



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's May 7, 2024 Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for other monetary loss
- authorization to retain the security deposit
- recovery of the Application filing fee.

The Tenant's May 22, 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 Tenants (hereinafter, the "Tenant") and the Landlords (hereinafter, 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.

Preliminary Matter – amendment of the Landlord's Application

The *Act* s. 64 permits me to amend an application. I amend the Landlord's Application to reflect more accurately the nature of separate pieces of their claim for compensation. This includes damage in the rental unit, as listed below in a separate section.

Preliminary Matter – amendment of the Landlord’s Application

The Tenant, in response to the Landlord’s Application, provided amounts they spent for their provision of evidence in this matter. I find that the Tenant did not make a separate issue of this on their Application. In any case, the Tenant’s own choice of service method is not something that is normally compensable via the *Act*.

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 other monetary loss?
- 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 Landlord eligible for recovery of the Application filing fee?
- f. 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 February 1, 2022, set for a fixed term ending on July 31; however, the tenancy continued on a month-to-month arrangement past that time. The rent amount was \$2,100 that did not increase over the term of the tenancy.

The agreement, being of standard format, refers to the *Act* throughout. There are no additional provisions setting out any other provisions for specialized or specific cleaning at the end of the tenancy.

The Tenant paid a security deposit amount of \$1,050 on January 23, 2022. As of the date of this hearing, the Landlord retained the full amount of the security deposit. The Tenant’s Application concerns the return of the deposit to them.

The Landlord and Tenant met on February 1, 2022 to inspect the condition of the rental unit. This is documented in the Condition Inspection Report that the Tenant and Landlord each provided in their evidence. In their evidence, the Landlord provided a series of photos that show the state of the rental unit prior to the Tenant moving in.

The tenancy ended for the reason of the Landlord's own need for the rental unit, associated with their sale of the rental unit property. On April 18, the Tenant notified the Landlord of their earlier move-out date from the rental unit on April 30, 2024. In the letter notifying the Landlord of this, dated April 18, the Tenant provided a forwarding address to the Landlord.

The Landlord paid the Tenant the amount of \$2,142 on April 30, 2024, the final date of the tenancy. This was in line with the Landlord's obligation as per the *Act* to pay the Tenant one month's rent equivalent because the tenancy ended for the Landlord's own use/sale of the rental unit.

The Landlord and Tenant managed to meet on May 1, 2024 to inspect the condition of the rental unit. The Landlord was of the understanding that the Tenant should have a second opportunity to rectify individual points requiring further cleaning. The Tenant's interpretation is that a landlord must provide two opportunities for such a meeting that a tenant is thereby obligated to attend.

The Tenant described attending for the scheduled meeting time; however, the Landlord did not complete the final report. The Tenant visited the rental unit again after the initial meeting on that same date and recorded video throughout to attest to the state of cleanliness in the rental unit. The Landlord provided photos of their own that counter the evidence of the Tenant.

There is no finalized copy of a condition inspection report that shows a record of the final inspection meeting. The Tenant presented that they had no opportunity to sign off on the final report, with the Landlord's expectation being that a final inspection meeting would not be complete until the Tenant undertook further cleaning in the rental unit.

By contrast, the Landlord provided a copy of their message to the Tenant from the day after the move-out/inspection, stating that they had an arrangement in place to complete the inspection meeting that the Tenant did not attend. The Landlord stated to the Tenant: "you cancel it, I don't have time for today". The Tenant in the hearing stated clearly that they did not agree to come back for a second inspection in the rental unit.

The Landlord made a claim for compensation, all focusing on the state of the rental unit at the tenancy end, as follows:

| | Description | compensation |
|----|-------------------------------------|-----------------|
| 1. | cleaning throughout the rental unit | \$392.00 |
| 2. | x4 light bulbs | \$22.33 |
| 3. | main rental unit door handle | \$367.50 |
| 4. | carpet cleaning for two rooms | \$157.50 |
| | | \$939.33 |

The Landlord provided invoices for each of these items. The Tenant in the hearing stated these four items did not come up when they met with the Landlord on May 1. The Landlord recalled that they did mention these items to the Tenant.

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

The Landlord cited the Tenant breaking the main entry door handle during the tenancy. The Tenant recalled the building manager posting a notice to all building residents about faulty door handle issues. The Tenant described being twice locked in the rental unit because of the main entry door handle. The Tenant stated that they fixed the door handle on their own, using a wrench, in 2023.

The Landlord's invoice for this item, in the amount of \$367.50, shows "door fix part and labour", and "fixing gear wheels." The Landlord provided a photo of the rental unit door handle – a normally taut door handle appears loose.

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

Regarding the cleaning throughout the rental unit, the Landlord paid for this additional cleaning on May 3. The Tenant in the hearing stated they "totally disagree" with any need for additional cleaning, and that they did their best to clean the rental unit. In contrast to the Landlord's pictures showing the state of the rental unit, the Tenant had the opportunity to capture video after their initial meeting with the Landlord on May 1st.

The Landlord provided a series of photos depicting the state of cleanliness in the rental unit.

The Landlord included the cost for four lightbulbs to be replaced in the rental unit. The Tenant recalled bulbs being burned out in the rental unit at the start of the tenancy and that was a cost to them initially in this tenancy.

The Landlord provided an invoice for two rooms' carpet cleaning, dated May 6, 2024. The Landlord provided two photos showing discrete areas of carpeting that they submit required additional cleaning. The Tenant in the hearing described their own video in the evidence that shows differently.

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

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

The Tenant paid a security deposit amount of \$1,050 on January 23, 2022. As of the date of this hearing, the Landlord retained the full amount of the security deposit. The Tenant's Application concerns the return of the deposit to them.

The Tenant provided a forwarding address to the Landlord on April 17, 2024 when advising of their end-of-April move-out date. The Tenant provided another form to the Landlord on May 14 containing the same forwarding address.

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

The Landlord paid the Application filing fee amount of \$100 on May 7, 2024.

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

The Tenant paid the Application filing fee amount of \$100 on May 22, 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. 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 parties met to inspect the condition of the rental unit at the end of the tenancy; however, the report document was not completed. The Landlord is incorrect in their interpretation of providing two meetings to have a tenant return for a finalized inspection, after a “preliminary” inspection. The Landlord cannot fault the Tenant for not attending a final condition inspection meeting. I find positively that the Tenant attended the final condition inspection meeting as required.

The lack of a documented report would normally preclude the Landlord’s ability to claim against the security deposit, as set out in s. 36 of the *Act*.

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.

Regarding the faulty door handle, I find the Tenant managed the matter inappropriately during the tenancy, and this was not rectified by the time the tenancy ended. The Tenant stated they repaired the door handle on their own during the tenancy, and even highlighted that building management acknowledged door handle issues, but there was no communication to the Landlord directly about this issue. This would have afforded the Landlord the opportunity to repair the issue fairly on their own. The Tenant being locked in the rental unit for this reason may even have prompted an emergency repair for which the Tenant could have been reimbursed; however, the Tenant did not take that up in correct fashion.

I find the Landlord’s invoice for this work is vague. I grant the Landlord \$250 for the work involved with resetting the rental unit door handle that clearly presented a problem that was not rectified in the correct fashion during the tenancy. This is not to say the Tenant was the cause of the door handle fault; rather, the Tenant was not correct in repairing this issue on their own in a haphazard manner using a wrench.

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

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.

I grant the Landlord a nominal amount for cleaning in the rental unit, at \$100. I find the Landlord provided sufficient evidence to show the need for cleaning in more hidden areas in the rental unit. At the same time, I recognize that what the Tenant provided at the end of the tenancy approximates a standard that is reasonable cleanliness. On balancing the two different versions of what constitutes reasonable cleanliness, I find the Tenant provided more evidence on the reasonable level at the end of the tenancy. Also, I don't see the Landlord's expense at \$392 as an amount that is reflective of their duty to mitigate the expenses to them associated with this tenancy.

On lightbulbs, I dismiss this piece of the Landlord's claim. There is no specific provision in the tenancy agreement placing the positive duty to replace lightbulbs – which inherently have a limited lifespan – on the Tenant.

I find the Landlord did not provide sufficient evidence that justifies the cost of carpet cleaning in two rooms entirely. The two photos showing very small separate areas does not justify this expense to the Landlord. In any case, there is no separate provision in the tenancy agreement that places this obligation on the Tenant. I dismiss this piece of the Landlord's claim for this reason.

In sum, for monetary loss to the Landlord, I grant the amount of \$100 associated with the finer points of cleaning within 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?

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 prior to the tenancy ending on April 30, 2024. Therefore, the date in question is April 30, 2024.

The Landlord completed their Application at the Residential Tenancy Branch on May 7, 2024; therefore, I find s. 38(6) does not apply in this situation and there is no doubling of the deposit.

Above I granted the Landlord the amount of \$350 for damage and other monetary loss. The Landlord shall retain this amount from the security deposit amount of \$1,050 and return the balance to the Tenant.

e. 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.

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

I find the Tenant was not successful in this Application; therefore, I grant no recovery of the filing fee amount to them.

Conclusion

As above, I grant the amount of \$350 as compensation to the Landlord on their Application.

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

To the Tenant, I order the return of the balance of the security deposit amount to them, as set out below – this amount is \$650.

I grant to the Tenant a Monetary Order in the amount of **\$650** under the following terms:

| Monetary Issue | Granted Amount |
|---|-----------------------|
| compensation for damage | \$250.00 |
| compensation for other money owed | \$100.00 |
| recovery of the filing fee for this Application | \$50.00 |
| return of security deposit balance | -\$1,050.00 |
| Total Amount | \$650.00 |

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 30, 2024

Residential Tenancy Branch