



Dispute Resolution Services

Page: 1

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
- compensation for damage in the rental unit
- authorization to retain the security deposit.

The Tenants' Application, crossed to the earlier Application by the Landlord, concerned the return of the security deposit, and the recovery of the Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

Preliminary Matter: Landlord's Service of Notice of Dispute Resolution Proceeding and evidence

I find the Landlord served the Notice of Dispute Resolution Proceeding document, as well as their prepared evidence to the Tenant, all via registered mail. In the hearing, the Tenant confirmed this.

Preliminary Matter: Tenant's service of Notice of Dispute Resolution Proceeding

The Tenant applied initially to the Residential Tenancy Branch on December 21, 2023. They set out that they served the Notice of their Application to the Landlord on December 25, 2023. They had to leave this document in the Landlord's mailbox when the Landlord did not answer their door to receive the document in person.

The Tenant received their original Notice of Dispute Resolution Proceeding on December 22, 2023, from the Residential Tenancy Branch via email with instructions. The instruction to the Tenant, as per the Residential Tenancy Branch Rules of Procedure, as well as s. 59(3) of the *Act*, was to serve the Notice of Dispute Resolution Proceeding to the Landlord by December 25.

That Residential Tenancy Branch email message to the Tenant on December 22, 2023 contains the following:

Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)

You must serve the Notice of Dispute Resolution Proceeding package by Dec 25, 2023 in one of the following ways:

Canada Post Registered Mail

1. Print and prepare **separate** Notice of Dispute Resolution Proceeding packages to serve each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send each envelope by Canada Post Registered Mail. Package(s) must be post marked on or before **Dec 25, 2023**

In person

1. Print and prepare **separate** Notice of Dispute Resolution Proceeding packages to serve each respondent
2. Print and bring a proof of service RTB-55 for each respondent to sign acknowledging receipt of the Notice of Dispute Resolution package. Otherwise, bring a witness with you, who can sign to prove service
3. Serve each respondent one copy of the Notice of Dispute Resolution package by hand on or before **Dec 25, 2023**

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code: [****] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent

2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Dec 25, 2023**

Learn more about [serving your Notice of Dispute Resolution Proceeding package](#).

In the hearing, the Tenant set out that they attempted to provide the required information to the Landlord in person; however, the Landlord did not accept service, forcing the Tenant to drop the document in the Landlord's mailbox. The Tenant then emailed the Landlord with a copy of a picture of the document in the mailbox. The Landlord in the hearing took issue with this mode of service.

I find the Tenant did not undertake service to the Landlord as required. This applies to only the Tenant's Notice of Dispute Resolution Proceeding. For this reason, I dismiss the Tenant's Application for the security deposit return, with leave to reapply. As I stated to the parties in the hearing, I am considering the dispensation of the security deposit, or its return, as part of the Landlord's Application.

I dismiss the Tenant's Application for reimbursement of the filing fee, without leave to reapply.

Preliminary Matter: Tenant's service of evidence

The Tenant provided evidence to the Landlord in the same package they placed in the Landlord's mailbox on December 25, 2023. For service of evidence, this is an acceptable method, as per s. 88(f) of the *Act*. I find the Tenant properly served evidence to the Landlord as required; therefore, I give the Tenant's evidence full consideration where relevant.

The Tenant provided additional evidence to the Residential Tenancy Branch on April 11, 2024. In the hearing the Tenant stated they did not serve this to the Landlord. Because the Tenant did not serve this evidence, I am not considering these documents.

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 Landlord authorized to retain the security deposit?

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.

The Landlord provided a copy of the agreement they had in place with the Tenant. This tenancy started on September 1, 2023 on a month-to-month basis, for \$1,300 per month rent. The Tenant paid a security deposit of \$650 on August 15, 2023. The document, being a templated form, refers to the *Act* throughout.

The Landlord and Tenant jointly signed a condition inspection record on September 2, 2023. The Tenant claimed they did not receive a copy of this document until September 26 after they made an additional request to the Landlord. The Landlord recalls differently, with the copy they provided on that date being the second copy to the Tenant. According to the Tenant in the hearing, this negatively affected their trust of the Landlord during the tenancy.

The Tenant provided a notice dated October 28, 2023 that they wished to end the tenancy on November 30, 2023. This appears in the Tenant's evidence. As shown in the document, they offered to meet with the Landlord on November 30, the final date of the tenancy.

The Landlord recalls meeting with the Tenant on that date. Based on what they saw in their cursory review of the rental unit condition, they offered the Tenant further opportunity for final clean-up in the rental unit. This was until 2pm, and the Tenant returned to the rental unit, as per the Landlord's recollection, at noon. Even after this follow-up by the Tenant, the Landlord provided another opportunity for the Tenant to clean up in the rental unit. The Tenant wanted still more time, and the Landlord departed. According to the Landlord, the Tenant returned in the evening at 730pm and returned the key. At that time the Tenant objected to having no completed inspection report.

The Landlord felt the inspection was not complete. On December 1, the Landlord provided a notice of move-out inspection to the Tenant, posted to the door at the Tenant's forwarding address. This set a follow-up inspection date of December 6, as shown in the Tenant's record. The Tenant did not reply to this, and the Landlord sent another inspection date of December 8, as shown in the Tenant's evidence.

The Landlord attended to the rental unit alone on December 8, and completed the inspection document that appears in their evidence.

The Tenant recalled revisiting the unit and “having to go through several times”; however, the Landlord was not satisfied with the condition of the rental unit on the final day. The Tenant in the hearing stated they refused when the Landlord tried to re-schedule another inspection on the same date.

The Landlord claimed \$1,300 for the December 2023 rent because they were not able to have another tenant in the rental unit until the final inspection was complete.

The Landlord obtained an estimate (dated January 8, 2024) for residual work needed in the rental unit. In total this was \$1,986.88, including \$1,380 for 12 hours of labour. The material, aside from common clean-up and painting materials, includes a new faucet and bathroom light fixture. The Landlord noted specifically in the final inspection report a “broken bathroom sink drain”, and “burnt light fixture in bathrooms”.

The Tenant stated their mistrust of the Landlord after they moved out, they “don’t know what happened to the unit after I moved out”.

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.

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

The Landlord claimed a full month of rent for the following month of December. This is based on the premise that the Tenant did not complete a move-out inspection jointly with the Landlord as required, and this prevented the Landlord from re-renting the rental unit to new tenants.

I find the Landlord did not provide evidence at their effort at mitigating the impact to them arising from the incomplete end-of-tenancy process. The Landlord did not indicate

that there were, in actuality, other tenants ready to move in and were prevented from doing so by this process.

I find the Landlord's effort at assessing damage in the rental unit by way of the estimate they obtained for needed work factors into my consideration here as well. That estimate, as dated on the document provided to the Landlord, was on January 8, 2024. This is over one month after the Tenant returned the key to the Landlord on November 30. From this, I conclude the Landlord was not actively seeking new tenants to enter in December 2023.

I accept that the Landlord wanted to have this tenancy fully complete and over with. Their first available inspection date, as sent to the Tenant on the form for that purpose, was on December 6. This was over one week after the interactions they had with the Tenant on November 30. I find this also does not represent an effort by the Landlord at having the matter concluded as quickly as possible. I grant this one-week delay in seeking to finish the process was in all likelihood due to non-response from the Tenant at that point.

I find it was unreasonable for the Landlord to continue the process/need for an inspection in this manner and for this duration. I find in all likelihood this was borne of their frustration at having to keep calling the Tenant back to the unit on November 30, because of inadequate close-out cleanliness at the end of the tenancy.

In sum, I assign responsibility for fully ending the tenancy and having a complete move-out inspection on the final day of the tenancy with the Landlord. I find it was reasonable in one, perhaps two instances of allowing the Tenant to return to the rental unit to complete cleaning, also accounting for the Tenant not attending in a timely manner on the day of to complete that. Anything beyond that, I find the Landlord could have reasonably completed the inspection report on that same date and considered the matter closed. There was no appropriate reason why the Landlord had to follow up with two offers of a scheduled inspection after that, even though they felt it was a legal obligation to complete that process.

For these reasons, I grant \$100 in compensation to the Landlord a brief carryover period if they insisted on having the matter completed within 1 or 2 days. This is based on a per diem factoring in the rent amount, and two days' availability to conclude the matter. I find the Landlord could have properly concluded the matter entirely within next couple of days after November 30, either December 1 or December 2, which would have been the next available weekend. I find that the Landlord scheduling a follow-up

inspection on December 6 was unreasonable in the circumstances, and was not an effort at mitigating the impact to them.

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.”

I find the Landlord did not prove conclusively that there was damage to any faucet that required replacement. This is not borne out by the Landlord’s evidence. Similarly, the Landlord did not show damage to a light fixture that required replacement, and there is nothing to show this was any damage caused through the Tenant’s actions or neglect. I dismiss these pieces from the Landlord’s claim entirely.

I grant no compensation to the Landlord for common items associated with repair to walls, and cleaning products, and even rags. I find there is insufficient evidence in the form of pictures to account for 12 hours of labour. These amounts, the need for them, are not borne out by the Landlord’s evidence in the form of pictures. Additionally, the Landlord did not obtain this estimate until approximately one month after they declared the tenancy ended; I question the true need for these amounts of labour, and there is insufficient evidence of the need for materials or fixture replacements. As well, this was an estimate; I am not satisfied the Landlord undertook to have any of the work they are claiming for actually completed.

For these reasons, I dismiss the Landlord’s claim for compensation for damage in its entirety, without leave to reapply.

c. Is the Landlord authorized to retain the security deposit?

The Landlord established a claim in total of \$100.

I find the Landlord’s Application included a claim against the security deposit for something other than damage to the rental unit (*i.e.*, unpaid rent). I find it is not relevant whether the Landlord’s right to claim against the security deposit for damage has been extinguished under the *Act* in terms of the timeline set out in s. 38.

Under s. 72 of the *Act*, I allow the Landlord to retain \$100 of the security deposit. The Landlord must return the remaining amount to the Tenant. For this amount I grant a Monetary Order to the Tenant for the return of \$550 to them.

Conclusion

I dismiss the Tenant's Application, with leave to reapply.

I grant to the Landlord the amount of \$100. They may retain this amount from the Tenant's security deposit and return the remaining portion to the Tenant.

I provide the Tenant with a Monetary Order for \$550. The Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant 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: April 16, 2024

Residential Tenancy Branch