



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for a monetary order in the amount of \$1,995 for damages, and the filing fee. The tenant applied for the return of their \$825 security deposit, \$825 pet damage deposit, and for the filing fee.

The parties listed on the cover page of this decision attended the hearing and were affirmed. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing and confirmed that they understood that the decision would be emailed to both parties.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Is either party entitled to their filing fee?

Background and Evidence

The tenancy began in 2016. A copy of the tenancy agreement was submitted in evidence. The most recent fixed-term tenancy was signed starting October 1, 2021 and was scheduled to convert to a month-to-month tenancy after September 30, 2022.

The tenant paid a security deposit of \$825 and a pet damage deposit of \$825, which the landlord continues to hold. I will refer to the deposits as \$1,650 in combined deposits for the remainder of this decision (Combined Deposits).

The parties confirmed that on October 6, 2022, the tenant provided their written forwarding address to the landlord. The landlord filed their claim on October 17, 2022, which is within 15 days of receiving the October 6, 2022, written forwarding address.

The landlord's claim of \$1,995 is comprised of the \$100 filing fee and the following:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	KK cleaning	Cleaning the apartment	\$308.70
#2	Hourigan's Carpets & Linos LTD	Carpet and underlay replace	\$1461.46
#3	Vagabond Ventures	cat urine smell destroyer	\$22.34
#4	U haul	Removal of carpet	\$32.28
#5	U haul	0.79 per kilometre	\$25.28
#6	Labor for three people to strip the carpet	\$15 ph	\$45

Regarding item 1, the outgoing Condition Inspection Report (CIR) was completed on October 4, 2022. The tenant failed to sign the CIR. Many photos were reviewed including stains on the carpet, cat hair in the fridge, storage closet dirty with a spatula left inside, dirty washing machines with stickers from clothing left inside, dirt and junk left under the sink, mould and cat hair in washer, baseboards with cat hair and dirty inside, etc.

The tenant's response to item 1 was that they have photos, but they were not submitted in evidence.

In terms of the carpets, due to the age of the carpets, they would have reached 100% depreciation as the useful life of carpets is 10 years, which has passed.

The issue of extinguishment by failing to sign the outgoing CIR will be addressed below.

Analysis

Based on the documentary evidence presented and the testimony of the parties, and on the balance of probabilities, I find the following.

Extinguishment

Section 35 of the Act requires that the landlord and tenant to sign the CIR, which the tenant failed to do. Section 36(1) of the Act applies and states:

Consequences for tenant and landlord if report requirements not met

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) **the tenant has not participated on either occasion.**

I find that by failing to sign the outgoing CIR, the tenant failed to participate in the outgoing CIR and extinguished their right to the Combined Deposits. The outgoing CIR has an area where the tenant can disagree with the contents of the CIR and did not sign any portion of the outgoing CIR.

Therefore, I find the tenant is not entitled to any of the \$1,650 in combined deposits. Therefore, the tenant's claim is dismissed without leave to reapply, due to extinguishment.

Landlord's claim

As the landlord's claim is for \$1,895 before the filing fee and the carpets were 100% depreciated, I find I only need to determine item 1, which is for cleaning costs in the amount of \$308.70, which is less than the \$1,650 Combined Deposits the landlord is now entitled to retain due to extinguishment.

I have reviewed the photo evidence and I find the tenant breached section 37 of the Act, which requires the rental unit to be left in a reasonably clean condition, which I find the tenant failed to do. Therefore, as I find \$308.70 is a reasonable cost for cleaning, the landlord is granted that amount, which I find is more than covered by the Combined Deposits the landlord is entitled to retain.

The filing fee is also covered by the Combined Deposits and therefore, I decline to award a monetary order in this matter.

Conclusion

The tenant's claim is dismissed due to extinguishment.

The landlords' claim has some merit; however, the Combined Deposits more than cover any successful claim and therefore I find there is no need for a monetary order under the Act.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 27, 2023

Residential Tenancy Branch