



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Tenant filed an Application for Dispute Resolution on September 1, 2023 seeking compensation for monetary loss, the return of their personal property from the Landlord, and recovery of the Application filing fee.

The Landlord filed an Application for Dispute Resolution on September 11, 2023 seeking compensation for rent owing, damage in the rental unit, and monetary loss/other money owed. They also seek reimbursement of the Application filing fee. This Application from the Landlord was joined to that of the Tenant that was already in place, covering the same hearing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 5, 2023. The Landlord attended the hearing; the Tenant did not attend.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding to the Tenant

In the hearing, the Landlord presented that they notified the Tenant of their Notice of Dispute Resolution Proceeding via registered mail. The Landlord provided an image of the associated registered mail label showing a tracking number.

From this evidence, I find the Landlord informed the Tenant fully about their Application they made to the Residential Tenancy Branch, and provided the required evidence (15 pieces in total). On this basis, I give the Landlord’s evidence full consideration in this matter.

Preliminary Matter – Tenant’s attendance

In the hearing, the Landlord stated they knew about the Tenant’s Application. The Tenant provided no evidence to the Residential Tenancy Branch for this hearing.

The Tenant did not attend the hearing, although I left the teleconference hearing open until 11:30am to enable the Tenant to call in this teleconference hearing that was scheduled for 11:00am. I confirmed correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant’s Application in its entirety, without leave to reapply.

Preliminary Matter – amendment to Landlord’s Application

In the hearing, the Landlord presented that the Tenant caused damage in the individual rental unit that they rented from the Landlord under the tenancy agreement. This work was continuing and not complete as of the date of this hearing. The Landlord is incurring ongoing costs associated with repair in the rental unit.

On their Application, the Landlord added a substantial claim for compensation due to the Tenant causing damage in the rental unit property; however, the Landlord added this \$30,000 claim under the issue of damage to the rental unit. I find this more appropriately concerns the Landlord’s claim for other money owed to them, as opposed to damage-specific compensation within the rental unit.

The *Act* s. 64(3)(c) provides that an arbitrator may amend an application for dispute resolution.

I amend the Landlord’s Application to place the issue of compensation stemming from the damage throughout the rental unit property, set out below, under the section dealing with monetary loss/other money owed. I withdraw the Landlord’s Application for damage in the rental unit. The Landlord may apply on the issue of damage to the individual rental unit in the future.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to compensation for monetary loss/other money owed?

Is the Landlord entitled to reimbursement of the Application filing fee?

Is the Landlord entitled to retain all/part of the security deposit?

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had in place with this Tenant. The tenant started on January 15, 2023, set for a fixed term ending on February 1, 2024. The rent amount was \$2,600 to be paid on the 1st day of each month. The Tenant paid a security deposit of \$1,300 on January 1, 2023.

A clause in an attached addendum, also signed by the Tenant, provides that”

Reasonable effort must be made to comply with the Strata Bylaws. Any fines due to the violation of the Strata Bylaw will be tenant’s sole responsibility.

Is the Landlord entitled to compensation for unpaid rent?

Upon moving in, the Tenant paid a one-half amount for rent from January 16 to the end of that month. The Landlord did not receive rent by 4pm on February 1. In the evening, the Tenant stated they would pay it as soon as possible.

On February 2, the strata contacted the Landlord to inform them of a flood in the rental unit property, emanating from the rental unit. The Tenant exited the building and then did not return until February 25 when they obtained their personal property, under the supervision of the police. The Landlord obtained an order of possession for the rental unit through the Residential Tenancy Branch on February 28, 2023.

The Landlord did not receive a rent payment for February. The Landlord claims \$2,600 as the full month’s rent amount owing.

Is the Landlord entitled to compensation for monetary loss/other money owed?

The Tenant's actions caused a flood within the rental unit, and this led to greater damage throughout the building. The Landlord in the hearing stated this was, in total, damage to 45 rental units in the building. The strata took responsibility for remediation and repair work in all areas of the building that were damaged by the flood.

The police investigation, hastened by the strata and neighbours who were fearful of the Tenant, revealed alteration/damage of the rental unit's sprinkler system. The Landlord also provided images of severe damage in the rental unit bathroom.

The strata imposed a fine against the Landlord, notifying the Landlord of this on February 22. The Landlord included the letter to them from the strata in the evidence. This was an amount that the strata paid for the service call associated with the sprinkler head in the rental unit. This amount is \$774.13.

The strata's insurer undertook the work of remediation and repair work resulting from the damage caused by the flood in the rental unit on February 2. On August 29, 2023, the strata wrote to the Landlord to inform them of the chargeback for the insurer's premium. This amount is \$50,000. The Landlord included the August 29 letter advising them of this, as well as a copy showing the amount of premium at \$47,619.05 plus GST of \$2,380.95. The Landlord on their Application specified the amount of \$30,000 as their claim for compensation.

In the hearing, the Landlord provided that they were repaying this amount in increments. As of the date of the hearing, the Landlord had paid \$15,000 of this amount. In summary, the Landlord's insurer covered the damage caused by the flood in the rental unit, and the strata is collecting the total deductible amount from the Landlord.

Analysis

Is the Landlord entitled to compensation for unpaid rent?

The *Act* s. 26 provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not a landlord complies with the legislation/tenancy agreement.

I find this was a circumstance where the Tenant left the rental unit property, and did not enter the rental unit again, or contact the Landlord, until obtaining their belongings on February 25, with the supervision of the police. There is no record of the Tenant asking for, or obtaining, permission or authorization to end the tenancy early.

I grant the Landlord the full amount of February 2023 rent; this is compensation of \$2,600.

Is the Landlord entitled to compensation for monetary loss/other money owed?

The *Act* s. 32(3) states that a tenant must repair damage to the rental unit that is caused by the actions or neglect of a tenant.

The *Act* s. 67 sets out that if damage/loss results from a tenant not complying the *Act*/tenancy agreement, an arbitrator may determine the amount or compensation, and make an order for the Tenant to pay that amount to the Landlord.

The Tenant caused damage in the rental unit requiring a service call. I find this violates s. 32 of the *Act*. As per s. 67 and the specific clause in the tenancy agreement ordering the Tenant to repay any amount to the Landlord, I grant this compensation to the Landlord. This amount is \$774.13.

Under s. 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 Landlord must satisfy the following four elements on a balance of probabilities:

- proof that the damage or loss exists;
- 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
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the Landlord followed s. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Landlord credible on their account of the incident that caused extensive damage throughout the rental unit property. This necessitated strata involvement and insurance, and that insurer, via the strata, required a premium to be paid. The strata covered this, and is requesting repayment from the Landlord.

This is entirely due to the actions of the Tenant in the short period they resided in the rental unit. I find the Landlord has provided proof of the amount involved, and in the hearing the Landlord testified under affirmed oath that they are paying this amount in total.

I grant the Landlord compensation in the amount of \$30,000 for this loss to them.

Is the Landlord entitled to reimbursement of the Application filing fee?

The Landlord was successful in this Application. I find it was necessary for the Landlord to bring this Application forward in order to resolve the matter. I grant the Landlord reimbursement of the \$100 Application filing fee.

In conclusion on the Landlord's Application, The total award to the Landlord in this matter is \$33,474.13.

Is the Landlord entitled to retain all/part of the Tenant's security deposit?

The Act s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$33,474.13. I authorize the Landlord to keep the full amounts of the security deposit -- \$1,300 -- in satisfaction of this compensation. After the deduction of \$1,300, there is a balance of \$32,174.13 owing from the Tenant.

Conclusion

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

I have amended the Landlord's Application, to withdraw their claim for compensation for damage in the rental unit. The Landlord may apply separately on this issue.

I grant the landlord a Monetary Order in the amount of **\$32,174.13** under the following terms:

Monetary Issue	Granted Amount
compensation for rent amounts owing	\$2,600.00
compensation for monetary loss/other money owed	\$30,774.13
authorization to retain all of the security deposit	-\$1,300.00
recovery of the filing fee	\$100.00

Total Amount	\$32,174.13
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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 7, 2023

Residential Tenancy Branch