



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

The Landlord filed an Application for dispute resolution on July 10, 2023, seeking compensation for unpaid rent, damage in the rental unit, and monetary loss/other money owed, and recovery of the Application filing fee.

The Tenant filed an Application on August 11, 2023 for the return of their security deposit/pet damage deposit, and recovery of the Application filing fee. With the Landlord's Application already in place, the Tenant's Application was crossed to that of the Landlord.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 23, 2024. Both the Landlord and the Tenants (hereinafter, the "Tenant") attended the hearing.

Preliminary Matter – Landlord's service of the Notice of Dispute Resolution Proceeding and evidence

The Landlord provided proof that they served the Notice of Dispute Resolution Proceeding document, and their evidence, to the Tenant via registered mail on July 14, 2023. They provided two registered mail labels showing the post office stamped them on July 14, and showing the tracking number for each, as well as the completed Tenant name and address on each label.

The Tenant in the hearing stated that the address I read to them in the hearing – that in a different province – was correct. The Tenant recorded the two tracking numbers I stated to them in the hearing, repeating each full number back to me. During the hearing the Tenant stated they checked the tracking numbers online, and each delivery

was not complete. Inexplicably, the post office could not complete delivery of these two packages.

The Tenant also stated that they had no idea about the Landlord's Application for compensation. The hearing was the first instance they knew of the Landlord's Application.

I verified each tracking number after the completion of the hearing. Each record shows completed delivery on July 17, 2023. A party named "G.H." (full name omitted, though last name the same as that of one Tenant) signed for the packages on July 17, 2023.

From this proof of service from the Landlord, I find they served the Notice of Dispute Resolution Proceeding and their evidence to the Tenant as required. I find the Tenant not credible on their account that the post office was not able to complete delivery to them. The tracking numbers provided by the Landlord – expressly for this purpose to prove service – show that the registered mail they sent was delivered and signed for to the address provided by the Tenant in an email to the Landlord on July 2, 2023.

In conclusion on this point, I give the Landlord's evidence full consideration where necessary and relevant.

Preliminary Matter – Tenant's Notice of Dispute Resolution Proceeding and evidence

In the hearing, the Landlord confirmed they received the notice of the Tenant's Application, as well as the Tenant's prepared evidence. I give the Tenant's evidence full consideration where necessary and relevant.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to compensation for damage in the rental unit?
- Is the Landlord entitled to compensation for monetary loss/other money owed?
- Is the Landlord entitled to retain all/part of the security deposit and/or pet damage deposit?

- Is the Landlord entitled to recovery of the filing fee for their Application?
- Is the Tenant entitled to a return of the balance of their security deposit and/or pet damage deposit?
- Is the Tenant entitled to recovery of the filing fee for their Application?

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had in place for this rental unit with the Tenant. The tenancy start date was June 1, 2023, with a fixed-term end-of-tenancy date of May 31, 2024. The monthly rent was set at \$2,280, payable on the first day of each month.

The tenancy agreement shows the Tenant paid a security deposit amount of \$1,140 on April 18, 2023, and a pet damage deposit amount of \$1,140 on April 18, 2023.

On the Tenant's Application, they indicated that the full amount of the security deposit amount was \$2,280, the equivalent of one full month's rent. The Tenant provided the amount of \$868 as that of the security deposit they paid. In the Tenant's evidence, they provided a transaction history record showing a payment of \$2,280 on April 24, 2023. In the hearing, they stated that this was the deposit they paid to the Landlord on that date.

The Tenant occupied a different unit in the same rental unit property prior to moving to the rental unit that is the subject of this hearing. They claimed these separate amounts on their Application because they were told these deposit amounts transferred with their tenancy to a new rental unit.

The Landlord in the hearing provided that the full amount of deposits from the Tenant's prior rental unit was refunded to them on June 12, 2023. This was returned as a credit to the Tenant on June 12, 2023, two separate amounts of \$961 for the two deposits.

When the Landlord described the Tenant paying two separate deposit amounts of \$1,140 each – for the combined total of \$2,280 – on April 24th, the Tenant in the hearing stated "that does sound accurate." The ledger provided by the Landlord in their evidence shows this transaction on that precise date.

The Landlord provided a copy of the full tenancy agreement signed by the Tenant on April 19 and April 20, 2023. The Landlord signed the document on April 21, 2023. This agreement contains an additional 52 items in the addendum, comprised of 9 pages. The Landlord referred to clause 18 in the addendum, that which sets out the amount of one full month's rent, should the Tenant ends the fixed-term tenancy before the original term. This is "to cover the Landlord's cost of re-renting the Rental Unit".

In the hearing, the Tenant explained that they did not use the "docusign" feature (which would enable them to sign digitally, and not in the direct presence of the Landlord's agent) to complete the tenancy agreement. They also did not receive a copy of the agreement either at the time of its signing, nor as evidence for this hearing. They surmised that the building manager/Landlord's agent signed the document on their behalf.

In response to this, the Landlord referred to their emails of April 19 and April 20, when they sent the document to the Tenant via email for their signature. This means is "doesn't seem the building manager signed on [the Tenant's] behalf." The Tenant then surmised that the Landlord was "deliberately trying to withhold the [new tenancy] agreement, and purposely withholding paperwork."

The Landlord provided a record in evidence they labelled "abandonment email". This is the Tenant's email to the Landlord dated July 2, 2023 6:58am, wherein they advise the Landlord they will move out "effective 7:00 AM PST today". The Tenant cited the Landlord's failure to repair the building entrance that was "still insecure", after they provided the Landlord "a timeframe of 7:30 PM PST July 1st, 2023".

In the hearing, the Tenant described their feeling of a risk to their personal safety. This was after a previous incident of assault against them, and they had previously notified the Landlord about the insecure door on June 1. The Landlord "didn't follow through on door repair" and the Landlord did not respond to the Tenant's inquiry and request for door repair.

In the hearing, the Landlord set out that the responsible manager at the Landlord's office returned from vacation on July 5th, then read the Tenant's email. That person attended to the rental unit and found the keys within the rental unit. There was no move-out inspection scheduled with the Tenant; however, the Landlord did inspect the unit on July 4 and documented that in the report that they provided in their evidence.

The Landlord seeks compensation as follows:

- \$4,585 – June 2023 rent in full (\$2,280) and July 2023 rent in full (\$2,280) – in the hearing the Landlord provided that the Tenant did not pay rent for either of these months. This is shown in the Landlord's ledger in the evidence. The Landlord also bases this claim for July rent in full on the Tenant's insufficient notice to end the tenancy, and the abandonment on that same day.
- \$25 – a late fee for June 2023 rent – the tenancy agreement sets out this late fee in the addendum item 20: "The Landlord may charge the Tenant a non-refundable administration fee of \$25.00 for each late payment of all or a portion of any rent. . ."
- \$450 – the cleaning of the rental unit, a rekey of the rental unit, and disposal of abandoned items as well as repairs to walls/screws left in place. In support of this piece of their Application, the Landlord referred to the condition inspection report, and the 5 photos they provided in evidence.
- \$2,280 – the equivalent of one month's rent in full, as per clause 18 in the tenancy agreement addendum, liquidated damages. This is based on the Tenant's insufficient notice to the Landlord about ending the tenancy.

In response to the Landlord's claim for damage in the rental unit, the Tenant presented that they were not given a request to attend a meeting to inspect the rental unit. They had no response from the Landlord on their inquiries regarding the front door of the rental unit building.

Analysis

By s. 62 of the *Act*, an arbitrator has authority to make any finding of fact or law that is necessary or incidental to making a decision or order under this *Act*.

I find as fact that the Tenant paid a full security deposit amount of \$1,140, and a full pet damage deposit amount of \$1,140. The Tenant provided a record of the full amount of \$2,280 on April 24, and this matches the Landlord's ledger showing payment of "SD & PD payment" on that same date. I find the Tenant not credible on their account of past deposits utilized by the Landlord in this tenancy agreement, and the Landlord provided a credible reference in their testimony of the dates they paid those past deposits back to the Tenant. Going forward in this analysis, this is the amount for each deposit that I factor in to any amount of compensation owing from the Tenant to the Landlord, or for a repayment of deposits to the Tenant.

The Tenant raised the issue of the signing of the agreement, stating that they felt the Landlord's agent signed that document on their behalf, and they were not provided a copy. As set out in the preliminary section regarding evidence, I find the Landlord completed full service of the notice for this hearing including their evidence. I find the Tenant received a copy of the Landlord's evidence for this hearing; this includes a copy of the agreement.

I find as fact, based on the Landlord's testimony in the hearing in which they made direct reference to their email records of April 19 and April 20, that they provided the document for the Tenant's signature. The Tenant did so in each section of the agreement where it was necessary to do so, then returned the document to the Landlord as required. I find the Landlord credible on this point. I find the copy of the tenancy agreement shows one Tenant's signature on April 19, and the second Tenant's signature on April 20, via docusign showing an individual string of code under each Tenant's signature. I find this verifies the Landlord's proof as set out in the hearing that each Tenant signed the document before returning it to the Landlord. The same goes for subsequent signatures throughout the document, prior to the Landlord's agent signing the agreement separately on April 21.

In summary on this single point, I find the Tenant not credible on their submission that the Landlord's agent signed the document completely on their behalf. I find that is just not possible with the use of docusign.

Is the Landlord entitled to compensation for unpaid rent?

The *Act* s. 26 sets out that a tenant must pay rent to a landlord, unless authorized to make deductions.

The *Act* s. 45 sets out that a tenant may end a fixed-term tenancy "not earlier than one month after the date the landlord receives the notice." In addition, the end-tenancy-date must not be prior to the fixed-tenancy end date as set in the tenancy agreement.

In this situation, I find the Landlord has established a claim for unpaid rent owing for July 2023. The Tenant notified the Landlord of their ending the tenancy on the same day of that notification, July 2.

I find the Landlord credible on their account, with reference to the Tenant ledger they retained for this purpose, that the Tenant did not pay rent for the month of June 2023.

The *Act* s. 67 sets out that monetary loss resulting from a tenancy shall receive an order from an arbitrator for that party to pay compensation to the other party.

I find the Landlord is entitled to receive compensation for the July 2023 rent in full, for \$2,280. I find the Landlord is also entitled to receive compensation for the June 2023 rent in full, for \$2,280. This total is \$4,560.

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

As per the *Act* s. 32, a tenant must repair damage to the rental unit caused by their actions or neglect.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

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.

The Landlord established that the rental unit was left in an unclean state at the end of the tenancy. They incurred costs, as listed on the inspection document, of \$450 for this.

Though the Landlord provided images as proof of the need for cleaning, I am not satisfied of other damage listed by the Landlord in the rental unit. Also, there is no authoritative source for the cleaning amount, or an invoice showing this was an amount the Landlord paid for some cleaning service, or reference to when the cleaning took place in the rental unit. I dismiss this individual piece of the Landlord's claim for compensation for this reason.

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

The Landlord claimed the set amount of \$25, referring to the Tenant's non-payment of June 2023 rent. I find this piece of the Landlord's claim is legitimate, and this was sourced in the tenancy agreement addendum. I grant this amount to the Landlord in full.

The Landlord referred to the liquidated damages clause in place in the tenancy agreement. I find, definitively, that the Tenant breached the agreement, as well as the *Act*, by ending the tenancy before the end of the original fixed term as defined in the agreement. The Tenant has the obligation to provide adequate notice of ending a tenancy, no matter the circumstances. There is no record of the Tenant applying for the Landlord to repair the faulty building door on an emergency basis (as provided for in the *Act*), and the Tenant had no authority, or legal basis, for ending the tenancy by abandoning the rental unit (with no notice to the Landlord) as they did on July 2.

I grant the Landlord the full amount of this liquidated damages clause; this forms part of the tenancy agreement. This amount is \$2,280.

Is the Landlord entitled to retain all/part of the security deposit and/or pet damage deposit?

The *Act* s. 38(1) sets out that a landlord must either repay deposits, or claim against them, within 15 days of the later date of the end of tenancy, or when they receive a forwarding address from the Tenant.

If the Landlord does not do either of these within 15 days, a landlord may not make a claim against either deposit, and must repay double of their amounts total. This is set in s. 38(6) of the *Act*.

The tenancy end-date, as well as the Tenant providing their forwarding address, were relayed to the Landlord by the Tenant on July 2. The Landlord made this Application on July 10, 2023. I find this is within the 15-day timeframe as set out in s. 38(1) of the *Act*.

The *Act* s. 72(2)(b) sets out that any amount owing from a tenant to a landlord may be deducted from any security deposit or pet damage deposit.

Under s. 72 of the *Act*, I allow the Landlord to retain the security deposit of \$1,140, plus the pet damage deposit of \$1,140, in partial satisfaction of the compensation I find is owed to them. This amount, in total, is \$2,280.

Is the Landlord entitled to a recovery of the filing fee for their Application?

The Landlord was successful in this Application, and it was necessary for them to bring the matter to the Residential Tenancy Branch for closure. I grant the Landlord recovery of the Application filing fee in full.

Is the Tenant entitled to a return of the balance of their security deposit and/or pet damage deposit?

The Act s. 35 provides that a landlord and tenant together must inspect the rental unit. Should that inspection not occur, a landlord is precluded from claiming against the deposits, as per s. 36, unless a tenant has abandoned the rental unit.

The Tenant made a claim for the return of their deposits. I find the Tenant made this claim on the basis that they did not have the opportunity to attend a final inspection in the rental unit.

I find, definitively, that the Tenant abandoned the rental unit on July 2, 2023. They provided very short notice of this to the Landlord. The Landlord is not precluded from making claims against the security deposit and pet damage deposit.

Above, I find the Landlord has legitimate and valid claims for compensation, and I authorized the Landlord to keep all of the deposit amounts in full in partial satisfaction of those claims. For this reason, I dismiss the Tenant's Application for a return of their deposits, without leave to reapply.

Is the Tenant entitled to recovery of the filing fee for their Application?

The Tenant was not successful in this Application; therefore, I dismiss their claim for recovery of the Application filing fee.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$4,685 under the following terms:

Monetary Issue	Granted Amount
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compensation for unpaid rent	\$4,560.00
compensation for monetary loss/other money owed	\$2,305.00
authorization to retain all of the security deposit and pet damage deposit	-\$2,280.00
authorization to recover the filing fee for this Application	\$100.00
Total Amount	\$4,685.00

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 dismiss the Tenant's Application in full, without leave to reapply.

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: January 24, 2024

Residential Tenancy Branch