DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's applications under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant filed three applications, and in total applied for:

- an order to end the tenancy based on a frustrated tenancy agreement
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement (x2)
- a Monetary Order for the return of all or a portion of their security deposit and pet damage deposits
- authorization to recover the filing fee for this application from the Landlord (x3)

Both parties were granted substituted service orders for service of documents by email.

The Tenant acknowledged being served with the Landlord's hearing package by email on October 22, 2024. The Tenant acknowledged being served with the Landlord's evidence packages by email on December 17, 2024, and December 23, 2024.

The Landlord acknowledged being served with the Tenant's applications and evidence sent in various emails from October to December 2024. The Tenant asserts the Landlord was served with all their documents.

The Landlord was instructed to notify the arbitrator if any document was referenced which was not served to them. As this did not occur in the course of the hearing and the Landlord effectively responded to the Tenant's testimony and evidence, I deem the Landlord was served with the Tenant's applications and evidence by email in accordance with the Act and Rules of Procedure.

Preliminary Matter

The Tenant named a respondent P.D. in all three of their applications. The Landlord testified that this person assisted them with service of documents, but that this person was not named on any tenancy documents nor were they involved in the tenancy in a Landlord's capacity beyond service of documents.

I have amended the Tenant's application to remove this person as a respondent, as they are not a named party to the tenancy agreement, nor did they act as an agent of the Landlord during the tenancy.

Issues to be decided

Is this tenancy ended based on frustration of the tenancy agreement?

Is the Landlord a Monetary Order for unpaid rent?

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 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 retain all or a portion of the Tenant's security and pet damage deposits? Is the Tenant entitled to the return of all or a portion of their security and pet damage deposits?

Are either party entitled to recover their filing fees for their applications?

Facts and Analysis

The parties are advised that my decision will be broken into three main parts, with the summary of facts and evidence, followed by my analysis and decision, in accordance with the connected claims of each party as follows:

1. Tenancy Issues:

    - Landlord's claims for unpaid rent, lost rental income, and liquidated damages
    - Tenant's claims for frustration of tenancy agreement, rent reduction, and damages for loss of dishwasher use
    - Security and Pet Damage Deposits

2. Water escape event / flood

    - Landlord's claims for insurance losses

- Tenant's claims for insurance losses, lost employment income, and mental and emotional distress

3. Tenant's medical claims

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

1. Tenancy Issues

This tenancy began on September 1, 2021, with a monthly rent of $2958.00, due on the first day of the month, with a security deposit of $1450.00 and a pet damage deposit of $1450.00.

The parties signed a renewed fixed term tenancy agreement on November 15, 2023, for the period of December 1, 2023 to November 30, 2024. The Tenant moved out of the rental unit on October 1, 2024, and gave the Landlord their forwarding address in writing by email the same date.

On September 13, 2024, the Tenant sent the Landlord an email requesting to end their tenancy with a tentative effective date of October 15, 2024, stating that their reason for ending the tenancy was requiring more space for their family. The Landlord responded to remind the Tenant about the fixed term agreement ending November 20, 2024, and referenced the liquidated damages clause that would apply should the Tenant end the tenancy early, and requested a response from the Tenant with a firm date if they chose to still end the tenancy early.

The Tenant moved out of the rental unit on October 1, 2024, and did not pay any amount for rent for that month. The Landlord claims $2958.00 for the unpaid rent of October 2024, and liquidated damages of $500.00, as the Tenant did not give a full month of written notice to end their tenancy and breached the fixed term tenancy agreement.

The Landlord also claims $2958.00 for lost rental income for the month of November 2024. The Landlord claims the Tenant did not notify them that they would be moving out of the rental unit on October 1, 2024. The Landlord made minor repairs and touch ups to the rental unit between October 5 and October 15, 2024, and advertised the rental unit for rent starting October 17, 2024. The Landlord was unable to re-rent the unit for November 1, 2024. The Landlord re-rented the unit on October 25, 2024, with a tenancy start date of December 1, 2024.

The Landlord provided copies of the email communications with the Tenant regarding the end of the tenancy, and the signed tenancy agreement as evidence to support their claims.

The Tenant argues that the tenancy agreement was frustrated, and therefore they should not be liable for the rent of October 2024, liquidated damages, or lost rental income for November 2024.

The Tenant testified that there were various issues in the rental unit, including ongoing rodent issues, malfunctioning dishwasher and other appliances. The Tenant also claims that their physical health was impacted by the rental unit, which they believe to have been caused by mold and mildew from various water leaks that had occurred in the rental unit through the course of their tenancy.

Over the last year of the tenancy, the Tenant claims the relationship between the parties deteriorated, and many of the concerns they raised were not adequately addressed by the Landlord. The Tenant argues that due to the Landlord's behaviour, and the serious health impacts they suffered from the rental unit, the tenancy agreement was frustrated, and they felt they had no choice but to move out of the unit early.

The Tenant provided copies of communications with the Landlord about their concerns and the end of the tenancy, and photos of what they believe to be mold in the rental unit as evidence to support their claims.

The Tenant further claims compensation for the ongoing dishwasher problems during the period of July 2023 to March 2024. In July 2023, the dishwasher leaked and caused water damage to the rental unit. After the repairs were completed, the Tenant claims that the dishwasher did not function properly through this period. They claim that sometimes the dishwasher worked, other times it would leak or they would be unable to properly close the dishwasher door due to the way it was installed.

The Tenant claims they notified the Landlord about these issues by email, but it was not effectively addressed by the Landlord until March 2024. The Tenant claims a rent reduction of 10% ($295.80 per month) for the 8.5 month period of July 2023 to mid March 2024, for a total of $2507.50. The Tenant also claims $3825.00 for their time spent handwashing dishes, for approximately 1 hour per day for 255 days, at $15 per hour.

The Tenant provided copies of their communications with the Landlord about the dishwasher, and photos of the dishwasher taken after July 2023, as evidence to support their claims.

Is this tenancy ended based on frustration of the tenancy agreement?

Section 56.1 of the Act says that an arbitrator may order a tenancy ended if the rental unit is uninhabitable or the tenancy agreement is otherwise impossible to perform.

Tenancy Policy Guideline 34 says the following about frustration of tenancy agreements:

- a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.
- The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned.
- Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

Typically, with matters of tenancies, frustration applies when the rental unit is so damaged or hazardous that it would be impossible for the Tenant to continue living there and the unit cannot reasonably be repaired or otherwise returned to its original state. An example of frustration of a tenancy agreement would be if the rental unit burned to the ground in a wild fire.

The circumstances described by the Tenant in this case, do not nearly meet the definition nor requirements for frustration of the tenancy agreement. The Tenant's concerns about a malfunctioning dishwasher, minor rodent infestation, or suspected mold or mildew in the rental unit which is not supported by the evidence provided, do not have such a drastic impact on the tenancy agreement so as to make it impossible to perform.

I find that the Tenant has described circumstances which do not meet the test or considerations for frustration of contract, and therefore find that this tenancy did not end by frustration under section 56.1 of the Act.

Is the Landlord a Monetary Order for unpaid rent?

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.

Section 45 of the Act says a tenant may end a tenancy by giving the landlord written notice at least one full month before the effective date on the day before the rent is due. For example, if the Tenant is moving out on October 1, 2024, the Tenant must give their written notice by August 31, 2024, one full month to the day before the day rent is due under the tenancy agreement.

Section 45 of the Act also says that a Tenant may not end their tenancy by giving a one month notice earlier than the end date of a fixed term tenancy.

Based on the evidence and testimony of both parties, I find that the Tenant gave the landlord an informal notice to end their tenancy on September 13, 2024, with a tentative effective date of October 15, 2024. The Tenant then vacated the rental unit on October 1, 2024, and failed to pay the rent due under the tenancy agreement for that month.

I find that the Tenant breached section 45 of the Act by not giving the Landlord written notice to end their tenancy at least one month before the effective date, and by ending their tenancy before the end of the fixed term tenancy agreement. Therefore, I find that the Tenant was liable to pay the rent for the month of October 2024 under the tenancy agreement.

For these reasons, I find the Landlord is entitled to a monetary order for unpaid rent of $2958.00, under section 67 of the Act.

Is the Landlord entitled to a Monetary Order for money owed for liquidated damages under the tenancy agreement?

Tenancy Policy Guideline 4 says that if a liquidated damages clause is included in a signed tenancy agreement, and the amount due for liquidated damages is a genuine pre-estimate of loss as a result of a breach and not a penalty, then the tenant must pay the stipulated sum.

Based on the signed tenancy agreement provided as evidence, I find that the Tenant breached the tenancy agreement by ending the tenancy before November 30, 2024, the end of the fixed term. I find that the Tenant, by signing the tenancy agreement, agreed that $500.00 of liquidated damages would be owed to the Landlord if the tenant ended the tenancy before November 30, 2024.

I find that term 5 of the tenancy agreement is clearly identified as a liquidated damages clause, and states the following:

> If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy be vacating before the end of any fixed term, the tenant will pay to the landlord the sum of $500.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

Based on the above, I find that the liquidated damages clause in this signed tenancy agreement is valid and enforceable. I find that $500.00 is a reasonable and genuine pre-estimate of loss, and is not extravagant or beyond the greatest loss that could reasonably follow a breach of the tenancy agreement.

Therefore, I find that the Tenant is liable to pay $500.00 for liquidated damages for ending the tenancy before the end of the fixed term period, as per term 5 of the signed tenancy agreement.

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

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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on my analysis above with regard to the Landlord's claim for unpaid rent, I find that the Tenant breached section 45 of the Act, and the tenancy agreement, by ending the tenancy before the end of the fixed term period.

Tenancy policy guideline 3 says:

- where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement.
- In order to prove their claim, a landlord must due whatever is reasonable in the circumstances to minimize their loss, which includes re-renting the premises as soon as possible.

The Landlord claims that they lost rental income for the month of November 2024, due to the Tenant's breach of the Act and tenancy agreement.

Although I find that the Landlord did suffer a loss of rental income for the month of November 2024, I find the Landlord has failed to establish that they took all reasonable steps to re-rent the unit for November and minimize their loss effectively.

By the Landlord's own testimony, they did not advertise the rental unit for rent until October 17, 2024, which is 17 days after the Tenant moved out, and over a month after the Tenant notified the Landlord that they would be moving out by October 15, 2024.

I find that even if the Landlord was not aware of the Tenant's intentions to move out October 15, 2024, they still failed to advertise the unit for rent immediately after the tenant vacated the unit. In this case, the failure was even greater, as they could have

begun to advertise the unit as available for November 1, 2024, any time after the Tenant gave their notice in September.

The Landlord argues that they did not advertise the unit earlier because the Tenant did not confirm a concrete date for moving out, and because of the minor repairs and touch ups they needed to do in the rental unit. I do not find this to be a reasonable action or excuse for not attempting to advertise the rental unit sooner. The Landlord was aware that the Tenant intended to move out by October 15, 2024. The Landlord did not, at any point after September 14, 2024, attempt to follow up with the Tenant about their intentions, or otherwise confirm when the unit would be available for a new tenant, so they could rent the unit out as soon as possible. In these circumstances, I find that would have been the reasonable action of the Landlord to minimize their potential loss.

Further, minor repairs and cleaning after a tenancy ends are a routine part of a tenancy. The Landlord is not precluded from advertising or otherwise attempting to re-rent a property while they make these minor repairs, nor was the unit in such poor condition that it could not reasonably be advertised or shown to prospective tenants.

I find that the Landlord's failure to even advertise the unit until October 17, 2024, likely prevented them from successfully re-renting the unit for November 1, 2024. On a balance of probabilities, had the Landlord begun advertising and showing the unit after receiving the Tenant's notice, or immediately after the Tenant moved out, the Landlord would have been far more likely to find a new tenant by November 1, 2024.

For these reasons, the Landlord's claim for lost rental income of $2958.00 under section 67 of the Act is dismissed, without leave to reapply.

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

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.

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence and testimony of both parties, I find that the Tenant has failed to prove their claims for a rent reduction and compensation for handwashing dishes due to the malfunctioning dishwasher.

Firstly, I find that the Tenant has failed to prove that the Landlord breached the Act, regulation, or tenancy agreement with regard to the use and repair of the dishwasher.

On review of the communications between the parties, I find that the Tenant told the Landlord the dishwasher was running smoothly in both October and November 2023. I find that the Tenant provided a chain of emails from February 26 – March 2, 2024, which notified the Landlord about an issue with the dishwasher, which was repaired within 5 days of alerting the Landlord.

The Tenant did not provide any other record of communication with the Landlord about issues with the dishwasher during the 8.5 month period claimed (July 2023 to March 2024). The Tenant has failed to establish, on a balance of probabilities, that there was any ongoing issue with the dishwasher beyond the February 2024 issue, or that the Landlord ignored or otherwise failed to address this issue.

Per the emails provided and testimony of the parties, the dishwasher malfunctioned around February 26, 2024, and was repaired and fully functional by the actions of the Landlord by March 2, 2024, less than a week after the issue was reported. I find that the Landlord's actions to quickly and effectively address the repair concern are in compliance with the Landlord's obligations to repair and maintain the rental unit under the Act.

For the reasons above, the Tenant's claims for a rent reduction of $2507.50 and compensation for handwashing dishes of $3825.00, are dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security and pet damage deposits? Is the Tenant entitled to the return of all or a portion of their security and pet damage deposits?

Section 38 of the Act says the landlord must make an application against the tenant's security deposit within 15 days of the tenant providing their forwarding address in writing to the landlord.

Section 44 of the Residential Tenancy Regulation says that service of records by email are deemed received the third day after they were emailed.

As the Tenant gave the Landlord their forwarding address on October 1, 2024, by email, and the Landlord was deemed to receive that email on October 4, 2024, the Landlord had until October 19, 2024, to file their application to claim against the Tenant's security deposit. As the Landlord filed their application on October 16, 2024, I find the Landlord' made their application on time in accordance with section 38 of the Act.

Section 38(1) and 38(7) of the Act say a landlord must either repay the tenant's pet damage deposit or make a claim against it, only for damages caused by a pet, within 15 days of the tenant providing their forwarding address in writing to the landlord. If the

Landlord does not comply with this requirement, section 38(6) of the Act says the landlord must pay the tenant double the amount of the pet damage deposit.

The Landlord did not make any claims about damage caused by the tenant's pet. The Landlord did not provide any testimony or evidence that the tenants pet damaged the rental unit. The Landlord was not within their right to withhold the Tenant's pet damage deposit, as they failed to make any claim with regard to pet damage in the rental unit within the time required by the section 38 of the Act.

For these reasons, I find the Tenant's pet damage deposit must be doubled under section 38(6) of the Act.

Based on the above, the amount of the Tenant's security and pet damage deposits, plus interest, as are follows:

Security deposit: $1450.00

Pet damage deposit – doubled: $2900.00

Interest on both deposits, calculated before doubling: $138.88

Total: $4488.88

As the Landlord has been awarded a monetary order for unpaid rent and liquidated damages, I find that the Landlord is entitled to retain $3458.00 from the Tenant's deposits under section 72 of the Act.

I find that the Tenant is entitled to a monetary order for remaining amount of the deposits of $1030.88 under sections 38 and 67 of the Act.

2. Water escape event / flood of rental unit

Each party in this case has made claims that the other party is ultimately responsible for the water escape event that occurred in the rental unit in July 2023, which led to monetary losses for each party.

The Landlord claims $11,000.00 for insurance deductibles paid as a result of this water escape event. The Tenant claims $4920.00 for their insurance deductible, lost employment income, and emotional distress as a result of the water escape event.

The Landlord claims that the water escape event was caused by a rat chewing through the dishwasher water line. The Landlord argues that the Tenant was aware of a rodent infestation in the rental unit, which was caused by their failure to maintain a clean and sanitary rental unit, and failed to notify the Landlord about the issue, which ultimately led to the rodent chewing through the water line and causing the flood.

The Landlord provided copies of the plumbers and restoration invoices, including findings about the cause of the water escape event and resulting damages, as evidence to support their claims.

The Tenant claims that the Landlord failed to do any regular or routine inspections or maintenance on the dishwasher and other appliances in the rental unit. The Tenant believes that the water line failed due to the age of the dishwasher, and the Landlord's failure to adequately and regularly inspect and maintain it.

The Tenant provided email evidence of their request for the Landlord to inspect and do preventative maintenance on the dishwasher in June 2023 as evidence to support their claims.

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

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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence and testimony before me, I find that the Landlord has failed to prove on a balance of probabilities that the Tenant breached the Act, regulation, or tenancy agreement, or that any breach led to the water escape event in the rental unit.

The Landlord provided a written summery, reportedly regarding findings from various people about the damaged garage door seal which the Tenant argued led to the rodent presence in the garage of the rental unit. Though the summary asserts that these people found the damage must have been caused during the tenancy or by the Tenant themselves, I do not find this to be convincing evidence that the Tenant is responsible for the rodent presence, nor the damage caused by the water escape event.

The summary lists a number of people who apparently attended and inspected the garage door seal on October 4 and 5, 2024. The water escape event occurred in July 2023. These reported findings, therefore, have little to no relevancy to an event that occurred over a year before this inspection. Further, I have no way to verify the findings, as the people who made these findings did not attend the hearing to establish themselves as experts, or explain why the condition of a garage door seal in 2024 would have any relevancy to an incident that occurred over a year prior.

The Landlord provided a copy of an invoice from the plumbing company who attended the unit after the dishwasher leak. The invoice states that the leaking appears to have been caused by rats chewing through the drain line. The Landlord also provided an email chain in which the Tenant confirms they had traps set in the garage and had called pest control to address a suspected rodent in the garage, and two undated photos of a garbage can and kitchen sink full of dishes.

The Landlords argument that the Tenant's poor standard of cleanliness and sanitation in the rental unit, and failure to identify a rodent issue, led to the water escape event. Again, I do not find this to be adequate evidence that the Tenant breached the Act, or that the breach led to the damages. The only evidence before me about the cause of the leak is an invoice with a note about a suspected rodent chewing the drain line, and even that is limited to the brief observation of a plumber and is not supported by any other evidence.

The Landlord's evidence does not support a claim that the rental unit was in such a poor condition of cleanliness and sanitation so as to attract rodents to the unit. The photos show garbage in a can under the sink, and dishes in that sink. I do not find the use of a garbage can for garbage, or a sink for dishes, to be unreasonable, nor unclean. It is not unusual to throw your garbage away in a can, nor is it unusual to use your sink for dishes. There is no other documentary evidence which supports the Landlord's claim about an apparently unclean or unsanitary unit.

The Tenant's knowledge of an apparently minor rodent problem, and actions to address that problem, also are not breaches of the Act. The Tenant contacted pest control and set up traps in the garage. There is no evidence that rodents had infested the unit, beyond some minor presence in the garage area. There is no evidence of rodent droppings or nesting materials in the unit. There is no evidence of any live or dead rodents in the unit nor the garage at the time of the event. There is no evidence of an actual infestation, other than that the Tenant suspected a rodent in the garage occasionally, and had addressed it with traps.

The Tenant is not required to report every occurrence of a pest to a landlord. It is not abnormal for a rodent to be in a garage, and a person to set a trap. An infestation of the rental unit would include far more apparent evidence, including droppings, nesting materials, and perhaps even seeing and hearing rodents throughout the unit. Neither party testified that any such evidence of an infestation was present at the time of the water escape event or after. There is no evidence, for example, that during the repairs while the affected areas were demolished and rebuilt, the contactors noticed or reported any evidence of rodents. There is no evidence that Landlord or their agents observed rodent activity or infestation, other than the apparent drain line damage.

Overall, I find that even if the water escape event was caused by a rodent damaging the drain line, there is no sufficient evidence that the Tenant's breach of the Act led to a rodent infestation, nor that there even was an infestation. The occasional presence of a

rodent in the garage is not an active or severe infestation which would require a report to the Landlord or serious intervention.

The evidence before me does not sufficiently support, on a balance of probabilities, the Landlord's claim that the Tenant is responsible, by action or neglect, for the damage that occurred to the rental unit, and the Landlord's associated losses. I find it likely, based on all the evidence and testimony before me and on a balance of probabilities, that the dishwasher line was damaged by an event beyond either party's control.

For these reasons, the Landlord's claim for $11,000.00 for their insurance deductibles is dismissed, without leave to reapply.

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

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.

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence and testimony before me, I find that the Tenant has failed to prove, on a balance of probabilities, that the Landlord breached the Act, regulation, or tenancy agreement, that any breach led to the water escape event in the rental unit.

The Tenant has provided an email where they requested that the Landlord inspect the dishwasher in the rental unit in June 2023. No active issue with the dishwasher was identified, and the Tenant's own testimony was that it appeared to be functioning fine.

The Landlord is required by the Act to promptly respond to and address any emergency repair issues (Section 33), and to repair and maintain the rental unit in a manner that complies with the health, safety and housing standards required by law (Section 32).

The Tenant has not identified any emergency repair that the Landlord failed to complete in June 2023. The Tenant has not identified any law health, safety, or housing standards or laws which the Landlord failed to meet.

Further, there is no evidence that the dishwasher failed and leaked due to a failure to inspect and maintain it. There are no findings in any report about the incident which support this claim.

The evidence before me does not sufficiently support, on a balance of probabilities, the Tenant's claim that the Landlord is responsible, by action or neglect, for the damage that occurred to the rental unit and the Tenant's associated losses. I find it likely, based on all the evidence and testimony before me and on a balance of probabilities, that the dishwasher line was damaged by an event beyond either party's control.

For these reasons, the Tenant's claim for $4920.00 for their losses resulting form the water escape event, is dismissed, without leave to reapply.

3. Tenant's medical claims

The Tenant claims $13,355.00 for their medical costs, and flights to and from Mexico to address their medical concerns.

The Tenant claims that the rental unit was full of mold and mildew as a result of the water escape events occurring in 2023, and that their exposure to this mold and mildew caused medical problems for the Tenant and their daughter.

The Tenant provided medical documentation, flight receipts, and photos of the rental unit as evidence to support this claim.

The Landlord claims that there is no evidence of elevated mold and mildew in the rental unit, nor does the Tenant's evidence support their claim that their medical problems were caused by exposure in the rental unit. The Landlord hired an expert to conduct a mold and moisture analysis in October 2024, and provided the report as evidence to support their claims.

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

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.

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence and testimony before me, I find that the Tenant ahs failed to prove the Landlord breached the Act, regulation or tenancy agreement, or that any breach led to the Tenant's medical issues.

The Tenant did not provide any evidence of reporting concerns about mold or mildew in the rental unit to the Landlord, nor any sufficient evidence to prove that there were toxic levels of mold present in the unit.

The Tenant's only evidence of mold in the unit were some photos provided in evidence. On review of the photos, I do not see any apparent mold. There are photos of clean carpet and walls, with no visible mold growth. There are photos under the kitchen sink, where there appears to be dirt or debris, but again, on viewing it does not appear to be mold. Without some report or other documentary evidence to prove the presence of mold in the unit, I do not find this convincing evidence of a toxic mold problem in the rental unit.

Based on the Landlord's report, there appears to be some minor elevation of one type of mold in one area of the rental unit, but this minor elevation is not found to be at a harmful level, and there is no report of any other toxic levels of mold which could be harmful to human health.

Further, the Tenant's medical documentation does not support the Tenant's claim that their medical issues were caused by mold exposure, nor that that exposure occurred in the rental unit.

The medical report provided as evidence identified chronic or pre-existing health issues for both patients, which may be aggravated by exposure to mold and damp environments. None of the evidence provided identifies exposure to mold as the cause of the medical conditions, nor a timeline of exposure to cause such issues which would support the Tenant's claim that their occupancy in the rental unit led to their condition.

For these reasons, the Tenant's claim for $13,355.00 for their medical costs is dismissed, without leave to reapply.

Conclusion

As both parties were partially successful and partially unsuccessful with their claims, and both parties paid filing fees for their applications and claimed for the return of those filing fees, I find that neither party is awarded the return of their filing fee under section 72 of the Act.

I Order the Landlord to retain **$3458.00** from the Tenant's security and pet damage deposit in full and final satisfaction of their monetary awards, under sections 67 and 72 of the Act.

I grant the Tenant a Monetary Order for the return of the remaining balance of their doubled pet damage deposit, plus interest, under section 38 of the Act. I Order the Landlord to pay the Tenant the balance due of **$1030.88**.

The Tenant must serve the Landlord with this Order as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	**Granted Amount**
Tenant's security deposit	$1450.00
Tenant's pet damage deposit, doubled	$2900.00
Interest on Tenant's deposits, calculated before doubling	$138.88
Landlord's Monetary Order for unpaid rent	-$2958.00
Landlord's Monetary Order for liquidated damages	-$500.00
Total Amount due to Tenant	**$1030.88**

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: January 31, 2025

Residential Tenancy Branch