DECISION

Introduction

This hearing dealt with cross applications including:

The tenant's July 6, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The tenants' July 31, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

As well as the landlord's August 14, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- 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
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Service of Notice and Evidence

The parties accepted service of Notice and Evidence related to respective claims.

Preliminary Matters

I dismissed the tenants' claims related to validity of the 10-Day and One-Month Notices to End Tenancy because the tenants vacated the residential property on August 3, 2023. Likewise, I also dismissed the tenants' requests for the Landlord to Comply as well as the claims to set Conditions on Rights to Entry. I made these amendments under RTB Rule of Procedure 7.7 because the tenancy has ended. I also consolidated the tenants' two separate claims for Monetary Compensation into one claim.

I joined the landlord's application with the tenants' two applications, under RTB Rule of Procedure 2.10, because I found them substantively similar.

Issue(s) to be Decided

Tenants

- Are the tenants entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
- Are the tenants authorized to recover the filing fee for this application from the landlord under section 72 of the Act

Landlords

- Are the landlords entitled to a Monetary Order for damage to the rental unit or common areas?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
- Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A copy of the written tenancy agreement was provided. The tenancy started November 1, 2022, and was to run for a 12-month fixed term. Monthly rent was set at $1,800.00 excluding utilities and a $900.00 security deposit was collected. The tenants vacated on August 3, 2023, and the security deposit was initially returned in full. However, the landlords advised during the hearing that they "cancelled" the cheque used for this return because it had not yet been cashed by the tenants. The parties agreed that the landlords are entitled to a $50.00 charge for cleaning after the tenancy ended.

The residential property contains two rental units. The tenants occupied the lower unit. The parties agreed that landlord G.D. occupied the upper unit from April 2023 onward. The parties agreed that the tenants were issued a Section 47 Notice to End Tenancy on July 28, 2023, that it was served to the door, and that it was issued for reasons of:

Tenant or person permitted on the property by the tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
- *Put the landlord's property at significant risk*

The tenants stated that the vacated shortly after receiving this Notice because they were fearful of the landlords. Both parties provided extensive evidence regarding the lead up to this Notice being issued. When asked to clarify what exact sections of the Act, regulations or tenancy agreement the tenants violated and how, the landlord declared that the tenants violated the sections shown in the Notice.

The tenants stated that they vacated because the landlord G.D. frequently invaded their privacy. The tenants attached a bike lock to a section of the property to prevent the landlord from being able to view inside the rental unit. The landlords disputed this accusation and claimed that the lock blocked the landlord's own property. They landlords submitted a claim for compensation for the costs of having this bike lock cut on July 20, 2023, for $105.00. An invoice was provided. Of note, is that both parties described the lock as related to their own private entrance while the tenancy was ongoing. The landlord stated that a video was provided of the yard, however, only audio was accessible from this file.

The landlords claimed $800.00 in pain and suffering related to this event and others including concerns with the tenants' use of cannabis, late night noise, and interference. The landlord documented these concerns in a letter dated July 19, 2023. The landlords also sent a letter on July 25, 2023, reminding the tenants of their entitlement to park two cars under the tenancy agreement. Both parties submitted evidence of multiple other written and verbal communications, however, these were not specifically identified during the hearing.

The tenants claimed $11,960.00 for monetary loss against the landlords for the following reasons, including:

- The $400.00 increase in the monthly rate of rent for their new unit, as calculated by 6 months of the $1,800.00 rental rate = $10,800
- $60.00 for loss of use of the driveway during a 1.5 month repair project that was to have taken two weeks
- $1,000.00 for pain and suffering
- $100.00 return of filing fee

- $120.91 for a UHaul for moving to new rental unit, with receipt provided

Both parties provided proof of text messages with the other. Conflict on temperature management between the two rental unit was a common theme, including repeated threats from the landlord, including threats to not adjust heat when heat was on as well as threats to turn off the AC. The landlords stated at one point, that they were so mad because they felt the tenants had taken advantage of them.

The landlord indicated that there are two separate hydro meters for the rental unit, but only one Fortis meter. The landlord confirmed that all utility accounts are in their name because there is only natural gas boiler/hot water tank for the two rental units. The parties referred to the tenancy agreement addendum where the landlords' terms for utility billing are outlined:

> "Utilities will be shared by tenants of both floors. The split in costs will be divided equally dependent on the number of people living in the house plus the suite size"

Challenges arose after the previous tenants in the upper unit vacated and the landlord G.D. began residing in the upper unit from April 2023. This resulted in an increase to the named tenants' utility bills due to the change in occupant numbers. Utilities were previously shared equally, but the tenants then became primarily responsible for utilities from April 2023 onwards since they were a family of 4 and the landlord was only 1 person. According to the landlord, this meant that the landlord consumed fewer utilities than the tenants.

The tenants did not dispute this billing system, they stated that they just wanted proof of actual utility bills so that they could confirm what was being charged and paid. The landlord issued a 10-Day Notice to End Tenancy on July 1, 2023, for the tenants' alleged failure to pay $222.81 in utility charges following a written demand on June 2, 2023. Both parties referred to a May 1, 2023, letter from the landlord, confirming that the named tenants' share of Fortis billing will be %62 and %65 for hydro billing.

The tenants requested repayment of $519.31 for overpayment of utilities paid to the landlord because the tenants claimed they paid for utilities consumed in a garage on the property despite the garage being used only by the landlords. The landlords disputed this claim and stated that they gave the tenants an extra discount on monthly utility charges once the tenants raised these concerns. The parties agreed that the tenants paid utilities for the month of August 2023 despite only residing in the rental unit for 3 days. The landlords argued that a separate $200.00 utility charge however remained unpaid.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As shown in RTB Rule of Procedure 6.6, the applicant is responsible for establishing their claim for compensation on the balance of probabilities.

I find that both parties uploaded extensive evidence, however, they only referred to a small portion of it during the hearing. In accordance with RTB Rule of Procedure 7.4, I only considered the evidence directly identified during the hearing, while drafting this report.

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

The parties agreed that the tenants accepted the landlords' $50.00 charge for cleaning. I note that cleaning is not considered "damage" under the Act. I order that the landlords are entitled to $50.00 from the tenants under section 67 of the Act because the tenants agreed to this charge.

Is either party entitled to a monetary order for compensation for loss or other monies owed?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the applicant must satisfy each of the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed

The landlords claimed $1,255.00 in compensations for:

- the costs of a locksmith $105.00,
- the $50.00 cleaning fee that was already awarded,
- the $100.00 filing fee
- And $800.00 in pain and suffering

Because the cleaning fee was already awarded, and the filing fee is dealt with separately, I will address the landlords' claims for the locksmith and pain and suffering.

Regarding the locksmith, the parties agreed that the lock was removed while the tenants remained in possession of the rental unit. Consequently, I dismiss the landlords' claim for compensation due to their failure to minimize costs. I do not give leave to the landlord to reapply.

Regarding the landlords' claim for pain and suffering, I note that landlords complained about "being taken advantage of" but they failed to translate this concern into the legal framework of the Act, regulations, and tenancy agreement. I dismiss the claim and I do not give leave to the landlord to reapply.

Regarding the tenants' claim for compensation for loss or other monies owed in the amounts of $519.31 and $11,960.00, Residential Tenancy Policy Guideline 6, states that "a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected." This protection is written in section 28 of the Act.

Based on my review of the evidence and testimony received during the hearing, I find that the tenants established on the balance of probabilities that the landlords repeatedly interfered with their right to quiet enjoyment and freedom from unreasonable disturbance. I reviewed the proof of text messages provided and found the landlord's repeated threats to deliberately interfere with the tenant's heating and cooling of their rental unit especially problematic.

I award $1,000.00 in compensation to the tenants for the 4 months they lost quiet enjoyment between April ($250.00), May ($250.00), June ($250.00), and July 2023 ($250.00), while landlord G.D. resided in the upper unit. I award this compensation in response to the tenants' claims for compensation for pain and suffering.

The purpose of compensation according to RTB Policy Guideline 16, "is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred." Preventing the tenants' from managing the temperature in their rental unit, is also a violation of the landlord's requirement under 32 (1)(a) of the Act to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Regarding the tenants claim for repayment of $519.31 for utilities paid, I find that the tenants failed to establish their entitlement to this amount on the balance of probabilities. Both parties submitted extensive evidence regarding the matter of utility billing, however, neither party submitted a clear and comprehensive summary of payments requested and payment submitted so that I could easily evaluate the tenants' claims against the landlord's dispute of the claim.

As required by RTB Rule of Procedure 7.4, evidence must be presented for the Arbitrator to consider, and then under RTB Rule of Procedure 7.17, the Arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence. I mention this because, even though I found that the landlords interfered with the tenants' entitlement to utilities, I do not find that the landlord violated that Act, Regulations or

Tenancy Agreement regarding their entitlement to collect these payments. I therefore dismiss the tenants' claim for repayment of utilities. I do not give leave to reapply.

Regarding the tenants' other assorted claims for compensation, including the cost of increased rent for their new place, moving fees, and loss of the driveway space, I find that the tenants failed to mitigate their own losses regarding these claims by choosing to move prior to appearing before the RTB to receive a determination of the validity of the Notice to End Tenancy they received. I therefore dismiss the tenants' assorted claims for compensation. I do not give leave to reapply.

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

The parties agreed that a $900.00 security deposit was collected. The parties also agreed that this deposit has not yet been returned because the landlords cancelled the return check that was originally sent to the tenants. I find that the tenants' deposit was valued at $913.08 on the day of the September 29, 2023, hearing according to the online RTB Interest Calculator.

Because the landlords have not established a claim for compensation for damages against this security deposit, I order that the landlords must return double the security deposit to the tenants in accordance with 38(6) of the Act and RTB Policy Guideline 17.

I order that the landlords must pay to the tenants $1,813.08 as shown below:

$900.00 x 2 = $1,800.00 + $13.08 in interest = $1,813.08

I do not subtract the $50.00 award prior to doubling the return of the deposit because compensation for cleaning is not considered "damage" under the Act.

Recovery of filing fee for this application from the tenant?

The landlords were unsuccessful in their claim. I dismiss their claim to recover the filing fee. Because the tenants were partially successful in their claim, I order that they recover one $100.00 filing fee from the landlords under section 72 of the Act.

Conclusion

I dismiss the landlords' claim for compensation for monetary loss or other money owed.

I also dismiss the landlords' claims to recover the filing fee.

I award the tenants a $2,863.08 Monetary Order under the following terms:

Compensation for loss of Quiet Enjoyment	$1,000.00
Return of double the security deposit	$1,813.08
Recovery of Filing Fee from landlords	$100.00
Total Successful Claim from Tenants	$2,913.08
Minus Landlords' Recovery of Cleaning Fee	-$50.00
Total Monetary Order to Tenants	$2,863.08

The tenants must serve the landlord(s) with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: October 26, 2023

Residential Tenancy Branch