

DECISION

Introduction

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

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act

It also dealt with the Landlord's Application for Dispute Resolution under 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
- 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

Both the Landlord and the Tenants attended the hearings.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Landlord was served the Proceeding Package by registered mail on August 26, 2023 and in accordance with the Act. The Landlord also acknowledged receiving the Tenant's amendment.

Service of Evidence

Both parties acknowledged receiving the other party's evidence in relation to their applications.

Preliminary Matters - Amendment

The Tenants sought to amend their application to increase their monetary claim from \$19,889.09 to \$34,962.10. The Landlord did not object to the Tenant's amendment and acknowledged receiving a copy of it in advance of the hearing. I therefore allow the amendment.

Issues to be Decided

Are the Tenants entitled to reimbursement of the cost of emergency repairs?

Are the Tenants entitled to compensation for damage or loss?

Are the Tenants entitled to an order for the return of their personal property?

Is the Landlord entitled to unpaid rent or utilities?

Is the Landlord entitled to compensation for damage to the rental unit?

Are the Tenants entitled to the return of their security deposit?

Is the Landlord entitled to retain the Tenants' security deposit?

Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Tenants rented a mobile home from the Landlord on his farm. The Tenants moved in in December 2016. Monthly rent at the start of the tenancy was \$900 (\$200.00 of which was allocated to hydro). The Tenants vacated the rental unit in May 2023.

Both the Landlord and Tenant now make a number of claims against each other arising from the tenancy.

These will be addressed in turn below.

Analysis

Are the Tenants entitled to reimbursement of the cost of emergency repairs?

Section 33(3) of the Act allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.

Section 33(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

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

- 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

In their application, the Tenants claim compensation arising from kitchen and plumbing issues in December 2022. They say that they had to leave the rental unit and stay in a hotel, and incurred other related costs.

These types of claims are not emergency repairs and therefore cannot be claimed under section 33 of the Act. Tenants can only claim actual costs incurred to conduct emergency repairs, provided the provisions of section 33 are satisfied. I will address the hotel claim and related expenses in the Tenants' compensation claim below, however. The claim for reimbursement of the cost of emergency repairs is dismissed without leave to reapply.

Are the Tenants entitled to compensation for damage or loss?

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

- 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

The Tenants made a large number of claims amounting to \$34,962.10. I will address each in turn.

Failure to complete repairs

The Tenants said that the Landlord failed to make necessary repairs to the rental unit during the tenancy. In particular, the Tenants said that the fan over the stove did not work – rather than exhaust air outside the rental unit, it would allow cold air to enter. The Tenants also said that from 2020 to 2023, the furnace did not work properly. They often had no heat, particularly when it was very old outside. The Landlord also took two years to repair a washing machine that was damaging their clothes. The rental unit also

had sewer issues, which meant that at times they could not use the sink and had to do dishes outside. The Tenants said that they valued the “loss to the tenancy” at \$6,000.

The Landlord said that the kitchen sink was plugged twice in 7 years. He said that the fan worked properly. He also said that whenever he checked the furnace/heating system, it worked fine – except for on one occasion when he said that the Tenants had turned a switch off.

I accept the Tenants evidence. The Tenants submitted pictures and contemporaneous text messages to the Landlord complaining about the various issues they raised, which convince me that the problems raised were legitimate.

However, I find the Tenants have not proven an actual loss. The amount they submitted - \$6,000 – is unexplained and has no connection to any actual losses incurred by the Tenants. I therefore dismiss the Tenants’ claim.

Rent increases/overpayment

The Tenants also claimed that the Landlord illegally increased the rent on several occasions between 2019 and 2023. The Tenants said that they were not given notice as required by the Act, and that the rent increases were in excess of what the Act permitted.

The parties agreed that at the start of the tenancy, monthly rent was \$700.00 plus \$200.00 for hydro. In total, the Tenants paid \$900.00. I find that this total amount was rent, notwithstanding the fact that the parties allocated certain amounts to hydro. Landlords can have tenants pay for utilities, but in order to do so must submit bills to tenants. It is clear that this was not done in this case, which makes the entire amount paid by the Tenants rent.

The Tenants claimed rent overpayments for the following months:

\$50 – March, April, May, June, November, December (2019); January, August, September (2020)

\$100 – September, October, November, December (2021); January, February, March, April, May, June, July, August, September, October, November, December (2022)

In other words, in the months when \$50.00 was claimed, the Tenants paid \$950.00, and the months where \$100.00 was claimed, the Tenants paid \$1,000.00.

The Landlord did not dispute the amounts paid by the Tenant. He said there were two verbal increases. In February 2019, the Landlord told the Tenants that they would have to pay an addition \$50.00 to reflect increased hydro costs as of March 1, 2019. On March 1, 2021, the Landlord told the Tenants that they had to pay an additional \$50.00 rent increase as of April 1, 2021.

Sections 40 to 43.1 of the Act set out how Landlords can increase rent. Landlords must give notice in writing using the approved form at least 3 months before the effective date of the increase. Rent can only be increased in accordance with the regulations, unless agreed to by the tenant in writing or ordered by the director. Section 43(1)(5) of the Act states that if a landlord collects a rent increase that does not comply with Act, the tenant may deduct the increase from rent or otherwise recover the increase.

It is clear that the Landlord did not comply with the Act. Notice was not given in writing, nor were the Tenants provided with sufficient notice. In addition, the increase exceeded the rent increase limit, which was 2.5% in 2019 and 0% in 2021.

I therefore find that the rent increases were illegal and the Tenants is entitled to recover the rent overpayments. While the total amount is \$2,050.00, the Tenants claimed \$1,925.00. This is likely because of the fact that the Tenants' claim risked exceeding the monetary jurisdiction of the RTB. The Tenants are therefore awarded \$1,925.00. The Tenants are not permitted to bring a new claim in relation to any other months where rent was illegally increased by the Landlord.

Loss of Quiet Enjoyment - Cows

The Tenants also said that throughout the tenancy, the Landlord's cows would come onto their yard, defecate, and damage their property. They said that this was an ongoing issue and submitted text messages showing that they repeatedly complained to the Landlord. They also submitted many pictures showing a large number of cows in their yard. They said that the Landlord failed to repair and maintain a cattleguard, which would have kept the cows away from the property. On a few occasions, there was a bull in the yard, which scared the Tenants.

The Tenants claimed the following compensation in relation to loss of enjoyment of the yard:

- \$6,000.00 – loss of quiet enjoyment of yard
- \$10,800.00 – cost of picking up poop and chasing cows out of yard
- \$844.10 – paddleboard replacement
- \$899.99 – lawn chairs replacement

The Landlord said that for 6 months of the year, the cows are kept indoors and did not roam on the property. He said that he did his best to repair the fence and the cattleguard when the Tenants complained. He said it was only at the end of the tenancy – in the last two years – that the Tenants complained. He said that sometimes the cows were on their property because they left the gate open. Finally, he said there was no proof of damage to their property.

I agree that there is no evidence showing damage to the Tenants property or their replacement cost. I therefore do not award any compensation in relation to the paddleboard or the lawn chairs.

It is not in dispute that the Landlord's cows were, at times, in the Tenants' yard. Based on the evidence submitted, which included text messages from the Tenants complaining about the cows, I find that the Landlord did not act diligent and responsibly to address this ongoing issue. As a result, the cows interfered with the Tenants' ability to use and enjoy their yard for portions of the year over the past two years.

I find the Tenants' compensation claim is exaggerated, however. First, the cows did not roam freely for half the year. Second, the Tenants did not submit any evidence showing that there were complaints to the Landlord before 2021. I accept that the Landlord made some efforts to repair the cattleguard, although these were clearly insufficient. I also find that the Tenants could have brought an application to address this issue during the tenancy and yet did not do so. In total, I award the Tenants' \$1,500.00 for loss of quiet enjoyment arising from loss of use of the yard because of the cows.

Christmas 2022 expenses

The Tenants said in 2022, during Christmas, that they were forced to leave the rental unit because the unit was unlivable – there were issues with the water, sewage and heating systems. The Tenants said that they contacted the Landlord about the issue but that he did not do anything to address the issues. The Tenants claimed \$321.28 for 2 nights in a hotel in Kamloops, \$121.78 for meals and \$30.80 for fuel costs incurred. In addition, the Tenants claimed \$142.78 for food that was lost.

The Landlord said that the Tenants had unplugged the heat tape, which protects the pipes. He said he went to the rental unit on Christmas Day as quickly as possible and was able to get everything working.

I accept the Landlord's evidence and find that the events of Christmas 2022 were the result of the Tenants' actions. In particular, I find that the Tenants unplugged the heat tape, which caused the breakdown of the systems. The Landlord submitted text messages in the days leading up to December 25, 2022 which confirm that the Tenant KB plugged in her truck and jet ski under the trailer. I find that the Tenants unplugged the heat tape in order to plug in their own belongings. The claims arising from Christmas 2022 are therefore dismissed.

Water

The Tenants said they had to buy water from 2019 to 2023. They said that the Landlord obtained a report indicating that there were toxic substances in the water and that it was undrinkable. As a result, the Tenants had to purchase their own drinking water. In total, the Tenants claimed \$2,499.67. This was calculated based on an estimated cost of \$7.99 per week from 2019 to May 1, 2023.

In response, the Landlord said that an initial water sample was taken from an improper location (a water hydrant). He said the water was retested and it was potable. In other

words, there was nothing wrong with the water. In addition, he said that the Tenant RM told him that he purchases drinking water regardless. This was not disputed by RM.

In light of the lack of evidence related to the water quality, the lack of invoices related to the cost of water, and the fact that RM would have purchased water regardless of the water quality, this claim is dismissed.

Compensation for end of tenancy

The Tenants claimed \$1,000.00 arising from the end of the tenancy. They received a letter from the Landlord stating that he was ending the tenancy because a family member was going to occupy the rental unit. I find that the letter is not a notice under the Act because it does not use the proper RTB form. The Tenants are therefore not entitled to any compensation under section 51 of the Act. This claim is dismissed.

Canada Post/Google Photos/RTB File Preparation

The Tenants claimed various costs associated with the dispute resolution process, including Canada Post charges (\$73.08), printing charges (\$78.62), and time calculated on an hourly basis (\$1875.00). In essence, the Tenants are claiming their costs arising from the dispute. I find that these costs are not recoverable. The Act does not set out a regime relating to costs arising from dispute resolution other than recovery of the filing fee. This claim is therefore dismissed. For the same reason, as discussed below, I dismiss the Landlord's claim for time spent on the dispute resolution process.

Are the Tenants entitled to an order for the return of their personal property?

The Tenants did not address this claim during the hearing. On their paper application, they refer to seeking water testing results and rent receipts from the Landlord. However, neither of these items are personal property belonging to the Tenants. This claim is therefore dismissed without leave to reapply.

Is the Landlord entitled to unpaid rent or utilities?

The Landlord claimed \$2,749.96 in relation to utilities. This amount was calculated based on the actual use of utilities by the Tenants. However, as stated above, he said that the agreement with the Tenants when they moved in in 2016 was that they would pay \$700 a month plus \$200.00 a month for hydro. He said the parties agreed that because of usage, the amount to be paid would increase to \$950 as of March 1, 2019.

I find that the Landlord cannot now require the Tenants to pay the actual cost of utilities, when throughout the tenancy and according to their agreement, they were to pay a fixed, pre-estimated cost.

For that reason, this claim is dismissed without leave to reapply.

Is the Landlord entitled to compensation for damage to the rental unit?

The Landlord also claimed \$7,485.85 in compensation for damage caused by the Tenants. I will address each of the Landlord's claims in turn.

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

Garbage – dump fees

The Landlord claimed \$200.00 to dispose of garbage and abandoned belongings left by the Tenants. He submitted a picture showing items that were left behind. It took him a couple of hours to do this work. The Tenants said that there were items left in the firepit. They said that the Landlord's picture was taken before they moved out and is not representative of the state of the unit when they left. I accept that some belongings were left behind by the Tenants, but find the Landlord's claim of \$200.00 to be inflated. I award nominate damages in the amount of \$40.00.

Painting

The Landlord said that the rental unit had to be repainted because of stains from cigarette smoke. He submitted a receipt showing the cost of painting was \$2,345.32. The unit was last repainted before the Tenants moved in. The Tenants said that the entire trailer is wood paneling. They said that there was one wall in the kitchen that would have required painting. They said that the paint on this wall was in bad shape when they moved in.

I decline to award any compensation in relation to painting. Policy Guideline 40 on the Useful Life of Building Elements states that indoor paint lasts 4 years. I find that the rental unit was due to be repainted and therefore the Landlord is not entitled to compensation.

Door replacement

The Landlord said that 5 doors had to be replaced because they had holes in them or were damaged. He said the cost of replacing the doors was \$2,005.50. The Tenants acknowledged damaging two of the doors. They said that these were old, interior doors. They disputed the cost claimed by the Landlord.

I accept that the Tenants damaged two of the interior doors. I also accept that the Tenants damaged the exterior door. The Landlord submitted a written statement from a neighbour who was aware of the state of the door when the Tenants moved in and who

went through the rental unit with the Landlord at the end of the tenancy. I find it would not be appropriate to award the Landlord the replacement cost of the doors, given that they were at least 7 years old, if not older. I find it is appropriate to award the Landlord nominate damages in the amount of \$400.00.

Cleaning

The Landlord said that the rental unit was left in an unclean state. In particular, he said there was grease accumulated around the stove. He said he hired two women who came for a total of 18 hours to clean the rental unit at a cost of \$450.00. The Tenants said the unit was clean when they moved out. They submitted pictures showing the state of the unit. They also said that the grease accumulation was a result of the Landlord's own neglect. In particular, the hood fan did not work properly.

The evidence submitted by the Landlord does not convince me that the rental unit required 18 hours of cleaning. The pictures are limited in what they show and of very low quality. I accept that the certain areas were not cleaned by the Tenants, including behind the fridge and the stove. I therefore award the Landlord nominate damages in the amount of \$50.00.

Curtains and Blinds

The Landlord said that curtains and blinds were missing when he recovered possession. He said their replacement cost was \$677.80. He did not submit a quote or receipt. The Tenants said that the curtains were left in a bag in a spare room when they vacated the rental unit. They said that the curtains were old and likely original, and that they were deteriorating during the tenancy. I am not convinced that the Landlord has suffered a loss. I find that the curtains were old and due to be replaced.

Dishwasher

The Landlord said that the dishwasher was missing when he recovered possession of the rental unit. He said he spent \$452.55 to replace it. The Tenants said that the dishwasher broke down during the tenancy and that they replaced it with the Landlord's full knowledge and consent. They said that they paid for the replacement dishwasher and it was entirely reasonable for them to take it with them. I accept the Tenants' evidence, which was uncontradicted, and dismiss this claim.

Water and sewer issues

The Landlord claimed \$900.00 in relation to repairs to the water and sewage pipes. The Landlord said that the Tenants unplugged the heat tape, which caused freezing. The Tenants denied unplugging or switching off the heat tape. They said that the issues were the result of improper maintenance or servicing by the Landlord. As stated above, I accept that the Tenants' action caused the water and sewage issues over Christmas

2022. However, the Landlord has not submitted an invoice proving his loss, and therefore this claim is dismissed.

Time spent on complaint

The Landlord claimed \$500.00 because of the time he spent on the complaint. Such a claim amounts to a claim for legal costs, which I find is not permitted by the Act. As with the Tenant's similar request, I dismiss this claim without leave to reapply.

Are the Tenants entitled to the return of their security deposit? Is the Landlord entitled to retain the Tenant's security deposit?

The Tenants submitted proof that they provided their forwarding address by registered mail to the Landlord on May 29, 2023. The Landlord did not return the security deposit. The Landlord filed for dispute resolution on October 30, 2023. Section 38(1) of the Act states that a landlord must either return the deposit or file for dispute resolution within 15 days of the end of the tenancy or receiving a tenant's forwarding address. It also states at section 38(6) that the security deposit is doubled if the Landlord does not comply with section 38(1). I therefore find that the security deposit should be doubled.

The Tenants said the security deposit was \$450.00. The Landlord said that it was \$350.00. Neither party submitted banking records, a receipt or a cheque indicating the amount of the security deposit that was paid. In the absence of corroborating evidence, I am not convinced that the security deposit was \$450.00. I therefore find that the deposit paid was \$350.00 and order that it be doubled in accordance with section 38(6) of the Act.

Is the Landlord entitled to recover the filing fee?

Because the Landlord was largely unsuccessful, I decline to award recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$3,844.67, based on the following:

Double the security deposit with interest	\$709.67
Illegal rent increase	\$1,925.00
Loss of quiet enjoyment (yard)	\$1,500.00
Less – garbage dump	\$40.00
Less – damage to doors	\$400.00
Less – cleaning	\$50.00
Total	\$3,644.67

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: April 17, 2024

Residential Tenancy Branch