



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 1:50 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representative attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

The landlord testified that on July 26, 2022 and March 13, 2023, copies of the Application for Dispute Resolution, Notice of Hearing and evidence package were sent to the tenants by registered mail. The landlord provided registered mail receipts in support of service.

Based on the above evidence, I find the tenants to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

### **Issues**

Is the landlord entitled to a monetary award for damage or loss?

Is the landlord entitled to retain all or a portion of the tenants security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on September 1, 2021 and was a one year fixed term tenancy. The tenants ended the tenancy early on June 30, 2022. The monthly rent was \$2300.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$1150.00 and a pet deposit of \$1150.00 at the start of the tenancy of which the landlord continues to retain a total of \$1765.00. The landlord returned an amount of \$535.00 by cheque on July 12, 2022.

The landlord is claiming \$1150.00 in liquidated damages for the tenants breaking the fixed term lease early. The landlord submits that clause #3 of the tenancy agreement additional terms provides for the above to cover the landlord's costs to re-rent and advertise the unit. The landlord provided a breakdown of the placement and advertising fees.

The landlord is claiming \$315.00 for cleaning fees resulting from a guest of the tenants vomiting on the patio furniture of a tenant directly below their unit. The landlord submitted an invoice for the steam cleaning of the patio furniture.

The landlord is claiming \$241.00 (reduced to \$200.00 by the landlord during the hearing as per the landlord's original claim) for maintenance costs for repainting the living room and dining room walls in the unit. The landlord submits these were damaged beyond reasonable wear and tear and this was reflected in the move-in and move-out reports. A receipt was submitted as evidence.

In the hearing the landlord withdrew the claim for a \$100.00 move-out fee.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The tenancy agreement signed by the parties stipulates the landlord may require the tenants to pay a sum of \$1150.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the amount of \$1150.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty. I award the landlord **\$1150.00** in liquidated damages as claimed.

I accept the landlord's claim for cleaning fees for the patio furniture. The landlord submitted an invoice for this expense and I find it was caused by the tenants and/or the tenants guests. The landlord is awarded **\$315.00** as claimed.

I accept the landlord's claim that the tenants left the unit walls damaged beyond normal wear and tear as evidenced by the move-in and move-out reports. The landlord is awarded **\$200.00** as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$1765.00** (\$1150.00 + \$315.00 + \$200.00 + \$100.00).

The landlord continues to hold a security deposit and pet deposit in the amount of \$1765.00. I allow the landlord to retain the balance of the security deposit and pet deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

### Conclusion

The landlord is entitled to a monetary award of \$1765.00. I allow the landlord to retain the balance of the tenants' security deposit and pet deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 04, 2023

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Residential Tenancy Branch