

## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the Tenants and the Landlords pursuant to the Residential Tenancy Act (the “Act”):

The Tenants applied for:

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

The Landlords applied for:

- a Monetary Order for unpaid utilities pursuant to section 67 of the Act;
- a Monetary Order for damage to the rental unit or common areas pursuant to 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 pursuant to section 67 of the Act; and,
- authorization to recover the filing fee for this application from the tenants pursuant to section 72 of the Act.

Hearings took place on December 5, 2023, and April 9, 2024. Interim Decisions were issued on December 5, 2023, and April 10, 2024. The Interim Decisions are incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing before this Arbitrator, the Tenants KM and GW attended the hearing for the Tenants. Landlord FV attended the hearing for the Landlords.

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

As both parties were in attendance, I confirmed that there were no issues with service of the parties' Proceeding Packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

## **Issues to be Decided**

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

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

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

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

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

## **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 parties agreed that this tenancy began on September 20, 2020, and ended on November 14, 2021. Monthly rent of \$1,900.00 was due on the 15<sup>th</sup> day of the month. The Landlord collected security and pet damage deposits which have previously been returned.

The Tenants are seeking compensation for monetary loss or other money owed in the amount of \$1,410.00 as follows:

	Item	Amount
1.	Garbage Access Restricted (\$1.00 per day x 239 days	\$239.00
2.	Loss of Quiet Enjoyment (Cage Lattice)	\$450.00
3.	Fence Enclosure (\$1.00 per day x 271 days)	\$271.00
4.	Wood Storage (\$25 per month x 7 months)	\$350.00
<b>Total</b>		<b>\$1,410.00</b>

### *1. Garbage Access*

The Tenants testified that they are seeking \$239.00 which is equivalent to \$1.00 per day that access to the garbage was restricted. The Tenants testified that they could not access the garbage which had been moved from its outdoor location to inside the garage without texting the landlord to obtain access to the garage. The Tenants testified that they had lots of garbage and diapers and sometimes had to wait over night to get rid of their trash. The Tenants testified that they did not have access to a basic service and are therefore seeking compensation.

In response, the Landlord testified that the garbage was moved from its outdoor location into the garage because there were bears in the neighbourhood. The Landlord testified that the same practice was used by neighbours in the area in an effort not to attract bears. The Landlord disputed that the Tenants were without access to the garbage for 239 days and testified that the Tenants were provided with the garage code if the Landlords were away. The Landlord testified that the Tenants have not provided any evidence to substantiate their claim.

### *2. Cage Lattice*

The Tenants testified that the Landlords built a cage lattice without their knowledge. The Tenants testified that when they returned from a camping trip, the lattice had been built outside their door. The Tenant's testified that the lattice completely obstructed their view and was therefore, a violation of section 28 of the Act. The Tenants testified that the lattice interfered with how they lived as they had previously enjoyed eating outside in this area. The Tenants are seeking a rent reduction in the amount of \$100.00 per month for the last four and a half months of their tenancy in the amount of \$450.00.

The Landlord testified that the privacy lattice was brought up with the Tenants before they moved in as the Landlords had planned to upgrade the backyard. The Landlord testified that the lattice did not impact the Tenant's ability to use the entrance space outside their door. The Landlord testified that the space was not a living area. The Landlord testified that the lattice did not obstruct the Tenants' view. The Landlord testified that the Tenant's left the entrance cluttered with items and did not use the space respectfully even after many reminders. The Landlord testified that the lattice was installed to improve the backyard and obstruct the Landlord's view of the Tenant's clutter.

### *3. Fence Enclosure*

The Tenants testified that at the outset of the tenancy it was agreed that the rental property would be fully fenced. The Tenants referred to Addendum 12 of the Tenancy Agreement which states:

The Landlord shall conduct repairs on the premises to be completed by Sept 20.  
Repairs shall include:

[...]

- Repair of the fence to establish a fully enclosed yard.”

The Tenants testified that the yard was not fully enclosed when they moved in as the fence was in a state of disrepair. The Tenants testified that the fence was not repaired until June 12<sup>th</sup>. The Tenant testified that it was not until their son escaped through an opening in the fence that the Landlord repaired the fence. The Tenants are seeking a rent reduction in the amount of \$1.00 per day for 271 days during which time they alleged the fence was in a state of disrepair in multiple areas.

The Landlord testified that Tenant’s claim that the yard was not fully fenced at the outset of the tenancy is unsubstantiated and inconsistent with the evidence. The Landlord testified that during the tenancy, the Landlord made improvements to the fence on their own initiative. The Landlord testified that they were advised of the deficiency in the fence referred to by the Tenants on June 9, 2021, and the deficiency was resolved on June 12, 2021.

#### *4. Wood Storage*

The Tenants are seeking reimbursement in the amount of \$25.00 per month for 14 months during which time they allege they were not provided with sufficient space to store their wood pile. The Tenants testified that a space was allotted to them at the outset of the tenancy; however, they were forced to move their wood from its location so the landlord could paint the house. The Tenants testified that moving the wood was a heavy job and they were not provided sufficient storage space for all of the wood on the property at any point. The Tenants testified that they were required to move the majority of their wood off of the property to a neighbour’s backyard where it could be stored at no cost.

The Landlord disputes the Tenant’s claim regarding wood storage and argued that the matter was dealt with early on in the tenancy. The Landlord testified that they did not believe they were obligated to provide the Tenants with more storage space for their wood but offered to allow them to store the wood in their garage on a temporary basis

so the matter could be resolve by way of arbitration at the Residential Tenancy Branch; however, the Tenants refused and found storage offsite.

The Landlords are seeking a Monetary Order in the amount of \$2,273.36 as follows:

	Item	Amount
1.	Unpaid Utilities	\$145.90
2.	Shelves Removal	\$197.40
3.	Move-out cleaning	\$300.00
4.	Baby Room Painting	\$181.76
5.	Baby Room Painting	\$88.40
6.	Driveway Parking	\$400.00
7.	Privacy Lattice	\$500.00
8.	Counselor	\$360.00
<b>Total</b>		<b>\$2,273.36</b>

#### *1. Unpaid Utilities*

The Landlords are seeking \$145.90 in unpaid utilities. The Landlord testified that the Tenants did not pay the utilities for the period ranging from September to November 2021. The Landlord submitted copies of a BC Hydro Bill dated November 26, 2021, for the period of September 24, 2021, to November 24, 2021, and a Fortis BC Bill dated November 23, 2021, for the period of October 22, 2021, to November 23, 2021. The Landlord testified that they have prorated the bills because the Tenants vacated on November 14, 2021. The Addendum to the tenancy agreement which is submitted into evidence indicates that the Tenants are responsible for 35% of the bills.

The Landlords are seeking \$44.50 from the Tenants to cover their share of the Fortis Bill and \$101.30 from the Tenants to cover their share of the BC Hydro Bill. The Landlord submitted a copy of an email sent to the Tenant's on December 7, 2021, seeking reimbursement of the same.

In response to the Landlord's testimony, the Tenants testified that to their recollection, they paid everything they owed to the Landlord up to the day of the eviction. The Tenants testify they are unsure of this claim from the Landlord. The Tenants submitted an Interac E-transfer email showing they paid \$131.50 to the Landlord on October 29, 2021.

#### *2. Shelves Removal*

The Landlords are seeking \$197.40 for the cost of removing two shelving units left in the rental unit by the Tenant. The Landlord sought to increase this claim at the hearing to \$350.00 because the quoted amount for removal of the shelves has increased given the time that has passed since they obtained the initial quote.

The Landlord testified that the Tenants left two shelving units in the rental unit when they vacated. The Landlord testified that they asked the Tenants to remove the two shelving units but the Tenants refused and advised the Landlord that the shelving units are an upgrade to the rental unit. The Landlord testified that the shelves have not been removed from the rental.

The Tenants testified that the shelves are still located in the rental unit and are benefitting the Landlord. The Tenants testified that the Landlord agreed to the addition of the shelves to the rental unit.

### *3. Move Out Cleaning*

The Landlords are seeking \$300.00 for cleaning the rental unit after the tenancy. The Landlord testified that it took two people (they and their spouse) 3 hours to clean the rental unit together. Therefore, the landlord is seeking 6 hours of cleaning at a rate of \$50.00 per hour.

The Landlord testified that when the Tenants vacated, they left the rental unit very dirty. The Landlord testified that it is the Tenants obligation to clean the rental unit prior to vacating. The Landlord directed my attention to photographs in their evidence to support that the walls, floors, windowsills were not cleaned by the Tenants.

In response to the Landlords' claim, the Tenants testified that the Landlord did not complete a move-in condition inspection report. The Tenants submitted photographs of the rental unit to support their assertion that the rental unit was clean when they moved out.

### *4. Baby Room Painting (Labour)*

The Landlords are seeking \$181.76 for 8 hours of painting labour at a rate of \$22.72 per hour. The Landlord testified that the baby room was freshly painted at the outset of the tenancy and had to be re-painted following the tenancy because the dirt and scuffing on the walls was unable to be cleaned.

In response, the Tenants testified that they filled holes in the walls of the baby room prior to vacating but believe that painting the room is the responsibility of the Landlords. The Tenants testified that the baby room was not freshly painted at the outset of their tenancy, but rather had been touched up.

#### *5. Baby Room Paint*

The Landlords are seeking \$88.40 for the cost of the paint used in the baby room. The Landlord submitted a receipt from Dulux Paint into evidence to support this claim.

The Tenants dispute the Landlord's claim for the cost of paint.

#### *6. Driveway Parking (4 months)*

The Landlord is seeking \$400.00 in damages based on \$100.00 per month for four months in which the Tenants parked two vehicles in the driveway. The Landlord testified that the Tenants broke a material term of the tenancy agreement by parking two vehicles in the driveway instead of one vehicle. The Landlord testified that by doing so, the Tenants breached their right to quiet enjoyment and caused indirect and intangible damage.

#### *7. Privacy Lattice*

The Landlords are seeking \$500.00 for the cost of setting up a privacy lattice in the backyard of the rental property. The Landlord testified that the Tenants misused and cluttered the backyard with items such as gas containers and furniture. The Landlord testified that they asked the Tenants to be more respectful of the shared space on numerous occasions; however, the Tenants refused. The Landlord testified that they privacy lattice was set up to protect them from the view of the Tenant's clutter.

#### *8. Counselor*

The Landlords are seeking \$360.00 to cover the cost of counseling sought by the Landlord. The Landlord testified that they had to go to counseling as a result of the many altercations between the two parties. The Landlord testified that the Tenants were very aggressive, and the Landlord did not feel safe leaving the house for fear of confrontations with the Tenants. The Landlord described a circumstance in which the police were called to assist in resolving a dispute between the parties.

The Landlord testified that items 6-8 represent intangible and indirect damages that are difficult to monetize. The Landlord testified that they tried to show how hurtful the tenancy was to them and their family.

In response to the Landlord's claims regarding items 6-8, the Tenants testified that the Landlords' claims are for intangible damages that resulted from a difficult time between two families attempting to reside on the same property. The Tenants testified that they stood up for themselves and their rights as tenants during the tenancy. The Tenants testified that the events have been traumatic for them as well and the allegations made against them, in particular the allegation of assault is absurd.

## **Analysis**

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

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

#### *Garbage Access*

I have considered the Tenants' evidence and I find they have failed to establish the exact number of days during which their access to the garbage collection bins were restricted by the Landlord, particularly in the face of the conflicting evidence and testimony of the Landlord. However, I find the Tenant's have provided sufficient evidence to support on a balance of probabilities that they were required to contact the Landlord to access the garbage bins which were re-located to the garage for an extended duration of the tenancy.

Regardless of the reason for the bins having been stored in the garage, I find the Tenants inability to access the bins freely is a restriction of a service that is essential to the Tenants' use of the rental unit that did inconvenience the Tenants. With that said, I



do not find this inconvenience significant as I do not believe it was the Landlord's intention to restrict the service entirely, nor do I find the restriction was without merit. However, RTB Policy Guideline 16 allows me to award nominal damages when 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. Having found that the Tenants were inconvenienced by the placement of the garbage collection bins in the garage, I award nominal damages in the amount of \$150.00.

### *Lattice*

I have considered the addition of the lattice to the concrete area outside of the Tenant's entrance. The Tenants argue that the addition of the lattice to the space outside of their entrance is a breach of their section 28 right to quiet enjoyment. However, I find they have not provided sufficient evidence to support this. While the Tenants may have enjoyed the use of this space prior to the addition of the lattice, the use of the space is not contemplated by the tenancy agreement, therefore I find the space is more likely than not common space. I am not satisfied that the addition of the lattice restricted the Tenants' use of the common space such that it caused an unreasonable disturbance. As a result, I find the Tenants have failed to prove on a balance of probabilities that the Landlord breached their right to quiet enjoyment and therefore the Tenants have not satisfied me of part two of the four part test namely that damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement.

For this reason, I decline to grant the Tenants' claim regarding the lattice.

### *Fence Enclosure*

I have considered the Tenant's evidence regarding the fence, and I find that they have not provided sufficient evidence to support that the yard was not fully fenced on or about the outset of the tenancy. I find the Tenant's assertion that the fence was in a state of disrepair without any documentary or photographic evidence to support the same is not sufficient to establish their assertion that the yard was not fully fenced for a period of 271 days. To the contrary, the evidence of the Landlord supports that within two days of notifying the Landlord of a deficiency in the fence, the deficiency was resolved. Based on the foregoing, decline to grant the Tenant's claim regarding the fence.

### *Wood Storage*

I have considered the testimony and evidence of the parties and I find that the Tenant's have not established that they suffered a loss in the claimed amount of \$350.00

regarding wood storage. The purpose of compensation under the Act is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. In this case, I find it is evident to me, that the tenants are not seeking reparation as they do not claim to have paid any storage fees for the wood storage. While I acknowledge that the wood storage was at issue during the tenancy, I find the Tenants made the choice to find alternate storage space rather than seek arbitration regarding the wood storage at no cost during the tenancy as suggested by the Landlord. For these reasons, I find the Tenants are not entitled to compensation retroactively.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, based on the foregoing, I find the Tenants are entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$150.00.

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

As the Tenants were only partially successful in their application, I find that they are not entitled to recover the filing fee for this application from the Landlords. The Tenants application for authorization to recover the filing fee for this application is dismissed without leave to reapply.

**Are the Landlords entitled to a Monetary Order for unpaid utilities?**

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlords' evidence supports that they received the Fortis BC and BC Hydro bills for the relevant billing period and sought payment from the Tenant's after the tenancy

ended. While the Tenant's submitted an Interac E-transfer supporting that utilities were paid on October 29, 2021, I find it more likely than not that this payment does not reflect payment for the relevant period. There is no evidence to support that the Tenant's paid the utilities up to and including November 14, 2021. Based on the foregoing, I find the Landlords provided sufficient evidence to support their claim for unpaid utilities in the amount of \$145.90.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the foregoing, I find the Landlord is entitled to a Monetary Order for unpaid utilities under section 67 of the Act, in the amount of \$145.90.

**Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?**

*Move Out Cleaning*

Section 37(2) of the Act imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state at the end of a tenancy.

The parties have submitted conflicting evidence to support the state of the rental unit following the tenancy. Importantly, no move-in condition inspection was completed. On that basis, I give little weight to the move out condition inspection report as I am not aware of the condition of the rental unit at the outset of the tenancy. With that said, I find that the Landlord's photographs do show some deficiencies in the cleanliness of the windowsills, walls and baseboards. However, I find the Landlord's claim for \$300.00 to complete this cleaning unreasonable. For that reason, I find it reasonable to award the Landlord \$150.00 for their time spent cleaning the floors, baseboards, windowsills and walls.

*Baby Room Painting (Labour and Paint)*

The Landlord testified that the baby room was freshly painted at the outset of the tenancy. To the contrary, the Tenants testified that the baby room was not freshly painted at the outset of the tenancy but rather had been touched up. *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. Per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is four years. While the Landlords purport that the paint was within its useful life, I find the Landlord has not provided sufficient evidence to support this. I make this finding keeping in mind that there is no move in condition inspection report to

support the condition of the baby room paint at the outset of the tenancy. Based on the foregoing, I decline to grant the Landlord's claims for labour and paint.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the foregoing, I find the landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$150.00 as set out below

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

*Shelves Removal*

At the reconvened hearing, the Landlords sought to increase their claim for the cost of removing the shelves from the rental unit to \$350.00. I decline to grant the Landlords' amendment to their claim on the basis that I am not satisfied that the increase in the amount claimed for this item should have been reasonably anticipated by the Tenants.

Residential Policy Guideline 1 states that if the tenant leaves a fixture on the residential premises or property that the landlord did not agree the tenant could erect, and the landlord wishes the fixture removed, the tenant is responsible for the cost of removal.

In this case, I find that the Landlords have not provided sufficient evidence to support that they did not agree the Tenants could erect the shelving unit. On that basis, I am not satisfied that the Tenant's are responsible for the cost of removal.

Moreover, even if I were to determine that the shelves were erected without the agreement of the Landlord, I find the Landlords' assertion that the shelves will be removed unconvincing based on the duration of time they have remained in the rental unit since the Tenant's vacated. I find the fact that the shelves remain in the rental unit almost three years after the tenancy ended does not support that the Landlord has suffered a loss or will in fact remove the shelves. For these reasons, I decline to grant the Landlord's claim regarding the shelves.

*Parking, Lattice and Counselor*

I have considered the Landlords' claims for the costs associated with parking, the lattice and counseling fees. However, I find it is evident to me that the Landlord is not seeking the costs associated with an actual loss but rather by their own evidence is seeking compensation for indirect and intangible losses by way of these claims.

Importantly, point three of the four-point test requires proof of the actual amount required to compensate for the claimed loss or to repair the damage. In this case, the Landlord has not established how the dispute regarding parking amounted to a loss of \$100.00 per month and for that reason, I find that provided sufficient evidence to support an actual amount required to compensate for the claimed loss.

Importantly, point two of the four-point test requires proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement.

Regarding the lattice, I find that the Landlord has not proven that the loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement. Rather, I find the Landlord chose on their own accord to erect the lattice and therefore created the monetary loss by proceeding in this manner. Similarly, regarding counseling, I find the loss is based on the choice made by the Landlord as to how they wished to proceed with treatment following the difficult tenancy.

Based on the foregoing, I decline to grant the Landlords' claim regarding parking, the lattice and counseling. The Landlords' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

### **Are the Landlords entitled to authorization to recover the filing fee for this application from the Tenants?**

As the Landlord was only partially successful in their application, I find that they are not entitled to recover the filing fee for this application from the Tenants. The Landlords' application for authorization to recover the filing fee for this application for the Tenants is dismissed without leave to reapply.

### **Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$145.90** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order in favor of the Landlord for unpaid rent under section 67 of the Act	\$145.90

a Monetary Order in favor of the Landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$150.00
a Monetary Order in favor of the Tenants for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act	-\$150.00
<b>Total Amount</b>	<b>\$145.90</b>

The Landlord is provided with this Order in the above terms. Should the Landlord wish to enforce this order, the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme 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: August 12, 2024

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Residential Tenancy Branch