

## **DECISION**

### **Introduction**

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

- A Monetary Order for unpaid rent under section 67 of the Act
- A Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing was previously adjourned as it was unable to finish within the required time.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Landlord C.L. was deemed served on April 26, 2024, by pre-agreed email in accordance with section 89(1) of the Act. The Tenants provided a copy of the email and RTB Form #51. The Landlord argued the Tenants sent the Proceeding Package in an email with other pieces of evidence and the Landlord had a difficult time finding the Proceeding Package. However, the Landlord also advised they were ready to proceed. The Act requires that a party serve the respondent with notice of hearing using a method outlined in the Act, which the Tenants complied with, and the Landlord advised

they were ready to proceed, as such, I take no issue with the alleged confusing way the Landlord was served.

I find that Tenant M.K. was deemed served on February 22, 2024 by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant S.K.K was deemed served on February 22, 2024 by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

## **Service of Evidence**

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act. The Landlord argued that 7 pieces of evidence were served late on May 25, 2024; however, the Landlord advised they are not taking any issue with the evidence being included and the Landlord had time to review it.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

## **Preliminary Issue**

- Tenants' Past Application

The Landlord argued the parties had a previous dispute where the Tenants' application was dismissed, without leave to reapply and the Landlord argued the Tenants cannot file this application (past decision noted on cover page). I reviewed the past decision and note that the Tenants never applied for monetary compensation and that is stated in the past decision "the tenants claimed that they wanted monetary compensation, which they agreed they did not apply for". Therefore, I find that the past decision does not prohibit the Tenants from applying for monetary compensation.

## **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

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

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

## **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.

Evidence was provided showing that this tenancy began on August 15, 2022, with a monthly rent of \$2,900.00, due on first day of the month, with a security deposit in the amount of \$1,450.00 and a pet damage deposit in the amount of \$1,450.00. The Tenants vacated the rental unit November 30, 2023. The security and pet damage deposits have already been dealt with in a previous dispute.

The Landlord is seeking unpaid utilities, compensation and damages. The Tenants filed a cross application seeking compensation.

## **Landlord's Application**

The Landlord is seeking unpaid utilities of \$65.96 for water. The Landlord's position is that water was not checked off in the tenancy agreement as included in the rent and the Tenants owe the last remaining water bill. The Landlord provided an email from the water company which stated "If the tenants have been there over a year we can work out an adjustment amount based on historical data. That amount is \$65.96 for the period Oct 14 to Dec 01, 2023".

The Tenants' position is that water was included in rent, and this was verbally agreed to by the parties. The Tenants argued the Landlord presented them a water bill 9 months into the tenancy and they agreed to pay because the Tenants believed they did not have a choice. The Tenants filed a counterclaim to recover the water they paid during the tenancy.

The Landlord is seeking the following compensation and damages:

Item	Description	Amount
1	Cleaning	\$575.00
2	Drywall Paint	\$1,250.00
3	Loss of Rental Income	\$2,900.00
4	Motorhome Storage September 2023 to November 2023	\$315.00
5	Reupholster	\$700.00
	<b>TOTAL</b>	\$5,740.00

The parties advised no move-in condition inspection report was completed. A move-out condition inspection report was completed on December 14, 2023.

### **#1 Cleaning**

The Landlord's position is that the rental unit was left dirty when the Tenants vacated the rental unit. The Landlord advised they undertook the cleaning with the Landlord's partner, and it took 16 hours of cleaning at \$35.00 an hour. The Landlord advised a cleaner was hired for 3 hours after the drywall was installed and a receipt was provided. The Landlord provided photographs to support the state of the rental unit.

The Tenants' position is that the Landlord filed this as a punitive claim and the Tenants do not agree with the Landlord's characterization of the state of the rental unit. The Tenants provided videos to support the state of the rental unit.

### **#2 Drywall and Paint**

The Landlord's position is that repairs were needed for the drywall in the small bedroom and living room. The Landlord argued the damage was the result of the Tenants attaching bookcases to the walls. The Landlord provided photographs and an invoice. The Landlord advised the prework was completed by the Landlord at a rate of \$35.00 and hour for 2 hours.

The Tenants' position is that the damage was not caused by the Tenants but was previously there. The Tenants argued they never attached any bookcases to the walls.

### **#3 Loss of Rental Income**

The Landlord advised they are reducing their claim from \$4,350.00 to \$2,900.00 and are only seeking the loss of rental income for December 15, 2023 to January 15, 2024. The Landlord's position is that because of the delay in being able to complete the move-out inspection and the repairs to the drywall the Landlord was only able to re-rent the rental unit for January 15, 2024.

The Tenants' position is that the Landlord agree to the move-out inspection date and that the rental unit was not left in an unrentable state. The Tenants pointed to email communications between the parties from November 2023 where the Landlord agreed to one of the inspection dates suggested by the Tenants.

### **#4 Motorhome Storage September 2023 to November 2023**

The Landlord's position is that the parties agreed the Landlord could store an RV on the rental unit property; however, the Tenants changed their mind and the Landlord had to pay for storage costs. The Landlord pointed to email exchanges between the parties where the Tenants consented to the RV storage. The Landlord pointed to an email dated June 19, 2022, where the Tenants stated, "We have no problem with sharing the space for your visits".

The Tenants' position is that the relationship between the parties broke down and the Tenants decided the presence of the Landlord and the storing of the RV would disturb the Tenants peace.

### **#5 Reupholster**

The Landlord's position is that they agreed the Tenants could cover bench cushions with different fabric, but the Tenants threw away the original material on the cushions and the Landlord did not agree to this. An email from the reupholstering company with an estimate of a price and photographs were provided.

The Tenants' position is that this damage was not noted on the move-out inspection report. The Tenants argued their understanding of the arrangement was that the original material could be removed, and the Tenants were authorized to cover the cushions with new material. The Tenants provided a copy of the WhatsApp messages between the parties discussing the cushions.

The Tenants stated in the WhatsApp message, "If you are around the house and can measure the cushions that fit the booth, could you give us the measurements? We are considering having some fabric made to fit them at the souq here. It's not a big deal. We

don't have to do this, but if you are there would you mind checking the size?" In response the Landlord stated "I like the idea and I can pay for the costs as the cushions would be lovely."

### **Tenants' Application**

The Tenants are seeking the following compensation:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Loss of Quiet Enjoyment	\$17,724.00
2	Reimbursement of Water	\$617.33
	<b>TOTAL</b>	\$18,341.33

#### **#1 Loss of Quiet Enjoyment**

The Tenants' position is that between June 2023 to November 2023 the Tenants' quiet enjoyment was impacted by the Landlord's actions. The Tenants argued the Landlord's misuse of the RTB Mutual Agreement to End Tenancy form, claiming the Tenants owed arrears for water, listing the rental unit for sale, and the Landlord's unfounded fears regarding safety collectively constituted harassment and impacted the Tenants' peaceful enjoyment. The Tenants provided communications between the parties to support their claim.

The Landlord's position is that communication between the parties broke down which resulted in the relationship changing between the parties. The Landlord admitted they were misusing the RTB Mutual Agreement to End Tenancy form but argued it was a mistake and not meant to be used as a threat.

#### **#2 Reimbursement of Water**

The Tenants are seeking reimbursement from the Landlord for the water bills paid by the Tenants between October 2022 to October 2023. The Tenants argued their understanding was that water was included in rent and this was a verbal agreement between the parties. In support of this the Tenants pointed to a WhatsApp message between the parties where the Tenants inquired if anything else needed to be set up besides hydro and internet and the Landlord did not mention water.

The Tenants argued that 9 months into the tenancy the Landlord approached the Tenants to pay for the past 9 months of water bills that the Landlord had paid and pay for water moving forward. The Tenants argued because the Landlord had the parties sign a fixed term 1 year lease with a mutual agreement to end tenancy at the end of the fixed term, the Tenants were afraid of losing the rental unit and agreed to pay for the past 9 months and for water moving forward.

The Landlord's position is that there was never any agreement that water was included in the rent, and this is supported by the tenancy agreement. The Landlord argued because they were out of the country for several months, they paid the water bills and then reached out to the Tenants to be reimbursed. The Landlord argued they never thought it would be a problem to get the Tenants to reimburse for the water payments.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for unpaid utilities?**

Based on the tenancy agreement water was not included in the rent and was the responsibility of the Tenants. The Tenants have provided insufficient evidence to establish the parties had a verbal or written agreement otherwise. I find that the WhatsApp message between the parties does not support that water was included in rent, as utilities can be the requirement of a tenant but not be setup in the tenant's name. As such, I find the Tenants owe the Landlord \$65.96 for unpaid water for the period of October 15, 2023 to November 30, 2023. I award the Landlord a Monetary Order for \$65.96.

### **Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report. Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss

- the landlord acted reasonably to minimize that damage or loss

## **#2 Drywall and Paint**

Section 21 of the Regulation states that “in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has preponderance of evidence to the contrary”.

It is noted that the Tenants dispute that the damage was caused by them. Rather, the Tenants’ position is that any damage was there prior to the Tenants moving in. Given that the Landlord has not provided any condition inspection report completed at the start of the tenancy, the Landlord has not proven any breach of the Act for the drywall. Without a move-in condition inspection report, I find I cannot determine the condition of the walls prior to the Tenants moving in. While the Landlord provided some photographs before the Tenants moved in, it is difficult to determine the exact state of the walls from those photographs. As such, I decline to award any compensation for the drywall and paint.

## **#5 Reupholster**

Based on the correspondence provided by the parties, I find that the Landlord agreed to have the cushions reupholstered in new fabric. I find the correspondence was vague on whether the Tenants were required to keep the old fabric, as such, I find the Landlord has failed to establish the Tenants breached the Act by throwing away the old fabric. Additionally, the Landlord only provided an email containing an estimate of the price for reupholstering. No other invoice or receipt was provided to show the work was completed. Based on the above, I decline to award any compensation.

## **Is the Landlord entitled to a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement?**

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



## **#1 Cleaning**

The Landlord advised they completed the cleaning alongside the Landlord's partner; however, the Landlord did not provide a receipt or invoice. The Landlord provided a word document that stated cleaning \$575; however, there is no breakdown of what cleaning was done and how long each task took. As such, I find that the Landlord has failed to establish the value of the loss. While the Landlord provided a receipt for cleaning after the drywall work was completed, I find that the cleaning done after the drywall work is not related to any breach by the Tenants. I decline to award any compensation for cleaning.

## **#3 Loss of Rental Income**

The Landlord argued the delay in renting the rental unit was because the Tenants delayed the move-out inspection and drywall work needed to be completed. As stated above, the Tenants were not held liable for the drywall damage as there is no move-in condition inspection report. As such, I decline to hold the Tenants responsible for the loss of rental income due to the drywall repair. Additionally, based on the email correspondence between the parties the Landlord agreed to complete the move-out inspection on December 13, 2023. The Landlord had the option to send an agent on their behalf or suggest another date to have the move-out inspection report completed sooner. Based on the above, I find that the loss of rental income was not caused by the Tenants failure to comply. I decline to award any compensation for the loss of rental income.

## **#4 Motorhome Storage September 2023 to November 2023**

Based on the evidence provided, I find that the parties discussed the Landlord storing an RV on the rental property; however, I find that there was no agreement reached and nothing included in the tenancy agreement. In an email from June 19, 2022, the Tenants stated, "We have no problem with sharing the space for your visits". However, no details about how the arrangement would work were discussed or agreed to by the parties at that time. Around June 2023 the parties began discussing RV storage again; however, based on the evidence I find that the parties were unable to reach an agreement. To be awarded compensation the Landlord must establish the Tenants failed to comply with the Act, regulation and/or tenancy agreement. Based on the evidence there was nothing in the tenancy agreement requiring the Tenants allow the RV to be stored on the property and the parties were never able to reach an agreement on this topic in June 2023. As such, I find that the Landlord has failed to prove the Tenants breached the Act, regulation and/or tenancy agreement. I decline to award any compensation.

## **Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

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

### **#1 Loss of Quiet Enjoyment**

Section 28 of the Act, states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following

- a. Reasonable privacy
- b. Freedom from unreasonable disturbance
- c. Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;
- d. Use of common areas for reasonable and lawful purposes, free from significant interference

Policy Guideline #6 explains that a breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises and temporary discomfort, or inconvenience does not constitute a basis for a breach of the entitlement of quiet enjoyment. When determining the amount by which the value of the tenancy has been reduced Policy Guideline #6 advises that an arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment and the length of time over which the situation existed.

The Tenants position is that the Landlords actions were equivalent to harassment which impacted the Tenants quiet enjoyment. Based on the testimony of the Tenants I find that the loss described by the Tenants is an intangible loss.

The evidence supports that the relationship between the parties became strained around June 2023. The substantial correspondence indicates increasing ill will between the parties and lack of communication.

I find there is insufficient evidence to establish the Landlord's actions breached the Tenants' right to quiet enjoyment. The Tenants complained about different actions by

the Landlord, most of which are not prohibited under the Act. For example, listing a rental unit for sale or bringing a witness when you attend the rental property.

I do find that the Landlord was misusing the RTB Mutual Agreement to End Tenancy form and requiring the Tenants to sign a new fixed term tenancy after every year; however, I do not find that this rises to the level required for a breach of a tenant's right to quiet enjoyment. As such, I decline to award any compensation for loss of quiet enjoyment.

## **#2 Reimbursement of Water**

Based on the tenancy agreement water was not included in the rent. I find the Tenants have provided insufficient evidence to establish that the parties verbally agreed water was included in rent. I find that the WhatsApp message between the parties does not support that water was included in rent, as utilities can be the requirement of a tenant but not be setup in the tenant's name.

I find that the Landlord had delayed charging water to the Tenants for 9 months. Based on the evidence presented, I am not satisfied that by the Landlord's conduct or otherwise, the Landlord communicated to the Tenants an intention to abandon their right to charge the utilities. Additionally, considering the tenancy was 1 year and 3 months long and water is billed and paid infrequently, I do not find the Landlord's delay, in the circumstances, to be sufficient to estop the Landlord from charging these utilities to the Tenants in accordance with the tenancy agreement. As such, I find that the Landlord was authorized to recover the utilities from the Tenants, and this was not a breach of the Act, regulation and/or tenancy agreement. As such, I decline to award any compensation to the Tenants.

## **Is the Landlord or Tenants entitled to recover the filing fee for their applications?**

As the Landlord was partially successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the Act. The Tenants were not successful in their claim, and I decline to award the recovery of the Tenants' filing fee.

## **Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$165.96** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid utilities under section 60 of the Act	\$65.96
authorization to recover the filing fee for this application from the Tenants under section 65 of the Act	\$100.00
<b>Total Amount</b>	<b>\$165.96</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the Landlord's application is dismissed, without leave to reapply.

The entirety of the Tenants' application is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 3, 2024

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Residential Tenancy Branch