DECISION

Introduction

This hearing dealt with Cross Applications including:

The Tenant's April 18, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 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 17, 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 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

The hearing was attended by the two Tenants who were represented by their Adult Son, P.D., and the two Landlords. All parties had the opportunity to provide sworn testimony and refer to evidence.

Preliminary Matter – Address for Service.

The residential property is a single-family dwelling that was recently constructed in 2020. The Tenants in this dispute occupied the main floor of this house between September 15 and November 18, 2024. They had signed a month-to-month tenancy agreement.

The address for service is the residential property, and during this tenancy, the Landlords rented the main floor unit of the residential property, while the Landlords retained rights to store their belongings at the unit. The Landlords previously lived in the main floor of the residential property.

The Landlords were in the process of relocating to a new community.

The Tenants' Son and the Landlords disagreed about the frequency with which the Landlords were present at the residential property while this brief tenancy was ongoing.

The Tenants' Son argued that the Landlords were regularly present once a week, but neither party provided verifiable evidence of the Landlord's presence at the residential property during the tenancy or after, except for when the parties agreed that Landlord S.P. was present at the residential property on November 7, 2023, when the parties signed a written document confirming the end of this tenancy.

The parties agreed that the Landlords identified the residential property as their address for service in the written tenancy agreement that was signed September 15, 2023.

The Landlord A.P. testified that email was not an accepted means of service for the Landlords, which was not disputed by the Tenants' Son.

As seen in RTB Policy Guideline 12 – Service Provisions, there are specific requirements that must be followed when serving documents under the Act, and in particular, Section H of this Guideline says the following about serving to a mailbox:

> **By leaving a copy of the record in a mailbox or mail slot for the address where the person to be served resides at the time of service**
>
> - If this method of service is used, the person leaving the record needs to determine that the mailbox or mail slot belongs to the person to be served, particularly in a multi-unit building, such as an apartment, condo, or office building.

Service of Notice and Evidence

The Tenants' Son testified during the hearing that they served the Landlord with Notice of the Dispute by registered mail on April 28, 2024, however, I find that the Tenants' actual proof of service by registered mail related to mail that was sent on May 12, 2024, with proof of mailing and tracking provided. I reviewed this information and confirmed that the two packages (1 for each landlord) were addressed to the residential property and that neither package was collected. Both packages were returned to the Tenants on June 4, 2024.

I therefore find that the Tenants did not serve the Landlord with Notice of their claim as required by the Act because service was done to an address where the Landlords did not reside and the mail was then returned to the Tenants as a result.

The Tenants' Son argued that they served to the residential property because "they had no other address for service for the Landlords."

Landlord A.P. testified that they regularly communicated with the Tenants by text and email and that the Tenants ought to have known the Landlords current address for service.

The Landlord A.P. testified that the Landlords only became aware of the Tenant's claim against them on May 16, 2024, and only became aware of the Tenants' forwarding address on this day when they finally received mail, which is why the Landlords applied for dispute resolution on May 17, 2024, to retain the Tenant's security deposit.

The Tenants' son testified that the Tenants received Notice of the Landlords dispute and were served copies of the Landlord's evidence. I therefore find that the Landlords served the Tenants as required by the Act.

The parties agreed that the Tenants duly served their evidence in response to the Landlord's claim to the Landlords current physical address because the Landlords put this address in writing to the Tenants when they served the Tenants with Notice of the Landlords' dispute.

The Landlords testified that they were out of the country, and that they received the Tenant's evidence on July 27, 2024, regarding the Landlords claim, but the Tenant provided proof of mailing these items sooner.

The Landlord A.P. testified that the Landlords are ready to proceed with hearing the Tenants' claim against them and so I proceeded to hear claims from both parties despite the Tenants' failure to serve the Landlords as required by the Act.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent under section 67 of the Act?
- Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
- Are the Landlords entitled to 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?
- Are the Tenants entitled to the return of their security deposit?
- Is either party authorized to recover the filing fee for this application from the other under section 72 of the Act?

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:

- Monthly rent was $2,300.00 while this tenancy was ongoing.
- The Tenants paid prorated rent for September 2023, and full rent for October and November 2023.
- They met in person on November 7, 2023, to confirm in writing that the tenancy was ending.
- The Landlords did not complete the required condition inspection report after conducting a move-in and a move-out condition inspection.
- The Landlord sent a $1,350.00 Etransfer to the Tenants as the return of their $1,150.00 security deposit, plus an additional $200.00 that was accidentally sent because the Landlord's current tenants are paying $2,700.00 a month for rent and so the Landlord divided that amount by two.

The Landlords are claiming compensation of $2,300.00 for the month of December 2023 because the tenancy was a month-to-month tenancy, and the Tenants only gave Notice that they were ending their tenancy on November 7, 2023. The Landlords had originally submitted a claim of $4,600.00 for compensation or unpaid rent, but agreed to guidance provided during the hearing, that they would only potentially be entitled to a maximum of $2,300.00 which is one month because the parties had a month-to-month tenancy.

The Tenants' Son denied that extra rent was owed and referred to their evidence provided to confirm that the Tenants had communicated with the Landlords during October 2023 to indicate that they would be ending the tenancy early, and that the Tenants did their best to provide Notice as required but alleged that the Landlord S.P. did not appear at the residential property as requested.

The parties agreed that the Landlord put in writing by text to the Tenants that they needed to provide proper Notice under section 45(1) of the Act and serve it accordingly if they are to properly end the tenancy under the Act.

The parties agreed that a written document dated October 31, 2023, was signed by the parties acknowledging that the tenancy would be ending, however, they disagreed about why and how this Notice was signed.

The Landlord A.P. testified that Landlord S.P. only signed this document because it was late at night and did not realize what they were signing. The Tenants' Son however argued that S.P should have read what they were signing and that they accepted proper Notice the tenancy was ending November 30, 2023.

The Landlords are claiming $100.00 for compensation for damages related to a broken shower door and a broken screen door that they fixed themselves. The Landlords provided photos of the broken screen and testified that it was damaged when the Tenants were vacating the residential property. The Landlord A.P. testified that the Tenants' own videos from the residential property confirm that the shower door in the bathroom with the tub was damaged and not opening fully. No receipts were provided.

The Tenants' Son denied the Landlord's claim for damages and testified that the Tenants left the residential property in the same condition as when the rented it, and that the Landlords cannot prove damages because they never completed a condition inspection report.

The Landlords also claimed compensation of $1,468.49 for other monies owed including:

- $156.25 + $214.74 = $370.99 for utilities
- $225.00 for 5 hours of cleaning after tenancy ended
- $472.50 for carpet cleaning and pressure washing
- $200.00 for lawn cutting
- $200.00 for return of overpayment of security deposit

The Landlord claimed utilities for natural gas and hydro because the written tenancy agreement included a requirement that the Tenants pay %60 of utilities. The Tenants' Son agreed that the Tenants owed utilities and agreed that specifically $355.26 ($140.52 + $214.74) is owing to the Landlords.

The Landlord referred to proof of photos and a professional cleaning invoice to support their claim that they are entitled to $225.00 for cleaning because the Tenants did not leave the property reasonably clean, this included photos of an empty fridge with stains after all the shelves and drawer were removed, in comparison to the Tenants' video of a seemingly clean fridge.

The Tenants' Son rejected the Landlords' claim for compensation for cleaning and testified that they left the unit clean as required as shown in the Tenants' time stamped videos of the residential property. The Tenants' Son argued that this is contrast to the Landlord's photo evidence which is not timestamped.

The Landlords claimed $472.50 as compensation for carpet cleaning and power washing and provided an invoice to show that they paid to have the carpets cleaned before and after this brief tenancy.

The Landlord A.P. testified that the carpets had to be cleaned because the Tenants appeared to have worn their shoes on the carpets, however, no photographic evidence was provided to confirm this claim. The Landlord A.P. referred to photos of the exterior of the residential property to demonstrate that power washing was needed and alleged that this was because the Tenants stored belonging outside.

The Tenants' Son disputed the claim for compensation for carpet cleaning and referred to RTB Policy Guideline 1 where it is written that tenants are only generally responsible for cleaning the carpets after an at least 12-month tenancy. The Tenant's Son also rejected the Landlord's claim for pressure washing, and referred to an image from their own video, taken at night, to suggest that pressure washing was not required.

The Tenants’ Son concluded their argument against this $472.50 claim by alleging that the company who completed the carpet cleaning is the Tenants’ company, and that it is not a legitimate company because no GST was charged on the invoices provided as evidence. The Landlord A.P. denied this claim and testified that their company is a different company.

The Landlords claimed $200.00 for lawn cutting because lawn maintenance was the responsibility of the Tenants. The Landlord A.P. referred to proof of a quote from a local lawn company to show the average rate for a lawn service and testified that they had a neighbour mow the lawn 4 times at the cost of $50 each time. However, no receipt of this $200.00 payment was provided.

The Tenants’ Son rejected this claim for costs associated with lawn maintenance and testified that the Tenants mowed the lawn themselves twice between September 15 and November 18 when the tenancy ended.

Regarding the Tenants’ $1,150.00 security deposit, the Tenants’ Son testified that they sent their required Notice of a Forwarding address as required by the Act by registered mail on March 19, 2024. However, the Tenants’ Son agreed that this Notice was sent to the residential property, which is the rental property of the Landlord, and not the Landlords’ personal residence. A review of the tracking number associated with the mailing indicates that the package was collected on March 25, 2024.

The Landlords denied receipt of March and April mailing from the Tenants’ and Landlord A.P. testified that the Landlords returned the full value of the deposit, plus that accidental $200.00 extra as soon as they received mail on May 16, 2024, of the Tenants’ claim when they collected their mail from a corporate post office location.

The Tenants’ Son argued that their parents are still owed $950.00 with double the return of their security because the Landlords failed to return the security deposit within 15 days of receiving the Notice of forwarding address send on May 19, 2024.

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.

Are the Landlords entitled to a Monetary Order for unpaid rent under section 67 of the Act?

As seen in section 45(1) of the Act, a tenant on a month-to-month tenancy agreement is required to give notice at least a day before rent is due on the final month of the tenancy, that they would be vacating.

The Tenant is then also required to serve a copy of this same notice on the Landlord as required by section 88 of the Act, and as seen in section 88, email is not an accepted means of service.

Consequently, I find that the Tenants' October 31, 2024, email indicating that they will be ending the tenancy, does not count as proper Notice under section 45(1) or 88 of the Act, to end the tenancy as of November 30, 2023.

Likewise, I find that the paper notice placed in the Landlord's mailbox on October 31, 2023, does not count as proper Notice under section 45(1) or 88 of the Act, to end the tenancy as of November 30, 2023, because under 90(c) of the Act, even where service to mail box is considered accepted means of service, the item served, cannot be deemed served, until 3 days later when the Landlord is not physically present to receive the Notice.

I emphasize this because the Tenants' Son agreed that the Landlord S.P. did not appear at the residential property until November 7, 2024, and so this means that they otherwise had no means of collecting the paper Notice left in their mailbox on October 31, 2024.

Regarding the November 7, 2023, Notice document that is dated October 31, 2023, by the Tenants who wrote the Notice, I find that the Landlord's signature of this Notice, does not represent the Landlord's consent that they received the Notice on October 31, 2023, because as indicated above, I find that the Tenants failed to serve the Landlord with proper Notice under 45(1) of the Act that they would be ending the tenancy on November 30, 203.

Consequently, I find that the Landlords established their claim for compensation to rent for December 2023, because the earliest possible legal date for the Tenants to end their tenancy on November 7, 2023, was December 31, 2023.

I therefor find that the Landlords are entitled to a monetary order of $2,300.00 under section 67 of the Act, and RTB Policy Guideline 3 because the Landlords could have otherwise expected the Tenants to pay rent for December 2023.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?

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 Landlords claimed $100.00 for compensation for minor damage but did not provide receipts. The Tenants dispute the claim and argued that they left the rental unit in the same condition it was at the start of the tenancy.

I find that the Landlords failed to establish on the balance of probabilities that they are entitled to compensation because they did not produce a move-in condition inspection or move-out condition inspection report, and they did not provide verifiable receipts to support their financial claim.

I therefore dismiss the Landlord's claim for compensation for damage and do not give leave to reapply.

Are the Landlords entitled to 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?

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.

Regarding the Landlords claim for compensation for utilities, I find that they are owed $355.26 because the Tenants' Son agreed that this amount was owed.

Regarding the Landlord's claim for compensation for cleaning, I find that they provided a verifiable receipt in the amount claimed. However, I also find that the Tenants provided comprehensive video proof of the condition of the rental unit when the tenancy ended. I therefore find that the Landlords only established their entitlement to a partial claim for cleaning, and so I will award $112.50 which is %50 of the claim because I find that extra cleaning of the fridge and bathrooms was required.

Regarding the Landlords' claim for carpet cleaning and power washing, I find that the Landlords incurred the unexpected costs of $367.50 for carpet cleaning at the residential property on November 19, 2023, after paying $367.50 for carpet cleaning at the property on September 2, 2023. I find no reason was provided during the hearing, for why the Landlords would pay a company to have the carpets cleaned, if not required.

I therefore find that the Landlords are entitled to compensation in the full amount claimed of $367.50 because, as seen in RTB Policy Guideline 1, Tenants are responsible for carpet cleaning when they dirty carpets and fail to leave the residential property reasonably clean as required by section 37 of the Act.

Regarding the Landlords’ claim for compensation for pressure washing, I find that they are not entitled to compensation because they failed to establish on the balance of probabilities that the condition of this particular portion of residential property was worse when this tenancy ended, than it was when it started two months earlier.

Regarding the Landlords’ claim for compensation for mowing, I find that they failed to satisfy the four-point test for compensation and failed to demonstrate on the balance of probabilities that the Tenants did not maintain the lawn as required, and that this failure resulted in an unexcepted charge to the Landlord.

Regarding the Landlords’ claim for $200.00 for the return of their overpayment of the security deposit, I find that this matter is not the responsibility of the Tenants, but rather, a mistake of the Landlords. Consequently, I have no legal framework with which to consider this portion of the Landlords claim.

In sum, I find that the Landlords successfully establish their claim for $835.26 for cleaning and other losses associated with the tenancy.

$355.26 + $112.50 + $367.50 = $835.26

Are the Tenants entitled to the return of their security deposit?

I find that questions of service are important for understanding this matter.

Where the Tenants’ Son argued that they served the Landlord with Notice of their Forwarding Address as required by the Act on March 19, 2024, by sending the Notice to the Residential property even though the Tenants know that the Landlords do not reside at the residential property, I find that this act of Service under section 88 of the Act, does not satisfy the service provisions of RTB Policy Guideline 12 because service was done to an address that is not the home address of the Landlord.

I find that the Landlords satisfied their obligations under section 38(1) of the Act by submitting their application for dispute resolution on May 17, 2024, as required by section 38 of the Act, because the Landlords’ testified that they only received Notice of the Tenants’ forwarding address on May 16, 2024.

I find under 71(2)(b) of the Act that the Landlords were effectively served with the Tenants’ forwarding address on May 16, 2024, because despite errors in the address for service, this was the actual day that the Landlords received Notice by an accepted means of service (mail) of the Tenants’ forwarding address.

I justify this finding by referring to the agreed upon fact that the Landlords returned the full value of the Tenants’ $1,150.00 security deposit plus $200 accidental extra on May 16, 2024, because that was the day the Landlords became aware of the Tenants’ claim against them.

I therefore dismiss the Tenants' claim that the Landlord return double the security deposit under 38(6) of the Act, because I find that the Landlords promptly returned the full value of the security deposit within 15 days as permitted by 38(1)(c) under the Act, with the accidental $200.00 extra, more than covering any interest that would have accumulated.

Lastly, I find that extinguishment provisions of section 24 and 36 of the Act do not apply because the Landlords' primary claims for compensation in this application, are for rent, and cleaning which are not considered damages under the Act and their monetary awards for rent and cleaning, exceed the value of the Tenant's security deposit, which was returned on May 16, 2024.

Authorization to Retain Filing fees

I find that the Landlord was successful in their claim, and so they are entitled to recover the $100.00 cost of this application from the Tenant under section 72 of the Act.

Likewise, I find that the Tenants were not successful in their application and so I dismiss their claim to recover the $100.00 application fee from the Landlords.

Conclusion

The Tenants' request for return of double their security deposit is dismissed, I do not give leave to reapply because the parties agreed that the security deposit was returned in full.

I dismiss the Landlords' claim for compensation for damages and do not give leave to reapply.

I find that the Landlords are entitled to a $3,235.26 Monetary Order according to the following terms:

Monetary Order for Unpaid Rent	$2,300.00
Monetary Order for Compensation for Loss	$835.26
Authorization to recover filing fee	$100.00
Total Amount Owed	$3,235.26

The Landlord is provided with this Order in the above terms and 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 1, 2024

Residential Tenancy Branch