



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's January 2, 2024 Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for damage in the rental unit
- 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 January 19, 2024 Application for the return of the security deposit and recovery of their 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 and their prepared evidence via registered mail. In the hearing, the Tenant confirmed this.

The Tenant provided evidence to the Residential Tenancy Branch, in response to the Landlord's Application. On my question about service to the Landlord, the Tenant stated they did not provide this evidence separately to the Landlord. The Landlord confirmed this: they received no evidence from the Tenant. For this reason of non-disclosure, I do not consider the Tenant's response evidence herein.

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

The Tenant received their original Notice of Dispute Resolution Proceeding on January 22, 2024, 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 January 25.

That Residential Tenancy Branch email message to the Tenant on January 22, 2024 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 Jan 25, 2024 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 **Jan 25, 2024**

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 **Jan 25, 2024**

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 **Jan 25, 2024**

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

In the hearing, the Tenant set out that they did not serve the required information to the Landlord. The Landlord confirmed this.

I find the Tenant did not undertake service to the Landlord as required. This applies to the Tenant's Notice of Dispute Resolution Proceeding, as well as the Tenant's evidence for their Application. 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 to the Tenant, as part of the Landlord's Application.

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

Issues to be Decided

- a. Is the Landlord entitled to compensation for damage in the rental unit?
- b. Is the Landlord entitled to compensation for monetary loss/other money owed?
- c. Is the Landlord entitled to retain all/part of the security deposit?
- d. Is the Landlord 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 each provided a copy of the tenancy agreement. The tenancy started on August 1, 2022, for a fixed term; however, no end of fixed term date was indicated in the agreement. The indication is that the tenancy reverted to a month-to-month arrangement after that.

The agreement, which is a pre-formed standard template that conforms with the *Act*, lists in section 6 the need for joint condition inspections in the rental unit at the start of the tenancy, and at the end of the tenancy.

The Tenant paid a rent amount of \$2,500 at the start of the tenancy, and a security deposit of \$1,250.

As shown in the addendum that also formed part of the agreement:

- “All appliances will be in good working condition on the move-in day. And must be the same condition when the contract ends.”
- “At the end of the occupancy, the unit must be professionally cleaned to the standard and condition as received. All areas must be cleaned and washed, including walls, floors, tiles, blinds, windows, appliances, closets/cabinets (inside/outside), washroom, light fixtures, patios, etc.”
- “The carpets and paints aren’t new or flawless. Except for minor wear and tear, everything is expected to remain the same. And without any permanent marks, stains, damages, changes, holes, etc.”
- “On the move-in day, tenants should check the unit and take photos of any obvious issues. The photos should be shared with the landlord and then saved safely for the move-out time. That can help with any potential dispute on the move-out day.”
- “No interest will apply to the damage deposit amount.”

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.”

The Landlord in the hearing reiterated that they instructed the Tenant to take photos in order to record the condition of the rental unit on the Tenant’s move-in day. The Landlord stated they did not complete a condition inspection meeting with the Tenant, and the Tenant “didn’t ask for it.”

The Tenant described an incorrect-fitting door in the rental unit, and the incident of a ceiling leak during the tenancy because of the sprinkler pipe system. The repairs necessitated by this leak led to the entire ceiling being repainted.

This tenancy ended on the Tenant’s own notice to the Landlord. The Tenant cited the reasons of renovations used as the Landlord’s strategy to force the Tenant out. The Tenant provided an end-of-tenancy notice for the end date of November 30, 2023. The Tenant recalled transferring the key to the Landlord, via their neighbour who was a mutual contact, on December 1 or December 2.

After the tenancy ended, the Tenant provided a forwarding address to the Landlord on December 22, 2023.

a. 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 November 30, 2023. The Landlord stated they offered 3 different opportunities or a joint inspection meeting with the Tenant. The Landlord provided a string of text messages to the Tenant on November 28 (querying a time to meet “on Thursday” *i.e.*, November 30), then specifying Thursday morning, or the next day Friday morning (*i.e.*, December 1).

After this, on November 30, the Landlord texted to the Tenant to say they served a specific form for the ‘Final Opportunity to Schedule a Condition Inspection’. That form in the evidence shows the Landlord’s proposed meeting time of December 3, 2023 to finally review the condition of the rental unit.

The Tenant responded to say their neighbour would act as their representative for this final meeting. The Landlord described waiting on December 3rd, and when the neighbour did not attend on time, the Landlord completed the ‘Condition Inspection Report’ form themselves.

That form appears in the Landlord’s evidence, indicating the inspection took place on December 3rd. On the final page, which bears the neighbour’s signature as a witness to say the Tenant did not attend, the Landlord listed specific issues of damage, which includes:

- all windows are left dirty and dusted
- screens uncleaned
- cabinets uncleaned, poor cleaning of oven, stove
- bathroom cleaning is poorly done
- carpets are all stained and left unwashed
- minor damage to blinds
- all closet doors and other doors are left with marks
- bedroom door is damaged
- walls have lots of stains and damages
- screen behind the main entry is ripped off
- patios are left uncleaned.

In the hearing, I provided both parties sufficient time to describe the issues of cleaning/repairs from their perspectives.

The Landlord provided the following list in a worksheet dated January 2, 2024:

	Description	paid
1.	painting – damages to walls, doors, closet doors	\$1700 + GST
2.	general and carpet cleaning	\$945 + GST
3.	replacement of light fixtures and bulb	\$105.95 + tax
4.	missing organic bin given by strata	\$30 + tax
5.	replacement of torn roller blind	\$37.99 + tax
6.	missing visitor pass/broken fob	\$100
		\$3,072.06

1. painting: The Landlord described the Tenant putting patches on the walls to cover small nail holes of the type used for framed pictures. In a separate document, the Landlord listed walls “full of marks and stains”, covered with a “non-matching color paste” without being painted. This forced the Landlord to paint all walls in the rental unit. Aside from this, the Landlord listed specific damage to doors within the rental unit.

The Landlord provided pictures of chipped door edges, dirty door, walls patched in small spots and marks and stains throughout.

The Tenant described one door as being incorrectly installed at the beginning of the tenancy, leading to scraps along the door edge. The Tenant in the hearing maintained that nothing needed painting, and they undertook to patch the walls as a favour to the Landlord.

The Landlord provided an invoice dated December 21, 2023, detailing the work completed. This highlights the price scheme for certain portions of work (*i.e.*, one coat of paint throughout is \$1,250). The Landlord did not provide a paid invoice that included the tax amount. Their calculation of \$1,700 is based on this pricing list. There is no final paid invoice in the Landlord’s evidence.

2. general and carpet cleaning: the Landlord provided an estimate dated December 27, 2023, showing move-out cleaning service (8 hours at \$90 per hour) and carpet cleaning. There is no paid invoice for the completion of this work.

The Landlord provided photos throughout showing unclean carpets, unwashed tiles, kitchen throughout, appliances, bathroom. The Landlord provided a separate list of needed cleaning throughout the rental unit, in detail room-by-room. This cost, as an estimate, was \$992.25 including GST.

The Tenant provided that they cleaned the carpets, as they stated in an email to the Landlord. The Tenant did not draw upon evidence showing this, or specify other information about the cleaning.

3. The Landlord specified light fixture removal by the Tenant, with the original fixture in one room missing, to be replaced by a lone light bulb. They also showed a missing kitchen track light fixture. The Landlord provided an invoice for \$73.99 replacement kitchen track fixture, \$24.99 for an individual fixture.

The Tenant described there not being any light fixture at all in the place indicated. They tried their best to recover the light bulb and replace the original that was not in place. This was broken when they moved in.

4. The original organic bin was provided by the strata. The Landlord showed this was missing at the end of the tenancy. They sourced a price of \$30 for its replacement from Amazon.

The Tenant could not recall any organic bin in place, nor did they use one. They described using their own organic disposal system.

5. The Landlord provided images of window covers torn and stained, as well as bent horizontal blinds. On their description for damages, the Landlord wrote: "The roller blind covering the vision part of the unit's entry door is torn at the bottom."

The Landlord provided an invoice for the item showing its value at \$37.99.

The Tenant described this 2-centimetre tear in place in the blind, simply because of the age of the rental unit.

6. The Landlord provided an image of the broken and taped door fob for the rental unit. This was provided by the strata. The Tenant did not return one individual visitor parking pass as provided by the strata. The Landlord did not provide documentation to establish the value from the strata for these items.

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

On the Application, the Landlord provided the amount of \$5,100, and set out:

The tenant failed to attend to necessary repairs, resulting in a two-month loss of rent. This is although [the Tenant] is a landlord [themselves] and owns a condo in Downtown Vancouver, and therefore should have been more considerate. Unfortunately, due to the holiday season, we experienced a delay in finding someone to perform the repairs on short notice. The unit is still undergoing repairs and cleaning, and we expect it to be ready after January 12th. We may also potentially lose the rent for February.

As evidence for this, the Landlord provided a transfer record of the Tenant's final rent payment for November 2023. As of the date of the Landlord's Application (*i.e.*, January 2, 2024), they stated the repairs and cleaning were still continuing.

The Landlord provided a list of damages in the rental unit, setting out: walls, bedroom door, bedroom closet door, and washer/dryer folding door. As set out above, the Landlord provided a list of items needing cleaning. The Landlord's estimate for cleaning, obtained on December 27, sets out 8 hours of cleaning as well as carpet cleaning.

In the hearing, the Landlord described having 6 prospective tenants ready for the rental unit by January 1st. By mid-January, with no work completed, none of these prospective tenants were interested because of ongoing repairs.

The Tenant submitted that the Landlord advertised the rental unit to be available for mid-December. Subsequent advertisement by the Landlord show they lowered the rent amount, indicating that they could not garner sufficient interest for a new tenancy because of what the Tenant termed an excessive rent amount. I infer the Tenant was submitting that the Landlord had more difficulty renting the unit because of their requested amount for rent, as opposed to any delay on renting because of the condition of the rental unit.

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

The Tenant provided a forwarding address to the Landlord on December 22, 2023. the Landlord filed their Application to the Residential Tenancy Branch on January 2, 2024.

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

The Landlord paid their Application filing fee amount of \$100 on January 2, 2024.

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 damage in the rental unit?

The *Act* s. 5 provides that landlords and tenants may not avoid or contract out of the *Act*. Moreover, any attempt to avoid or contract out of the *Act* is of no effect.

I find the Landlord supplanted the *Act*, and what is set out in the tenancy agreement that reflects tenets in the *Act*, by including an addendum to the tenancy agreement. Though the Landlord may argue the Tenant agreed and signed off on these separate terms, the fact is the terms as set in the addendum are an attempt to circumvent pieces of the *Act*. There are certain points in the addendum that run counter to the *Act*, and contradict sections in the very same tenancy agreement. By s. 5, I find the parts of the addendum leaving the duty to take pictures with the Tenant circumvents the *Act* which sets out the need for a condition inspection, reported and signed by both parties, at the start of the tenancy. This is set out in section 6 of the tenancy agreement. While the Landlord cited the Tenant's lack of photos taken at the start of the tenancy, and the Tenant not asking for an inspection, I find the obligation to ensure an inspection meeting occurs, is documented, and shared with the Tenant, rests with the Landlord as set out in the tenancy agreement and the *Act*.

I factor this consideration into each piece of the Landlord's compensation claim for damage in the rental unit.

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

1. painting:

I find the Landlord did not at all document the condition of the rental unit at the start of the tenancy. It is plausible that there were extant issues with the walls, with either puncture holes or stains, in place at the start of the tenancy, making sole damage attributed to the actions/negligence of the Tenant difficult to prove. I accept the Tenant's single point about a door that was not installed correctly as exacerbating some slight damage that was already in place.

Given the concept of "reasonable wear and tear" set in s. 37, I find it unacceptable that the Tenant undertook work on patching the walls, then leaving that job incomplete. This is clearly shown in the Landlord's evidence, and I find positively that the walls were not in that condition at the start of the tenancy, and this is something beyond reasonable

wear and tear at the end of the tenancy. For this, I find some compensation to the Landlord is in order.

At the same time, the Landlord did not provide evidence of an actual expense outlay by them. There is no evidence of completion of the work, only an estimate in place.

I accept the Tenant's statements that one door was not in pristine condition as at the start of the tenancy. I factor in the age of the rental unit into this part of the Landlord's claim for compensation as well. I grant no compensation to the Landlord for door repair, again referring to the lack of a condition inspection in place as of the start of the tenancy, making damage by the Tenant difficult to prove in fact.

For the Tenant's haphazard effort at wall repair, I grant the Landlord \$500 in compensation. There is nothing beyond this to show that the condition of the walls was pristine at the start of the tenancy, and nothing to justify the cost estimate the Landlord submitted as evidence, nor that the Landlord actually paid for completed work.

2. general and carpet cleaning:

The Tenant did not provide any proof to show that they completed cleaning. I find it reasonable that a specific part of the addendum set out the need for carpet cleaning at the end of the tenancy. Given the rest of the evidence provided by the Landlord showing the very unclean state of the rental unit, I grant the Landlord approximately one-half of their claimed amount for cleaning throughout. I am not certain that the amount of time, as set out in the estimate, was warranted. This also accounts for the Landlord not providing a paid invoice showing actual completion of the work, and no inspection at the start of the tenancy.

I grant compensation to the Landlord for \$550.

3. I find the Landlord provided before-and-after photos to show what was in place with the light fixtures in question. This is despite there being no move-in inspection report. I grant compensation to the Landlord for \$100 for the light fixture replacements only.
4. There was no specific item in the addendum, or a list of some sort to set out that an organic bin was provided for the Tenant. I grant no compensation for this to the Landlord because I am not satisfied a loss exists.
5. I grant no compensation for the replacement of the roller blind, again referring to the fact that there was no move-in inspection to establish that this particular item was undamaged at the start of the tenancy.

6. I am not satisfied of the cost involved with fob or visitor parking pass replacement. This is not set out as a cost replacement by the strata, who manages that aspect of the property. The Landlord did not establish the value of this loss; therefore, I grant no compensation.

In sum, the Landlord did not provide a documented inspection at the start of the tenancy. This impacted their ability to satisfy all four conditions of the test I set out at the start of this analysis section in this decision. I grant \$1,150 total compensation to the Landlord for damage/required cleaning in the rental unit.

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

As set out above, the *Act* s. 7 sets a positive obligation on the Landlord as follows:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord cited difficulty with obtaining contractors during the December 2023 holiday season. This set back the repairs and cleaning in the rental unit, leaving them without tenants in the rental unit for December and January.

I set the positive obligation on the Landlord to minimize the damage or loss to them. This end-of-tenancy was not unexpected or due to the Tenant abandoning the rental unit; therefore, I find the Landlord had the opportunity well in advance of the end of this tenancy to plan ahead. I note the Landlord's estimate for repairs in the rental unit was toward the end of December 2023, weeks after the tenancy ended. I don't see strong evidence of the difficulty the Landlord faced in obtaining an estimate for some work involved.

Additionally, the work does not involve major renovations or structural changes. At most, the work involved is cosmetic, really focusing on doors. I fail to see that a painter for that kind of work in the rental unit was difficult to obtain in the days following the tenancy. There is also no accounting for the Landlord's ability to complete that work on their own, or another solution to minimize the cost.

I also fail to understand why the Landlord was not able to complete cleaning in the rental unit in a timely manner. The Landlord obtained an estimate for cleaning on December 27, close to one month after the tenancy ended. I find this is an unnecessary delay, minus strong evidence showing difficulty in obtaining some sort of cleaning service, even to provide an estimate as opposed to actual completion of the work.

I find also the type of work involved – *i.e.*, resetting of doors and minor cosmetic work to doors, some painting, and cleaning throughout – did not prevent the Landlord from obtaining new tenants, even in that state. I find the Landlord did not cover off cleaning within a very short timeframe after the tenancy ended. I also find the types of repairs involved – cosmetic in nature – would not bar the Landlord from obtaining new tenants for a move-in.

In sum, I find the claim for two months' rent income is excessive, and not warranted based on the Landlord's non-minimizing of their expenses. I find cosmetic work and cleaning would not have completely precluded the Landlord from having new tenants enter the rental unit some time in December, and certainly by January. This lends credence to the Tenant's point that the Landlord was waiting for a favourable rental rate to settled based on market-drive factors.

In sum, I dismiss this piece of the Landlord's Application, without leave to reapply.

c. Is the Landlord entitled to retain all/part 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 relevant date is when the Tenant provided their forwarding address to the Landlord on December 22, 2023.

The Landlord made their Application to the Residential Tenancy Branch for compensation on January 2, 2024. I find the Landlord applied within the 15-day legislated timeline after December 22, 2023. I conclude s. 38(6) does not apply in this situation, and there is no doubling of the deposit.

The Landlord established a total claim of \$1,150. Under s. 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit.

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 file this Application in order to resolve the matter. I find the Landlord is entitled to recover the \$100 filing fee they paid.

Conclusion

I grant to the Landlord compensation in the amount of **\$1,250.00** for damage in the rental unit, and dismiss the Landlord's claim for monetary loss/other money owed:

Monetary Issue	Granted Amount
compensation to the Landlord for damage in the rental unit	\$1,150.00
Landlord's recovery of the Application filing fee	\$100.00
authorization to retain all of the security deposit	-\$1,250.00
Total Amount to Landlord	\$0.00

This decision is final and binding. 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: May 1, 2024

Residential Tenancy Branch