

## **DECISION**

### **Introduction**

This hearing dealt with cross applications including:

The Tenant's March 20, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's May 29, 2024, 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 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

The hearing was attended by the two Tenants M.M. and K.M. and G.S. as the Agent for the Landlord. All parties were able to present sworn testimony and refer to evidence during the hearing.

### **Preliminary Matters**

The Landlord referred to written proof of authorization for them to attend and participate as the Landlord's Agent.

The Landlord amended their claim to remove the claim for payment of rent because payment of rent was dealt with through a prior application from the Landlord that was heard on April 4, 2024. The Tenants agreed and so I amended the application to remove the claim as requested under section 64(3)(c) of the Act.

The parties agreed that the Landlord previously submitted a claim for compensation for damages at the residential property, and that they were given leave to reapply for their claim in the April 4, 2024, Decision from the RTB.

## **Service of Notice and Evidence**

The parties testified that they accepted service of Notice and Evidence.

## **Issues to be Decided**

- Are the Tenants entitled to a monetary order for emergency repairs?
- Are the Tenants entitled to a monetary order for damage or loss?
- Is the Landlord entitled to a monetary order for damage or loss?
- Is either party entitled to recover the costs for the filing fee?

## **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 residential property is a single-family dwelling with a large lot. The parties agreed that the Landlord purchased the property some time in 2016 and owned the property as Landlord throughout the tenancy that is the subject of this dispute.

The Tenants occupied the property with their children between January 1, 2018, and October 31, 2023. The parties agreed that the Tenants occupied the property early in December 2017 in exchange for certain terms that were written into the tenancy agreement.

The text of the 12-page tenancy agreement and its assorted terms was discussed at length during the teleconference hearing.

Monthly rent was \$3,000.00 when the tenancy ended and the parties agreed that the full value of the security and pet damage deposit were ordered to be applied against the Landlord's claim for rent in the April 4, 2024, Decision associated with the previous hearing.

The Tenant M.M. repeatedly testified that the Tenants did not file a dispute with the RTB while the tenancy was ongoing because the Tenants wanted to continue raising their family within the residential property and feared retribution from the Landlord.

The Tenant K.M. testified that they always coordinated necessary repairs and did their best to work with the Landlord and the Landlord's agents during the tenancy.

The Landlord testified that they find it odd how the Tenants only made a claim for compensation AFTER the Landlord submitted their original claim for compensation on November 14, 2023, that was heard on April 4, 2024.

The Tenant M.M. referred to their written statement that clearly summarized and outlined their claim for compensation and referred to text message conversations that were also provided.

Regarding the Tenants' claim for compensation for emergency repairs, the claim for \$9,623.25 is the amount shown in an invoice dated November 23, 2018, associated with the costs of removing a molding old structure from the yard of the residential property.

The parties agreed that the following clause was included in the tenancy agreement:

(h) Other : Tenant agrees to remove the shed located in the backyard of the house in exchange for early possession of the premises. Tenant shall ensure the removal of the shed complies with the local municipality's requirement and apply for permits if required. All contractors involved shall carry their own liability insurance.

The parties also agreed that the Landlord had a different Agent during 2018, than the one who represented the Landlord during the hearing. I note that the Landlord and the Tenants referred to proof of a text message sent from this prior Agent to the Landlord on November 22, 2017, indicating that: *The Tenant agreed to remove the structure for free in exchange for December 2017 rent, and that the costs to remove the structure would likely be more than \$2,800.00 which was the rate of rent at the time.*

The Landlord stated that they do not owe the Tenant money for the structure because removal of the structure was included in the tenancy agreement.

The parties agreed that the old structure was the original house on the property and not physically connected to the house that was occupied by the Tenants. The Tenant K.M. alleged that the old structure was "condemned" but did not provide any verifiable evidence to support the claim.

The Tenant M.M. testified that the Tenants attempted at multiple times to have the Landlord pay the costs of removal, but eventually decided it was a cost they had to absorb. The parties agree that the Tenants started paying rent in January 2018 despite taking occupancy of the residential property in December 2017.

I reviewed section 33 of the Act, Emergency Repairs, during the hearing, to cavass submissions from both sides. The Tenant M.M. testified that it was an emergency because the presence of the old structure in the yard was a safety hazard for their children however no additional supporting evidence was provided.

The Tenants reviewed their claim for compensation for damage of loss in the amount of \$24,400.00 as made up by the following:

- 8 Months no dishwasher = \$3,400.00
- 52 months no washing machine = \$6,000.00
- 10 months with no cold water main bathroom sink = \$3,000.00
- Failure to repair fence = \$3,000.00
- General failure by Landlord = \$9000.00

The Tenant M.M. referred to evidence submitted and testified that they had to hire help with dishes during the 8 months they were without a dishwasher because Tenant K.M. had a chronic illness and needed help. The Tenants alleged that they had evidence to suggest the dishwasher was an issue when the Landlord purchased the residential property in 2016.

The Tenant M.M. testified that they were forced to do laundry at friends and family's during 52 of the 70 months of this tenancy agreement when they were without a functioning washing machine and that this was a lot of work. The Tenant K.M. referred to evidence of written submissions from friends and families in support of this claim.

The Tenant M.M. referred to evidence submitted and testified that their children experienced burns from the hot water in the bathroom sink which resulted in the Tenants blocking off the sink in the main bathroom until it was fixed.

The Tenant M.M. testified that there was a clause in the tenancy agreement that required the Landlord to fix the fence prior to the tenancy because the Tenant had a dog and 5 children. However, the fence was not fixed and so the Tenants had to install many pieces of plywood to make the yard safe. The Tenants also allege that a neighbour attempted to share costs for the fence with the Landlord but allegedly got no response from the Landlord.

The Tenants referred to evidence submitted and claimed compensation in response to the Landlord's alleged efforts to increase the rent during the tenancy, to sell the residential property during the tenancy, and their Landlord showing up at the residential property without Notice during the tenancy. The Tenants also repeatedly testified that the Landlord and their agent were allegedly aggressive during the move-out inspection. The Tenant M.M. claimed that their family lost quiet enjoyment of the residential property as a result.

The Landlord's Agent disputed the Tenants' claim for compensation and referred to their own evidence submitted to testify that:

- The Landlord responded to maintenance issues when the Tenants actually put their requests in writing to the Landlord;
- The Landlord sent appliance repair persons when needed to the residential property;
- The Landlord secured new appliances when informed that new appliances were needed for the residential property;

- The Tenants withheld rent on two occasions with permission from the Landlord to account for the costs of necessary repairs;
- The Landlord fixed the fence as needed;
- The Landlord always communicated with the Tenants about access and always tried to address needs when needs were communicated.
- Rent only increased from \$2,800-\$3,000.00 during the tenancy.

Regarding the Landlord's claim for compensation for damages, this includes the following:

- Whole house cleaning \$550.00
- Replacement of fridge components \$356.72
- Replace fireplace glass \$493.50
- Painting \$5,040.00
- Replace broken cabinets \$2,632.00

The Landlord confirmed that their claim for damages also included the claim for unpaid rent, which was removed from this application, and that that actual damage claim is \$9,082.22.

The Landlord referred to evidence submitted to show photos of the residential property before and after the tenancy. The Landlord also referred to the move-in and move-out inspection report to show the differences and to demonstrate that all damages claimed by the Landlord, were identified in the move-out inspection report. The Tenant M.M. testified that they attended both inspections and that M.M. refused to sign to the move-out inspection report because they felt the Landlord was being too strict.

The Landlord referred to an invoice for cleaning in the amount of \$550.00 and acknowledged that the invoice does not have proof of address or service date. The Tenants disputed the claim for cleaning and testified that they left the property reasonably clean and even paid to have it clean themselves.

The Landlord referred to a receipt for payment in the amount claimed for the broken fridge component and testified that the broken components have been replaced. The Tenants disputed the claim for compensation and testified that they understand that the Landlord renovated the kitchen in 2009 and that the fridge components that broke, broke because the fridge had exceeded its expected serviceable life and everything was just brittle due to age.

Regarding the fireplace glass, the Landlord referred to a professional invoice in the amount claimed and to a picture of a fireplace showing cardboard where the glass insert should be. The Landlord testified that the glass has been replaced in the fireplace. The Tenants agreed that the glass was broken, but denied blame, testifying that there was a windstorm that resulted in negative pressure in the chimney breaking the glass sometime in 2021.

The Tenants agreed that they had placed cardboard in the fireplace since that time and that they did not use the fireplace in the basement after the glass broke until the tenancy ended.

The Landlord testified that the Tenants never notified the Landlord of the broken glass. The Tenants testified that they provided verbal notice when the break occurred, and that the Landlord previously observed the cardboard in the fireplace. Tenant K.M. testified that they got a new phone and lost most of their text messages which would have shown a complete record of K.M.s communications with the Landlord during the tenancy.

Regarding the claim for compensation for painting, the Landlord referred to an invoice larger than the amount claimed and testified that they are only claiming part of the amount from the Tenants because the Landlord recognizes it was a 6+ year tenancy. The Landlord referred to photos submitted showing multiple smaller and larger holes in the walls around the residential property to testify that compensation was needed for damage that was beyond wear and tear.

Regarding the various documented holes in the walls, the Tenant K.M. testified that they asked the Landlord if they should fix the holes, and the Landlord allegedly responded, "just clean the house, don't worry about the holes". The Tenant M.M. testified that they did not know where the hole shown on page 54 of the Landlord's evidence was even located.

The Tenant M.M. also testified, that it is shown on the move-in condition inspection report that there are various scratches on the walls at the start of the tenancy, and Tenant K.M. alleged that the walls had not been painted for 12 years when the tenancy ended. The Tenants agreed that they caused one doorknob shaped hole in the drywall because there was no door stop on that one wall.

Regarding the claim for compensation for broken cabinets, the Landlord referred to a professional invoice in the amount claimed and acknowledged that the invoice is not itemized and so it is hard to tell what was completed for the amount identified. The Landlord referred to photos provided to demonstrate that assorted items were damaged at the end of the tenancy including:

- Peeling laminate on a cabinet drawer,
- Missing glass drawer on the fireplace cabinet,
- A missing doorknob,
- Cut countertop in the laundry
- Drawer off track in what looks to a bedroom closet

The Tenants disputed this claim for compensation and testified that the Landlord's photographic evidence of before photos are "listing photos" from when the property was for sale when the Landlord purchased it in 2016. The Tenant M.M. testified that there was never a glass drawer by the fireplace during their tenancy, and that the cabinet

laminate peeled because it was old and cheap from 2009. The Tenants referred to their evidence for records of communication to demonstrate that the Landlord had known for many years about the cut countertop because this was what allegedly prevented the Landlord from securing a replacement washing for so many years.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim as required by RTB Rule of Procedure 6.6.

### **Is the Tenant entitled to a Monetary Order for Emergency Repairs?**

As seen in section 33(1) of the Act, an emergency repair is one that is urgent and necessary for the health or safety of anyone or for the preservation or use of residential property.

As seen in section 33(3) of the Act:

(3)A tenant may have emergency repairs made only when all of the following conditions are met:

- (a)emergency repairs are needed;
- (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Specific to the Tenants' claim for compensation for the costs of removing the old structure from the residential property, I find that they failed to establish on the balance of probabilities that this constitutes an emergency repair because:

- There is a clause in the tenancy agreement that says the Tenants will remove the structure in exchange for early possession of the residential property.
- The Tenants provided no evidence to suggest that the condition of the structure changed between December 2017 and November 2018 when it was removed.
- The Hearing occurred on June 25, 2024.
- The Tenants provided no evidence of communication with the Landlord that cited section 33 of the Act as the Tenant's justification for paying to remove this structure.

I therefore dismiss the Tenants' claim for compensation for emergency repairs and do not give leave to reapply.

**Is the Tenant entitled to a monetary order for their claim for compensation for damage or loss?**

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

This four-point test is outlined in RTB Policy Guideline 16.

The Tenants testified that they lost quiet enjoyment during the tenancy. The test for quiet enjoyment is shown in RTB Policy Guideline 6 which shows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Specific to the Tenants' claim for \$24,400.00 in compensation, I find that this was associated with a multitude of issues that revolved around a common theme of: *we did not want to give the Landlord reason to evict us.*

This response was offered by the Tenants on multiple occasions when I inquired during the hearing why the Tenants did not make applications to the RTB during their 6+ year tenancy when documented issues arose with the dishwasher and the washing machine.

I referred the parties during the hearing, to section 7 of the Act which states that:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I also refer to RTB Policy Guideline 5 Duty to Mitigate Loss because it refers to the larger legislative context of the RTB and how the RTB exists as an administrative body to uphold the Act and Regulations. It is also useful to note, that case law like *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, has clearly communicated that the Act and Regulations are designed to protect Tenants.



Consequently, I give little weight to the Tenants' claims that they did not raise all concerns and requests for repairs directly to the Landlord during the tenancy because they claimed to be worried that they would get evicted.

I find that the Tenants signed a tenancy agreement with appliances:

5. The rent includes the following service and facilities:
  - (a) Stoves, Oven, Fridge, Dishwasher, Washer & Dryer

If and where the Tenants experienced inconveniences associated with the malfunctioning of any of these appliances, I find that there were various mechanisms available to the Tenants to restore the appliances to the required functional status.

For instance, as noted by the Landlord, the Tenants withheld rent on two occasions.

Nevertheless, I find that the Tenants are entitled to nominal compensation due to their many months of documented issues with assorted appliances and so I award \$1,000.00 because the Tenants have a large family and they testified that the Tenant K.M. has a chronic illness which makes it even more important for the family to have functioning appliances.

Regarding the claim for compensation for the bathroom sink, I find that the Tenants failed to establish on the balance of probabilities that they are entitled to compensation because the Landlord convincingly disputed the claim. I also find that the Tenants failed to demonstrate why and how they let an alleged safety hazard (the hot water only) for their children remain for 10 months without attempting the simple fix necessary for the problem. I therefore dismiss this claim and do not give leave to reapply.

Regarding the Tenants' claims for compensation related to a fence, I find that it was written on the Move-in condition inspection report that the fence would be fixed, however, I find that insufficient evidence and documentation was provided for me to determine what the promised fix may have been.

I therefore dismiss this claim and do not give leave to reapply.

Regarding the Tenants claim for compensation for general loss of quiet enjoyment, I find that that the Landlord provided sufficient evidence to contradict the Tenants' claims that the Landlords did not respond to written communications, or that the Landlord would regularly access the residential property without proper notice, or under dubious circumstances, such as, attending to show the property instead of attending to address maintenance issues.

In sum, I find that the Tenants successfully established a \$1,000.00 claim for compensation for damage or loss under the Act.

## **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

I find that the Landlord has successfully established on the balance of probabilities that they are entitled to some compensation for damages because:

- I do not award compensation for cleaning in the full amount cleaned because:
  - The invoice provided is not dated or addressed.
  - The Tenants argued that they had the residential property professionally cleaned prior to vacating.
  - I award nominal damages of \$200.00 because the Landlord provided photos of staining on the wall and staining on the carpets.
- I do not award compensation for the fridge components because the Landlord had no evidence on the age of the appliance and the Tenants alleged that the appliance was at least 14 years old when the tenancy ended, and the average expected lifespan of a refrigerator is 15 years according to RTB Policy Guideline 40.
- The Landlord provided a documented invoice and receipt for painting and wall repair at the residential property after the Tenants vacated.
- The Landlord provided photos of at least 4 specific areas that required substantial drywall repair prior to painting and 32(3) of the Act requires Tenants to repair any damage caused by their actions or neglect.
- I therefore award nominal compensation of \$700.00 from the total invoice of \$9,135.00 that was required for complete painting of the house after at least 6, if not 12 years since it was previously painted, and RTB Policy Guideline 40 states that the average interior paint job should last for 4 years.
- I do not award full compensation for the furnace glass because I find that the Tenants established on the balance of probabilities that the glass broke in response to an environmental event, and not in response to any of their actions nor neglect.
- I award nominal compensation of \$100.00 glass repair for the basement furnace because the Tenants provided no verifiable evidence related to efforts to

communicate to the Landlord that the glass broke in early 2021 and remained broken until the tenancy ended in late 2023.

- I make this nominal award because I find that a broken fireplace in a residential property occupied by children presents a liability concerns.
- I do not award compensation related to the invoice for cabinetry because I find that invoice provided does not specify what was repaired and I find that the Tenants established on the balance of probabilities, that the items flagged as “damage” by the Landlord, reflect permitted “wear and tear” instead.

I find that the Landlord successfully establish their claim for \$1000.00 worth of cleaning and damages associated with the tenancy.

$\$200.00 + \$700.00 + \$100.00 = \$1,000.00$

### **Authorization to retain filing fees**

I find that both parties were only partially successful in their applications and so I dismiss both of their requests to recover the \$100.00 filing fee from each other under section 72 of the Act.

### **Conclusion**

I find that the \$1,000.00 claim for loss awarded to the Tenants cancels out the \$1,000.00 claim for compensation to the Landlord and that consequently, neither party is owed any money related to this tenancy.

I dismiss the Tenants’ claim for compensation for emergency repairs and do not give leave to reapply.

I dismiss both the Landlord and Tenants’ claim to recover the costs of the filing fee and do not give 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 2, 2024

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Residential Tenancy Branch