



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).
The Landlords' application for:

- A Monetary Order for damage to the rental unit or common areas, and for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act,
- Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act,
- Reimbursement of the filing fee.

And the Tenant's application for:

- Return of security deposit that the Landlords are retaining without cause.
- Reimbursement of the filing fee.

Landlord RA attended the hearing for the Landlords.

Tenant AG attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas, and for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit that the Landlords are retaining without cause?

Are the Landlords entitled to recover the filing fee?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed to the following tenancy details:

- The Tenancy started on February 1, 2023, as a fixed term tenancy to end on January 31, 2024.
- The Tenancy ended on August 31, 2023.
- The monthly rent was \$2,300.00.
- The Tenant paid a security deposit in the amount of \$1,150.00, which the Landlords continue to hold in trust.
- There parties did not complete a move in inspection, or a Condition Inspection Report (CIR) at the start of the tenancy.
- The Tenant was given two opportunities for the move out inspection, however, they did not show. The Landlords completed the move out inspection on September 7, 2023. The Landlords did not provide a copy of a completed CIR to the Tenant. The move out CIR was not submitted in evidence to the Residential Tenancy Branch (RTB).
- On September 2, 2023, the Tenant provided via email their forwarding address in writing to the Landlords.
- On November 1, 2023, the Tenant provided via registered mail their forwarding address in writing to the Landlords.

The Landlords are seeking a monetary order as follows:

Item 1: \$636.16, for replacement of a bed and mattress. The Landlord testified that the Tenancy Agreement (TA) indicates the rental unit was furnished with two beds, including mattresses, at the start of the tenancy. The Landlord testified that the Tenant removed one bed from the rental unit at the end of the tenancy. The Landlord stated

that they replaced the bed for the total cost of \$636.16. The Landlord submitted the invoice as part of their documentary evidence. The Tenant testified that the rental unit was furnished with two beds and they did not remove them at the end of the tenancy. The Tenant stated that the Landlords gave them permission to remove furniture at the start of the tenancy, and they only proceeded to remove those items, which consisted of a desk and some smaller items.

Item 2: \$876.96, for repairs to damaged walls in the rental unit. The Landlord stated that there was damage to three of the walls in the rental unit, the living room wall, a bedroom wall and the kitchen wall. The Landlord testified that the walls have scratches and nail holes. The Landlord submitted photographs of the walls as part of their documentary evidence. The Landlord testified that they paid for the repairs and they submitted the invoice from a renovations company. The Tenant testified that the walls were damaged and had nail holes when they moved into the rental unit.

Item 3: \$1150.00, loss of 15 days of rent. The Landlord testified that the tenancy started as a fixed term to end on January 31, 2024. In June 2023, the Tenant advised the Landlord of their intention to end the tenancy. The parties agreed that the Tenant vacated the rental unit on August 31, 2023. The Landlord testified that they immediately attempted to re-rent the rental unit, and signed a new agreement on July 24, 2023, with a new tenancy start date of September 15, 2023. The Landlords submitted this tenancy agreement as part of their documentary evidence. The Landlord is seeking \$1150.00 for loss of rent for 15 days from September 1, 2023 to September 15, 2023.

The Tenant testified that they provided their tenant notice to end the tenancy, with the offer to show the rental unit and to assist the Landlords with sublease options. The Tenant stated that the Landlords agreed to end the tenancy by August 31, 2023 and refused their offer to assist. The Landlord testified that the Tenant offered to assist with subleasing, but they decided to proceed with their own best effort to re-rent as soon as possible, and that they were successful. The Landlord stated that the Tenant had informed them of their low credit, and they decided to re-rent the rental unit on their own.

Item 4: \$100.00 for removal of the couch. The Landlord testified at the end of the tenancy the Tenant left behind an old couch in the rental unit. The Landlord testified that they are yet to remove the couch. They have received a quote in the amount of \$100.00 from a rubbish removal company. The Landlords submitted a photograph of the couch as part of their documentary evidence. The Tenant testified that the couch was in the rental unit at the start of the tenancy, prior to them occupying the rental unit.

Analysis

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas, and for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Under section 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:

1. Proof that the damage or loss exists;
2. 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;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlords have established a claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

Residential Tenancy Policy Guideline 3 provides guidance for claims for rent and damages for loss of rent. It states:

- Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

I accept that the Landlords incurred the loss of rental income as the Tenant vacated the rental unit prior to the end of the fixed term agreement, in violation of the tenancy agreement. The Landlords documentary evidence proves they took immediate steps to

re-rent the rental unit, and a new tenancy was signed on July 24, 2024 at \$2,300.00 monthly rent and with the effective date of September 15, 2023.

I find the Landlords met their obligation to mitigate and minimize the loss, as they took action to re-rent the rental unit for the same monthly rent of \$2,300.00. I accept the Landlord's testimony that the Tenant indicated concerns with a low credit rating, and I find it reasonable for the Landlords to make the decision that they will immediately proceed with the ren-rental process. Further, I find the Landlords took reasonable steps to re-rent and were successful in signing a new agreement by July 24, 2023, and, thereby, they met their obligation to minimize the loss.

As the Tenant vacated the rental unit on August 31, 2023, I find the Landlords did incur loss of rental income from September 1, 2023 to September 15, 2023, in the amount of \$1,150.00. I grant the Landlords a monetary award of \$1,150.00 for unpaid rent.

With respect to Item 1, 2 and 4, I find the Landlords did not prove that the damage or loss exists due to the actions or neglect of the Tenant in violation of the Act, regulation or tenancy agreement. The parties did not complete a move in inspection and, although the Landlord claims they completed the move out inspection CIR, they did not provide the CIR to the Tenant or as evidence to the RTB. With the absence of a completed move in CIR and the move out CIR, I accept the Tenant's testimony that they are not responsible for the bed, the couch and the damage to the three walls of the rental unit.

Although the Landlords submitted the photographs of the claimed loss and related receipts, I find they did not first establish that the loss occurred due to the actions of the Tenant. Given the above, I dismiss without leave the Landlords' claim for Item 1, Item 2 and Item 4.

Are the Landlords entitled to recover the filing fee?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

The Landlords are entitled to a monetary award in the amount of **\$1,250.00** as follows:

- \$1,150.00, for loss of rental income from September 1, 2023 to September 15, 2023,
- \$100.00 for the cost to the filing fee.

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit that the Landlords are retaining without cause?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

As the forwarding address was provided on September 2, 2023, and the Landlords made their application on September 6, 2023, I find that the Landlords did make their application within 15 days of the forwarding address being provided.

Section 23 of the Act states the landlord and tenant must together inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the Act states the landlord and tenant together must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit. The landlord must offer the tenant at least 2 opportunities, and the landlord may make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities and the tenant does not participate on either occasion.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties did not complete a move in inspection CIR. Further, on September 7, 2023, the CIR was completed without the Tenant and the Landlord did not provide a copy of the CIR to the Tenant. By failing to provide a copy of the CIR for the move out inspection, I find the Landlords have extinguished their right to claim against the security deposit.

The Landlord's application for authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed, without leave to reapply.

As I have dismissed the Landlord's application to retain the security damage deposit due to the extinguishment of their right to keep it under the section 36 of the Act, I find that the Tenant is entitled to a monetary award for the return of the security deposit.

Policy Guideline 17 provides guidance on Security Deposit and Set Off. It states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

For the above reasons, I grant the Tenant a monetary award for the return of double the security deposit.

The \$1,150.00 security deposit has accrued \$25.31 in interest, I grant the Tenant a monetary award in the amount of \$2,325.31 (double the security deposit, plus interest).

Is the Tenant entitled to recover the filing fee?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the **\$100.00** filing fee paid for this application under section 72 of the Act.

The Tenant is entitled to a monetary award in the amount of **\$2,425.31** as follows:

- \$2,325.31 for double the return of their security deposit plus interest,
- \$100.00 for the cost to the filing fee.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$1,175.31** under the following terms:

Monetary Issue	Granted Amount
Monetary Award for double the return of their security deposit plus interest.	\$2,325.31
Authorization to recover the filing fee for this application from the Landlords under section 72 of the Act.	\$100.00
Minus monetary award granted to the Landlord for compensation for loss under the Act.	-\$1,150.00
Minus authorization for the Landlord to recover the filing fee for this application from the Tenant under section 72 of the Act.	-\$100.00

	Total Amount \$1,175.31
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The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 28, 2024

Residential Tenancy Branch