DECISION

Introduction and Procedural History

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
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act

This hearing also dealt with the Tenant's 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 and/or pet damage 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

This hearing also dealt with the Tenant's 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

Landlord S.G. and Landlord Y.G. attended the Previous Hearing and the Continuation Hearing for the Landlords.

Tenant S.T. and Tenant S.B. attended the Previous Hearing and the Continuation Hearing for the Tenants.

After the Previous Hearing where parties ran out of time and an adjournment was granted, an Interim Decision dated August 30, 2024, was rendered. The Interim Decision and this Decision are to be read together.

At both hearings, the parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of the Notice of Dispute Resolution Proceeding and Evidence on the Landlord's Application, the Tenant's Application requesting for the return of the security deposit and pet damage deposit, and the Tenant's Application requesting compensation for damage or loss under the Act

Both parties affirmed that there were no issues with service of the applications and the evidence. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

Preliminary Matters

At the Continuation Hearing, the Tenants agreed to compensate the Landlord for a portion of the Landlord's claim for compensation, specifically two smoke detectors valued at $89.00 and damaged electrical outlets valued at $19.76. Based on this, I grant the Landlords a Monetary Order in the amount of $108.76 for the abovementioned items.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

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

Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and their pet damage deposit? If yes, is the Tenant entitled to the recovery of the filing fee?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, Regulation or tenancy agreement? If yes, is the Tenant entitled to the recovery of 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.

For context, the rental property contains a main house and a coach house.

The parties agreed that four tenancy agreements were signed between June of 2019 and May of 2024. The first of which was a tenancy agreement between the parties that

started on June 15, 2019, when the Tenants rented the main house on the rental property and the monthly rent was $3500.00. The Tenants testified that the parties completed a move in inspection and that the Landlords provided a copy of the condition inspection report in May of 2024. At the Continuation Hearing the Landlords agreed that they provided a copy of the move in condition inspection report to the Tenants in May of 2024.

The parties agreed that at the time of this first tenancy agreement, the Landlords collected a security deposit in the amount of $1,750.00, and the Landlords collected a pet damage deposit in the amount of $1,750.00. The parties agreed that the Landlords continues to hold both the deposits at the time of the hearings.

The second tenancy agreement began in November of 2019, when the parties signed a new tenancy agreement, which authorized the Tenants to rent the entire rental property which included the main house and the coach house in exchange for an increase in the monthly rent to $4,100.00.

The parties agreed that in In November of 2021, a third tenancy agreement was signed, and the monthly rent was increased to $4,300.00.

The most recent tenancy agreement began on November 15, 2022, a copy of this written tenancy agreement was provided. According to this tenancy agreement, the monthly rent was $4,500.00, and due on the fifteenth day of each month. The Tenants elaborated on the signing of the third and the most recent tenancy agreement where Landlord requested for a rent increase and that the parties had an understanding that the Tenants would agree to the rent increase in exchange for the a promise that the Landlord would not move in and end the tenancy.

The parties agreed that the Tenants vacated the rental property by May 3, 2024. The parties agreed that the Landlords gained possession of the rental property on May 6, 2024. The parties agreed that the Landlords received the Tenant’s forwarding address on May 6, 2024.

The Landlords testified that the parties reached an agreement for the tenancy to end on May 15, 2024, and that as part of that agreement, the Landlords would not charge the last month of rent, that the Tenants would sod the front yard and the backyard, and that the Tenants would clean the exteriors of the houses. The Landlords claimed that the Tenants did not fulfill their part of the agreement and vacated the rental property earlier than the agreed date.

The Tenants testified that they complied with the Landlords request for earlier return of the rental property and vacated the rental property earlier than the agreed date.

The Landlords submitted a 46-page document titled “Updated_Proof_of_Damages _file_-_July_2024.pdf” and referred to page 38 of the document, page 38 contained the

Landlord's written statement and a copy of a text message from March 27, 2024. Select passages in original format and wording from the text message exchange reads:

> *Tenants: If we can follow the would have been the normal end of tenancy of no charge for the last month (April), we can pay the first month rent, and damage and pet damage on the house we found. We'd be out by May 15, and you could have the house on the market ASAP. Does that work for you?*
>
> *Landlords: Hi [S.B.], I confirm the suggested settlement, I wish you, [Tenant S.T.], and your kids all the best!!*
>
> *Tenants: Thank you [Y.G.]. I'll trim the front exterior hedges/plants, lay fresh sod in the back yard, and have the exterior of the home cleaned in lieu of April's being our last months rent and mutually agree to end our tenancy.*

Unpaid Rent

The Landlords referred to the abovementioned mutual agreement, and page 38 of the abovementioned document, and testified that the Tenants did not fulfill their part of the agreement before vacating the rental property, specifically cleaning the exterior of the rental property and laying fresh sod in the yard. The Landlords requested a prorated amount for unpaid rent for the period between April 16 to May 6 of 2024, in the amount of $3,300.00.

The Tenants testified that the Landlords unilaterally decided to take the house back before the mutually agreed date scheduled for the end of the tenancy, specifically May 15, 2024, and that the Landlords unilaterally decided to begin renovations. The Tenants raised the issue of estoppel, specifically that the Landlords is estopped from requesting for unpaid rent because the Tenants could not have complied with the terms of the mutual agreement when the Landlords requested for earlier possession, gained earlier possession by consent and started renovations at the rental property before the tenancy ended according to the Mutual Agreement.

Compensation Request for Damage to the Rental Property

According to the Landlord's application, the Landlords requested compensation in the amount of $8,307.84 for damage caused to the rental unit during the tenancy.

The Landlords again submitted the 46-page document titled "Updated_Proof_of_ Damages _file_-_July_2024.pdf". The Landlords emphasized page 10 for a total list of all the damage the rental property sustained, and their values. The Landlord also submitted a matching monetary order worksheet.

1. The Water Damage

The Landlords requested compensation in the amount of $4,974.00 for loss due to water damage at the rental property.

The Landlords testified that on April 29, 2024, the Tenants informed the Landlords that a water supply hose connected to the toilet at the coach house on the rental property broke and caused a flood. The Landlords affirmed that according to the Tenants invoice evidence, the Tenants had hired a cleaner that day and the Landlords speculated that the flood was not a gradual leak, rather that it was caused by the Tenants cleaner. The Landlords stated that there was significant damage due to the flood. The Landlords emphasized that the rental property was in the Tenant's possession when the flood occurred.

The Landlords referred to page 27 of their 46-page evidence document, which contained a copy of the $9,751.00 invoice for the repair, and a copy of the $4,776.17 remittance funds that the Landlord's insurance paid the Landlords after the insurance company and the Landlords settled. The Landlords stated that a contractor hired to replace the water supply hose provided their opinion and report on what may have caused the hose to fail. A copy of this report is found on page 12 of the Landlord's evidence document, a passage from the contractor's report dated May 25, 2024, reads:

> *"The water supply tub for the toilet was knocked or hit. The plastic compression nut was snapped off at the bottom of the nut. You can notice a fracture line at the bottom of the plastic ring. If it was due to wear and tear the supply tub would have slowly started to leak and paddle on the floor beside the toilet, noticeable to the tenant."*

The Tenants submitted a 12-page document titled "supply_line_analysis.pdf", which contained a written statement from the Tenant's contractor, several pictures, and a 31-page document titled "toilet_intake_hose.pdf" which contained of 31 pages pictures associated with the water supply hose to the toilet and referred to pages 12 and 31. The Tenants speculated that the hose failed due to faulty installation, specifically that the faulty installation may have caused the plastic nut to shear off. A passage of the second page of the Tenant's contractor's written statement reads:

> *This could suspect to have occurred from one of two scenarios: 1. Due to how the stainless-steel hose was installed. Having a heavy curve in the hose could have caused stress to the weak plastic ends over time (the crack in the "disc" part of the plastic nut). This, added to overtightening the plastic nut to the toilet tank (which would have caused the clean sheering as noted on the clean separation of the plastic nut to the plastic disc of the nut. 2. A significant amount of force was applied to the supply line, causing it to break immediately.*

The Tenants testified that they believe that the water supply hose was beyond its life expectancy. The Tenants stated that the Landlord did not maintain the hose during he tenancy, that the Tenant's cleaner hand wiped the area, and that when their cleaner left there was no water leaks.

2. The Dryer Repair

The Landlords requested compensation in the amount of $514.71 for the repair of the dryer, and replacement knobs for dryer in the coach house.

The Landlords claimed that the Tenants damaged the heating element of the dryer at the coach house due to lack of maintenance, and that the dial knobs on the dryer have gone missing. The Landlords referred to page 21 and page 34 of their 45-page evidence document, which contained the corresponding invoices for the repair and the replacement knobs.

The Tenants testified the dryer was old and that they are not required to maintain the dryer or clean out the lint in the exhaust duct of the dryer. The Tenants elaborated that the Landlord never maintained the dryer or the exhaust duct.

3. The Cleaning Fees

The Landlords requested compensation in the amount of $405.00 for general cleaning of the rental property and $168.00 for carpet cleaning at the rental property.

The Landlords referred to several pages such as page 13 and 14 of the 46-page evidence document, which contained pictures of the rental property before the tenancy began and after the tenancy began and testified that the Tenants left the rental property in a dirty and messy condition when they vacated.

The Tenants testified that they did leave the rental property in a messy condition but elaborated that the Tenants had scheduled a cleaner but were advised by the Landlords to cancel the cleaner because the Landlords were not satisfied with the Tenant's cleaning in the coach house after the water leak.

4. The Wall Repair, The Bifold Door Repair, and the Faucet Repair

The Landlords requested compensation for repairing the holes and scratches in the drywall at a cost of $295.00, repairing the bifold door at a cost of $40.00, and repairing the faucet handle at a cost of $40.00.

The Landlords referred to pages 15 to 17 of their 46-page evidence document, which contained a receipt for paint work done prior to the start of the tenancy, several pictures of holes and scratches in the drywall, pictures of the before and after condition of the bifold door, and pictures of the before and after condition of the faucet handle.

The Tenants dispute the Landlord's claim that there was damage on the bifold door. The Tenants testified that the bifold door was working fine. The Tenants raised the issue that the bifold door was seventeen years old and has experienced wear and tear.

The Tenants testified that the damage to the drywall was likely from their teenage daughter. The Tenants elaborated that they would have fixed the holes and repainted the drywalls but the Landlord's unilaterally took possession of the rental unit and start of the rental unit before the agreed date for the end of the tenancy and that the beginning of the renovations prevented the Tenants from fixing the drywall. The Tenants also stated that the paint is beyond the life expectancy provided by the Policy Guidelines and that the Landlord would have had to repaint the interior drywall anyways.

The Tenants affirmed that the faucet at the coach house broke off at one point during the tenancy when the Tenants went to wash their hands and the handle broke off.

5. The Screen Door Repair

The Landlords requested compensation in the amount of $193.93, for replacement of the screen door at the rental property.

The Landlord referred to page 23 of the 46-page evidence document, which provided pictures of the screen door from January 2021 during the tenancy, and pictures of the screen door from May 6, 2024. The Landlords testified that the Tenants removed the hydraulic door holder and that the Tenants have improvised a replacement by tying the screen door to the nearby fence in order to keep it open. The Landlords claimed that this has caused the screen door to rust over time.

The Tenants testified that the screen door had already begun to corrode by August of 2019. The Tenants affirmed that the fasteners and holes holding the hydraulic door holder had rusted. The Tenants stated that the hydraulic door holder was functional when it was removed and left behind the coach house. The Tenants claimed that the condition of the door was due to wear and tear. The Tenants submitted page 14 of their 16-page evidence document titled "Busch_Takacs_Response.pdf", which contained pictures of the screen door with sections the Tenants have marked where they claimed rust had developed.

6. The Washing Machine Repair

The Landlords requested compensation in the amount of $430.95 for repair of the washing machine.

The Landlords referred to page 20 and 33 of the 46-page evidence document. Page 20 contained pictures of the invoice for a new washer and dryer which was delivered to the rental property on October 31, 2020, and pictures of the damaged washer tab ring from May 4, 2024. Page 33 contained pictures of estimates for the cost of labour and the cost of the parts to fix the washer. The Landlords claimed that excessive loads and imbalanced loads caused the drum in the washer to repeatedly contact the tab ring which led to damage.

While the Tenants did not provide testimony regarding the washing machine repair, select passages from page 12 of the Tenants 16-page evidence document titled "Busch_Takacs_ Response.pdf" reads:

> • *No dispute with regards to the damage to the washing machine*
> • *Damage was not intentional*
> • *The applicants' teenage daughter had put her bedding in the washing machine and unknowingly overloaded it.*
> • *The damage was neither caused by neglect or a deliberate act to damage the washing machine"*

7. The Front yard and Backyard Repairs

The Landlord requested compensation for damage to the rental unit in the amount of $1,011.50 for the backyard, and compensation for damage in the amount of $125.00 for the front yard.

The Landlords referred to the written tenancy agreement addendum and testified that under the tenancy agreement, the Tenants are responsible for maintain the front and back yard at the rental property. The Landlords testified that trees alive at the beginning of the tenancy were no longer alive at the end of the tenancy. The Landlord's submitted page 18 of their 46-page evidence document, which contained pictures of the backyard taken in August of 2018 and 2019, July of 2020 and 2021, and May 6 of 2024. The Landlord also submitted page 19 of their 46-page evidence document, which contained pictures of the front yard at the rental property from October of 2020, January of 2021, and May of 2024.

The Tenants submitted page 10 and page 11 of their 16-page evidence document titled "Busch_Takacs_Response.pdf" and testified that the drainage at the backyard of the rental property did not contribute to the growth of grass. The Tenants testified that despite their efforts to maintain the grass in the backyard at the rental unit, the grass did not grow successfully. The Tenants stated that they unilaterally decided to pour stones over the areas where the grass grew in the backyard. The Tenants affirmed that while they did not seek the Landlord's consent to do so, the Landlord's actions implied consent. The Tenants testified that the Landlord visited the rental property once a year to pickup rent cheques, and that the Landlord saw the backyard in November of 2022 and November of 2023 and did not dispute the condition of the backyard on either instance.

The Landlords responded that they saw the condition of the backyard when they visited but decided not to raise the issues with the Tenants at the time. The Landlords elaborated that they would address this at the end of the tenancy and request for the Tenant to restore the backyard to a similar condition at the beginning of the tenancy. The Landlords confirmed that they did not ask the Tenants to fix the backyard in 2022 or 2023.

Rent Increases

The parties agreed that a tenancy agreement was signed in October of 2019 which granted the Tenant exclusive possession of the entire rental property, including the main house and the coach house.

The Tenants testified that on November 15, 2021, the Landlords threatened to sell the property and move in their children if the Tenants did not agree to a rent increase. The Tenants stated that they agreed to a $200.00 rent increase, which updated the monthly rent to the sum of $4,300.00. The Tenants affirmed that while there was a mutual agreement to increase the rent, the Tenants claim that they were coerced. At the same time, the Tenants agreed that the Landlord did not physically threaten the Tenants.

The Tenants affirmed that on November 11, 2022, the Landlords again illegally increased the monthly rent by $200.00 to $4,500.00 a month. The Tenants testified that they paid $4,500.00 per month for rent between November 15, 2022, to April of 2024. The Tenants calculated that the total amount of illegal rent increases they have paid to the Landlords equals $9,200.00. Again, the Tenants affirmed that while there was a mutual agreement to increase the rent, the Tenants claim that they were coerced.

The Tenants testified that they did not see any other alternative beside agreeing to the rent increases or face potential homelessness. The Tenants affirmed that they were aware of the maximum allowable increase and that both increases were in contravention of the Act during both rent increases. The Tenants acknowledges that they did willingly agree to the increases both instances but emphasized that the Landlords did not increase the rent using the proper form in either instance where there was a rent increase.

The Landlords declared that the rent increases were mutual agreements and referred to the corresponding tenancy agreements aligned with the rent increases. The Landlords testified that they did not threaten the Tenants, but simply communicated to the Tenants that when the Landlords mentioned that they may have to sell the property, the Tenants requested the Landlords to extend the tenancy for two years to minimize disruptions to the Tenants family life.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

In general, under the legal doctrine of the freedom of contract, every person is free to enter into a contract with any other person they choose, and every person is free to contract on any terms they want. For a contract to be enforceable, there must be certain fundamental elements, such as an exchange of consideration and a meeting of the minds.

For our purposes, if the terms of the contract do not contravene the Act, it may be enforceable under a tenancy agreement and at the Residential Tenancy Branch.

I accept the submissions from both parties that the parties shared a mutual agreement to end the tenancy on May 15, 2024.

I accept the submissions from both parties that as terms of the mutual agreement, that the Landlord would not collect April of 2024's rent, that the Tenant would be required to perform tasks at the rental property such as yardwork, laying fresh sod, and cleaning the exteriors of the rental property. Based on the above, I am satisfied that the parties exchanged consideration such as the forfeiture of April's rent for the Landlord, and the performance of tasks by the Tenants, I am also satisfied that the parties had a meeting of minds which supported the validity of the initial mutual agreement.

I accept the Tenant's submissions that the parties had a subsequent agreement in which the Landlords requested an even earlier return of the rental property, and that the Tenants agreed.

I accept the submissions from both parties that the Landlord gained possession of the rental property on May 6, 2024.

In this case, based on the testimony of the parties, the evidence submitted, and on a balance of probabilities, I find that the Landlord has not established that they are entitled to unpaid rent for the period of April 15, 2024, to May 15, 2024.

While I have accepted that under the first mutual agreement, where the parties agreed that the Tenant would not have to pay rent for the last month of the tenancy, I find it more likely than not that the second agreement between the parties did not include any terms to replace or supersede the initial mutual agreement. Consequently, I find that the Tenant had a right to deduct their rent under the first mutual agreement. I further find that the Landlord may not unilaterally change the terms of the first mutual agreement to request for unpaid rent. Given that the second agreement and the first mutual agreement do not conflict with each other or replace each sides responsibilities in the first agreement, especially in the absence of being expressly stated or addressed in the second agreement, I find that both agreements were simultaneously active at the same time.

Based on the above, I dismiss the Landlord's request for a monetary order for unpaid rent, without leave to reapply.

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

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.

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

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
- damage or loss 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

All four conditions of the four-point test must be satisfied to be awarded compensation.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord has established a partial claim that the rental property sustained damages, and that the Landlord has incurred a loss due to the Tenants breach of the Act and the tenancy agreement.

I assign significant weight to the Landlord's 46-page evidence document, specifically page 10 to page 36 which included a list of claimed items, specific copies of pictures of the claimed items, and corresponding copies invoices and receipts.

Regarding the water damage, I find that the Landlord has satisfied all conditions of the four-point test, and I grant the Landlord their request for compensation for the water damage at the rental property.

While this issue was highly disputed by the parties, I find that the Landlord provided a believable and rational version of events on a balance of probabilities to overcome the Tenant's opposing testimony and evidence. I assign weight to both parties submitted reports of what may have caused the failure of the water supply hose. In report submitted by the Tenant, and the report submitted by the Landlord, there is wording that suggests that a blunt impact may cause a failure of the hose. Given that the parties both provided that the rental property was in the Tenant's possession at the time of the water damage, I find it more likely than not that the Tenant or a person permitted on the property by the Tenant, such as their cleaner, may have damaged the water supply hose, which caused it's failure and ultimately the water damage at the coach house on

the rental property. Based on this, I find that the Tenant breached section 32(3) of the Act.

Although the Tenant referred to the Residential Tenancy Branch Policy Guideline claims that the hose failed due to wear and tear, I disagree. In this case, the parties agreed that the rental property was built in 2007. First, the Residential Tenancy Branch Policy Residential Tenancy Branch Policy Guideline #40 is meant as a general guideline to determine the useful life of building elements and for determining damages, the Guideline does not override the Director's authority to determine damages or loss under the Act. Second, I reason that wear and tear is not relevant in this scenario because if the rental property was constructed in 2007 and I infer through the testimony and the submission of both parties that there has only been one water leakage of this scale, and that similar failures for similar hoses have not occurred at the rental property during the tenancy.

Regarding the general cleaning and carpet cleaning at the rental property, I find that the Landlord has satisfied all conditions of the four-point test, and I grant the Landlord their request for compensation for the loss the Landlord incurred for cleaning and carpet cleaning at the rental property. I assign significant weight to the Landlord's pictures of the rental property from around the time the tenancy ended, and the Landlord's invoices for cleaning fees and carpet cleaning fees. I also assign weight to the fact that the Tenants stated that they left the rental property in a messy condition. Based on this, I find that the Tenant breached section 37(2)(a) of the Act. I find that even though the Tenant was advised by the Landlord not to bother with cleaning and to cancel the schedule cleaner, I find that the Tenant has not supplied any information to demonstrate that the Tenants would be automatically excluded from their obligations under section 37(2)(a) of the Act. I find that the Tenants own misunderstanding of their obligations under the Act and tenancy agreement does not relieve the Tenant of their obligations under section 37(2)(a) of the Act to return the rental unit in a reasonably clean condition.

Regarding the repainting of the interior wall, the repair of the bifold door, and the repair of the faucet at the rental property, I find that the Landlord has satisfied all conditions of the four-point test. I find that the Landlord provided a credible version of events, that the mentioned items were damaged by the Tenants during the tenancy, and that the Landlord incurred a loss to repair the items. I find that the Landlord supported their version of events and their loss with several before and after pictures submitted in the evidence, and corresponding invoices.

Similar to the above, I find that the Tenant has not provided any evidence to demonstrate that they would be automatically excluded from their obligations under section 32(3) of the Act, to repair damages that the Tenants have caused. The Tenants again refer to the Policy Guideline #40 and emphasize that the above items only suffered wear and tear, but I disagree. On examination of the Landlord's evidence, specifically page 15 of the Landlord's 46-page evidence package, I find that the paint damaged shown on these pictures show several deep scratches, holes, and blemishes not typical of wear and tear. Moreover, I find that given the parties have established that

the home was built in 2007, and that it is clear that there are several doors and several faucets at the rental property, which I infer have not succumbed to wear and tear, and are still fully functional, I reason that it is more likely than not that wear and tear again does not apply to the bifold door or the faucet in this in this scenario.

Regarding the front yard and backyard landscaping costs, I will refer to the analysis above regarding whether the Landlord is entitled to a monetary order for unpaid rent. In this case, I will repeat several of the above findings:

- I accept the submissions from both parties that the parties shared a mutual agreement to end the tenancy on May 15, 2024.
- I accept the submissions from both parties that as terms of the mutual agreement, that the Landlord would not collect April of 2024's rent, that the Tenant would be required to perform tasks at the rental property such as yardwork, laying fresh sod, and cleaning the exteriors of the rental property. Based on the above, I am satisfied that the parties had a meeting of minds which supported the validity of the initial mutual agreement.
- I accept the Tenant's submissions that the parties had a subsequent agreement in which the Landlords requested for an even earlier return of the rental property, and that the Tenants agreed.
- I accept the submissions from both parties that the Landlord gained possession of the rental property on May 6, 2024.

In this case, I find that the Landlords have satisfied all conditions of the four-point test, specifically that they have incurred a loss due when the Tenant's failed to comply with the mutual agreement to end tenancy, and the Tenant's responsibility to lay fresh sod at the rental property. I assign significant weight to the text March 27, 2024, text message exchange provided for on page 38 of the Landlord's 46-page evidence document.

Similar to the above, given that neither parties have submitted evidence to demonstrate that the subsequent agreement superseded or terminated the terms of the initial agreement for the tenancy to end on May 15, 2024, which also included terms for the Tenant to perform yardwork and clean the exterior of the rental property, I find that the Tenant breached the initial mutual agreement by failing to perform the yardwork as they had agreed to.

Regarding the washing machine repair, I find that the Landlord has satisfied all conditions of the four-point test. I assign weight to the Landlord's evidence, specifically submitted copies of pictures of the washing machine, and the purchase invoice showing delivery in October of 2020. I also assign weight to the Tenant's own evidence submission which explains that the Tenant's daughter may have unintentionally overloaded it. Given the date of purchase, I find that wear and tear is an unlikely factor here.

While the Tenants are of the opinion that this damage would not constitute as neglect or a deliberate act to damage the washing machine, I disagree. Cambridge English

Dictionary defines neglect as “to not give enough care or attention to people or things that are your responsibility”. Oxford English Dictionary defines neglect as “lack of attention to what ought to be done”. With mind to these two consistent definitions, the Tenant’s own submission that the Tenant’s daughter usage may have overloaded the washing machine, I find it more likely than not that the Tenant’s, or somebody permitted on the property by the Tenants, such as their daughter, improperly used the washing machine and contributed to the damage sustained by the washing machine. Based on this, I find that the Tenants breached section 32(3) of the Act.

Regarding the drying machine repair, I find that the Landlord has established a partial claim to the amount requested. In general, it is the Landlord’s responsibility to maintain large appliances at a rental property, this is expanded on in Policy Guideline #1. In this case, I find that the Landlord has not provided sufficient evidence to demonstrate that the Tenant’s usage or lack of maintenance contributed to the damage the dryer sustained. As a result, I decline to grant the Landlord the labour portion of their compensation request for the drying machine repair, specifically the amount of $445.56.

However, on examination of the Landlord’s pictures on page 21 of the Landlord’s 46-page evidence document of, specifically pictures of the drying machine from before the tenancy agreement and at the end of the tenancy agreement, I accept the Landlord’s position that the power knob on the drying machine was not present at the end of the tenancy. I accept the Landlord’s invoice evidence on page 34 of their 46-page evidence document which showed that a replacement knob was purchased at a cost of $69.15. Given that the rental property was in the Tenant’s possession for the entire length of the tenancy up until the end of the tenancy, I find it more likely than not that the Tenant’s returned the rental unit and the drying machine, without a power knob, which contributed to the Landlord’s loss. While a missing power knob might not be considered damage per se, I reason that a drying machine without proper control over the power due to a missing power knob, would render it dysfunctional, and effectively damaged considering the power function is one of the essential functions of a drying machine. Based on the above, I find that the Landlord is entitled to partial compensation, only for the cost of the power knob. I find that the Landlord satisfied all conditions of the four-point test

Regarding the screen door repair, I find that the Landlords have satisfied all four conditions of the four-point test. I accept the Landlord’s submission that the screen door at the rental unit was fully functional at the beginning of the tenancy, that the Tenants removed the hydraulic door stopper, and that after the removal of the door stopper, the Tenants contributed to the increased deterioration of the screen door by dying it to a nearby fence leaving it exposed to the elements. While the Tenants disputed the Landlord’s claim and argued that the screen door was already rusting in August of 2019 and subject to wear and tear, I find that the Landlord’s picture evidence of the screen door shown on page 23 of the Landlord’s 46-page evidence document do not show any signs of rust or corrosion present. Moreover, I assign significant weight to the Landlord’s picture evidence which showed that the Tenants’ propped open the screen door by tying it to a nearby fence, effectively keeping it constantly in the open position. Based on this,

I find it more likely than not, that even if there was wear and tear experienced by the screen door, the Tenant's directly contributed to it's accelerated wear and tear when they removed the hydraulic door stopper and tied the screen door to the fence leaving it constantly open.

I will list the items where the Landlords have established their claim for damage or loss and is entitled to compensation below:

Items Claimed	**Granted Value**
Water Damage	$4,974.00
General Cleaning at the Rental Property	$405.00
Carpet Cleaning at the Rental Property	$168.00
Interior Wall Repaint, Repair of Bifold Door, Repair of Faucet	$375.00
Front yard and Backyard Repair by Landscaping	$1,135.50
Washer Repair	$430.95
Dryer Repair	$69.15
Screen Door Repair	$193.93
Total	**$7,751.03**

The Landlord's application requesting compensation due to damage or loss generally successful. Under section 67 of the Act, I find that the Landlords are entitled to a monetary award for damage or losses incurred, in the amount of $7,751.03.

Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit?

Section 23 of the Act states provides that it is the landlord's responsibility to offer at least two opportunities to do the move in inspection, to complete the report, to provide the report within seven days after the inspection, and to complete the inspection and the condition inspection report even if the tenant does not attend after having been given two opportunities.

Section 24(2) of the Act states that the right of a landlord to claim against a security deposit or a pet damage deposit is extinguished if the landlord does not provide the tenant with at least two opportunities to do a move in inspection, do the move in inspection, and to provide the move in condition inspection report to the tenant within seven days after the inspection is complete under Section 18 of the Residential Tenancy Regulation.

Section 36(2)(c) of the Act states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit for damage to the residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of in accordance with the Residential Tenancy Regulation.

Section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(5) of the Act states that the right of a landlord to retain all or a part of the security deposit or pet damage deposit does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or pet damage deposit has been extinguished under section 24(2).

Section 38(6) of the Act states that if the landlord does not return the security deposit or the pet damage deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security deposit or the pet damage deposit.

It is worth noting and relevant here that consistent with section E of Policy Guideline #17, when there is an extinguishment of the Landlord's right to claim the security deposit or pet damage deposit to be applied towards damages or loss does not exclude the Landlord's right to file an application to claim for damages. A passage from the Guideline states:

> *A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*
>
> *a. to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
> *b. to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
> *c. to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
> *d. to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

On review of the Landlord's application, and the submission of the parties regarding the forwarding address and the end of the tenancy, I find that the Landlords filed their application within the time required under section 38(1) of the Act.

Based on the submissions of the parties, specifically that a copy of the move in condition inspection report was provided to the Tenants in May of 2024, I find that the Landlord did not provide a copy of the condition inspection report to the Tenants within seven days as required under section 18 of the Residential Tenancy Regulation. Consequently, I find that the Landlord extinguished their right to retain the security deposit and the pet damage deposit to claim against damages against the rental property.

Section 38(6) states that if a landlord does not comply with section 38(1) of the Act, the landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit or both, as applicable.

In this case, while the Landlords complied with section 38(1) of the Act to file their application within the required timeline, I find that the Landlord did not have a right under the Act to file an application to retain any portion of the security deposit or pet damage deposit given that they have extinguished their right to claim against the security deposit and the pet damage deposit by failing to provide the condition inspection report within the time required under section 18 of the Regulation, ultimately extinguishing their right to claim against the security deposit and the pet damage deposit.

As a result, I find that the Landlords must pay the Tenants double the amount of both the security deposit, the pet damage deposit, as required under section 38(6) of the Act.

The Landlord's request to retain all or a portion of the security deposit and the pet damage deposit is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and their pet damage deposit? If yes, is the Tenant entitled to the recovery of the filing fee?

Given the above finding that the Landlords extinguished their right to claim against the security deposit and the pet damage deposit, and the finding that the Landlords must pay the Tenants double the amount of both the security deposit and the pet damage deposit under section 38(6) of the Act, I find that the Tenants are entitled to a Monetary Order for the return of both the full amount of their security deposit and the pet damage deposit with accumulated interest on both the original deposits, plus double the amount of the original security deposit and pet damage deposit as required under the Act.

The original security deposit combined with accumulated interest equals the sum of $1,821.61. The original pet damage deposit combined with accumulated interest equals the sum of $1,821.61. The original security deposit and the pet damage deposit with accumulated interest added together equal the sum of $3,643.22.

The interest is calculated in accordance with the Residential Tenancy Regulation with the assistance of the publicly accessible Residential Tenancy Branch Deposit Interest Calculator.

The doubled portion of the original security deposit sans interest, combined with the doubled portion of the pet damage deposit sans interest, added together equal $3,500.00.

Based on the above, I find that the Tenants are entitled to a monetary award in the amount of $7,143.22 for the return of all of the Tenant's security deposit, pet damage deposit, plus interest accumulated, and plus the doubled portion of the security deposit and the doubled portion of the pet damage deposit under section 38(6) of the Act.

Given the Tenants was successful in their cross application requesting for the return of the security and pet damage deposit, I find that the Tenant is entitled to the recovery of the $100.00 filing fee under section 72 of the Act

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, Regulation or tenancy agreement? If yes, is the Tenant entitled to the recovery of the filing fee?

The same four-point test for compensation is to be applied to the Tenant's request for compensation under the Act.

In the Tenant's cross application, the Tenants requested compensation in the amount of $9,200.00 for a claim of a series of illegal rent increases claimed alleged to have occurred on November 15, 2021, and November 11, 2022.

I accept the Tenant's claim that the Landlord breached the Act by increasing rent on November 15, 2021, and November 11, 2022, both which were above the maximum allowable amount, and without the proper form. I am satisfied that the Tenants paid the increased amounts of rent for the duration of the tenancy. I find that this satisfies the first condition and second condition of the four-point test. I accept the Tenant's calculation for the amount of rent that the Tenants overpaid due to the illegal rent increases. I find that this satisfies the fourth condition of the four-point test.

However, the fourth point of the four-point test states that a party making an application requesting compensation did whatever was reasonable to minimize the damage or the loss. In addition, section 7(2) of the Act states that a landlord or a 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.

In this case, I find that the Tenants did not do whatever is reasonable to minimize their losses incurred when they knowingly but continuously overpaid rent under the illegal increases between November 2021 to April of 2024. I assign significant weight to the fact that the Tenants declared that they were fully aware that both increases were in contravention of the Act, and despite being aware, continued to pay the increased rent for several years without raising any concerns at all, or by applying to the Residential Tenancy Branch to dispute the rent increases.

Based on this, I find that Tenants did not act reasonably to minimize their loss such as by filing a dispute with the Residential Tenancy Branch, by seeking legal assistance, or by deducting the overpayments from any subsequent rent payments. Consequently, I

find that the Tenants did not satisfy the fourth condition of the four-point test, or section 7(2) of the Act, and the four-point test fails.

The Tenant's request for a Monetary Order for damage or loss under the Act is dismissed, without leave to reapply.

As the Tenants were not successful in this cross application, I find that they are not entitled to recover the filing fee. The Tenant's request to recover the filing fee is dismissed, without leave to reapply.

Conclusion

The Landlord's request for unpaid rent is dismissed, without leave to reapply.

The Landlords are entitled to a monetary award for damages or loss under the Act and tenancy agreement is granted. I grant the Landlords a monetary award in the amount of $7,859.79.

The Tenants are entitled to a monetary order for the return of the security deposit, pet damage deposit, accumulated interest, and the doubled portion of the security deposit and pet damage deposit is granted. The Tenant's request for recovery of the filing fee on this application is granted. I grant the Tenants a monetary award in the amount of $7,243.22

The Tenant's request for a monetary order for damages or loss under the Act and tenancy agreement is dismissed, without leave to reapply. The Tenant's request for recovery of the filing fee on this application is dismissed, without leave to reapply.

As there are monetary awards granted to both parties, I set off the amounts of the awards against each other and the sum of $616.57is the remaining balance, in the Landlord's favour. Thus, I grant the Landlords a Monetary Order in the amount of $616.57.

The Landlords are provided with this Order. Should the Tenants fail to comply with the abovementioned terms regarding payment, the Tenants must be served with a copy of this Order as soon as possible.

Should the Tenants 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.

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: October 11, 2024

Residential Tenancy Branch