



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's June 8, 2023 Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for unpaid rent/utilities
- compensation for damage in the rental unit
- 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 their prepared evidence. In the hearing, the Tenant confirmed this.

I find the Tenant served a limited amount of evidence to the Landlord in response to the Landlord's Application. In the hearing, the Landlord described what they received: this was the same information they had shared with the Tenant, and 12 photos that were a mix of screenshots from a mobile phone and pictures.

The Tenant provided registered mail tracking information to the Residential Tenancy Branch to show that they completed service of evidence as required. From this, I conclude that the Tenant served their evidence to the Landlord. This was on November

4, 2023, as shown by the postal receipt and tracking number the Tenant provided to show this.

The Landlord stated they did not receive a separate Notice of Dispute Resolution Proceeding from the Tenant. The Tenant described using registered mail for this purpose on July 2, 2023, and provided a registered mail tracking number from that date. I find the Tenant credible on the point that they sent notice to the Landlord, and accept the Tenant's Application as part of this hearing, along with the evidence they provided.

Issues to be Decided

- a. Is the Landlord entitled to compensation for unpaid rent?
- b. Is the Landlord entitled to compensation for damage in the rental unit?
- c. Is the Tenant entitled to the return of the security deposit?
- d. Is the Landlord entitled to retain all/part of the security deposit?
- e. Is the Landlord entitled to recover the filing fee for this Application?
- f. 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 tenancy agreement. The tenancy started on August 15, 2021, for a fixed term set to end on July 31, 2022. The tenancy reverted to a month-to-month tenancy after the first year.

The Tenant paid a rent amount of \$1,250 at the start of the tenancy, and a security deposit of \$625.

As shown on page 2 of the agreement, there was "Max 2 adults allowed to live/sleep in unit, additional \$500/month per person allowed with written permission."

- a. Is the Landlord entitled to compensation for unpaid rent/utilities?

In their Application, the Landlord provided that the tenancy end-date was September 4, 2022. The Landlord provided the note they received from the Tenant with this date, in which the Tenant set out the following:

- it was official notice that the Tenant was ending the tenancy as of September 5, 2022, due to the Landlord's "breach in material terms by failing to provide a safe and habitable environment" – this released the Tenant from any obligation to provide any regulated set-timeline notice
- the Tenant acknowledged that the Landlord did not accept the Tenant's previous end-of-tenancy notice dated August 13, 2022, for the tenancy end-date of August 31, 2022.
- there was a rodent infestation that began from the Landlord's residence, and the Landlord had not appropriately managed the problem to end this infestation
- there was a break-and-enter event that the Tenant stated was not met with an appropriate response by the Landlord
- the Tenant accepted the cost of the Landlord needing to replace the locks, due to the Tenant losing the key
- the Tenant accepted the cost of the Landlord removing an installed shelf and an installed curtain/rod

In the hearing, the Tenant described providing the Landlord with a mutual agreement to end the tenancy; however, the Landlord would not acknowledge or sign this document. They vacated from the rental unit on August 28; therefore, they consider August 31 to be the final tenancy-end date. They provided this September 4 letter to the Landlord after the fact.

According to the Landlord, the Tenant notified them about their move-out in mid-August, when the Landlord had to inquire about late payment of August rent. The Landlord requested notification from the Tenant in writing, and then the Tenant provided a mutual agreement form.

On the Application for dispute resolution, the Landlord set out that the claimed amount of \$6,200:

- \$900 of this amount was because of the Tenant's overuse of laundry, up to 4 times per day. This is the cost of hot water/electricity for this to the Landlord, where the tenancy agreement referred to "1 free Laundry load/week".

The Landlord provided evidence in the form of text messages to/from the Tenant about the frequency of the Tenant using laundry.

- \$3,000, for the 3 months at \$1,000 per month for the extra people living in the rental unit. The Tenant told the Landlord their partner moved out, and at that time the Landlord reduced the rent amount by \$100. After this, 2 more adults moved in; therefore, the Landlord claims for \$1,000 per month extra as per the tenancy agreement. This was for the months of March through to May 2022, totaling \$3,000.

The Tenant stated their sister and sister's boyfriend visited, staying for approximately 3 weeks. They advised the Landlord of this in advance, and at that time the Landlord asked for \$1,350 per month. The Tenant referred to text messages they provided in their evidence, showing the Landlord agreed to their short-term visitors' stay from April 4 to April 21. A text message states: "Also they are gone . . . My sis and her boyfriend" The Landlord's acknowledgement of this (as submitted by the Tenant) was "Thanks for the update . . ."

The Tenant provided another text message from April 4, 2022 whereby they notified the Landlord of their payment of \$1,350 for that month. There is no stated objection by the Landlord about the amount.

In the hearing, the Tenant provided that they had no communication about this issue from the Landlord previously, only learning of this through this hearing process.

- \$2,300 for unpaid rent from the Tenant for September and October 2023, at a reduced amount of rent at \$1,150. The Landlord presented in the hearing that they received only late notice from the Tenant at the very start of September for an immediate move-out. The Landlord was not able to have new tenants for the month of October, and they also claim this on the basis of late notification from the Tenant.

In the evidence, the Landlord provided a message that they present as the Tenant agreeing to cover 30 days' amount of rent. This is an undated, cropped text message string. This was the Tenant agreeing to forfeit the security deposit in what they felt was only the equivalent of one-half month's rent.

Another message provided by the Landlord as evidence shows their request to the Tenant (undated) for the amount of \$1,175 for September 2022 rent. Other messages from mid-August show their request to the Tenant for a proper one-month advance notice, with the Landlord stating their need for this in order to have the unit re-rented in a timely manner.

In response, the Tenant stated that their September 4 notice provided the Landlord ample time to obtain new tenants. They stated the Landlord had new tenants for the following month of October.

In the Tenant's evidence they provided regarding the security deposit is a copy of their letter to the Landlord dated September 4, 2022. This provides: "Date the tenant plans to leave: September 5th 2022."

b. Is the Landlord entitled to compensation for damage in the rental unit?

The Landlord provided that the Tenant moved out from the rental unit on September 4, 2022. The Tenant submitted that their move-out date was staggered through the latter part of August, with the final date being August 28.

In the hearing, the Tenant described the Landlord wanting to have an inspection on September 1. The Tenant tried to accommodate a meeting together with the Landlord, but the Landlord kept rescheduling this.

The Landlord alone completed an inspection report, with pictures, to document the condition of the rental unit. The Landlord stated they were aware of the need for two opportunities, based on a discussion with the Residential Tenancy Branch. Their final notice to the Tenant about having an inspection was on September 4.

In their provided Condition Inspection Report, the Landlord provided a room-by-room list of details, noting specific items of damage, and "not cleaned" throughout. They obtained the Tenant's signature on the final page of the report, though the Tenant did not sign that they agreed to a full deduction (*i.e.*, \$625) from the security deposit.

On page 5 of the Report, the Landlord wrote the following:

Items left behind as of inspection Sept 4th, 2022. TV box, curtain, mount, mirror (furniture). Both curtains & wall mount installed by the tenant without permission, missing landlord-owned wifi router.

Notable on the final page of this document. dated September 4, 2022, is the Tenant's forwarding address.

The Landlord provided the amount of \$1,894.16 as a claimed amount of compensation for damage in the rental unit. They provided a Monetary Order Worksheet for this hearing, and the parties had the opportunity to present their understanding of each of the 5 items the Landlord listed:

- \$308.28 for the replacement of a dolly, ordered via Amazon on September 23, 2022. The Landlord submits the Tenant damaged the Landlord's dolly that was at the rental unit property.

The Tenant responded simply to say they used the dolly for moving heavy boxes, and returned it when their move-out was complete. They provided text messages from September 10, noting the Landlord's claim about RCMP involvement for the purpose of stolen property, describing "CCTV footage."

- \$26.82 for dryer parts replacement, with an accompanying invoice from Amazon on September 23, 2022. In the hearing, they mentioned that they did not claim for compensation of the repair amount owing to the Tenant's overuse of the laundry appliances. The Condition Inspection Report notes no specific damage to either the washer or dryer in the appropriate section.
- \$364.59 for a front door lock (a smartlock keyless entry), ordered via Amazon. The Landlord noted they provided a key that accompanies this lock to the Tenant at the start of the tenancy. The Tenant responded to say they never received a key.

The Condition Inspection Report has entries from the start of the tenancy, as "1 key + digital lock". The Landlord listed "no key return" and cited their concern over safety with an existing key remaining in the Tenant's possession after they moved out.

In a letter to the Landlord dated September 9 (i.e., days after their move out), the Tenant stated "The lock is digital as I am informed that you will need to change the passcode."

- \$294.48 Wifi router replacement, sourced from Amazon. The Landlord presented that they provided a dedicated router for the rental unit, installed in the bedroom in the rental unit. They were very careful to do an inspection together with the Tenant on the final day, and documented this in the final report.

The Landlord provided an image of a text message, undated, showing the Tenant's inquiry ("The wifi router was gone and I wasn't technically moved out yet."), to which the Landlord answered in the negative.

The Tenant presented that the Landlord accused them of stealing the router earlier during the tenancy in March 2022. This was after their own inquiry to the

Landlord on the router's whereabouts. They realized the router was missing approximately one week prior to the end of tenancy. The missing router, as the basis for the Landlord's inquiry closer to the end of the tenancy, was the Tenant's own router.

The Tenant also provided a video of them walking around the empty rental unit, presumably at the time of move-out when it was basically empty. They pointed to the previous location of the router to show it was missing. This router was "mysteriously missing from my room" when they were still officially living in the rental unit.

- \$899.99 for a replacement electric range, cost sourced from some online resource. The Landlord in the hearing stated they did not actually replace the oven, and this is an estimate cost for its replacement. They stated the glass on this appliance had "separated", and there were screws missing. The Tenant had declined to repair this.

The Landlord provided a single photo of an image of the door of the appliance. In the inspection report, the Landlord noted "damage to stove/oven".

In the hearing, the Tenant described a screw on the side of the appliance being "a little bit loose." They provided a text message to the Landlord on September 2 describing this precise issue, stating that all that would be required is a simple screw to be replaced.

c. Is the Tenant entitled to the return of the security deposit?

The Tenant provided a forwarding address to the Landlord on September 4, 2022 at the time of the move-out inspection meeting. This is listed on the final Move-out inspection report of that date, and signed by the Tenant.

The Tenant again provided their forwarding address to the Landlord in a letter dated September 9, 2022. The Tenant provided this evidence to the Landlord for this hearing in response to the Landlord's claim for compensation.

In the hearing, the Tenant noted they provided a forwarding address on two more occasions: this was on June 7 and June 27, 2023. This was via the Residential Tenancy Branch form specific to this purpose.

Analysis

In general, 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 a 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.

a. Is the Landlord entitled to compensation for unpaid rent/utilities?

The Landlord claimed \$900 for the Tenant's overuse of laundry. I find the Landlord did not specify the timeframe involved, and did not approximate the Tenant's use by frequency or amount. A single text message showing that the Landlord inquired about this to the Tenant at some point is not sufficient evidence for this piece of their claim.

As well, this was presumably an impact to the Landlord on the amount of utilities they paid; however, the Landlord provided no record of that, either to show a comparison, nor for any reference to the time period involved when the Tenant was allegedly overusing the laundry.

I dismiss this piece of the Landlord's claim because there is insufficient evidence in terms of an actual outlay of cost or expense by the Landlord for this piece.

Similarly, the Landlord did not show definitively that the Tenant had extra people living with them. There appears to be a frequent amount of text messaging between the Landlord and the Tenant, yet despite this there is no record of the Landlord inquiring on extra people living in the rental unit, or making a claim for extra rent to the Tenant in that timeframe. On this basis, I accept the Tenant's statement that they had not heard about this previously from the Landlord.

The Tenant presented some evidence – though minimal – that they informed the Landlord on April 21 that extra people who visited had left. The Landlord did not provide sufficient evidence to outweigh that provided by the Tenant on this point; therefore, I dismiss this piece of the Landlord's claim without leave to reapply. The Landlord simply had no evidence on this piece.

Regarding the Landlord's claim for September and October 2022 rent, the *Act* s. 45(1) applies in this scenario. 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."

I find the Tenant in August proposed a mutual agreement to end the tenancy. The Landlord was under no obligation to accept this, and the Tenant's position that the Landlord was incorrect on this is baseless in this situation. Other than this, there is no record of the Tenant bringing the matter of pests, or some break-entry situation, to the Residential Tenancy Branch for authorization in a reduction in rent or validation of an early end to the tenancy.

The applicable section for what the Tenant proposes as the appropriate justification for their seeking to end the tenancy early because of these problems is s. 45(3):

If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I do not see how the Tenant identified a material term breach to the Landlord as required. The Tenant provided photos showing some pest problem; however, there is no record of clear communication asking the Landlord to correct the situation – as a matter of maintenance or repair – within a reasonable timeframe. I am not satisfied this was a material term of the tenancy agreement to the extent that it would warrant an effective instant end to the tenancy for this reason.

The Tenant did not show how a break-entry scenario was because of the Landlord. I find this is a separate serious matter that did not involve the Landlord directly. Again, there is no record of the Tenant notifying the Landlord of this, or a reference to how it is a breach of basic tenancy laws. It is an unfortunate incident; however, I don't understand how it resulted from any breach of the *Act* or tenancy agreement by the Landlord. This also does not warrant an immediate end to the tenancy in this fashion for this reason. 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 the Tenant was therefore obligated to notify the Landlord of an end to this periodic tenancy as set out in s. 45(1). This was with notice at least one month in advance, for a date that accords with the requirement that it be the day before rent payment.

I grant the full amount of September rent to the Landlord because the Tenant did not provide proper required notice to the Landlord. This amount is \$1,150.

For the month of October, I find the final end-date that the Tenant must have availed themselves of was October 31, 2022. This was the first end-of-tenancy date that complies with s. 45(1). I grant the further amount of \$1,150 to the Landlord for this reason.

In sum on the Landlord's claim for rent and utility amounts, I grant compensation to the Landlord in the amount of \$2,300. The Tenant's notification to the Landlord was incorrect as per the applicable law in this situation, and I find there was not a material breach reason available to the Tenant either by right or default in this situation.

b. Is the Landlord entitled to compensation for damage in the rental unit?

Concerning the condition of the unit at the end of tenancy, s. 37 specifies that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

On each item listed by the Landlord as damage, I find as follows:

- The Landlord did not prove definitively that the Tenant either stole or damaged the dolly. In the evidence is the Landlord's message to the Tenant about police involvement in the matter; however, there is no record that the Landlord ever pursued the matter with the police. The Landlord claimed they had CCTV footage; however, for the purpose of making a claim for compensation on the dolly amount, the Landlord did not provide this as evidence. I dismiss this piece of the Landlord's claim for this reason: the Landlord did not provide sufficient evidence to prove damage or loss.
- The Landlord did not provide sufficient evidence of damage to the dryer for which they purchased a replacement part. There is no evidence of the age, model or lifespan of the dryer to rule out that damage may be attributable only to the actions or negligence of the Tenant. The Condition Inspection Report makes no mention of this specifically. As above, I find the Landlord did not provide sufficient evidence to prove damage or loss.

- I find the Landlord is not mitigating the cost to them by replacing the entire lock mechanism on the door. I am not satisfied of a safety concern associated with the smartlock system they are using at the rental unit. This would normally be a matter of changing the combination entry code. The key serves as a backup should the lock fail; however, I am not satisfied of any legitimate safety risk posed in this situation. I find, simply, that an entire lock replacement is not necessary in this situation. I dismiss this piece of the Landlord's claim for this reason.
- The burden of proof in this matter is on the Landlord to show on a balance of probabilities that items are damaged or require repair. In the situation of the router that they allege the Tenant stole at the end of the tenancy, I question why the Landlord did not bring the allegation of stolen property to the police – that would bolster their position that the Tenant stole items.

Aside from this alleged theft, the Landlord did not present clearly on this situation involving the router. Apparently, the item was missing in March 2022, and I don't understand if this claim was a carryover from that timeframe. In addition to this, the Tenant cross-claims that their own router was then missing from the rental unit before they moved out. The Landlord had the opportunity in this hearing process to present clearly on this situation, yet I find they did not. They did not overcome the burden of proof to show a damage or loss to them for this particular item. I dismiss this piece of the Landlord's claim for this reason.

- I am not satisfied there was damage to the stovetop/range that would justify replacement of that appliance. The Landlord did not provide sufficient proof of this, and the matter of a simple screw missing or loose (which I find to be fact) does not warrant a replacement. I dismiss the Landlord's claim for this reason.

In sum, the Landlord did not present clearly or have sufficient evidence to satisfy all four conditions of the test I set out at the start of this analysis section in my decision. I grant no compensation to the Landlord for any damage in the rental unit, and I dismiss this part of the Landlord's Application in its entirety, without leave to reapply.

c. Is the Tenant entitled to the return of the security deposit?

The *Act* s. 38(1) sets out that a landlord must either (a) repay any security deposit to a tenant, or (b) make an application for dispute resolution claiming against the deposit. This must occur within fifteen days of the later of either the tenancy end date, or the date a landlord receives a tenant's forwarding address in writing. This is the law on a

security deposit when a tenancy ends. This is strictly applied in all cases unless a landlord has a tenant's written consent to keep all/part of the deposit, or some order from the Residential Tenancy Branch.

In a situation where a landlord does not comply with s. 38(1), the *Act* s. 38(6) provides that a landlord may not make a claim against a deposit, and must pay to a tenant double the amount of the deposit.

In this matter, I find the end-of-tenancy date was September 4, 2022. I find the Condition Inspection Report in the evidence shows the Tenant provided a forwarding address to the Landlord on this date. The Tenant provided their address to the Landlord again more formally on September 9, and again after a prior hearing in this matter (dismissed with leave to reapply) in June 2023.

The relevant date I must consider is the end-of-tenancy date of September 4, 2022. This was the same date the Tenant first provided a forwarding address to the Landlord.

The Landlord made their initial Application to the Residential Tenancy Branch for compensation on September 10, 2022. An arbitrator on May 25, 2023 dismissed that Application with leave to reapply. For dissemination of the security deposit, I find as fact the Landlord applied within the 15-day legislated timeframe after September 4, 2022. I conclude s. 38(6) does *not* apply in this situation, and there is no doubling of the deposit. The Landlord complied with the applicable timeframe and applied against the deposit.

The *Act* s. 72 also applies in this situation. Above I found the Tenant must pay compensation to the Landlord, and this may stem from the security deposit. For this reason, I dismiss the Tenant's Application for the return of the security deposit.

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

The Landlord established a claim in total of \$2,300.

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 This is \$625 in total. There is no remaining amount from the security deposit to return to the Tenant.

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

I find the Landlord was successful in this Application against the Tenant. It was necessary for them to do so in order to resolve the matter. I find the Landlord is entitled to recover the \$100 filing fee they paid.

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

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

Conclusion

I grant to the Landlord a Monetary Order in the amount of **\$1,775.00** under the following terms:

Monetary Issue	Granted Amount
compensation to the Landlord for unpaid rent/utilities	\$2,300.00
Landlord's recovery of the Application filing fee	\$100.00
authorization to retain all of the security deposit	-\$625.00
Total Amount to Landlord	\$1,775.00

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: March 15, 2024

Residential Tenancy Branch