

DECISION

Introduction

The Landlord submitted two applications for dispute resolution (repeated applications) under the *Residential Tenancy Act* (Act).

The Landlord applied for the following:

1. Monetary claim of \$1,600.00 for unpaid rent or utilities,
2. Filing fees of \$100.00 for two repeated applications, which total \$200.00,
3. Monetary claim of \$2,934.75 for repair of driveway oil stains, cleaning costs and repairs.
4. To retain the \$800.00 security deposit and \$800.00 pet damage deposit, plus interest, in partial satisfaction of any amount owed.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Matter(s)

The Landlord was advised at the start of the hearing that both filing fees would not be granted as the Landlord could have amended their application instead of filing two repeated applications. Given this, I dismiss one filing fee of \$100.00, without leave to reapply as I find it is not the fault of the Tenant that the Landlord failed to properly amend their application under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

As the Landlord has claimed against the Tenant's security deposit of \$800.00 and pet damage deposit of \$800.00, I will refer to both deposits as combined deposits of \$1,600.00 for the remainder of this decision (Combined Deposits).

Issue(s) to be Decided

Has the Landlord proven a monetary claim under the Act?

What should happen to the Tenant's Combined Deposits?

Is the Landlord entitled to a filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on April 1, 2023. The monthly rent was \$1,600.00 per month and due on the first day of each month. The Combined Deposits of \$1,600.00 were paid by the Tenant at the start of the tenancy, which the Landlord continues to hold. The parties confirmed the rental unit was vacated on July 15, 2024. I will calculate the interest on the Combined Deposits later in this decision.

The Landlord's monetary claim is as follows:

1. \$1,600.00 for unpaid rent or utilities,
2. \$2,934.75 for repair of driveway oil stains, cleaning costs and repairs.
3. To retain the \$1,600.00 security deposit plus interest.

Item 1 – The Landlord has claimed \$1,600.00 for unpaid July 2024 rent. The Tenant states that they removed some items from the rental unit on July 3 and July 4 of 2024 but confirmed that the keys were not returned. The Tenant admits they did not pay rent for July 2024 but claims the rental unit was not habitable due to mould. The Tenant admitted that they did not request mould repairs in writing with the Landlord and did not file an application for dispute resolution regarding mould in the rental unit.

Item 2 – The Landlord has claimed \$2,934.75 for the following:

- A. \$1,359.75 for cleaning costs and repairs
- B. \$1,575.00 for driveway oil stain repair

For item 2A, the Landlord submitted a receipt in the amount of \$1,359.75 dated July 20, 2024, and includes GST for the following work completed:

- Suite clean up, disinfecting, carpet stain and smell removal, stain and smell removal (20 hours at \$55.00 per hour) = \$1,100.00
- Patching walls and touch-up paint (3 hours at \$65.00 per hour) = \$195.00

The Landlord confirmed there was no incoming Condition Inspection Report (CIR) and that for the outgoing CIR, the Landlord provided the Tenant two dates, the first being July 14, 2024, at 5:00 PM

and the second date being July 15, 2024, at 5:00 PM. The Landlord stated that both opportunities were provided via text on July 12, 2024, and that the Tenant did not respond to that text. The Landlord stated that on July 13, 2024, the Landlord sent another text stating that the outgoing CIR would be on July 15, 2024, at 5:30 PM and that the Tenant failed to attend for the outgoing CIR, which was completed in the absence of the Tenant.

The Landlord described the rental unit as “brand new” after a full remodel in 2022, and that the Tenant was the first person to rent the rental unit since the remodel in 2022. The Landlord confirmed the home was built in 1969.

The Landlord submitted photos which support the following after the Tenant vacated:

- Dirty floors
- Dirty counters
- Personal items left behind
- Fridge and freezer items left behind and not cleaned
- A removed closet door that was damaged by Tenant
- Stained carpet
- Blood and feces in toilet

The Landlord referred to section 43 of the tenancy agreement, which was the non-smoking term and is initialled by both parties and reads as follows:

No smoking of any combustible material is permitted on the residential property, including within the rental unit.

The Landlord testified that the entire unit also reeked of marijuana and mould. The Landlord stated that there was also vomit down the wall.

The Tenant’s response to this item was that there was no incoming CIR and that the condition of the rental unit was not pristine at the start of the tenancy. The Tenant admitted that scraps were left behind but claims they were in the process of cleaning when the Landlord inspected the rental unit. The Tenant also claims the carpet stains were pre-existing. The Tenant claims they were outside of cell service range and was camping so did not receive the texts scheduling the outgoing CIR. The Tenant claims their last date at the rental unit was July 4, 2024.

The Tenant admitted that they did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and did not dispute the One Month Notice to End Tenancy for Cause (One Month Notice).

Regarding item 2B, the Landlord has claimed \$1,575.00 to repair the driveway which the Landlord claims was new in October 2022. The Landlord did not submit a receipt or invoice, but did submit an estimate dated July 22, 2024, in the amount of \$1,575.00 to “cut out and put in new asphalt” 4 feet by 10 feet in size (Driveway Estimate). The photo evidence of the oil stains I will address further below.

The Tenant admitted that their truck leaked oil and that they attempted to clean the oil off using a pressure washer but was not successful in removing all the oil. The Tenant claims they offered some compensation but could not come to an agreement with the Landlord on the amount. The Tenant stated that the Landlord’s own vehicle leak oil on a different part of the driveway, which is supported by the photo evidence. The Tenant claims that oil leaks on a driveway are reasonable wear and tear.

In response the Landlord stated that only damaged vehicles leak oil onto driveways. The Tenant stated that most vehicles leak some kind of fluid, and this is supported by the Landlord’s own vehicle leaking oil on the same driveway but in a different area.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Has the Landlord proven a monetary claim under the Act?

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

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Item 1 – I find the Tenant breach section 26 of the Act by failing to pay rent for July 2024. As such, I grant the Landlord **\$1,600.00** for this portion of their claim.

Item 2 – The Landlord has claimed \$2,934.75 for the following:

- C. \$1,359.75 for cleaning costs and repairs
- D. \$1,575.00 for driveway oil stain repair

For item 2A, I have reviewed the photo evidence and afford the testimony of the Tenant very little weight as I find the Tenant breached section 37 of the Act by leaving the rental unit very dirty and that to leave blood and feces in the toilet to be completely unreasonable in any tenancy. I find it more

likely than not that the Tenant was not out of cell range as claimed as I find the Tenant admitted that they were not at the rental unit since July 4, 2024, and the outgoing CIR was not completed until July 15, 2024. Therefore, I grant the full cleaning costs and repairs in the amount of **\$1,359.75** as I find the photo evidence supports that the Tenant stained the carpet, breached section 43 of the tenancy agreement non-smoking term and left the rental unit very dirty and that the damages were not consistent with reasonable wear and tear.

Regarding item 2B, I find the Landlord has failed to comply with section 7 of the Act that states as follows:

7(2) 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.**

[my emphasis added]

I find the Driveway Estimate is not a reasonable quote and that cutting out a 4 feet by 10 feet portion of asphalt driveway when the Landlord also had oil stains from their own vehicles is not minimizing their loss and not reasonable. Furthermore, I find the oil stains are cosmetic only and given the size shown on the photo evidence, I agree with the Tenant that this is reasonable wear and tear on a driveway considering the Landlord's own vehicle also leaked oil. Therefore, I dismiss item 2B in full without leave to reapply.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a portion of their claim for damage or loss under the Act, regulation or tenancy agreement.

Is the Landlord entitled to a filing fee?

As the Landlord's application had full success with one application and partial success with the other application, I grant the Landlord one filing fee of **\$100.00** under section 72 of the Act.

What should happen to the Tenant's Combined Deposits?

As the Landlord continues to hold the Tenant's \$1,600.00 in Combined Deposits, I find the interest accrued is \$56.79 for a total Combined Deposits including interest amount of \$1,656.79. I authorize the Landlord to retain the Tenant's full Combined Deposits including interest of \$1,656.79 in partial satisfaction of the Landlord's monetary claim.

I find the Landlord has established a monetary claim of \$3,059.75 as follows:

Item 1 of \$1,600.00 for July 2024 unpaid rent
Item 2A of \$1,359.75 for cleaning and repairs
Filing fee of \$100.00

From the amount of \$3,059.75 I offset the \$1,656.79 Combined Deposits including interest for a balance owed by the Tenant to the Landlord of \$1,402.96. I grant the Landlord a monetary order in the amount of **\$1,402.96** under section 67 of the Act.

Conclusion

The Landlord has proven a claim of \$3,059.75 and has been authorized to retain the Tenant's Combined Deposits and interest of \$1,656.79 and has been granted a monetary order of \$1,402.96.

This decision will be emailed to both parties.

The monetary order will be emailed to the Landlord only for service on the Tenant as required. The Landlord must issue a demand for payment letter when serving the Tenant, the monetary order and be able to prove service before the monetary order can be enforced in the Provincial Court, Small Claims Division.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 4, 2024

Residential Tenancy Branch