



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on April 5, 2023, seeking compensation for unpaid rent, for damage in the rental unit, for monetary loss/other money owed, and for recovery of the Application filing fee. This was for a rental unit identified as “Unit A”.

The Landlord also filed an Application on April 5, 2023, for “Unit B”. This was for compensation for unpaid rent, for damage in the rental unit, for monetary loss/other money owed, and recovery of the Application filing fee. This was previously treated by the Residential Tenancy Branch as a separate tenancy, handled through a separate application and hearing process; however, after reviewing the matter, an arbitrator determined that the matter was inextricably linked to the Landlord’s other Application (*i.e.*, that of Unit A), and the matters were crossed.

I have crossed the matters, as shown on the cover page of this decision. This decision is final and binding for both “Unit A” and “Unit B”.

The Tenants (hereinafter, the “Tenant”), on July 28, 2023, filed their own Application for the return of the security deposit and pet damage deposit, and recovery of the Application filing fee.

The matter proceeded by a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 27, 2023 and January 18, 2024. Both the Landlord and the Tenant attended the hearing.

Preliminary Matter – service of evidence

As set out in the Interim decision dated November 29, 2023, I find the Landlord served their evidence to the Tenant as required in this matter.

I find the Tenant also served their evidence to the Landlord via registered mail on August 4, 2023.

Preliminary Matter – damage in the rental unit(s)

In the November 29, 2023 Interim Decision, I notified the participants that I dismissed the Landlord's Application for damage in the rental unit. I confirmed that in the reconvened hearing on January 18, 2024. The Landlord in the reconvened hearing confirmed they were withdrawing their claim for damage in the rental unit(s). For this reason, I dismiss the Landlord's compensation claims for damage in the rental unit(s), with leave to reapply.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent, and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee for these Applications pursuant to s. 72 of the *Act*?
- Is the Tenant entitled to the return of their security deposit and/or pet damage deposit, pursuant to s. 38 of the *Act*?
- Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

tenancy agreements and deposits

The Landlord presented a copy of the tenancy agreement they had in place with the Tenant for Unit A. This shows basic information:

- the tenancy started on March 1, 2019 on a month-to-month basis
- the monthly rent was \$1,600 per month, payable on the 1st of each month
- the Tenant did not pay the \$800 security deposit
- the Tenant paid \$300 of the \$800 pet damage deposit.

Regarding this agreement, in the hearing the Landlord presented that social services presented \$300 to the Landlord at the time the Tenant moved in – they applied this to the security deposit of Unit A. The Tenant lived in this rental unit from March 2019 onwards.

There is an addendum in the Landlord's evidence, showing a charge for NSF/late payments. Also: "Additional company will be \$150 per person per month after 14 days consecutive or not" and "Additional occupants will be \$300.00 per month per person."

The Landlord presented a copy of the tenancy agreement that had in place with the Tenant for Unit B, showing:

- a tenancy start date of September 1, 2021 on a month-to-month basis
- the monthly rent was \$1,600 per month, payable on the 1st of each month
- the Tenant paid a security deposit of \$800 on September 1
- the pet damage deposit of \$800 was not paid.

The Tenant entered into two separate agreements with the Landlord. First was Unit A, then one Tenant entered into another separate agreement for Unit B. The tenancy agreements are overlapping, and the parties to the tenancy agreements effectively shared the same rental units. Each tenancy ended after the Landlord issued end-of-tenancy notices for each of Unit A and Unit B. After a dispute resolution hearing on January 19, 2023, an arbitrator granted a single order of possession to the Landlord for both units. The Tenant moved out from Unit A and Unit B on January 31, 2023.

Regarding Unit B, the Landlord presented that they ended a previous tenancy involving other tenants in early 2019. They renovated the unit for approximately 2 months. Other tenants moved in starting in June 2019 for approximately two months (in what the Landlord described as a trial basis), and then the Tenant, after living in Unit A for a period of time, also moved into Unit B in August 2019.

The Tenant stated they signed a separate agreement for Unit B in 2021, after speaking to the Landlord about moving into this downstairs Unit B. According to the Tenant, the Landlord did not want to complete a new tenancy agreement.

In the hearing, the Landlord presented that the Tenant, in June-July of 2020, paid \$3,200 covering all four deposits listed above. This included the \$1,300 remainder for Unit A deposits, and \$1,600 for the Unit B deposits. The Landlord also stated that during that time, they were renting Unit B to other residents; therefore, these deposit amounts were not covered later.

In the hearing, the Tenant stated that they moved to Unit B on August 24, 2020. The Tenant submits they did not pay full deposits to the Landlord because they paid deposits in a previous rental unit; these deposits were not returned and so the Tenant concluded that the deposits transferred to the new living arrangements. They then paid the balance of the deposits when they figured this out.

In response to this, the Landlord stated that the previous space rented to the Tenant had a lot of damage; therefore, they were not getting anything of the deposits in return. In summary on deposits paid, alternately for Unit A or Unit B, the Landlord queried how many excuses were in place from the Tenant for when they paid deposits for either Unit A or Unit B. They submit the Tenant's story keeps changing, with multiple excuses in place.

The Tenant responded to say that the Landlord had a unique situation with other tenants living at the rental unit property, thereby avoiding their obligations under the law by not having a tenancy agreement in place with other residents in a tenancy the Landlord referred as a 'trial period'. Overall, the Tenant pointed to the Landlord's lack of organization for this whole tenancy, stating that no conclusions can be drawn on what amounts were paid by them, and for what purpose.

i. Landlord's claim for rent – Unit A

On their April 5, 2023 Application concerning Unit A, the Landlord provided the following, regarding unpaid rent amounts:

Aug 2020 \$1000 Oct 2020 \$1600 Dec 2020 \$1600 Jan 2021 \$1600

The Landlord completed a monetary order worksheet for Unit A (dated April 4, 2023), listing the following amounts:

- August 2020: \$1,000
- October 2020: \$1,600
- December 2020: \$1,600
- January 2021: \$1,600
- additional occupants August 2022: \$600
- late fee (Aug, Oct, Dec 2020, Jan 2021): \$100

The Landlord completed a subsequent monetary order worksheet for Unit A (dated September 26, 2023) listing \$1,600 for February 2023, with "[Unit] A unrentable MT suite".

In the hearing, the Landlord stated that the January 2021 rent was paid on December 31, 2020. The *actual* amount of rent owing for August 2020 is \$1,600. The Landlord added the full rent amount for February 2023, being another \$1,600. This makes the rent amounts owing (*i.e.*, for August 2020, October 2020, December 2020, and February 2023) totalling \$6,400.

The tenancy agreement for Unit A contains a list of instructions to the Tenant; this includes a bank account number for deposit of rent amounts. In the hearing, the Landlord stated they never accepted cash as a form of payment from the Tenant. For the months in question, clarified in the hearing, the Landlord pointed to their own bank records (consisting of records of electronic payments) to show there are no records of payment of rent for each of these months.

The Tenant pointed to another bank account in use by the Landlord. They also presented that their own bank information shows one Tenant was forwarding money to the other Tenant in order to pay the rent. The Landlord, in response, stated the large amounts passing are odd if not being paid for rent. The Tenant also queried why the Landlord apparently made no inquiry at the time, for example in January 2021.

The Landlord included a handwritten list showing the rent amounts they collected monthly. This shows the following:

- August 26, 2020: \$600, with the notation “[Tenant] actually moved into [Unit “B”] on paper”
- October. 2020: 0 – (being in total \$3,200 short + \$25 late fee)
- December 2020: 0 – (being \$3,200 short owing to payments in November + \$25 late fee)
- January 2021: 0 - (being \$3,200 short + \$25 late fee)

The Landlord’s list ends in December 2022. On the final page, the Landlord added: \$25 late fee for 13 months in total, and “additional occupants” at \$600.

The Landlord’s bank records show the following money deposited to the bank account, starting from December 2020, through to December 2022, showing:

- \$2,000 on December 31, 2020
- \$1,300 on January 1, 2021

The Landlord’s record contains a note, dated January 11, 2022, showing that the Tenant made “a correct payment for January 2022 rent.” Also: “As you indicated, your rent has been \$150

light since [Tenant] took over [Unit B] over a year ago.” The Landlord set out that “12 months x \$150 = \$1800 which is due now.” The Landlord set out they would agree to “\$200 per month for 9 months”

Another note from the Landlord dated March 12, 2022 sets out:

At this time we need to complete rental agreement for [Tenant] as [they have] taken over downstairs [i.e., Unit B] over a year ago without notifying me and at the same time giving herself a \$150 per month discount.

In their evidence, the Landlord also provided a note to the Tenant, post-tenancy, dated March 2, 2023. This shows a list for outstanding amounts owing from the Tenant: \$600 for additional occupants; 3 months rent, “Feb rent as place was unrentable with no stove even.”

ii. Landlord’s claim for rent – Unit B

The Landlord completed a paper application concerning compensation for Unit B, listing the following records from 2020 for \$6,700:

- Aug 1600
- Oct 1600
- Dec 1600
- Jan 1600
- March 300 short

The Landlord also listed \$600 for additional occupants, as well as a \$125 late fee.

In the hearing, the Landlord stated that January 2021 rent was paid. Also: “if we consider \$600 as covered, then August 2020 was covered.”

Separately for Unit B, the Landlord provided a monetary order worksheet, dated April 4, 2023 for each of the August, October, December and January (2021) rent amounts. A separate worksheet dated September 26, 2023 lists the amount for “unrentable MT suite” for February 2023 rent at \$1,600.

The Landlord provided records of e-transfers to them, ostensibly for payment of rent for Unit B. Two of the records show payment of other residents’ damage deposit (2020-06-02, and 2020-06-01). This material was not clearly associated with either Unit A or Unit B.

The associated tenancy agreement for Unit B, as set out above shows the tenancy start date of September 1, 2021, with the Tenant paying a deposit of \$800 on that date.

The Landlord included a tenancy agreement for two other residents that resided in Unit B, signed on August 27, 2020. The start of that tenancy date is not included in the pages from the agreement, nor is the amount of rent these other tenants paid.

In the evidence, the Landlord provided copies of letters to the Tenant (as set out above for Unit A) dated January 21, 2020, January 11, 2022, and March 12, 2022. The Landlord also included the post-tenancy letter of March 2, 2023.

In the evidence, the Landlord also included the timeline of payments for Unit A, April 2020 through to December 2022, as well as e-transfer records of payment.

The Tenant provided a transcript of the recording they made for the final inspection they had with the Landlord on February 1, 2023. This highlights the Landlord's statement: "Those months rent, I can't imagine you didn't pay them. I don't know why we can't find paperwork for them. But I total trust that you did pay them." Also: ". . .it's more probable that it's some kind of paperwork glitch."

iii. Tenant's return of security deposit and pet damage deposit – Unit A

On July 28, 2023, the Tenant filed their Application for the return of both deposits associated with Unit A.

They presented the following evidence:

- the same tenancy agreement the Landlord provided for Unit A, showing April 1, 2019 \$800 security deposit (notated as "unpaid") and April 1, 2019 pet damage deposit (notated as \$300 paid, \$500 unpaid)
- a record of e-transfers:
 - June 1, 2020, \$2,000 total, with the message: "June's rent \$1,700 and \$300 towards damage deposit"
 - June 4, 2020, \$1,300 total, with the message "Damage deposit"
- a February 21, 2023 note to the Landlord, for Unit A, providing a forwarding address, requesting return of the \$1,600 amount

- a transcript of the included audio recording of the final inspection on February 1, 2023, nothing from the Landlord “Looks pretty good you guys.” (The Tenant provided a separate record of registered mail for this piece of evidence to the Landlord.)
- the tenancy agreement for other tenants who lived in Unit B, showing \$800 for a security deposit (no notation indicating it was paid), and \$800 for a pet damage deposit (no indication it was paid) payable by September 1, 2020.

In the hearing, the Tenant noted in particular that they provided a note to the Landlord dated February 21, 2023 for Unit A, as appears in their evidence.

Analysis

Governing the entire dispute resolution process at the Residential Tenancy Branch are the *Residential Tenancy Branch Rules of Procedure*. Their objective is to “ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.”

With regard to evidence, Rule 3.7 sets out the following:

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In this process, I spent a large amount of time reviewing what the Landlord had submitted. Because each tenancy for Unit A and Unit B – involving the same Tenant – overlapped, the Landlord repeated their information. This hampered my efforts to make sense of what the Landlord was trying to show with their evidence, and led to a protracted hearing process.

In addition, the Landlord in the hearing adjusted amounts they were seeking as rent compensation. This undermines the Landlord’s entire claim as I set out for each rental unit below.

The *Act* s. 26 sets out that a tenant must pay rent when it is due under the tenancy agreement. This is “whether or not the landlord complies with the Act, the regulations or the tenancy agreement”, aside from any right a tenant may have to deduct all/part of the rent.

i. Landlord’s claim for rent – Unit A

In this case, I find the Landlord was not clear in what amount they were seeking as compensation. Only in the hearing stage did the Landlord state that January 2021 rent was actually paid, despite their record keeping to the contrary. The Landlord then adjusted the amount owing for August 2020.

The Landlord provided an abundance of records showing e-transfers; however, the Landlord did not link the payments received back to the handwritten list they provided. This list also did not reflect what the Landlord presented in the hearing, which appeared to be based on their recollection.

There is also the January 11, 2022 note in the Landlord's record that shows the Landlord agreeing to some form of payment required for the amount of \$1,800. This is another anomaly that does not appear to be accounted for elsewhere, and is not easily identifiable in the Landlord's record.

Overall, the Landlord provided an abundance of records; however, they were not organized sufficiently for me to make any conclusions on rent amounts owing. It is not my role to piece the Landlord's record together for them by making inferences or guesses, and I was still not able to understand the Landlord's claim for compensation in the hearing, due to the Landlord's changes and comments on the record.

The Landlord claimed an additional amount for late fees and extra occupants. There was no evidence or testimony to explain that part of the Landlord's claim.

On this issue, the burden of proof is on the Landlord. I find the Landlord did not present sufficient information that rent amounts were owing from the Tenant for Unit A. I dismiss this Application concerning Unit A, without leave to reapply.

The Landlord was in the position during this tenancy to have in place a clear agreement; however, they chose to have other tenants present which confused matters greatly. If the Tenant was responsible for obscuring matters deliberately or through negligence for the Landlord, the Landlord did not present the matter as such in the hearing or in their Application.

The Landlord's record bears too many inconsistencies. The Landlord did not prove, on a balance of probabilities, that rent amounts from the Tenant were owing for Unit A. More importantly, there is no evidence that the Landlord took up the issue of unpaid rent in a clear and consistent fashion during the tenancy, and this also affects the veracity of the Landlord's record, as well as their recollection, in this matter.

The Landlord was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

ii. Landlord's claim for rent – Unit B

In this piece of the Landlord's Application, the chief inconsistency is the confusion between the Tenant apparently occupying both Unit A and Unit B at the same time. In addition, there were other tenants previously living in Unit B, and the Landlord did not present a clear timeline on when the Tenant's obligation for Unit B rent began.

The Landlord is claiming rent amounts for 2020 through to early 2021; however, the tenancy agreement in the evidence for Unit B commences only on September 1, 2021. Again, it is not my role to make guesses on the Landlord's evidence to construct a coherent timeline. I conclude from this inconsistency that the Landlord themselves was not clear on when precisely the Tenant took up occupancy in Unit B.

Also, as they did with Unit A, the Landlord in the hearing made an adjustment to their accounting, by stating that August 2020 rent was in fact paid.

As well, the Landlord presented the list of rent payments for Unit A once again in their evidence they provided to the Residential Tenancy Branch for their Application associated with Unit B. This greatly confuses things, meaning also that I was not able to understand what record the Landlord had in place for Unit A.

The Tenant presented a transcript of their recording of the final meeting they had with the Landlord. The Landlord is heard to say that they trusted the Tenant had paid rent amounts previously. Though in all likelihood taken out of context, when combined with the other lists and transaction records the Landlord provided that are not clear (with no record solely for Unit B), I find as fact that the Landlord was not clear on what rent amounts they required, when the Tenant's obligation for Unit B began. I afforded the Landlord the opportunity in the hearing to explain this matter; however, their testimony did not provide sufficient detail to enable me to conclude that there were unpaid rent amounts. The record, combined with the Landlord's testimony, simply does not show this.

The Landlord again claimed for late rent payments as well as other occupants. It was not clear from the evidence when other occupants were in place. The only evidence is simply a listed amount of \$600, with no other evidence to show why the Landlord claims this amount.

For these reasons, I dismiss the Landlord's claim for rent amounts owing for Unit B, without leave to reapply. I grant no reimbursement of the Application filing fee.

iii. Tenant's return of security deposit and pet damage deposit – Unit A

The *Act* s. 38(4) sets out that a landlord may retain an amount from a security and/or pet damage deposit if, at the end of a tenancy, a tenant agrees that a landlord may retain that amount, to pay some liability or obligation.

If a landlord does not have a tenant's agreement in writing, the *Act* s. 38(1) sets out that, within 15 days of the later of either the end-of-tenancy date or a tenant's provision of a forwarding address, a landlord must either repay the deposits or apply to claim against them.

As set in s. 38(6), where a landlord does not return the deposits or file a claim against them with the fifteen-day timeframe, a landlord must pay double of the deposit amounts.

On this piece, the burden of proof lies with the Tenant to show that they paid the deposits, and also that the Landlord incorrectly held their deposits after the tenancy ended and the required period of time had passed.

The Tenant provided a record of e-transfers to the Landlord, June 1 (\$300 towards damage deposit), and June 4, 2020 (\$1,300, message notes "Damage deposit"). This was over one year after the Tenant signed the tenancy agreement on March 1, 2019. There is a notation on the evidence copy of the agreement noting unpaid security and pet damage deposits for \$800 each.

The burden of proof in this instance is to show that these deposits were applied to this specific tenancy, that of Unit A. The Tenant made a transfer to the Landlord for these amounts over one year after the tenancy started. The Landlord's record of e-transfers, while matching the Tenant's record to show that these two transactions occurred, even with the same messages, by this time there were other tenants living in Unit B, and that is what the Landlord accepted this payment for.

I find the Tenant's explanation was lacking on this fine point of why they paid deposits for Unit A over one year after the tenancy started. This apparently was the first tenancy they had in place with the Landlord, for Unit A and quite some time prior to the tenancy agreement signed for Unit B in September 2021. The Tenant's record is not sufficient to show these amounts paid were to be applied to the tenancy in Unit A – complicating this was the presence of other tenants at the rental unit property (for which, apparently, the Landlord also required some deposits), and the timeline involved. The Tenant's record simply comes up short to show that this was the amount paid for Unit A deposits. According to the agreement, only \$1,300

remained to be paid, yet the Tenant's record also shows they paid a total of \$1,600 toward some deposits. The record is too spotty for me to conclude the Tenant paid security and pet damage deposits for Unit A, and I will not make an inference or assumption on this point on the Tenant's behalf.

For these reasons, I dismiss the Tenant's Application for the return of their deposits in Unit A, with leave to reapply. Note well that leave to reapply is not an extension of any time period involved with a party to a tenancy making an application for dispute resolution.

The Tenant was not successful; therefore, I grant no recovery of the Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Landlord's Application for rent amounts owing for Unit A.

For the reasons set out above, I dismiss the Landlord's Application for rent amounts owing for Unit B.

I dismiss the Tenant's Application for the return of the deposits for Unit A, with leave to reapply.

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: February 17, 2024

Residential Tenancy Branch