



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

### **Introduction**

On January 16, 2025, the Landlords finalized their Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for:

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

The Tenants filed their own Application that was joined to that of the Landlord for:

- return of the security deposit
- authorization to recover the filing fee for this Application.

The Tenants amended their Application on February 17, 2025 for compensation for monetary loss/other money owed.

The Landlords (hereinafter referred to as the “Landlord”) and the Tenants (hereinafter, referred to as the “Tenant”) both attended the scheduled hearing.

### **Service of Notice of Dispute Resolution Proceeding**

The Landlord in the hearing presented that they served the Notice of Dispute Resolution Proceedings to the Tenant associated with their Application, by registered mail to the Tenant’s new address on January 23, 2025. The Tenant confirmed this service.

The Landlord provided evidence to the Tenant on March 16, both “in hand” and on the door of the Tenant’s new address. The Tenant also confirmed this service. The Landlord provided more documents to the Tenant on March 27 via email – the Tenant acknowledged this service,

though in the context of their own ability to prepare evidence for this hearing, they questioned the timeliness thereof.

The Tenant served their Notice of Dispute Resolution Proceedings to the Landlord via registered mail on January 30, 2025. The Landlord confirmed this mode of service in the hearing. The Tenant amended their Application on February 17, served to the Landlord on February 20. The Landlord also acknowledged this service.

The Tenant served evidence to the Landlord, finalizing this on March 23 in an email to the Landlord. I find this evidence in response to the Landlord's Application was provided to the Landlord more than 7 days prior to the scheduled March 31 hearing.

### **Issues to be Decided**

- Is the Landlord entitled to retain all/part of the security deposit amount for compensation?
- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to compensation for monetary loss/other money owed?
- Is the Landlord entitled to compensation for damage in the rental unit?
- Is the Landlord entitled to recover the filing fee for this Application?
- Is the Tenant entitled to recover the filing fee for this Application?

### **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 for the record. In the hearing I confirmed the security deposit amount of \$1,500 that the Tenant paid on June 1, 2023.

The addendum in the agreement provides that the Tenant was responsible for 70% of the utilities; the Landlord would credit 30% back to the Tenant on the first of each month.

The Tenant in the hearing stated that they were not present when the Landlord captured the state of the rental unit in detail on video. The Landlord sent these videos to the Tenant at the

start of the tenancy; however, the Landlord did not document this inspection in a condition inspection document/checklist. The Tenant confirmed there's no inspection or documentation on the date they moved into the rental unit, and nothing jointly signed.

The Landlord stated that one video clip captures the Tenant's voice in the background, meaning they were actually present at the time. The Landlord also confirmed with the Tenant that they received these videos at the start of the tenancy.

On November 15, the Tenant notified the Landlord that they wished to end the tenancy. The Tenant moved out from the rental unit on December 31. The Landlord and Tenant both visited to the rental unit on January 1, 2025, and the Landlord recalled they inspected each room in detail, while the Tenant waited in the kitchen area.

The Tenant presented a copy of their emails to the Landlord, post-tenancy, to inquire on payment of utilities amounts: December 20, total of \$89.57, and January 8, total of \$68.35. This forms the Tenant's claim for the \$157.92 amount. The Landlord did not object to this in the hearing, and accepted the amount.

Regarding the kitchen countertops in the rental unit, the Landlord presented that the countertops were left with stains, leaving them with the only option of repolishing the countertops for \$1,500. The Landlord had also inquired on replacement of all countertops for the amount of \$6,500. They mentioned this to the Tenant at the end of the tenancy in the interest of settling on some agreed-to compensation, but recalled all that the Tenant proposed was attempting another cleaning method.

The Landlord provided videos of all areas in their evidence for this hearing. They noted two areas of staining, and overall blotchiness to the countertops' surface. The Landlord also pointed to the Tenant's own Facebook post wherein the Tenant inquired on cleaning methods for this type of surface, as evidence of the Tenant not being careful to a sufficient degree about these countertops. The Landlord stressed that they contacted the original countertop installer, as well as two firms that handle countertop resurfacing/repolishing.

The Tenant agreed that one area of the countertop – known as area 'C' – was "blotchy", with a stain that is more noticeable than other areas. The Tenant stated that they did not receive a "quote" or "estimate" from a service provider; rather, for this hearing they received copies of text messages to/from service providers and the Landlord. The Tenant also reiterated that they had their own cleaners in the rental unit during the time of the tenancy, and there was never a time when they left materials sitting on the countertop for a period that would cause some sort of staining or damage.

The Tenant in the hearing stated they raised the issue of keeping the countertops clean with the Landlord during the tenancy. In November 2023, as shown in the Tenant's email to the Landlord, they raised the issue of the best method to keep the countertops clean, and inquired on whether they were sealed. The Tenant recalled noticing, within a couple of weeks of moving in, that the countertops were prone to staining, and required a lot of effort to remove stains.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

**Is the Landlord entitled to all/part of the security deposit amount for compensation?**

**Is the Tenant entitled to the return of the security deposit?**

The following sections of the *Act* apply in this present scenario:

- s. 24(2) provides that a landlord's right to claim against a security deposit for damage to property is extinguished if there are no offers for an inspection, or a landlord does not complete an inspection report and provide that report to a tenant
- at the end of a tenancy, a landlord has a similar obligation for both an inspection meeting, and providing a documented report, as per s. 36(2)
- s. 38(5) provides that a landlord's right to retain any part of a security deposit does not apply, in relation to damage, where a landlord's right is extinguished under s. 24 or s. 36

I find as fact that there was no documented inspection, either at the start or the end of this tenancy. The Landlord provided videos about the state of the rental unit at the start; however, the condition was not documented with both parties signing to acknowledge the condition. The Landlord did not document the condition of the rental unit at the end of the tenancy, though captured more videos. Strictly speaking, the Landlord did not comply with s. 24 and s. 36 of the *Act*; therefore, the Landlord in this scenario has no right to claim against the security deposit.

As per s. 38(5), I conclude the Landlord has no right to retain any part of the security deposit. I order its return, in full, to the Tenant. I grant to the Tenant a monetary order for this purpose.

The *Act* s. 38(6) provides for a doubling of a deposit amount returned to a tenant, where a landlord does not either return it, or claim against it, within 15 days after the later of either receiving a tenant's forwarding address, or filing a claim against it.

I accept that the Landlord made this Application on January 16, after receiving the Tenant's forwarding address via email on January 8. I conclude there is no doubling of the deposit amount.

For the reasons set out above – that the Landlord's right to claim against the security deposit, and their right to retain any part, is extinguished, I order the Landlord to return the security deposit in full to the Tenant. I provide the Tenant with a Monetary Order for the full security deposit amount.

Adding interest to that security deposit amount, the final amount is \$1,561.78.<sup>1</sup> I provide the Tenant with a Monetary Order for this amount.

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

The Landlord in the hearing agreed to compensate the Tenant \$157.92; therefore, I grant this amount to the Tenant.

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

The *Act* s. 23 sets out that, at the start of a tenancy, a landlord and tenant must jointly inspect a rental unit. That inspection must be documented in an inspection report, and a landlord must provide that report to a tenant.

The *Act* s. 35 sets out that a landlord at the end of a tenancy must inspect the rental unit with the Tenant, complete a condition inspection report with both a landlord and a tenant's signatures on that document to attest to its contents.

The *Act* s. 32 refers to a tenant's obligation to maintain reasonable health, cleanliness and sanitary standards during a tenancy.

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2023 \$1500.00: \$17.15 interest owing (1.95% rate for 58.63% of year)

2024 \$1500.00: \$41.04 interest owing (2.7% rate for 100.00% of year)

2025 \$1533.97: \$3.59 interest owing (0.95% rate for 24.66% of year)

The *Act* s. 37 sets the obligation on a tenant to ensure, at the end of a tenancy, that a rental unit is reasonably clean, and undamaged except for reasonable wear and tear.

More generally, under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

In this scenario, I find the Landlord is presenting a claim for a level of cleanliness for countertops that was inherently hard to obtain. This is not “damage” *per se*, and I conclude this is nothing beyond reasonable wear and tear in the rental unit. I find the Tenant credible on their recollection of inquiring about the level of effort needed to remove anything with colour that affected the surface, requiring extra effort to clean.

As well, the images that the Landlord captured on video, I find, show nothing untoward about the condition of the countertops which appear, for the most part, to be unstained and of a clear surface. With this, I conclude that damage or loss in this situation does not exist. I find the countertops not stained, or otherwise blemished, through any deliberate or negligent acts by the Tenant, meaning they are reasonably clean except for reasonable wear and tear.

For these reasons, I dismiss the Landlord’s claim for compensation for damage in the rental unit, without leave to reapply.

### **Is the Landlord entitled to recover the filing fee for this Application?**

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

**Is the Tenant entitled to recover the filing fee for this Application?**

The Tenant was successful in this Application; therefore, I grant recovery of the Application filing fee to them.

**Conclusion**

For the reasons set out above, I dismiss the Landlord's Application, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of **\$1,819.70** as per the terms set out above. 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 31, 2025

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Residential Tenancy Branch