



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for unpaid rent/utilities
- compensation for monetary loss/other money owed
- authorization to retain all/part of the security deposit
- recovery of the filing fee for this Application

In this hearing I also dealt with the Tenant's later Application for the return of the security deposit and recovery of the Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

Service of Notice of Dispute Resolution Proceeding and evidence

I find the Landlord served the Notice of Dispute Resolution Proceeding and evidence. In the hearing, the Tenant confirmed this.

In response to the Landlord's Application, the Tenant served evidence to the Landlord via email. This included a 2-page statement from the Tenant and their witness' statements. Though the Landlord questioned the Tenant's use of the correct email address for this purpose, I find the Tenant served the Landlord appropriately.

The Landlord was aware of the Tenant's Application for the return of the security deposit and filing fee. The Tenant served the Notice of Dispute Resolution Proceeding to the Landlord via email on January 17, 2024. The copy of the email provided by the

Tenant as proof of this shows attached evidence as well. The Tenant's evidence they provided to the Residential Tenancy Branch mirrors what they provided to the Landlord in response to the Landlord's Application; therefore, I find the Landlord received full disclosure on the Tenant's Application.

Preliminary Matter – Landlord's withdrawn claim for unpaid rent

The Landlord initially applied for an unpaid rent amount based on the full month of September 2023. In the hearing, the Landlord stated they amended this amount because they were able to find new tenants, after the Tenant moved out, in September 2023. In the hearing, I clarified this twice with the Landlord.

The *Act* s. 64(3)(c) provides that I may amend an application, or permit an application to be amended. On this basis, I withdraw the Landlord's claim for unpaid rent, and consider their claim as the issue of monetary loss/other money owed, set out in detail below.

Issues to be Decided

- Is the Landlord entitled to compensation for monetary loss/other money owed?
- Is the Landlord entitled to retain all/part of the security deposit?
- Is the Tenant entitled to the return of the security deposit?
- Is the Landlord entitled to recover the filing fee for this Application?
- Is the Tenant entitled to recover the filing fee for this Application?

Background and Evidence

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

In the evidence, the Landlord and Tenant each provided a copy of the agreement they had in place, for the tenancy starting on August 18, 2023. The rent amount was set at \$2,350, payable monthly, and an added charge of \$150 per month for utilities.

The tenancy agreement was set as a "month to month basis until cancelled in accordance with the *Act*".

The 5th paragraph in the tenancy agreement defines “Liquidated Damages”:

... if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$1,175 as liquidated and not as a penalty for all costs associated with re-renting the rental unit. Additionally, the tenant will pay any rental revenue losses or damages caused by the early end of the tenancy, and any other amounts owing to the landlord under this Agreement.

The Landlord drew attention to the Addendum that provided the unit was partially furnished. As well, a specific clause in the Addendum covered off a unique situation:

Tenant(s) understand and agree that the security deposit may be retained by the Landlord if the tenant(s) fail to move into the unit on the agreed upon start date of the Rental Agreement or vacate/abandon the unit prior to the end date of Rental Agreement without Landlord's written consent.

The Tenant recalled that they moved into the rental unit on August 18; however, an inspection with the Landlord was not completed until later. This was on September 1st, after they moved out from the rental unit on August 31st. The Tenant and Landlord jointly signed the ‘Condition Inspection Form’ (as shown in each party’s evidence) acknowledging this. That form, signed by the Tenant and Landlord on September 1, 2023, shows the Tenant provided a forwarding address at that time. The Tenant did not indicate they agreed to security deposit deductions.

The Tenant also recalled telling the Landlord directly that they would be moving out. They had this discussion with the Landlord on August 25th. When the Landlord queried further on August 27th, the Tenant confirmed this via email. This record appears in the Landlord’s evidence for their Application, as well as the Tenant’s evidence for their own Application.

In the hearing, the Landlord stated the Tenant’s short notice to end the tenancy was a violation of the *Act* as well as the tenancy agreement. The Tenant did not provide any reason of some material breach of the agreement by the Landlord that may pass as a reason for ending the tenancy early. The Landlord described this as the Tenant abandoning the rental unit, because the Landlord provided no consent or the agreement for the tenancy to end in this manner, with inadequate notice from the Tenant.

The Tenant in the hearing cited health and safety concerns they felt were present in the rental unit. They had mentioned this issue to the Landlord within their first week of living in the rental unit. Regarding the discussion with the Landlord on August 25th, they recalled the Landlord stated ‘no problem’ about the tenancy ending in this manner.

In the hearing, the Landlord stated their recall was that they heard about cleanliness/health/safety within the rental unit only when the Tenant moved out at the end of August. On August 25th, they told the Tenant about requiring 30 days' end-of-tenancy notification, and informed the Tenant they would try to have new tenants move in. The Landlord confirmed they had new tenants in the rental unit by September 16th.

In their claim for compensation, the Landlord added the following amounts:

1. \$1,175 – On the Landlord's Application:

Request to retain the security deposit as the tenant moved out without due notice and written consent, as agreed in Clause 2 of Addendum A. Also for loss of rent in September a resulting liquidated damages (cleaning fees) as per Clause 5 of the Rental Agreement

2. \$161 – for cleaning the Landlord paid for at the end of the tenancy. In the hearing, the Landlord stated they had the receipt for this amount to show they paid. At the time of the Application in September 2023, the Landlord set out an estimated amount of \$300

In their Application, the Tenant seeks the return of their security deposit in full. This is based on their submission that the rental unit was "uninhabitable" because of maintenance issues and pests. The issues remain unresolved, and the Tenant provided proof that they thoroughly cleaned the rental unit at the end of the tenancy.

Analysis

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

A party that makes an application for compensation against the other party has the burden to prove their claim. This burden of proof is based on the balance of probabilities. An award for compensation is provided for in s. 7 and s. 67 of the *Act*.

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

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

The *Act* s. 45 sets out that a tenant may end a periodic tenancy by giving a landlord notice, effective on a date that “is not earlier than one month after the date the landlord receives the notice”, and “is the day before the day in the month . . . that rent is payable under the tenancy agreement.”

The *Act* s. 38 governs the return of a security deposit, with a strict 15-day timeline. The *Act* s. 35 requires a landlord to complete a condition inspection report.

I find the Tenant violated the *Act* by not providing adequate notice to the Landlord, as per s. 45 of the *Act*.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for compensation for an amount of rent they would normally have received from the Tenant that they did not. This is for the carryover time period in September 2023, when the Tenant vacated the rental unit with inadequate notice to the Landlord.

I find the Tenant had no acceptable reason for ending the tenancy in the manner they did, and no authority for doing so under exceptional circumstances. The only way that would be possible is with the agreement of the Landlord, or with prior authorization from the Residential Tenancy Branch.

I find it reasonable, and in the interests of mitigate a loss to them, that the Landlord found new tenants for the rental unit as soon as possible. This was mid-September.

The Landlord did not provide proof of the cost to them of cleaning. The Landlord had ample time to provided this, from the date of their Application to virtually the day of the hearing. The Landlord did not provide this proof; therefore, I grant no compensation to them for this additional cleaning.

In sum, I find the Landlord established a claim equivalent to one-half of the monthly rental amount, this is \$1,175.

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

The Landlord established a claim in total of \$1,1175.

The *Act* s. 38 provides that, within 15 days of either the tenancy ending or the date the landlord receives a tenant's forwarding address, a landlord must either repay the deposit or make a claim against it. Because the Landlord filed their Application within 15 days of the tenancy ending, as well as within 15 days of receiving the Tenant's forwarding address, there is nothing precluding the Landlord from claiming against the deposit for compensation.

Under s. 72 of the *Act*, I allow the Landlord to retain all of the security deposit in the amount of \$1,175 in total. There is no remainder to return to the Tenant.

Is the Landlord entitled to recover the filing fee for this Application?

I find the Landlord was successful in bring this Application against the Tenant; therefore, they are entitled to recover the \$100 filing fee they paid.

Is the Tenant entitled to the return of all their security and pet damage deposits?

As set out above, the *Act* s. 38(1) states that within 15 days of the later of either the end of tenancy, or the date a landlord receives a forwarding address, a landlord must either repay it, or formally claim against it.

In this case, I find the Landlord made their claim within the timeline. Above, I granted the totality of the security deposit to the Landlord to repay the amount owed to them by the Tenant. This is based on the Tenant effectively abandoning the rental unit with inadequate notice to the Landlord.

I dismiss this Application from the Tenant, without leave to reapply.

Is the Tenant entitled to recover the filing fee for this Application?

I find the Tenant was not successful in their Application; therefore, there is no return of the filing fee to them.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
compensation to the Landlord for monetary loss/other money owed	\$1,175.00
Landlord's recovery of the Application filing fee	\$100.00
authorization to retain all of the security deposit	-\$1,175.00
Total Amount to Landlord	\$100.00

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: February 5, 2024

Residential Tenancy Branch