



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlord's application for:

- A Monetary Order of \$581.00 for damage or loss under the Act
- A Monetary Order of \$750.00 for monetary loss or money owed under the Act
- Authorization to retain a portion of the Tenant's security and pet damage deposit
- Reimbursement of the filing fee

And the Tenant's application for:

- A Monetary Order of \$2,982.60 for monetary loss or money owed under the Act
- Double the return of their security deposit and pet damage deposit
- Reimbursement of the filing fee

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.

The original hearing began on November 4, 2024, and an Interim Decision was issued dated November 7, 2024, which should be read in conjunction with this decision.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act. Further, the Tenant provided the Canada Post Customer Receipt containing the tracking number to confirm service of their application to Landlord. The Canada Post tracking status shows the mailed package was delivered, and signed for by Landlord CS. As such, I find all parties have been served with the required documents in accordance with the Act.

Preliminary Matters

The Landlord withdrew their claim of \$750.00 for liquidated damages. As such, I dismiss without leave to reapply the Landlord's claim for a Monetary Order of \$750.00 for monetary loss or money owed under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Is the Tenant entitled to a Monetary Order for monetary loss or money owed under the Act?

Is the Landlord entitled 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, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

Is the Landlord entitled to recover the filing fee?

Is the Tenant entitled to recover the 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 for my decision.

Both parties agreed to the following tenancy details:

- The rental unit was a furnished house
- The tenancy started on May 15, 2024, as a fixed term tenancy to end on August 15, 2024
- The tenancy ended on August 15, 2024
- The monthly rent was \$4000.00, due on the first day of each month
- Utility fees were \$250.00 per month
- On April 14, 2024, the Tenant paid a security deposit in the amount of \$2000.00 and a pet damage deposit in the amount of \$2000.00, which I will refer to as combined deposits in this decision

- On August 28, 2024, the Landlord returned to the Tenant \$2,695.78 of the combined deposits. On October 3, 2024, the Landlord returned to the Tenant \$250.03 of the combined deposits. The total amount of \$2,945.81 was returned to the Tenant
- On May 16, 2024, the parties completed the move-in Condition Inspection Report (CIR)
- On August 15, 2024, the parties completed the move-out CIR
- On July 31, 2024, the Tenant provided their forwarding address in writing to the Landlord

Legal Counsel submits that at the end of the tenancy the parties agreed for the Landlord to keep \$50.00 of the combined deposits, and to return the amount of \$3,950.00 to the Tenant. The agreement was confirmed and signed for by both parties as shown on the move-out CIR. The Landlord testified that they agreed to the \$50.00 deduction for cleaning, however, later they noticed the additional cleaning that was required at the rental unit.

The Landlord is seeking a monetary order as follows:

Item 1 - \$581.00, for cleaning costs of the rental unit, including the washing machine. The Landlord testified that the Tenant relied on professional cleaning services, but they missed in cleaning the countertop surfaces, drawers, cabinets, window tracks and floors of the rental unit. The Landlord stated that the washing machine was full of pet hair, and they pulled apart and cleaned the washing machine and relied on a professional cleaning company. The Landlord stated that they spent 3.5 hours to dismantle and clean the washing machine, to include removal and cleaning of the rubber drums.

The Landlord submitted an invoice dated August 16, 2024, for 4 hours of cleaning. The invoice is for the total amount of \$231.00. The Landlord stated that the cleaning company charged \$173.30 for cleaning of the washing machine, and the remainder of the invoice is for general cleaning of the rental unit. The Landlord referred to the move-out CIR and photographs that were submitted as part of their documentary evidence.

Legal Counsel submits that at the start of the tenancy, the washing machine was inspected and the dirt was noted. The Tenant emailed the Landlord about a musty smell in the basement of the rental unit. The Tenant submitted the email communication as part of their documentary evidence. Legal Counsel submits that at the move out inspection the Landlord opened and inspected the washing machine. Legal Counsel

submits the parties agreed for the Landlord to remove pet hair and clean the rubber seal, hence the \$50.00 deduction agreement. Legal Counsel submits that the condition of the washing machine was agreed to by the parties during the move-out CIR. Legal Counsel submits it is unlikely that grime, dirt, build up and odour would result from a three month tenancy as claimed by the Landlord.

The Tenant is seeking a monetary order as follows:

Item 1 – \$246.01, for replacement of cleaning products. Legal Counsel submits there were issues with a dirty rental unit and these deficiencies were noted as soon as the Tenant moved into the rental unit. The Tenant cleaned the rental unit and paid \$246.01 for cleaning supplies.

Item 2 - \$491.53, for replacement of linens and soft furnishings. Legal Counsel submits that the Tenant was required to place rugs in the rental unit, however, the rugs provided by the Landlord were not clean. Legal Counsel submits the Tenant purchased new rugs and other linens for the total cost of \$491.53. The Tenant provided their credit card statement as proof of purchase.

The Tenant stated that the condition of the rental unit was unreasonable and they could not live in such conditions, and they proceeded to clean the rental unit. The Tenant stated that they informed the Landlord of their concerns, however, did not ask for reimbursement costs.

Item 3 - \$51.51, for replacement of a pan for the convection stove. Legal Counsel submits the induction stove did not work due to a defective pan. The Tenant had to purchase a new pan at the cost of \$51.51. The Tenant submitted a receipt of \$51.51 dated June 11, 2024.

The Landlord stated that the Tenant failed to communicate concerns to them. The Landlord stated that the items and furnishing were either new or if used items, they were not dirty and were in reasonable condition. The Landlord stated that the Tenant volunteered to purchase products and took all items with them at the end of the tenancy. The Landlord stated that the Tenant failed to provide receipts to proof the cost of the items claimed.

Item 4 - \$2,193.55 ($\$4,250.00/31 = 137.10 \times 16$ days), for overpayment of rent. Legal Counsel submits the fixed term tenancy ended on August 15, 2024, and then converted to a month-to-month tenancy. On July 15, 2024, the Tenant provided to the Landlord via

email their notice to end tenancy, (Tenant Notice) with the effective date of August 15, 2024. Legal Counsel submits the Tenant paid monthly rent for August 2024, however, they did not have possession of the rental unit from August 16, 2024, to August 31.

Legal Counsel submits the Landlord advertised the rental unit for re-rental on July 15, 2024, July 16 and 17, which proves they did receive the Tenant Notice on July 15, 2024.

Item 5 - \$7940.72, for double the return of their security deposit (\$3,950.00 x 2) plus interest of \$40.72.

The Landlord testified that they received the Tenant Notice via email on July 15, 2024. The Landlord stated that effective July 15, 2024, they advertised the rental unit for re-rental and successfully secured a tenancy with the effective date of September 1, 2024.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

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.

Is the Landlord entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

I find that the Landlord has failed to establish a claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

In this case, the rental unit was inspected at the end of the tenancy, and the parties had the opportunity to inspect and record deficiencies and their position on those items. I find the parties did so, and agreed to a \$50.00 deduction from the combined deposits, and for the Landlord to return to the Tenant the remainder of the combined deposits. I find the parties are bound by their agreement as noted on the move-out CIR.

Although the Landlord seeks additional cleaning costs, I find they have not established the Tenant's breach of the Act, regulations or tenancy agreement. Instead, the rental unit was cleaned by a professional cleaning company as per Clause 47 of the tenancy agreement and the parties finalized an agreement with respect to any deductions, the amount of \$50.00.

Further, I find the Landlord is seeking additional loss for their time when they did not substantiate their claim for the additional time and cleaning. I find they did not prove the value or amount of the claimed loss. For the above reasons, this claim is dismissed without leave to reapply.

Is the Tenant entitled to a Monetary Order for monetary loss or money owed under the Act?

I find that the Tenant has failed to establish a claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant's claim for Items 1, 2 and 3 are dismissed without leave to reapply for the following reasons:

I find the Tenant failed to prove the Landlord's violation of the Act, regulation or tenancy agreement. Further, they did not do whatever was reasonable to minimize the claimed loss as required by the Act.

As stated earlier in this decision, the parties accepted the condition of the rental unit as per the move-in and move-out CIR. If the Tenant had issue with the condition of the rental unit or any items, I would expect for them to have communicated, in a timely manner, the same to the Landlord. It would be reasonably expected that the Tenant would inform the Landlord of their concerns and for the Landlord to rectify the issue, and possibly replace the items. I find the Tenant was to take these steps to minimize the claimed loss as required by the Act. As such, I decline to award the claimed amounts and they are dismissed without leave to reapply.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the

tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 30 (PG 30) provides guidance on fixed term tenancies. It states:

- A tenant who wants to end the tenancy at the end of the fixed term, must give one month's written notice. For example, if the fixed term expires on June 30th, the tenant must ensure the landlord receives the tenant's notice to end the tenancy by May 31st

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has failed to establish a claim for overpayment of rent paid for August 16, 2024, to August 31.

In this case, the Tenancy Agreement shows a fixed term tenancy that, at the end of the fixed term, continues on a month-to-month basis. I find the parties are bound by the obligations of this signed contract.

In order to end the fixed term tenancy by August 15, 2024, I find the Tenant was obligated to provide notice to end tenancy no later than July 14, 2024. I find the Tenant failed to do so and owed rent for August 2024, as paid by the Tenant. In this case, I find the Tenant failed to prove a loss occurred due to the Landlord's violation of the Act, regulations or tenancy agreement. As such, the claim for return of the overpayment of rent is dismissed without leave to reapply.

Is the Landlord entitled 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, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

As the tenancy ended on August 15, 2024, and the Landlord made their application on August 25, 2024, I find that the Landlord did make their application within 15 days of the tenancy ending.

In this case, the Landlord returned to the Tenant a portion of the combined deposits as follows:

- \$2,695.78, returned on August 28, 2024
- \$250.03, returned on October 3, 2024

The amount of \$2,695.78 had accrued \$21.08 in interest from the start of the tenancy to date of return. The amount of \$250.03 had accrued \$2.62 in interest from the start of the tenancy to the date of return. The remaining deposit held by the Landlord in the amount of \$1,054.19 has accrued \$18.16 in interest. The Landlord holds the total combined deposit, to include interest, in the amount of \$1,096.05.

Under section 72 of the Act, I allow the Landlord to retain the security deposit of \$50.00 as agreed upon by the parties and previously noted in this decision.

I find the Tenant is entitled to the return of the remainder of their combined deposits, to include interest, in the amount of \$1,046.05.

Is the Landlord entitled to recover the filing fee?

As the landlord's application was not successful, I decline to award the Landlord the \$100.00 filing fee for the cost of their application.

Is the Tenant entitled to recover the filing fee?

As the Tenant's application was successful for their application for the return of their combined deposits, I award the Tenant the \$100.00 filing fee for the cost of their application.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

As I did not grant a monetary award to the Landlord, I order the return of the combined deposit, to include interest, to the Tenant. I order the return of the combined deposits in the amount of \$1,046.05 to the Tenant as noted above in this decision. Further, I granted the Tenant the \$100 filing fee paid for their application.

To give effect to the above, I grant the Tenant a monetary order in the total amount of \$1,146.05.

This decision 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: January 8, 2025

Residential Tenancy Branch