Dispute Resolution Services

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 damage in the rental unit
- authorization to retain the security deposit/pet damage deposit
- recovery of the Application filing fee.

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

The Tenant and the Landlords (hereinafter referred to in the singular as "Landlord") attended the scheduled hearing.

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

Based on a review with the parties in the hearing, I find the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding document and hearing information as required. I find the Landlord served all pieces of their evidence to the Tenant via registered mail. The Tenant confirmed this in the hearing.

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

The Landlord confirmed they received a copy of the Tenant's Notice of Dispute Resolution Proceeding.

On my review, the Tenant could not state categorically that they provided evidence to the Landlord, either in response to the Landlord's Application, or with the Tenant's own Application.

I reviewed the documents that the Tenant provided to the Residential Tenancy Branch with the parties in the hearing. I confirm that all documents provided by the Tenant as evidence were those centering on the tenancy itself, *e.g.*, a copy of the tenancy agreement the parties had in place. I assured the Landlord that I was not seeing any separate submissions by the Tenant that they did not have. For any documents the Tenant provided separately to the Residential Tenancy Branch without serving to the Landlord as evidence, I have removed those materials from consideration. The Tenant had the opportunity to address matters through their testimony in the hearing. This is a form of recorded evidence that is on the record, reflected in the decision below.

Issues to be Decided

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

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

c. Is the Landlord entitled to recovery of the Application filing fee?

d. Is the Tenant entitled to a return of the security deposit/pet damage deposit? \

e. Is the Landlord authorized to retain the security deposit and/or pet damage deposit?

f. Is the Tenant entitled to 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 provided a copy of the agreement they had in place with the Tenant. This tenancy started on February 22, 2018 on an initial one-year fixed term, then continuing on a month-to-month basis. The starting rent was $2,400 per month, payable on the first day of each month. Over the course of the tenancy, the rent increased to $2,480.

The Tenant paid a security deposit amount of $1,200, and a pet damage deposit amount of $3,600. The Tenant recalled paying $4,400 at the start of the tenancy with a money order, and $400 cash. The arrangement with a triple pet damage deposit amount was for the amount of $1,200 for each of the Tenant's three pets they had at the start of the tenancy.

The document, being a templated form, refers to the *Act* throughout.

The agreement addendum sets out that utility costs are shared between two units on the rental unit property. The smaller unit and larger unit on the property split costs on percentages with an element of a *pro rata* portion, and based on the total number of occupants.

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

The Landlord set out that the Tenant stayed an extra two weeks after the scheduled end-of-tenancy date that was initially set at December 31, 2023. The Landlord set rent at a per diem rate, for $620 per week from December 31 through to January 14, 2024. The Tenant in the hearing stated they agreed to this at the time, and confirmed their willingness to pay this amount, despite the hardship they underwent around the time the tenancy was ending.

The Landlord provided an amount of $201.01, for the remaining utilities amounts left unpaid by the Tenant after the tenancy ended. This was for billing periods from September 2023 through to January 15, 2024. This accounts for a "reconciliation" from the utility's providers over this same period. The Tenant agreed to the amount, though did state that the amounts were based on the Landlord's calculations on invoices that they only saw as part of the Landlord's evidence for this hearing.

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

The Landlord and Tenant jointly signed a condition inspection record on January 15, 2024. The Landlord completed an inspection report as presented in their evidence. The Landlord noted, in miscellaneous spots in the document:

- "bad marks on oak floor damage – Tenant disagrees"
- "major black marks on hall/dining & living room floors – tenant doesn't agree"
- paint missing on walls or damage in kitchen/living room/downstairs [bedroom]x2

The Tenant stated they did not agree that this report fairly represented the condition of the rental unit.

The Landlord provided pictures showing what they submit is floor damage on individual pieces of oak flooring. These appear as black stains around the edges of certain pieces of flooring squares. This is for a few rooms/areas in the rental unit.

The Tenant in the hearing reiterated that they pointed to this as an issue during the tenancy, and either the Landlord, or the appointed other property resident who acted as a manager would not address the situation or proffer an explanation.

The Landlord provided a receipt from 2017, showing a pre-tenancy floor finishing receipt. The Landlord paid $4,987.50 for this work. In their written description, the Landlord stated an assessment (by Pacific West Building Consultants) “suggested was due to liquid”. The brief email setting this out is in the Landlord’s evidence. The Landlord provided their suspicion that the issue was “due to animal incontinence”.

For this damage, the Landlord provided an amount of $1,500 on their worksheet. The Landlord stated the assessment was completed based on the photos the Landlord provided to the firm. That firm would charge $1,500 for an inspection and a fulsome report. The Landlord did not undertake to obtain this report. The Landlord in their written submission sets out a cost for other hardwood at $2,876.68, or vinyl at $1,862.77, sourced online.

The Landlord claimed 12 hours of their own time at $20 per hour for wall repair (*i.e.*, $240), and $24.09 for paint. The Landlord provided pictures showing what they deemed damage in the rental unit. The Landlord cited wall damage throughout requiring painting, due to holes in the walls, and one instance of strip lighting removed from the wall.

The Landlord provided 3 separate amounts for the cost of lightbulbs replacement. In the hearing, the Tenant stated there were areas in the rental unit with lights that they simply could not reach to replace.

The Landlord provided an amount of $40 for 2 hours of their time for extra cleaning in the rental unit. On the condition inspection report, the Landlord noted “rental unit is in excellent clean condition.”

The Landlord provided an amount of $143.90 for replacement of garage door openers, and $276.02 for a dishwasher part replacement. The Tenant agreed to these amounts in the hearing.

c. *Is the Landlord entitled to recovery of the Application filing fee?*

The Landlord paid the Application filing fee amount of $100 on February 28, 2024.

d. *Is the Tenant entitled to a return of the security deposit/pet damage deposit?*

e. *Is the Landlord authorized to retain the security deposit and/or pet damage deposit?*

As set out above, the Tenant paid a full amount of $4,800: a $1,200 security deposit, and a full pet damage deposit amount of $3,600. In the Landlord's evidence are three separate pet agreements. The Tenant understood that there was a pet damage deposit for each pet they had during the tenancy.

The record shows that the Tenant provided their forwarding address to the Landlord on February 28, 2024. This is after the tenancy ended on January 15, 2024.

f. *Is the Tenant entitled to recovery of the Application filing fee?*

The Tenant paid their Application filing fee on March 15, 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 unpaid rent/utilities?*

On the basis that the Tenant agreed to the rent amount of $620 per week for the first two weeks of January 2024, I grant the amount of $1,240 to the Landlord, representing approximately one-half of the monthly rent for the extra time the Tenant occupied the rental unit.

Though the Landlord presented copies of invoices for the utilities they are intending to receive compensation for, I find the invoices are not clearly set out. Accumulated totals do not equal the amount of $818.85 that the Landlord claims is owing from the Tenant. The Landlord also submitted repeat copies of the same invoice time periods for differing amounts. The Landlord also did not give a plausible recollection of why these amounts were allowed to accumulate for months.

I agree with the Tenant that the amounts owing is not clearly set out. A clear percentage for the rental unit, which shares these utilities with other units on the same rental unit property, is not set out in the addendum of the tenancy agreement. That section of the addendum contains some complex formulae that is practically difficult to understand. I conclude the value of the loss to the Landlord is not clearly established in the evidence. It is not my role as an accountant to rectify this in the Landlord's evidence.

Though the Tenant agreed to the amount of $201.01, which represents the difference between a rectified amount and the actual utilities expenses, I grant only $100 as compensation to the Landlord, with no clear calculation established in the evidence as to how the Landlord arrived at the amounts. This is a nominal amount for compensation, based on the Tenant's recognition that some utilities amounts were left owed at the end of the tenancy.

In sum, for the Landlord's claim for rent/utilities, I grant compensation for $1,340.

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

The *Act* s. 37 sets out that a tenant must, at the end of a tenancy, leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find it unlikely that the unique damage to the floors, as shown in the Landlord's photos, and referred to in the description of the consulting firm, resulted from the Tenant's pets. I find this is speculation on the part of the Landlord, and there is no evidence to show definitively that pets caused damage to the floors. I make no determination on the cause of the damage to individual pieces of the oak flooring. The Landlord did not provide an authoritative account, involving an examination of the underlay of the flooring, to show this resulted from the actions

or negligence of the Tenant during the tenancy. All that is present is a consultant's opinion about a plant-grow operation, not the Tenant's, as being a possible cause.

I find it evident that the Landlord's resurfacing of the flooring in 2017 did not tackle an underlying issue. On a balance of probabilities, I find that the flooring bore some residual issue from an earlier tenancy. The Landlord did not provide a definitive account to show the issue with the flooring was because of the Tenant's pets.

I find the Tenant credible on their account that they raised the issue of the unsightly areas of the flooring during the tenancy, with no follow-up from the Landlord.

I distinguish this from reasonable wear and tear over the course of the tenancy. I find this is a unique type of damage, unknown in origin. To show the Tenant is accountable, the Landlord must show the damage resulted from a breach of the tenancy agreement/*Act* -- that is, damage beyond reasonable wear and tear. The Landlord did not prove that damage resulted from the actions of the Tenant, and I find the Tenant credible in their account that they raised it as an issue during the tenancy. For this reason, I grant no compensation for the flooring to the Landlord.

I find the need for repainting in the rental unit arose through wear and tear over the course of this six-year tenancy. I find there was no deliberate or negligent damage to the walls by the Tenant. The Landlord should, in any event, paint the interior of the rental unit at reasonable intervals; after six years of this tenancy, the Landlord should bear the cost of repainting in the rental unit. There is no evidence of excessive or untoward damage to the walls.

On lightbulbs, I find the Tenant did not remove or steal lightbulbs at the end of the tenancy. I consider lightbulb replacement to be reasonable wear and tear over the course of the tenancy. I grant no recovery for these amounts claimed by the Landlord.

The Landlord did not provide sufficient evidence of the need for two hours of additional cleaning within the rental unit. I dismiss this piece of the Landlord's claim for this reason.

The Tenant at the hearing agreed to the amount of $143.90 for replacement garage door openers, and $276.02 for the missing dishwasher part and replacement. I grant these amounts to the Landlord.

In total, I grant $419.92 to the Landlord for damage in the rental unit.

c. *Is the Landlord entitled to recovery of the Application filing fee?*

I find the Landlord was successful in this Application, and it was necessary for them to bring this to dispute resolution to end this tenancy completely. I grant recovery of the Application filing fee amount. This amount is $100.

d. *Is the Tenant entitled to a return of the security deposit/pet damage deposit?*

The *Act* s. 19 provides that any deposit amount shall not be greater than one-half of one month's rent payable under the tenancy agreement. The *Act* s. 19(2) states that a tenant may recover any overpayment.

I find the Landlord required and accepted three times the statute-set pet damage deposit amount, for $3,600. The Tenant must recover the overpaid amount of $2,400. I find this was not a correct 'deposit' amount, as defined in the *Act*; therefore, I did not add interest to this amount of overpayment.

I grant a Monetary Order to the Tenant for this amount, as set out below.

e. *Is the Landlord authorized to retain the security deposit and/or pet damage deposit?*

A landlord's right to claim against the security deposit/pet damage deposit is time-sensitive as set out in s. 38 of the *Act*: a landlord must either return the deposits, or make a claim against them, within 15 days of the later of the end-of-tenancy date, or when they receive a forwarding address from a tenant. A landlord who does not follow this timeline is restricted from utilizing a deposit for damages.

I find the Landlord received a forwarding address from the Tenant on February 28, 2024. The Landlord completed this Application on that same day; therefore, a consideration of the timeline does not apply to this present scenario.

The *Act* s. 72(2) sets out that upon an arbitrator's order for any amount of payment from a tenant to a landlord, the amount may be deducted from any security deposit/pet damage deposit due to a tenant.

I grant to the Landlord $1,859.92 in total for rent, utilities, and damage in the rental unit. I authorize the Landlord to keep this amount from the combined correct security deposit and pet damage deposit amount of $2,400. Added interest brings the combined deposit amount to

$2,476.07 since the start of the tenancy. The Landlord must return the balance of $616.15 to the Tenant. I have added this amount to the Tenant's Monetary Order.

d. Is the Tenant entitled to recovery of the Application filing fee?

I find it was necessary for the Tenant to bring their own separate Application to have this matter rectified. I grant recovery of Application filing fee to the Tenant for this reason. The total compensation amount to the Tenant is $3,116.15.

Conclusion

I grant compensation to the Landlord, in part, for the amounts set out above. The Landlord may retain the amount of $1,859.92 in total, deducted from the security deposit/pet damage deposit they have retained after the tenancy ended. They must return the balance of the proper deposit amounts to the Tenant.

I provide the Tenant with a Monetary Order for $3,116.15 as set out above. The Tenant must serve this Monetary Order 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: June 10, 2024

Residential Tenancy Branch