DECISION

Introduction

This hearing 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

It also dealt with the Landlord's application 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 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 Landlord under section 72 of the Act

Tenant C.S. and Tenant S.S. attended the hearing for the Tenant

Landlord A.A.K., F.K. and M.L attended the hearing for the Landlord

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties agree that email was a valid method of service for the tenancy.

The Tenant confirmed receipt of the Landlord's Proceeding Package via email and that they had enough time to review it. Therefore, I find the package properly served per section 89 of the Act.

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Service of Evidence

The Tenant confirmed receipt of the Landlord's evidence via email and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

The Landlord confirmed receipt of the Tenant's evidence via email and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

Preliminary Issue

Amendment

During the hearing the Landlord requested to add $10,763.50 to the amount they claimed. The amounts included costs for mold testing, an additional half month of rent, and the financial difference from re-renting the unit at a lower rate.

Rule 7.12, of the Residential Tenancy Branch's Rules of Procedure, allows me to grant amendments at a hearing. Specifically, I can grant an amendment under the rule it arises from circumstances that a party can reasonably anticipate. Rule 7.12 cites as an example the increase in arrears in rent accrued between filing the application and conducting the hearing.

I find that the additional costs the Landlord claims are owed, do not necessarily arise from circumstances the other party could have reasonably anticipated. The Tenants could not be reasonably expected to anticipate the costs and circumstances the Landlord is claiming compensation for. The Landlord did not apply to amend their application before the hearing, in a way that would have alerted the Tenants to these additional claims. Therefore, I do not grant the Landlord’s requested amendment.

Issues to be Decided

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

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

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.

Both parties agree the tenancy began on September 15, 2024, and ended on October 1, 2024. The rent was $5,700.00 due on the first of the month and there was a $2,850.00 security deposit.

The Landlord provided a copy of a tenancy agreement signed by both parties. It stated the tenancy was for a fixed term from September 15, 2024, to September 30, 2025. After the fixed term the tenancy would continue month to month.

The Landlord claims the Tenant ended the fixed term unlawfully and is seeking a month of lost rent. The Tenant claims the rental unit was in such a bad state when they began the tenancy that the Landlord owed them compensation.

The Tenancy

Both parties agree there was a move in condition inspection report signed by both parties on September 24, 2024. The report noted the rental unit was not clean and that there was mold in the washer. It noted that a set of blinds in the kitchen needed to be fixed, that the baseboard needed to be cleaned, and the furnace system needed to be cleaned.

The Landlord claims they later discovered the mold in the washer was actually dirt. They say they had already paid for eighteen hours of cleaning prior to the move in, and the place was relatively clean when the Tenants moved in. They claim they agreed to the extra cleaning and to do extra repairs at the Tenants' request to accommodate the Tenants.

The Tenants claim that the place smelled terrible when they arrived. They said they did not mention this smell due to the Landlord’s agent telling them it would be fixed if additional cleaning was done.

The Tenants claim the rental unit was unliveable as it was given to them. The smell was making them sick, and they were concerned about the health and safety of their children. Tenant C.S. went to the hospital and was given a prescription. They claim the medical staff at the hospital had told them the health problems resulted from toxic exposure.

The Tenants provided a redacted copy of the prescription which did not show a diagnosis.

On September 27, 2024, the Tenants hired a remediation company to inspect the property for mold. They claim the inspector told them that they needed to leave immediately and have their furniture professionally cleaned.

The Tenants submitted videos they claim is of the inspector. The inspector moves a device and tells the Tenants that it depends on their sensitivity, but they should not occupy the property. The video only shows the inspector's hand, and the inspector never identifies themselves.

On September 27, 2024, the Tenants gave the Landlord notice they were moving out.

The Tenants claim they then hired movers and cleaners to move out of the rental unit. They also cancelled the internet.

After the Tenancy

The Landlord claimed to search for a new tenant after the previous ones left. They provided rental ads in support of this.

The Landlord claims to have found a new tenant on November 16, 2024. They provided a new signed tenancy agreement with that the new tenant (the new tenancy agreement). It is signed November 2, 2024, states the tenancy begins on November 16, 2024, and the rent was $5,000.00 per month.

The Landlord also hired a company to test the rental unit for mold on November 7, 2024. This test revealed there was no mold.

Both parties provided written reports and invoices for their mold inspections.

The Landlord's report states the inspectors name, states the testing that was done, and provides a conclusion. It stated the testing involved visual inspections and air samplings of the rental unit, which compared it to the levels outside. Its conclusion is there were no safety problems. The report says the company is in no way liable for the report.

The invoice for the inspection states there was a 24 hour rush for the lab results. The Tenants testified they called the company that did the report who said it was impossible.

The Tenant's report provides data, and states that spore traps and an "Air-O-Cell" were used. It was not signed by a particular expert, and it does not provide a statement on whether the rental unit is safe. On page 10 the report states "Many factors impact the final results; therefore, result interpretation should only be conducted by qualified individuals."

Analysis

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

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

To make a successful monetary claim a party must show that:

1. the other party acted in a way that breached the Act or tenancy agreement;
2. due to the breach, they suffered a loss; and
3. that they took reasonable actions to mitigate the loss.

The Landlord is claiming $5,700.00 for the loss of October 2024's rent resulting from the Tenant's breaching the fixed-term tenancy agreement by leaving early.

Breach

I find the Landlord has shown the Tenant unlawfully ended the fixed term tenancy early.

Both parties agree the tenancy agreement was for September 15, 2024, to September 30, 2025. Both parties agree the tenancy had ended on October 1, 2024, without the Tenant paying rent for October 2024.

A tenant does not have the ability to end a fixed term tenancy at their leisure by giving their landlord one month of written notice. However, the act does outline specific scenarios where a fixed-term tenancy can be ended.

The Tenant in essence made two arguments for why the tenancy agreement should be ended early. Either they ended the tenancy agreement early due to a breach of a material term, or the tenancy agreement had been frustrated.

<u>Breach of a material term</u>

Under section 45 (3) a tenant may end a tenancy agreement if a Landlord has breached a material term of a tenancy agreement and has not fixed the breach within a reasonable period. Residential Tenancy Policy Guideline 08 outlines that to end a tenancy for a breach of a material term a party must send the other party a written notice stating:

- there is a problem;

- they believe the problem is a breach of a material term of the tenancy agreement;

- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

Both parties agree that the Tenants did not include a deadline in any of their communications regarding the alleged breach. Therefore, I find the Tenants did not end the tenancy for breach of a material term.

Frustration

A contract is frustrated when unforeseen circumstances radically change the situation to the point where the contract can no longer be carried out as intended.

I find the tenancy agreement was not frustrated in this case. The Tenants by their own account knew about the smell prior to moving in. I do not find the Landlord's failure to clean the property to the Tenant's satisfaction meets the high bar of unforeseeable circumstances

Loss

The Landlord claimed to have lost one month of rent for the month of October due to the Tenants ending the tenancy early. Under section 7(1) a Tenant is liable for any damage they cause for not complying with their tenancy agreement. Following this logic, as Residential Tenancy Policy Guideline 3 explains, when a Tenant ends a tenancy early, without legal justification the Tenant may be responsible for lost rental income.

The Landlord claims that had the Tenant's continued the tenancy, as they were required to do, they would have been owed $5,700.00 for the month of October 2024. Instead, they had to find a new Tenant for that month and missed out on a month of rent.

The Tenants moved out of the rental unit on September 30, 2024. I find the Landlord found a new Tenant for November 16, based on the new tenancy agreement. Therefore, I find the Landlord has proven they lost one month of rent.

Mitigation

The Landlord provided ads showing that they were advertising the property to find new renters to minimize their losses. I find the Landlord was searching for a new tenant based on the ads and on the new tenancy agreement. I find the Landlord was given notice that the Tenants would move out on September 27, 2024, based on the move out email they submitted. I also find the Landlord also reduced the rent by $700.00 based on the new tenancy agreement stating the monthly rent is $5,000.00.

While there is a high demand for housing, I find that the Landlord spending some time to review applicants to find new tenants is reasonable. The Landlord also took the reasonable step of reducing the rent to find replacement tenants faster.

Therefore, I find the Landlord adequately took action to mitigate their loss.

I find the Landlord is entitled to a Monetary Order $5,700.00 under section 67 of the Act. The complete calculation for the Monetary Order can be found in the “Conclusion” part of this decision.

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

The Tenants’ claims for compensation come from two sources. The Tenants claim they are owed compensation for repairs and testing they did, and for having to move out of the rental unit. I will deal with these two claims separately.

Repairs and Testing

I do not find the Tenants are owed compensation for the repairs and testing they undertook.

The Act makes Landlord’s responsible for repairs related to reasonable wear and tear, and maintaining a residential property suitable for occupation. The Tenant is responsible for maintaining reasonable health and cleanliness standards. I find the Landlord was responsive to the complaints of the Tenant and took steps to address their concerns.

The only situation a tenant may have repairs done themselves is if it is an emergency repair and the tenant had followed the proper process. I note that Residential Tenancy Policy Guideline 51 explicitly states that mold removal is not an emergency repair.

Therefore, I find the Tenants have failed to prove their entitlement to a monetary award.

Moving

The Tenants’ claim for compensation for moving out come from their allegation that the rental unit was unfit for occupation.

First, I find that once the Tenants moved into the rental unit, they could not claim compensation for moving out due to the rental unit’s uncleanliness. I find no evidence showing the Tenants attempted to contact the Landlord to request additional cleaning after they moved in. I find that moving out without contacting the Landlord clean to request additional cleaning is a failure to mitigate their loss.

I find the Tenants have not proven that the Landlord failed to meet their obligations to provide a rental unit that meets health and safety standards.

Both parties tested the rental unit for mold rental unit. The Tenants also testified that they suffered health consequences due to living in the rental unit. They also provided a prescription without a diagnosis.

I find the conclusions drawn from the Landlord's mold inspection to be more credible than the Tenants'. I note the Tenants' report provides data without any interpretation. The report itself states on page nine state that the results should only be interpreted by qualified individuals. The Tenants did not claim to be experts, nor did they provide a statement from an expert on the results.

In contrast the Landlord's report does contain the professional's conclusions on the data they gathered. It states there are no mold related safety hazards.

There were no documents or expert testimony connecting the health problems the Tenants testified about to mold. Without this I find the Tenant has not shown they suffered health problems due to moving into a rental unit that was unfit to be moved into.

The Tenants have not proven there was a mold problem or that living in the rental unit was causing health problems. Therefore, I find the Tenant has not shown they had to move out of the rental unit. Given the Tenant did not have to move out of the rental unit due to the Landlord breaching their duties under the Act, the Tenant cannot claim compensation for having to move out.

Therefore, the Tenants monetary claim is dismissed in its entirety without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant's application was unsuccessful, I dismiss their application for their filing fee without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Under section 67 a Landlord may request to keep a security deposit in satisfaction of a Monetary Order. As I have granted the Landlord a Monetary Order, and they have a $2,850.00 security deposit, I authorize them to retain this security deposit in partial satisfaction of the Monetary Order

The tenancy began on September 1, 2024, and the tenancy ended on September 30, 2024. Therefore, I find an additional $6.71 for the interest would have accrued according to the formula in section 4 of the *Residential Tenancy Regulation.*

Conclusion

The Tenants' application is dismissed in its entirety without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **$2,943.29** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order under section 67 of the Act	$5,700.00
authorization to withhold security deposit under section 72(2) of the Act ($2,850.00 + $6.71 interest)	-$2,856.71
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	$100.00
Total Amount	**$2,943.29**

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

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

Dated: December 11, 2024

Residential Tenancy Branch