



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

The Landlord filed an Application for dispute resolution on June 12, 2023, seeking compensation for damage in the rental unit (\$300), and recovery of the Application filing fee.

The Tenant filed an Application on August 2, 2023 for the return of their security deposit. With the Landlord's Application already in place, the Tenant's Application was crossed to that of the Landlord.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the "Act") on December 19, 2023. Both the Landlord and the Tenant attended the hearing. Each party stated they received the other's Notice of Dispute Resolution Proceeding, as well as the evidence.

Issues to be Decided

- Is the Landlord entitled to compensation for damage in the rental unit?
- Is the Landlord entitled to all/part of the security deposit?
- Is the Landlord entitled to recovery of the filing fee for their Application?
- Is the Tenant entitled to a return of the security deposit?

Background and Evidence

The Landlord and the Tenant each provided a copy of the tenancy agreement that was in place. The tenancy started on June 1, 2019 on a month-to-month basis. The monthly rent amount was \$600. The Tenant paid a security deposit of \$300.

The Tenant informed the Landlord that they wanted to end the tenancy, and the final day of the tenancy was March 31, 2023. This was the final move-out date, and the Landlord and Tenant met together in the rental unit on March 31, 2023. This was after a "pre-move out meeting" on March 15.

The Landlord completed a final move-out condition report at the time of the inspection meeting. The report lists “1 blind paint/drywall damage in dining room and living room”

While the document shows the Tenant signed as agreeing to the full deduction of the security deposit amount, the Tenant made it clear in the hearing that they did not intend to sign in this space, instead their signature should appear below to sign-off that the inspection process was complete. The Tenant provided a forwarding address to the Landlord in this document at that time.

In the hearing, the Tenant specified with respect to alleged damage that it could be attributed to normal wear and tear in the rental unit over time. The blinds were old with sun damage at the time of the start of the tenancy. There was a downspout in the rental unit that caused or contributed to wall damage such as the Landlord described. The Tenant listed the walls as being in a bad condition at the start of the tenancy, and they would mention this regularly to the Landlord during the tenancy, with no Landlord follow-up.

As stated by the Landlord, the Tenant agreed to the deduction, as recorded in the report. The Landlord stated they were being frugal in determining this amount of compensation from the Tenant. There was extensive damage in the living room as shown in the pictures the Landlord provided for this hearing. The Landlord stated they had no record of complaints re: the state of things in the rental unit from the Tenant.

In the Landlord’s record is a work-order invoice for the work completed, equal to \$300 for repairs, including parts. The Landlord included 5 images showing wall damage. In the hearing the Tenant said they made repairs on the walls before they moved out from the rental unit.

The Tenant pointed to the Landlord’s obligation to apply for compensation involving the deposit within 15 days of the end of the tenancy. As well, the Tenant pointed to the life cycle of items involved with the Landlord’s claim: that is 10 years for venetian blinds, and 4 years for interior paint.

Analysis

The following sections of the *Act* apply to this situation:

- s. 37: when a tenant vacates, a tenancy must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

- s. 38(1): 15 days after the end of the tenancy, or a tenant providing a forwarding address (whichever is later), a landlord must either repay the deposit or make an application for dispute resolution claiming against the deposit
- s. 38(6): if a landlord does not comply with s. 38(1), they may not claim against any deposit, and must pay a tenant double the amount of each deposit

Specific to the fact scenario in this tenancy, I find as follows:

- the tenancy ended on March 31, 2023, and the Tenant provided their forwarding address to the Landlord at that time
- the Landlord did not apply for compensation within the 15-day timeline, not until June 12, 2023
- the Tenant filing a separate direct request proceeding for the return of the security deposit does not supplant or otherwise interrupt the 15-day timeline in place in s. 38 of the *Act*
- the Landlord did not comply with s. 38(1); therefore, s. 38(6) applies in this situation, and the Landlord must pay the Tenant double the amount of the security deposit
- I accept the Tenant's submission that they signed the form in the wrong spot; therefore, I find they did not agree to a full deduction of the security deposit amount by the Landlord. This is borne out by the Tenant making a separate different application for the return of the deposit (that application was dismissed with leave to reapply).
- as shown in the move-in condition inspection report, I find the walls were not in pristine condition at the start of the tenancy – this is significant given that the Landlord's issue with damage in the unit focuses on walls
- the condition inspection for the end of tenancy notes "same" throughout the report – given that other blinds in the rental unit are noted to be bent, with no indication of the age of said blinds, I find it more likely than not that the blinds in question were not new/undamaged at the start of the tenancy – I find the Tenant credible on this point as well, given the numerous issues in place at the start of the tenancy.

In summary, I dismiss the Landlord's claim for damage in the rental unit. This is chiefly due to the number of issues noted in the move-in condition inspection report as shown in the

evidence. The final report notes “same” throughout; therefore, it is difficult to apportion damage in the rental unit to the actions/negligence of the Tenant.

I find the Landlord must pay to the Tenant the amount of \$600 – this is double the security deposit amount of \$300, as per s. 38(6) of the *Act*.

I dismiss the Landlord’s Application in full without leave to reapply. The Landlord receives no recovery of the Application filing fee.

Conclusion

I dismiss the Landlord’s Application in full, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of \$600.

I provide the Tenant with this Monetary Order in the above terms and the Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 20, 2023

Residential Tenancy Branch