



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Landlord's 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/pet damage deposit
- recovery of the Application filing fee.

The Tenants' Application, crossed to the earlier Application by the Landlord, concerned the return of the security deposit, and the recovery of the Application filing fee.

The Tenant and the Landlords attended the scheduled hearing.

Preliminary Matter: Landlord's Service of Notice of Dispute Resolution Proceeding and evidence

Based on the Tenant's confirmation in the hearing, I find the Landlord served the Tenant with the Notice of Dispute Resolution Proceedings, respondent instructions, and their picture evidence in this matter. This was as required via the Tenant's email that was agreed to as a means of service at the time the parties signed the tenancy agreement.

Preliminary Matter: Tenant's service of Notice of Dispute Resolution Proceeding and evidence

The Landlord stated they did not receive the Notice of Dispute Resolution Proceedings of the Tenant's application. The Tenant provided that they served this to the Landlord by leaving it in the mailbox at the Landlord's address, based on having not received any response from the Landlord via email. The Tenant set out that they completed this service on December 10, along with their prepared evidence. The Tenant described

attending at the Landlord's residential address and leaving the material in the mailbox, the location of which they described in detail.

The Tenant specified that this method of service was in light of the ongoing postal strike that prevented them from sending registered mail.

The *Act* s. 89 specifies the means of service for documents; s. 89(1) is specific to a notice of hearing/application. Leaving the document in the mailbox is not listed; I find this does not constitute personal service to the Landlord in this instance.

Because the Tenant did not undertake a viable method of service for this type of documentation, as well as their evidence, I find they did not serve the Landlord as required. I am excluding the Tenant's evidence from consideration; however, the return of the security deposit is a consideration that is part of the consideration of the Landlord's Application to retain the security deposit.

Issues to be Decided

- a. Is the Landlord entitled to compensation for damage in the rental unit?
- b. Is the Landlord entitled to recovery of the Application filing fee?
- c. Is the Landlord authorized to retain the security deposit and/or pet damage deposit?
- d. Is the Tenant entitled to 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.

In their evidence, the Landlord provided a copy of the tenancy agreement they had in place with the Tenant. This tenancy started on March 16, 2023, on an initial one-year fixed term, then continuing a month-to-month basis. The starting rent was \$4,300 per month; by April 2024 this increased to \$4,450.

The Tenant paid the security deposit amount of \$2,150 on March 11, 2023.

The tenancy agreement, being a templated form, refers to the *Act* throughout.

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

The Landlord (via their agent at the time) and the Tenant jointly signed a condition inspection as presented in their evidence. This shows “marks” throughout each room to detail the condition/state of walls. Also: “up level sink & faucet need plug cover, [. . .] asked window screens upstairs bedroom; door stopper; install one smoker tester, tiles near stairs need to fix.”

This tenancy ended because the Landlord served the Tenant a tenancy-end notice for the Landlord’s use of the rental unit. In line with this notice, the Tenant moved out from the rental unit by May 31st. The Landlord and Tenant arranged a joint inspection on June 2. The Tenant presented that the Landlord did not document the inspection, and did not provide a copy of the condition inspection report as required. The Landlord’s copy of the inspection report has no notation in the move-out specific sections.

The Landlord obtained a quote from a painting company – in the Landlord’s evidence though the Tenant denies this was served to them – on the same day of the final inspection. The quote for painting through the rental unit was \$8,925

After the tenancy, the Landlord set out that they moved their own family into the rental unit. Their parents were supposed to also move in, but the smell in the rental unit adversely affected their one parent to an extreme degree, meaning the Tenant’s parents did not move in to live in the rental unit.

The Landlord provided pictures showing what they submit is the need for repainting throughout the rental unit, based on certain areas of the walls. Based on the painting estimate they obtained, the Landlord claims the full amount of this cost for painting: \$8,925. In the hearing, the Landlord stated they did not complete the painting after the tenancy ended.

In the hearing, the Tenant described the rental unit being dirty when they moved in. They undertook a lot of work on their own. The Tenant recalled the walls not being painted at the time of moving in, and they did not ask the Landlord about this during the tenancy. As well, the Tenant described the Landlord not raising any issue with the condition in the rental unit at the time of the final inspection.

The Tenant also described their efforts at attempting to contact the Landlord post-tenancy for the return of the deposit. The Landlord apparently did not respond to communication from the Tenant.

b. Is the Landlord entitled to recovery of the Application filing fee?

The Landlord paid the Application filing fee amount of \$100 on December 2, 2024.

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

As set out above, the Tenant paid the \$2,150 security deposit at the start of the tenancy.

The record of a prior hearing between the parties, concerning the security deposit, outlines the Arbitrator's finding that the date of the Tenant's service of their forwarding address was November 18, 2024, the date of that Arbitrator's decision.

d. Is the Tenant entitled to recovery of the Application filing fee?

The Tenant paid their Application filing fee on December 7, 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. 37 sets out that a tenant must, at the end of a tenancy, leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find it unlikely that the rental unit was pristine and undamaged with respect to the walls at the start of the tenancy. This is documented in the condition inspection report that the Landlord provided in their evidence. This makes it very difficult to attribute the condition of the walls at the end of the tenancy to the Tenant exclusively.

The Landlord provided insufficient evidence to show damage or an unclean state on the walls as the result of actions or negligence of the Tenant. There are a minimal number of pictures, and the Landlord described the primary issue being the odour in the rental unit, which in any instance is impossible to show in a picture. I find the material the Landlord provided for this claim does not justify an award for compensation in the amount claimed, \$8,925. Therefore, I am not satisfied that damage/loss exists of any kind in this matter.

Moreover, I find the Landlord did not mitigate the loss by undertaking to have the work completed in a timely fashion after the end of the tenancy. There was no actual work completed; therefore, the amount exists in the abstract as an estimate only, and for an excessive amount of work that is not supported by the minimal amount of pictures the Landlord provided.

I find the Tenant credible on their account that the walls were unclean/unpainted at the start of the tenancy. This is documented in the inspection report in the evidence. I also find the Tenant credible that the Landlord did not present any issue with the walls at the time of the final inspection – there was no talk about compensation for this, and the Landlord did not follow-up after the tenancy ended.

I distinguish what the Landlord presented in the evidence as reasonable wear and tear over the course of this tenancy. This takes into consideration that the Tenant had six children, and an unclean state in the rental unit at the start of the tenancy.

For these reasons, I grant no compensation for painting in the rental unit to the Landlord. I dismiss the Landlord's Application, without leave to reapply.

b. Is the Landlord entitled to recovery of the Application filing fee?

The Landlord was not successful in this Application; therefore, I grant no recovery of the filing fee.

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

A landlord's right to claim against the security deposit/pet damage deposit is time-sensitive as set out in s. 38 of the *Act*: a landlord must either return the deposits, or make a claim against them, within 15 days of the later of the end-of-tenancy date, or when they receive a forwarding address from a tenant. A landlord who does not follow this timeline is restricted from utilizing a deposit for damages.

I find the Landlord received a forwarding address from the Tenant on November 18, 2024, as ordered by the prior Arbitrator. The Landlord completed this Application on December 2; therefore, a consideration of the timeline does not apply to this present scenario and there is no doubling of the deposit by s. 38(6) of the *Act*.

The *Act* s. 35 puts the positive obligation on a landlord to complete a move-out inspection form, with both parties' signatures, as well as provide a copy of that document to the Tenant. By s. 36, where a landlord does not complete a report and give a copy of it to a tenant, they are precluded from claiming against the deposit.

I find the Landlord did not fulfill the requirements of s. 35 as shown in the evidence. By s. 36, I find the Landlord's right to claim against the security deposit is extinguished.

For this reason, I order the return of the security deposit -- \$2,150 in full -- to the Tenant. The added interest is \$95.95¹, making the full complete amount to be returned is \$2,245.95.

d. Is the Tenant entitled to recovery of the Application filing fee?

1

2023 \$2150.00: \$34.00 interest owing (1.95% rate for 81.10% of year)
2024 \$2150.00: \$59.03 interest owing (2.7% rate for 100.00% of year)
2025 \$2195.10: \$2.91 interest owing (0.95% rate for 13.97% of year)

I find it was necessary for the Tenant to bring their own Application to have this matter rectified. This was with no communication on the issue from the Landlord post-tenancy, and repeat applications from the Tenant to the Residential Tenancy Branch. I grant recovery of the Application filing fee to the Tenant for this reason. The total compensation amount to the Tenant is \$2,345.95.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

I provide the Tenant with a Monetary Order for \$2,345.95 as set out above. The Tenant must serve this Monetary Order 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 20, 2025

Residential Tenancy Branch