DECISION

Introduction

This decision involves three applications including:

The Landlord's July 12, 2024, Application for Dispute Resolution ("File 1") 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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant's July 13, 2024, Application for Dispute Resolution ("File 2") 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
- 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

The Landlord's July 29, 2024, Application for Dispute Resolution ("File 3") 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 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

- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The September 24, 2024, hearing was attended by Landlord I.A. as owner of the residential property and Director of the Property Management Company identified as Landlord in this Dispute.

Tenant J.J. attended with the support of with the support of their associate A.P, who was a silent observer.

The October 15, 2024, teleconference hearing was attended by Landlord I.A, with the support of their spouse, Z.A., and requested witness testimony from their contractor A.P.

Tenant J.J. attended the hearing with the support of their associate A.P, who was a silent observer.

The November 7, 2024, hearing was attended by the Landlord and their Spouse, Z.A.

Tenant J.J attended with the support of their associate A.P, who was a silent observer, and former Tenant of the unit J.S. The Tenant called a witness A.Q.

Parties provided sworn testimony, referred to evidence and asked questions during the three hearings.

This Decision must be read in conjunction with my Interim Decision dated October 26, 2024, specifically regarding File 3 because the matter had to adjourned to a second hearing slot.

Service of Notice of Dispute Resolution Proceedings

The parties testified during the September 24, 2024, hearing that they accepted service of Notice related to File 1 and File 2.

Matters of service related to File 3 were addressed in the Interim Decision.

Service of Evidence Related to these Disputes

The parties agreed during the September 24 teleconference hearing that they served each other with their respective evidence related to File 1 and File 2 as discussed and identified during the hearing, except for one piece of the Tenant's evidence.

The Landlord testified that they did not receive a copy of the Tenant's recording of a conversation they had with an associate of the Tenant, who is said to have with knowledge of how the Tenant maintained the residential property.

The Tenant referred to their records and argued that they served this recording to the Landlord September 10, 2024, however, they also conceded that this evidence may not have been served due to file size limitation when serving by email.

Matters of evidence service related to File 3 were addressed in the Interim Decision.

The Landlord argued during both hearings that they were unable to view the contents of the Tenant's video/audio files that were submitted as evidence.

I find that the Tenant failed to provide evidence in support of the requirements of RTB Rule of Procedure 3.10.5 which requires parties who serve electronic evidence, to confirm that electronic evidence can be accessed.

I therefore find that I can consider all evidence served by either side, except for the Tenant's audio and video files, in my decision making because I am satisfied that the parties served copies of this evidence on each other as required by the Act and Rules of Procedure.

For clarity, both sides submitted hundreds of pages of evidence, organized across multiple PDF documents, and uploaded against the three files.

I received explicit instructions during the November 7, 2024, hearing from the parties, that I am to consider evidence globally, which means that if it was served against one file, I can consider it generally against all claims.

Types of evidence include:

- RTB template documents
- Photos
- Emails and text messages between Landlord and Tenant
- Email and text message conversations between Landlord and other parties
- Real estate listing
- Proof of payment
- Professional documentation
- Assorted professional invoices and quotes
- Proof of payment related to assorted charges

Preliminary Matter – The Residential Property

All three disputes involve the same residential property, a single-family dwelling built in the 1970s that contains an upper and a lower rental unit which is referred to as the "main unit" by the parties in this dispute.

The Landlord has owned this property since 2017 and operates it as a rental property through their property management company.

The parties agreed that the Tenant rented the Upper Unit in January 2019 and that they paid a $1,043.00 security deposit and a $1,043.00 pet damage deposit. The parties also agreed that monthly rent of $3,144.28, due on the first of the month, was paid in full when this tenancy for the Upper Unit ended June 30, 2024.

The parties agreed that the Tenant began also renting the Main Unit on July 15, 2019, after paying a $1,050.00 security deposit. The parties agreed that the Tenant paid monthly rent of $2,250.22, due on 15th day of the month, was paid in full when the tenancy for the Main Unit ended on July 14, 2024.

Both tenancy agreements were month to month when the Tenant vacated.

The Tenant argued that they vacated the two rental units at different times because the dates given coincided with the dates that rent was due for the respective units.

The parties agreed that the Main Unit was occupied by a different tenant when the named Tenant in this dispute began occupying the Upper Unit. The named Tenant then took over the Main Unit when it became available.

The parties also agreed that the Landlord is still holding the full value of all monies paid by the Tenant for security and pet damage deposits related to their use of the residential property.

Preliminary Matter – Ownership of the Residential Property

During the September 24, 2024, Hearing, the Landlord testified that they personally are the registered owner, and then during the October 15, 2024, hearing, the Landlord testified that the residential property is owned by a family trust of some sort, and that both they and their spouse Z.A. are beneficiaries of this trust.

I use my discretion under RTB Rule of Procedure 7.7, to add Landlord I.A. as a party to this dispute because no evidence was provided by either side to indicate that the Landlord's Property Management company (named as Landlord by the Landlord), is the owner of the residential property.

Preliminary Matter – Jurisdiction of the RTB on the Landlord's Claims

File 1 as submitted by the Landlord was initially for $66,144.18, which exceeds the Small Claims Court Limit as specified within section 58 and 85 of the Act.

I informed the Landlord during the September 24, 2024, teleconference that they can appeal to a higher-level court if they wish to proceed with their claim in the originally specified amount.

The Landlord indicated that they wished to reduce their claim for compensation so that it fits within the $35,000.00 limit of the RTB, as seen in the following amendments:

- Withdrawing their claim for compensation for utilities.
- Reducing their claim for compensation for damages from $28,000.00 down to $25,000.
- Reducing their claim for monetary loss or other money owed from $35,000.00 down to $10,000.00.

The Tenant consented to these amendments and so I permitted the Landlord to amend their claim for compensation in accordance with the RTB Rules of Procedure.

I therefore find that Landlord's claims for compensation, as amended at the hearings that occurred on September 24, and October 15, 2024, include the following:

File 1

- Request payment of $25,000 damage,
- Request payment of $10,000 loss for loss of rent
- Request to retain deposits = $1,430.00 Pet and $1,430.00 Security

File 3

- Request payment for $15,838.00 as combined claim for damages and loss
- Request to retain deposits = $1,050 Security

As discussed during the participatory teleconference hearings that occurred on September 24, 2024, and October 15, 2024, a significant portion of the Landlord's claim for compensation for damages is based on a September 6, 2024, invoice in the amount of $39,396.00.

The Landlord is also claiming $9,432.84 as compensation for loss in the form of "lost rent" of $3,144.28 x 3 (for July, August, and September) for the Upper Unit as well as $2,250.00 x 2.5 (for July 15 – 31, August and September) for the Main Unit for a total claim of $5,625.55 for lost rent from the Main Unit.

In sum, I find that the Landlord has submitted a combined claim of $50,000.00+ ($15,058.39 + $35,000.00) for compensation against the Tenant and has applied to retain the full value of the Tenant's security and pet damage deposits that were collected against this claim. This means that if the Landlord is %100 successful in their two applications, the Tenant could potentially be ordered to pay $46,148.39.

$50,058.39 - $3,910 (combined value of deposits) = $46,148.39

Section 73 of the Act sets out that the Director may resolve related disputes, as well as disputes involving the same landlord and tenant, within the same dispute resolution proceedings.

My colleagues responsible for file intake, observed that the Landlord had submitted two claims, as described above, against the same Tenant for the same residential property. The Landlord was then given two participatory teleconference hearings on the condition that both disputes were heard by the same Arbitrator.

The Tenant's application (File 2) was joined by intake staff with the Landlord's File 1, and both files were heard by myself, during the first hearing on September 24, 2024.

I invited submissions from the Landlord and Tenant during the October 15, 2024, hearing (that was scheduled to hear File 3) on the guidance provided within pages 8-9 within RTB Policy Guideline 27 on the division and consolidation of related claims and the questions of whether the Landlord's two applications are sufficiently distinct, or integrally interwoven.

Also relevant to the above, is section 58(2) of the Act which provides that the Director must not determine disputes involving claims for debts or damages if the monetary amount claimed exceeds the limit set out in the Small Claims Act, which is $35,000.00.

The Landlord argued that their two files (File 1 and File 3) are sufficiently distinct because the parties signed two separate tenancy agreements and conducted two separate move-in inspections and move-out inspections. The Landlord also argued that the Tenant paid rent separately for the two units, and that the Tenant used the Upper Unit for living, and the Main unit for their home-based business.

The Tenant testified that they agreed that the Landlord's two files are for two separate applications for two separate tenancies.

I am therefore satisfied that I have the jurisdiction necessary to hear the merits of the Landlord's full final claim against the Tenant, with each application (File 1 and File 3) subject to the financial limits of section 58(2) of the Act.

For clarity and consistency in in Decision tracking, I use my discretion under RTB Rule of Procedure 2.10 to join all three applications that have been filed, including the Landlord's file submitted on July 12, 2024 (File 1), the Tenants file submitted on July 13, 2024 (File 2), and the Landlord's file submitted on July 29, 2024 (File 3).

Preliminary Matters – Items Settled and Tenant's Requests

The Tenant agreed that they owed the Landlord the requested $20.51 for payment of utilities as part of the Landlord's claim for compensation related to the Main Unit.

I therefore find under section 63 of the Act that the parties settled their utilities related dispute, and that the Tenant will pay the Landlord $20.51 as requested for utilities owing, and I close the Landlord's claim for payment of rent as submitted as part of their claim related to the Main unit.

The parties agreed that the Landlord no longer required the claim for rent for the Upper Unit that had also been for payment of utilities, and so I permitted the Landlord to withdraw the claim for unpaid rent for the Upper Unit.

The Tenant testified during the November 7, 2024, teleconference hearing that they are withdrawing their claim for compensation for loss of quiet enjoyment during this tenancy which is identified as a claim for $17,000.00 on File 2. I permitted the withdrawal of this claim with the Landlord's agreement, under RTB Rule of Procedure 7.12 and Rule 7.12.1.

The Tenant stated that they wish to retain their claim for the return of their $3,910.00 that was paid as security and pet damage deposits for the two tenancy agreements.

Preliminary Matters – Time Management and Procedural Fairness

Both parties informed me at different times during the three hearing sessions that they both had experience with RTB proceedings, the Landlord as a lawyer and the Tenant as a private investigator.

I repeatedly confirmed for both parties that I needed them to respond to my specific questions so I can gather the information necessary for me to make decisions on the merits of each claim, in accordance with the Act, Regulations, and policy guides. I also confirmed for the parties that they would have additional opportunity to speak and draft my attention to anything that may have been missed.

This need for arbitrators to make clear inquiries on behalf of self-represented parties was recently confirmed in *Moon v Vizi, 2024 BCSC 1068 (see paragraphs 28 – 30).*

I refer to RTB Rules of Procedure 3.6 and 3.7 which require parties to submit well organized evidence that is relevant to their claims. As seen in the text of rule 3.6:

> "….The director has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant."

I also refer to RTB Rule of Procedure 7.4 where it is written that:

> 7.4 Evidence must be presented
>
> > Evidence must be presented by the party who submitted it, or by the party's agent.
> >
> > If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I also refer to RTB Rule of Procedure 6.6 where it is written that the RTB makes decisions on the balance of probabilities as the standard of proof, and that the onus of proof, is on the person making the claim, which is the Landlord in these disputes, with their combined claims for $50,058.39 in compensation against the Tenant.

I confirmed for both parties that I would spend time after the hearing reviewing documentary evidence in detail after the hearing so long as it was clearly identified by either party, as part of the evidentiary record during the three hearing days.

Reviewing these documents and preparing this Decision has required 30+ hours of work by myself after concluding the three teleconference hearings which lasted more than 7 hours including:

- 120 minutes on September 24, 2024
- 120 minutes on October 15, 2024
- 190 Minutes on November 7, 2024

I will also note for transparency, that the Landlord repeatedly stated during all three hearings that they found that I did not allow them to be heard, which was said to be different from my observed interactions with the Tenant, who the Landlord stated, I allowed to speak freely.

In response to this claim, I refer to direction from *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257* where it is written in paragraph 11 that:

> "..while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group…"

Which is to say, the Act required me to provide the Tenant with a fulsome opportunity to respond to the claim for $50,058.39 in compensation against them.

Preliminary Matters – Accusations of Fraud

The Tenant spoke repeatedly during the November 7, 2024, teleconference, of their concerns with what they deemed fraudulent activities of the Landlord and referred many times to testimony and evidence provided by the Landlord's Witness, the contractor, during the October 15, 2024, teleconference.

The Tenant stated that they will be seeking an RTB Review request based on their concerns and evidence of what they called fraud perpetrated by the Landlord, if the hearing is closed and a Decision was issued based on the evidence and testimony provided to date.

The Tenant asked to adjourn the hearing and receive instructions that additional evidence could be served.

I shared information with the parties on how the RTB manages Review requests in accordance with RTB Policy Guideline 24.

I sought instruction from the Landlord on their preferred way of addressing the Tenant's concerns, and the Landlord instructed me to close the hearing and provide my findings.

Issues to be Decided

Is the Landlord Entitled to the following for the Upper Unit

- 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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Is the Landlord entitled to the following for the Main Unit

- 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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Is the Tenant is entitled to:

- 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

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.

<u>How did the two tenancies end?</u>

The parties agreed that the Tenant sent an email on May 29, 2024, to the Landlord providing Notice that they would be vacating the Upper Unit on June 31, (sic) and the Main Unit on July 14, 2024. This document also includes Notice of the Tenant's forwarding address as required by section 39 of the Act.

The Tenant testified that they gave Notice to end the tenancy because they said they were tired of various structural issues within the property, including repeated roof leaks, and they also had safety concerns with a neighbour of the residential property.

The Landlord argued that this was not valid Notice from the Tenant because it was sent by email, and it did not satisfy the timeline requirements of the Act because they received the email on June 2, 2024.

The Tenant repeatedly stated that they had a good relationship with the Landlord until the Tenant gave Notice that they would vacate. The parties agreed that they discussed the question of the Tenant potentially purchasing the residential property during the tenancy, at different times during these tenancies.

However, no evidence or testimony was provided to indicate that the Tenant ever acquired or developed a financial interest in this property which would have placed this dispute outside of the jurisdiction of the RTB as seen in RTB Policy Guideline 27.

MOVE-IN/MOVE OUT INSPECTIONS AND INSPECTION REPORTS

Specific to the question of the security and pet damage deposit and whether the Tenant is entitled to the return of all deposits, the Landlord provided copies of:

- A move-in inspection reports dated January 15, 2019, for the Upper Unit.
- A move-out condition inspection report dated June 30, 2024, for the Upper Unit.
- A move-in condition inspection dated July 20, 2019, for the Main Unit.
- A move-out condition inspection dated July 16, 2024, for the Main Unit.

The Tenant stated that they received all inspection reports except for the move-out inspection report for the Main Unit and specifically testified that this document was not received until August 6, 2024, stating this this was outside of the 15-day window permitted by the Act.

The parties agreed about the inspections for the Upper unit, and the move in inspection for the Main Unit, but disagreed about the move-out inspection for the Main unit, arguing that it occurred on different days, and was attended by different persons.

The Tenant argued that their Agent, an employee and Witness, participated in the required move-out inspection for the Main Unit with the Landlord on July 10, 2024, and that the justification for the inspection occurring at this time was seen in their email correspondence and the result of a phone conversation.

The Landlord disagreed and referred to their evidence of email correspondence with the Tenant to argue that the Landlord provided the Tenant with the required two-opportunities to participate in a move-out as required by section 35 of the Act.

The Tenant testified that the relationship with the Landlord was strained at the time.

The Tenant had their witness A.Q. provide sworn testimony on their experience cleaning the main rental unit between July 9 and 10 and then remaining in the Main Unit on July 10. A.Q. testified that they were instructed to remain that evening of the 10th so that they could represent the Tenant during a move-out condition inspection with the Landlord.

The Witness A.Q. testified that they previously conducted the June 30 Move-Out Condition Inspection for the Upper unit with the Landlord, and that they had prior knowledge of the Landlord because the Witness A.Q. is an employee of the Tenant and so they were regularly at the residential property for business purposes.

The Witness A.Q. testified that during the evening of July 10:

- The Landlord appeared in the Main Unit with a second individual and that these two individuals walked through the unit.
- The Landlord and Witness A.Q. exchanged small pleasantries regarding the efforts of A.Q. in cleaning and removing items from the residential property.
- The Landlord then left the residential property and the Witness A.Q. remained for a while longer because they expected that the Landlord would return with the appropriate paperwork for conducting the move-out condition inspection.
- When the Landlord did not return, they left the keys for the Main Unit on the stove and locked the rental unit from the doorknob.

The Landlord testified that they did not attend to the residential property that evening, because July 10 it was a Wednesday, and they always attend swimming for their daughter. The Landlord's spouse testified that they confirmed the Landlord was not present at the residential property that day.

CONDITION OF THE UPPER UNIT AT THE START OF THE TENANCY

The Tenant testified that they left the Unit in better condition than when they rented it in 2019. They also testified that they experienced various issues with bugs and rodents during their tenancy, with reference to records of email communications between the parties during the tenancy.

The parties agreed that everything in the unit was marked as "good condition" within the January 15, 2019, move-in condition inspection report.

The Landlord referred to 16 photos submitted showing the unit as furnished, and 21 additional photos said to depict the condition of the rental unit at the start of the tenancy.

The Landlord referred to the text of the MLS listing in 2017 to argue that the Unit was newly renovated when they purchased the property.

The Tenant disputed the Landlord's claim and argued that the 16 photos were of the condition of the unit when the Landlord purchased the property because these photos were taken from the real estate listing at that time.

The Tenant argued that the rental unit was occupied by a tenant who had multiple animals between 2017 and 2019 when the unit was occupied by the Tenant.

The Tenant referred to 23 of their own photos taken prior to move-in. As with the Landlord's 21 photos, these photos depict various small scratches, and or evidence of holes/patching across many sections of wall within the Upper unit.

The Landlord agreed that they had no information about the age of any of the items in their damage claim. They referred to the text of the 2017 MLS listing to argue that everything was "newly renovated" when the property was purchased.

The Landlord agreed that they had not painted rental unit before the tenancy started, but argued it was newly painted when the tenancy started in 2017.

CONDITION OF THE UPPER UNIT ON MOVE OUT

The Landlord did not dispute that they attended the residential property in June 2024 while the tenancy was ongoing, or that their photos said to be of move-out at the rental unit, were photos from earlier in June 2024 which depict a very different unit from the Tenant's photos provided on move-out of the upper unit.

These photos appear to have been taken by a remediation professional and are referenced in a Remediation Report based on a June 10, 2024, inspection of Upper Unit for "tenancy and pet damage".

The Tenant argued that the Landlord frequently threated to have them evicted during the tenancy and that the Tenant attempted to play nice to retain their tenancy.

The Landlord agreed that they previously had a good relationship with the Tenant.

The Landlord responded to the Tenant's claims by referring to their records of email and text message responses to argue that they were responsive to the Tenant's communications. The Landlord also argued that they documented during the tenancy, that the Tenant was failing to maintain the units appropriately, as we as evidence in the pictures of dog urine and feces across the floor of the rental unit in June 2024.

The Tenant testified that the Landlord never issued them a Notice to End Tenancy for cause and argued that most of the damage within the unit was caused by the prior

tenants. The Tenant agreed that from 2022 onwards the Landlord put various request in writing and that the Tenant actioned those requested when they were received.

The parties also agreed that the Tenant paid rent late during their final month of tenancy, and the Tenant agreed that they offered to repair various items during the tenancy because the Tenant had been previously hoping to purchase the property.

The Landlord referred to the text of the included "Addendum" to the original written tenancy agreement, signed January 19, 2019, by both parties, which specified pet and smoking restrictions within the unit.

The Landlord alleged that the Tenant smoked within the rental unit, but the Tenant disagreed. The Landlord referred to assorted pictures provided within their various 100+ page separately named evidence documents, to argue that they had proof of the Tenant smoking within the rental unit. This included a picture of a cigarette pack and a single cigarette butt. The Landlord asked to show other photos specifically for the record, but I declined.

The Landlord referred to a professional Disaster Restoration Services inspection report dated March 18, 2024 (sic), for the residential property. They also referred to a second inspection document which included photos taken of the residential property on June 10, 2024.

The Tenant referred to their evidence, which included three videos that an associate of theirs took while walking slowly through the rental unit. The Tenant also submitted 19 photos of the condition of the rental unit on move out.

The contents of the move-out condition inspection report were reviewed during this hearing, and I noted the Landlord's repeated comments regarding dirty areas, pet urine, pet feces, pet hair, and assorted damage caused by Pets.

The Landlord referred to their Revised Monetary Order Worksheet uploaded to the RTB on September 6, 2024, to claim the following damage claims:

- Interior Painting $6,600.00
- Popcorn Ceiling Paint $1,300.00
- Deck Membrane $2,000.00
- Replace Door Locks $500.00
- Wall Baseboards $3,700.00
- Flooring $10,970.00

The Landlord referred to Invoice 1026 from a General Contracting Company dated September 6, 2024, in the amount of $39,396.00.00 to confirm costs as claimed in this application. The Landlord referred to their email evidence with the Tenant to argue that they spent two days getting quotes to repair various components of the rental unit before they decided it was easier to get all the work done by a general contractor. The

Landlord testified that they used the company identified, because they were available to do the work at the best price.

The Landlord requested that I listen to a recording of a conversation between the Landlord and Tenant, and from this discussion, the Tenant spoke to how they had been approved for a mortgage for purchase, however, the house inspection associated with the mortgage failed the property due to wiring concerns, and a cracked foundation amongst other issues.

The Tenant agreed that their dog chewed a section of the drywall but argued that the Tenant had this repaired by the end of this tenancy as seen in their photos and evidence provided. The Tenant also testified that they would clean everything up when they were asked by the Landlord.

The Landlord testified that a new deck membrane was required for the back deck because the Tenant allowed their two dogs to pee and poop on the deck. They referred to the text of the MLS listing to argue that the deck was new when the tenancy started, but then conceded that they had no knowledge on the age of the membrane. The Landlord referred to photos submitted of urine and feces on the deck membrane, as well as photo submitted of what appeared to a rolled-up carpet on the deck but was said to be the original deck membrane.

The Tenant agreed that they had gotten quotes to replace the membrane on the deck during the tenancy, because they had previously been thinking of purchasing the residential property. The Tenant agreed that their dogs occasionally “relieved themselves” on the deck but argued that they promptly cleaned it up. The Tenant referred to their first video submitted on move out, to argue that the deck membrane was in good condition when the tenancy ended.

The Landlord argued that they had to get both locks replaced to the rental unit because the Tenant did not return keys. The Tenant disputed this claim and argued that they left the keys in the mailbox when this tenancy started.

The Landlord claimed compensation for new baseboards because they argued that the baseboards had to be removed when the flooring was replaced. The Landlord argued that the floor was heavily damaged by the urine and feces from Tenant’s dogs and that as seen in the Landlord’s photos submitted, there was dog urine and feces across multiple locations of the floor when photos were taken from within the Upper Unit in June 2024.

The Tenant disputed these claims and argued that the individual who took these photos had unsupervised access to the rental unit without proper Notice or permission from the Landlord. The Tenant testified that they operate a personal business with sensitive files from the Main Unit of the residential property.

The Tenant denied responsibility for the full replacement of the flooring because they argued that the flooring had exceeded its useful life and was previously damaged by the tenant who lived in the unit before them. The Tenant also argued that the most significant areas of damage to the floor, were due to a roof leak that occurred during the tenancy. The Tenant referred to their Part 1 and Part 2 Evidence submission to argue that that continuously documented issues out of their control, when and as, they occurred during this tenancy to the structure of the residential property.

The Landlord agreed that the Tenant reported concerns in April 2020 regarding a leak that necessitated gutter cleaning and fascia repair. The Landlord also agreed that the Tenant reported an issue in May 2024 over the ceiling of the bedroom occupied by the Tenant's daughter. The Landlord reiterated that they that they actioned these items as soon as possible.

The Tenant argued that the darkest spot of flooring is adjacent to this area of the roof that leaked, and also argued that the darkness of the flooring confirms water damage, and not pet urine which typically shows as grey.

The Tenant argued that they could have called a prior tenant from the rental unit as a witness, and that this prior tenant would argue that the Landlord claimed the costs of repairs from this Tenant, even though the Landlord made no repairs to the Unit.

The Landlord disputed these claims.

The Landlord referred to this same Monetary Order Worksheet to claim the following as Money Owed or Other Monetary Loss:

- Loss of rent for July, August, September $3,144.28 x 2 = $9,432.84
- Fridge Removal $600.00

The parties agreed that the Landlord was required to install multiple refrigerators within the rental unit during the tenancy. The Landlord referred to the original real estate listing to argue that the appliances were new when the tenancy started. The Tenant argued that the Landlord replaced the appliances with older appliances, and did not dispute that at one point the Tenant had two refrigerators in the rental unit when the tenancy ended.

The Landlord stated that it cost $600 to have this second appliance removed.

CONDITION OF THE MAIN UNIT AT THE START OF THE TENANCY

The Landlord and Tenant agreed and referred to their respective evidence of emails and photos taken during that time, that the prior tenant of the Main Rental Unit was issued a Notice for Cause due to them being a hoarder, as well as other drug and disturbance related concerns.

The Landlord's Spouse testified that the whole matter took up a significant amount of the Landlord's time during 2019 and argued that the Landlord personally removed the former tenant's belongings from the main unit and then cleaned it so that it could be ready for occupancy by the Tenant.

The Landlord and Tenant provided different timelines for occupancy:

The Tenant argued that the former tenant vacated July 14 and that they took occupancy the next day on July 15.

The Landlord referred to the text of the written tenancy agreement for the Main Unit and argued that the Tenant did not take possession of the Main Unit until July 20.

Regarding the content of the Move-In Condition inspection dated July 20, the Tenant stated that they did not record all concerns with the unit at that time, and did not identify any items that needed to be completed prior to occupancy, because the parties had a positive working relationship at that time.

The Landlord disputed the Tenant's statements and referred to the Tenant's assorted comments on the Move-In report showing that various parts of the floor were lifting, and that the Kitchen area needed paint, and argued that this represented the high level of detail and attention provided by the Tenant to the condition of the Main Unit at the start of their tenancy.

The Landlord also referred to evidence of what they called an Invoice for cleaning in the amount of $150.00 from the Tenant which the Landlord stated they paid, and that this should be considered evidence that the Main Unit was in fine condition when this tenancy started.

The Tenant expressed disbelief at this statement and stated that they have checked their emails, and they never provided such an invoice to the Landlord. The Tenant also referred to their 29-page document entitled "[former tenant] Evidence" as a comprehensive summary of how the Main Unit was used and occupied prior to the Tenant taking possession of the Unit. The Tenant testified that despite their concerns for the unit and its prior use for hoard and drug production, they just needed an office space for their private investigation business.

The Tenant indicated that they had tried to settle their dispute with the Landlord offline and that they were willing to contribute towards the Landlord's repairs, but that they were not willing to pay the full claim.

CONDITION OF THE MAIN UNIT AT THE END OF THE TENANCY

The Landlord called a Witness A.P. during the October 15, 2024, teleconference hearing for File 3, to receive testimony regarding the condition of the Main floor unit, and

the residential property generally because A.P. is the contractor behind the Contractor's invoice 1026 that forms the financial basis of the Landlord's claim for compensation.

The Witness A.P. was asked to confirm the scope of Invoice 1026, and they indicated that they did not have a copy of this invoice on them. They also testified in response to questioning that the Landlord has a payment plan for this invoice and that at the date of the hearing, it had not yet been paid in full.

The Witness A.P. was asked to confirm if the charge for vinyl plank of $10,970.00 was for the whole residential property, and they confirmed that it was. The Landlord disputed this testimony and reminded the Witness A.P. that they had a conversation recently and had requested that Witness A.P. issue a separate invoice for flooring for the Main Unit because the Landlord recognizes that they are responsible for the costs of the flooring on the main floor due to ongoing issues of water coming up from the group.

The Witness A.P. testified that the entire residential property needed to be painted because of the smell inside, and that the contractors used the baseboards left behind by the Tenant as part of their baseboard replacement across the full residential property.

The Witness A.P. also spoke to how much work was needed in the yard to bring it back to a reasonable condition.

The Tenant asked the Witness if they were a certified locksmith regarding the charges for $500.00 on Invoice 1026 and the additional $250.00 charge on Invoice 1087 dated August 8, 2024.The Witness A.P. indicated that they are not a certified locksmith.

The Landlords Spouse referred to specific photos of the windows on move out, to emphasize that there were mats of dog hair shown stuck to the window.

The Tenant argued that the Landlords photos are not time stamped and so it is unclear when they were taken. The Tenant referred to their photos, taken by their Witness A.Q., on moveout to argue that the rental unit was left reasonably clean and ready to be rented.

Regarding the charge for vent and chimney cleaning, the Tenant testified that they never used the fireplace because the prior tenant left a dead animal. The Landlord disputed this claim and referred to their evidence provided to confirm that the Tenant used the fireplace.

Regarding the claim for Junk Removal, the Tenant argued that that most of the items removed, were related to construction materials for the house renovation, as well as items they had left at the residential property since they belonged to the previous tenants of the rental units at the residential property.

The Tenant conceded that they forgot a vacuum cleaner and 3 bar stools and that they were willing to pay $25 for each of these items.

Regarding the claim for painting of the Main Unit the Landlord argued that it was needed to cover up smoke smell, and that the 4-year time frame for interior paint is just a guideline. The Landlord argued that the Main Unit was freshly painted in 2018.

The Tenant opposed the claim for painting and stated that the walls needed painting prior to either of their tenancy agreements starting.

Regarding the claim for new locks, there was extensive back and forth about whether the Tenant's employee and witness left the Tenants keys to the rental unit on the stove on the night of July 10. The Tenants also argued that the Landlord did not replace the locks to the Main rental unit after the previous tenant vacated, and this was why the Tenant installed a security system so that they could comfortably use the Main Unit for their business.

Regarding the Landlord's claim for a closet door, the parties agreed that there was at least one billfold door on the ground of storage since located under the stairs. The Landlord referred to the move out condition inspection to argue that they had to buy a replacement door for the third bedroom and restore a door to the utility room.

Lastly, regarding the Landlords claim for $557 for "garbage receptacle" they referred to the 33-Page "documents" package uploaded to file 3, that they previously charged the Tenant for the increased cost of garbage collection after the Landlord upgraded collection to the larger receptacle.

The parties agreed that the Landlord sent the email below to the Tenant on February 19, 2022:

> Attached is the utility bill for [redacted] with $395 charged for the 360 litre garbage container while the rate for the prior 180 litre container, which I changed at your request, is $110.
>
> As such please etransfer the difference in the rate of $285 for the larger container at your convenience.

The parties agreed that the Tenant paid the requested amount.

The Landlord referred to evidence of promotional materials from the local municipality to justify their claim for compensation, explaining that it is the difference in annual charges between the size of garbage collection containers.

The parties agreed that the written tenancy agreements show that "garbage collection" is marked as included in monthly rent, and the Landlord explained that this included service was for the "smaller" and not the "larger" garbage can which is why they are seeking to reclaim the difference in costs from the Tenant.

Regarding the condition of the main unit at the end of the tenancy, the Tenant referred to their photos provided and argued that it was left reasonably clean and rentable because their employee had spent two days cleaning the unit.

The Landlord and their Spouse spoke to the assorted pictures they took of the interior of the rental unit on July 16, 2024, when they conducted the move-out condition inspection. The Spouse emphasized photos showing clumps of fur stuck on windows to argue that the unit was not left reasonable clean.

The Landlord claimed $840.00 as compensation for cleaning the lower unit.

The Landlord agreed in response to questioning, that the proof of $840.00 charge was based on a written estimate and agreed that the Landlord did not in clean the unit or pay to have the unit cleaned prior to renovations occurring which involved new flooring, baseboards, and wall painting.

The Landlord referred to photos of the yard, said to be taken July 16, 2024, to depict that significant work was required to restore the yard, despite the Main floor tenancy agreement identifying grass and yard as the responsibility of the Tenant.

The Tenant's Witness A.Q. stated that they last mowed the lawn in late June.

The Tenant argued that the photos of the yard were not accurate depiction of the yard at the end of the tenancy and indicated that the condition of the yard can be seen in their video on moveout from the Upper Unit. The parties agreed that the Landlord coordinated the efforts of a landscaper during part of this tenancy.

The Landlord referred to the $1,300.00 charge for yard work as seen in the contractor invoice, and referred to photos of the yard, front and back taken during the tenancy as a contrast to the condition it was left in at the end of the tenancy.

The Landlord summarized their various claims by stating that they are a reasonable person, and that they only claimed for compensation related to things that were damaged by the Tenant during these two tenancies.

Analysis

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

Is the Landlord entitled to a Monetary Order for damage to the rental Unit or Common areas?

I use subheadings in this Decision document to set out the various considerations behind my reasons provided for my findings on the merits of:

- The Landlord's claims for the Upper Unit
- The Landlord's claims for the Main Unit

- The Tenant's Request for return of their security deposits and pet damage deposit

LEGAL TEST FOR DAMAGES AND COMPENSATION UNDER THE ACT

RTB Policy Guideline 1 sets out Landlord and Tenant responsibilities for components within a residential property during, after and between tenancies.

RTB Policy Guideline 3 sets out the legal test for award compensation for rent.

RTB Policy Guideline 16 sets out the 4-point test for compensation for damage, and all parts of this test must be satisfied for the Arbitrator to award compensation, including:

- Has the Tenant failed to comply with the Act, regulation or tenancy agreement?
- Has loss or damage resulted from this non-compliance?
- Can the Landlord prove the amount of or value of the damage or loss?
- Has the Landlord acted reasonably to minimize that damage or loss?

As also seen in PG 16, the Arbitrator can award nominal damages in cases where the Landlord has not satisfied all four parts of the test, but has nevertheless established on the balance of probabilities, that there is damage within the rental unit that is beyond normal wear and tear.

RTB Policy Guideline 40, sets out the expected serviceable life of various building components, and specific to this dispute, I note the following guidance provided:

- 4 years for interior painting
- 10 years for flooring such as laminate
- 15 years for deck membrane

Related to this, I refer to the Landlord's evidence of the 2017 Real estate listing which I find identifies 2014 as a reno year, I also note the following from the description of (emphasis added):

> "Lots of updates such as *newer* roof, furnace, floors, bathrooms, dishwasher, washer & dryer, fridges, stoves, extractor hood, hot tank."

I therefore find that the Landlord failed to provide verifiable evidence of the age of the various damaged components within the rental unit.

General Comments on Evidentiary Value of Inspection Reports

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the parties provided their own information and documentary evidence regarding the condition of the Upper unit when this tenancy started:

- The Tenant argued that the Landlord's photos of the rental unit as furnished, were photos from 2017, when the residential property was purchased by the Landlord.
- The Tenant also argued that the rental unit was occupied by a different tenant with their own animals, prior to them who damaged the unit before it was occupied by the Tenant.

This means that the validity of the move-in condition for the Upper Unit was challenged by the photos provided by both sides at the time the tenancy started because a significant amount of photos provided showing assorted areas of damage across the rental unit at the time the tenancy started.

As seen in section 21 of the Regulations to the Act:

> Evidentiary weight of a condition inspection report
>
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Taking this into consideration, I find that the 2019 Condition Inspection report does not reflect the actual condition of the rental unit when the tenancy started.

This is relevant to the Landlord's claim because the Landlord is arguing that documented damages in the rental unit, were caused by the Tenant in this dispute.

I find that the Tenant established on the balance of probabilities that at least some of the damages documented at the end of the tenancy, existed prior to the tenancy starting. They also established on the balance of probabilities that at least some damage occurred to the residential property due to uncontrolled water ingress which is verified in the Landlord's Restoration services reports.

I reviewed the Tenant's evidence package and find that they carefully documented their concerns with water ingress during the tenancy, including events in 2020, documented ceiling mould in 2021, rats, October 2021, and specific upstairs water leaks in December 2021 which included the work of a plumber which suggest issues with the pipes in the residential property causing water leakage.

The Tenant then had to give Notice to the Landlord in August 2023, of water leaking into the upstairs, within the bedroom occupied by their daughter, with water coming in through the ceiling light and other areas.

The Tenant provided proof of their text messages with the Landlord to confirm correspondence regarding May 9, 2024, when trades people were to inspect the roof of the residential property, with the Tenant alleging that repair work never occurred.

The Tenant testified and wrote in their evidence package that they then gave Notice to End to their landlord after another roof leak on May 26, 2024.

Also relevant to this dispute, is the Landlord's repeated testimony, and assorted evidence in support of the Landlord's Claim that the Tenant failed to maintain the interior of the residential property (upper and main unit) as required by 32(2) of the Act:

> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

As seen in part 4 of the four-point test, parties seeking compensation for a contravention must actively mitigate their losses associated with any potential contravention. This requirement is specifically identified in section 7 of the Act, and can also be seen within evidence provided, including an email exchange on October 10, 2022, where the Landlord writes:

> I hope you are doing well and enjoying your Thanksgiving weekend. I want to follow up on the inspection of the property I completed during the summer where I had noticed that your neglected upkeep of the property was causing premature damage and age to the property.
>
> Let me know if you are free for me to stop by next Sunday October 16 between 4-5pm to complete a follow up inspection of the full house to ensure the required maintenance and repairs are conducted to the property to ensure its longevity and value.

Response from Tenant

> Thank you for your email. I have not had the contractors in to complete any work. I would like to discuss specifics of the work that you wish to be done given that some is which are regular wear and tear. As well, I am more than willing to fix any thing that was caused during my tenancy.
>
> I think some things I shouldn't be solely responsible for such as the rear fence of the back yard as it is an old fence and was broken partially prior to moving in. With respect to scratches on the floor upstairs I have agreed to fix that however there were some scratches in front of the balcony.
>
> As for the painting of the upstairs I am willing to paint

I highlight this exchange because I find it highly relevant to the Landlord's current claims for compensation for new floors, and painting of the rental unit, despite their own evidence that they allowed the Tenant to continue occupying the rental units.

In fact, this tenancy only ended, because the Tenant gave Notice.

The Landlord, despite their concerns, during this tenancy, never sought to formally end it. I therefore find that the Landlord failed to mitigate their losses associated with this tenancy. I will nevertheless review their overall claim, line item by line item, to ensure that the merits of each claim are fully considered.

Also highly relevant is the agreement from parties that the original tenant from the Main Unit was served a Notice to End Tenancy for Cause due to various concerns with how they were occupying the unit, including concerns for hoarding and drug use, including possible “meth” consumption/cooking.

The Tenant provided a 29-page document entitled “[former tenant] Evidence” which included proof of communication between the parties, as well as various pictures depicting hoarding and other disarray within the Main Unit prior to the unit being occupied by the Tenant in this dispute.

While I recognize that the Landlord testified that they personally cleaned the rental unit after it was vacated by the former tenant, I find that no evidence or testimony was provided by the Landlord to confirm, or even suggest, that any structural or even aesthetic fixes were made to the Main Unit before it was occupied by the Tenant.

I therefore accept the Tenant’s challenge of the evidentiary weight of the merits of the Move-In Condition inspection report, and I find, as I did regarding the Upper Unit, that under section 21 of the Regulations, that the report dated July 20, 2019, has limited evidentiary value.

<u>REGARDING THE UPPER UNIT</u>

My summary and analysis of the Landlord’s Claim is based on the Monetary Order Worksheet dated September 6, 2024, as amended during the September 24, 2024, hearing to only include

- Interior Painting $6,600.00
- Popcorn Ceiling Paint $1,300.00
- Deck Membrane $2,000.00
- Replace Door Locks $500.00
- Wall Baseboards $3,700.00
- Flooring $10,970.00

I find that Invoice 1026 from the General Contractor for $39,396.00 for work at the residential property, from which the claims above are identified, is not marked as paid. This observation was supported by testimony received during the October 15, 2024, hearing from the Landlord’s Witness, the general contractor, that the Landlord has a “payment plan” for paying the costs as recorded.

I award no compensation for interior or ceiling related painting because I find that the evidence provided by both parties was that painting was needed when the tenancy started in 2019 due to the various scratches, holes, and patches across the walls of the Upper Unit.

I reviewed the Landlord's evidence of the Tenant securing a 2022 quote for painting and accept the Tenant's testimony that they were looking for quotes when they were thinking of buying the residential property from the Landlord, which does not suggest responsibility, only that someone wanted the interior to look nice if they owned it.

While I acknowledge the Landlord submitted proof of a professional remediation report for the rental unit that notes "strong smells of smoke", I find that this is outweighed by photos of the walls of the rental unit from before and after this tenancy, which clearly show that the walls required painting. And as seen in RTB Policy Guideline 40, interior painting of a rental unit, only has an expected serviceable life of 4 years, and this tenancy lasted for more than 5, within a rental unit that was not even freshly painted when this tenancy started.

As seen above with the reference to RTB Policy Guideline 40 and 1, tenants are not required to paint a residential property that has not been painted in more than four years, particularly when the walls were documented as damaged when this tenancy started in 2019.

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

Regarding the claim for compensation for a new deck membrane, I accept based on photos provided, that the Landlord was required to purchase a new deck membrane and have it installed as part of Invoice 1026 at the costs of $2,000.00.

That said, I find that the Landlord failed to establish on the balance of probabilities that they are entitled to the requested compensation for the new membrane because:

- No verifiable documentation was provided on the age of the membrane replaced
- The Tenant was permitted to have a dog at the residential property
- The Landlord previously documented concerns with how the Tenant was maintaining the property but failed to issue a Notice for Cause.

I nevertheless award nominal compensation of $572.86 because I find based on review of the Landlord's evidence of photos that the Tenant's use of the back porch caused more damage than usual wear and tear, particularly as seen on page 68 of the Landlord's 108-Page "Pictures and Text" evidence document, which clearly shows the deck membrane, which is normally sealed tight to deck boards when properly installed, has been bunched up and pulled back from the door.

Regarding the Landlord's claim for compensation regarding new Locks at the residential property, I find that they failed to establish on the balance of probabilities that they

incurred this cost due to the Tenant's alleged failure to return keys to the unit as required by 37(2)(b) of the Act. I make this finding because the Tenant testified that they left the keys as required and the Landlord failed to provide verifiable documentary evidence to confirm otherwise.

Regarding the Landlord's claim for compensation for flooring, I find that the Landlord is entitled to $2,860.00 as compensation because it reflects the combined value of a $1,430.00 pet damage deposit and $1,430.00 security deposit that were collected.

I provide this award because find that the Landlord provided persuasive evidence from a qualified remediation expert who inspected the residential property in June 2024 while the tenancy was ongoing to document assorted concerns, including extensive floor damage caused by pets.

The Landlord also provided evidence of text message conversations with a neighbour of the residential property, concerned about the noises from the dogs, as well as proof of an audio conversation between the Landlord and the Tenant where the Tenant acknowledges issues with one of the dogs and admits the dogs relieves themselves in the house due to a neurological issue.

I decline to award any additional compensation for the floors because:

- The Landlord provided no verifiable information on the age of the floors when the tenancy started – 2014 as "renovation year" on an MLS listing but nothing else was provided that could be verified.
- If the floors were 10 years old, this is the expected serviceable life according to RTB policy Guideline 40.
- The Landlord failed to provide verifiable information on the condition of the floor at the start of the tenancy – the Tenant also alleged that the tenant before them had pets which may have caused their own damage to the floors.
    - These points refer to Parts 1 & 2 of the 4-point test for compensation.
- The Tenant provided persuasive evidence, together with the Landlord's evidence from a remediation specialist to indicate that a significant portion of flooring damage was related to water damage through the residential property and structure water damage was structural water damage, unrelated to actions or inactions of the Tenant.
- The Landlord's proof of costs related new floors, was not verified – their Contractor as witness indicated that the costs included the costs for new flooring across the full house and indicated that the Landlord has not yet paid the invoice.
    - Costs considerations are Part 3 of the 4-point test for compensation.
- The Landlord referred to evidence and testified that they had concerns for multiple years about how the Tenant maintained the rental unit, but did not issue a Notice to End Tenancy for cause prior to this tenancy ending.
- I therefore find that the Landlord failed to mitigate their losses associated with how the Tenant may or may not have been keeping their dogs within the rental unit.

- This is part 4 of the 4-point test and refers to section 7 of the Act.

I nevertheless make this award for compensation for damaged flooring in consideration of the dog feces and urine across surfaces in the rental unit, and the extreme amount of dirt and debris around the unit. Additionally, the Landlord alleged that they permitted one dog but as seen the Landlord's photographic evidence provided, the Tenant had two dogs during the June 2024 inspection.

Furthermore, the Landlord's June 11, 2024, restoration report shows current moisture readings from multiple areas around the rental unit which suggests the urine stains were recent since they were still damp.

Regarding the Landlord's claim for replacement of baseboards, I find that the longevity of these baseboards may have been enhanced by the Landlord if the Landlord had repainted them prior to the tenancy starting. I make this finding because photos provided of the Upper Unit before tenancy started depicted baseboards that were previously damaged.

I also note the Landlord's testimony that they "replaced the baseboards because they replaced the floors" and the parties' agreement that the Tenant left behind multiple lengths of baseboard because they recognized that sections of baseboard were damaged during this tenancy.

I therefore dismiss the Landlord's claim for additional compensation related to baseboard because I find that the Tenant has already compensated the Landlord by leaving behind the lengths of replacement baseboards.

In sum, I award the Landlord $3,860.00 as compensation for damage or loss to the rental unit or common area under section 67 of the Act.

$2,860.00 + $572.86 = $3,360.00

<u>REGARDING THE MAIN UNIT</u>

My summary and analysis of the Landlord's Claim are based on the Monetary Order Worksheet dated September 28, 2024, with 11-line items, with a specific focus on the items that are properly categorized as damages under the Act.

Regarding the charge for vent and chimney cleaning, I find that the Landlord referred to invoices provided in the amount claimed for charges they incurred after multiple years of the Tenant living in the rental unit.

As seen in RTB Policy Guideline 1, these are costs of the Landlord should expect as part of their requirement to maintain ventilation systems at regular intervals. Likewise, PG 1 identifies Tenant obligations, as limited to the removal of any visible debris at the base, or on the faceplate.

I nevertheless award nominal damages of $100.00 toward vent cleaning due to the following comments as noted on the Landlord's invoice for $282.45, because it confirms more debris than usual was found within and removed from the vents of the residential property.

Air duct and furnace cleaning We did clean air duct in this property and we find lots of animal waste and hair and pet food. This is not a normal because even filters block with animal hair and inside the vent, we find bone and lots of germ and smell extremely bad.	$269.00	1	$269.00

I similarly provide nominal damages of $50.00 towards the Landlord's claim for chimney cleaning and decline to award the full amount claimed because:

- the Tenant testified that they never used the fireplace
- the Landlord only provided a quote for costs of $312.90.

I find that the Landlord failed to satisfy part 3 and part 4 of the four-part test for loss and that they failed to establish on the balance of probabilities that they actually incurred a loss of that amount as no proof of payment for a verifiable service was provided.

I find that nominal damages of $50.00 are sufficient for the costs of removing any debris at the base of the chimney that the Tenant may have failed to remove as part of their general cleaning activities at the end of these tenancies, to satisfy their obligations under RTB Policy Guideline 1.

Regarding the claim for $2,500.00 for Junk Removal, I find that the Tenant established on the balance of probabilities that most of the items removed, were related to construction materials for the house renovation, and removal of items left behind at the residential property from the previous tenants.

The Tenant conceded that they forgot a vacuum cleaner and 3 bar stools and that they were willing to pay $25 for each of these items. I therefore award nominal damages to the Landlord of $100.00 towards junk removal and dismiss the remainder of their claim for removal and do not provide leave to reapply because:

- Photos provided by the Tenant on moveout suggest an empty residential property.
- The Tenant argued that any furniture left behind was furniture owned by previous tenants and referred to the Landlord's photos of the loaded truck of junk to be removed.
- The Tenant provided comprehensive evidence and testimony of dump charges incurred at end of tenancy which establishes in the balance of probabilities that the Tenant actively removed their items from the residential property.

Regarding the Landlord's claim for compensation for $250.00 for door locks, I find that the Landlord failed to establish on the balance of probabilities that they are entitled to compensation because the Tenant's Witness testified that they left the keys to the unit behind on the stove of the unit on the evening of July 10. The Tenant also testified that the Landlord did not change the locks of to the unit when this tenancy started.

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

Regarding the claim for $150.00 for closet door install, I find that the Landlord provided confusing testimony about their actual losses incurred. I also find that the parties agreed that a closet door was present and visible on the floor of a storage area within the rental unit. I dismiss the claim for compensation and do not provide leave to reapply because:

- The Landlord had no knowledge on the age of the closet door replaced – doors in general according to RTB Policy Guideline 40 have an expected serviceable life of 20 years.
- The residential property was purchased in 2017, rented, and then rented to the Tenant in this dispute in 2019, I find that the Landlord failed to establish on the balance of probabilities that a new door was required to the actions of the Tenant, and not due to damage by previous tenants, or aged nature of the door.
- The Tenant argued and provided pictures in support of their claim that no door was damaged during the tenancy, despite what the Landlord wrote on the condition inspection report for the Main unit.

Regarding the claim for painting of the Main unit the Landlord argued that it was needed to cover up smoke smell, and that the 4-year time frame for interior paint is just a guideline. The Landlord argued that the Main unit was freshly painted in 2018.

The Tenant opposed the claim for painting and stated that the walls were due to be painted.

Recognizing that the Landlord has the walls painted as part of a larger renovation project in 2024 after these tenancies ended, I find that this claim does not satisfy the requirements of RTB policy Guidelines 16 since the paint was at least 6 years old and two sets of Tenants had lived in the rental unit.

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

Regarding the claim for yard management, the landlord confirmed in the text of the lower unit tenancy agreement that yard and lawn management were the Tenants responsibility. The parties also agreed that the Landlord coordinated the efforts of a landscaper for a period of time during these tenancies. The Landlord and their spouse referred to photos of the yard in support of their claim.

The Tenant disputed the photos and claimed that they did not accurately represent the condition of the yard. The Tenant also referred to testimony from their Witness to argue that the lawn had been mowed in late June.

I find that the landlord is entitled to compensation for yard maintenance because the photos provided, depict a very overgrown yard, almost jungle like, and the Landlords Spouse testified these photos were taken July 2024.

I therefore award the requested $1,300.00 because I find that yard maintenance was the responsibility of the Tenant, and that testimony of the yard being mowed sometime in June is not sufficient proof of the Tenant having maintained the yard as required.

I am satisfied by the $1,300.00 charge on invoice 1026 that a $1,300.00 charge was incurred by the Landlord.

In addition to the Landlord's claim for damages, I review their loss-related claims for payment of garbage collection and cleaning.

Regarding the claim for Garbage receptacle costs of $557, the parties agreed that the Tenant paid a one-time fee to upgrade the size of the receptacle and agreed that the Landlord had not collected additional monies from the Tenant for increased costs of garbage collection since 2022. The parties also agreed that the text of the written tenancy agreements, include the costs of garbage collection.

I therefore find, in absence of a verifiable addendum to the tenancy agreement, that the Landlord failed to establish on the balance of probabilities that they are entitled to recoup any increased costs for garbage collection between 2022 and 2024 when this tenancy ended, from the Tenant.

I dismiss this part of the Landlord's claim and do not give leave to reapply.

Regarding the Landlord's claim for cleaning in the amount of $840.00 as shown in their proof of an estimate, I find that the Landlord failed to establish on the balance of probabilities that they are entitled to this compensation because:

- The Landlord testified that they did not pay to have the house cleaned, or work at cleaning the residential property prior to the comprehensive renovations that occurred – this means that the Landlord did not experience a financial loss, contrary to part 3 of the 4-part test for damages.
- The parties agreed that the prior tenant of the Main Unit was a "hoarder" and was potentially using the rental unit for drug purposes and that the Landlord personally cleaned the main unit prior to it being occupied by the Tenant in this dispute.
- The Landlord argued that the Tenant charged the Landlord for additional cleaning when this tenancy started which the Tenant disputed.

- The Tenant provided comprehensive photos of the rental unit when it was vacated by the Tenant, for both the upper and Main unit, and based on my review of these photos, I find that the units were both left “reasonably clean” as required by section 37 of the Act.
- The Tenant argued that the Landlords photos are not time stamped and so it is unclear when they were taken.

I therefore dismiss the Landlord’s claim for compensation for cleaning and do not give leave to reapply because I find that the Tenant left the unit reasonably clean as required.

In sum, I find that the Landlord is entitled to a $1,550.00 monetary order, under section 67 of the Act for damage to the rental unit or common area.

$100.00 + $50.00 + $100.00 + $1,300.00 = $1,550.00

Is the Landlord entitled to a monetary order for Loss related to this tenancy?

REGARDING THE UPPER UNIT

The Landlord’s claim was related to two parts: Loss of rent while repairs were underway $9,432.84 and $600.00 for removal of a second refrigerator.

As seen above, I largely dismissed the Landlord’s claim for compensation for damages and so I am required to dismiss their claim for compensation for loss of rent associated with the damage repair. I do this because, under the Act and RTB Policy Guideline 16, compensation is only awarded in response to a documented contravention.

As seen above, I found that only a portion of the Landlord’s repairs were directly associated with the Tenant’s actions. I also find that the Tenant properly gave Notice as required by section 45 of the Act that the tenancy would be ending on June 30, 2024.

I therefore find that the Tenant in this Dispute is not required to compensate the Landlord for completing renovation work on a rental unit after it has been occupied by tenants for 7 years since it was purchased by the Landlord in 2017.

I therefore dismiss the Landlord’s claim for loss of rent.

Regarding the Landlord’s claim for removing a “second” refrigerator, I reviewed the Landlord’s evidence of emailing with the Tenant regarding the refrigerator between 2019 and 2021, and note, as was discussed during the September 24, hearing, that the Landlord consented to the Tenant simultaneously retaining the two appliances within the residential property.

Emails suggest that the Landlord also had to replace a microwave and a washing machine during this tenancy. However, if and where a tenancy agreement states that appliances will be included in rent, the Landlord is responsible for ensuring that the Tenant retains access to these appliances throughout the tenancy, including functional appliances.

I therefore find that the Tenant is not responsible for costs claimed by the Landlord for providing services and facilities required by the tenancy agreement that was signed by the parties when this tenancy started.

The Landlord's claim for compensation for monetary loss is dismissed in full, without leave to reapply because I find that they failed to satisfy the four point test for loss that is required to be awarded compensation, as seen in RTB Policy Guideline 16.

I also find that $600.00 for removal of an appliance to be exceptionally high.

REGARDING THE MAIN UNIT

I similarly dismiss the Landlord's claim for compensation for Loss related to their claimed loss of rent of $5,625.55 for ½ July, August and September because I find that:

1) The Tenant gave legal notice as required by section 45 of the Act to end what was a month- to- month tenancy
2) The Tenant vacated the rental unit before the day identified in the Notice
3) The Tenant in this Dispute is not required to compensate the Landlord for completing renovation work on a rental unit after it has been occupied by tenants for 7 years since it was purchased by the Landlord in 2017.

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

Who is entitled to retain the security deposits and pet damage deposit?

I find that the Landlord satisfied their obligations under the Act, Regulations, and RTB Policy Guideline 17 with their application to retain the security and pet damage deposit collected in relation to the Upper unit, as compensation for damage because:

- They conducted the required move-in and move-out inspections and produced the required report documents that were served to the Tenant.
- They applied to the RTB within 15 days of the tenancy ending on June 30, 2024, as required by 38(1) of the Act.

I therefore find under section 72 of the Act that the Landlord is entitled to retain the full $2,860.00 value of these deposits ($1,430 + $1,430) as partial satisfaction of the Landlord's successful claim for $3,432.86 in damages in the Upper Unit.

Regarding the $1,050.00 security deposit collected by the Landlord for the Tenant's use of the Main floor rental unit, the parties provide contradictory evidence and testimony.

I find the following is relevant:

- The Landlord emailed the Tenant on July 7, 2024, asking when the Tenant would be available for a move-out inspection (as seen in page 27 of their evidence).
- The Tenant testified that they spoke on the phone with the Landlord and that the parties agreed that the Landlord would be present at the property during the evening of July 10.
- The Tenant received testimony from their Witness A.Q. who was present at the Main unit during the evening of July 10 for the purpose of conducting a move-out condition inspection.
- The Witness who has past knowledge of the Landlord, because they conducted the Move-Out condition inspection for the Upstairs Unit, testified that the Landlord was present at the residential property, and visited the Main unit during the evening of July 10.
- Yet the Landlord and their spouse disputed this testimony and argued that the Landlord was not even present at the residential property on the evening of July 10 – however, no verifiable proof to support this alternative claim was provided.

I therefore find that the Tenant reasonably expected the Main Unit move-out condition inspection would occur July 10, and so they had their employee, the Witness, A.Q., present at the rental unit and ready to participate.

However, the Landlord whose onus it is to conduct the inspection and produce the inspection report, did not.

Also relevant to this chain of events, are the requirements of section 36 of the Act, which set out that the landlord extinguishes their right to retain a deposit for damage if they fail to:

- Offer two opportunities for inspection
- Conduct the required move out condition inspection
- Provide the Tenant with a copy of the inspection report as required by the Act and regulations.

I therefore find that the Landlord extinguished their right to retain the $1,050.00 security deposit for damage, due to their failure to conduct the move-out condition inspection for the Main Unit as required by section 36 of the Act because:

- As seen on page 28 of the Landlord's 33 page "Documents" package of evidence, the Landlord emailed the Tenant on July 12 to provide them with an RTB 22 – Final Notice to conduct an inspection.
- I find that the Landlord writing this on July 7

Please let me know whether you have moved out of the lower suite and when you whether you are available to do the inspection during the evening after 7pm during this coming week.

- And issuing the Final Notice of inspection on July 12, does not qualify as providing two opportunities for inspection under the Act and section 17 of the Regulations.
- The Tenant testified that the Landlord served the move-out condition inspection report for the Main unit on August 6, 2024, which is more than 15 days beyond either the July 10 o4 July 16 inspection, which is contrary to section 18 of the Regulations.

I therefore find that the Landlord is required to return double the value of the $1,050 deposit plus interest to the landlord as set out in RTB Policy Guideline 17. According to the online security deposit interest calculator, I find that this deposit was valued at $1093.37 at the day of the October 15, 2024, hearing, having earned $43.37 in interest since it was collected in 2019.

I find that the Tenant is entitled to payment of $2,143.37 as set out within RTB Policy Guideline 17 because the Landlord's other claims for compensation related to the Main Unit were not successful, only their claim for compensation for damage was successful.

RTB Policy Guideline 17 requires that all damage related provisions of the Act and Regulations must be satisfied before a landlord is authorized to retain any portion of a security deposit against damage.

$1,050 x 2 = $2,100.00 + $43.37 = $2,143.37

This requirement to return double the value of the deposit to the Tenant despite making an application to the RTB to retain the deposit, as the Landlord did in this dispute, was recently confirmed by the Supreme Court in *Leung v Ty, 2024 BCSC 1214.*

Is either party entitled to recover the filing fee for these applications?

I find that the Landlord was largely unsuccessful in their two applications and so I dismiss their requests to recover the filing fees for their two applications from the Tenant.

Likewise, I dismiss the Tenant's request to recover the filing fee from the Landlord.

Conclusion

I find that the monetary awards to the Landlord are cancelled out by the security deposit award for the Main unit to the Tenant, and that neither side is provided a monetary order for payment because no payment is owing.

Monetary Issue	Granted Amount
Award for unpaid rent (utilities) under section 67 of the Act	$20.51
UPPER UNIT: a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	$3,432.86
MAIN UNIT: a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	$1,550.00
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	-$2,860.00
Total Potential Award To Landlord	**$2,143.37**
Minus required compensation to Tenant for return of double their security deposit + interest for Main unit	**-$2,143.37**
Total Final Award to Landlord for Compensation	**$00.00**

The Landlord's two claims for compensation for loss or other money owed are dismissed, without leave to reapply.

The claims from the Landlord and Tenant to recover the filing fee from either party for their respective applications, are dismissed, without leave to reapply.

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

Dated: November 19, 2024

Residential Tenancy Branch