



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **LL: MNDL-S MNDCL-S FFL**
 TT: MNDCT MNSD FFT

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (Act). The Landlord made one application (Landlord's Application) for:

- a monetary order for compensation to make repairs that the Tenant, his pets or their guests caused to the rental unit during the tenancy pursuant to section 67;
- a monetary order for compensation for monetary loss or other money owed by the Tenant pursuant to section 67;
- authorization to keep the Tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for the Landlord's Application from the Tenant pursuant to section 72.

The Tenant made one application (Tenant's Application) for:

- an order to seek the return of the Tenant's security deposit pursuant to section 38;
- a monetary order for compensation for monetary loss or other money owed by the Landlord pursuant to section 67(1); and
- authorization to recover the filing fee for the Tenant's Application from the Landlord pursuant to section 72.

The original hearing of the Landlord's Application and Tenant's Application was held on April 17, 2023 (Original Hearing). An agent (JL) for the Landlord and the Tenant attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The

parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, JL stated the Landlord served the Notice of Dispute Resolution Proceeding for the Landlord's Application and the Landlord's evidence (collectively the Landlord's NDRP Package) by registered mail on August 8, 2022. JL provided the Canada Post tracking number for service of the Landlord's NDRP Package on the Tenant to corroborate her testimony. The Tenant acknowledged receipt of the Landlord's NDRP Package by registered mail. As such, I find the Landlord's NDRP Package was served on the Tenant in accordance with the provisions of sections 89 and 89 of the Act.

At the Original Hearing, the Tenant stated he served the Notice of Dispute Resolution Proceeding for the Tenant's Application (Tenant's NDRP) by registered mail. JL acknowledged the Landlord received the received the Tenant's NDRP by registered mail on September 2, 2023. As such, I find the Tenant's NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Original Hearing was scheduled for 60 minutes. However, by 73 minutes into the hearing, it became clear that the parties would not be able to complete their testimony and rebuttals. Based on the foregoing, I adjourned the Original Hearing and issued a decision dated April 18, 2023 (Interim Decision) pursuant to Rule 7.8 of the RoP. In the Interim Decision I ordered the Tenant to re-serve the evidence he submitted to the RTB prior to the Original Hearing on the Landlord but not to serve the Landlord with any additional evidence. I also ordered that the Landlord may serve the Tenant, and submit to the RTB, with any relevant evidence to respond to the Tenant's evidence. The parties were ordered they were not to amend their respective Applications. The Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for June 8, 2023 (Adjourned Hearing), were served on the parties by the RTB. JL and the Tenant attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Tenant's Evidence on Landlord

At the Original Hearing, the Tenant stated he served his evidence (Tenant's Evidence) on the Landlord with the Tenant's NDRP. JL stated the Tenant's evidence was incomplete based on information set out in the Monetary Order Worksheet the Tenant enclosed with the Tenant's NDRP. The Tenant could not provide an explanation for this discrepancy. As noted above, in the Interim Decision, I ordered that the Tenant re-serve

the Landlord with the evidence submitted to the RTB before the Original Hearing. I also ordered that the Landlord may serve the Tenant, and submit to the RTB, with any relevant evidence to respond to the Tenant's evidence.

Issues to be Decided

Is the Tenant entitled to:

- the return of the Tenant's security deposit?
- a monetary order for compensation for monetary loss or other money owed by the Landlord?
- recover the filing fee for the Tenant's Application from the Landlord?

Is the Landlord entitled to:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused to the rental unit during the tenancy?
- a monetary order for compensation for monetary loss or other money owed by the Tenant?
- keep the Tenant's security deposit?
- recover the filing fee for the Landlord's Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' respective Applications and my findings are set out below.

The Landlord and Tenant submitted into evidence a copy of the signed tenancy agreement, dated May 19, 2021, between the parties. The parties agreed the tenancy commenced on May 30, 2021, for a fixed term ending June 30, 2022, with rent of \$4,900.00 payable on the first day of each month. The tenancy agreement required the Tenant to pay all utility charges, except for water, including gas and hydro. The tenancy agreement stated the Landlord would reimburse the Tenant for 1/5th of the gas and hydro utilities. The Tenant was required to pay a security deposit of \$2,450.00 to the Landlord. JL admitted the Tenant paid the security deposit to the Landlord and that the Landlord was holding the deposit in trust for the Tenant. The parties agreed the Tenant

vacated the rental unit on June 30, 2023, being the last day of the fixed term of the tenancy. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear and adjudicate the parties' respective Applications.

JL stated a move-in inspection was performed on May 30, 2021 and a move-out inspection was performed on June 30, 2023. JL submitted into evidence a copy of the move-in inspection report that was signed by both the parties JL submitted into evidence a copy of the move-out inspection report that was signed by the Landlord but not the Tenant. The Tenant stated he attended the move-out inspection but did not sign the move-out inspection report. The Tenant stated it became extremely ugly at the move-out inspection, the agent was screaming, was very insulting with the result that he had to leave. JL did not dispute the Tenant's testimony respecting what happened at the move-out inspection.

The Tenant stated he served the Landlord with his forwarding address by registered mail on July 4, 2022. The Tenant provided the Canada Post tracking number for service of his forwarding address on the Landlord to corroborate his testimony. JL stated the Landlord received the Tenant's forwarding address and made an application for dispute resolution with the RTB on July 19, 2022.

JL stated the Landlord was seeking compensation for damages and other money owed by the Tenant totaling \$34,291.11 calculated as follows:

Description of Monetary Claim	Amount
Changing Locks to Rental Unit	\$154.14
Loss of Rental Income for 3 Days	\$474.19
Repairs to Rental Unit	\$333.45
Carpet Cleaning	\$367.50
Cleaning of Mattress	\$141.75
Cleaning of Rental Unit	\$136.50
Replacement of Bathroom Countertop	\$2,459.80
Repairs to Fence	\$126.00
Mental Loss	\$30,000.00
Cost of Prescriptions	\$60.28
Psychological counseling	\$37.50
Total:	\$34,291.11

Landlord's Claim for Locksmith Services:

JL stated the Tenant was provided three keys for the rental unit and one key for the garage. JL referred to the move-in condition inspection report that indicated the Tenant was provided with three keys for the rental unit and one key for the garage. The Tenant admitted that he did not return one key for the rental unit at the time he vacated the rental unit. JL stated the Landlord was claiming \$154.14 for locksmith services to have the locks changed. JL submitted into evidence a copy of an invoice for \$154.14 to support the Landlord's claim.

Landlord's Claim for Loss of Rental Income:

JL stated that, as the Tenant did not return all the keys for the rental unit, the Landlord lost three days of rental income from the rental unit totaling \$474.19. JL also stated the Tenant left large items in the rental unit and did not retrieve those items until three days after the move-out inspection performed on June 30, 2022. The Tenant disputed JL's claim that he left items in the house other than for a mattress he purchased during the tenancy and which he retrieved three days after the tenancy ended at the request of the Landlord. JL did not provide a tenancy agreement with a new tenant to establish the date the Landlord re-rented the rental unit to a new tenant. Furthermore, the Landlord did not submit any other evidence to demonstrate how the Landlord incurred a loss of rental income because of the Tenant's delay in removing the mattress from the rental unit.

Landlord's Claim for Replacement of Lightbulbs and Light Switch

JL stated the Tenant vacated the rental unit without replacing the lightbulbs that were not working. JL referred to the move-in inspection report that all lighting fixtures in the rental unit were "good". JL submitted into evidence eight photographs showing approximately 13 light bulbs in recessed ceiling fixtures were not working and three fixtures in which three lightbulbs were missing or burned out. JL stated a light switch was not working and that it required replacement. JL submitted into evidence two photos of a wall plate showing two electrical switches. The photos of the light switches do not show any visible damage to either of them. JL provide any plausible explanation for why the Tenant would have tampered with one of the light switches.

The Tenant denied he or another person permitted on the residential property tampered with the light switch. The Tenant stated most of the lightbulbs were located in recessed ceiling fixture on high ceilings that were beyond his reach without the use of a step

ladder to reach those fixtures. The Tenant admitted there were several lightbulbs he could have replaced without a ladder. Although The parties disagreed on the height of the ceilings on which most of the recessed light fixtures were located, the photos submitted by JL appear to reveal most ceiling fixtures were located on high ceilings. JL provided a copy of the invoice for replacing the lightbulbs and light switch for \$333.45. The invoice did not provide any reason why one of the light switches required replacement.

Landlord's Claim for Carpet Cleaning

JL stated the Tenant did not clean the carpets in the rental unit. JL referred to the move-out inspection report that referred to "broken, damaged, stained and dirty places" but the report did not specifically mention the carpets. However, JL submitted into evidence a photo to demonstrate the condition of the light coloured carpeting on a stairway. The parties agreed the rental unit was approximately 2,000 to 2,100 square feet in size. The parties agreed the three bedrooms and stairs were carpeted. JL stated the Landlord was seeking reimbursement for the carpet cleaning and submitted a copy of the invoice for \$367.50 to support the Landlord's claim.

The Tenant stated there was about 1,000 square feet of carpeting in the rental unit and the rest was hardwood or tile. JL suggested there was more than 1,000 square feet of carpeting in the rental unit. The Tenant referred to the move-in inspection report that noted there was a stain on the carpet at the entry of the Master Bedroom. The Tenant stated he arranged for a person to clean the carpets using a machine he borrowed from a friend. The Tenant did not submit any evidence that he paid the cleaning person to clean the carpets or any invoices for the purchase of solutions to clean the carpets.

Landlord's Claim for Cleaning of Mattress

JL stated the rental unit was partly furnished including a mattress located in one of the bedrooms. JL stated the Tenant had replaced the mattress, without the Landlord's consent, with an inferior mattress. JL stated the Tenant or another person stained the original mattress with blood and it required cleaning at a cost of \$141.75. JL submitted a photo of the original mattress showing the blood stain and a copy of the invoice for removing the stain from the mattress. The Tenant stated his son had braces installed and that he had accidentally bled onto the mattress. The Tenant stated he attempted to remove the blood from the original mattress but he was unsuccessful. The Tenant stated he purchased a new mattress to replace the original mattress. The Tenant stated

he never spoke to the Landlord about this incident and that, when the Landlord discovered the replacement, he was accused of stealing the original mattress.

Landlord's Claim for Cleaning Services

JL stated the Tenant did not leave the rental unit in a reasonably clean condition after he vacated it. JL submitted into evidence seven photos of a dirty cabinet under a sink, a dirty lint trap for the dryer, a dirty washing machine, dirty windowsills and dusty blinds. JL submitted into evidence a copy of the invoice for \$136.50 paid by the Landlord for cleaning services and stated the Landlord was seeking reimbursement for the cleaning services. The Tenant did not dispute the authenticity of the photos submitted by JL.

Landlord's Claim for Replacement of Bathroom Countertop

JL stated the Tenant had cracked a marble countertop in one of the bathrooms in the rental unit. JL submitted into evidence two photos of the countertop that showed a significant crack in the countertop. JL submitted into evidence a quotation for removal of the existing countertop for \$450.00 and two quotes for replacement of the countertop, one for \$3,500.00 and the other for \$3,300.00. JL stated the Landlord was seeking \$2,459.80 from the Tenant to complete the removal and replacement of the countertop. JL referred to the move-in inspection report that indicated the bathroom fixtures were in "good" condition. JL stated the countertop was installed in 2011. The Tenant did not dispute the age of the countertop.

The Tenant stated that he noticed there was a crack in the countertop after moving into the rental unit but admitted he did not advise the Landlord he had discovered the crack. The Tenant stated the Landlord could have had the countertop repaired and that it did not require replacement. The Tenant did not provide any evidence to support his contention that the countertop could be repaired and the cost of such repairs.

Landlord's Claim for Fence Repair

JL stated the Tenant's son damaged an exterior fence by playing basketball. JL submitted into evidence photos of the front and backyards of the rental unit at the time of move-in. The photos show the exterior fencing was in poor condition. JL admitted the fence was original to the house but did not provide any evidence on when the fence was installed. JL submitted a copy of the invoice for \$126.00 and stated the Landlord was seeking reimbursement from the Tenant for the repairs to the fence. The Tenant stated the fence was completely rotted out and that it was falling onto the residential property

and that he screwed portions of the fence back on during the tenancy. Although the move-in inspection report referred to a variety of components of the exterior of the rental unit, it did not specifically refer to the condition of the exterior fencing.

Landlord's Claim for Mental Loos, Prescriptions and Psychological Counseling

JL, who identified herself as the daughter of the Landlord, stated the Tenant had caused her severe mental distress that required counselling and use of prescription medications. JL stated the Landlord was claiming a total of \$30,097.78 for these injuries. JL provided copies of the receipts for the prescriptions totaling \$60.28 but did not provide an invoice for the psychological counselling. JL provided a copy of a letter, dated August 20, 2021 from a psychologist. In that letter, the psychologist states he completed a clinical interview with JL. The psychologist indicates the background of JL and her on-going depressive symptoms that have debilitating effects on her life and that JL met the criteria for major depressive disorder.

The psychologist provided recommendations for JL's treatment. However, nowhere in that letter was there any reference to the depressive symptoms being caused by the Tenant or the tenancy nor does the psychologist place any monetary value on any losses arising from JL's condition. I also note that the date of the letter from the psychologist was August 20, 2021, which was only six weeks after the Tenant moved into the rental unit.

Tenant's Claim for Gas and Electrical Utilities

The Tenant stated that, pursuant to the terms of the tenancy agreement, the Landlord was responsible for paying him 1/5th of the gas and electrical utilities. The Tenant submitted into evidence copies of BC Hydro statements totaling \$1,516.77 and Fortis statements totaling \$2,592.21. The Tenant stated he is claiming \$725.85 from the Landlord to reimburse him for the gas and electrical utilities. The Fortis and BC Hydro statements provided by the Tenant indicate total charges of \$4,108.98 and the Landlord's portion of \$821.79 calculated as follows:

Type of Utility	Total Charges	1/5th of Total Charges
Fortis - Gas	\$2,592.21	\$518.44
BC Hydro – Electricity	\$1,516.77	\$303.35
Total:	\$4,108.98	\$821.79

The Tenant stated the Landlord never reimbursed him for any of the gas and electrical charges. JL did not dispute the amounts provided in the statements provided by the Tenant for the gas and electrical utilities charges and she admitted the Landlord never reimbursed the Tenant for any of those utility charges. The Tenant was unable to provide an explanation for the discrepancy between the \$725.85 claimed in the Tenant's Application with the total amount of gas and electrical utility charges stated in the Fortis and BC Hydro statements totaling \$821.79.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

- 37(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the foregoing, a party making a claim for compensation must prove it is more likely than not that the other party breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

Residential Tenancy Branch Policy Guideline 16 (PG 16) addresses the criteria for awarding compensation. PG 16 states in part:

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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the party making the claim for compensation must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

Performance of Move-In and Move-Out Condition Inspection Reports

JL stated a move-in inspection was performed on May 30, 2021 and a move-out inspection was performed on June 30, 2023. JL submitted into evidence a copy of the move-in inspection report that was signed by both the parties JL submitted into evidence a copy of the move-out inspection report that was signed by the Landlord but not the Tenant. The Tenant stated he attended the move-out inspection but did not sign the move-out inspection report. The Tenant stated it became extremely ugly at the move-out inspection, the agent was screaming, was very insulting with the result that he

had to leave. JL did not dispute the Tenant's testimony respecting what happened at the move-out inspection.

Although there was conflict during the move-out condition inspection, I find it was the Tenant's choice not to complete the move-out condition inspection. As such, I find the Landlord had the right to complete the inspection in the absence of the Tenant. Based on the foregoing, I find the Landlord complied with the provisions of sections 23 and 35 of the Act and that the Landlord's right to claim against the security deposit was not extinguished by the provisions of sections 24(2) and 36(2) of the Act.

The Tenant stated he served the Landlord with his forwarding address by registered mail on July 4, 2022. The Tenant provided the Canada Post tracking number for service of his forwarding address on the Landlord to corroborate his testimony. Pursuant to section 90 of the Act, I find the Landlord was deemed to have received the Tenant's forwarding address on July 9, 2022. The records of the RTB indicate the Landlord's Application was made on July 19, 2022. Section 38(1) of the Act states:

- 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Pursuant to section 38(1) of the Act, the Landlord had until August 3, 2022 to make the Landlord's Application. The records of the RTB indicate the Landlord's Application was made on July 19, 2022. As such, I find the Landlord's Application was made within the 15-day period required by section 38(1). As the Landlord's Application was made within 15-day period, I find the Landlord is not required to pay the Tenant double the amount of the security deposit that would otherwise be required to be paid to the Tenant pursuant to section 38(6) if the Landlord had missed the deadline for making the

Landlord's Application. As such, the Tenant has a credit of \$2,450.00 from the security deposit the Landlord is holding on his behalf that may be applied to any damages or compensation I find the Landlord is entitled to.

Landlord's Claim for Locksmith Services:

JL stated the Tenant was provided three keys for the rental unit and one key for the garage. JL referred to the move-in condition inspection report that indicated the Tenant was provided with three keys for the rental unit and one key for the garage. The Tenant admitted that he did not return one key for the rental unit at the time he vacated the rental unit. JL provided a copy of an invoice for \$154.14 to support the Landlord's claim for the locksmith services. Section 37(2) of the Act states:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Tenant admitted he did not return one of the three keys for the rental unit when he vacated it. As such, the Tenant did not comply with the requirements of subsection 37(2)(b) of the Act. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenant must pay the Landlord \$154.14 for locksmith services to rekey the rental unit. As such, I order the Tenant to pay the Landlord \$154.14 for the locksmith services.

Landlord's Claim for Loss of Rental Income:

JL stated that, as the Tenant did not return all the keys for the rental unit, the Landlord lost three days of rental income from the rental unit totaling \$474.19. The Tenant also stated the Tenant left large items in the house and did not retrieve those items until three days after the move-out inspection performed on June 30, 2022. The Tenant disputed JL's claim that he left items in the house other than for a mattress he purchased during the tenancy and which he retrieved three days after the tenancy ended at the request of the Landlord.

JL did not provide any evidence, such as a tenancy agreement with a new tenant, to demonstrate the Landlord re-rented the rental unit to a new tenant and or that failure of the Tenant to return all the keys or remove all the items in the rental unit until three days after the tenancy ended resulted in a loss of rental income. The Landlord did not provide any evidence that he attempted to minimize any loss of rental income such as providing evidence that he attempted to have the doors rekeyed as soon as possible after the Tenant vacated the rental unit on June 30, 2022. As such, I find the Landlord did not attempt to minimize any loss of rental income resulting from the Tenant's failure to return all of the keys to the rental unit. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that he is entitled to recover \$474.19 for loss of rental income. As such, I dismiss this part of the Landlord's monetary claim without leave to reapply.

Landlord's Claim for Replacement of Lightbulbs and Light Switch

JL stated the Tenant vacated the rental unit without replacing the lightbulbs that were not working. JL referred to the move-in inspection report that all lighting fixtures in the rental unit were in "good" condition. JL provided eight photographs showing approximately 13 light bulbs in recessed ceiling fixtures were not working and three fixtures in which the lightbulbs were missing or burned out. JL stated a light switch was not working and that it required replacement. JL provides two photos of a wall plate showing two electrical switches. The photos of the light switches do not show any visible damage to either of them. JL provide any plausible explanation for why the Tenant would have tampered with one of the light switches.

The Tenant denied he or anyone living in the rental unit damaged the light switch. The Tenant stated many of the lightbulbs were located in fixtures were located on high ceilings and he did not have a step ladder to reach those fixtures. The Tenant admitted there were several lightbulbs he could have replaced without a ladder.

The parties disagreed on the height of the ceilings on which most of the light fixtures were located. However, the photos of the light fixtures submitted by JL reveal the majority of the lightbulbs were located in recessed ceiling fixtures located on high ceilings that would require a step ladder to change the light bulbs in them. There were several photos provided by JL that showed three lightbulbs in fixtures that were either missing or burned out that were within reach of the Tenant to replace.

Residential Tenancy Policy Guideline 1 (PG 1) provides guidance on the responsibilities of landlords and tenants during a tenancy. PG 1 states a tenant is responsible for replacement of lightbulbs during a tenancy. I note however that PG 1 states that if a major appliance is difficult to move, then the landlord is responsible for cleaning behind and underneath the appliance. It was clear from the photographs that the majority of lightbulbs could only be replaced with the use of a step ladder. I find it unreasonable for a tenant to be required to buy or rent a step ladder to replace lightbulbs and that, for many tenants, using a ladder could pose significant risk if the tenant were to fall from the ladder. As such, I find that in this case, the Landlord was responsible for replacement of all but three of the light bulbs. Based on the foregoing, I find the Landlord have proven, on a balance of probabilities, that the Tenant is responsible for the cost of replacement of three lightbulbs. I find a reasonable amount of damages for the cost replacement of the three lightbulbs to be \$75.00.

JL stated a light switch was not working and that it required repair. JL submitted into evidence a copy of a wall plate showing two electrical switches. JL did not provide any plausible explanation for why the Tenant would have tampered with the light switch. The Tenant denied he or another person permitted on the residential property tampered with the light switch. In the absence of additional evidence to demonstrate the Tenant tampered with or damaged the light switch, I find the Landlord has not proven, on a balance of probabilities, that the Tenant is responsible for the costs of repairing the light switch. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that the Tenant is responsible for the repair of the light switch. Based on the foregoing, As such, I award the Landlord \$75.00 for the costs of replacing three lightbulbs and dismiss the balance of the Landlord's claim for \$333.45 for repair services for replacement of the lightbulbs and light switch.

Landlord's Claim for Carpet Cleaning

JL stated the Tenant did not clean the carpets in the rental unit. JL referred to the move-out inspection report that referred to "broken, damaged, stained and dirty places" but the report did not specifically mention the carpets. However, JL submitted into evidence a photo to demonstrate the condition of the light coloured carpeting on a stairway. JL provided an invoice for \$367.50 for carpet cleaning. The parties agreed the rental unit was approximately 2,000 to 2,100 square feet in size. The parties agreed the three bedrooms and stairs were carpeted. The Tenant stated there was about 1,000 square feet of carpeting in the rental unit and the rest was hardwood or tile. JL suggested there was more than 1,000 square feet of carpeting in the rental unit. The Tenant referred to the move-in inspection report that noted there was a stain on the carpet at the entry of

the Master Bedroom. The Tenant stated he arranged for a person to clean the carpets using a machine he borrowed from a friend. The Tenant did not submit any evidence that he paid the cleaning person to clean the carpets or that he had incurred expenses to purchase solutions to clean the carpets.

PG 1 states a tenant is generally responsible for steam cleaning or shampooing the carpets after a tenancy of one year. In this case, the tenancy ended at the end of the one year fixed term. The Tenant did not provide any evidence he paid the cleaning person to clean the carpets nor did he provide a copy of an invoice for the purchase of the solution to clean the carpets. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the carpets were not reasonably cleaned at the end of the tenancy. As such, I order the Tenant to pay the Landlord \$367.50 for cleaning the carpets in the rental unit.

Landlord's Claim for Cleaning of Mattress

JL stated the rental unit was partly furnished including a mattress located in one of the bedrooms. JL stated the Tenant had replaced the mattress, without the Landlord's consent, with an inferior mattress. JL stated the Tenant or another person stained the original mattress with and provided an invoice for \$141.75 to clean the mattress. JL submitted a photo of the mattress showing the blood stain and a copy of the invoice for removing the stain from the mattress. The Tenant stated his son had braces installed and that he accidentally bled onto the mattress. The Tenant stated he attempted to remove the blood from the original mattress but he was unsuccessful. The Tenant stated he purchased a new mattress to replace the original mattress. The Tenant stated he never spoke to the Landlord about this incident and that, when the Landlord discovered the replacement, he was accused of stealing the original mattress.

As noted above, section 37(2) of the Act states a tenant must leave the rental in reasonably clean, and undamaged except for reasonable wear and tear. The Tenant admitted the blood stain on the mattress was caused by his son. Rather than firstly consulting with the Landlord to determine a mutually agreeable course of action respecting the stain, the Tenant replaced the mattress at his own expense without the knowledge or permission of the Landlord. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenant is responsible for cleaning the original mattress provided by the Landlord. As such, I order the Tenant to pay the Landlord \$141.75 for cleaning the mattress.

Landlord's Claim for Cleaning Services

JL stated the Tenant did not leave the rental unit in a reasonably clean condition after he vacated it. JL provided seven photos of a dirty cabinet under a sink, a dirty lint trap for the dryer, a dirty washing machine, dirty windowsills and dusty blinds. JL submitted into evidence a copy of the invoice for two hours of cleaning services for \$136.50 and stated the Landlord was seeking reimbursement for the cleaning services. The Tenant did not dispute the authenticity of the photos submitted by JL.

As noted above, section 37(2)(a) of the Act states a tenant must leave the rental in reasonably clean, and undamaged except for reasonable wear and tear. PG 1 states a tenant is expected to leave the internal window coverings clean when he or she vacates the rental unit. PG 1 states a tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

Based on the testimony and evidence submitted by JL, I find the Tenant did not completely clean the rental unit as required by section 37(2)(a) of the Act. I find the Landlord's claim for \$136.50 for cleaning the rental unit to be reasonable. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that he is entitled to recover the costs for cleaning the rental unit. As such, I order the Tenant to pay the Landlord \$136.50 for cleaning the rental unit.

Landlord's Claim for Replacement of Bathroom Countertop

JL stated the Tenant had cracked a marble countertop in one of the bathrooms in the rental unit. JL submitted into evidence two photos of the countertop that showed a significant crack in the countertop. JL submitted into evidence a quotation for removal of the existing countertop for \$450.00 and two quotes for replacement of the countertop, one for \$3,500.00 and the other for \$3,300.00. JL stated the Landlord was seeking \$2,459.80 from the Tenant to complete the removal and replacement of the countertop. JL stated the countertop was installed in 2011. The Tenant did not dispute the age of the countertop. As such, I find, on a balance of probabilities, that the countertop as installed in 2011.

The move-in condition inspection report states the condition of the fixtures in the bathroom were in "good" condition. The Tenant admitted he did not inform the Landlord when he discovered the crack in the marble countertop. Based on the date of installation of the countertop, it was 11 years old at the time the Tenant vacated the rental unit. As such, I find the Landlord has proven, on a balance of probabilities, that the Tenant is responsible for the damages to the countertop.

Residential Tenancy Policy Guideline 40 (PG 40) provides a general guide for determining the useful life of building elements for determining damages claimed by one part against another. PG 40 provides the useful life of cabinets and counters for bath and kitchen at 25 years. Based PG 40, the remaining useful life of the countertop was 14 years. As such, I find the Landlord is entitled to recover \$1,377.49 from the Tenant for the damage to the countertop, calculated as follows:

$$(25 \text{ years} - 11 \text{ years}) \times \frac{\$2,459.80}{25 \text{ years}} = \$1,377.49$$

Based on the foregoing, I order the Tenant to pay the Landlord \$1,377.49, representing the undepreciated value of the countertop.

Landlord's Claim for Fence Repair

JL stated the Tenant's son damaged an exterior fence by playing basketball. JL submitted a copy of the invoice for \$126.00 and stated the Landlord was seeking reimbursement from the Tenant for the repairs to the fence. JL submitted into evidence photos of the front and backyards of the rental unit at the time of move-in and move-out. The photos taken at the time of move-in show the exterior fencing was in poor condition. JL admitted the fence was original to the house but did not provide any evidence on when the fence was installed. The Tenant stated the fence was completely rotted out and that it was falling onto the residential property and that he screwed portions of the fence back on during the tenancy. Although the move-in inspection report referred to a variety of components of the exterior of the rental unit, it did not specifically refer to the condition of the exterior fencing.

PG 40 provides the estimated useful life of wood fences is 15 years. The photos provided by the Landlord clearly indicate that the fencing was more than 15 years old and in poor condition at the commencement of the tenancy. As such, I find the fencing was fully depreciated at time the Tenant vacated the rental unit. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that he is entitled to recover any compensation for damages to the fencing.

Landlord's Claim for Mental Loss, Prescriptions and Psychological Counseling

JL, who identified herself as the daughter of the Landlord, stated the Tenant caused her severe mental distress that required counselling and use of prescription medications. JL stated the Landlord was claiming a total of \$30,097.78 for damages for these claims. JL provided copies of the receipts for the prescriptions totaling \$60.28 but did not provide a letter from a physician confirming the prescriptions were related to treating symptoms caused by the Tenant or the tenancy. JL did not provide an invoice for the psychological counselling. JL provided a copy of a letter, dated August 20, 2021. In that letter, the psychologist states he completed a clinical interview with JL. The psychologist indicates the background of JL and her on-going depressive symptoms that have debilitating effects on her life and that JL met the criteria for major depressive disorder.

The psychologist made recommendations for JL's treatment. However, nowhere in that letter was there any reference to the depressive symptoms being caused by the Tenant or the tenancy nor did the psychologist place any monetary value on the losses arising from JL's condition. I also note that the date of the letter from the psychologist was August 20, 2021, which was only six weeks after the Tenant moved into the rental unit.

Section 1 of the Act defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Section 58(1) of the Act states:

- (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
 - (a) rights, obligations and prohibitions under this Act;
 - (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

JL did not submit a copy or any other evidence that she was appointed as an agent for the Landlord. The tenancy agreement was executed by the Landlord and Tenant and not by JL. As such, there is no evidence before me that JL permitted occupation of the rental unit under a tenancy agreement, or exercised powers and performed duties under this Act, the tenancy agreement or a service agreement. Section 58(1) of the Act only permits a person to make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant. As JL is not a "landlord" as defined by section 1 of the Act, I find that JL is not entitled seek damages from the Tenant using the dispute resolution process provided for by section 58(1) of the Act. Furthermore, the Landlord has not submitted any evidence that he paid JL for the losses claimed and that he is seeking to recover such payments from the Tenant.

Even if I am wrong on this point, the Landlord did not submit any calculations or other evidence to demonstrate and justify how the \$30,000.00 for mental loss was calculated. Furthermore, the Landlord did not submit evidence from the physician who prescribed the prescriptions to explain why they were required. Lastly, the Landlord did not provide a copy of the invoice for the psychological counselling. As such, I find the Landlord has not proven, on a balance of probabilities, that he is entitled to recover the \$30,097.78 for JL's mental loss, the prescriptions or cost of the psychological testing. Based on the foregoing, I dismiss this part of the Landlord's monetary claim without leave to reapply.

Tenant's Claim for Gas and Electrical Utilities

The Tenant stated that, pursuant to the terms of the tenancy agreement, the Landlord was responsible for paying him 1/5th of the gas and electrical utilities. The Tenant provided copies of Fortis statements totaling \$2,592.21 and BC Hydro statements totaling \$1,516.77. JL did not dispute the amounts provided in the statements provided for gas and electricity and she admitted the Landlord never reimbursed the Tenant for any of those utility charges. The Tenant stated he is claiming \$725.85 from the Landlord to reimburse him for the gas and electrical utilities. The Fortis and BC Hydro statements provided by the Tenant indicate total charges of \$4,108.98 and the Landlord's portion of \$821.79.

The Tenant was unable to provide an explanation for the discrepancy between the \$725.85 claimed in the Tenant's Application with the total amount of gas and electrical utility charges stated in the Fortis and BC Hydro statements totaling \$821.79. As the Tenant's claim for reimbursement from the Landlord for utilities was only \$725.85 in the Tenant's Application, I can only award the Tenant \$725.85. As such, I order the Landlord reimburse the Tenant \$725.85 compensation for the utilities owed by the Landlord to the Tenant.

Calculation of Amount owed by Tenant to for damages and compensation

Based on the foregoing, I find the Landlord is entitled to damages and compensation of \$2,252.38 from the Tenant, calculated as follows:

Description of Monetary Claim	Amount Awarded to Landlord
Changing Locks to Rental Unit	\$154.14
Repairs to Rental Unit	\$75.00
Carpet Cleaning	\$367.50
Cleaning of Mattress	\$141.75
Cleaning of Rental Unit	\$136.50
Replacement of Bathroom Countertop	\$1,377.49
Total:	\$2,252.38

Filing Fee for Landlord's Application and Tenant's Application

As the Landlord has been substantially successful in the Landlord's Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application. As the Tenant has been substantially successful in the Tenant's Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application.

Conclusion

I order the Landlord to pay the Tenant \$923.47 calculated as follows:

Purpose	Amount
Damages and Compensation payable by Landlord to Tenant	\$2,252.38
Filing Fee for Landlord's Application	\$100.00
Less: Compensation payable to Landlord to Tenant for Utilities	-\$725.85
Less: Tenant's Security Deposit	-\$2,450.00
Less: Filing Fee for Tenant's Application	-100.00
Total:	-\$923.47

The Tenant must serve the Monetary Order on the Landlord as soon as possible. Should the Landlord 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: July 13, 2023

Residential Tenancy Branch