DECISION

Introduction

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

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenants' 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 Tenants under section 72 of the Act

It also dealt with the Tenants' Application for Dispute Resolution under 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 requiring the Landlords to return the Tenants' personal property under section 65 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

The hearing took place over three days in December 2023 and January and March 2024. The December hearing was for approximately 1 hour, the January hearing was for approximately 2 hours, and the March hearing was for approximately 3 hours.

The Tenants and the Landlords attended all of the hearings.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of the Proceeding Packages by registered mail and in accordance with the Act. I am satisfied with service of the Proceeding Packages.

Service of Evidence

Neither party raised any issue with respect to service of evidence. I therefore find that all evidence was served in accordance with the Act.

Preliminary Matters – Amendment of Tenants' Claim

During the hearing, it was apparent that the Tenants were claiming compensation in excess of the Small Claims monetary limit. I informed the Tenants that to proceed with such a claim, they would have to file a claim in BC Supreme Court, because my monetary jurisdiction does not exceed the Small Claims limit. The Tenants said that they were prepared to narrow their claim as follows:

Material losses	$23,179.83
Anticipated medical expenses	$4,000.00
Estimated material losses	$2,606.00
Aggravated damages	$2,606.00
Storage and remediation	$2,606.00

Issues to be Decided

Are the Landlords entitled to unpaid rent and utilities?

Are the Landlords entitled to compensation for damage to the rental unit?

Are the Landlords entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement?

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction?

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

Are the Tenants entitled to an order requiring the Landlords to return their personal property?

Is either party entitled to recover the filing fee?

Background and Evidence

The tenancy began on December 1, 2022. Monthly rent was $2,000.00 and a security deposit of $1,000.00 was paid by the Tenants. The Landlord is still holding the Tenants' deposit.

The Tenants moved into the rental unit on December 7**,** 2022. At the time, a move in condition inspection was conducted. No mold or water damage was observed or recorded on what the Landlord called a move in condition inspection report. The document in question, entitled “Report of Residential Premises and Contents”, is an unsigned document with no markings whatsoever, other than a short list of issues (ie. stains, nicks and ticks, dryer vent, etc.). The parties agree that the dryer exhaust pipe was disconnected at move in. The Tenants said that it was likely blowing hot air into the rental unit in the period prior to move in.

The Tenants said that within weeks of moving in, they (along with their infant daughter) suffered from skin issues. They initially thought that it was from an infection such as hand, foot and mouth disease. Their issues persisted until the end of the tenancy.

In late January 2023, the Tenants noticed a mushroom growing in the bathroom of the master bedroom. The Landlords said that the mushroom was immediately addressed by the Landlords’ son, who removed the mushroom, recaulked the shower and purchased paint for the Tenant NM to re-paint. No further investigation of the area behind the wall where the mushroom was found was done by any of the parties. The Landlords said that the shower had been leaking and required recaulking, but that this issue was never reported to them by the Tenants.

Following discovery of the mushroom, the Tenants began to suspect that there was a bigger issue in the rental unit related to mold and that their health issues were the result of mold in their home.

Around this time, the Tenants told the Landlords that they thought that there was mold throughout the house and that testing and remediation were necessary. The Landlord said that they would address the issue in early April, when they returned from wintering in Mexico.

The Tenants also saw different health professionals at this time, including a nurse practitioner and a naturopathic doctor. The naturopathic doctor gave them supplements for “mycotoxin detox”.

The Landlords said that the rental unit is 12 years old and has no history of mold. They said that tenants both before and after the Tenants did not experience any health issues living in the rental unit.

On March 16, 2023, the Tenants emailed the Landlords to indicate that they would be moving out on April 15, 2023 because of the mold in the rental unit and the health issues it was causing. The Landlord JM responded saying “Thank you, accepted.” The email made no mention of payment of rent between March 16 and April 15. On April 2, 2023, the Landlord JM asked about payment of half a month’s rent for April 2023. Shortly thereafter, the Tenants informed the Landlords that they would forfeit their damage deposit in relation to April rent.

The Tenants actually left the rental unit on April 7, 2023. They said that it was no longer possible to live in the rental unit because of the unsanitary conditions.

The Landlord JM said that on April 15, 2023, she contacted the Tenant NM to ask about returning the keys and conducting a move out inspection. She said she did not receive a response. On April 17, 2023, she attended at the rental unit and found that the Tenants' belongings were still there. She contacted the Tenants by email and wrote the following:

> *You gave us notice for the 15th of April. We are assuming that as rent was not paid, and you have vacated the premises, you will not be returning. As an end of tenancy, walk-through was not completed, the keys were not returned, the mail key was not returned and the garage door opener was not returned. Assuming the contents are not wanted, and we will dispose of them. Please confirm, and no reply means that you agree with his above statement.*

The Tenant NM responded saying that he did not accept the Landlord's statement. He said the "space is a biohazard and the stuff remaining in there are unretrievable by me." He said he made repeated attempts to return to the rental unit after leaving on April 7, but that it caused him rashes and chest pain. He said he was waiting to hear from the health authority and the RTB and that he would contact her again shortly.

No evidence of subsequent contact between the Landlords and the Tenants was submitted by either party.

No move out condition inspection was ever conducted. The Landlords took the position that the Tenants abandoned the rental unit.

Both the Tenants and the Landlords made a large number of claims against one another arising from the tenancy and the end of the tenancy. These will be addressed in the analysis section below.

Analysis

Are the Landlords entitled to unpaid rent and utilities?

Unpaid Rent

According to the tenancy agreement, rent is due on the first day of the month.

The Landlords said that the Tenants sent them an email on March 16, 2023. They said that the Tenants told them that they would vacate the rental unit on April 15, 2023. They said that the Tenants paid rent in March 2023 but did not pay rent in April 2023. They seek compensation in the amount of $2,000.00, representing rent for the month of April 2023.

The Tenants said that the Landlords accepted the Tenants' proposal, which was that they would move out on April 15, 2023 and that as a result they should not be held liable for the entire month's rent. They provided evidence showing that the Landlord JM wrote to the Tenants on April 2, 2023 asking for half a month's rent. The Tenants told the Landlords on April 2 that they could keep the deposit, which represented half a month's rent. The Landlords did not respond to this, which according to the Tenants means that they implicitly consented to forgoing or waived their right to the entire month of rent.

I find that the Tenants were required to pay half a month of rent in April 2023. I make this finding based on the fact that it was clearly the understanding between the parties, since the Landlord JM wrote on April 2, 2023 asking about half of the month's rent rather than the full month. I award the Landlords $1,000.00, representing rent due in the month of April. As indicated below, I find it is appropriate to apply the security deposit being held by the Landlord to outstanding rent that is due.

Utilities

The Landlords said that according to their rental agreement, utilities (electricity, gas, garbage) were to be split 50/50 between the upstairs and downstairs tenants. They said that the Tenants did not pay anything for utilities owing in March 2023. They seek $103.83 for the March 2023 gas bill (half of $207.66) and $214.09 for the March 2023 electricity/garbage bill (half of $428.17).

The Tenants said that the Landlord had a very unorthodox approach to utilities, in that they had to pay the previous tenant's final utility bill when they first moved in. They said that as a result, they should not be required to pay the final month's bill.

I find that the Tenants are not required to pay the final month's utility bill. This is based on the Landlords' unusual approach to utility bills, whereby the Tenants paid utilities upon moving in but are not required to pay utilities for their last month. The tenancy ended on April 15, 2023. The Tenants should therefore not have to pay utilities for the period from March 16, 2023 until the end of the tenancy. I do find that an amount should be paid for the first half of March, however. I therefore divide the March bill in two and award the Landlords $158.96 for outstanding utilities.

Are the Landlords entitled to compensation for damage to the rental unit?

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

Flooring/Tile Replacement

The Landlords said that the Tenants broke a tile during the tenancy. It could not be replaced because replacement tiles were not available. Instead, the flooring was replaced completely. The flooring was 12 years old. In an email sent on April 2, 2023, the Tenant acknowledged damaging the tile and said he would pay for its replacement upon being informed of the cost.

The Landlord said that the following costs were incurred in relation to installing new flooring:

> Flooring materials - $2,799.50
> Labour (by Landlords) – 30h x $50/h = $6,000.00
> Underflooring - $537.60
> Hardware - $181.44
> Brad nails - $19.99
> Baseboard - $119.52
> Baseboard - $111.68
> Loss of rent - $2,000.00

At the hearing, the Tenants said they should not be responsible for replacement of the flooring because it was reasonable wear and tear. The Tenants said that a number of tiles had been broken by the previous tenant, which showed that this was a common issue and a sign that the floor was getting old.

I accept the Tenants' evidence that the broken tile was reasonable wear and tear and that the Tenants should not be responsible for replacement of the flooring. In addition, I find that the Landlord's claim is disproportionate; it is unreasonable to claim replacement of all of the flooring because a single tile was broken. This claim is therefore denied.

Wall repair

The Landlord said that there was scotch tape and duct tape damage on the walls around the dining room window. No pictures of the damage were submitted. The Landlord said that the area was filled, sanded and painted. The work took four hours. The Landlord claimed $200.00 for labour and supplies.

The Tenants said that the Landlords did not submit sufficient evidence proving their claim. I agree. I am not satisfied that there was damage to the walls around the dining room window. No pictures were submitted by the Landlords. This claim is therefore denied.

Dishwasher

The Landlords said that the Tenant NM had installed a new dishwasher improperly. This was done with the Landlords consent – the Tenant had found and purchased a new dishwasher, was reimbursed by the Landlords, and was allowed to install it himself. The Landlord MM said it was not connected to the electrical system properly, and that he had to uninstall it, reinstall it and reconnect it to electrical system. It took 2 hours to do this work and the Landlord claimed $100.00 at $50.00 an hour.

The Tenants said that this claim was unreasonable. The Tenant NM did not charge the Landlord for his labour. The Tenant informed the Landlord that the dishwasher was going to be installed at an angle. The dishwasher worked perfectly after being installed by NM.

I decline to award the Landlords compensation for dishwasher reinstallation. The Landlords took a risk in allowing the Tenant to install the dishwasher himself. The Landlords also benefited from the Tenant's labour, including procuring the dishwasher and disposing of the old one. These are all normally tasks that a landlord is responsible for. Similarly, a landlord is normally responsible for installation of a major appliance. This claim is therefore denied.

Are the Landlords entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement?

To be awarded compensation for a breach of the Act regulation or tenancy agreement, 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

Nominate damages can be awarded where there is a breach of the Act but the loss is not proven with precision.

Mold testing

The Landlords sought reimbursement of air sampling testing by APEX EHS. APEX was retained after the Tenants left, around April 26, 2023, because the Landlords had been told by the Tenants that the house was contaminated. The Landlords acknowledged that they did not believe that there was a mold issue, given the lack of smells or evidence on the walls. They submitted an invoice for APEX in the amount of $1,102.50.

By their own admission, the Landlords indicated that they did not believe that mold testing was necessary because there was no mold issue. It defies logic that the Tenants

should be held responsible for unnecessary testing conducted after the end of the tenancy by the Landlords. This claim is denied.

Storage, Legal Ad, Fuel, Garbage bags

The Landlords sought reimbursement for costs arising from the storage and disposal of the Tenants belongings. In sum, the Landlords took the position that the Tenants abandoned a considerable amount of personal belongings. These had to be sorted and were either immediately disposed of or stored in accordance with the requirements of the Act. The Landlords said that they also took out an ad related to the abandoned property because of their legal obligations. Finally, they incurred fuel costs arising from numerous trips between the rental property, their house, the storage centre, landfills, and thrift shops (both in Kelowna and Summerland).

They made the following claims:

> Storage Centre for one month - $101.92
> Storage at the Landlords' home for 1.5 months - $225.00
> Legal Ad - $152.41
> Fuel - $270.00
> Landfill charges - $98.30
> Garbage bags - $31.89

The Tenants said that these charges could have been avoided. They said that the Landlords told them on April 17, 2023 that they would "dispose" of their belongings, without advising them that they were going to pack and store their belongings or take them to Kelowna. The Tenants also said that the property was not abandoned, but that the Tenants were consulting with different authorities to determine what to do.

I substantially agree with the Landlords claims. I find that in failing to deal with their own belongings, the Tenants put the Landlords in a position where they had to deal with the property in accordance with the Act. I agree that the property was abandoned – following the Tenant NM's email on April 17, 2023, the Tenants did not communicate with the Landlords again about it. Upon discovering that the rental unit was not properly vacated, the Landlord JM contacted the Tenant NM to determine the Tenants' intentions. The "ball" was in their court, and it was incumbent on them to take steps to deal with their personal belongings.

I find that the Landlords should be reimbursed for the storage centre invoice ($101.92), the legal ad ($152.41), landfill charges ($98.30), and garbage bags ($31.89). There was no actual cost to the Landlords to store the property at their home, and so I decline this claim. I agree with the Tenants that the fuel claim is exaggerated because there was no need to go to Kelowna – the items could have been disposed of at the landfill in Summerland. I do find some fuel costs should be recovered by the Landlord, however, and so I award nominate damages of $30.00.

Locks

The Landlords sought $102.14 in relation to 4 locks that had to be rekeyed because the Tenants did not return the keys when they left the rental unit. An invoice was submitted. The Landlords also sought $50.00 compensation for the time spent re-installing the locks, saying that it took approximately 1 hour.

The Tenants said that this could also have been avoided had the Landlords communicated with them about the locks. I do not agree. It was incumbent on the Tenants to return the keys to the property. It was reasonable for the Landlords to change the locks after the keys were not returned to them.

I award the Landlords $102.14 for the 4 locks and $25.00 for the Landlord's labour.

Cleaning

The Landlords said that the Tenants did not clean the rental unit before leaving. On May 26, 2023, they hired a private company to clean the rental unit at a cost of $125.00 (5 hours at $25.00 an hour). The Landlords submitted a copy of the invoice for the cleaning and pictures of the state of the rental unit when they recovered possession.

The Landlords also said that the carpets in the rental unit were left in a dirty state. There are carpets in the 3 bedrooms and on the stairs. The tenancy agreement requires carpet cleaning upon move out, which the Tenants did not do. The Landlord claimed $210.00 in relation to this item and submitted a receipt in support of the expense.

The Tenants disputed both claims. They said that they kept the rental unit clean. They also said that cleaning was only done a month after they moved out. In the interim, the Landlord had done work on the rental unit. They also questioned the cleaning invoice, because the Landlords appeared to hire their daughter to do this work (this was not disputed by the Landlords).

Regarding carpet cleaning, the Tenants said that carpet cleaning was not necessary after 4.5 months of living in the rental unit. Policy Guideline 1 indicates that tenants are responsible for steam cleaning and shampooing carpets when the tenancy lasts over a year.

I agree with the Tenants that at least some of the cleaning related to the renovations that were undertaken after the Tenants moved out. I also agree that there is no evidence indicating that professional cleaning of the carpets was necessary after 4.5 months. I find the Landlords should be awarded some compensation, however, because it is clear that the Tenants did not clean the rental unit when they vacated. This would have been impossible because of the amount of belongings that were left behind. The pictures submitted by the Landlord show that the rental unit was not cleaned. I therefore award the Landlord nominate damages in the amount of $50.00.

Labour

The Landlords claimed $1,800.00 for the 36 hours spent packing and moving the Tenants belongings. The Landlords said they should be compensated at a rate of $50.00 an hour, based on a clause in the tenancy agreement which states that “In the event the landlord repairs tenant damage the tenant is responsible for the landlord’s time at $50.00 an hour and the cost of material.”

The Tenants did not respond to this claim in their written submissions or at the hearing.

I do not find that the clause cited by the Landlord applies to work done related to abandoned property, because it is not repairs.

Based on the evidence submitted and heard, which included considerable pictures showing the volume of belongings left behind by the Tenants, I find compensation for the Landlords’ time is appropriate. I find an award of nominal damages is appropriate. I award the Landlords $250.00 to compensate them for the time spent dealing with the Tenants’ property.

Are the Landlords entitled to retain all or a portion of the Tenant’s security deposit in partial satisfaction?

The Landlords are entitled to retain all of the Tenants security deposit in partial satisfaction of the compensation owed to them. This was agreed to in writing at the end of the tenancy.

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

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

- the Landlords have 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 Tenants acted reasonably to minimize that damage or loss

The Tenants position was that the rental unit had a mold problem, the Landlords did not act in a diligent, reasonable or responsible manner in light of their obligations to provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards, and that as a result of the Landlords’ conduct (or lack thereof) the Tenants suffered losses.

The Tenants must convince me, on a balance of probabilities, that there was a mold issue in the rental unit that caused their health issues and other losses. In support of such a finding, the Tenants put forward the following evidence:

- a mushroom was found growing out of the shower in late January 2023
- there were signs of mold growth by the sink, windows and the toilet bowl
- they said that when they first moved in, there was a strong “perfumed” smell, suggesting that the Landlords were masking the smell of mold, but that it gradually appeared over time
- from December 2022 to April 2023, the Tenants experienced various symptoms, particularly related to their skin
- the Tenants’ daughter had elevated levels of mycotoxins six months following the end of the tenancy

Some of these points are disputed by the Landlords while some are not. The Landlords admit that there was a mushroom growing in the shower. They also accept that the Tenants and their daughter had health issues. They dispute that there was mold growing in any other areas of the house. They also said that there was no moldy or musty smell, particularly when they recovered possession of the rental unit. They said that there are a variety of potential causes of the Tenants’ health issues and that there is no evidence linking them to the rental unit or mold.

Based on the evidence before me, I am not convinced, on a balance of probabilities, that mold in the rental unit caused the Tenants’ health issues or losses. This does not mean that there was no mold, but instead speaks to the complexity of the issue and the difficulty in proving that mold was present and having an impact on them.

I make this finding for several reasons. First, I find that the evidence relating to mold is largely circumstantial. The Tenants had health issues, noticed that there was a mushroom, and attributed their health issues to a broader mold problem.

While I accept that there was a mushroom growing in the shower, I am not convinced that this means that there was mold throughout the house. The evidence simply does not support such a finding.

The Tenants are clearly careful and conscientious individuals who took their wellbeing and that of their family extremely seriously. It is inexplicable then, that the Tenants did not take pictures or write to the Landlords about any visible mold in the rental unit (other than the mushroom). For example, the Tenant LL said that she would clean the toilet bowl each week and that mold would re-appear within 3-4 days. Despite this, not a single picture of the toilet bowl was submitted, nor did the Tenants ever raise this issue with the Landlords. They also said that “every window [had] mold growth.” The Tenants did submit pictures of some window frames with black marks. The Landlords disputed that this was mold and said that instead it was staining of the wood. I find that the marks do not look like mold (or live mold). The pictures of the bathroom sink/caulking show wear, but do not show a mold problem.

The Tenants also said that the Landlords masked the musty, moldy smell when they first moved in with a fragrance. This is not plausible. Perfumes do not last for weeks. There is no evidence at all of the Tenants complaining about a moldy or musty smell in

the rental unit until the end of the tenancy, despite the fact that it would have been apparent soon after they moved in. I do not accept that this is true.

Regarding the daughter's mycotoxin levels, the test was conducted well after the Tenants moved out. There is no evidence that her mycotoxin levels were caused by the rental unit. The Tenants' own materials indicate that mycotoxins levels can be influenced by a variety of factors, including food. I am also hesitant to rely on this evidence given that it was not a test done in Canada, nor was it recommended by a medical doctor.

The Landlords' testing, from APEX, suggests that mold was impacting air quality in the master bedroom. However, I was provided with no compelling evidence showing that the levels of mold detected could cause the health issues that the Tenants dealt with. In addition, the Tenants themselves discounted the legitimacy and merits of APEX's work, saying that air testing was not recognized or recommended by Health Canada.

Simply put, the Tenants have not submitted sufficient evidence proving that there was a mold in the rental unit that caused their health issues. This is a difficult fact to prove and would likely have required independent, expert assessment or evidence (or at the very least, considerable photographic evidence). It is understandable that the Tenants were not focused on the need to prove that there was a mold issue (and its impact) around when the tenancy ended, given their concerns with their own health and well-being, which I find sincere. However, having brought a claim against the Landlords for compensation arising from a breach of the tenancy agreement or the Act, the Tenants are required to prove their claim. I find that they have not done so.

Each of the Tenants' compensation claims is dismissed. For the reasons stated above, the link between the rental unit and the Tenants' health issues is unproven, therefore the Landlords should not be responsible for past or future medical expenses. There is no compelling evidence that mold colonized the Tenants' belongings and that they were rendered completely unusable, therefore the Landlords should not be required to pay for their replacement costs.

The Tenants' claim is therefore dismissed without leave to reapply.

Are the Tenants entitled to an order requiring the Landlords to return their personal property?

The Tenants did not pursue this claim. This can be explained by the fact that the Landlords said that by the time of the hearing, they had disposed of all of the Tenants' property. Instead, the Tenants sought monetary compensation, as discussed above. Because the Landlords no longer have in their possession any of the Tenants' property, this claim is dismissed without leave to reapply.

Is either party entitled to recover the filing fee?

The Tenants were unsuccessful and are not entitled to recovery of the filing fee. The Landlords had only limited success. In the circumstances, I decline to award recovery of the filing fee.

Conclusion

The Landlords application is partially granted.

I grant the Landlords a Monetary Order in the amount of $974.91 under the following terms:

Monetary Issue	**Granted Amount**
April rent	$1,000.00
Utilities	$158.96
Storage Centre	$101.92
Legal Ad	$152.41
Landfill charges	$98.30
Garbage bags	$31.89
Fuel	$30.00
Locks	$127.14
Cleaning	$50.00
Time	$250.00
Less – Damage deposit with interest	$1,025.71
Total Amount	$974.91

The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, it may be enforced in Provincial Court (Small Claims).

The Tenants application is dismissed without leave to reapply.

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: March 22, 2024

Residential Tenancy Branch