the above invoice to his insurance, but the insurance will not likely pay it.

Tenant J.S. testified that agent M.R. is a property manager and is already being paid for his services. Tenant J.S. submitted that agent M.R. will be the only party to gain from writing an invoice from his own company.

### Garage openers/locks

Agent M.R. testified that after the tenant destroyed the toilets the landlord was afraid for the safety of the home and so had the locks and garage door opener changed. A receipt for the above in the amount of \$219.59 was entered into evidence.

J.S. testified that the keys and the garage door opener were with him and that the tenancy had not ended.

### Closing Submissions

The agents did not make any closing submissions.

Tenant J.S. testified that he has been in construction for 18 years and that if his intention had been to damage the property, he would have clipped wires or put a rag in the sewer lines. Tenant J.S. testified that such damages would not have been as apparent and would have cost more to repair. Tenant J.S. testified that he would not have done something so obvious as smashing toilets.

### Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

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.

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.

### Repair and paint walls

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.

Policy Guideline #40 states that the useful life for interior painting is four years. Based on agent M.R.'s testimony I find that the paint was at least four years old at the time the tenants moved out; therefore, at the time the tenants moved out, there was no useful life left for the interior paint of this unit. I find that since the useful life of the paint had expired by the time the tenants moved out, the landlord is not entitled to recover the



cost of repainting the walls. Upon review of the photographs included in the painting quote, I find that the damages to the walls are minimal and are the result of regular wear and tear for which the landlord is not entitled to recover. The landlord's claim for painting the walls is dismissed without leave to reapply.

#### Lawn repair

Based on the testimony of both parties I find that the tenants were responsible for lawn maintenance including cutting the grass. Based on the invoices entered into evidence by the tenants, I find that the tenants maintained the lawn up until July 28, 2021. I find that the tenants have not proved that dry grass cannot be cut. I also note that the dry grass was successfully cut shortly after the tenants moved out as proved by the landscaping invoice in the amount of \$40.00. I find that the landlord suffered a loss in the amount of \$40.00 due to the tenants' failure to comply with a term of their tenancy agreement which is evidenced by the \$40.00 invoice. I find that it was reasonable for the landlord to hire someone to cut the grass. I find that the landlord acted reasonably to minimize the loss. I award the landlord \$40.00 for grass cutting.

#### Carpet cleaning

Residential Tenancy Policy Guideline #1 (PG #1) states that 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.

Based on the testimony of both parties I find that the tenancy was longer than one year and that the tenants did not shampoo, or steam clean the carpets at the end of this tenancy, contrary to PG #1. I therefore award the landlord the cost of cleaning the carpets in the amount of \$319.20. I note that the carpet cleaning requirement in PG #1 applies even if carpet cleaning is not included in any other agreement.

#### Damages related to broken toilets

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Tenant J.S. testified that he did not break any toilets at the subject rental property and alleged that the toilets were never broken. Tenant J.S. testified that if the toilets were broken and water damage occurred, the water damage would be evident in the photographs taken by C.C. when C.C. prepared the painting quote.

T.B. testified that he heard tenant J.S. break one of the toilets in the subject rental property and caught a glimpse of tenant J.S. breaking a second toilet in the subject rental property. T.B. and D.M. both testified that the toilets were undamaged before J.S. arrived at the subject rental property and were vandalized after J.S. attended the property. Agent S.B. testified that she was informed by D.B. on August 31, 2021 that tenant J.S. vandalized toilets at the subject rental property. The agents entered into evidence an invoice for an insurance deductible dated September 15, 2021 in the amount of \$1,000.00.

Upon review of the testimony of tenant J.S. and the testimony of the agents and the witnesses, I find that tenant J.S.'s testimony is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable. I find tenant J.S.'s testimony not to be credible and that the preponderance of evidence, including the testimony of the agents, the testimony of the witnesses, and the insurance deductible invoice supports the agents' allegations of vandalism. I find it highly unlikely and improbably that the agents and both of the agents' witnesses are lying and tenant J.S. alone is telling the truth.

I also find that the August 31, 2021 text sent to agent S.B. around the time of the vandalism which states "Ok I am not need the funds after 12:30" implies that tenant J.S. was aware that acts he had already committed or was going to commit would render the return of the deposit unlikely. I do not see any other reason why tenant J.S. who previously was very adamant about the return of the deposit would not need it after 12:30 p.m.

Tenant J.S. testified that the photographs taken by C.C. should have shown water damage. I do not agree with this conclusion. The quote made by C.C. has 9 photographs, only three of which show the lower portion of a wall and floor where water damage would likely be seen. While water damage cannot be seen in these three photographs, this does not mean that there was no water damage, just not in the three locations seen in the photographs. Water damage could easily have been in other areas of the subject rental property. I note that tenant J.S. was given a full opportunity to cross examine C.C. and at no time asked C.C. to provide testimony regarding water damage witnessed at the property by C.C.

As I have found, on a balance of probabilities, that tenant J.S. vandalized two toilets at the subject rental property, I find that tenant J.S. breached section 37(2)(a) of the *Act* which state that the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the agents have proved that the landlord suffered a loss for the insurance deductible to repair damage caused by tenant J.S. I find that it was reasonable of the landlord to claim the damage to the subject rental property under the landlord's insurance. I award the landlords \$1,000.00 for the cost of the insurance deductible.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

I accept agent M.R.'s undisputed testimony that the new tenancy agreement with the new tenants was at a rental rate of \$3,000.00. I accept agent M.R.'s testimony that due to tenant J.S.'s vandalism, the new tenants were not able to reside at the subject rental property for the month of September 2021 due to the extensive repairs required to the subject rental property.

I accept M.R.'s testimony that the landlord returned the \$3,000.00 rent payment to the new tenants for the month of September 2021. I find that the landlord suffered a loss of rental income in the amount of \$3,000.00 due to the tenant's vandalism of the subject rental property and breach of section 37(2)(a) of the *Act*. I find that the landlord acted reasonably in refunding the new tenants rent given the extensive damage to the property caused by tenant J.S. I award the landlord \$3,000.00 for loss of rental income.

Agent M.R. entered into evidence an unpaid invoice from his own personal company totalling \$5,722.50 for services rendered. No break-down of how the bill was calculated

or how many hours were worked was provided. I find that agent M.R. has not proved the value of the loss claimed as no information regarding the calculation of the invoice totalling \$5,722.50 was provided. I also find that this loss to the landlord has not actually occurred as the landlord has not paid this bill and it is not clear that the landlord will pay this bill. I also find that it is not clear if M.R. is entitled to wages over and above what he is being paid for his management services. For all the above reasons, I find that the landlord is not entitled to recover compensation for agent M.R.'s invoice.

#### Garage openers/locks

Given the acts of vandalism committed by tenant J.S. and the breach of section 37(2)(a) of the *Act*, I find that it was reasonable for the landlord to fear future acts of vandalism and to change the locks and garage door opener. I find that the landlord suffered a proved loss of \$219.59. I find that there are not mitigation issues. I award the landlord \$219.59.

#### Unpaid water bill

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Pursuant to the agreement made between the parties I award the landlord \$1,483.10 for water/sewage bills.

#### Security Deposit

Section 36 of the *Act* states:

**36** (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b)the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Both parties agreed that they met at the subject rental property on August 31, 2021 to complete the move out condition inspection report. Both parties agree that tenant J.S. did not enter the subject rental property with agent M.R. to complete the move out condition inspection report. Tenant J.S. testified that agent M.R. did not ask him to come in. Agent M.R. disputed this. B.P.'s witness statement is silent on this point.

I find, on a balance of probabilities, that J.S. agreed to meet at the subject rental property with agent M.R. on August 31, 2021 to complete a joint move out condition inspection report, similar to the move in condition inspection report completed jointly on March 5, 2020. Given that the parties had previously jointly completed a move in condition inspection report and agreed to a date and time to complete a move out condition inspection report, I find that tenant J.S. was aware that the move out condition inspection report was to be completed jointly. I find, on a balance of probabilities, that tenant J.S. elected not to participate, extinguishing the tenants' right to the return of the deposit as set out in section 36(2) of the *Act*.

Residential Tenancy Branch Policy Guideline #17 states:

In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss....

I find that tenant J.S. breached the obligation to jointly conduct the move out condition inspection report before the landlord breached the landlord's obligation to complete a move out condition inspection report that complies with section 20 of the *Regulation*. Since the tenant breached the *Act* first, the tenant bears the loss.

### Cleaning

Agent M.R. and agent S.B. testified that the subject rental property was not left in a clean condition and that the landlord incurred a cleaning expense in the amount of \$300.00. Tenant J.S. testified that the subject rental property was left in a clean condition.

Both parties entered into evidence a signed statement by agent M.R. and witnessed by B.P. that “No concerns or issues were noted at the time of tenancy end date. Deposit will be refunded in full within 15 days.” Agent M.R. testified that he signed the above notation under duress. B.P.’s witnessed statement states that tenant J.S. did not act in a threatening or forceful manner and that agent M.R. willingly signed the notation on the move out condition inspection report.

Duress involves coercion of the consent or free will of the party entering into a contract. To establish duress, it is not enough to show that a contracting party took advantage of a superior bargaining position; for duress, there must be coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner. *Lei v. Crawford*, 2011 ONSC 349 (CanLII), (approved *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183)

The witness statement directly contradicts agent M.R.’s testimony and supports the testimony of tenant J.S. Agent M.R. testified that he did not have a good eye for determining levels of cleanliness and that he did not open every door before signing the notation. I find that agent M.R. has not proved that tenant J.S. coerced him or forced him to sign the notation. I find it more likely that agent M.R. did not do a fulsome inspection and signed the notation at the request of tenant J.S., but was not forced to do so.

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.

The landlord or agents did not complete a move out condition inspection report in compliance with the *Regulations* and did not provide photographic or video evidence regarding the cleanliness of the subject rental property. I find that the landlord has not

proved, on a balance of probabilities that the property was not reasonably clean. The landlord's claim for the cost of cleaning is therefore dismissed without leave to reapply.

### Security Deposit Set Off

Residential Tenancy Branch Policy Guideline #17 states:

In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 [consequences for tenant and landlord if report requirements not met] of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$1,249.50.

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, pursuant to section 72 of the *Act*.

### Conclusion

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

Item	Amount
Unpaid water bill	\$1,483.10
Lawn repair	\$40.00
Carpet cleaning	\$319.20
Insurance deductible	\$1,000.00
Loss of rental income for September 2021	\$3,000.00
Garage openers/locks	\$219.59
Less security deposit	-\$1,249.50

<b>Total</b>	<b>\$4,812.39</b>
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The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: November 25, 2021

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Residential Tenancy Branch