



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 January 6, 2025, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

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

The Tenant's January 24, 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.

Preliminary Matter – Landlord's issue on the Application

Upon review, I find the Landlord's issue is more properly that of compensation for their monetary loss/other money owed, although I understand this piece stemmed from damage in the rental unit. The category of "damage" does not apply to what the Landlord presented here.

The *Act* s. 64(3)(c) permits me to amend an application for dispute resolution. I hereby amend the Landlord's Application by withdrawing their damage claim, adding the following for consideration:

- compensation for monetary loss/other money owed

Service of the Notice of Dispute Resolution Proceeding and evidence

The Tenant confirmed that the Landlord served the Notice of Dispute Resolution Proceeding for this hearing. The Tenant also, by describing the documents they received in the hearing, confirmed the evidence they received from the Landlord. I find the Landlord completed service of documents for this hearing as required.

Though the Landlord questioned the Tenant's service by email of later pieces of evidence and the amendment to their Application closer to the hearing date, the Landlord in the hearing then confirmed they received that in a proper method via registered mail. I find the Tenant completed service as required for this hearing process.

Given that both parties confirmed service of hearing information, the full extent of the other's Application, and evidence, I proceed with this dispute consideration with my review of all evidence on the record.

Issues to be Decided

- a. Is the Landlord entitled to compensation for monetary loss/other money owed?
- 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?

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 provided a copy of the tenancy agreement they had in place from the start date of July 1, 2022. This tenancy was on a month-to-month basis, and the rent amount was \$3,500.

The Tenant paid a security deposit amount of \$1,750 on June 29, 2022.

a. Is the Landlord entitled to compensation for monetary loss/other money owed?

The rental unit was subject to a fire incident. As shown in the Landlord's evidence, a report from the local fire department notes their dispatch at 16:16 hours on October 7, 2024. The report notes a "kitchen fire" on that date.

The Landlord provided a copy of the repair estimate dated December 17, 2024, summarizes room-by-room damage from the fire, noting a final amount loss of \$23,452.11. The Landlord pointed to this document to show their deductible paid for the work that was otherwise covered by insurance. This amount was \$1,000. The Landlord seeks to recover this from the Tenant.

The Landlord provided a copy of their insurance policy covering the relevant time period. Page 3 of that document shows the deductible amount of \$1,000.

On that same page, the policy lists discount codes, and a "claims free" code is present, though there is no indication the discount applied in this situation for this fire incident. The Landlord also claims \$750 for the loss of this discount status, being "10% over the next three years" – also "this exceeds \$750, but only claiming \$750". In the hearing, the Landlord described the insurance company no longer offering this discount to them because of the fire incident – basically "the Landlord lost entitlement to this discount because of this fire".

In the hearing, the Tenant described the fire starting within the oven – specifically the "oven's components" -- and not owing to any cooking or act of neglect in the kitchen. They responded by using a fire extinguisher, and reiterated that the fire alarm did not sound at the time of the fire incident. In response, the Landlord pointed to the fire department's report as not specifying a fire owing to some flaw within the appliance itself.

In the hearing, the Tenant also conveyed their recollection of the Landlord's statement to them at the time "not to worry" at the time. The Landlord reiterated that fire safety measures were in place, with no indication to them that smoke/fire alarms in the rental unit were not functioning correctly.

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

The Landlord in their evidence provided a second tenancy agreement, for the continued tenancy starting on July 1, 2024. This shows a rent amount of \$3,750 payable on the 1st day of each month. The agreement in the evidence does not bear either the Landlord's or the Tenant's signature.

In the hearing, the Landlord set out that at the very start of the tenancy in 2022, they had a verbal agreement, as an adjunct to the written agreement, that the amount of rent was reduced, but that they could increase the rent after two years. This raise to \$3,750 was still reduced from the asking rent amount of \$3,800. Despite this agreement continuance not being signed, the Tenant agreed and in fact did pay \$3,750 for each of July, August, September, and October 2024. The Landlord returned the October rent amount in full to the Tenant because of the fire incident hastening an end to the tenancy.

The Tenant recalled a discussion about rent being raised two years into the tenancy, with their son present to translate the discussion with the Landlord. They stated 'no' at the time, yet the Landlord reduced their asking amount (*i.e.*, \$3,800) by \$50, to \$3,750. The Tenant paid this extra amount because they feared an end to the tenancy if they did not pay this.

The Landlord noted the Tenant paid this amount with no dispute; therefore, they accepted this as the agreed-to rent amount. The Landlord also pointed out they had not increased the rent in 2023.

On the Application, the Tenant set out the following:

Landlord charged an additional \$250/mo from July-Oct 2024 which was greater than the legal amount. I would like these 4 months back of illegal rent increased paid back to me. In October, I paid \$3750 and was only returned 2500 and should be owed \$41 back as well.

The Tenant in the hearing acknowledged receiving most of October rent returned to them. They clarified this part of their claim was for three months: July, August, and September 2024 overpaid at the additional increase of \$250 per month.

The Tenant also itemized \$41 on their monetary order worksheet, and noted this on the Application; however, in the hearing the Tenant stated that they did not know what this amount was about.

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 \$1,750. In the hearing the Landlord and the Tenant both agreed that the end-of-tenancy date was October 7, 2024.

On the Tenant's Application, they noted that on January 16, 2025, they put their forwarding address on the door at the Landlord's address as it was noted in the tenancy agreement. The Landlord made this Application on January 6.

The Tenant claimed the return of the security deposit in full.

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

The Landlord paid the Application filing fee amount of \$100 on January 6, 2025.

Analysis

a. Is the Landlord entitled to compensation for monetary loss/other money owed?

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.

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 claim for money owed/compensation for loss, albeit to a limited extent.

The Landlord presented that the tenancy ended because of a kitchen fire; the Tenant presented the fire arose through a fault in the stove/oven, and they immediately dealt with the situation. The burden of proof is on the Landlord in this situation; I find the Landlord did not present sufficient evidence to show the Tenant's actions or neglect were the cause of the fire that caused the Landlord some expense in the form of their insurance deductible.

I find the Tenant credible on their point that the fire arose through some fault in the appliance. The Landlord did not present an abundance of evidence that showed categorically that the fire was caused by the actions of the Tenant. I apportion the cost of the Landlord's deductible equally between the two parties, and grant the Landlord one-half of the insurance deductible amount: this is \$500.

Other than this piece, the Landlord did not show an accurate calculation of what the \$750 amount represent in terms of a discount they would otherwise be entitled to. Though the Landlord specified this amount was *more* than \$750, they did not specify an amount, and this undermines their claim to show that the amount was *at least* \$750.

The *Act* states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I find the Landlord is entitled to an amount of \$500, and I order the Tenant to pay that amount to the Landlord.

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

Part 3 of the *Act* sets out the timing and notice requirements for rent increases.

First, s. 41 provides that "A landlord must not increase rent except in accordance with this Part."

Following this, s. 41 provides more specifics:

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

To provide for the amount, s. 43 sets out:

(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3)
- (c) agreed to by the tenant in writing.

I find the Landlord did not provide a separate notice to the Tenant in the approved form. This is specified as strictly necessary in the *Act*, set out above. There is no exemption from this provision of the *Act* in the situation where a Tenant agrees to the amount via an agreement – however, I note in this instance that the Tenant did not sign the agreement, and I find the Tenant credible on their point that they felt obligated to pay this increased amount, else the tenancy would end.

In sum, the Landlord must give the Tenant a completed notice of rent increase form at least three months before the effective date of rent increase. The approved form must be used when serving notice.

I find the Landlord did not provide proper notice in the approved form for the proposed rent increase for July 1, 2024. I order the rent increase specified by the Landlord for July 1, 2024 was null and void.

The *Act* s. 43(5) sets out that, if a landlord collects rent from an increase that does not comply with Part 3 of the *Act*, a tenant may recover that increase. The Tenant here made three payments in line with the Landlord's proposed rent increase; therefore, I grant recovery of \$750 to the Tenant.

I dismiss the Tenant's claim to an additional \$41, with no explanation of what that amount represents in the evidence.

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 \$1,750. The Tenant provided their forwarding address to the Landlord in January 2025. The Landlord completed this Application at the Residential Tenancy Branch on January 6, 2025, prior to receiving the Tenant's forwarding address; therefore, there is no doubling provision for that amount, s. 38(6) of the *Act* does not apply in this scenario.

I find the Landlord's Application includes a claim against the security deposit for something other than damage to the rental unit (*i.e.*, other money owed). I find it is not relevant whether the Landlord's right to claim against the security deposit for damage has been extinguished under the *Act*.

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. By this section, I grant the Landlord \$500 as compensation, to deduct from the security deposit they have retained since the end of the tenancy. The Landlord shall return the balance of that deposit to the Tenant.

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

I find the Landlord was moderately 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.

Conclusion

As above, I grant compensation of \$500 to the Landlord, as well as the recovery of the \$100 Application filing fee. I authorize the Landlord to deduct this amount from the security deposit amount of \$1,750; therefore, the compensation to the Tenant for this piece is \$1,150, the return of the balance of the security deposit.

I grant the Tenant \$750 for compensation owing to the rent increase they paid extra for, as set out above.

I grant to the Tenant a Monetary Order in the amount of **\$1,900** under the following terms:

Monetary Issue	Granted Amount
to Tenant: compensation for rent increase	\$750.00
to Tenant: return of security deposit balance	\$1,150.00
TOTAL	\$1,900.00

I provide the Tenant with this 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: March 24, 2025

Residential Tenancy Branch