

## **DECISION**

### **Introduction**

This hearing was reconvened from a hearing on May 16, 2024 as a result of the parties' applications for dispute resolution under the *Residential Tenancy Act* (the "Act").

The Tenants applied for:

- compensation of \$864.35 for monetary loss or other monetary owed under section 67 of the Act.

The Landlords applied for:

- compensation of \$5,227.87 for damage that the Tenants, their guests, or their pets caused during the tenancy under sections 32 and 67 of the Act;
- compensation of \$700.00 for monetary loss or other money owed under section 67 of the Act;
- authorization to retain the security and/or pet damage deposit of \$500.00 under section 38 of the Act; and
- authorization to recover the Landlords' filing fee from the Tenants under section 72(1) of the Act.

An interim decision was issued on May 17, 2024. This decision should be read together with the interim decision.

The Tenants and the Landlords attended this reconvened hearing and gave affirmed testimony. The parties confirmed receipt of each other's additional evidence since the original hearing.

### **Issues to be Decided**

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to compensation for damage caused during the tenancy and monetary loss or other money owed?

Are the Landlords entitled to recover the Landlords' filing fee?

Are the Landlords entitled to retain the security deposit?

## Background and Evidence

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

The rental unit is the upper suite of a house with three bedrooms and a garage. This tenancy commenced on February 1, 2023. Rent was \$3,000.00 due on the first day of each month.

The parties were involved in a prior dispute resolution proceeding (see file number on the cover page of this decision), which resulted in a settlement decision dated December 1, 2023. The parties agreed, among other things, that the Tenants would vacate the rental unit by 1:00 pm on December 15, 2023, and the Landlords would hold \$500.00 in trust as the total amount of the security deposit to be dealt with after a move-out inspection is completed.

The Tenants vacated the rental unit on December 21, 2023.

The parties had agreed that electricity and gas were not included in the rent. During the tenancy, the Tenants had the BC Hydro and FortisBC accounts for the whole house in their name, which included a downstairs suite that was not occupied by the Tenants. According to the Tenants, they did not know the utilities were for the whole house. The parties did not agree to a split for the utilities between the rental unit and downstairs suite. In October 2023, the Landlords reimbursed the Tenants \$475.61, representing 20% of the hydro and gas bills up to around June 2, 2023, and 30% of the bills from June 3, 2023 to around October 5, 2023. The Tenants do not agree with these percentages.

In their application, the Tenants seek compensation of \$864.35, representing 40% of the total hydro and gas bills paid by the Tenants during the tenancy, less the amount already reimbursed by the Landlords.

The Tenants argue that 40% is not unreasonable because there was initially one tenant downstairs, for whom the Landlords paid 20%, and later there were two tenants downstairs. The Tenants testified that the Landlords collected \$50.00 per month for utilities from the downstairs tenants, who had hot water included in their rent. The Tenants testified that the downstairs tenants had access to laundry 3 out of 7 days, or 42% of the time. The Tenants argue that if the bills had been in the Landlords' names, the Landlords would have split the total cost between the two suites and would have taken out any items to pay themselves. The Tenants submit that the Landlords were renovating the downstairs suite from April 15 to June 1, 2023, during which the Landlords used power tools with extension cords and consumed electricity. According to the Tenants, they had a relative stay with them for two weeks and use the rental unit as a mailing address.

The Landlords stated they did not know they should have put the utilities in their own names. The Landlords submit that they should reimburse the Tenants \$320.22 for hydro and gas utilities, representing 30% of the Tenants' bills excluding deposits, application fees, and a reactivation fee due to non-payment, less the amount paid by the Landlords. The Landlords argued that 30% is fair because the downstairs suite is approximately 30% of the house (the rental unit is 1,850 square feet, including a heated garage, while the downstairs is 525 square feet), the Tenants controlled the heat for the whole house, the downstairs was vacant from April 15, 2023 until June 1, 2023, and the increase in utilities consumption after the new downstairs tenants moved in was approximately 26%. The Landlords testified that they did not use any electricity, heat, or water (no laundry or shower) during the vacancy period for renovation, as they had battery powered tools and everything (kitchen etc.) was ripped out. The Landlords testified that the Tenants had other people in the unit, as the Landlords received complaints about multiple people using the laundry.

For their application, the Landlords claim compensation as follows:

| <b>Item</b>   | <b>Amount</b>     |
|---|-------------------|
| Carpet Cleaning   | \$392.49          |
| Repair Cut Out Carpet   | \$414.75          |
| Fire Extinguisher and Smoke Detector                          | \$109.56          |
| Master Bedroom Light, Bulb, and Door Supplies                 | \$143.05          |
| Front Dead Bolt and Lock Side Door                            | \$261.99          |
| Move Out Cleaning   | \$756.00          |
| Labour Repair Cost and Painting                               | \$2,520.00        |
| Deck Damage Estimate  | \$350.00          |
| Hood Fan  | \$280.00          |
| Rent for December 16 to 21, 2023<br>(\$100.00 / day × 6 days) | \$600.00          |
| Filing Fee  | \$100.00          |
| <b>Total</b>  | <b>\$5,927.87</b> |

The Landlords gave the following testimony and evidence:

- The parties completed a move-in condition inspection on February 1, 2023 with a condition inspection report, which was signed by one of the Tenants. A copy of the report was given to the Tenants with the tenancy agreement.
- The carpet in the rental unit was brand new. The Tenants had let their dog urinate and defecate on the carpet, which was not cleaned up when the Tenants

vacated. The carpet was also soiled with mud, pet odour, and spilled paint. The Tenants were required to professionally clean the carpet as per the tenancy agreement addendum. The Tenants also cut two squares in the carpet, which required repair. The Landlords provided receipts for carpet cleaning and repair.

- The Tenants removed a fire extinguisher and smoke detector. The Landlords purchased replacements from Home Depot. The bedroom light had to be replaced because the Tenants either broke it or took something out.
- The Tenants had smashed the doors in the house with a hammer. The Landlords' appraiser had seen the holes and a hammer on the ground during an inspection. The Tenants put in new doors, but those were not trimmed and could not close properly. There was also no door handle, so the Landlords installed a door latch.
- The rental unit had been painted brand new and re-done when the Tenants moved in. When the Tenants left, there were an excessive number of holes in the walls. The Tenants attempted drywall repairs by putting in putty, but the walls were not sanded. The Tenants got green paint on the kitchen doors, which they tried to clean, but in doing so took the finish off the doors.
- The Tenants damaged the hood fan which had been in pristine condition. The Tenants lost the keys so the Landlords had to replace the front door dead bolt and side door locks.
- There was a burnt hole in the deck, ruining the support beams and causing structural damage. The deck had been re-built two years prior. The burnt joist needs to be structurally reinforced for safety reasons. The Landlords obtained an estimate from their contractor for this repair.
- The rental unit was left filthy and nothing was cleaned. The Tenants left behind things in the fridge and freezer. The Landlords submitted photos of the rental unit into evidence. The Tenants left the dishwasher plugged and mould above the shower. The dishwasher had been brand new.
- The repairs were too overwhelming for the Landlords to do themselves. The Landlords submitted a \$2,520.00 repair invoice for 30 hours of labour by their contractor at \$75.00 per hour. These repairs include installing new door locks and deadbolt, trimming three bedroom doors replaced the Tenants, installing a bathroom door latch, patching holes and sanding the walls to prepare for painting, repainting due to excessive holes and patch painting by the Tenants, flushing and draining a plugged dishwasher and sink, treating and cleaning mould above the shower, installing a new smoke detector and bedroom light fixture, and removing and refinishing three kitchen doors. The \$500.00 that the Tenants agreed for the Landlords to keep does not put a dent in the damages.
- The photos provided by the Tenants are not dated and were obviously taken at different times. Some show drywall repairs while others do not. Some look like they were taken from the move-in. Other photos show that there was dirt on the stairs and mould in the bathroom when the Tenants left. The Tenants' carpet cleaning receipt, which has the date and phone number scratched out, does not appear legitimate.
- The Tenants were supposed to leave on December 15, 2023 but stayed until December 21, 2023. The Landlords were unable to have their new tenants move

in until the new year. The Landlords lost 15 days of rent, but decided to claim only 6 days for the time until the Tenants physically left. There were several attempts to schedule a move-out walkthrough with the Tenants. The Tenants kept saying that they were going to clean and needed more time. It was not mutual. The Tenants did not show up at 6:00 pm on December 21, 2023 for the move-out inspection and left the house in a mess.

The Tenants gave the following testimony and evidence:

- The Tenants did not get a copy of the move-in condition inspection report until December 15, 2023. The Landlords had said that they would drop off or email the Tenants a copy but never did. According to the guidelines, the Tenants were supposed to receive a copy within 7 days of moving in.
- The Tenants made a verbal agreement for the Landlords to keep the \$500.00 security deposit. The Tenants were not trying to claim against it as they knew there were some damages. Since the Tenants agreed for the Landlords to keep the security deposit, there was no reason to send the Landlords a forwarding address.
- The Tenants did not leave the rental unit in complete disaster, but had put time, effort, and money into fixing it. The Tenants were told that their painting was not good enough, so they did not finish painting. The Tenants have receipts for the doors and carpet cleaning. The carpet was cleaned but got dirty again when the Tenants moved out. The Tenants' pets are potty trained, but they may have experienced stress due to moving, which upset their digestive system. The mess was cleaned up and sanitized.
- From the pictures that the Tenants submitted, the house did not look bad. The Tenants did a lot of patching and sanding before they left. There were a few things that the Tenants forgot or did not have time to get to, including the bathroom and a couple of drawers that the Tenants forgot to empty out. The fire extinguisher was left on the kitchen counter. The damage to the deck is two boards that need to be replaced. The Tenants are unsure about the hood fan, which had a dent in it. The Tenants dropped and cracked one of the drawers in the fridge.
- There was a leak downstairs for 5 months that affected the Tenants' hydro bill and caused the mould smell. The spare bedroom upstairs smelled like rotten mould milk, due to possibly having been used as a toddler's room previously. The Tenants mentioned this to the Landlords but they denied it. There was no fan in either of the bathrooms.
- It was mutually agreed for the Tenants to be at the rental unit. Now it seems the Landlords had ulterior motives and are coming after the Tenants for more money. The Landlords should have been upfront about this instead of hiding their intentions.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Are the Tenants entitled to compensation for monetary loss or other money owed?**

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

According to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises (“Policy Guideline 1”), a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the regulations. Section 3 of the regulations defines a term of a tenancy to be “unconscionable” if the term is oppressive or grossly unfair to one party.

Policy Guideline 1 further states that if the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants’ share of the unpaid utility bills.

In this case, I find the parties disagree as to the total cost of hydro and gas utilities and the percentage split for the purpose of calculating the portion for the downstairs suite.

Regarding the total cost, I find the Tenants cannot include the deposits because these would have been refunded to the Tenants after they closed the accounts. I find the

Tenants also cannot include late payment charges and a \$120.75 re-activation fee due to non-payment. I find the Tenants could have mitigated their losses and avoided these charges by paying the bills in full and on time.

I find the initial application fees for each account should be included in the total utilities to be shared with the downstairs suite. I find if the Landlords had put the utilities in their own names, these fees would have likely been split between the Tenants and the downstairs tenants. I find there is no basis for the Tenants to bear the full cost of these fees simply because they were the ones to apply for the accounts.

I find the Tenants submitted summaries from BC Hydro and FortisBC (documents 14 and 15) showing that they paid \$1,682.59 for hydro and \$1,667.40 for gas. However, I do not use these figures because I find they also include the other charges that I have deemed to be ineligible above.

I have compared the figures provided by the Landlords in their document labeled as "Correct\_Values\_for\_actual\_Gas\_Hydro\_usage" with the bills submitted by the Tenants. I find the total cost of hydro and gas, excluding the deposits, re-activation fee, and late payment charges, but including the application fees, to be as follows:

| Utility Bill | Amount            |
|--------------|-------------------|
| 01 FortisBC  | \$677.60          |
| 02 FortisBC  | \$71.40           |
| 03 FortisBC  | \$54.23           |
| 04 FortisBC  | \$57.44           |
| 05 FortisBC  | \$67.38           |
| 06 FortisBC  | \$132.63          |
| 07 FortisBC  | \$202.36          |
| 08 BC Hydro  | \$188.02          |
| 09 BC Hydro  | \$230.43          |
| 10 BC Hydro  | \$315.55          |
| 11 BC Hydro  | \$308.07          |
| 12 BC Hydro  | \$329.55          |
| 13 BC Hydro  | \$46.88           |
| <b>Total</b> | <b>\$2,681.54</b> |

Regarding the percentage that represents usage by the downstairs suite, I accept the Landlords' evidence that the downstairs suite is a one-bedroom unit of 525 square feet,

while the rental unit is 1,850 square feet with three bedrooms and a heated garage. I find the downstairs suite to be approximately 22% of the total square footage ( $525 / (525 + 1,850)$ ).

I accept the downstairs suite was occupied by one tenant until April 15, 2023. I find the downstairs suite was unoccupied and was being renovated until June 1, 2023, when two new tenants moved in. I accept the Landlords' evidence that during the renovation, the kitchen was taken out and no one was using the shower or sharing the laundry with the Tenants.

I find that as noted in the Landlords' correspondence to the Tenant dated October 14, 2023, the hydro bills for June to August and August to October were \$85.12 and \$77.64 higher than the April to June hydro bill respectively. I find the April to June hydro bill was \$230.43, so the increases were approximately 37% and 34% respectively (or  $\$85.12 / \$230.43$  and  $\$77.64 / \$230.43$ ). I find the cost of gas per month did not change significantly.

I accept the downstairs tenants had access to laundry 3 out of 7 days per week and were paying the Landlords a flat monthly amount for utilities.

Considering the above factors, and given that I find the hydro increases were greater than indicated by the Landlords, I find it is appropriate to fix the downstairs suite's portion of the utilities at 35%. Pursuant to section 67 of the Act, I order the Landlords to pay the Tenants  $35\% \times \$2,681.54 - \$475.61 = \$462.93$  for hydro and gas utilities.

**Are the Landlords entitled to compensation for damage caused during the tenancy and monetary loss or other money owed?**

I will address the Landlords' claims as follows: (a) carpet and move-out cleaning, (b) mould cleaning and treatment, (c) repair and replacement of damaged or missing items, (d) lost keys, and (e) compensation for December 16 to 21, 2023.

*a. Carpet and Move-Out Cleaning*

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the parties agreed in the tenancy agreement addendum that the Tenants were to have the carpet professionally cleaned when the tenancy ends.

Policy Guideline 1 states that generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, they will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. The tenant may be expected to steam clean or shampoo the carpets at the



end of a tenancy, regardless of the length of tenancy, if they or another occupant had had pets which were not caged.

I find the Tenants provided undated living room photos that show the carpet to be clean, and a carpet cleaning invoice dated December 18, 2023. However, I find the Landlords provided timestamped photos showing that on the morning of December 21, 2023, there were dog feces on the living room carpet, as well as stains on the staircase carpet in the evening of December 21, 2023. I find the Tenants submitted timestamped photos taken in the afternoon of December 21, 2023, which focus on smaller sections of the carpet and flooring in other areas of the rental unit. I find the carpet in these photos appeared to have been vacuumed and spot cleaned. However, I find that more likely than not, the Tenants did not have the carpet throughout the unit steam cleaned or shampooed before they vacated that day. I find the Tenants were obligated to do so in order to make the carpet reasonably clean, due to the terms of the tenancy agreement addendum, the Tenants having uncaged pets, and to clean soiled areas such as the staircase carpet. Therefore, I find the Landlords are entitled to be reimbursed for the cost of carpet cleaning.

I find many of the Tenants' photos show the wall patches, and therefore I accept that those photos were taken at the end of the tenancy. Based on the sum of the photo evidence, I find the Tenants to have generally cleared out the rental unit before vacating. However, I find the Tenants did not adequately clean areas such as mirrors, windows, and inside cabinets, drawers, sinks, and appliances (dishwasher, fridge, freezer).

I find the Landlords submitted a cleaning invoice for 8 hours of cleaning by two cleaners. Considering the size of the rental unit and the state of the unit as shown in the parties' photos, I find the Tenants to be responsible for 50% of the Landlords' cleaning cost, or  $50\% \times \$756.00 = \$378.00$ . I find this amount to represent the additional time and cost necessary to bring the rental unit to a standard of reasonable cleanliness, the standard required of the Tenants under the Act. I note that reasonably clean is less than perfectly or completely clean, and may be less clean than how the unit had been given to a tenant at start of the tenancy or what would be considered move-in ready for the next tenant.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$392.49 for carpet cleaning and \$378.00 for general cleaning.

*b. Mould Cleaning and Treatment*

I find the Landlords' contractor invoice includes a charge for 2 hours to treat and clean mould above the shower. I find the Landlords did not provide photos showing mould above the shower. I find the Tenants' photos show some staining along the edge of the bathroom ceiling which appeared to be mould. However, I do not find the Landlords to have provided sufficient evidence to prove the cause or extent of the mould in order to

justify the Tenants' responsibility to pay for the treatment. Accordingly, I dismiss the Landlords' claim under this part without leave to re-apply.

*c. Repair and Replacement of Damaged or Missing Items*

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

Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the photos submitted by the Landlords, I find the parts of the carpet were cut out and the underlay removed. I find this was damage caused by the actions of the Tenants or a person permitted on the property by the Tenants. I find the Landlords provided a receipt of \$414.75 for patching two areas of the carpet. I find the Landlords are entitled to be reimbursed for this cost from the Tenants.

I accept the fire extinguisher and smoke detector were both missing when the Tenants vacated the rental unit. I find the Tenants' photo of the fire extinguisher on the kitchen counter was taken prior to December 21, 2023. I am satisfied that the Landlords incurred a cost of \$109.56 to replace these items, plus labour of approximately 0.5 hours to install the smoke detector (\$42.00). I find the Landlords are entitled to recover these amounts from the Tenants.

I find the photos submitted by the parties show that the master bedroom appeared to have a light fixture and the lights appeared to have been functioning. I find it is unclear why the Landlords purchased and installed a new light fixture. I do not find the Landlords to have proven that the Tenants removed a part or caused damage to justify replacing the light fixture. I dismiss the Landlords' claim for purchasing and installing the light fixture and lights without leave to re-apply.

I do not find any of the parties' pictures to clearly show that the kitchen cabinet doors were stained with green paint or required re-finishing due to damage. I am not satisfied that the Tenants caused damage to the cabinet doors to warrant removing and refinishing them for \$300.00 plus taxes. I dismiss the Landlords' claim under this part without leave to re-apply.

I find the Landlords submitted photos showing that the doors replaced by the Tenants were not properly screwed. I accept the Landlords' testimony that three doors did not close properly and required trimming to fit the doorway. I find the bathroom door did not have a doorknob, so the Landlords had to install a door latch. I find the Landlords incurred a cost of \$420.00, or 5 hours of labour at \$75.00 per hour plus taxes to repair these issues as indicated on the contractor invoice. I find the Landlords also incurred

costs for door supplies, including door handles and screws, for a total of \$86.94, or  $(\$34.98 + \$34.71 + 7.94) \times 1.12$  taxes.

I find there was an excessive number of holes in the bedroom walls, and some on the living room and kitchen walls. I find the Tenants patched some of the holes, though I note the Landlords' evidence that the Tenants did not properly sand or prepare them for painting. I find the Landlords incurred a cost of \$1,386.00, or  $(9 \text{ hours} + 7.5 \text{ hours}) \times \$75.00 \text{ per hour} \times 1.12$  taxes, to patch and paint the holes in the bedroom, living room, and kitchen. According to Policy Guideline 1, the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. I find the rental unit was freshly painted at the start of the tenancy. Considering the relatively short length of the tenancy and the excessive number of holes, I find the Landlords are entitled to recover the cost of the patching and painting repairs from the Tenants.

I find the burnt hole on the deck to be sizeable and to constitute damage exceeding reasonable wear and tear. I accept the estimate from the Landlords' contractor of \$350.00 for materials and labour to cut out the area and replace part of the two main beams. I find the Landlords are entitled to recover this amount from the Tenants.

I find the hood fan was dented, which I accept to be damage beyond reasonable wear and tear. However, I do not find the evidence to indicate that the dent was more than cosmetic damage. Based on the Landlords' photo evidence, I find the hood fan was used but in good condition at the start of the tenancy. Under these circumstances, I do not find the Tenants are liable for the cost of purchasing a brand-new hood fan. I fix the loss in value suffered by the Landlords for cosmetic damage to a used hood fan at 25% of the price of a new comparable unit, or  $\$280.00 \times 25\% = \$70.00$ .

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$414.75 for the carpet repair, \$151.56 for the fire extinguisher and smoke detector, \$506.94 for repairing doors, \$1,386.00 for patching and painting, \$350.00 for the deck repair, and \$70.00 for the hood fan.

#### *d. Lost Keys*

Based on the condition inspection report, I find the Tenants were given two keys at the start of the tenancy. I find the Tenants informed the Landlords on December 21, 2023 that they had lost the keys. I find the Tenants did not return either of the keys to the Landlords when they vacated the rental unit.

Under section 37(2)(b) of the Act, when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Under section 7(1)(a) of the regulations, a landlord may charge the tenant the direct cost of replacing keys or other access devices. Section 5(2) of the regulations states

that a landlord must not charge a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access.

Additionally, section 25(1) of the Act states that at the request of a tenant at the start of the new tenancy, the landlord must (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and (b) pay all costs associated with the changes.

Considering the above sections of the Act and the regulations together, I find the loss suffered by the Landlords due to the Tenants losing the keys is the direct cost of replacing the lost keys. I find the cost to re-key the rental unit is not a loss that results from lost keys, provided that the locks themselves have not been damaged and access into the rental unit remains normal. I find the evidence indicates that the locks were not damaged in this case. Therefore, I do not find the Tenants are liable to reimburse the Landlords for the cost of the new deadbolt and locks, or labour for the installation. I find the Landlords are entitled to nominal damages for two missing keys, which I fix at \$5.00 each for a total of \$10.00.

As explained in Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, nominal damages are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords nominal damages of \$10.00 for two missing keys.

*e. Compensation for December 16 to 21, 2023*

I find the parties agreed in the prior dispute resolution proceeding that rent was paid to December 15, 2023. I find the Tenants had agreed to vacate the rental unit by 1:00 pm on December 15, 2023. I find the parties in essence agreed that the tenancy was to end by 1:00 pm on December 15, 2023. However, I find the Tenants overheld in the rental unit until December 21, 2023, beyond the agreed upon tenancy end date and time.

I have reviewed the parties' text message correspondence. I do not find the parties to have mutually agreed to extend the tenancy end date to December 21, 2023. I find there were multiple attempts to schedule a move-out inspection, which was repeatedly pushed back and rescheduled due to the Tenants not being ready and requesting more time to clean. I find the Landlords attended the rental unit on December 17, 2023 and on the morning of December 21, 2023, at which times the unit was not clean and the Tenants still had belongings in the unit, including food in the fridge and a bed for sleeping. I find the Landlords advised they would return at 6:00 pm on December 21, 2023 to collect the keys. I find when the Landlords returned in the evening, the Tenants had already left.

I do not find the Landlords to have expressed that the Tenants would be able to stay free of charge until they vacated, nor do I find it would have been reasonable for the Tenants to believe that they were entitled to do so in the circumstances, based on the parties' communications.

Under section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As explained in Residential Tenancy Policy Guideline 3. Compensation for Rent and Damages for Loss of Rent, compensation for overholding includes compensation for use and occupancy of the unit on a *per diem* or daily basis until the landlord recovers possession of the premises.

I find the Landlords are entitled to compensation for overholding by the Tenants from December 16 to 21, 2023, calculated as  $\$3,000.00 / 31 \text{ days in December 2023} \times 6 \text{ days} = \$532.26$ . Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$532.26 for 6 days of use and occupancy.

### **Are the Landlords entitled to recover their filing fee?**

The Landlords have been partially successful in their claims for compensation. I find the Landlords are entitled to recover their filing fee from the Tenants under section 72(1) of the Act.

### **Are the Landlords entitled to retain the security deposit?**

The parties disagree whether the Tenants were given a copy of the condition inspection report within 7 days after the move-in inspection as required by the regulations. The Tenants submit that they did not receive a copy of the report until December 15, 2023, and as such the Landlords' right to claim damages was forfeited.

Under section 24(2)(c) of the Act, a landlord's right to claim against a security deposit for "damage to residential property" is extinguished if the landlord does not give the tenant a copy of the condition inspection report in accordance with the regulations. Under section 18(1)(a) of the regulations, a landlord must give the tenant a copy of the condition inspection report completed upon move in within 7 days after the inspection is completed.

However, I find nothing turns on this issue, because the Landlords have also claimed against the security deposit for something other than damage to residential property (i.e. 6 days of rent). This claim is not extinguished even if the Landlords did not give the Tenants a copy of the condition inspection report on time.

I find the Tenants did not serve the Landlords with a forwarding address in writing, such that the 15-day limit under section 38(1) of the Act has not been triggered.

I have found above that the Landlords are entitled to compensation exceeding the amount owing to the Tenants for utilities and the security deposit held by the Landlords.

Pursuant to sections 38(4)(b) and 72(2)(b) of the Act, I authorize the Landlords to retain the \$500.00 security deposit in partial satisfaction of the total amount awarded to the Landlords in this decision.

## Conclusion

The Tenants' claim for compensation is partially granted in the amount of **\$462.93**. The remainder sought by the Tenants is dismissed without leave to re-apply.

The Landlords' claims for compensation and recovery of the filing fee are partially granted in the amount of **\$4,292.00**. The remainder sought by the Landlords is dismissed without leave to re-apply.

Pursuant to sections 67 and 72 of the Act, I grant the Landlords a Monetary Order of **\$3,329.07**, calculated as follows:

| Item  | Amount            |
|---|-------------------|
| <b>Amounts Payable by Tenants to Landlords</b>  |                   |
| Carpet Cleaning   | \$392.49          |
| Cleaning (50% × \$756.00)   | \$378.00          |
| Carpet Repair   | \$414.75          |
| Fire Extinguisher, Smoke Detector, and Labour to Install<br>(\$109.56 + \$75.00 / hour × 0.5 hours × 1.12 taxes)        | \$151.56          |
| Patching and Painting Excessive Holes<br>((9 hours + 7.5 hours) × \$75.00 per hour × 1.12 taxes)                        | \$1,386.00        |
| Trimming 3 Bedroom Doors and Installing Bathroom Door Latch<br>(\$75.00 / hour × 5 hours 1.12 taxes + \$86.94 supplies) | \$506.94          |
| Burnt Deck Hole   | \$350.00          |
| Hood Fan Cosmetic Damage (25% × \$280.00)   | \$70.00           |
| Nominal Damages for 2 Missing Keys (2 × \$5.00)   | \$10.00           |
| Compensation for Overholding from December 16 to 21, 2023<br>(\$3,000.00 / 31 days × 6 days)                            | \$532.26          |
| Filing Fee  | \$100.00          |
| <b>Subtotal</b>   | <b>\$4,292.00</b> |
| <b>Less Amounts Payable by Landlords to Tenants</b>   |                   |

|   |                   |
|---|-------------------|
| Credit for Security Deposit   | - \$500.00        |
| Reimbursement for Hydro and Gas Utilities<br>(35% × \$2,681.54 - \$475.61 = \$462.93) | - \$462.93        |
| <b>Subtotal</b>   | <b>- \$962.93</b> |
| <b>Net Payable by Tenants to Landlords</b>  | <b>\$3,329.07</b> |

The Landlords must serve this Order on the Tenants as soon as possible. If the Tenants do not comply with this Order, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

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: July 3, 2024

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Residential Tenancy Branch