Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) A.M.	310039780	MNDCL-S, MNDL-S, FFL
(Tenant) J.L. and K.L.	310046899	MNETC, MNSD, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $12,600.00 compensation for damage caused by the Tenant, their pets or guests to the unit or property, holding the pet and security deposits for this claim; and
- recovery of the $100.00 application filing fee.

The Tenant filed a claim for:

- $35,784.72 for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property;
- return of the Tenant's $2,600.00 security deposit and pet damage deposits; and
- recovery of the $100.00 application filing fee;

The Landlord, the Tenants, and their counsel, M.G. ("Counsel"), the appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

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

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in his Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is either Party entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on November 1, 2015, with an [ending] monthly rent of $2,982.50, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,300.00, and a pet damage deposit of $1,300.00. The Landlord confirmed that he still held these deposits to apply to his claims.

The Landlord submitted a copy of the condition inspection report with the move-in and move-out conditions indicated ("CIR"). The CIR was signed at move-in by both Parties, but the move-out portion was signed only by the Landlord, and dated May 31, 2021. The Parties agreed that the tenancy ended when the Tenants moved out on May 31, 2021, and that they posted their forwarding address on the door on June 5, 2021.

LANDLORD'S CLAIMS

As the Landlord applied first, I started analyzing his claims first. I note that the Landlord referenced the cost of spider insecticide in his Application; however, in the hearing he said he could not remember that claim, and he did not provide any evidence in this regard; as such, that claim is dismissed without leave to reapply.

#1 REPAINTING HOUSE → $8,000.00 to $10,000.00

The Landlord's first claim is for repainting of the residential property, which the Landlord estimated at between $8,000.00 and $10,000.00. I asked the Landlord when the last time the house was painted, and he said not since he purchased it in 2011. The Landlord said that the addendum to the tenancy agreement says the Tenants are not allowed to make structural alterations.

The addendum includes:

3. Not make structural alterations, painting, wall papering, tiling, etc. or excessive use of nails/hooks/screws on the walls.

The Landlord said:

> The paint cost that I am asking for is not that the house needs paint - it needs house paint because of so many nails and hooks and things they had hanging on the walls. They removed their stuff - I tried to explain not to take nails off the Gyproc. This house has brown walls – they used putty – it sticks out all over the house – the white putty they sanded in almost every place, That's why it has to be painted.
>
> The painter looked at it – I asked 'how can I patch it up?' He suggested that you have to repaint the whole wall, where the cost becomes excessive. If we had identical paint left over that would be one thing, but with this house, there were no cans left with me. So, I have nothing to rely on except take a chip off and try to match it, but depending on the company it's a different make up. It normally doesn't match, so that is why patching is almost impossible to do. That is what the professional has told me.
>
> I haven't had it painted, because I'm maintaining two houses. It's cost me a lot of money, and I am waiting to be compensated for it, so that I can get it done.

I asked the Tenant what the condition of the walls were when they moved in, and he said:

> He asked people not to use [nails and plugs in the walls], but use existing ones. The house is over 10 years old, and a minimum three or four families have lived there. There were holes all throughout. The rule was we have to fill the holes, which we did.

The Tenant said there were already nails and plugs in the walls when they moved in. He said:

> We tried using what we could and put minimal holes in the wall. We used minimal holes in the walls. There was no paint provided to us. We were told we would have to take a chip off to try to match it up. We did what was required by the rental board - we filled all the holes. And on the main floor, there were two different colours. The family room, the kitchen, the hall, had lighter chocolate paint. We never painted anything.

The Landlord said:

> The move-in condition from page 16 and 17 indicates that on page 16 the west wall in the nook area is slightly chipped. On page 17, in the main bathroom area, the south/ease corner had a dent. Those were the only two marks in the whole house. The rest of the move-in form has checkmarks, which equals good.
>
> There were nothing – no nails…. The move-in condition form is the proof that there were only two items marked at the start. [The Tenant] signed on page three to affirm that. Now the paint touch ups are needed – no one has ever asked me for paint touch up. I cannot understand when they would ask me, up until now when the move-in condition form was not signed when I asked to go through the house. [The Tenant] took off in a blue truck, this question never came up in our entire time he has rented my house. '[Landlord], I need some paint, because I accidently chipped here or there'. I didn't have any paint, either, but what I am saying is that the move-in CIR was clearly signed by [the Tenant] confirming there were the two marks. And it is still there. I can see it. It has been there for a long time.
>
> We moved in 2012, I have rented to two small families, the other had one small child….They did not use any nails … to hang anything up. The nook area has a slight paint chip that was there when I was living there. I remember this one. We

> didn't have the exact matching paint and we just left it at that. It's still showing the same way.

#2 PATIO REMOVAL & REINSTALLING GRASS → $2,000.00

I asked the Landlord to explain this claim, and he said that it is for the cost of patio removal and reinstalling grass. The Landlord said:

> I have attached these – the exact amount – see page 60; we would charge $1,600.00, we will take the rocks away, level it, bring in the dirt the sod it - put it back to it's original shape.

I asked the Landlord if this work has been completed yet, and he said:

> None of the work is done at this time. $2,600.00 [the Tenants' deposits] is not enough to get any one of these things done. I am just waiting for this case to settle, so that I have funds to do this, I am maintaining two houses at this time, paying two mortgages

Counsel said: "[The Tenant] said there was just mud and a couple boards, and he installed the gravel."

The Landlord said:

> With due respect, there was no board, but a ramp made of boards to put three garbage cans, recyclables… there was just grass before. I had two little grandchildren playing there.
>
> When he put in the gravel, I objected to that. He said 'I have put it in, so I don't have to take dogs out for walk. They do their poop in there, and I wash it down - plus we can walk over it and our feet don't get wet'.

Counsel asked what the problem is with the gravel, and the Landlord said:

> It looks dirty, the yard becomes smaller, and gravel on the other side – to walk through this river rock is extremely difficult. Nobody puts in river rock. because it is hard to walk on. In addition to all this they had also used some grid kind of a thing, to have it used as a dog pen. It was a big dog pen.

Counsel asked why the Landlord doesn't solve the problem by putting it on his credit card. The Landlord said: I have already put a lot of money on credit cards…. My choice that I wanted to move into his house. And I will do it when I feel like doing it."

Counsel asked: "How do we know if you are going to spend the money doing that?"

The Landlord said: "I will do it right away. I have to make sure that this yard is returned to its original state. The contract says you cannot do this – breach of contract."

Counsel said: "There are no guarantees that you're going to have the gravel removed."

The Landlord submitted an Estimate of "removing 2 yards of rock and 50 sq. ft. slabs. Supply and install top dress and 200 sq. ft. sod." The total for this, including GST was $1,601.25.

In the addendum to the tenancy agreement, it states, in addition to paragraph 3. Set out above:

> 5. The tenant will request in writing any and all wishes to 'personalize' and/or repair the property directly to the Landlord for approval and consideration prior to any changes being omitted.

#3 CARPET REPLACEMENT → $3,000.00

I asked the Landlord to explain this claim, noting that he had not replaced the carpet, nor found an appropriate source of a replacement carpet. He said:

> I have no idea why the Tenant changed the carpet. No consent was secured from me. I simply discovered the carpet is gone and there is berber. I don't know what - the dog must have done something. The carpet matched the staircase and the same carpet extended all through the hallway and the upper bedrooms. Now my house has carpet that is gone and we have berber there.
>
> Why did he change it? The berber devalues my house – it doesn't match my house and is not a very nice berber, either. If we take this approach, what's wrong with it – people can change doors, walls, colours, the carpet – that is not the issue – it is a contractual violation. We can't allow anybody to make any changes in the house without notifying and having written consent from the Landlord

I asked the Landlord how old the carpet was at the start of the tenancy and he said: “It was not changed, but there’s nothing wrong with the carpet - the carpet quality is still the same.” The Landlord had said that he bought the house in 2011 and everything was new then, although he also said the carpeting was: “10 years when we bought the house.”

The move-in CIR indicated that the carpets throughout the residential property were checked off as in “good” condition at the start of the tenancy. There were no markings made on the move-out side of the CIR regarding the carpets.

Counsel then asked the Landlord some questions.

Counsel:

> What is the long term plan – to rip it out and put something else in?

Landlord:

> I would like to rip it out, because the quality of the carpet – 10 years when we bought the house. That carpet upstairs is 100 times better than this berber they installed.

Counsel: My question is are you going to do that?

Landlord: Absolutely. I will replace it with another piece of carpet.

Counsel: I thought you were thinking about laminate flooring?

Landlord:

> I never said anything about laminate. Unless I laminate the whole floor. It is more reasonable and less expensive to rip the berber out and put in a designer carpet.

Counsel:

> In the quote on page 59 of your materials, it says nothing about you’re going to use any different carpeting. You could be removing the berber and putting in laminate.

Landlord:

> If I can’t find a good quality carpet as close to the carpet as I have in the house, so that it looks about the same quality. I must maintain my house in the condition I originally had it.

Counsel: Have you found it? You haven't had time to shop for carpeting?

Landlord:

> Quickly, turn to page 13 of our materials for some invoices, including carpeting.

Counsel asked the Tenant questions, as well:

Counsel: [Tenant], why did you replace the carpet?

Tenant:

> The carpet was apparently cleaned, but it was filthy dirty. There were stains from pets or from kids. The carpet was stretched, we've provided pictures from that carpet throughout – it was stretched and rippled. It was awful. We thought we're going to be here for another year or two, so we'll improve structurally – see our invoice at [carpeting store] on page 13 – all done professionally and to match.

Counsel: Did the Landlord see this carpet?

Tenant: Yes.

Counsel: Did he say tear it out?

Tenant:

> No, he wrote a letter on November 18, 2018, saying we changed the carpet without the Landlord's approval. He was very satisfied with the carpet that was installed.

The Landlord stated:

> The move-in condition form does not support the statement made by [the Tenant] that it was dirty. It was listed as "good". The carpet has never been stretched before in my life that I have owned this house. It now needs stretching – yes, I can see some bubbles.
>
> The other thing not brought to [the Tenant's] attention, on November 18, 2018 – the causation notice number one – you have changed the family room carpet without the Landlord's approval, so it must be replaced.

TENANTS' CLAIMS

Counsel said that the Tenant's claim is for 12 months rent pursuant to section 51 (2) of the Act. Counsel said that the Landlord gave the Tenant an eviction notice saying that the Landlord was going to move in.

The Tenants submitted a copy of the Two Month Notice to End Tenancy for Landlord's Use, which was signed and dated March 28, 2021 ("Two Month Notice"). It has the rental unit address, it was served in person on March 28, 2021, with an effective vacancy date of May 31, 2021. The Two Month Notice was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or parent or child of that individual's spouse). In this case, the Landlord indicated on the Two Month Notice that "the landlord or the Landlord's spouse" will occupy the rental unit.

Counsel said:

> With respect to our application, the Landlord hasn't occupied the property at the relevant times.
>
> The Tenants drove by the Landlord's home close to the subject property, and [the Tenant] said they drove by the Landlord's home several times and he frequently saw Landlord's car parked at that residence. The Tenants gave evidence that the Landlord continued to live at his original residence, by submitting photographs of the Landlord's dark-coloured vehicle parked beside the Landlord's wife's white vehicle. These include photographs in the daytime and at night.
>
> The Tenants submitted that the residential property of the rental unit remained vacant as of November 2021. They submitted statements from neighbours commenting on the vacancy of the residential property.

In a letter from [R.S.] dated August 11, 2021, this person who lives on the same street as the residential property states:

> This letter is to verify that the house located at [rental unit address], has been vacant since June 1, 2021.
>
> I drive past this home at least twice per day. I have not seen anyone on the

> property, no vehicles in the driveway, no lights on at night, and the yard is a terrible overgrown mess.
>
> The yard is what drew my attention to the home as the previous tenant kept the property immaculate.
>
> If you have any further questions, please don't hesitate to call.

In a letter dated November 13, 2021, from [T.T.], this person states:

> It has been observed by myself, as I live directly across the street from this home, that the house located at [rental unit address] has been vacant since the previous tenants moved out on June 1, 2021.
>
> I see the house different times of the day as I am directly across from this home. The front yard has been in disarray, and newspapers left strewn on the porch for weeks. Blinds are always closed, same lights left on 24 hrs a day, 7 days week since September. Not one window was opened during the heat wave also.
> . . .

In a letter dated November 14, 2021, [C.H.] states:

> It has been observed by several neighbors, including myself, that the house located at [rental unit address] has not been occupied since the previous tenants moved out on June 1, 2021.
>
> I live in the neighborhood and see the house during different times of the day and have noticed zero activity at the residence. The front yard is in a particular state of disarray. Newspapers are left strewn about the porch for weeks. Blinds are always closed. During the heat wave, it was very unusual to see that none of the windows were opened. Lights have been left on 24/7 since September.

In the hearing, Counsel reviewed a number of the photographs that the Tenant submitted on different dates showing the Landlord's vehicle sitting at his residential property, not the rental unit property. Counsel noted such photographs that were taken on:

- June 26, 2021
- August 7, 2021
- September 30, 2021

- October 22 and 30th, 2021
- November 14, 2021

The Tenants' statements included that there were never garbage cans put out after they moved out. Counsel asked the Tenants: "Since you moved out of the house, have you ever seen the Landlords' cars parked at that house?" They responded: "Not at the front or the back. I live very close to the residential property. I am not close to the house he used to live in."

Counsel asked the Tenants how often they visited the rental unit property between June and November 2021. The Tenants said:

> At least once a week, because I realized that I had been deceived. His only intention was to build a lower suite, and rent out the upstairs. I have taken these pictures, talked with the neighbours, and got letters from them. The only time the lights came on was after we served him in September.

Counsel asked who is living in the residential property now, and the Tenants said:

> After the last hearing, both the upper and lower suites are for rent. It shows in our pictures that appliances were installed in the basement that he had renovated. Picture 61 shows he was in the course of doing the suite last summer, and saying that he was not doing any work on the house. Basically, we concluded that his intention was to rent it for more money.

The Landlord responded, as follows:

> Things were not going well at our house between me and my wife. Our 32 year-old son was just finishing a medical degree – and [our arguing] got to him. He had to study. We suggested, we could get them that basement. I had noticed that [the Tenant] doesn't use the basement, he said he has boxes stacked in there - Christmas stuff….
>
> Within a month, we decided it's not getting anywhere, my son could move in, I decided that it's time for me to take a hike, and I served [the Tenants]. And I did move in on June 4. I left my house before that, because things were really bad. To [the Tenant] – I said I crashed at a colleague's place in [another town], but not every day. Here and there, but that's about it.

I wasn't living in a particular place – almost end of April – in and out. In May or April, I had an email exchange with [the Tenant] asking, 'can you move out any earlier?' He said, 'No, I can't . . .'.

I did move in. What they have provided in terms of a letter from [R.S.] - he hasn't even signed it. Anyone can write a letter; people sign documents. Mr. [S's] letter. The residential property doesn't have a driveway. Maybe he has focused on a different house.

The second letter – [T.T.], - is fine letter, but line three, paragraph one – the letter states the Tenants moved out in June – wrong fact, they moved out in May.

Look at the second paragraph, line two – 'the front yard in a disarray, newspapers left strewn, blinds are always closed.' On the next page – [C.H.'s] letter – see the second paragraph, line two – '…particular state of disarray, strewn, blinds always closed'. Believe me, these two letters are composed by the same writer. It's impossible that two people are using the same terminology, the word "strewn" is not ordinary.

The second letter also written by [T.T.] – I don't even know that [C.H.] exists. The letter is typed, has the date, a signature, and then an address that's hand written. So, I question these. These facts not right.

30 degrees is not a temperature that kills people. I lived there and never felt that we had to open the doors and windows. Yes, at night upstairs, it's a little warmer, so I opened windows at that time.

As far as my moving in, go to Appendix 1 in my binder for an affidavit by [R.S.], who helped me move. It is a notarized letter.

This letter states:

I, [R.S.], hereby certify that I helped [the Landlord] move to [rental unit address] on June 4, 2021. We moved some furniture, kitchen and house stuff to his new house. Feel free to contact me if you have any questions.

Signed	Sworn/Declared/Signed before me
[R.S.]	at [city] BC, CANADA on
	13 day of 10 2021

[R.R.]
[signature]
A Notary Public in and for the
Province of British Columbia
[address] Sealed

The Landlord also referred to some pictures showing furniture in the house, that he said he moved in. He also referred to his Appendix #10, which has the following letter:

> August 20, 2021
>
> I am writing this letter to verify that I have known [the Landlord] for the last fifteen years.
>
> I have visited him a couple of times to offer emotional support to cope with his issues pertaining to erosion in his marital relationship – at his home at [rental unit address].
>
> Please feel free to reach me at [telephone number] should you have any questions.
>
> Regards,
> [signature]
> [A.B.]
> [address]

The Landlord referred to another letter at his Appendix 12, which states:

> August 21, 2021
>
> On August 18, 2021, I visited [the Landlord] at his residence [rental unit address] to consult about basement floor. He wanted to put in laminate floor. I gave him an estimate of cost total.
> Call me if you want. My cell number [telephone number]
>
> [signature]
> [N.M.]
> [W.H. Flooring]
> [address]

The Landlord explained that he works hard from 7 a.m. to 8 p.m. and that he is rarely home. He said he did not have a lawn mower at the rental unit property, and he could not find anyone to mow it for him.

The Landlord continued: “When the schools closed, I lived with my daughter in North Carolina.” He referred me to his Appendix #9, which is a statement signed by his daughter, [N.M.], saying that he was visiting her in Charlotte, N.C. from July 10, 2021, to August 3, 2021. She provided her telephone number and invited contact in this regard.

The Landlord said: “When I came back, I found someone to mow the lawn. See Appendices 7 and 8, for four or five receipts.”

The Landlord commented on the Tenant’s evidence regarding photographs of vehicles at the Landlord’s residence with his wife. He said:

> Pictures with my wife or the car the BMW car in the backyard, all those things, if you look at my binder there is Appendix 14 at page 27, for the ICBC insurance. The grey car they have been photographing in the back driveway of [the other] house, in the middle of the document it says a declaration of the principle driver – I own the car - but that is an extra car I take out on snowy days.
>
> We had this car insured, and my son has always been the principle driver of that car and he was living [with us]. He has recently, two to three months ago, moved to America to study. So, the car was driven by my son and he had it most of the time. He went back about three to four months ago, when he got his U.S. green card settled, he went back to the States, but he was stuck here. Those pictures say that I was there? Absolutely not true. It was my son who was living with his mother.
>
> I want to point it out that this marriage – I’ve known her since I was 16. It doesn’t mean there was - I have lived with this woman for 50 years, I have three beautiful – I still have a relationship with the rest of my family, I have 60% ownership in this property. I can visit her. So, all those pictures – I have no explanation other than this is my son’s car; he is the principle driver. I don’t want to be stuck with a lawsuit, if he’s not insured.

Counsel asked the Landlord what vehicle he was driving at this point, and the Landlord said the Porsche. He said: “They may have seen it outside my house. The grey one is now parked permanently, since it has no insurance. I will take it out again when winter,

otherwise, I will drive my Porsche."

The Landlord continued:

> The garbage things – I'm one single guy, who doesn't cook at home – what garbage do I create? A single person eating out all the time - nobody home to eat with. Sometimes I don't pull out the garbage can, because there's not enough in there, no need to pull it.
>
> Pages 36 to 40 prove I have bills; I changed my license.

Pages 36 through 40 of the Landlord's evidence contain a bill for home appliances for the rental unit property.

The Landlord said:

> I will leave it with you; you have said it and you will go through my Respondent's evidence and subs, everything is laid out clearly. These are all proofs that I have been living there. To add, I have lived there since June 4 until February 28, 2022 – 10 months. No person in his right mind – a tenant was paying me $3000, - would lose $30,000 in ten months, it's not a logical argument.
>
> Otherwise, I would have saved $30,000 that [the Tenants] would have paid me; it makes no sense. My motive was not to terminate the tenancy, I needed a place to stay. Second, it is not two suites; it is rented to a large family who have lots of kids and to one family at this time. They moved in on March 1, 2022. They are paying $4,600.00 for the whole house.
>
> The inflation has gone out the roof, houses are not available, and everything has gone up. We all know that.

Analysis

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

Before the Parties testified, I advised them of how I analyze evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets

out a four-part test that an applicant must prove in establishing a monetary claim. In this case, you must each, as applicant, prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

#1 REPAINTING HOUSE → $8,000.00 to $10,000.00

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

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

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

As set out in Policy Guideline #16 ("PG #16"), "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or

loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the paint was new before 2011, so it was at least ten years old at the end of the tenancy and had no years or 0% of its useful life left. The CIR indicates that the painted walls were in good condition at the start of the tenancy, but the Landlord said in the hearing that the walls were covered in light coloured putty on darker coloured walls at the end.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

I find that the residential property was over-due for a new coat of paint, well into the tenancy. As such, I find that the Landlord is not eligible for compensation for this claim pursuant to PG #40. Further, the Landlord has not invested any cost or lost any money from this matter, as he has not re-painted the residential property. Accordingly, **I dismiss this claim without leave to reapply**.

#2 PATIO REMOVAL & REINSTALLING GRASS → $2,000.00

First, the Landlord has claimed almost $400.00 more than his estimate was for in this matter.

I find that the Parties agree that the Tenants modified the yard, such that grass was replaced with river rocks and a patio of some kind. However, I find that this is contrary to clauses 3 and 5 of the Addendum noted above, in that the Tenant made what I find to be structural alterations to the exterior of the residential property. There is no evidence before me that the Tenants obtained the Landlord's permission for making these

changes. Therefore, and pursuant to PG #16, I find that the Tenants are responsible for returning the exterior of the residential property to the way it was at the start of the tenancy.

However, I find that the Landlord's claim of $2,000.00 is inconsistent with his evidence from the estimate he obtained, which quoted the cost at $1,601.25. As the Tenants did not deny having made these alterations to the property, I award the Landlord with **$1,601.25** from the Tenants for this unauthorized alteration, pursuant to section 67 of the Act.

#3 CARPET REPLACEMENT → $3,000.00

The Landlord's evidence is that the carpets in the residential property were ten years old when he purchased the property in 2011. As such, the carpets were 14 years old at the start of the tenancy, and 20 years old at the end of the tenancy in June 2021.

Pursuant to information PG #40 noted above, the useful life of carpeting is ten years. The evidence before me is that the carpeting was new in approximately 2001, so it was approximately 14 years old at the start of the tenancy, and had no years or 0% of its useful life left. The CIR indicates that the carpets were in good condition at the start of the tenancy; however, according to PG #40, the carpets had already depreciated to being beyond their useful life. Accordingly, I find that the Landlord is without a claim in this matter, as there was no value in the carpets to lose. I dismiss this claim without leave to reapply.

TENANTS' CLAIMS

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if:

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice.

In the Two Month Notice dated March 28, 2021, the Landlord indicated that the Landlord or a close family member, intends to occupy the rental unit. In the hearing, the Landlord said that he needed to occupy the unit, because of his marital difficulties.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member, the rental unit was left empty until it was rented out again. The Landlord confirmed that the rental unit is currently rented to a family for $4,600.00.

The Landlord submitted gas and hydro bills with his name and the rental unit address. The Landlord said this is proof that he was living there. However, I find it reasonable for the Landlord – the owner of the residential property – to put these bills in his name after the Tenants moved out in order to maintain the property and prepare it for rent or sale, if not because the Landlord was moving in.

The Landlord submitted statements from trades people and friends indicating that he was living in the residential property in June and in August 2021. However, the Landlord's evidence is that he did not like the carpeting that the Tenants installed in the residential property; therefore, it makes sense that he would have trades people come to do this work in the residential property. I find that this does not mean that the Landlord was living there.

Other friends said they visited the Landlord at the residential property, which makes sense if they are talking about his marital difficulties – they could have privacy from the Landlord's wife and son for this discussion.

However, I take note of the notarized statement of [R.S.] that he helped the Landlord move into the residential property with furniture on June 4, 2021. However, once the Tenants moved their furniture out, the residential property would seem empty without any furniture. Therefore, I find it is reasonable that the Landlord would move furniture into this house for whatever purposes he intended.

In contrast to the Landlord's evidence that he says proves that he moved into the residential property, the Tenants provided evidence from neighbours who observed the

property for months. They noted the newspapers "strewn" and the grass being overgrown. They noted that the lights were never on until September 2021, which happened to be after the Tenant had served the Landlord with his application and Notice of Hearing for this proceeding.

The Landlord said that these statements are fabricated, because two of them use similar language. However, I find that "strewn" happens to be an apt description for newspapers that are left unattended. I do not find it unusual for two different people to describe having observed the same thing in the same way.

When I consider the evidence before me, overall, I find that the Tenants' evidence is more persuasive than that of the Landlord. I, therefore, accept the evidence that the Landlord did not use the rental unit for the purposes stated on the Two Month Notice. Consequently, I find that the Tenants are entitled to and I, therefore award them with **$35,784.72**, the equivalent of 12 times the monthly rent of **$2,982.06** payable under the tenancy agreement, pursuant to sections 51 and 67 of the Act.

As the Tenants were successful in their application, I also award them with their **$100.00** filing fee from the Landlord, pursuant to section 72 of the Act.

Summary and Set Off

	CLAIMS	AMOUNT	AWARD
Landlord	Repainting house	$8,000.00 - $10,000.00	$0.00
	Patio removal & install grass	$2,000.00	$1,601.25
	Carpet replacement	$3,000.00	$0.00
		Sub-total	$1,601.25
	Less security and pet damage deposits		($2,600.00)
	Landlord owes Tenants	**Landlord's Total Award**	**($998.75)**
Tenant	Section 51 (2) claim per Two Month Notice		$35,784.72
	Recovery of RTB filing fee		$100.00

		Sub-total	$35,884.72
		Tenants' Total Award	**$36,883.47**

The Landlord was only partially successful in his application; therefore, I decline to award him recovery of his $100.00 Application filing fee from the Tenant. This claim is dismissed without leave to reapply.

I find that these claims meet the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's $1,300.00 security deposit and $1,300.00 pet damage deposit in complete satisfaction of the Landlord's monetary award. I authorize the Landlord to retain $1,601.25 of the Tenants' deposits and return the remaining $998.75 to the Tenants.

However, as the Tenant is successful in their application for compensation pursuant to section 51 (2) of the Act, as well as recovery of their $100.00 filing fee, I grant the Tenant a **Monetary Order** of **$36,883.47** from the Landlord, which includes the total amount of awards and orders set off per the above table.

Conclusion

The Landlord is partially successful in his claim for recovery of patio removal and grass installation of **$1,601.25**. The Landlord's other claims are dismissed without leave to reapply, as the Landlord provided insufficient evidence to prove these other claims on a balance of probabilities.

The Tenant is successful in his application for recovery of 12 months' rent pursuant to the tenancy agreement, as he provided sufficient evidence to establish that the Landlord did not fulfill the purpose of the Two Month Notice.

I grant the Tenant a Monetary Order of **$36,883.47**, which includes the return of the remainder of their security and pet damage deposits, recovery of the $100.00 Application filing fee, and 12 months' rent pursuant to sections 51 and 67 of the Act.

This Order must be served on the Landlord by the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The amount of compensation in excess of the statutory limitation of $35,000.00 is allowed under section 58 (2), and referenced in Policy Guideline 27. This section states

that if the claim is for compensation under section 51 (2) of the Act, as is the case here, the Director will accept jurisdiction if the claim is for an amount over the Small Claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration.

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

Dated: July 20, 2022

Residential Tenancy Branch