DECISION

Introduction

The Landlord files two applications seeking relief under the *Residential Tenancy Act* (the "*Act*"). In the first, the Landlord seeks the following:

- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

In the second application, the Landlord seeks the following:

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Landlord filed an amendment to the second application on January 9, 2025 increasing the claim.

C.L. attended as the Landlord. A.K. and H.V. attended as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Landlord's Claims

In her first application, the Landlord seeks $100.00 as compensation for other money owed, describing it as the "[d]ispute resolution Filing Fee". The Landlord also claims, independently of the claim for other compensation, for the $100.00 filing fee on the first application.

With respect to claim 02 on the Landlord's first application, I find that it was misplead as it is replication of the claim for the filing fee, which is made independently elsewhere. Since this is not independent relief, replicating a claim made elsewhere, I dismiss claim 02 without leave to reapply.

Issues to be Determined

1) Is the Landlord entitled to a monetary order compensating her for damage to the rental unit caused by the Tenants or their guests?
2) Is the Landlord entitled to a monetary order compensating her for lost rental income?
3) Is the Landlord entitled to retain all or a portion of the security deposit in satisfaction of the amount owed by the Tenants?
4) Is the Landlord entitled to the filing fee for both applications?

Evidence and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on June 1, 2024.
- Rent of $2,100.00 was due on the first day of each month.
- A security deposit of $1,050.00 was paid by the Tenants.

Both parties confirm that the Tenants have since vacated the rental unit, though there was some discussion on when this occurred. The details will bed discussed in greater detail below, though I accept that at this point the tenancy is over.

Legal Test Applicable to both Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Landlord entitled to a monetary order compensating her for damage to the rental unit caused by the Tenants or their guests?

Section 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

Section 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

Submissions

At the hearing, the Landlord explained that she seeks $1,800.00 in compensation for costs associated with remediating mold in the rental unit.

I am told by the Landlord that the Tenants notified her on November 10, 2024 that they discovered mold in the rental unit. The Tenants' evidence contains the email sent by the Tenants in which they gave notice of the mold. The Landlord says she arranged for a contractor to attend the rental unit to assess the mold, doing so on November 12, 2024.

The Landlord's evidence contains an inspection report dated November 13, 2024, which noted areas of mold in a living room window, patio door located in the kitchen, and a window for one of the bedrooms. The report author made the following assessment:

> Upon inspection of the home it was noted that there are high levels of humidity throughout the structure. Visible signs of fungal growth were seen on the majority of windows as seen in the above pictures.
>
> There were no signs of water ingress to contribute to the fungal growth and all ventilation fans appear to be in working order.
>
> It is in my opinion the fungal growth noted is due to high humidity that condensates on the homes windows likely caused by not utilizing the homes fans to move air or exhaust fans when cooking or using the shower.

The Landlord argued that the Tenants failed to use the fans in the rental unit. In the photographs provided, a ceiling fans are seen in the living room and the two bedrooms. The Landlord argued that the Tenants failed to leave these in operation to avoid the buildup in condensation and otherwise failed to use the exhaust fans in the bathroom and kitchen.

The Landlord's evidence contains a copy of an invoice dated November 28, 2024 in which $1,800.00 is invoiced for mold remediation.

The Tenants deny responsibility for the excess humidity and corresponding mold build up in the rental unit. The Tenants tell me that they were away for approximately two weeks prior to November 10, 2024, such that they discovered the mold and condensation when they returned.

The Tenants say that there was no mold present in the rental unit before they left the rental unit in late October and early November. The Tenants' evidence contains photographs from September 22, 2024 showing one of the affected windows, which is without condensation or mold.

The Tenants indicate that they used the bathroom and kitchen exhaust fans while using those areas of the rental unit, but did not leave them or the ceiling fans in operation while they were away for two weeks. In an email dated November 12, 2024, the Tenant A.K., in response to a request for information from the Landlord, indicates that the bathroom fan was in use, multiple times a day, that the kitchen fan was used every time they cooked, and that the ceiling fan was last used in the living room in mid-September 2024.

Findings

It is undisputed that the mold was reported to the Landlord on November 10, 2024. I have been given a report dated November 13, 2024 that would support that the mold developed from excess humidity after not running the ceiling fans and exhaust fans.

As it is not disputed, I accept, however, that the Tenants were not present in the rental unit for any significant period in the weeks prior to November 10, 2024. I further accept that the mold was not present when the Tenants were present in the rental unit immediately prior to their time away immediately prior to November 10, 2024. The Tenants' evidence supports that, at least as of September 22, 2024, no mold was present in one of the affected windows.

In the result, I accept it likely that the condensation and mold developed over the period in which the Tenants were not present in the rental unit. It bears some consideration that photographs provided by the Tenants show water pooling in the bottom vinyl channel that appears to be more than an inch deep. I do not find it likely that the Tenants would have permitted this develop given the level of cleanliness shown in the September 22, 2024 photograph.

The Landlord argued the Tenants caused the mold by failing to make use of the ventilation fans. With respect, the Tenants would not have left the ventilation fans running while they were away from home as they are only used as needed to exhaust humid air from the kitchen or bathroom. It makes little sense, absent other factors, to leave these fans running continuously. Further, there is no evidence the Landlord advised the Tenants to leave the fans in continuous operation, nor would one reasonably be expected to do so under normal circumstances.

The Landlord argued the ceiling fan was not used by the Tenants, with the Tenants' evidence indicating the living room ceiling fan was last used in mid-September 2024. It is unclear to me what the ceiling fans would have done to remedy the situation. The ceiling fans circulate air in the room, they do not exhaust humid air from the living space outside. Operating ceiling fans would not decrease excess humidity in a living space, which as mentioned above I accept occurred while they were away for some weeks.

I accept based on the evidence that, while the Tenants were living in the rental unit, they used the exhaust fans, namely the bathroom and kitchen fans. In other words, they made sure that humid air was extracted and ventilated outside. I accept that no issues were present in the rental unit when they were there prior to leaving for two weeks prior to November 10, 2024.

Despite the report of November 13, 2024, I find it more likely than not that the humidity was not caused by the Tenants. Again, they were not present in the rental unit when the condensation developed, such that they cannot be held responsible for it or for failing to run the exhaust fans. I find it more likely than not that the humidity and mold resulted from issues that are unrelated to the Tenants or their conduct, such that the damage would fall under the Landlord's general obligation to maintain and repair the rental unit under s. 32(1) of the *Act*.

As the Landlord failed to demonstrate the mold was caused by the Tenants in breach of their obligations under the *Act*, I find the Landlord failed to prove her claim. Accordingly, it is dismissed without leave to reapply.

2) Is the Landlord entitled to a monetary order compensating her for lost rental income?

A tenant may end a tenancy by giving notice to their landlord pursuant to s. 45 of the *Act*.

In the case of periodic tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice and is on a day before rent is due under the tenancy agreement.

In the case of fixed term tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice, cannot be earlier than the date specified in the tenancy agreement as the end of the tenancy, and is on a day before rent is due under the tenancy agreement.

Submissions

The Landlord argued that the Tenants vacated the rental unit and failed to give adequate notice in contravention of the fixed term tenancy, which she says ended on June 1, 2025. The Landlord seeks lost rental income between December 1, 2024 and February 28, 2025, as a new tenant is set to occupy the rental unit on March 1, 2025. I am told by the Landlord that the new tenant will be paying the same rent as the Tenants. The Landlord further seeks $673.20 in compensation for Hydro expenses over this period, though I am told this is an estimate based on the previous years usage as no invoice has been issued to the Landlord over the relevant period.

The Landlord indicated that the Tenants had to vacate the rental unit temporarily to accommodate mold remediation in the rental unit. When I asked her at the hearing when she gave notice to the Tenants they would have to vacate, the Landlord was unable to provide a substantive response.

The Tenants' evidence contains correspondence between the Landlord and the Tenants between November 10, 2024 to November 16, 2024. On November 10, 2024, the Landlord told the Tenants that their "contents will need to be moved – on your time and expense – in order to facilitate mold remediation".

The Tenants indicate that they cooperated with the Landlord's request, moving the last of their personal belongings on November 16, 2024. The Tenants argue, however, that they did so temporarily at first to address the mold remediation.

The email correspondence between the parties shows that matters degraded between them following accusations by the Landlord that the Tenants were responsible for the mold in the rental unit. In an email dated November 16, 2024, the Tenant A.K. informed the Landlord that they would be "completely evacuated by Monday" and that they did not wish to interact with the Landlord due to her view that there was an "unreasonably hostile environment".

Further correspondence between the Tenant A.K. and a property manager acting on behalf of the Landlord shows that efforts were made between November 17 to 19 to reach an agreement to end the tenancy. On November 19, 2024, the Tenant A.K. informed the property manager that they could not return to the property and that if there was no agreement to end the tenancy, they would seek an order to terminate the tenancy.

The Landlord's evidence contains a copy of a written tenancy agreement signed July 5, 2024 and that it had a fixed term ending June 1, 2025. The Tenants argue that they did not sign this agreement. The Tenants' evidence contains a tenancy agreement signed by them on June 2, 2024 which was on a month-to-month term.

The Landlord indicates that there was always an understanding that the tenancy agreement was for a one-year fixed term, though says she made an error when she prepared the first tenancy agreement. She says that the tenancy agreement she put into evidence was signed on July 5, 2024, after the tenancy started, to address this

oversight and done at the request of the Tenants, who wished to have added security with a fixed term as she was listing the property for sale.

I am told by the Landlord that there were text messages to this effect between her and the Tenants, though in evidence she submits one message, authored by her, and sent to the Tenant H.V.. The message is undated and says the following:

> When you get home today we need to sign new paperwork. The lease I gave you is for a monthly rental which is no good for you ...I shouldn't have rushed, that's how mistakes get made .. and I need that inspection report I left on the stairs completed. The realtor wants everything now

The Landlord submits a copy of the condition inspection report mentioned in the message set out above, which was done as a means of cross-referencing the signatures on it with the signatures in the tenancy agreement she provided. The condition inspection report is dated August 7, 2024.

The Tenants say they did not sign the second condition inspection report. I am told by the Tenants that they noted issues in the first move-in condition inspection report, which was completed some time when the tenancy started. They say the Landlord took issue with this, such that she wanted a clean copy of a move-in condition inspection report while addressing any issues the Tenants had outside of the report.

The Landlord acknowledges the move-in condition inspection report was done twice, though argued the issues noted by the Tenants in the first report were not significant and would be problematic for home inspection purposes when listing the property for sale.

Findings

In this instance, I am provided conflicting tenancy agreements. The one provided by the Tenants is a monthly periodic tenancy and signed by them on June 2, 2024. The Landlord provides a tenancy agreement for a fixed term ending June 1, 2025 signed by all the parties on July 5, 2025.

I note that in the correspondence between the Tenant A.K. and property manager, the property manager raises that there is a one-year lease, with the Tenant A.K. expressing some confusion on this point as she only had a month-to-month tenancy agreement in her possession. This can be seen in emails dated November 17, 2024 and November 19, 2024.

The Landlord, at various points, indicated that the Tenants wished to have a year lease and were interested in doing so to secure housing for the long term as she was listing the property for sale. However, there is no evidence to support any communications between where the Tenants either expressed their wish for a fixed term tenancy or acknowledged that this was the arrangement. The only message in evidence is from the Landlord herself, though no response message can be seen from this message sent by either the Tenants.

I am given a move-in condition inspection report dated August 7, 2024 to cross reference for signatures. The parties acknowledge this report prepared in response to the Landlord's concerns on the contents of the original move-in condition inspection report. The initial report, though not in evidence, was presumably done at the outset of the tenancy.

Though not strictly related to the claim, s. 14 of the Regulations specifies that the condition inspection must be completed when the rental unit is empty of a tenant's belongings and s. 23(1) of the *Act* indicating that this should be on the day the tenant is entitled to possession or as otherwise agreed to by the parties. Further, s. 20(1)(j) of the Regulations requires a condition inspection report to include space for tenants to note agreement or disagreement, with space for comments.

I am troubled the second move-in condition inspection report as it runs contrary to the timing requirements set by the *Act* and Regulations and was prepared in response to the Landlord's concerns with the comments left by the Tenants. To be clear, the Tenants had every right to note any issues they disagreed with in the move-in condition inspection report, and it was not for the Landlord to second guess this after the fact. Sanitizing a condition inspection report by a landlord runs contrary to the very purpose that both parties complete the report together.

Further, the message put into evidence by the Landlord suggests that the second tenancy agreement and second move-in condition inspection report were to be signed at the same time. However, the second tenancy agreement is dated July 5, 2024 with the second move-in condition inspection report is dated August 7, 2024. Even if the second condition inspection report were misdated, being July 8, 2024 rather than August 7, 2024, the day it was signed does not match the day the second tenancy agreement was signed, this despite what is suggested in the Landlord's text message.

Again, the Tenants deny signing either the second tenancy agreement or the second condition inspection report. Under the circumstances, I am more inclined to believe the Tenants. They appear to have been unaware of the fixed term lease when they notified of the same on November 17, 2024 by the property manager. This supports, in my view, that they likely did not sign the second tenancy agreement as they would have otherwise been aware of it at the time.

Further, the Landlord, with the second move-in condition inspection report, seemingly admits to manufacturing a document to suite her purposes, namely a clean move-in condition inspection report to facilitate the sale of her property. Again, there is no correspondence from the Tenants to support the Landlord's allegation that they wanted to have a fixed term tenancy when the tenancy started, which if it existed should have been produced by the Landlord in her evidence. When viewed on the whole, I find it more likely that the Landlord is not being truthful about the second tenancy agreement, that it was likely created by her to correct an oversight she perceived to have existed much as she had done with the second move-in condition inspection report, and that there was no fixed term.

I find that the second tenancy agreement put into evidence by the Landlord is not legitimate. I accept that the tenancy was a monthly periodic tenancy upon the terms set out in the tenancy agreement provided by the Tenants.

There was some debate on when the tenants vacated. I accept they likely did so on November 18, 2024, being the Monday after November 16, 2024 in which the Tenant gave the Landlord notice to that effect. I find that the Tenants did so at the request of the Landlord, which can be seen from her email sent to the Tenants on November 10, 2024 and again on November 15, 2024.

I note the tone of the emails sent by the Landlord prior to the inspection on November 12, 2024 are problematic. The Landlord asserts on November 10, 2024 that the Tenants had to vacate to remediate the mold. At that time, no inspection had been conducted, nor any recommendations given to support what steps, if any, were needed to remediate the mold.

In emails dated November 10, 2024, November 11, 2024, and November 12, 2024, the Landlord intimated the Tenants were responsible for the mold. As noted above, the inspection report, which alleged the Tenants may have been responsible, was prepared on November 13, 2024. In other words, the Landlord made allegations the Tenants were responsible prior to having any evidence to support that allegation.

The Tenants were faced with a perplexing mix of demands and accusations from the Landlord prior to the Landlord, on November 15, 2024, asking the Tenants again to vacate the rental unit. Within this context, I find that the Tenants conduct, namely their desire not to return to the rental unit, was with good reason. The Landlord both made unsubstantiated allegations against the Tenants and requested vacant possession of the rental unit without any basis to support that request.

To be clear, landlords may request vacancy for a period to effect repairs, though that should only be done if it is necessary. Based on the evidence before me, I have no reason to believe that the Landlord should have asked for vacant possession at all to remediate the mold. It is not in the inspection report of November 13, 2024, nor could that course of action been known to the Landlord when she first asked for vacant possession on November 10, 2024.

All this is to say that I find that the Landlord largely induced the end of the tenancy. She requested vacant possession, as early as November 10, 2024, without any clear basis for doing so. It bears some consideration that the Tenants had the right to the quiet enjoyment of their rental unit protected by s. 28 of the *Act*. In my view the requests by the Landlord and correspondence in the week following November 10, 2024 when the Tenants gave notice of the mold constituted a breach by the Landlord of the Tenants' right to the quiet enjoyment of their rental unit.

The Tenants, upon agreeing to the Landlord's request and vacating, were then faced with increasing demands from the Landlord that were unjustified. Further, they were then served with a tenancy agreement they did not sign, which was held as the basis for the Landlord seeking compensation for lost rental income from them. The Tenants, in

my view, rationally decided that it was simply no worth returning to the rental unit under the circumstances.

Though I agree the Tenants did not give notice to end the tenancy within the contemplation of s. 45 of the *Act*, I find that the Landlord induced the Tenants to effectively abandon the rental unit, such that the tenancy ended on or about November 18, 2024 under s. 44(1)(d) of the *Act*. Under the circumstances, I find that the Tenants should not be held liable for compensating the Landlord for lost rental income since the loss is directly caused by the Landlord's own conduct.

Accordingly, I dismiss the Landlord's claim for lost rental income and costs associated with utilities without leave to reapply.

3) Is the Landlord entitled to retain all or a portion of the security deposit in satisfaction of the amount owed by the Tenants?

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:

    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

The parties confirm that the Tenants have not provided their forwarding address to the Landlord. The Tenants indicate that they did not wish to do so as they do not want the Landlord to know where they reside.

Though I have dismissed the Landlord's claim against the security deposit for monetary compensation for lost rental income, I do not order the return of the security deposit as the Tenants have failed to provide their forwarding address. The Tenants may have had reason for not doing so, though they are required to give a forwarding address, even if that is not one where they reside.

To be clear, the Tenants right to the security deposit may be extinguished under ss. 24 or 36 of the *Act* as it relates to the condition inspection report, but also under s. 39, which extinguishes a tenant's right to the security deposit if they fail to provide their forwarding address within one year after the end of the tenancy. In other words, the Landlord's obligation to return the security deposit has not been triggered under s. 38(1) and, since this has not been done, I cannot determine whether the Tenants right to the security deposit has been extinguished.

Accordingly, I make no order for the return of the security deposit.

I note the Tenants requested relief in written submissions. To be clear, the Tenants are not entitled to do so absent filing an application on their own. The only order that could be granted in their favour on the Landlord's application, being return of the security deposit, cannot be granted as explained above.

4) Is the Landlord entitled to the filing fee for both applications?

As the Landlord was unsuccessful on both applications, I dismiss both claims under s. 72(1) of the *Act* for the return of the filing fees.

Conclusion

I dismiss all claims tied to the Landlord's two applications, in their entirety, without leave to reapply.

I make no order for the return of the security deposit as the Tenants have not yet provided their forwarding address.

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: February 4, 2025

Residential Tenancy Branch