



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's April 10, 2024 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 Tenant's April 16, 2024 Application, crossed to the earlier Application by the Landlord, was for:

- compensation for monetary loss/other money owed
- the return of the security deposit
- return of personal property
- recovery of their Application filing fee.

The Tenant and the Landlord attended the scheduled hearing.

### **Service of the Notice of Dispute Resolution Proceeding and evidence**

At the outset of the hearing, each party confirmed they received the Notice of Dispute Resolution Proceeding and prepared evidence from the other.

### **Preliminary Matter – Tenant's amended Application**

For one, the Tenant applied for the return of the security deposit and pet damage deposit after the end of this tenancy. On the Application, they entered this amount as \$2,550.

Secondly, the Tenant also indicated compensation for monetary loss/other money owed, setting the amount at \$2,150, being the deposit amounts less the cost of cleaners they paid for (\$400). I find the Tenant applied for the same compensation under two different issues on their Application.

The Act s. 64(3) provides that an arbitrator may amend an application for dispute resolution. On this basis, I amended the Tenant's Application to withdraw their claim compensation for monetary loss/other money owed. For the Tenant's Application, I will focus solely on the issue of the deposits' return to them.

### **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 Tenant entitled to the return of the security deposit?
- e. Is the Tenant entitled to the return of their personal property?
- 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 tenancy started on December 1, 2020, set for a fixed-one year term, thereafter reverting to a month-to-month arrangement. The rent, starting at \$2,450 per month, did not increase over the course of the tenancy.

The Tenant paid a security deposit of \$1,225, and a pet damage deposit of \$1,225.

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

The Landlord described the tenancy coming to an end because of their sale of the rental unit property. The purchasers provided a notice to the Landlord that they wanted vacant possession, and then proceeded with their desire to move into the rental unit. The Landlord described the official two-month end-of-tenancy notice as providing an end-tenancy date, as well as providing for one month of free rent. As confirmed by the Tenant in the hearing, the set end-of-tenancy date was March 30, 2024.

The Tenant described moving out from the rental unit on April 2, 2024, with “no understanding of which month was rent-free” (i.e., with what is granted as per the *Act* for an end-of-tenancy notice of this type). They described trying to communicate with the Landlord regarding the tenancy ending, but they were not able to contact the Landlord in that immediate pre-end-tenancy timeframe.

The Tenant listed their recall of rent paid in the months leading up to the tenancy ending: January paid, February “don’t believe so”, and no rent paid for March 2024.

The Landlord claims for a full rent amount for the month of February 2024. They sent an email to the Tenant on April 18 (post-tenancy), to clarify:

Unfortunately, I noticed you didn’t pay rent for the month of February either. The rule is two months notice and one month rent free.

The Landlord provided copies of bank statements to show that the Tenant did not pay rent for February 1, 2024.

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

After the tenancy ended, the Landlord returned a remaining part of the deposit to the Tenant on April 14, 2024, shown in a bank transfer record in the Landlord’s evidence. This amount was \$675. The Landlord’s withheld part of the rent – i.e., \$1,775 – was for cleaning (invoice \$997.50), painting (\$493.50), and a light fixture installation (\$183.55), which total \$1,674.55.

This return of remaining deposit money was on April 14, after the Landlord filed their Application at the Residential Tenancy Branch on April 10, listing the total claim amount of \$1,674.55. The Landlord paid \$100 for the Application; therefore they deducted this from the deposit amounts.

As proof of damage in the rental unit, the Landlord provided photos. These show a removed light fixture, along with someone replacing that individual item. The pictures also show miscellaneous spots in the rental unit needing further cleaning. There are discrete areas showing holes in the walls.

In the hearing, the Tenant maintained that there was no end-of-tenancy inspection with the Landlord, who did not attend on April 2. Instead, the purchasers attended with their agent. The Landlord exited the rental unit, and intended to return for final cleaning; however, the purchaser's agent accepted the return of the key from the Tenant, and replied "no problem" when the Tenant inquired about finalizing cleaning in the rental unit. As a result of the Tenant handing the key to the incoming owners directly, they were not able to remove some final items, including food, left in the rental unit.

The Landlord rebutted the Tenant's version by stating that the Purchaser's agent was in attendance. According to this agent, the Tenant handed back the keys, and refused to return back upstairs into the rental unit for an inspection. The Landlord was direct in stating that it was their own agent – i.e., the agent of the seller who was the Landlord – who attended to complete the inspection,.

In response to the Landlord's claim for damage/clean-up compensation, the Tenant said the cost for cleaning proffered by the Landlord is "insane". The Tenant also presented that they paid \$400 on their own for final cleaning in the rental unit. They cited the Landlord not providing a final condition inspection report, as well as no proof of the Landlord seeking to schedule a final inspection meeting.

Additionally, the Tenant claims that they are entitled to a doubling of the deposit in this instance where the Landlord did not attend for the move-out inspection, to attest to the condition of the rental unit.

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

d. 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 deposits totalling \$2,450.

In the hearing, the Tenant presented that they are entitled to double the deposit amounts because the Landlord did not schedule or attend a final inspection meeting.

e. Is the Tenant entitled to the return of their personal property?

On their Application, the Tenant provided "broom on deck items from refrigerator shelves & shoe rack". The Tenant in the hearing described being barred from a return into the rental unit to retrieve all items and finalize cleaning.

In the single handwritten description that the Tenant provided as evidence, they listed “cleaning supplies and refrigerator contents.”

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

The Landlord paid the Application filing fee amount of \$100 on April 10, 2024.

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

The Tenant paid the Application filing fee amount of \$100 on April 16, 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?*

I find the parties agreed that the tenancy ended because of a purchase of the rental unit. The Tenant provided that the end-of-tenancy date specified on that end-of-tenancy notice was March 30, 2024.

The Tenant in the hearing testified that they did not pay rent for February 2024.

As set out in s. 51 of the *Act*, a tenant who receives a two-month notice to end tenancy for a purchaser’s own use of the rental unit is entitled to one month’s free rent.

The Landlord’s bank records show a direct payment from the Tenant – identified by name – on January 5<sup>th</sup> for the full rent amount. I find as fact that was the last rent payment from the

Tenant to the Landlord. With the final move-out date being April 2, I find there is a gap in the rent to be paid to the Landlord.

As per s. 51, I grant that the rent-free month that the Tenant was entitled to was March 2024. I find as fact that the Tenant did not pay rent to the Landlord for \$2,450, and there was no legal right, either by reason of the tenancy ending or some other authorization or agreement, for the Tenant to withhold the February 2024 rent.

For this reason, I grant compensation to the Landlord for the full amount of February rent; that amount is \$2,450.

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

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 clean 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.

The Landlord did not present a documented condition inspection report. The Landlord has a record of photos that are purportedly in place to show the condition of the rental unit after the Tenant moved out. There is no recorded documentation to show this is accurate. I find this draws the accuracy of the Landlord's record of damage into question.

I find there is insufficient evidence to justify the costs proffered by the Landlord for damage in the rental unit. In order to verify this and present it accurately, the Landlord required a record of a final condition inspection, jointly with the Tenant; however, they did not do so.

For these reasons, I grant no compensation to the Landlord for alleged damage in the rental unit. In the alternative, I find the costs are not justified with respect to actual evidence of damage. The photos don't depict a degree of damage or lack of cleaning that justified the expenses presented by the Landlord.

In sum, I grant no compensation to the Landlord for damage in the rental unit. I dismiss this piece of the Landlord's claim, without leave to reapply.

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

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.

I find the Landlord did not complete a documented condition inspection meeting either at the start or the end of the tenancy. The fact that no meeting was not documented precludes the Landlord's right to claim against the security deposit/pet damage deposit as set out in s. 24(c) and s. 36.

As well, the Landlord is obligated to offer at least 2 opportunities to the Tenant for an inspection, as set out in s. 35(2).

The Landlord did not show there was explicit clear messaging to the Tenant that an agent – either that of the Purchaser, or that of the seller who was the Landlord – was attending to complete that task with the Tenant. Instead, the Tenant provided first-hand recollection that the Purchaser collected the key and stated “no problem” when the Tenant inquired on the condition of the rental unit and the need for any further cleaning.

I find, for reasons of no scheduled/offered inspection, and no documented condition inspection report, that the Landlord is precluded from applying against either of the deposits. The Landlord prematurely held a part of these funds and returned \$675 to the Tenant – I factor this amount into a final calculation, as set out below.

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

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 it is not plain in the evidence when the Tenant provided their forwarding address to the Landlord; however, this question is of no import when the Landlord filed their Application on

April 10, which is within 15 days of the tenancy end-date of April 2, 2024. For this reason, s. 38(6) of the *Act* does not apply and there is no doubling of the deposits.

The *Act* s. 72(2) sets out that, in a situation of a payment from a tenant to a landlord, the Landlord may deduct that amount from any security or pet damage deposit due to the Tenant.

As set out above, I granted one full month's rent amount to the Landlord, in the amount of \$2,450. This is the full amount of the two deposits; therefore, there is no return of any deposit amount to the Tenant.

*e. Is the Tenant entitled to the return of their personal property?*

I find the Tenant described items of negligible value. Should the Landlord have any of these items or know of their whereabouts, I order their return to the Tenant forthwith. With no clear foundation or testimony that the Tenant is wanting these items, I dismiss this piece from the Tenant's Application, without leave to reapply.

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

I find the Landlord was successful in this Application, and it was necessary for them to bring this Application in order to resolve the matter. I grant the full amount of the \$100 Application filing fee to them.

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

I find the Tenant was not successful in this Application; therefore, there is no return of the Application filing fee to them.



## Conclusion

As above, I grant recovery of one-month's equivalent rent amount to the Landlord, for \$2,450.

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

I grant to the Landlord \$100 for recovery of the Application filing fee.

I grant to the Landlord a Monetary Order in the amount of **\$675** under the following terms:

Monetary Issue	Granted Amount
compensation for unpaid rent	\$2,450.00
amount retained by the Landlord prior to Application (includes filing fee)	-\$1,775.00
balance owing from Tenant	\$675.00

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 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 19, 2024

Residential Tenancy Branch