DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- A Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlords were served on May 18, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that the Tenants were served on July 16, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act. The Landlords advised they received the evidence late, but I will note they consented to the evidence being admitted and proceeding with the hearing.

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

Preliminary Matters

- Tenancy Ended

The parties advised the tenancy ended June 30, 2023. Therefore, I find the Tenants' claim to suspend or set conditions on the Landlord's right to enter the rental unit is moot. As such, I dismiss this claim without leave to reapply.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?
Are the Landlords entitled to retain all or a portion of the Tenants' security and/or pet damage deposit in partial satisfaction of the monetary award requested?
Are the Landlords entitled to recover the filing fee for this application from the Tenants?
Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?
Are the Tenants entitled to recover the filing fee for this application from the Landlord

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on June 13, 2020, with a monthly rent of $2,537.50, due on first day of the month, with a security deposit in the amount of $1,250.00 and pet damage deposit of $625.00. This tenancy ended June 30, 2023.

The Tenants filed an application for compensation for loss of quiet enjoyment and the Landlords filed a cross-application claiming damages and requesting to retain the security and pet damage deposits.

Tenants' Compensation Claim

The Tenants are seeking 60% of their rent back for the period of August 2022 until June 30, 2023, because the Landlords impacted their quiet enjoyment. The Tenants advised that in August 2022 they were served a One Month Notice for Cause (the "One Month Notice") which they applied to have cancelled and won. The Tenants argued after they won their application to have the One Month Notice cancelled the Landlords demeaner changed towards the Tenants. The Tenants argued there was no communication from the Landlords, and they began engaging in aggressive behaviour.

The Tenants argued the following actions of the Landlords impacted their quiet enjoyment:

Removal of Items

The Tenants argued the Landlords came to the rental unit and removed the lawnmower that was provided so the Tenants could maintain the yard. Additionally, the Tenants argued Landlord FTP came to the rental unit and threatened to remove appliances if the Tenants and their roommates did not sign a notice. The Tenants witness AS ("Witness AS") testified that Landlord FTP came to the rental unit and demanded they sign a piece of paper, or they would remove all appliances.

The Landlords advised they removed the lawnmower because the lock on the garage was broken, and the lawnmower was expensive, so they did not want it to get stolen. The Landlords argued they gave notice to the Tenants that once the lock is replaced, they would return the lawnmower.

The Landlords argued the reason they came to the rental unit and requested a signature from witness AS was because of an insurance issue. The Landlords advised they only had insurance for one suite and the Tenants had built an additional suite and had roommates living in it which voided the Landlords insurance. The Landlords argued they needed to know who was living in the rental unit to update their insurance and the appliances were not allowed to be there. A copy of the Landlords' insurance was provided to support this claim.

Tore Down Fence

The Tenants advised they got permission from the Landlords to enclose the backyard of the rental unit with a fence. The Tenants advised they lived on a busy street and needed the back yard enclosed. The Tenants argued that around November 2022 the Landlords tore down a portion of the backyard fence. The Tenants argued they had pets that would run away and a young child, so the backyard was no longer safe to use when the Landlords tore down a portion of the fence.

The Landlords argued the portion of fence that was removed belonged to the neighbor and it was removed at the request of the neighbour because it was rotting. The

Landlords also advised the Tenants did not ask about a replacement for the fence until February 2023.

Notices Posted on Door

The Tenants argued the Landlords began posting excessive amounts of notices on the rental unit door, which caused anxiety for the Tenants children. The Tenants argued the Landlords previously communicated via email but started posting everything to the rental unit door around August 2022. Some of these notices indicated rent was paid "for use and occupancy only" and that the Tenants were required to move out. The Tenants advised they sent a formal request authorizing email service, but the Landlords responded that they do not do email service.

The Landlords argued the notices were posted on the rental unit door so they could prove they were properly delivered, and they wanted to have all concerns written down in writing. Additionally, the Landlords argued they provided receipts that stated" for use and occupancy only" because they were provide advice from the RTB to do this to protect their rights.

Inspections

Additionally, the Tenants argued the Landlords began doing an increased number of inspections of the rental unit and taking issue with any little thing. The Tenants argued that previously inspections occurred yearly. The Tenants argued that the Landlords were aggressive when they conducted these inspections. The Tenants witness TM testified that they were present for some of the inspections and the Landlords were rude during these inspections and unapproachable.

The Landlords argued they never conducted more inspections than allowed under the Act. Specifically, the Landlords advised during the 10-month period following August 2022 they only conducted 6 inspections. The Landlords argued the reason they engaged in these inspections was because the Tenants had a variety of different roommates and never informed the Landlords who they were. The Landlords argued they were concerned about who was living in the rental unit and the condition of the rental unit.

Landlords' Damages Claim

The Landlords advised they are seeking damages but are only requesting to keep the security and pet damage deposits and not the full amounts claimed for the damages.

The Landlords sought the following damages:

Item	Description	Amount
1	Dishwasher Repair	$89.60

2	Paint + Supplies	$220.36
3	Blinds and Weatherstrips	$273.89
4	Stove	$200.00
5	Siding Repair and Fence Removal	$945.00
6	Duct Cleaning	$525.00
7	Ozonator	$145.59
8	Landlord Labour	$1,000.00
	TOTAL	$1,179.99

#1 Dishwasher Repair

The Landlords position is that the dishwasher was leaking and the dishwasher technician stated on the invoice the cause was food build up and food not being scrapped off of plates before going in the dishwasher. The invoice was submitted into evidence. The Landlords advised the dishwasher was installed in 2016. The Landlords advised the Tenants informed them of the dishwasher leaking during the tenancy but told the Landlords not to fix it since they never used it.

The Tenants argued about 5 months into the tenancy the Tenants advised Landlord FTK that the dishwasher leaked the first time they used it and that they did not require the Landlords fix the dishwasher since they never used it.

#2 Paint and Supplies

The Landlords position is that the Tenants did extensive damage to the dry wall with screws, gouges, anchors and not properly sanding after they puttied the holes and the Landlords required supplies to fix the damage. Additionally, the Landlords argued the Tenants painted one room hot pink without receiving the consent of the Landlords. Receipts and photographs were submitted into evidence. The Landlords advised the rental unit was paint June 2020 before the Tenants moved into the rental unit.

The Tenants argued the Landlords gave them authorization to paint the entire rental unit and there was no requirement for them to return the rental unit walls to the original colours when they vacated. Additionally, the Tenants argued any damage to the walls was there when they moved into the rental unit. The Tenants' Lawyer argued that the Move-In Report cannot be trusted since the Landlords did not indicate all the issues on the Move-Out Report.

#3 Blinds and Weatherstrips

The Landlords' position is that the blinds were broken or missing parts and the weatherstrips had claw marks from pets. The Landlords agued they tried to combine the broken blinds but ended up having to replace some. Photographic evidence and receipts were provided by the Landlords. The Landlords advised the blinds were installed in 2016.

The Tenants' Lawyer argued that the Move-Out Report does not indicate the amount of damage to the blinds that the Landlords are not claiming. The Tenants argued the blinds were cheap and easily fell apart.

#4 Stove

The Landlords' position is that the Tenants were provided a stove in the garage and when the Tenants moved out the stove was missing. The Landlords argued the Tenants advised they were replacing the stove in the garage and when they left, they sold the replacement stove and left the rental unit with no stove in the garage. The Landlord advised no new stove has been purchased.

The Tenants position is that a couple months into the tenancy they asked the Landlords to fix the stove in the garage and the Landlords refused, so the Tenants purchased a new stove and informed the Landlords the old stove could be picked up. The Tenants argued Landlord FTP picked up the stove from the rental unit and disposed of it.

Landlord FTP disputes that they ever picked up or disposed of the stove in the garage.

#5 Siding Repair and Fence Removal

The Landlords' position is that they gave the Tenants permission to erect a temporary fence in the backyard of the rental unit but it could not be attached to the rental unit siding and was to be removed when they vacated the rental unit. The Landlords argued the Tenants did not remove the fence when they vacated and attached the fence to the hardy siding which caused damage. Photographs and the invoice were submitted into evidence.

The Tenants position is that the Landlords consented to the Tenants building the fence and the Landlords approved of it. Additionally, they argued the Landlords never raised any concerns after it was constructed and never told them it needed to be removed.

#6 Duct Cleaning

The Landlords argued the Tenants swept pet hair into the heat register vent and this resulted in the Landlords having to have the ducts cleaned. The Landlords submitted photographs and the invoice as evidence. The Landlords advised the ducts were cleaned in 2016 when they bought the rental unit.

The Tenants' Lawyer argued that duct cleaning is the responsibility of landlords and that there is no report submitted into evidence to support that there was excessive pet hair in the ducts.

#7 Ozonator

The Landlords argued there was a smell in the rental unit which required the Landlords to purchase an ozonator to remove the smell.

The Tenants argued they scrubbed the rental unit with vinegar and did everything they could to remove any smell from the rental unit.

#8 Landlord Labour

The Landlords argued they are seeking the cost of their labour to fix the dry wall and paint the rental unit. The Landlords advised they kept track of the hours spent but are only claiming a small portion. The rate was $25/ per hour. A copy of the invoice tracking the work completed by the Landlords was submitted into evidence.

The Tenants' Lawyer argued the Landlords were claiming labour for issues and damages not noted on the Move-Out Report. The Tenants had witness SN, who was present in the rental unit a couple hours before the move-out inspection and testified that the rental unit was left in good condition.

Security and Pet Damage Deposit

The parties agree a move-in condition inspection report was completed on June 14, 2020 (the "Move-In Report") and a copy of the Move-In Report was provided to the Tenants via email within a couple of days. The parties also agree that a move-out condition inspection report was completed June 30, 2023 (the "Move-Out Report) and the Tenants took a picture of the Move-Out Report, but the Landlords did not send a copy to the Tenants.

The parties advised the Tenants texted their forwarding address to the Landlords, but neither party could recall the exact date. The Tenants argued it was a couple day after they moved out on June 30, 2023. I will note a previous Arbitrator authorized the Landlords to retain $100.00 of the security deposit (decision noted on cover page).

Analysis

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To be awarded compensation for a breach of the Act, the tenant must prove the following 4 elements:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Loss of Quiet Enjoyment

Section 28 of the Act, states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following

(a) Reasonable privacy
(b) Freedom from unreasonable disturbance
(c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;
(d) Use of common areas for reasonable and lawful purposes, free from significant interference

Policy Guideline #6 explains that a breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises and temporary discomfort, or inconvenience does not constitute a basis for a breach of the entitlement of quiet enjoyment. When determining the amount by which the value of the tenancy has been reduced Policy Guideline #6 advises that an arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment and the length of time over which the situation existed.

<u>Notices Posted on Door</u>

The Landlords posted receipts stating, "for use and occupancy only", which under Policy Guideline #11 Landlords are encouraged to do to protect their rights. Additionally, based on policy Guideline #12, service of notices by attaching them to the door is an approved method of service. The Tenants argued they requested the Landlord serve notices in another form and even provided authorization to be served via email; however, the Tenants did not provide any documentation to support this. Additionally, the Tenants argued the number of notices caused anxiety for their children and resulted in them moving out. However, no evidence was provided to support this claim. Based on the above, I find that the actions of the Landlords were done to protect their rights under the Act and are allowed under the Act and Policy Guidelines. Furthermore, I find that the

Tenants did not provide sufficient proof of an impact on their quiet enjoyment of this tenancy through the Landlords use of notices.

Inspections

Section 29(2) allows a landlord to inspect a rental unit monthly. Based on the submissions of both parties and notices submitted into evidence, I find that the Landlords did not carry out more inspections than allowed under section 29(2) of the Act. A total of 6 inspections were conducted between August 2022 and June 2023. While this was an increase in the number of inspections carried out by the Landlords compared to previous years, it is well within what is allowed under the Act. As such I find that the Landlords did not breach the Tenants' right to exclusive possession of the rental unit subject to section 29 of the Act. I acknowledge that the Tenants found these inspections stressful; however, I am not satisfied that it qualified as "harassment" as alleged.

Removal of Items

Both parties have presented equally probable explanations about the removal of the lawnmower and potential removal of appliances. Where one party provides a version of events in one way, and the other provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the Tenants have provided insufficient evidence to support that the removal of items was done as a form of harassment.

Tore Down Fence

While the backyard of the rental unit was not enclosed when the tenancy began, the parties agree that the Landlords did consent to the Tenants enclosing the backyard through a fence. I find that the Tenants enclosed the backyard of the rental unit to enjoy the benefits of the yard and the removal of the portion of the fence by the Landlords impacted their ability to use the backyard. The Landlords argued they removed a portion of the fence at the request of the neighbour; however, no documentation or evidence was provided to support this. Based on the above, I find that by removing a portion of the fence the Tenants' entitlement to quiet enjoyment was impacted as the use of the backyard was significantly reduced. As the fence was removed around November 2022 and the Tenants vacated June 2023, I find that their entitlement to quiet enjoyment was impacted for a period of 7 month. Given that the breach of quiet enjoyment impacted the backyard and the Tenants still had access to the rental unit, I decline to award a 60% reduction in rent and find a 15% reduction reasonable given the facts. As such, I award the Tenants a Monetary Order for $2,664.38, for breach of quiet enjoyment.

Based on the above I award the Tenants $2,664.38 for breach of quiet enjoyment due to the removal of a portion of the backyard fence.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

#1 Dishwasher Repair

The invoice submitted by the Landlords states, “found food build up restricting water flow causing leak” and “recommend scraping food of dishes”, which suggests some responsibility for the leak was caused by improper use of the dishwasher. The Tenants argued they did not use the dishwasher since it leaked the first time it was used; however, this was not reported to the Landlords until around 5 months into the tenancy. I do not find that the Landlords have established that the Tenants were completely responsible for the dishwasher leak. I find that a reimbursement of 50% of the repair costs to be reasonable and fair, which amounts to $44.80.

#2 Paint and Supplies

Policy Guideline #1 states “any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition”. The Tenants argued the Landlords consented to the Tenants painting the entire rental unit; however, I find that there is insufficient evidence to establish the Landlords gave explicit consent to the paint the rental unit. As such I find that the bedroom painted hot pink was done without the consent of the Landlords and the Tenants were required to return the wall colour to its original condition.

In regard to the damage to the walls, the Tenants Lawyer argued the Move-In Report cannot be trusted and any damage was there prior to the Tenants moving into the rental unit. However, the Move-In Report had space for the Tenants to disagree and note any issues, but the Tenants selected that the report fairly represented the condition of the rental unit at move-in and did not note any damage to the walls.

The photographic evidence supports that the damage to the walls was beyond reasonable wear and tear, which breached section 36 of the Act. Based on the above, I find the Landlords are entitled to the $220.36, which is stated in the invoice.

#3 Blinds and Weatherstrips

Based on the photographic evidence and condition inspection report, I find that there was damage to the weatherstripping that is beyond regular wear and tear. As such, I grant the Landlords the $148.89 claimed in the application.

The Tenants' Lawyer argued the Move-Out Report did not indicate the number of broken blinds that Landlord MDY testified about during the hearing. However, I will note that the Move-Out Report did indicate 2 blind strings and one stick missing and the Landlords did provide photographic evidence to support this. The blinds were installed in 2016 and based on Policy Guideline #40 have a useful life of 10 years. I award the Landlords $30.00 for the blinds, as I find this considers the useful life of the blinds and the fact that the Move-Out Report indicated 2 blinds stings and one stick missing but no other damage.

#4 Stove

The parties have provided conflicting versions of what happened to the stove in the garage. The Tenants argued they purchased a new stove after the original stove stopped working and Landlord FTP picked up the original stove. The Landlords argued they never picked up the original stove and the Tenants threw it away.

Where one party provides a version of events in one way, and the other provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, I find the Landlords have provided insufficient evidence to support what happened to the original stove. I decline to award the Landlords the amount for the stove.

#5 Siding Repair and Fence Removal

Policy Guideline #1 states that a tenant must obtain consent of the landlord prior to erecting fixtures, like a fence. It goes on to state that "If the tenant leaves a fixture on the residential premises or property that the landlord has agreed he or she could erect, and the landlord no longer wishes the fixture to remain, the landlord is responsible for the cost of removal, unless there is an agreement to the contrary". The parties agree the Tenants had permission to erect the fence and based on the evidence and submissions of both parties I find that there was no agreement that required the Tenants to remove the fence. As such, I decline to award the cost of the fence removal or siding repair.

#6 Duct Cleaning

Policy Guideline #1 states that a landlord is responsible for cleaning heating ducts and ceiling vents as necessary. The Landlords argued the Tenants intentionally swept pet hair into the vents; however, no reports or documentation was provided to establish that there was an excessive amount of pet hair in the vents. As the responsibility for cleaning heating ducts and vents falls on the landlord, I decline to award any compensation for this claim.

#7 Ozonator

The evidence provided by both parties regarding the odor inside the rental unit at the end of the tenancy is diametrically opposed. The odor of a rental unit is particularly difficult to demonstrate to people who are not able to access it. As such, there is little in the way of direct evidence that demonstrates what the rental unit smelled like at the end of the tenancy. However, the Tenants had witness SN testify and they described no smell in the rental unit on the day the move-out inspection was conducted.

Where one party provides a version of events in one way, and the other provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the Landlords have provided insufficient evidence to support that there was a pet urine smell to the extent they have alleged. I decline to award the Landlords the amount for the ozonator.

#8 Landlord Labour

I find that the Landlord's time long accounts for repairs that the Landlords have not provided sufficient evidence to establish they were caused by the Tenants or required a repair. For example, the cleaning outlined in the log. The photographic evidence submitted by the Tenants and Move-Out Report does not support the cleaning being claimed. Additionally, I find that there is insufficient photographic evidence supplied by the Landlords to support the full amount of their labour being requested. As such, I decline to award the Landlords any compensation for their labour.

Section 67 of the Act states 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.

Therefore, I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of $444.05

Are the Landlords entitled to retain all or a portion of the Tenants security and pet damage deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

A tenant is required to provide their written forwarding address to the landlord. In this matter, the Tenants advised they provided their forwarding address via text message to the Landlords, which is not considered “in writing” and is not a permitted method of service as set out under section 88 of the Act. As such, I find that the Tenants have not provided their complete forwarding address in writing to the Landlord. Since the forwarding address was never provided in writing and the Landlord made their application on July 8, 2023, I find that the Landlord did make their application within 15 day deadline.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, 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.

The parties agree they completed the move-in condition inspection report in accordance with section 23(1) of the Act and a move-out inspection condition inspection report in accordance with section 35(1) of the Act but only a copy of the move-in condition inspection report was provided to the Tenants. The Tenants took a photo of the move-out condition inspection report, but no copy was provided by the Landlords. Based on the submissions of both parties I find that the Landlords extinguished their right to the security and pet damage deposits. However, the Tenants did not provide their forwarding address in writing and are not entitled to double the security and pet damage deposits.

As I have awarded both parties compensation, I will offset the amounts against each other. I award the Tenants the return of their security and pet damage deposits, plus any interest pursuant to section 4 of the Regulation. The Tenants are entitled to $1,910.63 for their security and pet damages deposits plus interest.

Are the Landlords or Tenants entitled to recover the filing fee for their applications?

As both parties were partially successful, I offset the filings fees against each other and neither party is entitled to any amount.

Conclusion

I grant the Tenants a Monetary Order in the amount of **$4,030.96** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order for the Tenants for the return of their deposit from the landlord	$1,910.63
a Monetary Order for the Tenants for monetary loss under section 67 of the Act	$2,664.38
Total amount awarded to the Tenants	**$4,575.01**
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act to the Landlord	-$444.05
authorization to recover the filing fee for previous application from the Tenants under section 72 of the Act to the Landlords	-$100.00
Total amount awarded to the Tenants after offset against the amounts owed to the Landlords	**$4,030.96**

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** 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 Act.

Dated: January 8, 2024

Residential Tenancy Branch