



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord filed an Application for dispute resolution on May 5, 2023, seeking compensation for damage in the rental unit (\$125), monetary loss/other money owed(\$125), and recovery of the Application filing fee. The Landlord amended the Application on May 18, changing these amounts under each heading to \$800 each.

The Tenant filed an Application on July 27, 2023 for the return of their security deposit, and recovery of the Application filing fee. 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 7, 2023. Both the Landlord and the Tenant attended the hearing. The Tenant acknowledged service of the Landlord's initial Notice of Dispute Resolution Proceeding and evidence, as well as the amendment. The Landlord acknowledged service of the Tenant's Notice of Dispute Resolution Proceeding and evidence.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for damage in the rental unit, and/or monetary loss/other money owed?
- Is the Landlord entitled to recovery of the filing fee for their Application?
- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to recovery of the filing fee for their Application?

Background and Evidence

The Tenant provided a copy of the tenancy agreement that they had in place with the Landlord. The tenancy started on October 1, 2021 on a month-to-month basis. The monthly rent amount was \$2,300. The agreement shows that the Tenant, along with another tenant listed on the agreement, paid a security deposit of \$1,150, and a pet damage deposit of \$575.

In the hearing, the Tenant presented that they did not have a meeting at the start of the tenancy together with the Landlord to inspect the condition of the rental unit.

The tenancy ended on January 6, 2023 when the Tenant handed the new key to the following resident. The Tenant submitted in the hearing that they did not have a final condition inspection meeting in the rental unit with the Landlord. The Landlord confirmed that no meeting like this took place at the end of the tenancy, as stated in their written submission: “. . . [the Landlord] didn’t do final inspection when [the Tenant] left.”

The record shows that the Tenant provided a forwarding address to the Landlord on January 24, with a complete form showing this information, signed, and dated by the Tenant.

The Tenant described their roommate moving out two weeks prior to January 6. The Landlord returned the amount of \$575 to the roommate when that roommate departed. The Tenant submits this was one-half the amount of the security deposit paid at the start of the tenancy.

The Landlord stated this \$575 amount was the return of the pet damage deposit to the roommate. Of the total \$1,150 security deposit amount that remained, the Landlord retained \$125 for carpet cleaning, and returned the remaining amount (*i.e.*, \$1,025) to the Tenant on January 23. The Landlord provided an image of a receipt for this work. The Tenant noted they did not consent to this; however, the Landlord provided that the Tenant did consent to this amount, as shown in some text message they provided.

After this, the Landlord received a complaint from the new tenant who moved into the rental unit about the state of the carpet therein. The Landlord then contacted the Tenant via text in an attempt to claim \$600. The Landlord amended their claimed amount for this hearing to \$800 for carpet replacement, and provided a handwritten explanation of their rationale for this. In their evidence, the Landlord provided images of the carpet, provided to them by the new tenant.

In the hearing, the Tenant raised the points that the Landlord did not conduct inspections of the condition of the rental unit either at the start or end of the tenancy, filed this application to the

Residential Tenancy Branch past the 15-day time limit for doing so, and provided no evidence of an amount needed for carpet replacement to show an actual compensation.

Analysis

The Tenant provided a copy of the agreement they had in place with the Landlord here. The start of the agreement, as well as page 2, are explicit in setting out that the *Act* applies. On page 3, the agreement sets out “condition inspections”, with reference to the *Act*. The fact that page 4 and 5 of the agreement are missing does not preclude the applicability of the *Act* to all aspects of this tenancy.

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

- s. 23: landlord/tenant together must inspect the condition of the rental unit upon move-in, and this must be documented in a report signed by the landlord/tenant
- s. 35: landlord/tenant together must inspect the condition of the rental unit at the end of a tenancy, this must be documented in a report signed by the landlord/tenant
- s. 36(2): the right of a landlord to claim against the security deposit is extinguished if the landlord does not provide an opportunity for inspection as per s. 35, or does not document an inspection
- 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 Landlord did not complete an initial or final condition inspection meeting with the Tenant as required
- there is no documented report of the condition of the rental unit either at the start or end of the tenancy
- because of these two points, the Landlord may not claim against either deposit

- the Landlord returned the amount of the pet damage deposit to the Tenant's roommate, who moved out prior to the Tenant's end-of-tenancy date – that amount is \$575 and the pet damage deposit forms no part of this consideration (even though the Landlord is claiming damage to the carpet, ostensibly from the Tenant's pet)
- the Landlord illegally retained a portion of the security deposit in the amount of \$125 from the Tenant, without going through a dispute resolution proceeding – this violates s. 38(1) of the *Act*
- the Landlord did not repay the deposit in full, or make an application claiming against the any part of the deposit, within 15 days of receiving the Tenant's forwarding address on January 24, 2023 -- the Landlord did not apply to the Residential Tenancy Branch until May 2023
- 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.

The Landlord claimed they did not know about the law as per the *Act*; however, the Landlord was a party to the tenancy agreement and signed that document together with the Tenant in September 2021.

I find the Landlord must pay to the Tenant the amount of \$2,300 – this is double the security deposit amount of \$1,150, as per s. 38(6) of the *Act*.

I find as fact that the Landlord already paid an amount of \$1,050 to the Tenant. I subtract this amount from the \$2,300 the Landlord must pay; therefore, the Tenant is entitled to compensation in the amount of \$1,250. I note also it was the Landlord who deducted an amount from the security deposit and not the pet damage deposit; therefore, I find the matter of the pet damage deposit already settled, and the Landlord illegally retained a portion from the security deposit.

The condition of the carpet is irrelevant to this situation. The Landlord did not manage that aspect of the tenancy effectively, and any opportunity the Landlord has for claiming compensation for damage in the rental unit has passed. Again, the Landlord not knowing the law about tenancies in the province is irrelevant and immaterial to this situation. I do note the Landlord provided no evidence on the amount of the carpet work they are making a claim to; therefore, any claim the Landlord would have for damage to the carpet in the rental unit is baseless and without evidence of the value thereof.

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

The Tenant was successful in this hearing process, and it was necessary for them to bring this Application to the Residential Tenancy Branch in order to rectify the matter. I grant recovery of the Application filing fee to the Tenant.

Conclusion

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

I grant the Tenant a Monetary Order in the amount of \$1,350.

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 8, 2023

Residential Tenancy Branch