



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## DECISION

### **Introduction**

This hearing dealt with the Landlord's February 14, 2025, Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- compensation for unpaid rent
- 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 March 13 Application, crossed to the Landlord's Application already in place by that date, concerned the return of the security deposit, and the recovery of their Application filing fee.

The Tenants (hereinafter, the "Tenant") and the Landlords (hereinafter, the "Landlord") attended the scheduled hearing.

### **Service of hearing documents and evidence**

I find the parties each 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 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.

### **Preliminary Matter – correct issue in this hearing**

The Landlord on their Application indicated compensation for unpaid rent. The Tenant somewhat took issue with this terminology in the hearing, with the implication being that they did not pay rent during the tenancy which was not the case.

Upon review, I find the Landlord's claim – centering on income lost from being unable to rent the months in the ensuing months after the tenancy ended – concerns their monetary loss or other money owed.

The *Act* s. 64(3)(c) is authority for me to amend an application for dispute resolution. I withdraw the Landlord's Application for unpaid rent, and replace it with this issue, listed below.

### **Issues to be Decided**

- a. Is the Landlord entitled to compensation for damage in the rental unit?
- b. Is the Landlord entitled to compensation for monetary loss/other money owed?
- c. Is the Landlord authorized to retain part/all of the security deposit for compensation?
- d. Is the Tenant entitled to the return of the security deposit?
- 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 Tenant each provided a copy of the tenancy agreement they had in place, and confirmed the terms therein. The tenancy started on April 1, 2024 on a month-to-month basis. The monthly rent was \$2,800 per month.

The Tenant paid a security deposit of \$1,400 on March 7, 2024, as recorded in the tenancy agreement. The Tenant presented – and the Landlord confirmed – that they later paid a pet damage deposit that the Landlord had since returned to them post-tenancy.

In the hearing, the Landlord pointed to the requirement, as set in the addendum to the tenancy agreement, for the Tenant to have their own insurance in place and to provide proof of that to the Landlord.

The Landlord provided a copy of move-in/move-out inspection reports, completed with the Tenant at the start and end of the tenancy. The forwarding address provided by the Tenant appears on the completed move-out inspection document, dated January 31, 2025.

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

In the hearing, the Landlord set out in detail the incident involving flooding in the rental unit, from December 1, 2024 onwards. They visited in response to a call from the Tenant about the basement being flooded. The Landlord's inspection involved one toilet that required immediate attention. The Landlord discovered the basement was flooded with many towels placed in the area to soak up water. A large bin was catching water from a crack in the basement ceiling.

The Landlord contacted a plumber and a restoration company to address the matter. The restoration company visited the same day. The Tenant had contacted their own insurer on this date as well.

In the hearing, the Tenant presented that they had a different version of events with respect to details in the Landlord's account. The Tenant stated that there were inherent problems in the tenancy, and they had communicated with the Landlord throughout the tenancy about the need for repairs, and this was ongoing, even concerning the toilets which did not appear to function properly. The Landlord reiterated their policy of inspecting the rental unit fully every three months, and no record of the Tenant's communication to the Landlord about toilet problems.

The Landlord in the hearing presented that their own insurer started a claim. They paid the \$2,000 deductible to the restoration company on December 9, 2024. The Landlord also paid \$251.54 to the drain service company that visited on December 2 to examine and clear the drainage. Both of these amounts are the Landlord's claim as

compensation stemming from damage that they present was caused by the Tenant, due to the Tenant's neglect on this issue.

The Landlord presented that, as of the date of this hearing, repairs and restoration was ongoing, and not yet completed. This is something that is beyond their control.

The Tenant presented that this is a pending matter of insurance, by which the Landlord would be covered according to the communication they had with their own insurer. If this was a matter of the Tenant's neglect in the matter, then the Tenant's own insurer would cover the amounts in question. The Tenant was explicit in stating this was not a matter for the use of the security deposit, and thus applied for its return.

The Landlord confirmed that the restoration process is with their own insurer, and that work is ongoing. They did not expect the matter to remain unresolved until this time. The Landlord stressed the 15-day timeline in which they had to make an application to retain the security deposit after the tenancy ended on January 31, 2025.

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

On the Application, the Landlord set out, for the amount of \$5,600:

Tenants signed a lease starting April 1 2024. The tenants gave notice to vacate property for Feb 1 2024. Due to the damages caused by the tenants as well as their refusal to allow the restoration company into the property to start work, I have been unable to rent the property out.

The is the equivalent of two months' rent, at \$2,800 per month.

The Tenant, after presenting that they dutifully paid rent on time at all stages of the tenancy, presented that this was also a matter of insurance. Their own insurer advised of this in the days preceding the hearing.

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

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

The Tenant paid a security deposit of \$1,400 on March 7, 2024, as recorded in the tenancy agreement. The Tenant presented – and the Landlord confirmed – that they later paid a pet damage deposit that the Landlord had since returned to them post-tenancy.

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.

The Tenant provided a forwarding address to the Landlord at the time of the move-out inspection on December 31, 2024. This appears in the copy of the move-out inspection report in the evidence.

The Landlord took no issue with the Tenant providing the forwarding address on December 31.

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

The Landlord paid the Application filing fee amount of \$100 on February 14, 2025.

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

The Tenant paid the Application filing fee amount of \$100 on March 13, 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 damage in the rental unit?*

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.

Notably, the move-out inspection form refers to 'restoration' throughout. I find this supersedes the immediate concerns about the condition in the rental unit at the end of the tenancy, and that cannot be finalized until the matter of insurance – which oversees and mandates the restoration process – is resolved. This is something outside both parties' control, and overrides what is normally in place at the end of a tenancy with respect to a landlord/tenant rights and obligations.

I find the parties' duty to mitigate the damage/loss is also barred by the current state of this insurance matter concerning damage in the rental unit. I find the Tenant is correct that, at this stage, it is not a matter of assessing damage in the rental unit where insurance is not yet resolved.

For this reason, I dismiss the Landlord's Application for compensation for damage in the rental unit; however, I am granting the Landlord leave to reapply.

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

As above, I find this involves a claim of some monetary loss to the Landlord, or other money owed, which may fall within the scope of coverage by the insurer via that of the Tenant. I find this aspect of the parties' respective insurance claims is not yet resolved.

As above, I dismiss this piece of the Landlord's Application; however, I am similarly granting the Landlord leave to reapply.

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

*d. 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 December 31, 2024. This was the same day the tenancy ended, and the date of the final inspection. Therefore, the date in question is December 31, 2024.

The Landlord completed this Application at the Residential Tenancy Branch on January 14, 2025; therefore, I find s. 38(6) does not apply in this situation with the 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.

I grant this is not a matter concerning dispensation of the Tenant's security deposit, and as a matter of equity, the Tenant should not continue to have the matter of the security deposit unresolved at this stage. I find it also fair to both parties to not allow the security deposit to continue to accumulate interest should its final dispensation remain unresolved.

The security deposit has accumulated interest from March 7, 2024, to the date of the hearing May 1, 2025. This amount of interest is \$35.44<sup>1</sup>. In total, the amount the Landlord must return to the Tenant is \$1,435.44.

The Landlord is not barred from seeking compensation concerning this tenancy, even with the matter of the security deposit now finalized.

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

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

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

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

## **Conclusion**

As set out above, I dismiss the Landlord's Application in full, with leave to reapply.

I grant to the Tenant I grant the return of the security deposit in full, with added interest. I grant the Tenant recovery of the Application filing fee.

---

1

2024 \$1400.00: \$30.98 interest owing (2.7% rate for 81.97% of year)

2025 \$1400.00: \$4.46 interest owing (0.95% rate for 33.15% of year)

I grant to the Tenant a Monetary Order in the amount of **\$1,535.44**.

I provide the Tenant with a Monetary Order, 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: May 1, 2025

---

Residential Tenancy Branch