



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's December 15, 2023 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
- recovery of the Application filing fee.

The Tenants' December 29, 2023 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 Tenants (hereinafter, the "Tenant") and the Landlord attended the scheduled hearing.

Service of hearing documents and evidence

Both the Landlord and the Tenant acknowledged they received the Notice of Dispute Resolution Proceeding from the other. Both parties also acknowledged they received the evidence the other presented for consideration in this matter.

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.

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?
- d. Is the Landlord eligible for recovery of the Application filing fee?
- e. Is the Tenant eligible for recovery of the Application 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 to my decision.

The Landlord and Tenant each provided a copy of the tenancy agreement they had in place. The tenancy started on March 1, 2021, set for a fixed term ending on August 31, 2021. After that, the tenancy continued on a month-to-month basis. Over the course of the tenancy, the rent increased to \$2,075 from the starting rent of \$1,800.

The Tenant paid a security deposit of \$1,800 on January 26, 2021. Both parties agreed that this was the full amount paid at that time.

An addendum to the agreement sets out that “2 months advance notice is required for ending the agreement.” In the hearing, the Tenant stated their understanding that the agreement ended when the fixed term expired; therefore, this term of the agreement did not apply to the tenancy when they notified the Landlord that they were ending the tenancy toward the end of October 2023.

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

The tenancy ended when the Tenant gave notice to the Landlord. The Tenant stated they gave a verbal notice to the Landlord on October 23, 2023, then confirmed this on October 25, 2023. Their final date of this tenancy, as stated, was November 30, 2023. Their piece-by-piece move-out process continued, and they let the Landlord know, two weeks in advance, that they needed access to a foyer area for larger furniture move out on November 28.

The Landlord recalled the discussion, with the Tenant stating, ‘probably until end of November, but can you give [us] two more weeks in December’. The Landlord recalled the basis for the statement was the Tenant’s stress about moving into their new home. The Landlord did not

recall a follow-up discussion on October 25. After the Tenant moved out, the Landlord expressed their confusion about the final end-of-tenancy date, and the Landlord and Tenant met in the rental unit on December 12 to review the condition of the rental unit.

The Tenant also recalled that the Landlord started a renovation process around that time, and access was given to contractors in line with that. The Tenant feels that the Landlord definitely knew that the Tenant had vacated and moved out all of their furniture. In the hearing, the Landlord stated they “realized that the Tenant moved out on November 28”. The Tenant reiterated that the rental unit was empty prior to November 28, meaning the Landlord “knew very well” that the rental unit was empty by November 30, and the Tenant had definitively moved out.

Based on their understanding that the tenancy was ending in mid-December, the Landlord claimed one-half of monthly rent as compensation. This amount is \$1,037.50. This was because the Tenant did not provide written notice; rather, this was “verbally in vague and ambiguous language”. The Landlord stated they provided more opportunity for the Tenant to move out – *i.e.*, until mid-December – based on the Tenant’s situation moving into a new home.

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

The Landlord claimed a \$300 amount for damage in the rental unit. This stems from the Tenant’s installation of a telephone line – the installer attached the cord along the outer wall of the rental unit property, leaving this installed at the end of the tenancy. The Landlord called to the installer and obtained the amount of \$150 for a technician’s visit. The Landlord estimated the job of removing the cord would cost \$300.

In their evidence, the Landlord provided a picture of the cable mounted on the rental unit home’s siding. The Landlord listed this as “damage” on the condition inspection document, and: “The . . . cable should be removed from inside of the house and exterior sidings.”

The Tenant in the hearing stated their account which required cable installation was not able to be accommodated at the rental unit when they moved in. As a transfer of their account, the installer came and put the cables on the outside of the home. This was so the Tenant could continue to use the telephone line for their work purposes. The basis for the Tenant requiring this installation was that there was no phone line already able to be used in the rental unit when they moved in.

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

As set out in the tenancy agreement, the Landlord collected a security deposit in the amount of \$1,800.

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?*

I find the Landlord did not meet the burden of proof to show that the Tenant intended, or gave some message that they intended, to occupy the rental unit through to mid-December. With nothing documented, this is based on the parties' recall of discussions had concerning the end of the tenancy. I find the Tenant more credible on their recall of the verbal notice they gave to the Landlord, and the subsequent discussion confirming that.

The addendum clause stating the Tenant should provide two months' notice to end the tenancy is invalid by s. 45 of the *Act*. The *Act* s. 5 says that it cannot be avoided or otherwise contracted out of.

I find, conclusively, that the Landlord was aware of the Tenant moving out by the end of November 2023. The Landlord confirmed they viewed the rental unit and observed that it was empty on November 28, 2023. As the owner of the rental unit, I find positively it was the Landlord's obligation to verify, or confirm, other arrangements that they had assumed were in place.

I find there was no messaging in place, or other indications, that the Tenant would occupy the rental unit until mid-December. With only the Landlord's assumption in place, minus evidence of clear communication otherwise, as well as proof the Tenant had already moved out from the rental unit substantively by November 28, I dismiss the Landlord's claim for unpaid rent for this

reason, without leave to reapply. I find that there was no unpaid rent; therefore, no loss to the Landlord exists.

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

I find the Landlord has shown that the cable was not in place at the start of the tenancy. I find it reasonable that the Landlord would want the cable to be removed after the tenancy ended. I find there is no evidence that the Landlord raised the issue with the Tenant at the time of installation (though I appreciate the Landlord's point that no one consulted them), during the tenancy, or as part of the discussion with the Tenant at the end of the tenancy. I find there was no discussion about its removal even without the service provider/installer visit.

I am not satisfied of the value of a technician visit. The Landlord did not provide proof thereof. Further, I find the Landlord did not quantify the amount of \$300 that they are claiming for this. The Landlord did not specify if the additional \$150 would be for siding replacement, or something else to cover where the cable was.

I am not satisfied of the value of the damage to the Landlord in this instance. For this reason, I dismiss this piece of the Landlord's claim.

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

The Act s. 19 sets out that a landlord must not accept a security deposit that is greater than one half of one month's rent. Should they do so, a tenant may recover that overpayment.

I find the Tenant overpaid on the security deposit by \$900. They paid a full month's rent as a deposit amount at the start of the tenancy. I order the Landlord to return the excess amount.

I dismissed each piece of the Landlord's claim above; therefore, I also order the Landlord to return the remaining amount of the full deposit to the Tenant, with interest. This amount is \$1,850.54.

d. Is the Landlord eligible for recovery of the Application filing fee?

The Landlord was not successful in this Application; therefore, I dismiss their claim for recovery of the Application filing fee.

e. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant was successful in their Application; therefore, I grant to them recovery of the Application filing fee.

Conclusion

I dismiss the Landlord's Application, without leave to reapply.

I grant the Tenant \$1,950.54 for the return of the security deposit, plus interest and the Application filing fee.

I provide the Tenant with a Monetary Order in the above terms and 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 23, 2024

Residential Tenancy Branch