

Residential Tenancies Tribunal

Application 2024-0774-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 31-October-2024.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", attended by teleconference.

Preliminary Matters

4. The landlord submitted affidavit with their application stating that they had served the tenants with the notice of the hearing electronically via emails on 9-September-2024 (LL#1). The tenants confirmed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, and we proceeded with the hearing.
5. There was written a fixed term rental agreement which commenced on 1-May-2022 that converted into a month-to-month rental agreement. The tenants moved out on 30-April-2024. Rent was \$1300.00 per month due on the first of each month. A security deposit of \$975.00 was collected on 24-March-2022 and is in landlord's possession.
6. The landlord's representative amended their application to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - Damages \$605.00;
 - Hearing expenses \$20.00;
 - Security Deposit of \$975.00 to be applied against any monies owed;

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 9-3: Compensation for Damages to Rental Premises, Section 12-1: Recovery of Costs and Section 14 of the *Residential Tenancies Act, 2018*: Security Deposit.

Issue # 1: Damages \$605.00.

Relevant submission:

10. The landlord submitted a damage ledger seeking a total \$605.00, as follows:

Item #	Description of Damages	Compensation Claimed
1.	Cleaning Completed after Vacancy	\$409.50
2.	Carpet Cleaning Completed after Vacancy	\$195.50
Total		\$605.00

Landlord's Position:

#1 Cleaning (\$409.50) – The landlord's representative stated that they conducted an inspection after the tenants moved out and determined that cleaning was required. The landlord's representative stated that they hired a cleaning company to clean the rental unit and submitted a receipt to support their claim (LL#2). The landlord is seeking a total of \$409.50 for cleaning services.

#2 Carpet cleaning (\$195.50) - The landlord's representative stated that the carpets were left uncleaned and damaged after tenants vacated the unit and required to be cleaned. The landlord's representative stated that they hired a professional cleaner company to clean carpets in three bedrooms and twelve stairs and submitted a copy of the receipt to support their claim (LL#3). The landlord is seeking \$195.50 for carpet cleaning.

Tenant's Position:

#1 Cleaning (\$409.50) – The tenants disputed that they are responsible for the payment for the cleaning services. The tenants argued that they had thoroughly cleaned the unit before vacating. They stated that they devoted the last five days of their tenancy to cleaning, ensuring the home was left in good condition. Consequently, the tenants dispute any charges for the cleaning, maintaining that they acted responsibly and hired the cleaner before they vacated and left the unit in clean condition.

#2 Carpet cleaning (\$195.50) – The tenants disputed that they are responsible for the carpet cleaning, arguing that they did not cause any damage to the carpets and that carpets had been cleaned prior to their moving out date. The tenants claimed that the carpets were approximately 30 years old and argue that any wear present was due to age rather than damage caused during their tenancy.

Analysis

11. In accordance with *Residential Tenancies policy* 9-3, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

12. After reviewing the testimony of both the landlord's representative and the tenants, I have analyzed the claims as follows:

#1 Cleaning (\$409.50) – As the tenants disputed that they are responsible for the payment for the cleaning services, I inquired the landlord's representative if they submitted any evidence to show the condition of the unit left by the tenants after they moved out. The landlord's representative indicated that she intended to submit photographs with their application, but due to an error, the photos were not included in the email she sent. In this case, the onus rests on the landlord, as the applicant, to demonstrate that the unit was indeed left in unclean condition necessitating professional cleaning. However, I find that the landlord failed to provide sufficient evidence to establish that cleaning services were required. Accordingly, I find that the tenants are not responsible for the cost of the cleaning services.

#2 Carpet cleaning (\$195.50) – As the tenants disputed that they are responsible for the carpet cleaning, arguing that they did not cause any damage to the carpets and that carpets had been cleaned prior to their moving out date, I inquired whether the landlord's representative present evidence of the carpet's condition at the time of the tenant's moving out, specifically any indications that the carpets were damaged and left uncleaned as the onus is on the applicant to show the proof. The landlord's representative stated that due to an error, the photos of the carpets were not included in the email she sent with their application. Given these circumstances, I find that the landlord has not provided adequate proof of the carpet condition to justify any specific tenant-caused damages or uncleanliness. For those reasons, I find that the tenants are not responsible for the cost of the carpet cleaning services.

Decision

13. The landlord's claim for damages does not succeed.

Issue # 2: Hearing expenses \$20.00

Analysis

14. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has not been successful, the tenant shall not pay the hearing expenses.

Decision

15. The landlord's claim for hearing expenses does not succeed.

Issue # 3: Security deposit to be applied against any monies owed \$975.00

Analysis

16. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
 - (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

17. The landlord's claim for losses has not been successful as per paragraphs 13 and 15 and as such, the security deposit shall not be applied against monies owed.

Decision

18. The landlord's claim for security deposit to be applied against monies owed does not succeed.

Summary of Decision

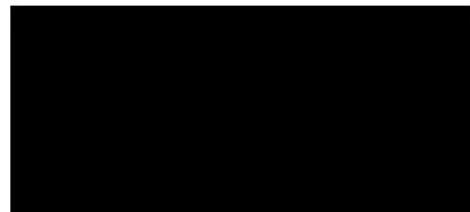
19. The landlord's claim for damages does not succeed.

20. The landlord's claim for hearing expenses does not succeed.

21. The landlord's claim for security deposit to be applied against monies owed does not succeed.

November 6, 2024

Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office