DECISION

Introduction

This proceeding dealt with monetary cross applications made under the *Residential Tenancy Act* (the Act).

The Landlord applied for dispute resolution seeking:

- a Monetary Order for damage to the rental unit under sections 32 and 67 of the Act
- a Monetary Order for unpaid or loss of rent under section 67 of the Act
- recovery of the filing fee paid for this application from the Tenants under section 72 of the Act
- authorization to retain all or a portion of the Tenant's security deposit and pet damage deposit in partial satisfaction of the Monetary Order requested

The Tenants applied for dispute resolution seeking:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for return of double the Tenant's security deposit and pet damage deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord J.A. attended the hearing for the Landlord.

Tenant C.D., Tenant C.B., and their legal counsel attended the hearing for the Tenants.

Preliminary and Procedural Matters

The hearing was held over two dates and by way of written submissions. An Interim Decision was issued on March 27, 2025 and should be read in conjunction with this decision.

During the hearing of March 27, 2025, the Landlord indicated they did not wish to pursue their claim for damage to the rental unit. I dismissed the claim without leave to reapply.

During the period of adjournment, between March 27, 2025 and May 6, 2025, the parties submitted evidence under the Tenant's application, as was expected, as I had noted in the Interim Decision. Also, an Amendment was served by the Tenants to clarify the Tenants were seeking return of double the deposits. The packages were acknowledged as being received. Although the Amendment was served late, the Tenant's legal counsel argued the amendment was inconsequential since it is upon an Arbitrator to consider doubling of the deposits under a Landlord's application where the Landlord seeks to retain deposits. I accept that argument as is consistent with Residential Tenancy Policy Guideline 17, and I will consider whether the deposits should be doubled in making this decision.

At the end of the hearing session of May 6, 2025 the parties were agreeable to concluding their submissions concerning the Tenant's claims, in writing. I gave each of the parties' instructions with respect to submitting and serving their respective submissions to each other and to me. I received their respective written submissions by the deadlines set for each and I am satisfied that they served their written submissions to the other party as directed. Therefore, I have admitted and considered the parties written submissions in making this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid and/or loss of rent for the month of January 2025?

Are the Tenants entitled to a Monetary Order for damages or loss under the Act, regulations or tenancy agreement?

Is the Landlord authorized to retain or make deductions from the Tenant's security deposit and pet damage deposit? Are the Tenants entitled a Monetary Order for return of their deposits? Should the deposits be doubled?

Is the Landlord entitled to recover the filing fee they paid from the Tenants?

Are the Tenants entitled to recover the filing fee they paid from the Landlord?

Background and Evidence

I have reviewed all evidence and submissions, including the testimony of the parties and the documentation and photographs. It should be noted that I was provided with a considerable amount of evidence and submissions but with a view to brevity I have only summarized the parties' respective positions and refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on October 15, 2024. The Tenants paid a security deposit of $1,900.00 and a pet damage deposit of $1,900.00 on September 8, 2024 and October 4, 2024, respectively. The monthly rent was set at

$3,800.00, due on the first day of the month. The tenancy was to be for a fixed term set to expire on October 15, 2025.

It was undisputed that the Tenants were not satisfied with the condition of the rental unit and had raised a number concerns to the Landlord and her husband regarding a rotting deck, ants, water ingress, and mold. Ultimately, the Landlord communicated to the Tenants, via text messages, in November 2024 that she will accept a month's notice to end tenancy. On November 30, 2024 the Tenants sent a notice to end tenancy to the email address for the Landlord's husband, communicating that they were ending the tenancy effective December 31, 2024.

The Tenants paid rent for December 2024 and vacated the rental unit in late December 2024. On December 30, 2024 the Tenants notified the Landlord that they had vacated, via text message. The Landlord responded via text message and arranged to meet at the property on January 3, 2025 to inspect the rental unit and return the keys. Upon arriving at the property, the Landlord informed the Tenants they had already inspected the rental unit and found it to be in satisfactory condition.

Landlord's claim for unpaid rent for January 2025 - $3,800.00

The Landlord seeks compensation from the Tenants for unpaid rent for January 2025. The Landlord submitted the rental unit was vacant for January 2025 and argued that they are entitled to recover this loss from the Tenants because:

I. The Tenants did not send their notice to end tenancy to the email address the Landlord had given to the Tenants for service.
II. Although the Tenants sent the notice to end tenancy to the Landlord's husband's email address, the Landlord did not see the notice until December 30, 2024 when they went looking for a notice to end tenancy after receiving the Tenant's text message of December 30, 2024.
III. The Landlord had no idea that the Tenants were going to move out until the text message of December 30, 2024 was received.
IV. The Landlord could not proceed to advertise the rental unit for rent right away given the Tenant's allegations of a mold infestation in the rental unit. The Landlord did not receive the Tenant's mold report despite asking for it, so she had to wait to have her own testing done before advertising the unit for rent.

The Tenants oppose the Landlord's claim on the basis they gave sufficient notice to end tenancy considering:

I. The Landlord had given the Tenants messages indicating she would accept a one month notice to end tenancy provided it was given by the end of the month, being November 30, 2024.
II. The Landlord's husband had been communicating with the Tenant on numerous occasions, usually about repair issues, via text message; however, the Landlord's husband had also given the Tenant his email address.

III. The Tenant asked the Landlord's husband for their mailing address because the Tenant wanted to send them "paperwork", and the Landlord had not provided a service address on the tenancy agreement.
IV. The Landlord's husband texted their mailing address to the Tenant and asked if the Tenant would be emailing the notice to end tenancy and the inspection report.
V. The Tenant replied that he would be sending the email that same day since Canada Post was on strike.
VI. The Tenant sent their notice to end tenancy to the Landlord's husband's email address at 5:55 p.m. on November 30, 2025.

The Tenants argue that they gave a one month notice by the last day of November 2024, as the Landlord had communicated to them that she would permit. The Tenants argued that the Landlord used the month of January 2025 to make significant repairs, including roof replacement, and the unit was not in a condition to be inhabited for the month of January 2025. The Landlord could have obtained a mold inspection sooner than she did. Accordingly, the Tenants should not be held liable to pay rent for January 2025.

The Landlord responded that she was waiting to receive the Tenant's mold report, which she asked for a number of times and did not receive, so she did not seek out her own mold test until after the tenancy ended. The Landlord was of the position that despite the roof replacement the rental unit was inhabitable in January 2025 and that it was the Tenant's insufficient notice to end tenancy and false claims of mold that gave rise to the vacant month.

Tenant's claims for damages or loss under the Act, regulations or tenancy agreement - $10,207.26

The amount claimed is the sum of:

- $3,800.00 for loss of use and enjoyment due to Landlord's failure to maintain the rental unit in accordance with the Act and applicable health standards
- $1,407.26 for expenses incurred by the Tenants for mold testing and a building inspection
- $2,000.00 for moving expenses
- $3,000.00 for aggravated damages relating to the Landlord's negligence which impacted the Tenants' health

The Tenants pointed to a number of repair and maintenance issues at the property as the basis for seeking compensation for loss of use and quiet enjoyment, moving expenses and aggravated damages, but mold exposure was the primary issue of concern.

In summary, the Tenants submitted that the back deck was rotten and unsafe, the roof had been leaking, the house was infested with mold, and there were pests including

ants and rats. Although the Landlord paid for an ant extermination, and a temporary roof patch around a vent, and the deck boards were replaced, the Landlord did not address the moisture and mold issues. The Tenants were not able to use and enjoy the rental unit and they should be entitled to recover some of the rent they paid, equivalent to one month's rent or 40% of the rent they paid during the tenancy.

In addition to loss of use and enjoyment, the Tenants seeks aggravated damages from the Landlord. The Tenants submitted that they and their children felt the effects of mold exposure such as respiratory difficulty or always feeling like they had a cold or allergies. The Tenants noticed their symptoms would improve when they went away from the rental unit and recurred when they returned to the rental unit. The Tenant's doctor even ordered mold toxicity testing for the female Tenant.

As for moving expenses, this claim reflects a conservative estimate of the time it took for the Tenants to pack and move. The Tenant is self-employed, and loss of time equates to loss of income. The Tenants also spent money on truck rental, gas for the truck rental, food and beverages for their moving helpers, and taking items to the dump.

As for the mold testing, the Tenants saw and smelled mold and were of the belief the Landlord was not taking their complaints seriously and since they are not mold experts, they commissioned mold testing and a report to demonstrate there was a problem with moisture and mold growth.

As for the house inspection, the Tenants incurred this costs after they gave their notice to end tenancy. The Tenants explained that they had originally booked a house inspection with a view to possibly purchasing the house in the future. They were going to cancel the appointment but decided to follow through with it to support their position that the house was in need of major repairs and mold remediation.

The Landlord was of the position the rental unit did not have mold contamination as supported by the mold testing and report she had done in January 2025. Any excess moisture in the rental unit could be attributable to the Tenants' use of the rental unit and not ventilating excess moisture from daily activities. The Landlord did respond to complaints regarding ants, the roof leak and the deck in a timely manner. When the Tenant complained of mold on November 16, 2024 the Landlord asked the Tenant to tell her where the mold was located and the Tenant did not respond for two weeks, on November 28, 2024. The Landlord asked to see the Tenant's mold report on a number of occasions, but it was not provided. The Landlord is of the view the Tenants were looking for an excuse to end the tenancy since early on in the tenancy and the Landlord is not liable to compensate them for the amounts claimed. Also the Tenants did not provide medical evidence concerning the alleged health impacts from mold despite asserting that they were undergoing mold toxicity testing.

Security deposit and pet damage deposit

The Tenant's forwarding address was contained in the notice to end tenancy that was emailed to the Landlord's husband's email address on November 30, 2024. The Landlord filed her Application for Dispute Resolution on January 12, 2025.

The Tenant's legal counsel argued that the Landlord's monetary claim is frivolous, an abuse of process, and there was no pet damage. Therefore, the deposits should be doubled.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, except where another specific section of the Act applies, such as claims against or for return of a security deposit or pet damage deposit.

Sections 7 and 67 of the Act apply to the Landlord's claim for unpaid or loss of rent and the Tenant's claims for damages and loss. With those claims, it is before me to determine the following, as set out in greater detail in Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss, whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;

- the violation resulted in damages or loss for the party making the claim;

- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss did whatever was reasonable to minimize their damage or loss.

Is the Landlord entitled to a Monetary Order for unpaid or loss of rent for January 2025?

As the claimant, the Landlord bears the burden to prove an entitlement to compensation for unpaid or loss of rent.

This tenancy was to be for a fixed term, expiring in October 2025. However, it is undisputed that after raising a number of repair issues to the Landlord's attention, the

Landlord sent the Tenant a text message on November 16, 2024 that included the statement:

> "However, if you are unhappy with the home then you can give notice to end tenancy if you wish."

Following further text messages concerning mildew and mold, on November 28, 2024 the Landlord wrote the following statement, via text message:

> "As mentioned you can give notice if you feel it is necessary to do so, notice is required by the last day of month for a December 31st move out."

Based on the above communication, I accept that the Landlord communicated to the Tenants that they may end the tenancy by giving a one month notice, as is permissable for ending a month to month tenancy. In making this representation to the Tenants, I find the Landlord to be estopped from seeking compensaiton for breach of a fixed term.

The Tenants provided evidence that they sent a notice to end tenancy, via email on November 30, 2024. The email was successfully transmitted since the Landlord acknowledged that it was received; however, the Landlord argued that this notice was not received until much later, on December 30, 2024, because it was sent to the Landlord's husband's email address rather than the Landlord's email address that is listed on the tenancy agreement as the email address to use for service.

Both parties made submissions concerning the day the Landlord received or found the Tenant's notice to end tenancy.

Section 88(j) of the Act and section 43(1) of the Regulations permit a Tenant to send a document, including a notice to end tenancy, to their Landlord via email by using the "email address provided as an address for service by the person." [my emphasis added]

To comply with the requirements of section 88(j) and 43(1) the Tenant would have had to send their notice to end tenanncy to the email address listed on the tenancy agreement unless the Landlord rescinded consent to use that email address.

The Landlord's husband's email address is not listed on the tenancy agreement as the email address to use for service but it is an email address the Landlord's husband had given the Tenant, via text message, when they were in communication about roof repairs and replacement on the rental unit.

Section 71 of the Act gives me discretion and authority to deem a person sufficiently served even if they were not served in a manner that complies with the Act. Even if I were to deem the Landlord's husband's email address to be sufficient for giving notice, it is remains upon me to make a determination as to when it was received.

Secton 44 of the Regulations provides a deeming provision for service by email. It states that a record given or served by email in accordance with section 43 is deemed to be received on the third day after it is emailed, unless earlier received.

I do not see any evidence that points to the email sent on November 30, 2024 being received any sooner than the deeming provision of three days after sending. I was not provided a read receipt or a response to the Tenant's emailed notice that would point to the email being actually being received on November 30, 2024, which would be required to give one month's notice to end the tenancy on December 31, 2024.

I am also highly skeptical that the Landlord did not receive the email notice to end tenancy until December 30, 2024 and that she had no idea the Tenants were going to end the tenancy at the end of December 2024, as she claims, considering the Landlord's husband and the Tenant had a text message exchaenges on November 30, 2024 whereby the Landlord's husband asked the Tenant if he was going to be emailing their notice to end tenancy and the Tenant responded that he would be doing it that day. The Landlord's own evidence and written submissions documents numerous text exchanges beween the Tenant and the Landlord's husband that demostrate the text messages were used to communicate frequently about the rental unit and the text messages were successfully delivered. I have no reason to believe the Tenant's text messages sent to the Landlord's husband on November 30, 2024 was not received by the Landlord's husband. Therefore, I am of the view the Landlord was aware the notice to end tenancy was coming.

Also of consideration is the text message exchange of December 30, 2024. The Tenant messaged the Landlord to ask about returning the keys and the return of the deposits "tomorrow". The Landlord's response is "Have you moved out completely?" and indicated the earliest they could meet is January 3, 2025. This is not a response that I would expect from someone claiming to have no foreknowledge that the Tenants were moving out. There is no indication of surprise or shock and using the word "completely" gives me the impression the Landlord was aware the Tenants were moving out that month.

Considering all of the above, I am the view the Landlord did receive the Tenant's email of November 30, 2024 through her husband, who had been very involved in communicaitons with the Tenant conerning the rental unit throughout the tenancy, and I deem the Landlord to have received the Tenant's notice to end tenancy on December 3, 2024 in keeping with section 71 of the Act and section 44 of the Regulations.

Having deemed the Landlord to have received the Tenant's notice to end tenancy on December 3, 2024, I find the Tenant's notice to end the tenancy effective on December 31, 2024 was received late.

Although the Landlord received the Tenant's notice late, the Landlord remains obligated to to whaever is reasonable to mitigate or minimize losses to establish entitlement to compensation under section 7 of the Act.

The Landlord testified that she advertised the rental unit for rent after she had a mold inspection performed in January 2025 and being satisfied by those test results that the unit could be re-rented. The Landlord submitted a mold testing report indicating an air sample was taken inside on the main floor of the rental unit on January 8, 2025 and the report was prepared on January 13, 2025.

Considering the Landlord had received multiple complaints from the Tenants concerning water leaks, a musty smell, issues with rot and drainage and what they suspected to be mold and mildew in the rental unit, I consider the Landlord's decision to conduct a mold test to be reasonable and prudent to ensure compliance with health and safety standards. However, I find the Landlord delayed in having the testing conducted. The Tenants had started making complaints of water ingress and a musty smell and concerns of mold in October 2024. The Landlord waited until January 2025 to do mold testing. Had the Landlord acted upon the Tenant's concerns and commissioned a mold test in a more timely manner, the lanldrod would have avoided the delay in advertising the rental unit for rent. I see undisputed evidence the Landlord asked to see the Tenant's mold report; however, it is not upon a Tenant's responsbility to test a unit for mold for the Landlord. Since the Landlord decided to delay her own testing, I find the Landlord must bear the consenquences of that decision. Therefore, I find I am not saisfied the Landlord took reasonable action to mitigate losses and I deny the Landlord's claim for loss of rent, without leave to reapply.

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

Having dismissed the Landlord's claim, I deny the Landlord's request for recovery of the filing fee from the Tenants.

Are the Tenants entitled to compensation for damages or loss under the Act, regulations or tenancy agreement?

As the applicants, the Tenants bear the burden to prove an entitlement to the compensation they have claimed against the Landlord.

The Tenants identified a number of issues with the condition of the rental unit that gave rise to their losses.

It is undisputed that there was an issue with rotting boards on the rear deck. The Tenants and the Landlord and the Landlord's husband had communicated with respect to the issue via text message. The text messages show the issue was reported October 15, 2024 and by October 30, 2024 new deck boards were installed by the Tenants. Certainly this is an issue that the Landlord should have known or ought to have known about as it fairly obvious when deck boards are rotten and the tenancy had just started. It is unclear to me why the Landlord's did not address this issue before the Tenant's

moved in or complained of it. In any event, I am satisfied that the rotting deck boards caused the Tenants to suffer a loss of use for 15 days.

Upon review of photographs, I see that the repaired section is less than one-half the size of the deck and away from the rear door to the house. The deck is a very low deck only inches off the ground, that was fairly small and provides access to the rear of the house and a storage area. I find its disrepair for 15 days to be a relatevely small loss to the value of the tenancy. I find an appropriate award to be in the range of 5% of the monthly rent for one-half of a month, or $80.00 [$3,800.00 x 5% x 50%].

As to the ant issue, the Tenant and the Landlord communicated about this issue via text message as well. I see the Tenant raised the issue on October 24, 2024 to which the Landlord suggested a home remedy. When the home remedy was unsatisfactory, the Tenant raised the issue again on October 27, 2024 and the Landlord responded by booking an exteriminator the following day. While I appreciate that have ants crawling around is unsettling, pests are oppotunitic creatures and there is no evidence to suggest the Landlord knew of this issue and did nothing about it. I find the Landlord's response to to be timely and reasonable. Therefore, I do not hold the Landlord liable to compensate the Tenants for ants entering the rental unit.

The Tenants raised an issue with respect to the presence of rats or rat feces. This appears to be in a storage area and the Landlord submitted that this storage area was not an area provided to the tenatns for their use. I find the evidence does not clearly demonstrate that this was an area the tenans were entitled to use and could not use. Therefore, I do not give further consideration of this issue.

By far, the most significant issue under dispute revolved around the issue of mildew or mold contamination in the rental unit.

Both parties provided mold testing reports for me to consider. The Tenants provided a mold report with respect to testing performed on November 22, 2024. The Landlord provided a mold report with respect to testing performed on January 8, 2025. The Landlord had also provided a mold report to the Tenants, that was prepared in February 2020; however, that mold report was not provided to me.

The mold reports that are before me show very different results. For purposes of this dispute, what is relevant is whether the rental unit had mold contamination during the tenancy. Only the Tenants had a mold report reflects samples taken during the tenancy. The Landlord has mold reports from years prior to the start of the tenancy and one done shortly after the tenancy ended. Given the timing of the various mold reports, I find the Tenant's report to be the better evidence to demonstrate the presence of mold during the tenancy.

The Tenant's mold report showed two types of air borne fungi that exceeded the fresh air sample taken outside in both the main living area and in the basement:

- Aspergillus/Penicillium-like and
- Cladosporium.

The Landlord's mold testing showed that there were no types of fungi detected in the main living area that exceeded exterior levels. Interestingly, there were no results for Penicillium/Aspergillus being present inside or outside of the home, whereas the Tenant's testing did. Neither party called any experts to explain such a discrepancy, especially its presence or lack of presence outside. However, I have no reason to reject the findings of the Tenant's mold testing and I accept that this type of fungi was inside the home and that it exceeded exterior levels by a significant amount.

The Tenant's mold report included moisture readings whereas the Landlord's did not. The results of the moisture reading showed that the bedroom ceiling plaster had 100% moisuture and the attic had 25% moisture and a statement that thse levels are ripe for fungi growth. I accept the Tenant's mold report to be accurate as it is consistent with findings in the home inspection report that was commissioned by the Tenants where areas of wetness and moisture had breached the building invelope. It is also consistent with the Tenant's complaints to the Landlord concerning the smell of mildew and what appeared to be mold formation in the rental unit.

I also find the mold testing commissioned by the Tenants to be superior than the testing commissioned by the Landlord considering the Tenants had the lower level rec room of the rental unit tested whereas the Landlord did not.

While I accept the Landlord's argument that excessive moisture may be introduced into a home by occupants failing to ventilate moisture, the Tenant's mold testing included moisutre readings done by the professional that pointed to the moist attic and wet ceiling as being the areas of concern. This, I find, can be linked to the roof leak(s), on a balance of probabilities.

On October 20, 2024 and the Tenant had notified the Landlord that the water leak was seen on the ceiing of the bedroom. Accordingly, I find the Landlord knew or ought to have known that the water breached the building envelope and had saturated building materials in the attic. The roof vent was patched on October 25, 2024; however, I did not hear of the Landlords having the attic materials, such as wood and insulation, or the ceiling plaster, dried and treated with antimicrobial which is typical when there is water damage, to prevent the growth of mold. Patching the roof was done fairly quicly; however, I find the Landlord's lack of action to deal with the wet building materials caused or at least significantly contributed to the fungi growth.

On October 27, 2024 the Tenant messaged the Landlord to inform the Landlord of water pooling on the property, and water running down the foundation, excess moisture in the basement and using a dehudifyer that did not seem to be helping. The Landlord attended the property on October 29, 2024 and/or October 30, 2024. There was water staining and mold on a baseboard in the basement bathroom that the Landlord

observed but the parties were in disagreement as to the source of the water staining and mold.

The Tenant messages the Landlord again on November 16, 2024 to seek a mutual agreement to end to the tenancy. The Tenant complains of finding mold and of their family feeling sick including respiratory issues. The Landlord asks where the mold was found, as she is unaware of mold anywhere other than in the basement bathroom, so that she can address the issue, but the Landlord also indicates in the same message that the Tenants may give a notice to end tenancy.

The Tenant does not respond until November 28, 2024 saying the mold is in a bedroom and upstairs bathroom and that the whole house smells of mold and their moisture readers are showing humidity of 73%. The Tenant acknowledges the Landlord wants to rectify the mold issue but takes the position that walls would have to come down, further exposing the Tenants to more mold.

On November 28, 2024, the Landlord also informs the Tenant that she has mold testing every 3 to 5 years and provides the Tenant with a mold test report she had done in February 2020. The Landlord again gives the Tenants the option of giving a month's notice to end tenancy.

The Tenant informs the Landlord's husband that they had a mold test done and it shows mold contamination. The Tenants proceed to give their notice to end tenancy on November 30, 2024, to the Landlord's husband email address. The Landlord and her husband ask to see the Tenant's mold report multiple times; however, the Tenants do not provide it and the Landlord stops asking.

Although I have found the Landlord's failed to address the water water damage from the roof leak, and that likely caused or significantly contributed to the mold contamination, I am of the view that both parties failed to act reasonably to minimize damages and loss.

For instance, the Tenant complained of mold on November 16, 2024 yet does not respond to the landlrod's questions about the location of the mold for two weeks. The Tenants also decided to get a mold test performed on November 22, 2024 and did not request that the Landlord have another one done or inform the Landlord they were doing one until after they already had done it. When the mold test results came in on November 28, 2024 the Tenant informed the Landlord of the locations of the mold. After that the landlrod and her husband asked to see their resport a number of times but the Tenants did not provide it until they included it as evidence for this hearing. This lack of communication on part of the Tenants causes me to consider that the Landlord may have acted sooner had the Tenants remained communicative with the Landlord about the mold issue they were experiencing.

As for the Landlord's responsibility to maintain the property, section 32 of the Act places the burden to maintain a property upon the Landlord. After the Tenant complained to the Landlord on November 16, 2024 of an apparent mold smell as soon as one walks in

the door, and the Tenant's lack of further response to the Landlord's questions, I find a reasonably prudent Landlord would have taken it upon themselves to undertake further investigation and not merely rely on the Tenant to convey more information.

All of the above considered, I am satisfied, on a balance of probabilities, that the rental unit was contaminated with fungi as a result of the Landlord's failure to adequately repair and maintain the property, especially after known roof leak(s) and complaints of a mold smell from the Tenant. I am satisfied the Tenants suffered from loss of enjoyment of the rental unit as a result of the smell and possible health effects of the excessive fungi in the environment. I find the Tenant's request for a 40% rent abatement to be reasonable for the mold exposure; however, I limit their award as follows.

I limit the Tenant's award for compenation to the time period starting November 16, 2024 until December 31, 2024 being the last day they paid rent for the rental unit. I reduce this amount by a further 25% to reflect the Tenant's failure to co-operate with the Landlord's requests for more information about where the mold can be seen and the Tenant's mold test results. Even if the Tenants did not want to provide the entire mold report to the Landlord, they could have at least described the type of fungi that was found to be excessive and their respective sport counts and locations to mitigate their damage. I calculate the Tenant's award for loss of value of the tenancy due to mold to be $1,710.00 [($3,800.00 x 1.5 months x 40%) - 25%].

As for the Tenant's claim to recover the cost for mold testing, I dismiss this request, without leave to reapply. I find the Tenants did not mitigate damages with respect to the mold testing costs. They did not request the Landlord perform one. Nor, did the Tenants make an application to the Residential Tenancy Branch to seek an order for the Landlord to perform one or for authorization to have one done and reimbursed by the Landlord.

As for the Tenants' claim for recovery of the building inspection report, I find there to be no basis under the Act for the Tenants to recover that cost. Considering it was done after the Tenants gave their notice to end tenancy, I am of the view the cost was incurred to gather evidence. Costs to obtain, gather, prepare or serve evidence is not recoverable from the other party under the Act. Therefore, I dismiss this request without leave to reapply.

As for the Tenant's request for moving costs, I dismiss this request without leave. The Tenants had requested a Mutual Agreement to End Tenancy shortly after the tenancy started. The Tenants came to their own conclusion that walls would have to be taken down to rectify mold issues which I do not see sufficient evidence to support. The Landlord was willing to release the Tenants from their fixed term agreement by permitting the Tenants to end the tenancy with a month's notice if they so chose to do. The Tenants chose to do so rather than occupy the rental unit for the remainder of the fixed term and during repairs, which is their right to do; however, it does not create a liability on part of the Landlord to pay for the moving costs.

With respect to the Tenant's cliam for aggravated damages, which primarily focused on the alleged health effects from mold, I find there is insufficient evidence to support the Tenants suffered serious health consenquences. The Tenant said she was going to undergo mold toxicity testing but the results were not provided. While the Tenant's children had respiratory issues, I am unable to conclude these are the result of living in the rental unit given the lack of medical evidence.

In summary, I award the Tenant's compenastion for loss of use and enjoyment of the rental unit in the sum of $1,790.00 [$80.00 rear deck + $1,710.00 mold contimation].

Are the Tenants entitled to recovery of the filing fee?

Given the Tenant's partial success, I award the Tenants partial recovery of the filing fee they paid, or $50.00, from the Landlord under section 72 of the Act.

Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit? Are the Tenants entitled to return of the security deposit and pet damage deposit? Should the deposits be doubled?

Section 38(1) of the Act provides that the Landlord has 15 days, from the date the tenancy ends or the Tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit and pet damage deposit, get the Tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the Landlord violates section 38(1) the Landlord must pay the Tenant double the security deposit.

The Tenants included their forwarding address on their notice to end tenancy that was emailed on November 30, 2024 and deemed to be received by the Landlord on December 3, 2024. The tenancy ended on December 31, 2024. The Landlord filed an Application for Dispute Resolution claiming against the deposits on January 12, 2025. As such, I am satisfied the Landlord met her 15 day deadline and complied with section 38(1) of the Act.

I have dismissed the Landlord's claims against the Tenants and their deposits. Nor did the Tenants extinguished their right to their return by failing to participate in a move-in or move-out inspection with the Landlord. Therefore, I find the Landlord has no basis to retain the Tenant's deposits.

Although I have dismissed the Landlord's claims, I do not see the Landlord's claims as being frivolous or an abuse of process. I am satisfied the Landlord was of the position she had a basis for making a claim for unpaid rent due to an insufficient notice to end tenancy. Therefore, I do not double the deposits.

I order the Landlord to return the Tenant's security deposit and pet damage deposit to them, plus accrued interest that I calculate to be $24.48 and $20.83 respectively.

Conclusion

The Landlord's claims against the Tenants have been dismissed, in their entirety, without leave to reapply.

The Tenants were partially successful in their claims and are provided a Monetary Order calculated as seen below.

Monetary Issue	Granted Amount
a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	$1,790.00
Award for partial recovery of the filing fee under section 72 of the Act	$50.00
Return of the security deposit and pet damage deposit	$3,800.00
Accrued interest on security deposit and pet damage deposit	24.48 20.83
Total Amount	**$5,685.31**

The Tenants are provided with this Monetary Order to serve and enforce upon the Landlord. Should the Landlord fail to comply with the Monetary Order, it may be enforced in the Provincial Court of British Columbia (Small Claims).

The balance of the Tenant's claims against the Landlord are dismissed without leave to reapply.

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

Dated: June 19, 2025

Residential Tenancy Branch