DECISION

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 43 disputing a rent increase for a capital expenditure;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

The Landlords file their own application seeking the following relief under the *Act*:

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

M.S., K.L., and T.L. attended as the Tenants. J.G. attended as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Application and Evidence

The parties advise that they served their application materials on the other side. All the parties acknowledge receipt of the other sides application and evidence.

However, the tenants M.S. and T.L. note some issues with service, namely that they were forwarded the Landlords' evidence from their co-tenant K.L. I was advised by the Landlord that his application materials were sent via registered mail to the tenants' forwarding address. M.S. and T.L. advise that they are in a new housing development and have had issues with their mail. Despite these issues, the Tenants advise that they were prepared to proceed with the hearing.

Accepting this, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Tenants' Claims

Review of the Tenants' applications shows two issues. First, there does not appear to be a rent increase for a capital expenditure. Second, the basis for their claim that the Landlord comply with the *Act* is unclear.

By way of some context, the claim disputing the rent increase pertains to an alleged illegal increase of 25% after T.L. moved into the rental unit. At no point during the hearing was there any discussion surrounding a capital expenditure.

I accept that the Tenants mislead their application as their intention was merely to dispute the rent increase. Accordingly, I amend the application to remove reference to disputing a capital expenditure.

With respect to the second issue, I note that the claim under s. 62 of the *Act* is stated as follows in the application:

> I had reached out to the landlord expressing my concerns. I have text messages of his refusal and a phone call of him threatening me on false accounts and calling me names when I provided him with the information I was given from the landlord and tenancy board.

I am further advised by the parties that the tenancy ended on December 31, 2023.

I enquired with the Tenants why they sought an order under s. 62 of the *Act* given that the application is unclear, and these claims are only relevant to ongoing tenancies. The Tenants advise that they were uncertain when they filed out the application, acknowledging the claim was in error.

Accepting this, I dismiss their claim under s. 62 of the *Act* without leave to reapply.

Issues in Dispute

1) Did the Landlords properly impose the rent increase?
2) Are the Tenants' entitled to a monetary order compensating for loss or other money owed?
3) Are the Landlords entitled to a monetary order compensating for damages to the rental unit caused by the Tenants or their guests?
4) Are the Landlords entitled to offset their monetary claims against the deposits paid by the Tenants?
5) Is either side entitled to its filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I

have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The tenancy started on January 1, 2023.
- The tenancy ended on December 31, 2023.
- The Tenants paid total security deposit of $250.00 and a pet damage deposit of $300.00.

I have been provided with multiple tenancy agreements by the parties. The first, signed August 12, 2022, lists M.S. and another individual, C.K., as co-tenants with a term beginning on August 31, 2022. A second tenancy agreement, with M.S. as the sole tenant, was signed on November 30, 2022. The final tenancy agreement, listing M.S. and K.L. as co-tenants, was signed on December 7, 2022.

I have also been provided with addendums to the tenancy agreements signed on August 12, 2022, November 30, 2022, December 7, 2022, June 6, 2023, and October 31, 2023.

As explained to me by the parties, the tenancy agreements were revised as people came and went from the rental unit. C.K. vacated the rental unit sometime in November or December 2022, which prompted a revision listing M.S. as the sole tenant. This was revised once more when K.L. moved in beginning on January 1, 2023.

The addendums correspond with tenancy agreements signed on the same date. For the purposes of this matter, the addendum signed December 7, 2022 (the "December Addendum") corresponds with the third tenancy agreement.

The parties explain that when T.L. moved into the rental unit the addendum dated June 6, 2023 (the "June Addendum") was signed adding him as an occupant. The final addendum signed October 31, 2023 (the "October Addendum") removed T.L. as an occupant.

1) Did the Landlords properly impose the rent increase?

The Tenants' application describes this claim as follows:

> [M.S.] and [K.L.] signed a 1-year lease for Jan. 1, 2023, until Dec. 31, 2023, at $2,000 per month. When [T.L.] was added by Addendum on June. 6, 2023, the [Landlords] made an illegal rent increase of 25%, equalling to $2,500 per month. They did not give us the required 3-month notice or have us sign the required Notice of Additional Rent Increase form. evidence: messages with landlords and e-transfers

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

In this instance, there is no dispute over the following facts:

- The June Addendum increased rent from $2,000.00 as set out in the tenancy agreement to $2,500.00.
- The Landlords discovered that T.L. occupied the rental unit in either late May 2023 or early June 2023, which prompted the June Addendum.
- The rent increase was made retroactive to April 1, 2023, with the tenants M.S. and K.L. paying $1,501.00 to the Landlords on June 5, 2023.

There was some dispute on when T.L. moved into the rental unit. T.L. advises that he previously lived with his parents at their home some distance from the rental unit. M.S. says that T.L. stayed with her during the week as he worked in the community in which the rental unit was located. M.S. further says that his occupancy at the rental unit was gradual as her relationship with T.L. had only just started.

The Landlord says that he understood T.L. moved into the rental unit beginning April 1, 2023 as per conversations with the Tenants themselves.

The Landlord's evidence contains text messages between one of the Landlords and M.S.. Relevant to this dispute, it contains the following messages from June 1, 2023:

> Landlord: Hi [M.S.],
>
> I just want to clear a few things up about [T.L.] as a tenant.
>
> First, you need to confirm with [K.L.] what a rental split will look like between you (whether that be equal payment between all parties or otherwise). [K.L.] and yourself are the only current names on the fixed term contract and as such have equal say.
>
> Second, it has come to my attention that that [T.L.] has been living in the space without a contract. He will need to pay for the time he has already speat as a tenant. Please confirm if it is the case that he is currently living there.
>
> Third, you will need to decide with [K.L.] how you would like to bring [T.L.] in as a tenant (whether we continue the same contract with him added as an addendum, or, alternatively if you would like to take [T.L.] as a subtenant, or lastly terminate the current contract and create new terms altogether)
>
> Regardless, I think it is a good idea to speak together as soon as possible. That way, I can be as transparent as possible and let every party understand their options.
>
> As a note, our offer stands the same at $2500/month for three people. The split will have to be negotiated between the three of you.

Please let me know when you're available to discuss this as it is best to do so in person.

Please feel free to ask me any questions in the mean time.

Tenant M.S.: […]

When I told [K.L.] about the rental split previously, her response was "fair enough" and that was it so i assumed it was okay but now she's arguing with me so we're currently not in agreement.

[T.L.] had a lease at [redacted] until April. 1st and he's been here since then. He helped [K.L.] and I with rent that month and then i brought it up with you shortly after. I was hesitant on him actually moving in at first because of past situations i've been through but now obviously it's what i'm wanting. He has been here a lot the last few months, even with his prior lease because i would help him get to work.

I'm trying to discuss with her about the lease but ideally we'd terminate and sign something new.

[…]

i also want to apologize for this entire situation, it not only sucks for us but i know its a hassle for you guys as well. hopefully we can get this sorted asap and everything will work out 😊

Part 3 of the *Act* sets out the process, timing, and amount of rent increases permitted. Relevant to this dispute, s. 40 of the *Act* specifies that a "rent increase" does not include an increase in rent that is for an additional occupant and authorized under the tenancy agreement as a term referred to in s. 13(2)(f)(iv) regarding additional occupants. Further, s. 43(1)(c) of the *Act* permits a landlord to a rent increase to an amount agreed to by the tenant in writing.

The December Addendum notes under clause 3 that additional tenants and/or occupants are not permitted during the tenancy. The tenancy agreement and December Addendum do not have an additional occupant fee as contemplated by ss. 13 or 40(b) of the *Act*.

I note that it is not disputed that the tenants K.L. and M.S. breached their tenancy agreement by permitting T.L. move into the rental unit beginning April 1, 2023. I find it was April 1, 2023 as per M.S.'s admission in her text messages with the Landlord. The Landlords were advised of T.L.'s occupancy in the rental unit, which prompted all the parties to renegotiate the terms of the tenancy.

As evidenced by the June Addendum, rent was increased to $2,500.00. All the parties signed the June Addendum.

To be clear, I do not find that the increase strictly falls within the contemplation of a rent increase. The Tenants breached their tenancy agreement, which could have prompted the Landlords to either insist T.L. leave or they could have issued a notice to end tenancy either for there being too many occupants or a breach of a material term of the tenancy agreement. Rather than choose to do so, the parties renegotiated the terms of the tenancy agreement, thus settling the issue and revising the addendum applicable to the tenancy agreement.

Further, the Tenants were under no obligation to agree to the rent increase, as evidenced by the text messages provided by the Landlords. Many options were discussed and, ultimately, they agreed to paying $2,500.00 per month in rent so that T.L. could continue to reside at the residential property. It seems incongruous to me for the Tenants to now insist that they should not have done so even though they breached the tenancy agreement, specifically the December Addendum.

Even if I am wrong and the increase was not born of a settlement agreement, I would further note that a landlord may impose a rent increase in an amount agreed to by the tenants in writing as per s. 43(1)(c) of the *Act*. The June Addendum clearly falls within contemplation of s. 43(1)(c) in any event.

I find that there was no improper rent increase. This portion of the Tenants' application is dismissed without leave to reapply.

2) Are the Tenants' entitled to a monetary order compensating for loss or other money owed?

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenants claim $1,751.00 and describe the claim as follows in their application:

> [T.L.] was added to MS and KL's original lease by Addendum on June. 6, 2023. [The Landlords] illegally back-charged us additional rent for April and May; equalling $1,167 more for TL and MS, and $334 for KL. Additionally, the landlords charged TL a security deposit of $250 when not required to do so. TL

terminated the addendum for Dec. 1, 2023, and still has yet to receive the deposit back. evidence: messages with landlords and e-transfers

Dealing with this in two portions, the Tenants claim $1,501.00 in compensation for overpayment of rent between April and June 2023 due to the occupancy issue noted above. First, the parties settled the issue of the tenants' breach of the tenancy agreement. The issue was canvassed by the parties, the tenants agreed to backdate the rent increase. The Landlords' evidence contains deposit receipts over the relevant period, which show that the $1,501.00 was paid by M.S. and K.L. on June 5, 2023. Review of the payment history confirms that this in relation to the increased rent for April, May, and June 2023.

I find that the Tenants are attempting to go back on a settlement agreement addressing their breach of the tenancy agreement. Nobody twisted their arm here. They had a choice: renegotiate, kick T.L. out, or risk the Landlords issuing a notice to end tenancy. They made their choice, which included payment of the increase retroactive to April 1, 2023, which is when M.S. says T.L. moved into the rental unit.

I accept that the Tenants paid $1.00 more than they ought to have as per the increase of $500.00 over the three months. I find that this overpayment constitutes a breach of the terms of the June Addendum and the parties' settlement, such that the Tenants are entitled to payment of the $1.00.

Looking at the payment of $250.00 for the additional security deposit, s. 20(a) of the *Act* prohibits the Landlords from requiring a security deposit at any other time than when the tenancy started and s. 20(b) of the *Act* prohibits there being more than one security deposit.

It is undisputed that the T.L. paid an additional $250.00 as a supplemental to the security deposit paid under the tenancy agreement. The June Addendum makes no reference to this additional amount.

I find that the additional security deposit of $250.00 was obtained contrary to s. 20 of the *Act*. I find that this amount is beyond the confines of the settlement agreement. I note that T.L. was brought into the rental unit on the June Addendum as an occupant, which does not mean a new tenancy agreement was made, despite that option being discussed.

I find that the Tenants are entitled to the return of the additional security deposit, being $250.00, irrespective the outcome of the Landlords' monetary claim.

3) Are the Landlords entitled to a monetary order compensating for damages to the rental unit caused by the Tenants or their guests?

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the

rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Landlords claim $2,336.25 in compensation and describe the claim as follows in their application:

> Cleaning Fees - the rental unit was left dirty and uncleaned. Wall damage - the walls were left dirty, damaged, and in need of patching/repair and paint. The damage severity exceeds the amount of their damage/pet deposit.

The Landlords provide a monetary order worksheet, which particularizes their monetary claim as follows:

Cleaning Costs	$551.25
Wall patch/Repair/Paint	$1,785.00

At the hearing, the Tenants advise that they agree to paying the cleaning costs incurred by the Landlords. I find that the Tenants have accepted the Landlords' claim for cleaning costs, thus comprising a settlement on this portion of the claim. I grant the Landlord a monetary order for $551.25.

The Landlord testified that the Tenants left holes in the walls that were excessive in number and that there were scratches in the wall from the Tenants' pet. I am advised that the Tenants patched the holes prior to vacating. The Tenants deny responsibility for the cost of repainting the rental unit.

The Landlords' evidence contains an estimate for the wall repair and repainting in the amount of $1,785.00. I enquired from the Landlord whether this amount was paid. The Landlord advised that he was uncertain of the specific cost and that no final invoice was made for the wall repairs.

Irrespective of the whether the Tenants are responsible for the costs of repainting the rental unit, the Landlords, as claimants, must quantify their claim. This means evidence of actual costs incurred. The Landlord admits, at the hearing, of not knowing what the actual costs for repainting the walls were, estimating that the $1785.00 is more or less accurate.

I find that the Landlords have failed to prove their claim by demonstrating clear evidence of actual costs incurred. It may be that the Tenants were ultimately responsible for causing damage to the wall in breach of their obligations under s. 37(2) of the *Act*. However, at this stage the Landlords make a nebulous ask for compensation for this expense based on a best estimate. I do not find it appropriate to grant monetary claims for damages to the rental unit when such costs can be clearly proven by reference to receipts, account information, and the like, all of which can prove an actual loss.

I dismiss the Landlords' claim for the wall repairs, without leave to reapply.

In total, I grant the Landlords $551.25 for their cleaning costs, as agreed to by the Tenants.

4) Are the Landlords entitled to offset their monetary claims against the deposits paid by the Tenants?

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

I am advised by the parties that the Tenants provided their forwarding addresses in their application, which was served on the Landlord in mid-December 2023. I further accept that Tenants vacated the rental unit, or at least the last tenant vacated the rental unit, on December 31, 2023, which is when the Landlords regained possession.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their application against the security deposit and pet damage deposit on January 9, 2024. Accordingly, I find that they did so within 15 days of the end of the tenancy as permitted under s. 38(1) of the *Act*.

Offsetting the Landlords' order for monetary compensation from the security deposit and pet damage deposit, I order that the Landlords return $882.89 to the Tenants ($1,100.00 + $300.00 + $34.14 - $551.25).

I note that this does not include the $250.00 discussed above. I further note that the security deposit, being $1,100.00, exceeds the restriction imposed by s.19(1) of the *Act* that the security deposit does not exceed half a month's rent payable under the tenancy agreement, which was $2,000.00 per month when it was signed on December 7, 2022. Review of the previous tenancy agreements shows that the security deposit was originally imposed in August 2022, when rent was paid in the amount of $2,200.00.

I certainly question the Landlords practice of updating tenancy agreements with such frequency, which invariably led to some confusion on what the security deposit should have been. In any event, I understand that the issue was largely inadvertent. In any event, I treat the $1,100.00 as the security deposit and charge interest on the total.

I note that I have also considered the question of extinguishment. I find that it is not applicable here. The Tenants and Landlords confirm the condition inspection report process was followed as per ss. 23 and 35 of the *Act*. Finally, I have also considered whether the pet damage deposit was properly retained as security for damage caused to the rental unit caused by the Tenants' pet. I find that it was. Despite being unsuccessful on their claim, I do not find that it was inappropriate for the Landlords to hold either deposits pending outcome of their application.

5) Is either side entitled to its filing fee?

I find that neither party was successful on their application. As such, I dismiss both their claims under s. 72(1) of the *Act* for their filing fees, without leave to reapply.

Conclusion

I dismiss the Tenants' claim disputing the rent increase, without leave to reapply.

I grant the Tenants' monetary claim in the amount of $251.00.

I grant the Landlords' monetary claim in the amount of $551.25.

I dismiss both the sides claim for their filing fee, without leave to reapply.

I order that the Landlords return the balance of the security deposit, pet damage deposit, and interest to the Tenants.

Offsetting the amounts above, I grant a monetary order in the Tenants' favour in the total amount of **$1,133.89** ($251.00 + $1,100.00 + $300.00 + $34.14 - $551.25).

It is the Tenants obligation to serve the monetary order on the Landlords. Should the Landlords fail to comply with the monetary order, it may be enforced by the Tenants at the BC Provincial 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: March 5, 2024

Residential Tenancy Branch