Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Landlord's October 27, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for:

- compensation for damage in the rental unit
- authorization to retain the security deposit
- recovery of the Application filing fee.

The Tenant's November 18, 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 Landlord attended the scheduled hearing.

Service of hearing documents and evidence

I find the parties served their individual hearing documents – importantly, the Notice of Dispute Resolution Proceedings – to the other as required.

I find the parties served their submitted evidence to each other as required.

Because both parties verified that they received evidence from the other, all the evidence they submitted to the Residential Tenancy Branch is on record and I consider any part of it where necessary and relevant.

Issues to be Decided

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

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

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

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

e. 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.

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

The Landlord and the Tenant each provided a copy of the tenancy agreement they had in place. The tenancy started on August 1, 2023, set for a fixed term ending on July 31, 2024; however, the tenancy continued on a month-to-month arrangement past that time. The rent amount was $2,950 that increased to $3,089.48 effective August 1, 2024.

The agreement, being of standard format, refers to the *Act* throughout. The copy in the evidence shows the Tenant initialed each page of the agreement. There are additional provisions which the Landlord drew attention to:

- Tenant agrees that upon move in that the furnished rental unit has been professionally cleaned by third party which includes cleaning of entire apartment, washing of all linens and towels, and steam cleaning of all carpets, furnishings, bed and mattress. At the end of the tenancy, the Tenant agrees to return the apartment to its original condition given and to ensure that all items on the furnishings and housewares listed on the check in list are returned in good order without damage and to replace items due to damage. At check out, the Tenant shall provide copy of invoice to Landlord evidencing that apartment was professionally cleaning.

The Tenant paid a security deposit amount of $1,475 on June 24, 2023. 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.

In their written submission, with reference to attached invoices, the Landlord presented that a building service company cleaned the rental unit. The company followed a cleaning list that the Landlord presented in their evidence. The furniture in place in the rental unit was also cleaned prior to the tenancy start, and painted on June 18, 2023. The Landlord presented invoices in their evidence to show completion of this work prior to the tenancy start.

In one part of the Tenant's written submission, they take issue with invoices presented by the Landlord, dated 2024 when the tenancy was active (i.e., not prior to the tenancy start). To the Tenant, this is one piece of the Landlord's pattern of fraudulent evidence submitted for this hearing.

The Landlord and the Tenant met on August 2, 2023 to review the condition of the rental unit at the start of the tenancy. The Landlord documented this inspection, noting the following:

- they left a copy with the Tenant at the rental unit on the date of the inspection, instructing the Tenant to sign the document, take pictures of the signed document, and email it to the Landlord
- the Landlord sent pictures of the rental unit on August 7
- the Landlord re-sent the document and pictures on August 20
- the Tenant reported on deficiencies via email on October 18, 2023, and again requested the signed document to be returned.

In their written response, the Tenant took issue with the Landlord's account of providing the report document to the Tenant:

- the Landlord did not leave a copy of the document with the Tenant on August 2
- the document is dated January 1, 2023 – 7 months before the tenancy start date
- the Tenant inquired on the document/pictures on August 18 via email – with no response from the Landlord
- the Tenant inquired again on September 19, 20 and 25 via email – again with no response
- on October 18, the Tenant listed concerns about the condition in the rental unit

The Tenant raised concerns about the actual documents the Landlord provided in evidence:

- the Landlord's response to the Tenant's October 18, 2023 message is dated October 18, 2022 – showing obvious fraud

- emails are fabricated/manipulated due to image quality, and cropped subject lines, and the indication “FW”

- the emails in the Landlord’s evidence do not show attachments, which would be the condition inspection report

The Landlord in a shorter response to the Tenant’s written submission, cited their professional agency and reputation as a business. According to the Landlord, the Tenant deliberately frustrated the entire process of the move-in condition inspection.

The Tenant provided a written notice to the Landlord on September 6, 2024, stating their desire to have the tenancy end on October 31, 2024. On September 23, the Tenant informed the Landlord about an earlier move-out date on October 12.

The Landlord responded to the Tenant’s initial tenancy-end notice on September 6, informing the Tenant about the need for professional cleaning, as set out in the tenancy agreement.

Regarding the final inspection on October 12, the Landlord noted specific damages in the rental unit, among them “indentations on the ceiling drywall” in specific areas, linens unwashed, a damaged floor fan the Landlord had provided in summer, and lack of cleaning of the couch. Though the Tenant responded at the time to say they rented a machine for the purpose of cleaning, the Landlord noted the items were not damp, which indicated otherwise. The Landlord noted the Tenant did not stay for the entirety of the inspection.

In the Landlord’s evidence is the copy of the move-out inspection document with the Landlord’s notation itemizing lack of cleaning, damage to the ceiling, and items not steam cleaned. In the evidence, the Landlord provided a copy of pictures and video to show these featured items.

The Landlord raised points to both contradict information coming from the Tenant about the rental unit condition, or to show the Tenant did not adequately clean in the rental unit as specified in the agreement:

- though the Tenant rented a cleaning machine on October 10, it was unused on its return, and was for carpet cleaning purposes only, with no furniture cleaning features

- the Landlord captured images showing dust rising from the couch, proof that the Tenant did not adequately clean the furniture

- video footage from the laundry room in the building shows the Tenant only cleaning clothes, and not linens as required

- a letter from the above-neighbouring unit attests to the Tenant banging on the ceiling, thereby causing the damage in question

- the Tenant made the move-out inspection process difficult, both in terms of being argumentative, and preventing professional cleaners from doing extra work

The Landlord closed out their written submission by stating they provided a copy of the condition inspection report. The Landlord's letter to the Tenant dated October 27 shows this, as well as the Landlord specifying that the total costs to clean the rental unit, as well as assessing damage, was $120 over the security deposit amount. By this time, the Landlord had already brought this Application to the Residential Tenancy Branch for resolution.

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.	repair and painting to ceiling	$889.74
2.	steam cleaning furnishings	$475.00
3.	replace broken fan	$89.53
4.	cleaning linens, pillows, etc. (3.5 hours + coin laundry cost)	$120.00
		$1,574.27

The Landlord provided invoices for each of these items. The Landlord provided these amounts to the Tenant in the attached 'Security Deposit Refund Form' they attached to their letter of October 27.

The Landlord also provided an etransfer to the Tenant in error on October 27, in the amount of $20.73. In their written submission, the Landlord added this to their claim for compensation.

In the Tenant's written submission, they raise the following points to question the veracity of the Landlord's evidence:

- The floor fan the Landlord provided was simply faulty. They provided a text message to the Landlord to inform the Landlord about this on August 30. The Tenant again informed the Landlord when the fan randomly started working again.

- The Tenant reiterated their point about no condition inspection report documenting the condition of the rental unit at the start of the tenancy being in place. They mentioned this specifically to state "Without a proper move-in inspection report, there is no credible baseline against which to assess any changes in the ceiling's condition." The Landlord referred to a "3-d virtual tour" recorded in June 2023; the Tenant dismissed this as a "temporal disconnect" prior to the start of this tenancy.

    - To this, the Landlord responded to say "Between June 30, 2023 and when the Respondents took possession of the unit, this rental unit was not occupied by any Tenant and was vacant." The Landlord also stated that, in the move-out inspection, the Tenant confirmed they hit the ceiling in an effort to stymie the noise from the above apartment.

- They provided an invoice of their cleaning machine (including an "Upholstery/Hand Tool"). They steam-cleaned the rug, as well as furniture items and cushions, returning the machine the following day.

    - The Landlord provided an account of their discussion with the supermarket employee who noted the exact machine was returned unused. To the Tenant, this indicated they returned the machine after cleaning it. The Tenant questioned the propriety of the Landlord asking separate third parties about the Tenant's separate transactions.

- The Tenant stayed in a hotel after undertaking this steam cleaning in the rental unit, because the furnishings were damp after their cleaning. The Tenant provided the invoice of their hotel stay.

    - To this, the Landlord summarily stated this does not prove that furniture items were steam-cleaned as required.

- Despite the Landlord's assertion that the Tenant did not wash linens, pillows, etc. as required (based on the Landlord's tracking of the Tenant's washing in the

laundry room via installed cameras), the Tenant maintains they completed this task "3 – 4 weeks prior to moving out to reduce the amount of work required on the last day." The Tenant then used their own sheets, etc. for the last few weeks.

- Despite the tenancy agreement term specifying the need for professional cleaning being seemingly at odds with the *Act* reference to "reasonable cleanliness", the Tenant hired professional cleaners who attended on the final day of the tenancy, October 12. The Landlord was present at the same time as these cleaners, affording the Landlord the opportunity to observe, and even instruct on particular areas requiring cleaning. According to the Tenant the Landlord prolonged the cleaners' work by 2 additional hours which was more expense to the Tenant. As evidence, the Tenant presented the invoice for this service ($294), as well as their text messages to/from the cleaners.

  In the hearing, the Landlord stated that the Tenant had not prepared the rental unit in advance of the final move-out inspection, having the cleaners attend simply at the time of the inspection, and not having the unit cleaned in advance in order to have a clear assessment of the unit's condition in place at the time.

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

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

The Tenant paid a security deposit amount of $1,475 on June 24, 2023. As of the date of this hearing, the Landlord retained the full amount of the security deposit.

The Tenant provided a forwarding address to the Landlord signed on October 10, 2024. This was on the designated form for this purpose. The Tenant attached this to an email sent to the Landlord on October 12, 2024. The Landlord took no issue with the Tenant providing the forwarding address on October 12.

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

The Landlord paid the Application filing fee amount of $100 on October 27, 2024.

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

The Tenant paid the Application filing fee amount of $100 on November 18, 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 sets out that, at the start of the 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.

As set out in s. 24, a landlord is precluded from claiming against a security deposit where they do not complete the inspection report and give a copy to a tenant.

The Tenant submits that the Landlord did not provide a copy of the report after the initial inspection, thereby preventing the Landlord from relying on its content as evidence in this hearing process, or precluding the Landlord from making a claim against the security deposit.

I find the Landlord credible in their account of providing a copy of the document on August 2, leaving this document at the rental unit with the Tenant at the time of the inspection, and requesting their signature on the same. I find the Landlord credible on this point based on the relatively immediate follow-up copy of the report they provided to the Tenant on August 7, 2023. I take no issue with the Landlord's preparation of evidence to show this point, and find it more likely than not, on a balance of probabilities, that the Landlord provided the pictures, as well as a copy of the condition

report, to the Tenant at that time, as a follow-up to the report document they left with the Tenant on August 2.

Though the Tenant stressed the anxiety this was causing them in this situation, their message to the Landlord on August 18 was that the situation was “not at all urgent” and instructing the Landlord to “please take your time” – as shown in the Tenant’s own evidence. This undermines the Tenant’s position in this matter, and their inquiry at this point was on pictures, not the inspection report.

I find the Tenant’s communication through August and September focused on pictures the Landlord took at the initial inspection. I find as fact that the Landlord provided a copy of the move-in inspection document to the Tenant as required, within a relatively short timeframe after the inspection date of August 2, 2023. I draw no adverse inference from the inclusion of an obviously incorrect date of January 2, 2023 on the face of the document. Further, the Tenant did not raise concerns with the Landlord about the condition of certain features in the rental unit until October 18 – this undermines the Tenant’s assertion that the whole situation left them anxious, with no communication from the Landlord on things.

In sum, I find the Landlord is not precluded via s. 23 or s. 24 of the *Act* from making a claim against the security deposit. I find as fact that the Landlord documented the condition of the rental unit and provided that condition inspection report to the Tenant as required. I find the Landlord attesting to the exclusive nature of this executive-catered rental unit to be a testament to the Landlord following the correct procedure in documenting its condition.

The *Act* s. 35 sets out that, at 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 also accurately reproduced in the tenancy agreement the parties had in place for this tenancy.

I find the parties met on October 12 to inspect the condition of the rental unit at the end of the tenancy. I find the process was impeded by the cleaners who attended at that precise time to attend to any additional cleaning deemed necessary. I conclude this meant the unit was not in a ready-to-go finalized state at the time of the inspection. I find the Landlord credible in their account when they state this prolonged the final move-out inspection process. Despite this, I find the Landlord managed to document the condition of the rental unit and have that in place, provided to the Tenant, as required.

Concerning damage more general in a rental unit, the *Act* s. 32(3) sets out that a tenant must repair damage in the rental unit that was caused by their actions/neglect.

Given the level of attention to detail the Landlord focuses on in providing this rental unit to what is evidently a particular type of tenant, in a more exclusive-type arrangement with a furnished executive-type unit in place, I find the Landlord strove for accuracy in their recording of incidental damage in the rental unit. For the damage to the ceiling, I find the Landlord credible in their account – based on my assessment of the evidence on a balance of probabilities – that there was no damage of any kind to any of the ceilings in the rental unit pre-tenancy. The Landlord provided an account of the resident upstairs who noted a particular type of action by the Tenant that likely resulted in the damage in question to the ceiling both in the bathroom and the living room.

I find the Landlord's rendering of the rental unit ceilings – both pre-tenancy and based on observations at the end – were backed up by their pursuit of the cause of these indentations. I find this is a reasonable approach by the Landlord who placed value in the appeal of a pristine rental unit available in a niche rental market.

The Tenant tried to undermine the Landlord's account by stating that there was no record of the condition of the rental unit at the start, and the Landlord's doctored/manipulated records of the pre-tenancy work the Landlord had completed prior to the start of the tenancy. These submissions, based on the Tenant's parsing of the information the Landlord provided in document format, do not outweigh the incidents of ceiling damage that I find the Landlord recorded adequately, backed with sufficient evidence for this hearing.

In sum on the ceiling damage and need for painting, I find the Landlord provided sufficient evidence to establish that a damage existed at the end of the tenancy, owing to the actions/neglect of the Tenant.

The Landlord did not provide sufficient evidence to establish the value thereof. There is no reference to square footage, or a time-referenced work order for that work's completion to establish the unit price in the Landlord's invoice. I reduce the amount granted to the Landlord for this reason, given the relatively small area of the ceiling area affected by this more slight damage, though still noticeable and measured by the Landlord. I grant the Landlord $500 for the work involved with painting, and the amount of $47.27 for the material needed. This amount subtotal is $547.27, with sales tax added ($27.37), totals $574.64.

The *Act* s. 37 sets the responsibility for a clean rental unit at the end of a tenancy: this is "reasonably clean, and undamaged except for reasonable wear and tear."

I find the Landlord's more focused clause in the tenancy agreement – reproduced above – runs counter to this tenant-focused obligation as set forth in the *Act*. I grant the Landlord a more nominal amount for the required steam cleaning of furniture, pillows, etc. in the rental unit. I find it unlikely that the Tenant steam-cleaned the items in question as required -- importantly, as they agreed to in the tenancy agreement – yet the Landlord did not prove that this omission by the Tenant left items beyond reasonably clean and undamaged, beyond reasonable wear and tear. I find the Tenant's videos are not showing particular steam cleaning.

In addition to this, the Tenant is expected to hire professional cleaners who undertake steam cleaning. I trust the Landlord could have avoided confusion on this issue for the Tenant by providing the name of cleaners who undertake this service exactly, at a fixed rate known to the Tenant upfront. That would more likely ensure completion of this particular aspect of cleaning that the Landlord insists on, rather unfairly and in contrast to s. 37 of the *Act*, from the Tenant.

In sum, for additional steam cleaning I find the Landlord has not justified the amount of $475 for this job in the evidence. I find this expense was not itemized accurately, without reference to why this type of cleaning is relatively more expensive, and distinct in nature from commercially-available forms of carpet/furniture cleaning such as the Tenant paid for at the supermarket. I grant the Landlord $100 for this piece of their claim for compensation, in recognition that the Tenant did not complete the job as they agreed to, yet also aware that this is a higher level of cleanliness than that provided for in the *Act*.

Regarding the floor fan, I find the Landlord has not proven conclusively that it was permanently broken and non-functioning after the tenancy ended. The evidence that the Tenant provided regarding its intermittent operation – text messages to the Landlord stating as such – outweighs evidence the Landlord provided which only shows its purchase value. I dismiss this piece of the Landlord's claim for this reason: the Landlord did not prove that a damage/loss exists.

I find the Landlord did not provide adequate evidence that the Tenant did not wash linens, towels, etc. as required by the tenancy agreement. This is a difficult burden of

proof where the Landlord asserted they “smell badly of sweat and were discoloured.” I am unsure what the Landlord would find sufficient proof from the Tenant that they undertook cleaning of these items, and the Landlord appeared to rely on security camera footage from the laundry area to show that the Tenant did not complete this washing as needed. This is a tall order for the Tenant in this tenancy, making the burden of proof for the Landlord that much higher. I find that cleaning the materials is something reaching beyond reasonable wear and tear in this tenancy. I find the Landlord did not prove that a damage/loss to them for this existed.

Aside from this, I find the amount indicated of $120 is an arbitrary amount. There is no reference to number of items washed, the timing thereof, or the cost of laundering these items. For these reasons, I dismiss the Landlord’s claim for the cleaning of linens, towels, etc. This falls outside what the *Act* normally allows for in any event, and should be the subject of a separate agreement for these types of items, along with a recommendation from the Landlord to the Tenant on cleaners, the associated cost, etc.

In sum, for damage in the rental unit, I grant the amount of $674.74.

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

c. *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 amounts to a tenant.

I find the Tenant’s forwarding address was in place with the Landlord on October 12, 2024. This was the same day the tenancy ended, and the date of the final inspection. Therefore, the date in question is October 12, 2024.

The Landlord completed this Application at the Residential Tenancy Branch on October 27, 2024; therefore, I find s. 38(6) does not apply in this situation with this date being the final date the Landlord could make this Application against the security deposit. There is no doubling of the deposit for this reason.

Above, I grant the Landlord the amount of $674.64 for damage in the rental unit. The Landlord shall retain this amount from the security deposit amount of $1,475, and return the balance to the Tenant.

d. 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.

e. 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 $674.64 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 $750.36. I reduce this amount by $20.73 for the amount the Landlord already returned to the Tenant.

I grant to the Tenant a Monetary Order in the amount of **$750.36** under the following terms:

Monetary Issue	**Granted Amount**
compensation for damage	$674.64
recovery of the filing fee for this Application	$50.00
reduction of prior-returned funds	$20.73
return of security deposit balance	-$1,475.00
Total Amount	**$729.63**

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: February 7, 2025

Residential Tenancy Branch