DECISION

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (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;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants file their own application where they seek the following relief under the *Act*:

- an order pursuant to s. 38 for double the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

This matter was adjourned pursuant to my interim decision of July 24, 2023.

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 Applications and Evidence and Adjournment Request

By way of some context, I am told by counsel that the parties to this tenancy have been the subject of 8 applications, which includes the two that are related to this matter. I would add that I have previously adjudicated a claim filed by the Tenants for monetary compensation.

This matter was itself adjourned on the basis that the Landlords filed to appeal a judicial review decision that went in the Tenants favour and set aside the decision of an arbitrator that granted the Landlords an order of possession. Counsel advises that the Tenants have since sought leave to appeal the Court of Appeal's to the Supreme Court of Canada.

I have provided this context because when canvassing issues of service in this matter, both the Tenants and Landlords spoke to receipt of significant amounts of documents served as part of the various proceedings. I am told by both sides that they have each received boxes of evidence due to litigation arising from this tenancy. I have no reason to disbelieve this to be the case and find it likely to be true.

I take note that given the level of litigation that has arisen from this tenancy, I accept that there is little love lost between the Landlords and Tenants. The contentious nature of these proceedings has, unsurprisingly, led to objections on service from both sides, which will be detailed below.

Landlords' counsel requested an adjournment to permit both parties to submit an organized record of evidence to be relied upon in this matter. The Tenants resisted the Landlords' adjournment request.

I did not grant the Landlords' request for an adjournment. The Landlords and Tenants are not uninitiated to the processes before the Residential Tenancy Branch. Indeed, my interim decision highlighted that both would be expected to serve their evidence in compliance with the relevant deadlines set by the Rules of Procedure.

I would add that the passage of time is prejudicial to both sides and their recollection to the events that transpired. Indeed, I suspect that this is a driving force behind the problems cited in the service of documents. There is further prejudice to the process before the Residential Tenancy Branch, which cannot reasonably expect to adjourn matters for parties to get their ducks in a row. This is particularly true when, as here, both sides were put on notice of the relevant deadlines.

For the reasons above, I did not grant the Landlords' adjournment request.

Service of the Landlords' Application

Landlords' counsel advised that the Notice of Dispute Resolution was served on each Tenant by way of registered mail sent on November 3, 2022. The Landlords have provided tracking information for the registered mail packages, which indicates they were received on November 7, 2022. Landlords' counsel advised the packages were sent to the Tenants' forwarding address.

The Tenants denied receipt of the Landlords' application, asserting they only received notice of it immediately prior to the original hearing in July 2023.

I accept the Landlords' evidence as it relates to the service of the Notice of Dispute Resolution, which shows the packages were retrieved on November 7, 2022. I would note, as well, that the Tenants were undoubtedly aware of the application given the hearing that took place in July 2023. I note no issues on service of the application were raised by the Tenants at that time.

I would further add that in the previous matter before me, the Landlords mentioned they too would be filing an application for monetary compensation and sought direction on joining it to the previous matter. The Tenants were present at that hearing. I made no comment on the request from the Landlords at that time as no application had been filed.

All this is to say that the Tenants' denial of receipt of the Landlords' application lacks, in my view, credibility as I have little doubt the Tenants had more than sufficient notice of the Landlords' application. I prefer the Landlords' evidence, as supported by the registered mail tracking information, with respect to service of the Notice of Dispute Resolution.

I find that the Landlords' Notice of Dispute Resolution was served on the Tenants in accordance with s. 89(1) of the *Act* and received by the Tenants on November 7, 2022 as demonstrated in the proof of service provided by the Landlords.

Service of the Landlords' Evidence

I am told by counsel that the Landlords' evidence was served in two packages: one sent in July 2023 and the other sent in May 2024. The Tenants deny receipt of the July package and argued the May package was served late.

Looking at the first evidence package, Landlords' counsel was, initially, unable to provide submissions or evidence with respect to its service. I stood the matter down for several minutes to consider whether to exclude the Landlords' evidence due to a failure to demonstrate it was served.

Upon resumption of the hearing, while explaining the exclusion of the Landlords' evidence, counsel then provided me with a registered mail tracking number for a package sent on July 4, 2023. Despite my frustration with counsel not being prepared to make submissions on service of documents, I do accept that service from July of 2023 was some time ago. As stated above, many documents have been exchanged by both sides through the various disputes. Considering this, I accepted the late submission of the service of the Landlords' evidence.

I was not provided with tracking evidence on the package tied to the registered mail number provided by the Landlords' counsel during the hearing. I enquired with the Landlords and Tenants on whether they raised any objection to my reviewing the tracking information for the package. Neither raised issue with my doing so.

Review of the tracking information confirms a package was sent on July 4, 2023 and received on July 10, 2023. I raised this with the Tenants. The Tenant K.N. emphasized again that no evidence was received and argued that the tracking information does not confirm the documents contained in any package that may have been sent.

I note that the Tenants repeatedly denied receipt of documents, despite that being demonstrably untrue as it relates to the Notice of Dispute Resolution. I further note that service of the July 2023 package took place nearly a year ago. I find it likely that the Tenants recollection of the specifics related to service of documents, and which were received, was adversely affected by the passage of time and the volume of documents exchanged to date between the parties.

Considering this, I find that the Tenants denial of receipt of the July 2023 package to be based on an unreliable recollection of events driven by the unusually complicated litigation history between the parties. The Tenants' issues in recalling what has been served to date is, to my view, more a function of the level of disorganization that has come about from the volume of documents served in the various litigation.

Despite what I view to be a level of disorganization present with both sides, that is distinct from whether evidence and documents were received. I note that the Tenants acknowledged boxes of evidence and documents and further note that the Tenants resisted the Landlords' adjournment request such that the record could be better organized.

On the face of the conflicting evidence with respect to service of the July 2023 package, I prefer the Landlords' evidence as shown by the tracking information that the package was received on July 10, 2023. Service of the package on July 4, 2023 was done contemporaneous to the Landlord providing those same documents to the Residential Tenancy Branch. I find it likely that the package of July 4, 2023 contained all the Landlord's evidence submitted to the Residential Tenancy Branch by July 2023.

I accept that the Landlords served their July evidence by way of registered mail sent on July 4, 2023. I find that this was done in accordance with s. 88 of the *Act* and accept the tracking information that it was received by the Tenants on July 10, 2023, when they signed for the package.

With respect to the Landlords' evidence package in May 2024, counsel tells me that it was sent to the Tenants on May 8, 2024, with the Tenant K.N. confirming receipt on May 10, 2024. As noted above, the Tenants raised issue with service of the package on the basis that it was late.

As referred to in my interim decision, Rule 3.14 of the Rules of Procedure imposes an obligation on applicants, in this case the Landlords, to serve their evidence on respondents, which must be received at least 14 days prior to the hearing. Counsel argued that the evidence all related to events in the fall of 2022, was not new, and was merely a reorganization of the documents previously served.

Despite counsels arguments, I cannot understand why the Landlords would have waited until after the 11th hour to serve documents when the hearing was originally adjourned in July 2023 and the events took place in the fall of 2022. It is more damning that these are documents have long been in the Landlords' possession.

Even if all the documents had previously been served, I decline to review both evidence packages to ascertain if they were included in the July 2023 evidence package. Such a review, in my opinion, could be prejudicial to the Tenants as I am the final decision maker on issues before me.

I find that the Landlords evidence package from May 2024 was served in clear contravention of Rule 3.14 of the Rules of Procedure and that it would be procedurally unfair to review or consider it. To include the late evidence would effectively deprive the Tenants of their right to respond in accordance with Rule 3.15. As such, the Landlords' late evidence is hereby excluded and shall not be considered by me.

Service of the Tenants' Application and Evidence

The Tenant K.N. advised having served their application and evidence, with the Tenants' evidence containing a proof of service form showing a package was sent July 4, 2023. Landlords' counsel does not raise issue with service of the application, though expressed not knowing which documents were provided by the Tenants in evidence as part of these proceedings.

I accept that counsel's issues with service of evidence are similarly tied to the volume of documents exchanged to date. The Tenants have provided proof of service, such that I accept evidence has been served on the Landlords. The documents provided by the Tenants, being mainly two affidavits and the decision on the judicial review, were confirmed to be in the possession of Landlords' counsel during the hearing.

Accepting the above, I find under s. 71(2) of the *Act* that the Tenants' application was sufficiently served on the Landlords as its receipt was acknowledged without issue. I further find that the Tenants evidence was served by way of registered mail sent on July 4, 2023, which is in accordance with s. 88 of the *Act*.

Preliminary Issue – Landlords' Request to Cross-Examine the Tenants

At the outset of the hearing, I explained the process, namely that both sides would make submissions and rebuttal submissions, with the Landlords going first. No question or issues were raised by either party after this was explained.

During rebuttal submissions, Landlords' counsel requested permission to ask questions directly of the Tenants. The Tenants did not consent to the request.

Rule 7.23 of the Rules of Procedure permits cross-examination at the discretion of the arbitrator. Parties to disputes before the Residential Tenancy Branch do not have an absolute right to cross-examine the opposing side.

As stated in Rule 1.1 of the Rules of Procedure, the object of Rules is to "ensure a fair, efficient, and consistent process". Administrative efficiency is an object balanced while maintaining a fair process. The Residential Tenancy Branch is not a court. It is an

administrative tribunal designed to address conflicts between landlords and tenants in a less formal venue than would be expected in court. I would further note that, by and large, the parties before the Residential Tenancy Branch are self-represented. Procedural rights before the Residential Tenancy Branch need to be considered within the context of this dispute process.

I declined the Landlords' request. I did so because the Landlords did not raise the issue of cross-examination at the outset when the hearing process was explained, accepting the process as explained by me. Further, I accept that there is an antagonistic relationship between the parties in this matter, some of which appears to be directed toward counsel. I see little utility in a cross-examination that would be time consuming and combative, particularly since no request was made by the Landlords at the first instance.

Issues to be Decided

1) Are the Landlords entitled to a monetary order for compensation or other money owed by the Tenants resulting from breach of the *Act*, tenancy agreement, or Regulations?
2) Are the Landlords entitled to a monetary order for damage to the rental unit caused by the Tenants or their guests?
3) Which party is entitled to the security deposit and pet damage deposit?
4) Is either party entitled to their filing fee?

Evidence and Analysis

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

General Background

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

- The Tenants moved into the rental unit on January 1, 2018.
- The Tenants vacated the rental unit in October 2022.
- Rent was due on the 1st day of each month.
- A security deposit of $1,250.00 and a pet damage deposit of $1,000.00 were paid by the Tenants.

I have been provided with a copy of the tenancy agreement, along with subsequent renewals of the agreement.

There was some dispute on whether rent was in the amount of $2,500.00 per month or $2,600.00 per month, with the Tenants arguing the increased amount was tied to an illegal rent increase. I note this issue was before me in the Tenants' previous application.

I note that the original tenancy agreement lists rent of $25,000 in rent per month, which I accept is a typographical error. A subsequent renewal from 2020 includes the notation that the Tenants provided 12 post-dated cheques of $2,600.00 per month on June 14, 2020. The Landlords argued the Tenants paid this amount for the remainder of their tenancy.

Test Applicable to the Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of *the Act*, 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.

1) Are the Landlords entitled to a monetary order for compensation or other money owed by the Tenants resulting from breach of the Act, tenancy agreement, or Regulations?

The Landlords, in their application, claim $14,152.68 and plead this portion of their application as follows:

> (12) Bailiff fees ($5,826.50), (13) 2/3rd of BC Hydro unpaid utilities ($1,378.55), (14) 2/3rd of Fortis BC unpaid utilities ($976.43), (15) Junk removal fees ($779.10), (16) Locksmith ($192.10), (17) pro-rated rent for October and November rent ($2,500)

Bailiff Fees

Counsel advises that the Landlords obtained an order of possession on October 5, 2022 in a previous matter before the Residential Tenancy Branch, the file number for which is noted on the cover page of this decision. Counsel tells me that the order of possession was served on the Tenants on October 6, 2022. I am further advised that a writ of possession was obtained on October 11, 2022 and executed by a bailiff on the same day.

The Landlords' evidence contains a copy of the order of possession dated October 5, 2022. I am further provided with the writ of possession and a statement signed by

counsel on October 11, 2022 in which he acknowledged, on behalf of the Landlords, that the bailiffs delivered vacant possession of the rental unit.

The Tenants do not dispute this, though argue that had they been given more time to move, they would have done so. The Tenant K.N. indicated that they had applied a review application, which was dismissed on October 10, 2022. A copy of the review decision has been provided by the Landlords. I am told by the Tenants that the review decision was given to them on Thanksgiving.

The Tenants further argued that the Landlords have previously requested the return of the bailiff fees from the Tenants in other venues. I asked the Tenants if they could direct me to a previous application made by the Landlords for the bailiff fees. The Tenants admit that no other application was previously made. I accept that there is no previous decision in any venue has adjudicated the Landlords' claim for the bailiff fees.

Section 57 of the *Act* sets out what occurs should a tenant fail to vacate the rental unit after the end of the tenancy. Section 57(2) prohibits landlords from taking actual possession of the rental unit until they have obtained a writ of possession from the BC Supreme Court. Further, s. 57(3) permits landlords to claim compensation from an overholding tenant for any period in which they occupy the rental unit after the tenancy has ended.

In this instance, there is no dispute. The tenancy ended when the Tenants were unsuccessful in disputing a notice to end tenancy. The Landlords were issued an order of possession. That order of possession was delivered to the Tenants on October 6, 2022. The Tenants had two days from that point to vacate the rental unit.

The Tenants filed a review application on October 7, 2022. That review application effectively stayed the enforcement of the order of possession until October 10, 2022, which is when the review application was dismissed. After this point, the Landlords were well within their rights to seek the writ of possession. Indeed, they were required to do if they wished to take back possession of the rental unit.

The Tenants argument that the Landlords did not need the writ of possession and that they would have vacated the rental unit had they been given the opportunity. This argument misses the main point underlying the Landlords claim: the Tenants no longer had any right to continued occupancy of the rental unit when the writ was obtained.

I admit some recollection of the previous dispute before me, though it was some time ago. Within the context of that dispute, I had the opportunity to review the decision of Arbitrator Weitzel, which is referenced in the judicial review decision. I have reviewed the judicial review decision and the decision from the court of appeal. I would add that I have further reviewed the decision from Arbitrator Selbee which granted the order of possession.

All these decisions have left a clear impression on me that there was breakdown in trust between the Landlords and Tenants. Within the context of this tenancy, I cannot say the Landlords were acting improperly or unreasonably by seeking the immediate

enforcement of the order of possession. They no longer trusted the Tenants to vacate voluntarily and sought to end, from their perspective, a troubled tenancy. The Tenants no longer had right to possess the rental unit and were overholding tenants.

I find that the Tenants failed to vacate the rental unit at the end of the tenancy and were overholding on the rental unit. The Landlords could not take actual possession until they obtained the writ of possession and were within their rights to do so. Section 57 of the *Act* permits the Landlords to seek compensation from the overholding Tenants.

I find that the Landlords are entitled to the bailiff costs from the Tenants. I do not find that mitigation is relevant here as the Tenants, despite no longer having a right to occupy the rental unit, continued to do so. The Landlords were under no obligation to agree to the Tenants' request for more time and given the troubled context of this tenancy I cannot say the Landlords were without cause to seek immediate enforcement of the order of possession.

I have been provided statements of account for the bailiff. The first shows a balance owed of $826.05 and the second that $5,000.00 in trust were expended. Counsel advises that the Landlords seek $5,826.50.

I accept that that there is likely a typographical error in the amount claimed by the Landlords in their application given the statements of account. I prefer the evidence in the statement of accounts and accept the Landlords suffered a loss as demonstrated in the statement of accounts.

I grant the Landlords $5,826.05 for the bailiff fees.

Locksmith Costs

Landlords' counsel advises that the bailiffs fees included the costs for changing the lock for the front door but that there were other doors into the rental unit that needed changed as the Tenants did not return the keys. I am told the Landlords retained a locksmith to change the locks for the other doors at a cost of $192.10, with a receipt dated October 11, 2022 in evidence related to this expense.

The Tenants argued that they only had one key to enter the rental unit and that they should not be responsible for rekeying doors giving access to the basement rental unit. I note that at paragraph 37 of the judicial review decision, a copy of which was provided by the Tenants, the Tenants testified at that time that there were "four external doors to the rental unit".

Section 37(2)(b) of the *Act* requires all tenants to surrender the keys in their possession giving access to the rental unit and the residential property. I find the Tenants' denial that there were multiple doors into the rental unit to lack credibility as it is directly contradicted by their testimony during the judicial review.

I find that the Landlords have established that the Tenants failed to return their keys to all the doors at the residential property in contravention of s. 37(2) of the *Act*. I accept

that there were multiple doors to rekey, as evidenced in the judicial review decision, and that the bailiffs only rekeyed one of the doors. I accept the Landlords suffered a loss of $192.10 as demonstrated in the invoice in evidence.

I find that mitigation is not a relevant consideration here as the cost had to be incurred as no keys were surrendered by the Tenants. The Landlords were in the process of taking back possession of the rental unit after the Tenants refused to vacate in accordance with the order of possession. Understandably, they wished to ensure the Tenants no longer had access.

I grant the Landlords $192.10 for the locksmith costs.

Removal of Abandoned Items

Landlords' counsel advises that the Tenants left various items behind at the rental unit. I am told the Landlords seek the costs for their removal. I am referred to an invoice dated October 15, 2022 in evidence for the removal of these items, which show a cost of $779.10 was incurred.

Counsel indicates that the bailiffs removed some of the Tenants' belongings and that the Tenants were required to sign a document with the bailiff whereby the agreed that the remaining items were abandoned.

The Landlords' evidence does not contain a signed statement to the effect described by counsel, though the statements of account from the bailiff show disbursements were made to a moving and storage company. The Landlords evidence further contains photographs of the rental unit, showing various items left about the property, including some furniture items. Counsel says these items were soiled with pet urine or feces.

The Tenants tell me that they lost many of their belongings during the eviction from the rental unit. They argue that had they been given time to vacate, they would have been able to clean the rental unit of all their belongings. They further argue that the Landlords photographs show the basement rental unit and not their rental unit.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean state when they vacate the rental unit.

Dealing first with the allegation that the Landlords photographs show the basement rental unit, I find that that argument by the Tenants does not withstand even modest scrutiny. The images show above grade windows overlooking the yard. In other words, these are not photographs taken from a basement suite. I find this argument by the Tenants to be without merit and to lack credibility.

It is incongruous, in my opinion, for the bailiffs to have left belongings behind, such as the couch and other items, while removing most of the other belongings. I accept that the bailiffs removed all the Tenants belongings and that those items left behind were abandoned.

I accept that the remaining items were abandoned by the Tenants within the meaning of s. 24(1) of the Regulations on the basis that they were left behind after the Tenants had vacated since the Tenants likely acknowledged the items should not be taken by the bailiff.

I have considered the abrupt context in which this tenancy ended. I note that the Tenants had nearly a week from receiving the order of possession to get their affairs in order. Despite this, they appear to have taken no steps to organize or pack their belongings, apparently hoping the review application would be successful.

That was neither prudent nor wise. It effectively meant that the cleaning and moving would be completed under exigent circumstances. Again, the Landlords were within their rights to seek enforcement of the order of possession at any point after the review application was dismissed.

I find that the items left behind by the Tenants constituted a breach of s. 37(2) of the *Act* and that the Landlords have proven that this occurred. I do not accept that the Tenants acted in keeping with that obligation by taking reasonably prudent steps to pack their belongings after receipt of the order of possession. I further find that the Landlords suffered a loss of $779.10, as demonstrated by the invoice in evidence, for the removal of the Tenants final belongings abandoned in the rental unit.

I do not find mitigation to be a relevant factor here as the Landlords were required to remove the Tenants abandoned belongings. They had little choice but to incur the expense and given the items to be removed, I cannot say the expense was exorbitant.

Accordingly, I grant the Landlords $779.10 for the cost of removing the Tenants' abandoned belongings.

Cleaning Costs

Counsel advises that the rental unit was left in a significantly unclean state by the Tenants. I am told that, in addition to the removal of the abandoned items, no cleaning had taken place. I am further told that there was pet urine and feces present within the rental unit. The Landlords' photographs support that no cleaning had been done by the Tenants prior to the enforcement of the writ of possession.

Counsel tells me that the Landlords seek $1,350.00 to reimburse them for the cleaning costs incurred and am directed to an invoice in evidence for that amount. Review of the invoice, dated October 21, 2022, shows that it took 3 cleaners a total of 15 hours each to clean the rental unit, which was done over three days.

The Tenants argued that they would have cleaned the rental unit had they been given time to vacate the rental unit. Again, I place no weight on this argument. The Tenants were given a copy of the order of possession on October 6, 2022, which gave them two days to provide vacant possession to the Landlords. Despite this, they do not appear to have taken any steps to clean or vacate the rental unit, instead placing their hopes that the review application would be successful. As it turned out, the review application was

dismissed. The Tenants' failure to take any steps to clean led to the Landlords' costs when they took back possession.

I find that the Landlords have established, as demonstrated in the photographs, that the Tenants failed to adequately clean the rental unit, which was in breach of their obligation under s. 37(2) of the *Act*. I further find that the Landlords suffered a loss of $1,350.00 for the cleaning costs of the rental unit as demonstrated in the invoice in evidence.

I do not find that mitigation is a relevant factor to this claim. I accept that the rental unit was in a significantly unclean state. I have little doubt that it took the cleaners the time shown in the invoice to clean the rental unit. The cost, though high, is proportional to the cleaning required.

I grant the Landlords $1,350.00 for the costs to clean the rental unit.

Carpet Cleaning

Landlords' counsel indicates that the carpets were left in an unclean state by the Tenants and that the Landlords had to pay $315.00 to clean the carpets. The Landlords' evidence contains an invoice dated October 23, 2022 for $315.00 to clean the rental unit's carpets.

The Landlords' evidence contains photographs of the carpets in question, including one which shows a dirt outline in the carpet consistent with the perimeter of a mattress or boxspring. The level of uncleanliness of the carpets shown in the photographs is, in my view, consistent with the general level of uncleanliness throughout the rental unit that I accept was a result of the Tenants. Accordingly, I do not accept that the carpet cleanliness issues pre-existed the tenancy.

Again, the Tenants argued that they would have returned the rental unit in a clean state had they been given time to do so. Again, I place no weight on that argument for the same reasons stated above.

I find that the Landlords have proven, as demonstrated in the photographs, that the Tenants left the carpets in an unreasonably clean state in breach of their obligations under s. 37(2) of the *Act*. I further find that the Landlords suffered a loss from this breach of $315.00 to clean the carpets, as evidenced in the invoice.

I do not find that mitigation is a relevant factor to this claim. The carpet cleaning costs are not exorbitant and given the state of the carpets as shown in the photographs, I accept that the cost was proportional to the required cleaning.

I grant the Landlords $315.00 for the carpet cleaning costs.

Lost Rental Income

Counsel advises that the Landlords seek lost rental income for one month due to the required time to undertake repairs and cleaning to the rental unit given the state it was

left by the Tenants. I am told by the Landlords that the rental unit was re-rented on December 1, 2022. Counsel advises that when the tenancy ended, it was on a monthly periodic term.

The issue I have with this portion of the Landlords' application is that I do have sufficient evidence to support that the Landlords mitigated their damages. Though I accept the Tenants did not leave the rental unit in a state acceptable for the purposes of marketing to prospective tenants, I have no evidence to support when advertisements were put up. I further have no evidence to show the date of occupancy for prospective tenants was advertised.

The invoices provided to me show that much of the cleaning was completed before November 1, 2022, thus presumably demonstrating occupancy could have, at least, been sought for that date or perhaps sometime in November 2022. Without evidence to support the marketing of the rental unit at the end of the tenancy, I find that I cannot assess whether the amount claimed is rightly attributable to the Tenants or due to the Landlords failure to act reasonably in minimizing their losses.

I find that the Landlords have provided sufficient evidence to support a claim for lost rental income for November 2022 as they have failed to demonstrate what steps they took to advertise the rental unit for a new tenant. As such, I dismiss this claim without leave to reapply.

Unpaid Utilities

Counsel indicates that the Tenants failed to pay their portion of the residential property's utilities as required of them under the tenancy agreement. The tenancy agreement shows the Tenants were responsible for paying 2/3 of the utility costs. Counsel advises the Tenants did not pay from June 19, 2021 to the end of the tenancy and that they owed $1,378.55 for hydro costs and $1,926.70 for natural gas.

Though I can see that the Tenants were responsible for 2/3 of the utility expenses, I have been provided no evidence to support the amount claimed by the Landlords. There are no utility statements in evidence. I am provided with a monetary order worksheet outlining the individual amounts, but without supporting statements. It is insufficient for a claimant to seek thousands of dollars in compensation without some supporting documents to demonstrate the amount claimed corresponds with what is owed.

I find that irrespective of whether the Tenants failed to pay utilities as required of them under the tenancy agreement, the Landlords have failed to prove their claim by demonstrating in their evidence the loss they claim to have sustained.

As the Landlords have failed to prove the loss, I find that they failed to make out their claim and dismiss this portion of their application, without leave to reapply.

Garage Door Opener Replacement Costs

Landlords' counsel advises that the Tenants failed to return the garage door opener to them at the end of the tenancy, which required the Landlords to purchase a new opener and hire someone to reprogram the garage door at a cost of $210.00.

However, much like the utilities claim, the Landlords have failed to provide a receipt to demonstrate the cost claimed was incurred. The lack of a receipt supporting the amount claimed is, in my view, fatal.

I find that the Landlords have failed to prove they suffered a loss in relation to the garage door opener replacement. As such, it is dismissed without leave to reapply.

Pest Control, Landscaping Costs, and Washer/Dryer Replacement Costs

Counsel made submissions on the costs for landscaping costs, pest control, and the replacement costs for a washer and dryer. However, none of these claims are outlined within the Landlords application. The Landlords have not filed an amendment to their claim.

Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. This rule protects a bedrock requirement to conducting a procedurally fair process, namely that respondents, in this case the Tenants, have notice of the claim being advanced against them.

The application has a general claim for cleaning. This does not, in my view, lay out sufficient particulars to put claims for pest control, landscaping costs, or appliance replacement into play.

I find that these claims are not properly set out in the Landlords' application such that it would be procedurally unfair to consider them. The Tenants were not properly given notice of the claims in the application, such that these issues are not strictly before me. As such, I decline to make any findings on these claims as they are not pled in the application.

Summary

In total, I grant the Landlords $8,462.25 ($5,826.05 + $192.10 + 779.10 + $1,350.00 + $315.00) for the claims set out above. All other aspects are dismissed without leave to reapply.

2) Are the Landlords entitled to a monetary order for damage to the rental unit caused by the Tenants or their guests?

The Landlords claim $20,847.32 for this portion of their application and describe it as follows:

> The exact cost of the below will be provided prior to the hearing. Current and prospective damage to the unit includes the following:(1) repair drywall and paint

in washrooms,(2) fixing holes in the ceiling,(3) repairing window screen,(4) replacing dirty and damaged blinds,(5) pressure washing deck,(6) repair broken sliding door hinge,(7) repair/replace scratched wood flooring, (8) replace portions of soiled carpets,(9) garage opener replacement/reprogramming(10) cleaning(11) mgmt. fee

These aspects of the Landlords' monetary order worksheet are left without particulars, simply stating TBD.

Dismissal of this claim

At the hearing, counsel detailed the following claims:

- Deck Repainting $390.60
- Misc Repairs $953.40
  - Adjusting Closets
  - Replacing Lightbulbs (18)
  - Replacing Kitchen Faucet
  - Unclog Drain
  - Unclog Toilet
- Misc Repairs $945.00
  - Kitchen Cabinet Repair
  - Basement Wall Painting
  - Pressure Washing
- Bannister and Wall Repair $868.35

However, I have been provided with no invoices or receipts by the Landlords to support these claims. Even if the Tenants were responsible for the costs, I have insufficient evidence to support findings that any actual costs were incurred.

I find that the Landlords have failed to prove this claim by failing to provide evidence to quantify any loss. As such, I dismiss it, in its entirety, without leave to reapply.

3) Which party is entitled to the security deposit and pet damage deposit?

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 in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch.

A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38 or their right to do so has been extinguished by ss. 24 or 36. Sections 23 and 35 of the *Act* relate to the process of preparing and conducting the condition inspection reports at the time of move-in and move-out.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

Forwarding Address

Both parties confirm that the Tenants provided their forwarding address to the Landlords on October 15, 2022. I have been provided with a copy of the email from that date which included the forwarding address.

There was no issue raised with service of the forwarding address by way of email, such that I find it was sufficiently served under s. 71(2) of the *Act* on October 15, 2022 as acknowledged by the Landlords.

The Condition Inspection Report

Landlords' counsel advises that the Landlords prepared a move-in condition inspection report on January 1, 2018, that it is in the proper form, and that the Tenants were given a copy of the move-in condition inspection report on January 1, 2018. The Landlords have failed to provide a copy of the move-in condition inspection report in their evidence.

I am further told by the Landlords that they did not conduct an move-out condition inspection report and did not provide the Tenants an opportunity to participate. Presumably, this was due to the circumstances surrounding the end of the tenancy.

The Tenants, for their part, deny the Landlords prepared a move-in condition inspection report or receiving a copy. Though I am somewhat circumspect of the Tenants denial given the previous issues I have had with their credibility, I do not have a copy of the move-in condition inspection report before me.

Irrespective of whether the move-in condition inspection report was prepared, I accept that no move-out condition inspection report was prepared. Further, the Landlords admit that they did not provide the Tenants an opportunity to participate in a move-out inspection.

To be clear, the Landlords had an obligation under s. 35(2) of the *Act* to offer the Tenants 2 opportunities to participate in the move-out inspection. Further, s. 35(3) of the *Act* required the Landlords to complete a move-out condition inspection report in accordance with the Regulations. These obligations applied to the Landlords even though the tenancy ended by way of eviction.

I find based on the Landlords own submissions that they breached their obligations to conduct the move-out condition inspection and report as required of them under s. 35 of the *Act*. The tenancy did not end due to abandonment but due to a notice to end tenancy. Correspondingly, I find that this triggered s. 36(2) of the *Act* and that the Landlords right to claim against the security deposit and pet damage deposit for damage to the rental unit were extinguished.

Distinction between the Security Deposit and the Pet Damage Deposit

Section 1 of the *Act* defines "security deposit" and "pet damage deposit". A security deposit is held by a landlord "as security for any liability or obligation of the tenant respecting the residential property". However, a pet damage deposit is held by a landlord "as security for damage to the residential property caused by a pet".

The distinction between both the security deposit and pet damage deposit is relevant here since the Landlords' failure to conduct the move-out condition inspection and report triggered s. 36(2) of the *Act*. I highlight the following wording from s. 36(2) of the *Act*: "…the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished…".

The net effect of ss. 1 and 36(2) of the *Act* is that the pet damage deposit and security deposit are treated differently in this matter. The Landlords can only claim against the pet damage deposit for damage to the residential property, which was extinguished here under s. 36(2) of the *Act*. However, the Landlords still had the right to retain the security deposit based on this application, as they claimed for compensation beyond mere damage to the residential property.

Upon review of the Landlords' application and in consideration of Rule 2.6 of the Rules of Procedure, I find the Landlords filed their application against the security deposit and pet damage deposit on October 19, 2022.

Looking at the security deposit, I find that the question of extinguishment is irrelevant as the Landlords retained the right to claim against it for any liability or obligation, which is what they did when they filed for other compensation. The doubling provision under s. 38(6) of the *Act* does not apply to the security deposit.

However, the pet damage deposit limits claims to that for damage to the residential property caused by a pet. Since the Landlords' right to hold or claim against the pet damage deposit for damage to the residential property was extinguished under s. 36(2) of the *Act*, the Landlords had no right to retain the pet damage deposit beyond the 15-day deadline imposed by s. 38(1) of the *Act* and had to return it within that time. The Landlords did not do so and, instead, retained the pet damage deposit.

As such, I find that the doubling provision under s. 38(6) of the *Act* applies to the pet damage deposit.

Offsetting the Pet Damage Deposit and Security Deposits from Amount Awarded to the Landlords

Section 38(1)(c) of the *Act* requires interest on the deposits to be calculated in accordance with the Regulations.

I have calculated interest on the pet damage deposit and security deposit by reference to the Residential Tenancy Branch's deposit interest calculator. I did so by reference to when both the security deposit and pet damage deposit are said to have been paid as per the tenancy agreement up to the date of this decision. I do so over this entire period despite it extending beyond the end of the tenancy since the Landlords continued to hold the security deposit and pet damage deposit in trust for the Tenants over this entire period.

Interest is calculated as follows:

2017	$2250.00:	$0.00 interest owing (0% rate for 3.84% of year)
2018	$2250.00:	$0.00 interest owing (0% rate for 100.00% of year)
2019	$2250.00:	$0.00 interest owing (0% rate for 100.00% of year)
2020	$2250.00:	$0.00 interest owing (0% rate for 100.00% of year)
2021	$2250.00:	$0.00 interest owing (0% rate for 100.00% of year)
2022	$2250.00:	$0.00 interest owing (0% rate for 100.00% of year)
2023	$2250.00:	$43.91 interest owing (1.95% rate for 100.00% of year)
2024	$2292.19:	$24.52 interest owing (2.7% rate for 39.62% of year)

Interest on the deposits totals $68.43.

Given the total owed by the Tenants, I direct under s. 72(2) of the *Act* that the Landlords retain the security deposit, pet damage deposit, and interest in partial satisfaction of what is owed. I offset the security deposit, double the pet damage deposit, and interest on both deposits against the total amount owed by the Tenants in the amount of $3,318.43 ($1,250.00 + ($1,000.00 x 2) + $68.43).

4) Is either party entitled to their filing fee?

I find both parties were less than substantially successful on their applications, both landing less than 50% of what they have claimed. As such, I find neither are entitled to their filing fee and dismiss both claims under s. 72(1) of the *Act*, without leave to reapply.

Conclusion

I grant the Landlords $8,462.25 in monetary compensation.

I dismiss the Landlords' claim for compensation for damage to the rental unit, without leave to reapply.

I double the pet damage deposit due to the Landlords breach of s. 35 of the *Act*. I direct that the Landlords retains the security deposit, pet damage deposit, and interest in partial satisfaction of the amount owed by the Tenants. The total offset, including the double pet damage deposit, is $3,318.43.

I dismiss both parties claims for their filing fee, without leave to reapply.

In total, I order under ss. 38, 67, and 72 of the *Act* that the Tenants pay **$5,143.82** to the Landlords ($8,462.25 - $3,318.43).

It is the Landlords' obligation to serve the monetary order on the Tenants. Should the Tenants fail to comply with the monetary order, it may be enforced by the Landlords 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: May 24, 2024

Residential Tenancy Branch