

DECISION

Introduction

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

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for monetary loss or other money owed
- For an order that the tenancy has ended due to a frustrated tenancy agreement.

Both parties appeared and confirmed they have received each other's evidence.

Preliminary Issue

The Tenant's application for monetary compensation relates to a Two Month Notice for Landlord's Use of property under section 51 of the Act. The parties agreed that the tenancy ended pursuant to section 49 of the Act. I do not understand why the tenant has asked for an order that the tenancy ended due to a frustrated tenancy agreement as this means the tenancy ended that was not the fault of either party, such as a fire. Clearly that was an error on the Tenant. Therefore, I dismiss this portion of the Tenant's application without leave to reapply.

At the outset of the hearing the Landlord stated that they have never disputed that the Tenant is entitled to compensation that equals one months rent of \$1,596.50 or the return of prorated rent, which was recalculated at the hearing of \$772.50 for a total of \$2,369.00, less the amount already given to the tenant of \$750.00 for a total of \$1,619.00. The Landlord stated that they had asked the Tenant how they would like to money to be paid.

Issues to be Decided

Is the Landlord entitled to a monetary order for damages to the rental unit?

Is the Landlord entitled to keep all or part of the security deposit?

Is the Landlord entitled to recover the cost of the filing fee?

Is the Tenant entitled to a monetary order?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on May 1, 2021, with a monthly rent of \$1,596.50, due on first day of the month, with a security deposit in the amount of \$750.00. The tenancy ended by a Two Month Notice for Landlord's Use of Property and the Tenant ended the tenancy earlier on May 16, 2024.

The Landlord's representative (Landlord) testified that the Tenant caused damage to the ceiling paint and wall as they had used stickers which caused damage. The Landlord stated that they had to buy paint for the wall and ceiling, which they want to recover; however, they are not claiming for their labour. The Landlord stated the ceiling had been painted 10 years earlier and the wall was painted before the Tenant moved in. The Landlord seeks to recover the cost of paint, eco fee, a 6-piece paint kit and taxes that are identified in their Home Depot receipt

The Landlord testified that there were four light bulbs burnt out at the end of the tenancy and it was the Tenant's responsibly to replace the light bulbs during the tenancy. The Landlord seek to recover \$19.96, eco fee of 4 x \$.15 and taxes, for a total of \$22.96 that are identified in their Home Depot receipt

The Landlord withdraws their claim for the light switch, one light bulb and Exhaust fan.

The Landlord testified that the Tenant broke two door handles during the tenancy, through their actions or neglect. The Landlord seeks to recover 2x \$38.43, and taxes, that are identified in their Home Depot receipt

The Landlord testified that the Tenant broke the lead terminal on the stove element, and it had to be replaced. The Landlord seeks to recover \$93.64.

The Landlord testified that the Tenant chipped the tiles on the floor, and they cannot be fixed. The Landlord stated that the cost to replace the floor is much greater than the Tenant's security deposit.

The Tenant testified that they are not responsible for the paint. The Tenant stated that they did have some tape on a wall and ceiling; however, there were stains and scratches in the ceiling when they moved into the rental unit.

The Tenant testified that they are only responsible for three burnt out lights as the other one and the switch were not working.

The Tenant testified that they did not do any damage to the lead terminal on the stove element. The Tenant stated that they rarely used the stove. The Tenant stated that it looks like the wire had burnt, from the aging process.

The Tenant testified that the two door handles broke during their tenancy from pushing down. The Tenant stated that they had asked the Landlord to make the repair to the door on the first room on June 30, 2023; however, it was never repaired.

The Tenant testified that the tiles were cracked when they moved into the rental unit. The Tenant stated that they did not cause any damage to the floors. The Tenant stated that chips were there; however, was minor and never wrote on the inspection report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states 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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I am not satisfied that the Tenant is responsible for any of the paint cost for the following reasons.

The move-in condition inspection report shows the ceiling had stains and scratches. The ceiling in the living room was not even completed to show its condition when the tenant moved into the premises. Even if I accept there was tape residue, the ceiling has not been repainted in 10 years, the useful life span of paint is 4 years under the Residential Tenancy Policy Guideline 40.

The move-in condition inspection report shows the walls had chips and marks, surely the rental unit walls had not been painted when the Tenant moved in as testified by the Landlord. Further, the tenant resided in the rental unit for 3 years. As stated above, the useful lifespan is 4 years, and I find it more likely than not that the useful lifespan had past.

Based on the above, I dismiss the Landlord claim for paint and supplies.

The Tenant acknowledged that they did not replace three light bulbs during their tenancy, it is the Tenant's responsibility to replace the bulbs during their tenancy. I have calculated the individual bulbs are worth \$5.74, as the original claim was for four. Therefore, I find the Tenant owes the Landlord **\$17.22**.

I am not satisfied that the Tenant caused damage to the terminal lead wire to the element of the stove. I find it more likely than not simply the aging process as the stove was 10 years old and nearing its useful lifespan. Further, the Landlord is responsible for making basic repairs. I have no evidence that leads me to believe the Tenant's actions cause the damage.

In this case the Tenant reported a broken handle to the Landlord in June 2023. I have no evidence that the Landlord took any action to investigate the broken handle. While I accept there were two door handles off the doors at the end of the tenancy; however, the mechanism seems to be in good shape. I am not satisfied on the balance of that the damage was caused by the actions or neglect of the Tenant. Door handles can become loose and come off under normal use and the aging process. I have no evidence before me of when the door handles were installed. Therefore, I dismiss this portion of the claim.

I am not satisfied that the Landlord has suffered any loss for the tiles, even if I accepted they were some minor chips. The tiles clearly had some cracks when the Tenant moved in which were not replaced at that time. Further, even if I found the Tenant was responsible for the chips, the Landlord has not provided any value to the loss. Therefore, I dismiss this portion of the claim.

I find that the Landlord has established a total monetary claim of **\$17.22** comprised of the above described amount. I authorize the Landlord to keep this amount from the Tenants security deposit of \$750.00 leaving a balance due to the Tenant of **\$732.78**.

As it was already determined at the outset of the hearing that the Landlord owes the Tenant \$1,619.00 for prorated rent, and one month compensation, less and after the Landlord monetary claim was offset with the security deposit leaving a further amount due to the Tenant. I find the Landlord owes the Tenant the total amount of **\$2,351.78**. I have granted the Tenant a formal order pursuant to section 67 of the Act, should the Landlord fail to return to the Tenant the above amount.

I decline to award either party the cost of the filing fee, as they simply offset each other's.

Conclusion

The Landlord is granted a monetary order in the above amount and may keep a portion of the security deposit in full satisfaction of their claim.

The Tenant is granted a monetary order in the above amount for compensation under section 51 of the Act and the return of the balance of their security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 10, 2024

Residential Tenancy Branch