



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Landlord's December 9, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation for unpaid rent
- authorization to retain all/part of the security deposit for compensation
- recovery of the Application filing fee.

The Tenant's February 4, 2025, Application, crossed to the earlier Application by the Landlord, was for:

- compensation for monetary loss/other money owed
- return of the security deposit
- recovery of the Application filing fee.

The Tenant and the Landlord both attended the scheduled hearing.

Service of the Notice of Dispute Resolution Proceeding and evidence

Each party confirmed that they accepted email as a means of service from the other for the purpose of this hearing.

At the outset of the hearing, the Tenant confirmed they received the Notice of Dispute Resolution Proceeding and prepared evidence from the Landlord.

The Landlord stated they received evidence from the Tenant via email. The Tenant provided that the evidence they provided on their own February 4 Application was the same as that they provided in response to the Landlord's December 9 Application. The

Tenant's video evidence, which they stated they could not provide to the Landlord, receives no consideration because they did not disclose it to the Landlord.

The Landlord could not confirm that they received the Notice of Dispute Resolution Proceeding from the Tenant, that document that outlines the detail of the Tenant's claim. To verify their service of this document, the Tenant provided a copy of the text message they sent to the Landlord ("sent you a couple of emails yesterday and today. . ."), and a copy of the email they sent to the Landlord on February 5, 2025 (6:15pm), the message that has the Notice of Dispute Resolution Proceeding attached. (named "Dispute_Notice_[file #]_02_05_2024").

I find this email shows the Tenant served the Landlord with the Notice of Dispute Resolution Proceeding, and their evidence, as required. The text messages show the parties agreed to service of documents by email for the purpose of this hearing.

Issues to be Decided

- a. Is the Landlord entitled to compensation for unpaid rent?
- b. Is the Tenant entitled to compensation for monetary loss/other money owed?
- c. Is the Landlord authorized to retain all/part of the Tenant's security deposit?
- d. Is the Tenant able to recover the security deposit amount?
- e. Is the Landlord eligible for recovery of the Application filing fee?
- f. 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.

The Landlord and the Tenant each provided a copy of the tenancy agreement they had in place from the start date of November 1, 2024. This was for a fixed-term tenancy to end on November 30, 2025, then set to revert to a month-to-month arrangement after that.

The rent amount in the agreement was \$2,650, payable on the first day of each month. The parties agreed that the Tenant paid this amount to the Landlord on November 1, 2024.

The Tenant paid a security deposit amount of \$1,325 on October 7, 2024.

a. Is the Landlord entitled to compensation for unpaid rent?

The Landlord set out that they met with the Tenant in the rental unit on November 1. They provided the rental unit key to the Tenant, and the Tenant was not sure at that time when they would move into the rental unit.

As the Landlord recalled, the Tenant messaged to the Landlord on November 2 and described some items left behind from some repair/maintenance work previously completed. The Tenant sent another message to inquire on further cleaning in the rental unit, due to prior painting in the rental unit. The Landlord and a cleaner visited to the rental unit on November 3 to complete this extra cleaning.

In the evidence, the Landlord included a copy of the Tenant's message from November 6. The Tenant cited the Landlord's failure to communicate that the place was not move-in ready by November 1. The Tenant requested a mutual agreement from the Landlord to end the tenancy. The Tenant also stated:

I do not feel like I can trust transparency and appropriate timing of communications and our relationship going forward if this is the way things are already unfolding in the first days of my tenancy/our agreement.

The Landlord recalled the Tenant returning to the rental unit on November 5/6. The Tenant stated the rental unit was "looking great"; however, by that time the Tenant had decided to rent elsewhere. Following this, the Tenant on November 29 sent a letter to the Landlord detailing the Landlord's "failure to comply", being an unclean rental unit, no move-in inspection, and untimely communication on the cleaning/further repairs.

The Landlord described the Tenant knowing what was happening at each stage, via text messages that are in the Landlord's evidence. The Landlord described two light fixtures and boxes that remained in the rental unit prior to the Tenant's move in, requiring minor clean up, which they fulfilled at the Tenant's request.

The Landlord claimed 2 months' rent equivalent as compensation (\$5,300) owing to their inability to have new tenants in place until February 2025. They did propose that

the Tenant could find replacement renters for the purpose of continuing the agreement already in place.

b. Is the Tenant entitled to compensation for monetary loss/other money owed?

The Tenant had a different recall of events in November 2024. The Tenant's email to the Landlord on November 6 states that the rental unit at that time was "properly move-in ready"; however, they cited the Landlord's unclear communication about additional cleaning, and this meant they had to cancel the movers they had hired. They questioned the Landlord's "transparency and appropriate timing of communications and our relationship going forward" and asked for a mutual agreement to end the tenancy.

The Tenant in a follow-up message acknowledged the Landlord had posted an ad for the rental unit's availability for December 2024. The Landlord responded to say "you are responsible for the place until a new tenant is found as per your lease and the Rtb guidelines." The Landlord then inquired on the Tenant's own efforts to find a replacement sublet tenant in this situation.

The final communication in the Tenant's evidence is that from the Landlord dated November 29. The Landlord requested the Tenant's payment of rent for December 2024 rent, with "the letter you have sent me is a poor attempt to get out of your responsibilities."

The Tenant requested the return of the November 2024 rent amount that they paid in full, due to the rental unit not being move-in ready by November 1. Additionally, the Landlord did not participate in a required move-in inspection. The Landlord responded to this secondary point to say that an inspection would have occurred when the Tenant finished moving in. The Landlord also pointed out that they were in the rental unit with the Tenant initially on November 1 for over 30 minutes in duration. The Landlord reiterated that the rental unit was perfectly fine for the Tenant to move into as they wanted.

c. Is the Landlord authorized to retain all/part of the Tenant's security deposit?

d. Is the Tenant able to recover the security deposit amount?

As set out in the tenancy agreement, the Tenant paid a security deposit of \$1,325. The Tenant provided their forwarding address to the Landlord on November 28, 2024. This letter is in both the Landlord's and the Tenant's evidence for this hearing.

The Landlord completed this Application at the Residential Tenancy Branch on December 9, 2024.

The Tenant claimed the return of the security deposit in full due to no damage in the rental unit.

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

The Landlord paid the Application filing fee amount of \$100 on December 9, 2024.

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

The Tenant paid the Application filing fee amount of \$100 on January 3, 2025.

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 unpaid rent?

The *Act* s. 26 sets the positive obligation for payment of rent with a tenant:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 44 lists the ways in which a tenancy may end.

The *Act* s. 45(2) sets out that a tenant may end a fixed-term tenancy by giving a landlord notice 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 on the tenancy agreement as the end-of-tenancy date; and
- the day before the rent-payable date as per the tenancy agreement.

The *Act* s. 16 provides the following:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find as fact that the Landlord and the Tenant had an agreement in place when they signed the agreement in October 2024. Neither the agreement nor the *Act* specify that an inspection of the rental unit is a mandatory requirement for there to be an agreement. Such a meeting is not set out in the *Act* as signifying the start of a tenancy, or completion of a tenancy agreement. The *Act* only sets out consequences on a security deposit if a start/end meeting is not completed or documented.

I find as fact that the parties did not undertake a condition inspection meeting at the start of this tenancy does not cancel or nullify the tenancy agreement. As per s. 16, I find the parties' obligations were in place as per the tenancy agreement from November 1, 2024 going forward.

With that, in this scenario I find s. 45(2) applies, and the Tenant did not provide correct notice to the Landlord about ending the tenancy. To be clear: the Tenant did not specify a correct effective end-of-tenancy date permitted by the *Act*.

The earliest possible tenancy-end date, as per s. 45(2)(a), was December 31, 2024, based on both the Tenant's earlier request to end the tenancy via mutual agreement (on November 6), and their later communication to the Landlord (on November 28). For this reason, I find the Landlord is eligible for December 2024 rent in full.

The Landlord did not provide sufficient evidence to show their efforts at re-renting the rental unit in as timely a manner as possible. As well, the Landlord did not prove definitively that the earliest replacement tenants they had could only be in place by February 2025. For this reason – the steps by a party to mitigate their loss – I find the Landlord is not eligible for the January 2025 rent amount.

I grant the Landlord compensation for December 2024; this amount is \$2,650.

b. Is the Tenant entitled to compensation for monetary loss/other money owed?

For the same reasons set out above, I find the Landlord did not breach the *Act* or the tenancy agreement by accepting rent payment, and then not returning that amount to the Tenant. With a tenancy agreement in place, and the Tenant a party to that agreement, they were legally obligated to give sufficient notice to the Landlord about ending the tenancy as per s. 45(2), and they did not.

In conclusion on this point, I find the *Act* s. 16 applies, and the parties entered into the tenancy agreement, conferring rights and obligations on either party. At all times, after signing the agreement, for these purposes the Tenant was a party to the agreement and, for them, certain obligations were in place.

As per the agreement, and the tenancy start date of November 1, 2024, the Tenant was obligated to pay rent on November 1, and there is no authority for them to reduce or completely deduct the rent for that timeframe.

The Tenant did not show the Landlord violated the *Act*; therefore, I find there is no compensation owing to the Tenant for the rent amount they paid for November 2024.

I grant no return of the rent amount the Tenant paid for the month of November. An agreement was in place, binding on the Tenant, conferring on them the obligation to end the tenancy with correct notice, as well as to pay rent on the 1st of each month. There was no violation of the *Act* or the tenancy agreement by the Landlord here; therefore, legally, the Landlord owes no compensation to the Tenant.

For these reasons, I dismiss this piece of the Tenant's claim, without leave to reapply.

c. Is the Landlord authorized to retain all/part of the Tenant's security deposit?

d. Is the Tenant able to recover the security deposit amount?

As set out in the tenancy agreement, the Tenant paid a security deposit of \$1,325. The Tenant provided their forwarding address to the Landlord on November 28, 2024. This letter is in both the Landlord's and the Tenant's evidence for this hearing.

The Landlord completed this Application at the Residential Tenancy Branch on December 9, 2024. I find the Landlord made this Application within 15 days of receiving the Tenant's forwarding address; therefore, there is no doubling of the deposit amount.

While the *Act* s. 24 is specific on a landlord's right to claim against a security deposit being extinguished if a landlord does not provide 2 opportunities for inspection, or document that inspection, there is also a provision in place that provides for monetary orders. The *Act* s. 72 provides that any amount payable from a tenant to a landlord may be deducted from any security deposit due to the Tenant.

On this basis, I grant the Landlord to deduct the entirety of the security deposit amount of \$1,325 from the amount the Tenant owes them for the December 2024 rent. In sum, I grant compensation to the Landlord for the remaining amount \$1,325, and there is no security deposit return to the Tenant.

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

I find the Landlord was successful in this Application, and it was necessary for them to bring this Application to resolve the matter. I grant the full amount of the \$100 Application filing fee to them.

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

The Tenant was not successful in their Application; therefore, I grant no return of the Application filing fee to them.

Conclusion

As above, I grant recovery of one-month's rent, to the Landlord, for \$2,650. I authorize the Landlord to deduct the entirety of the security deposit amount of \$1,325; therefore, by Monetary Order I grant compensation to the Landlord for \$1,325.

I also grant to the Landlord \$100 for recovery of the Application filing fee.

I dismiss the Tenant's claim for compensation, and the filing fee, without leave to reapply.

I grant to the Landlord a Monetary Order in the amount of **\$1,425.00** under the following terms:

Monetary Issue	Granted Amount
compensation for December 2024 rent	\$2,650.00
retain security deposit in full as compensation	-\$1,325.00
Application filing fee	\$100.00

I provide the Landlord with this Monetary Order in the above terms and the Landlord must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord 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 25, 2025

Residential Tenancy Branch