DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Tenants and the Landlord under the *Residential Tenancy Act* (the Act). The Tenants' Application for Dispute Resolution, filed on October 20, 2024 (the Application), is for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- An order requiring the Landlord to return the Tenants' personal property under section 65 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's Application for Dispute Resolution, filed on November 15, 2024 (the Cross Application), is for:

- An Order of Possession based on the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- A Monetary Order for unpaid rent under section 67 of the Act
- 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 the Cross-Application from the Tenants under section 72 of the Act

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

The Tenants applied for and were granted a substituted service order on October 25, 2024, allowing them to serve the Proceeding Package on the Landlord via email. The Landlord acknowledged receipt of the Proceeding Package, including a large amount of evidence attachments, and raised no concerns regarding service of the Notice of

Dispute Resolution Proceeding. While the Landlord states she and C.J. tried to review all the evidence before the hearing, she noted that due to the large volume of evidence submitted to the Residential Tenancy Branch (RTB) by the Tenants and its poor organization, she could not say for sure that she had reviewed all the documents.

Based on the submissions of the parties, I find that the Landlord was duly served with the Proceeding Package under section 71(2)(c) of the Act. During the hearing, when Tenant K.W. referred to two doctor's notes she had submitted as evidence, the Landlord stated she had not received these documents. Due to the brief content of the notes, they were read out loud during the hearing and are referred to in the reasons below. However, due to the lack of service of the doctor's notes to the Landlord, I have given them limited weight.

The Landlord states the Proceeding Package for the Cross Application was served to the Tenants in person on November 21, 2024. A signed Proof of Service form (RTB-55) confirming this service was submitted into evidence by the Landlords. The Tenants' acknowledged receipt of the Proceeding Package, including the Landlords evidence, and that they had sufficient time to review the documents prior to the hearing.

Based on the evidence before me and the submissions of the parties, I find that the Proceeding Package and the Landlord's evidence was served to the Tenants in accordance with section 89 of the Act.

While not raised as an issue by the Tenants, I find the Landlord's evidence was similar in volume to that provided by the Tenants and also poorly organized. Rule 3.7 of the RTB Rules of Procedure requires that evidence submitted by a party be organized, clear and legible. This rule further states that "To ensure procedural fairness and efficiency, the director has the discretion to not consider evidence if the director determines it is not readily identifiable, organized, clear and legible."

During the hearing, both parties were unable on multiple occasions to identify which documents they had, in fact, submitted into evidence or where certain documents could be found or how they were labelled. Due to the lack of organization of both parties' evidence and that the parties themselves were unable to direct me to what file name was associated with a document they were referring to, in accordance with Rule 3.7, I have only considered the evidence explicitly referred to by the parties during the hearing and that I they were able to direct me to during the hearing.

Preliminary Matters

Withdrawal of Applications

At the outset of the hearing, the parties agreed that the Tenants had vacated the rental unit on November 24, 2024. Therefore, the Tenants are no longer seeking cancellation of the One Month Notice, and the Landlord is no longer seeking an order of possession based on either the One Month Notice or the 10 Day Notice. Some of the other orders sought by the Tenants are also no longer required because the tenancy has ended.

Rule 7.12 of the Rules of Procedure states that an application can be amended at the hearing only when the amendment can be reasonably anticipated or where the respondent consents to the amendment. The Tenants asked to withdraw the following issues at the outset of the hearing:

- Cancellation of the One Month Notice under section 47 of the Act
- An order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

The Landlord asked to withdraw the following issue at the outset of the hearing:

- An Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act

Both parties consented to withdrawal of the above-listed issues. Therefore, I have amended the Application and the Cross Application in accordance with section 64(3)(c) of the Act to withdraw the claims listed above.

Amendment to Application

The Tenants clarified during the hearing that, while the Application includes a request for an order requiring the Landlord to return the Tenants' personal property under section 65 of the Act, the personal property at issue (the Sewing Chair), is damaged and no longer usable. The Tenants are therefore not seeking return of the Sewing Chair, but rather compensation for that item.

Rule 7.12 of the RTB Rules of Procedure states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. I find it could be reasonably anticipated by the Landlord that the Tenants would seek compensation for an item of personal property that is no longer usable. Therefore, I have amended the Tenants Application for compensation for damage or loss under section 67 of the Act to include compensation for the Sewing Chair.

As the Tenants were not seeking return of any personal property other than the Sewing Chair, I find it is not necessary to analyze the Tenants' Application for an order requiring the Landlord to return the Tenants' personal property under section 65 of the Act. This portion of the Tenants' Application is therefore dismissed, without leave to reapply.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for compensation for damage or loss?

Is the Landlord entitled to a Monetary Order for compensation for damage or loss?

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

Are the Tenants or the Landlord entitled to recover the filing fee for the Application or the Cross Application from the other party?

Background and Evidence

I have reviewed the evidence referred to by the parties in their submissions and the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agree that this tenancy began on April 15, 2024, and that the monthly rent set out in the tenancy agreement was $1,950.00 due on the first day of the month. The rental unit is a manufactured home that is owned by the Landlord and is in a manufactured home park that is also owned by the Landlord. The Tenants paid a security deposit of $975.00 ($500.00 on March 14 and $475.00 on March 22). The Tenants also paid a pet damage deposit of $487.50 in three installments of $162.50 on April 1, April 15 and September 30. The Landlord currently holds the deposits in trust.

The Tenants received the One Month Notice on October 10, 2024. The Landlord then served the 10 Day Notice to the Tenants on November 5. The effective date of the 10 Day Notice was November 18, and it states unpaid rent of $1,950.00 was due November 1. It is undisputed that the Tenants vacated the rental unit on November 24.

The Tenants state that the Rent Record submitted into evidence by the Landlord is an accurate reflection of the rent and deposit amounts they have paid since the start of the tenancy. The Tenants state the Landlord tried to get an order from the RTB for them to pay $6,000.00 or $7,000.00 in October 2024, but that the Tenants were successful in that other matter and were told they only had to pay the pad rent amount of $645.00 per month. The Tenants state they did not pay rent for November because they were moving out.

The Tenants testified that they are seeking compensation for lost wages and airfare resulting from the Landlord not complying with the Act and constantly harassing or threatening them with eviction notices. The Tenants provided a breakdown of their compensation claim as follows:

- $4,000.00 for one week of lost wages for Tenant M.L.
- $400.00 for Tenant M.L.’s flight home
- $7,200.00 for three months of lost wages for Tenant K.W. due to stress and severe anxiety caused by the Landlord and Tenant K.W.’s related medical leave
- $129.99 for the Sewing Chair

The Tenants testified they were given a one-day eviction notice or notice to move and that the Landlord was saying the Tenants were delaying the repair work required on the rental unit. The Tenants state that this required Tenant M.L. to leave work early and fly home to try to deal with the situation. The Tenants state $4,000.00 is approximately

what Tenant M.L. earns in a one-week period, and that because of his work rotation, he missed out on a full week of wages when he left his shift early. No documentary evidence was provided by the Tenants to confirm Tenant M.L.'s earnings, the days he was off work, or that his leaving work early resulted in a full week's worth of lost wages.

No documents were submitted by the Tenants regarding when Tenant M.L.'s flight was booked, the date of the flight, or the cost of the flight. The Tenants stated they could provide proof of payment for the flight if required, but that $400.00 was the approximate cost. No further information was provided by the Tenants regarding why Tenant M.L. had to suddenly leave work to address an eviction notice or notice from the Landlord that they were delaying repair work to the rental unit. In response, the Landlord stated there is no such thing as a one-day eviction notice under the Act.

The Tenants state that they have been fighting with the Landlord since they moved into the rental unit and, because of the stress caused by the various eviction notices, the poor condition of the rental unit, repairs required to the rental unit, moving into another unit while repairs were supposed to be done, mold and vermin issues, and overall harassment from the Landlord and her staff, Tenant K.W. was unable to function and her doctor put her on stress leave in June 2024. Tenant K.W. states she was constantly in fear of being kicked out of their home and that, as a result of the severe anxiety the situation caused, she was off work from early June until late- August or September.

Tenant K.W. testified she did apply for medical Employment Insurance but that it was not granted. She states her work also tried to get her coverage through their private insurer, but this also did not work. Based on Tenant K.W.'s hourly wage of $26.00/hour, she has estimated she lost wages of $2,400.00 per month for three months. No pay stubs or letters from Tenant K.W.'s employer were provided to confirm this amount.

The Tenants submitted two notes from Tenant K.W.'s doctor into evidence, the contents of which were read aloud during the hearing as the Landlord had not seen these documents. The doctor's note dated June 12, 2024 states "Leave granted 3 June to 3 July due to medical/psychological reasons". The note dated July 16, states "Has not worked from June 3. Leave granted 16/7 to 16/8/2024 due to medical reasons".

The Tenants testified that they found the Sewing Chair in the yard and that it appeared the legs had been bent in and that it was dumped behind a tree. The Tenants submitted a photograph of the Sewing Chair into evidence that they say shows its condition and location when they found it. Tenant K.W. states the Sewing Chair cost $129.99.

The Landlord states she has followed the RTB processes at all times with regards to the eviction notices given to the Tenants. The Landlord states it was the Tenants who were verbally abusive towards her and her staff. The Landlord's testimony was that a $500.00 rent reduction was offered to the Tenants in May 2024 because their shower did not work, but that the Tenants demanded more of a rent reduction. The Landlord also testified that a different unit was offered to the Tenants at the end of July because bathroom renovations were required in the rental unit that the contractors said the Tenants should move out for. The Landlord states the Tenants delayed moving into the other unit, which delayed when the renovations to the rental unit could be completed.

The Landlord states the Tenants owe unpaid rent of $8,710.00 from May 1 to November 1, 2024, and that they occupied two units in August and September but only paid $645.00 per month for both of them. The Landlord states she is only seeking what is fair for unpaid rent and that the prior RTB decision only addressed the Tenants' rent obligation for the month of September. The Landlord states the 10 Day Notice of September 14, 2024, which was the subject of the prior RTB dispute, stated unpaid rent of $1,950.00 was due, but that this was with respect to September's rent only.

The October 2, 2024 decision made in the prior RTB dispute noted on the cover page of this decision found that the Landlord was not justified in charging the full rent for September because she had agreed to charge $645.00 during renovations and the renovations were not completed until September 20. As the second page of the 10 Day Notice at issue in that proceeding was not before the arbitrator, no findings were made regarding the amount owing as stated in the notice or how the Landlord had arrived at the amount claimed.

In addition to the unpaid rent claim, the Landlord is seeking compensation in the below amounts for the following items:

- $246.34 for an air purifier
- $150.00 for a humidifier
- $20.00 for curtains
- $175.00 in late fees ($25.00 for 7 months from May to November 2024)

The Landlord provided a receipt confirming the cost of the air purifier that she says was purchased for the Tenants to use for the mold and moisture issues in the rental unit. The Landlord says she asked for the air purifier to be returned but that it never was. The Tenants admit the air purifier was accidentally packed up and put in the moving truck by friends that were helping them move, but that this was an honest mistake.

The Landlord testified that the humidifier and the curtains both belonged to C.J. and that C.J. lent these items to the Tenants, but they were not returned at the end of the tenancy. No evidence was submitted regarding the value of these items, but the Landlord and C.J. estimated the values as those set out above. The Tenants did not confirm or deny that they took the humidifier and curtains, but stated the curtains did not belong to C.J., rather they were left behind by a prior tenant.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Are the Tenants entitled to a Monetary Order for compensation for damage or loss?

Rule 6.6 of the RTB Rules of Procedure state the onus to prove a case is on the person making the claim. If an applicant is successful in proving it is more likely than not the

facts occurred as claimed, the applicant is required to provide sufficient evidence to establish the following four points for a monetary claim to succeed:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. That they took reasonable actions to mitigate the loss.

The Tenants state they both have missed work and, therefore, lost wages as a result of the eviction notices served to them by the Landlord and the Landlord's harassment and highhanded behavior. No documentary evidence was provided by the Tenants to support the amounts claimed.

Although the prior RTB dispute did not find in the Landlord's favor regarding the 10 Day Notice of September 14, 2024, this alone is not sufficient to establish that the Landlord's issuance of the notices to end tenancy was a violation of the Act. It is undisputed that communication between the parties deteriorated early in the tenancy and was not civil or professional on many occasions. However, the Tenants have not identified a violation of the Act or tenancy agreement by the Landlord which I can directly link to their claims for lost wages or airfare.

Furthermore, while the doctor's notes submitted by the Tenants confirm Tenant K.W. was on a medical leave for psychological reasons, there is no medical evidence or medical opinion linking this leave to the Landlord's actions or the circumstances of the tenancy. Therefore, I am not satisfied there is a direct causal relationship between what occurred during the tenancy and Tenant K.W.'s medical condition. Similarly, I am not satisfied that any of the notices received from the Landlord necessitated Tenant M.L. immediately leaving his work rotation and flying home. In any event, no evidence was provided to substantiate the cost of the flight or the resulting amount of his lost wages.

Based on the above, the Tenants have not satisfied me that their lost wages or the flight cost was brought about by any violation of the Act, regulations or tenancy agreement caused by the Landlord. These claims for compensation are therefore dismissed, without leave to reapply.

I am satisfied, based on the photographs provided of the Sewing Chair, that this item was damaged and disposed of when the Tenants were not present. No information or testimony was provided by the Landlord regarding what happened to the Sewing Chair.

Sections 24 and 25 of the *Residential Tenancy Regulation* (Regulation) place an obligation on a landlord to store a tenant's personal property in a safe place and manner for a period of at least 60 days following the date of its removal where the landlord considers the personal property to have been abandoned. A landlord cannot consider a tenant to have abandoned personal property unless the conditions in section 24 of the Regulation have been met.

On the balance of probabilities, I find that the Sewing Chair was damaged beyond use as a result of the Landlord failing to store the Tenants personal property in a safe place and manner in violation of the Regulation. I accept Tenant K.W.'s testimony that, to the best of her recollection, she purchased the Sewing Chair for $129.99. As the Sewing Chair was not a new item when it was damaged, I award compensation in the amount of $100.00 for the Sewing Chair.

The Tenants' Application for a Monetary Order for compensation for damage or loss under section 67 of the Act is granted with respect to the Sewing Chair in the amount of $100.00.

Is the Landlord entitled to a Monetary Order for compensation for damage or loss?

For the Landlord to make a successful monetary claim, the Landlord must also establish that a damage or loss exists; that the damage or loss results from a violation of the Act, Regulation or tenancy agreement; the value of the damage or loss; and that they took reasonable actions to mitigate the loss.

As the Tenants acknowledged they inadvertently took the air purifier, and the receipt provided by the Landlord shows it was purchased on May 2, 2024, I am satisfied that the Landlord is entitled to compensation in the amount of $246.34 for the air purifier.

I find that the humidifier and curtains were items lent by C.J. to the Tenants and that this was not an arrangement or transaction governed by the Act, Regulation or tenancy agreement. Therefore, I find the Landlord is not entitled to compensation with regards to these items under section 67 of the Act.

With regards to the Landlord's claim for $175.00 in late fees from May to November 2024, section 7(2) of the Regulation states that a landlord must not charge the fees described in section 7(1), which includes late fees, unless the tenancy agreement provides for that fee. The Landlord states that the late fees are provided for in the Park Rules, which were signed by the Tenants. However, the version of the Park Rules that was submitted into evidence by the Landlord did not include any reference to late fees and there is no clause in the tenancy agreement providing for the payment of late fees. Therefore, I deny the Landlord's request for compensation with regards to late fees.

The Landlord's Application for a Monetary Order for compensation for damage or loss under section 67 of the Act is granted with respect to the air purifier in the amount of $246.34. The remainder of the compensation claimed for damage or loss under section 67 of the Act in the Cross-Application is dismissed, without leave to reapply.

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

Section 26 of the Act requires a tenant to pay rent unless they have a right under the Act to deduct all or a portion of the rent.

With regards to the $1,950.00 the Landlord says is owed for September 2024, I find that the decision in the prior RTB dispute has already addressed September's rent. The principle of *res judicata* prevents an applicant from pursuing a claim that already has been decided. This principle also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action. Therefore, the Landlord's claim for unpaid rent for September 2024 is dismissed on the ground of *res judicata*.

With regards to the rent arrears that the Landlord says accrued prior to September 2024, the October 2 RTB decision refers to an email dated August 11 from the Landlord confirming rent was set at $1,100.00 for May 2024 and reduced to $645.00 while repairs were underway. The Landlord's email states that the rent payment for May is $1,100.00 and after that, it is $645.00. I therefore find that the parties had agreed that rent for May was $1,100.00 and from June until the bathroom renovations were completed, rent was $645.00.

Based on the principle of estoppel, I find the Landlord cannot now claim that the Tenants were required to pay $1,950.00 monthly rent from May to September 2024. Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. That the amount of unpaid rent stated as owing in the 10 Day Notices of both September 14 and November 5 is only $1,950.00 further supports a finding that the Landlord is estopped from pursuing a claim for unpaid rent for the months prior to September.

As the parties agree that the amounts paid by the Tenants as recorded in the Landlord's Rent Record are accurate, I find the Tenant's are in arrears of rent as follows:

- May: $ 0.00
- June: $ 645.00
- July: $ 45.00
- August: $ 0.00
- September: $ 0.00
- October: $ 0.00

Therefore, I am satisfied that the Tenants are currently in arrears of $690.00 for the months of June and July 2024 and the Landlord is entitled to recover rent for those months.

With regards to the rent for November 2024, the 10 Day Notice was served to the Tenants on November 5 and the effective date was November 18. It is undisputed that the Tenants did not file an application to dispute the 10 Day Notice, nor did they pay rent for November within 5 days of receiving the 10 Day Notice. Therefore, under section 46(5) of the Act, the Tenants are conclusively presumed to have accepted the end of the tenancy as of the effective date stated in the 10 Day Notice.

Based on the above, I find that the tenancy ended on November 18, 2024, and it is undisputed that the Tenants vacated the rental unit on November 24. Policy Guideline

#3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the Act. However, if tenants remain in possession of the premises (overholds), the tenants are liable to pay occupation rent on a per diem basis until the landlords recover possession of the premises.

As the Tenants continued to occupy the rental unit after the tenancy ended, the Tenants are overholding tenants as defined by section 57 of the Act. Section 57(3) of the Act states a landlord may claim compensation from a previous tenant for any time they occupied the rental unit after the tenancy ended. However, this section should not be read as placing the same duty to pay rent in full at the start of the month on overholding tenants. This section is carefully written to differentiate overholding tenants from tenants and does not refer to the compensation as rent.

Therefore, I find the Tenants did not automatically owe the full month's rent at the start of November 2024. Rather, the Tenants would owe the Landlord for any losses caused by their failure to follow the Act under section 7.

Section 67 of the Act states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. I find that the Landlord is entitled to a monetary award under section 67 of the Act in the amount of $1,560.00 ($65.00/day x 24 days) for the period the Tenants occupied the rental unit during November 2024.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and overholding under section 67 of the Act, in the total amount of $2,250.00.

Under section 72(2)(b) of the Act, I allow the Landlord to retain the Tenants' security deposit and pet damage deposits of $1,462.50, plus interest of $28.22, in partial satisfaction of the Monetary Order.

Are the Tenants or the Landlord entitled to recover the filing fee for the Application or the Cross Application from the other party?

As the Tenants were largely unsuccessful, I find they are not entitled to recover the $100.00 filing fee for the Application from the Landlord.

While the amounts awarded to the Landlord were less than those requested, I find the Landlord was successful in the Cross Application and is entitled to recover the $100.00 filing fee from the Tenants under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of **$1,005.62** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent and overholding under section 67 of the Act	$2,250.00
Authorization to retain all or a portion of the Tenants' security deposit and pet damage deposit in partial satisfaction of the Monetary Order under section 72 of the Act	-$1,462.50
Amount of interest owed on security deposit from May 13, 2024 to the date of this Order	-$28.22
A Monetary Order for compensation for loss or damage in favor of the Tenants under section 67 for the Sewing Chair	-$100.00
A Monetary Order for compensation for loss or damage in favor of the Landlord under section 67 for the air purifier	$246.34
Authorization to recover the filing fee for the Cross-Application from the Tenants under section 72 of the Act	$100.00
Total Amount	**$1,005.62**

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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 23, 2024

Residential Tenancy Branch