Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's March 26, 2024 Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for:

- compensation for unpaid rent
- compensation for damage in the rental unit
- compensation for other monetary loss
- authorization to retain the security deposit
- recovery of the Application filing fee.

The Tenant's March 27, 2024 Application, crossed to the earlier Application by the Landlord, concerned the return of the security deposit, and the recovery of their Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

Service of hearing documents and evidence

As set out in my Interim Decision of June 26, 2024, I find the parties served their submitted evidence to each other as required. Each party served the required notice/hearing documents to the other.

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 entitled to compensation for other monetary loss?

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

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

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

g. 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. This subtenancy agreement started on June 1, 2023, set for a fixed 4-month term until September 2023. There was a brief period of per diem rent that the Tenant paid for an earlier-than-contracted move-in date.

The parties updated the agreement commencing on October 1, 2023, set to end at the end of April 2024.

The set rent amount was $2,750, payable on the first of each month. The Tenant paid a security deposit amount of $2,750 shown in the Tenant's direct money transfer to the Landlord on May 6, 2023.

The agreement contains other terms concerning the tenancy:

- the parties agreed to a joint inspection at the start, when/if the tenant starts keeping a pet, and at the end of the tenancy
- the Tenant shall be responsible for any repairs necessitated by pet damage

- concerning pets, the Tenant keeping a pet is contingent on the Landlord's permission, and there is no specific clause specifying dogs or other pets only (i.e., no cats allowed) – though the wording does include "Providing the tenant meets the landlord's criteria . . ."

- no other person may occupy the rental unit

- the Act applies to this agreement

- if the Tenant vacates before the end of the fixed term:

  the Tenant will be charged a re-rental fee of $500 plus the cost of advertising and will also be responsible for paying the rent until the end of the Residential Tenancy Agreement term, or until a suitable new tenant is found to occupy the premises

While the Landlord maintained that they completed a documented inspection process with the Tenant at the start of the tenancy, the Tenant states there was no inspection document. The parties met via video conference for a viewing of the rental unit. In the hearing, the Landlord acknowledged they did not use the correct form for this purpose; however, they provided a completed inspection report to the Tenant in January 2024. The Tenant noted this inspection document – meant to be a record of the condition of the rental unit at the start of the tenancy – was created by the Landlord on January 28, even though it referenced an October 2023 inspection date.

The tenancy ended after the Landlord notified the Tenant of a 2-month period for their own use of the rental unit. This was not via correct form. Then the Landlord issued a One-Month Notice to End Tenancy for Cause on the correct form. The Tenant challenged this in a formal hearing process; however, in the interim period the Tenant moved out from the rental unit on February 29, 2024.

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

The Tenant applied for a hearing to dispute the One-Month Notice to End Tenancy for Cause. During that process, as described by the Landlord in the hearing, the Residential Tenancy Branch informed the Landlord that the Tenant could stay until the end of April 2024, given that the set hearing date was April 8, 2024.

The Landlord claims one full month of rent for March 2024, at $2,750. This is based on the Tenant informing the Landlord on February 26 of their final move-out date on February 29. The Landlord's text message to the Tenant on this date, to clarify what they heard from a third

party, is in the Landlord's evidence (email communication 64). The Tenant confirmed, at 7:54 pm: "As you requested, Feb 29th I will be moving out."

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

The Landlord entered the rental unit on January 27. 2024 under the auspices of protecting certain pieces of their private property that they observed from outside the rental unit property. They made observations upon their entry, and on January 28 set these out in a longer email to the Tenant: the Tenant's cat living in the rental unit without the Landlord's permission, as well as another occupant who was living in the extra bedroom. The "cat play structures" that the Landlord observed were an indication to them that the occupant/cat was more permanent with the Tenant. The Landlord requested the cat/occupant to leave the rental unit by the following day, January 29. The Landlord alluded to their earlier text message to the Tenant describing their allergy to cats.

The Landlord observed that the Tenant had moved the Landlord's own bicycle from a protected sheltered spot on the deck to a more weather-exposed area. They described heavy weather forecasts around that time that increased their concern about this particular piece of their property. The Landlord claims for the cost of their bicycle damaged by rust (invoice showing replacement at $1,227.45), with detailed pictures, as well as video of the wetness affecting that particular area.

In the hearing, the Landlord set out that they took this item to assess for either replacement of parts, or replacement in full. The Tenant recalled moving the item to an "arguably more protected area" on the covered deck. The Tenant also added that the Landlord's bicycle had been left outside for an approximately 8-month timeframe in total.

The Landlord obtained an estimate to repair the deck due to oil stains/residue from the Tenant's barbeque the Landlord observed on the deck. At the end of the tenancy, that area was left with residual stains. On April 10, 2024 the Landlord obtained a quote for a resurfacing of the deck, including removal and reinstalling of the railing for the purpose of resurfacing. This total is $2,939.59 that the Landlord claims in full. The Tenant presented a picture that show this area as apparently the same at the time of their first visit to the rental unit.

The Landlord claimed $200 for their having to replace a vacuum cleaner that the Tenant willingly disposed of without notification to the Landlord. The Tenant stated they replaced the Landlord's non-functioning vacuum with a new one. The Tenant left this vacuum at the rental unit at the end of the tenancy. The Landlord objected to this new vacuum being in place and attempted to return it to the Tenant because of their allergy.

In their January 28 email to the Tenant concerning cats/additional occupant, the Landlord set out that the Tenant would be obligated to cover costs for any cleaning the cat infraction necessitated. The Landlord would attend the following day to remove certain items.

The Landlord made immediate adjustments to what was available to the Tenant in the rental unit, citing their allergies.

In the hearing, the Tenant brought a witness who spoke to their observations of the Landlord's demeanour and condition at the time of the Landlord's visit to the rental unit on January 29. In the witness' opinion, the Landlord did not appear to be affected, with "no signs of discomfort."

The Landlord provided a worksheet setting out expenses to them for the issues stemming from the Tenant keeping the cat in the rental unit:

	Description	compensation
1.	2 queen mattresses damaged by pet	$11,824.95
2.	mattress purchase, temporary	$423.36
3.	office chair affected by pet	$89.00
4.	wall art affected by pet	$130.00
5.	mattress protector pads affected by pet	$101.00
6.	ironing board cover affected by pet	$25.00
7.	cleaning fees associated with pet	$600.00
8.	moving/assistance for removal of items affected by pet	$187.50
9.	filters for air purifiers	$134.50
10.	increase in energy bill for running air purifiers	$300.00
11.	impact to health for inflammation	$5,000.00
		$18,815.31

The Landlord provided a quote for the cost of replacing their mattresses, dated June 4, 2024. There is the expense for a temporary mattress they obtained in light of their regular mattress set going into storage.

The Landlord provided photos of scratches to a sofa; however, no part of their claim centered on this type of damage. In a written statement, the Landlord described a whit chair, and other wall damage, and scratches on flooring and appliances. No part of the Landlord's claim centered on these damages.

Attesting to the necessary level of cleaning, as stemming from the Tenant's pet, the Landlord provided a statement from a hired cleaner who visited on April 14, 20, and 27 for $292.50 in total. The Landlord also included a copy of their later message to the Tenant of June 11, setting out that they are continuing to operate air purifiers stemming from their allergy.

In the hearing, the Tenant provided that they paid for a professional cleaner at the end of the tenancy, this in addition to what they had to pay for at the beginning of the tenancy.

c. *Is the Landlord entitled to compensation for other monetary loss?*

The Landlord provided the amount of $25 for an amount charged for the replacement of a parking pass at the rental unit property. The Landlord provided an image of their March 8 message to the Tenant asking for the return of this pass.

In the hearing, the Tenant stated they agreed to this charge.

d. *Is the Landlord authorized to retain the security deposit?*

e. *Is the Tenant entitled to the return of the security deposit?*

As set out in the tenancy agreement, the Landlord at the start of the tenancy collected a security deposit in the amount of $2,750.

For their Application, the Tenant presented that the tenancy ended on February 29, 2024. The Tenant provided their forwarding address to the Landlord at the start of the tenancy as they stated in the hearing. The Tenant confirmed this with the Landlord in their message dated March 25, 2024.

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

The Landlord paid the Application filing fee amount of $100 on March 26, 2024.

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

The Tenant paid the Application filing fee amount of $100 on March 27, 2024.

Analysis

In this sublet situation, between the Landlord and the Tenant as set out in the tenancy agreement, the Landlord here meets the definition of "Landlord" as set out in s. 1 of the *Act*. The definition of "sublease agreement" also applies in this situation. I find, on each successive tenancy agreement that the parties had in place, a fixed term was explicit therein.

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?

As set in s. 45(2) of the *Act*, a tenant may end a fixed-term tenancy with notice to the landlord, for an effective date that is not earlier than one month after the date a landlord receives notice from a tenant. As well, the end-of-tenancy date can be no earlier than a date specified as the end of the fixed-term tenancy, and can only be for a day prior to the rent-payment date.

A notification from a tenant must also be in writing, and state the grounds for ending the tenancy, and specify an effective date.

In this scenario, I find the evidence is clear that the Tenant notified the Landlord of the immediate end to this tenancy only three days in advance of February 29th. The fact that there was a pending hearing at the time does not cancel this obligation of the Tenant.

The agreement was explicit on the point that the Tenant was obligated to pay rent until the end of the fixed term. As per s. 45(2), a tenant may not end the tenancy earlier than the fixed-term end date. The end-of-tenancy notice that was also in place could have ended with an

arbitrator setting an end-of-tenancy date, but the Tenant opted to move out earlier without proper notice to the Landlord.

I find the fact of the Tenant disputing the One-Month Notice to End Tenancy for Cause does not otherwise negate this obligation as set in the *Act*. Though the Tenant's specified end-date was the same as that appearing on that document, the Tenant filed for a dispute, and then did not otherwise withdraw that piece of their Application and inform the Landlord of a move-out date in a timely manner as the *Act* requires.

In their Application the Landlord made a claim for a single month of rent compensation. I find the Tenant breached the *Act* and the tenancy agreement by providing notice to the Landlord in this fashion, via text messages with very short notice.

I find as fact that the Landlord mitigated their damage/loss by not requesting the additional month of April in this Application. The Landlord also did not claim for the additional $500 amount that was specified in the tenancy agreement for this type of end-of-tenancy situation.

For the Tenant's breach, I grant the Landlord the full amount of rent for March 2024 as claimed = $2,750.

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

The *Act* s. 23 and s. 35 set out that, at both the start and the end of a tenancy, a landlord and a tenant must jointly inspect the condition of the rental unit, and a landlord must complete a report of the rental unit condition. This information is accurately reproduced in the tenancy agreement the parties had in place for this tenancy.

In this instance the Landlord did not complete a documented condition inspection meeting at the start of the tenancy. The fact that the meeting was not documented in a timely accurate fashion, signed as agreed-to by the Tenant, precludes the Landlord's right to claim against the security deposit as set out in s. 24(c).

Concerning damage more generally, the *Act* s. 32(3) sets out that a tenant must repair damage to a rental unit that is caused by their actions/neglect.

Also, the *Act* s. 37 sets out that a tenant must leave a rental unit reasonably lean and undamaged except for reasonable wear and tear.

To be awarded compensation for a breach of the *Act*, a landlord must prove:

- a tenant failed to comply with the *Act*/tenancy agreement
- loss/damage resulted from this failure to comply
- the amount/value of the damage/loss
- a landlord acted reasonably to minimize damage/loss.

I find the Tenant did not cause damage to the Landlord's bicycle. That is a separate piece of the Landlord's property that is entirely the Landlord's responsibility. Any obligation forced upon the Tenant to ensure a bicycle's correct placement on the balcony is unreasonable, and impinged on the Tenant's right of full access to the Tenant. Seemingly unconcerned about the bicycle's potential exposure to inclement weather (and despite the agreement's clause prohibiting the Tenant's storage of bicycles on the balcony), the Landlord here is trying to assert that the Tenant damaged the bicycle through neglect. I definitively find that is not the case, and there is no compensation to the Landlord for this frivolous claim. I find the bicycle was of questionable value to the Landlord.

I find it reasonable that normal barbeque use would require some sort of clean-up. I find there is no evidence to show the balcony was permanently damaged from use of a barbeque by the Tenant. I find no damage exists; therefore, I dismiss this piece of the Landlord's claim which is grossly inflated.

The Landlord provided no record of value, or expense to them, for a replacement vacuum. There was not even a description, make/model of the vacuum in question. I grant no compensation to the Landlord for this item.

The Landlord made a substantial claim due to the impact of pet hair/dandruff that aggravated their allergy. The Landlord presented no evidence of the condition of their allergy. Given that the entirety of the Landlord's claim for furniture and cleaning centers on this allergy, I find the Landlord provided insufficient evidence of an actual allergy that necessitated replacement of furniture items, and cleaning fees. As well, the Landlord did not present an accurate accounting of cleaning fees, or the additional use of an air purifier increasing their energy use.

I find the Tenant's witness credible on their observations of the Landlord at the time of the visit on January 29. Given the Landlord's description of the impact to them as they claimed, I find symptoms would be strikingly obvious, and there were no observed symptoms.

I find, categorically and definitively, that there was no damage to items in the rental unit, and there was no expense or other monetary loss to the Landlord by reason of the Tenant keeping a cat. The Landlord did not provide sufficient evidence to show all four points set out above.

For these reasons, I dismiss the Landlord's claim for expenses/damages stemming from the cat/occupant in its entirety, without leave to reapply. The Landlord has no other avenue to claim expenses/damage resulting from this issue, or this tenancy, with this decision being final and binding.

I find the Landlord is not entitled to any compensation for damage in the rental unit. There is no evidence, either as to actual damage, or the authentic impact to the Landlord.

c. *Is the Landlord entitled to compensation for other monetary loss?*

I grant the Landlord $25 for the parking pass replacement that the Tenant agreed to.

d. *Is the Landlord authorized to retain the security deposit?*

e. *Is the Tenant entitled to the return of 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 the security deposit amount by $1,375. They paid a full month's rent equivalent as a deposit amount at the start of the tenancy. I order the Landlord to return the excess amount. This leaves the amount of the security deposit, the dispensation of which is governed by s. 38 of the *Act*, as $1,375.

The *Act* s. 38 sets out that within 15 days of the later of the tenancy end-date, or the date a landlord receives a tenant's forwarding address in writing, a landlord must repay any deposit with interest, or make an application against a deposit.

The *Act* s. 38(6) provides that if a landlord does not comply with this timeline, they may not make a claim against a deposit, and must pay double any deposit amount to a tenant.

I find the Tenant's forwarding address was in place with the Landlord at the start of the tenancy. I find it reasonable that the Landlord had to confirm this separately with the Tenant after the tenancy ended, in a separate communication to the Tenant on March 25, 2024.

I find the Tenant finalized and confirmed their forwarding address with the Landlord on March 25, 2024. The Landlord completed their Application at the Residential Tenancy Branch on March 26, 2024; therefore, I find s. 38(6) does not apply in this situation and there is no

doubling of the deposit. This is despite the Landlord not providing the final condition inspection report to the Tenant as required within 15 days after that inspection meeting.

Above I granted the Landlord the amount of $2,750 for rent owing. The Landlord must return the overcharged deposit amount of $1,375; however, I consider this to be not a security deposit amount and I do not add interest (as would normally be in place as per s. 38(1)(c)) to this amount that the Landlord must return outright to the Tenant.

Aside from s. 38 of the *Act*, s. 72(2) grants that any payment from a tenant to a landlord may be deducted from any security deposit.

For final coverage of amounts owing, I make the following orders, to give effect to each party's legal rights:

- I order the Landlord to return the amount of $1,375 to the Tenant forthwith. I grant a monetary order to the Tenant in order to give effect to this.

- I order the Landlord to retain the amount of $1,375 – *i.e.*, the correct full amount of the security deposit – as payment towards the rent amount owing. I grant a separate monetary order to the Landlord for the amount of $1,375, which is the balance of rent amounts owing.

I acknowledge that the amounts are overlapping; however, this complexity was added by the Landlord collecting a greater-than-authorized security deposit amount at the start of the tenancy. The parties may agree to settle the matter independently of these monetary orders; however, they will have no recourse to make any further claim on the dispensation of the security deposit amount after this final and binding order.

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

The Landlord was moderately successful in this Application; therefore, I grant one-half of the Application filing fee to them.

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

I find the Tenant was successful in their Application; therefore, I grant to them recovery of their Application filing fee. I find it was necessary for the Tenant to bring this Application forward for a correct determination on the timeline surrounding their forwarding address vis-à-vis the end-of-tenancy date.

Conclusion

As above, I grant recovery of one-month's equivalent rent amount to the Landlord, for $2,750.

I dismiss the Landlord's Application for compensation for damage in the rental unit, without leave to reapply.

I grant the amount of $25 to the Landlord for other money owed (i.e., parking pass replacement).

I grant to the Landlord $50 for recovery of the Application filing fee.

To the Tenant, I grant the amount of $1,375, plus $100 for the recovery of the Application filing fee.

I grant to the Landlord a Monetary Order in the amount of **$1,450** under the following terms:

Monetary Issue	**Granted Amount**
compensation for unpaid rent	$2,750.00
return of security deposit overpayment to the Tenant	-$1,375.00
compensation for other money owed	$25.00
recovery of the filing fee for this Application	$50.00
Total Amount	**$1,450.00**

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 grant to the Tenant a Monetary Order – to ensure enforcement of their legal rights in this matter – in the amount of **$1,475** as follows:

Monetary Issue	**Granted Amount**
compensation for overpaid security deposit	$1,375.00
recovery of the filing fee for this Application	$100.00

Total Amount	**$1,475.00**

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: July 17, 2024

Residential Tenancy Branch