



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

The Tenant filed an Application on April 11, 2023 for the return of their security deposit. This was a direct request application that an adjudicator reverted to a teleconference hearing on July 10, 2023.

The Landlord filed an Application for dispute resolution on May 25, 2023, seeking compensation for rent amounts owing, damage in the rental unit, and recovery of the Application filing fee.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 12, 2023. Both the Landlord and the Tenant attended the hearing.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding/evidence

The Tenant filed their Application via direct request on April 11, 2023. The Application was finalized in the Residential Tenancy Branch, and the Tenant sent notification of their request to the Landlord via registered mail on May 20, 2023. An adjudicator dismissed the Tenant’s direct request application because of an incomplete tenancy agreement in the records provided by the Tenant.

The Residential Tenancy Branch provided the Tenant with the Notice of Dispute Resolution Proceeding on July 10, 2023. For this hearing, the Tenant provided proof to show that they sent this to the Landlord via registered mail on July 13, 2023. The Landlord confirmed they received this notice in this manner from the Tenant.

The Tenant in the hearing stated they provided evidence to the Landlord for this hearing, including the important information about giving their forwarding address to the Landlord at the time the tenancy ended in April 2021.

The Landlord stated they only received two pieces of evidence for this hearing from the Tenant. One of these pieces was an April 1, 2021 letter to them concerning the end of the tenancy. Another copy of this same note in the Tenant’s evidence for this hearing

contains handwritten information – the Landlord was very clear in the hearing that they did not receive an additional copy of the note with handwriting on it. As well, the Landlord was clear that they did not receive a completed form from the Tenant with the required information about the Tenant's forwarding address.

The Tenant in the hearing was not clear on their recollection of what they had disclosed to the Landlord for this hearing. I reviewed the evidence provided with the parties in the hearing compared to what the Landlord described in detail that they received from the Tenant for this hearing. There was a large discrepancy on what the Tenant provided for this hearing to the Residential Tenancy Branch, versus what the Landlord stated they received.

The *Residential Tenancy Branch Rules of Procedure* are very clear on the procedure concerning service of evidence by any applicant. An applicant (here, the Tenant) must serve a respondent (here, the Landlord) with copies of any evidence submitted to the Residential Tenancy Branch. The Residential Tenancy Branch sent this same directive to the Tenant when processing the Tenant's Application, on May 17, and again on July 10.

I find there was a significant discrepancy between what the Tenant provided to the Residential Tenancy Branch as evidence for this hearing, and what they provided to the Landlord, especially concerning the timing of the Tenant's provision of their forwarding address to the Landlord at the end of the tenancy. I find the Landlord credible on the point they made about receiving only minimal evidence from the Tenant for this hearing.

The Tenant did not provide a record of their service of evidence to the Landlord for this hearing. There are two submissions from the Tenant to the Residential Tenancy Branch directly; one is 14 pages in length, and the other is 8 pages in length, with one package submitted approximately one month after the first.

I find the Landlord credible on their statements about not being served all evidence from the Tenant for this hearing. For this reason, I exclude the Tenant's evidence from consideration. Without a full record of it being served to the Landlord – the Tenant did not account for this clearly during the hearing, being unsure – I exclude the Tenant's evidence from consideration.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding/evidence

The Landlord in the hearing stated they provided the Notice of Dispute Resolution Proceeding to the Tenant via registered mail. This was to the address provided on the Tenant’s own Notice of Dispute Resolution Proceeding for the scheduled hearing. The Landlord provided a copy of the registered mail receipt showing they sent this on May 31, 2023.

The Tenant stated they had not seen the registered mail, yet at the same time they received the Notice of Dispute Resolution Proceeding via email from the Landlord. I find this confirms that they received the Notice of Dispute Resolution Proceeding from the Landlord as required.

The Landlord provided evidence to the Residential Tenancy Branch on May 24 and May 25. I find the Tenant confirmed they received the same via email from the Landlord.

The Landlord provided an additional piece of evidence – showing a record of “last rent payment” to the Residential Tenancy Branch on November 23, 2023. I am not certain the Landlord provided this to the Tenant; therefore, I exclude this piece from consideration.

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?
- Is the Tenant entitled to recovery of the Application filing fee?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that was in place. The tenancy started on October 1, 2017, as confirmed by the parties in the hearing. The Tenant indicated a start date of July 1, 2020, and the agreement provided in the evidence shows the parties signed the agreement on May 18, 2020.

The Tenant paid a monthly rent of \$1,550 as of the end of this tenancy in 2021. The Tenant paid a security deposit of \$750.

While the Tenant provided an end-of-tenancy date on their application of April 12, 2021, the Landlord provided an end-of-tenancy date of July 1, 2021.

The Landlord presented the Tenant moved out from the rental unit in March 2021. There was a fixed-term tenancy in place that was running until June 30, 2021. The agreement the Landlord provided states: "This Agreement will be 12 months in duration with a possession date of July. 1, 2020."

The Tenant stated they ended this tenancy because the rental unit was too noisy from the upstairs unit. Their plea to the Tenant was "completely ignored" and there was "no dialogue" on this point. The Tenant described having "no choice" but to give the Landlord an end-of-tenancy notice, and the Landlord ignored this. The Tenant recalled giving "approximately March notice", and then vacated the rental unit on April 12, 2021. The Tenant stated that notice to the Landlord "corresponded a day or two ahead of time" and they paid the Landlord for the short-term period of early April. This was \$620 for the period from April 1 to April 12, 2021.

The Landlord in the hearing stated they did not receive any notice from the Tenant concerning the tenancy end and "everything was abrupt". The Landlord stated they were trying to connect with the Tenant when April rent was not paid in full, and they were "completely ignored" on this.

The Tenant on their Application to the Residential Tenancy Branch presented that they gave their forwarding address to the Landlord on April 12, 2021. This was "mailbox onsite, email and left a copy with the keys in the suite". In the hearing, the Tenant stated they provided this to the Landlord "in every manner that I could". There was no contact from the Landlord in the 12-day period in April 2021.

The Landlord stated they never received a forwarding address from the Tenant. They only received an address from the Tenant when served with the Tenant's Notice of Dispute Resolution Proceeding for this hearing.

Concerning a \$5,580 rent amount owing, the Landlord completed their Application to the Residential Tenancy Branch as follows:

Tenant had signed a lease until July 1/2021 where the tenant was paying \$1,550 rent per month for a two bedroom unit. The tenant left in March without warning and paid \$620 in March saying that this combined with the \$750 damage deposit should cover the portion of time they spent in the unit in March/2021. As a result March is not paid in full and April/May/June was not paid at all. There was no forwarding address provided and no return of phone call.

In the hearing, the Landlord maintained that the Tenant did not end the tenancy correctly. The Landlord submitted that the Tenant paid \$620 for rent for March 2021, and owes or each subsequent month through to the end of the tenancy. The Landlord referred to the April 1, 2021 email message to them from the Tenant.

The Landlord completed a worksheet to set out other money owed (total \$2,716.81) from the Tenant concerning damage in the rental unit:

- damaged washing machine: \$786.81 – invoice dated September 22, 2021
- delivery/installation of washing machine: \$200 – undated set out in text message
- contractor repairs: \$1,730 – invoice dated May 9, 2021 (carpet with install: \$970; walls \$550; pickup/discard \$210)

The Landlord provided a copy of the initial Condition Inspection Report they completed jointly with the Tenant in 2017. The Landlord did not complete this document based on an inspection in 2021 after the Tenant moved out. The Landlord in the hearing described entering the rental unit after the Tenant vacated, with no opportunity to contact the Tenant for a close-out inspection.

The Landlord provided a May 25, 2023 letter from the contractor who completed work in the rental unit in "April to May of 2021". This attests to holes in the carpets, the walls with "many holes and scrapes everywhere", and this was "not normal wear and tear". They "laundry center style" washer/dryer "had what appeared to be physical damage to it", and the dryer was working but the washer was not.

Analysis

The *Act* s. 60 sets out that an application for dispute resolution must be made within 2 years of the date that tenancy ended. Specific to the Landlord's Application, the *Act* s. 60(3) provides that the other party – *i.e.*, the Landlord – may make an application.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; **and**
- steps taken, if any, to mitigate the damage or loss.

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

- s. 45: a tenant may end a fixed-term tenancy by giving an effective end-date that is not earlier than the date specified in the agreement as the end of the tenancy
- s. 37: when a tenant vacates, a tenant 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 regarding payment of rent in this tenancy, I find as follows:

- the end-of-tenancy date in this situation was April 12, 2021

- the Tenant provided notice to the Landlord on April 1, 2021 – this was a brief message on that date which the Landlord referred to specifically as evidence in this matter – I find the Tenant gave their end-of-tenancy notice to the Landlord on April 1, 2021, setting out that they would pay the specific amount of \$620 for April 1 to April 12, 2021
- the Tenant did not provide their forwarding address to the Landlord as required – there is no evidence before me on this point and I find the Tenant not credible on this point
- the Tenant delayed their Application in this matter until one day short of the two-year limitation period; therefore, I find the Tenant not credible on the point that they provided their address to the Landlord as required at the end of the tenancy
- I find that, if the Tenant had provided their address, there would, more likely than not, have been no excessive delay in their pursuit of the return of their security deposit from the Landlord – I find the Tenant would be more credible in this matter if they had brought their Application forward in a timely manner. If the Tenant provided this forwarding address to the Landlord via email, as stated in the hearing, the Tenant did not provide evidence of that, and did not disclose that evidence to the Landlord as positive proof.
- I find the tenancy was of a fixed term, set to end on June 30, 2023. I find the Tenant ended the tenancy in violation of s. 45(2) of the *Act*, by providing a brief email message to the Landlord on April 1, 2021 as the Landlord referred to in the hearing. Though the Landlord recalled events taking place in March 2021, I find the Tenant moved out from the rental unit on April 12, 2021.
- Given the Tenant violated s. 45(2) of the *Act*, I grant the Landlord the remainder of April 2021 rent (*i.e.*, \$930)
- Similar to my finding regarding the timeline in place with the Tenant's Application, I find the Landlord did not intend to pursue the matter of unpaid rent immediately post-tenancy. The Landlord provided in the hearing that they were prepared to let this matter go; therefore, I question whether the claim for unpaid rent for two months is valid. The Landlord did not present this as a lack-of-income situation that affected them negatively; nor did the Landlord present that the matter posed a hardship to them with an inability to acquire a new tenancy in the rental unit. I note the Landlord undertook work within the unit into the following month of May;

therefore, I question the Landlord's intention to re-rent the unit as a source of income beyond April 2021.

For these reasons, I limit the amount of compensation to the Landlord for the remainder of April 2021 rent. I find the Landlord did not mitigate the loss to them by bringing a claim forward in a timely manner.

Regarding damage in the rental unit, I make the following findings, based on the 4 points set out above:

- the Landlord did not provide proof of the damage within the rental unit to carpets/walls – this is a disadvantage when the Landlord filed their Application two years past the end of this tenancy
- in light of no pictures showing damage, I find the condition inspection report as of the start of the tenancy is not reliable simply on its indications that everything in the rental unit was in a good condition
- with no evidence of damage to carpets and walls I cannot attribute that to this tenancy – the contractor's note is not reliable two years post-tenancy
- there is insufficient evidence of the malfunctioning washing machine as attributable to the Tenant -- I am not satisfied that this was damage that was not repairable beyond the useful life cycle of such an appliance.

For these reasons, I dismiss the Landlord's claim for compensation because of damage in the rental unit. I don't understand why, if the Landlord intended to pursue the matter, they did not do so within a reasonable amount of time after the tenancy ended when the Tenant moved out from the rental unit.

I have dismissed the Tenant's Application in its entirety; therefore, I find the Tenant is not eligible for reimbursement of the Application filing fee.

I find it was necessary for the Landlord to bring this Application in order to have the matter rectified. I grant the Landlord recovery of the Application filing fee based on their modicum of success in bring the matter forward.

Conclusion

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

I grant the Landlord a Monetary Order in the amount of \$1,030.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,030. After setting off the security deposit, there is a balance of \$280. I am authorizing the Landlord to keep the security deposit amount in full and award the balance of \$280 as compensation for the remainder of the April 2021 rent amount.

I provide the Landlord with this Monetary Order in the above terms and the Landlord must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord 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 27, 2023

Residential Tenancy Branch