

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 21-0040-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:55 PM on 26 January 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively, attended the teleconference. [REDACTED] was also in attendance.

Issues before the Tribunal

4. The tenants are seeking the following:
 - An order for the refund of rent in the amount of \$3,300.00;
 - An order for payment of utilities in the amount of \$426.01; and
 - An order for refund of security deposit in the amount of \$600.00.
5. The landlord is seeking the following:
 - A determination of the validity of a termination notice;
 - An order for a payment of \$1,115.00 in compensation paid for inconvenience;
 - An order for a payment of \$1,718.70 in compensation for damages; and
 - Authorization to retain the security deposit of \$600.00.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case are sections 14 and 16 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Preliminary Matters

8. The landlords amended their application at the hearing and struck their claim for a determination of the validity of the termination notice issued to them by the tenants. They also struck their claim for a payment of \$300.00 in rent from their claim for compensation for inconvenience.

Issue 1: Refund of Rent \$3300.00

The Tenants' Position

9. The tenants entered into a 1-year, fixed-term lease with the landlords, commencing 15 February 2021, and copy of that executed agreement was submitted with their application (T #1). The agreed rent was set at \$1200.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$600.00.
10. Because of various maintenance issues at the property, on 30 May 2021 the tenants send the landlords a termination notice indicating that they were moving on 01 July 2021. They were unable to find a new apartment by that date, however, and on 27 June 2021 they entered into a written agreement with the landlords (L #1) indicating that they would vacate the premises on 31 July 2021. They moved on 01 August 2021.
11. The tenants claimed that the rental unit was advertised as a 3-bedroom house, with 2 bedrooms in the upstairs part of the house, and 1 downstairs. The tenants stated that the downstairs bedroom was too small for their purposes, and they instead had 2 of their children sleeping in the downstairs rec room.
12. On 26 May 2021, the tenants had the property inspected and it was found that none of the windows in the basement of house met the prescribed egress requirements, and they were informed that that part of the house could not be used as a bedroom. As such, the tenants moved their 2 children upstairs and they slept in the living room area.
13. Because the tenants could not use the basement area as a bedroom, they are seeking a refund of half of the rent they had paid to the landlords during their tenancy—\$300.00 for February 2021, and \$600.00 for each of the months from March through to July 2021.

The Landlords' Position

14. The landlords pointed out that they had conducted a walkthrough with the tenants in early February 2021, before they moved in, and they were aware of the size of the rooms and the sizes of the windows at that time, and no concerns were raised. Landlord1 stated that the only reason this matter was raised in late May 2021 was because they had refused to allow the tenants to operate a business out of the rental unit.
15. Landlord1 stated that she had previously lived at the rental property herself and she used one of the downstairs rooms as a bedroom. She claimed that she was unaware that the windows did not meet the egress requirements, and that when she was informed of that fact by the tenants, she offered to let them out of their lease early. She also stated that she was not aware that the tenants were going to be living at the unit with 4 children.

Analysis

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

Rental increase

16. (5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

17. I accept the tenants' claim that because the windows in the basement did not meet the egress requirements set out in the National Building Code of Canada, that basement, and none of the rooms in the basement, could be used as a bedroom. As the unit was rented to them as having 3 bedrooms, and as the tenants needed all 3 for themselves and their children, I find that the unavailability of that third bedroom did lead to a reduction in the tenants' enjoyment of the rented premises.
18. Given that this was supposed to be a 3 bedroom unit, I find that that unavailability can be valued at \$200.00, meaning that the tenants would be paying \$1000.00 per month for a 2-bedroom unit, instead of \$1200.00 for 3-bedroom, as initially agreed.

19. But between February and the end of May 2021, the tenants were using that basement as a sleeping area and there was no reduction in their enjoyment of the property. Hence, their claim for a refund of rent for that period does not succeed.
20. And after the tenants became aware that that basement could not be used for sleeping, and after they had terminated their agreement for the end of June 2021, they nevertheless agreed, in writing, on 27 June 2021, to rent that unit again, for another month, at a rate of \$1200.00. Hence their claim for a refund of rent for July 2021 does not succeed.
21. This leaves June 2021, and I find that the tenants are entitled a refund in the amount of \$200.00 for that month.

Decision

22. The tenants' claim for a refund of rent succeeds in the amount of \$200.00.

Issue 2: Utilities - \$426.01

The Tenants' Position

23. The tenants stated that shortly after they moved in they discovered that the heaters in the basement were not working and, between 20 February and 30 March 2021, they used space heaters in that area. The tenants stated that they were informed by a representative at Newfoundland Power that these space heaters use considerably more electricity than the broken hot water heaters and they calculate that they are entitled to a payment of \$109.71 in compensation for the extra electricity they were required consume.
24. The tenants also complained that their electricity usage was higher than what it ought to have been because they were also running dehumidifiers at the property. They stated that in March 2021, there was a leak in the ceiling in the living room, and as a result there was moisture on the walls and ceiling in that room. As a result, a dehumidifier was running constantly in the upstairs portion of the house until the repairs were completed in July 2021.
25. They also stated that the toilet located in the basement was broken and there was an overflow in the basement area and there was water damage. The contractors who carried out repairs ran dehumidifiers and fans in the basement for about a week while these repairs were being carried out. The tenants are seeking compensation in the amount of \$316.30 for the extra electricity they consumed while these fans and dehumidifiers were running in the basement and in the upstairs living room.

Landlord's Position

26. Landlord2 acknowledged that there were some delays in getting the heaters repaired in the basement, but he argued that the amount of electricity used to run a space heater would be approximately the same would be used in running the hot water heaters.
27. With respect to the flood in the basement, landlord2 claimed that overflow was likely caused by the tenants and he suggested that they had clogged the toilet. He also claimed that a dehumidifier was supplied for the basement and that the tenants would have been responsible for the costs of running it anyhow.

Analysis

28. Regarding the broken heaters, not enough evidence was presented at the hearing to convince me that these space heaters consumed more electricity than the broken hot water heaters. So that portion of the tenants' claim does not succeed.
29. Regarding the dehumidifiers and fans, I accept the tenants' claim that there was a leak in the living room, for which they were not responsible, and I have reached the same conclusion about the toilet in the basement. I also accept their claim that some extra electricity was used to run those appliances. I find that an award \$200.00 in compensation for the extra electricity usage to be fair.

Decision

30. The tenant's claim for the costs of utilities succeeds in the amount of \$200.00.

Issue 3: Compensation for Damages \$1718.30

Relevant Submissions

The Landlords' Position

31. Landlord1 stated that the tenants had caused some damages at the unit during their tenancy and with their application the landlords submitted the following breakdown of the costs they had incurred to carry out the repairs:

• Curtain rod	\$16.55
• Rod for bedroom	\$22.96
• Labour to paint hallway	\$500.00
• Paint materials	\$117.38
• Paint and plaster basement	\$57.50
• New back door	\$194.49
• Installation of door.....	\$200.00
• Replace tile	\$9.42

• Living room blinds	\$400.00
• Desk.....	\$200.00
Total.....	<u>\$1718.30</u>

Curtain rod

Rod for bedroom

32. Landlord1 stated that the curtain rod for the bathroom was missing when the tenancy ended and she was required to replace it. She pointed to her submitted receipt showing that she was charged \$17.22 (L #3). That rod was about 2 years old.
33. Landlord1 also complained that a curtain rod was missing from one of the bedrooms and that had to be replaced as well. No receipt was submitted with her application.

Paint hallway

34. Landlord1 stated that she had given the tenants permission to paint the walls in the hallway, but she complained that they had done a poor job and that some paint had transferred to the trim work and to a thermostat. In support of her claim, the landlord submitted 2 photographs (L #4). Landlord1 also complained that the tenants had used yellow paint on these walls, but she was required to repaint those walls too because there were white patches visible. With their application the landlords submitted an e-mail in which [REDACTED] states that he had charged the landlords \$600.00 to have that work carried out. No receipts were submitted for the paint that the landlords stated that they had purchased.

Paint and plaster basement

35. Landlord1 stated that the tenants had caused damage to a wall in the stairwell, and although they had attempted to repair it, that repair work was inadequate and it had to be redone. In support of her claim, the submitted a photographs showing the wall in the stairwell, as well as text-message she had received from her carpenter in which he writes that he would send the landlords an invoice for \$5350.00. \$5300.00 of that amount was for the costs of repairing the basement after the overflow from the toilet, while \$50.00 of that amount was for redoing the stairwell wall.

New back door

36. Landlord1 stated that the fibreglass screen door was missing after the tenants moved out, and she claimed that she later found it, in pieces, under the deck. That door has not yet been replaced, but the landlords pointed to their submitted quotes (L #3) showing that a new door would cost \$139.99 + tax and that they would be charged \$200.00 to have it installed. Landlord2 stated that that door was approximately 8 years old.

Replace tile

37. Landlord1 stated that there was a small hole in a ceiling tile, and she purchased a new one at a cost of \$9.42. A photograph of that tile was submitted with the landlords' application, as well as a copy of the receipt for the replacement.

Living room blinds

38. Landlord1 stated that the vertical blinds that had been in the living room when the tenants moved in were missing after this tenancy ended. Those blinds have not been replaced and the landlords submitted no quote or estimate for the costs of purchasing new ones. Landlord2 stated that these blinds were approximately 10 years old. The landlords are seeking \$400.00 in compensation.

Desk

39. Landlord1 stated that the tenants had removed the desk from the office and had put it in the rec room. The landlords had asked her carpenters to move it back into the office for her, but they informed her that the tenants had screwed it to the wall in the rec room, and when they removed those screws, the desk fell apart. The landlords are seeking \$200.00 in compensation for the costs of replacing the desk. No receipts or estimates were submitted with their application. Landlord2 stated that this desk was about 8 years old.

The Tenants Position

Curtain rod

Bedroom rod

40. Tenant1 stated that the curtain rod in the bathroom lost its tension and would no longer stay in place. She replaced that rod during her tenancy and she took that new rod with her when she moved out. She also stated that the old rod was left in a storage closet. Regarding the rod for the bedroom, tenant1 stated that she had only been supplied with 1 curtain rod, and with respect the bedroom identified by the landlord, there were blinds in that room and no curtains.

Paint hallway

41. Tenant1 pointed out that the landlords' photographs only show 2 areas where there was a transfer of paint to the trim work, and she argued that a claim for \$500.00 to cover up those 2 spots of paint is excessive. She also argued that there were no white spots showing through the yellow paint that they had applied and she pointed to her own photographs showing the condition of the walls when they vacated.

Paint and plaster basement

42. Tenant1 stated that they had repaired the basement stairwell wall, and she pointed to her own photographs, taken when they moved out showing that that work was done properly.

New back door

43. Tenant1 stated that this door was made of fibreglass with wooden spindles, and she claimed that it was old and falling apart when she moved in. During the course of the tenancy, the condition of the door worsened such that it was just hanging off its hinges. Therefore, the tenants decided to remove the door and they placed it under the deck. Tenant1 stated that she had done nothing to cause the damage to the door. She also argued that it should not cost \$200.00 to screw a new door into place.

Replace tile

44. Tenant1 acknowledged that they had damaged that tile and she agreed that they are responsible for the costs of replacing it.

Living room blinds

45. Tenant1 stated that these blinds were broken and falling apart when they moved into the unit. She claimed that some were held together by scotch tape and she also claimed that they smelled of cigarette smoke. She acknowledged that she had taken them down and tenant2 stated that they were placed out by the shed.

Desk

46. Tenant1 stated that the landlords had left a desk and an entertainment center in the unit and they had informed them that they could move them to different rooms or store them if they wished. Tenant1 acknowledged that she had moved the desk to the rec room and that it had been moved around in that room several times during their tenancy. She denied, however, that she had screwed it to the wall and she claimed that it was intact when she moved out.

Analysis

47. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

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

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) *After hearing an application the director may make an order*

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

48. With respect to the curtain rods, the tenants claimed that there was no curtain rod in that bedroom when the tenancy began, and the landlords provided no corroborating evidence at the hearing (an incoming inspection report, before-picture, etc.) to establish that that room was furnished with a rod. And with respect to the rod for the bathroom, the landlords presented no evidence to establish that this rod was damaged through a deliberate or negligent act, and the tenants claimed it had merely lost its tension through normal use. As such, those claims do not succeed.

49. Regarding the painting, I agree with the tenants that the landlords evidence only shows a couple of areas where paint had transferred to the trim work, and that evidence does not warrant an award for the costs of repainting those walls. I find that \$50.00 is a fair award. With respect to the stairwell, the tenants' photographs show that that part of the wall was adequately repaired when they moved out, so that claim does not succeed.

50. With respect to the screen door, again, the tenants claimed that this door was in poor condition when they moved in and that it had fallen apart from normal use. The landlords presented no evidence showing the condition of that door when the tenancy began (e.g., an incoming inspect report or any before-photographs) and no evidence to establish that it was damaged as a result of a deliberate or negligent act.
51. Regarding the blinds and the desk, the landlords presented no evidence at the hearing to establish the costs of replacing these items. In any case, I accept the tenants' claim that these blinds were in a poor condition when they moved in and that the desk was intact when they vacated.
52. This leaves the ceiling tile, for which the tenants accept responsibility. That claim therefore succeeds in the amount of \$9.42.

Decision

53. The landlord's claim for compensation for damages succeeds in the amount of \$59.42.

Issue 4: Compensation for Inconvenience - \$1115.00

Relevant Submissions

The Landlords' Position

54. In addition to the claim for compensation for damages dealt with in the previous section, the landlords are also seeking compensation for these following expenses:
 - Gas for travel \$200.00
 - Maintenance for lawn care \$150.00
 - Additional renovations due to flood \$300.00
 - Winterizing hot tub \$165.00

Total \$1115.00

Gas for travel

55. Landlord1 stated that she resides in [REDACTED] and the rental unit is located in [REDACTED]. On one long weekend, the tenants contacted the landlords complaining about a broken element on a stove and they were required to drive from [REDACTED] to deal with this matter, despite the fact that they had already planned to travel to the unit on the following Friday. Landlord1 stated that as it was a long weekend, no stores were open and the stove could not be repaired. She also complained that the tenants refused her entry to the apartment. She is seeking a

payment of \$200.00 for the gas she had burned in travelling to the rental property on that weekend. No receipts were submitted with her application.

Maintenance for lawn care

56. Landlord1 complained that the tenants had not mown the lawn before they vacated and she was required to hire [REDACTED] about a week after the tenants moved, to do that work. With her application, she submitted an e-mail from [REDACTED] dated 22 January 2022, stating that he had charged the landlords \$150.00 to mow the lawn.

Additional renovations due to flood

57. Landlord1 stated that because of the flood which occurred at the property, she was charged \$5300.00 to have repairs carried out to their basement. However, the landlords' insurance only covered \$5000.00 of that amount. Landlord1 argued that the tenants are responsible for the difference because they never informed her about the matter until 12 hours after it happened. She claimed that if she had been contacted earlier, she could have had workers at the unit sooner and the renovations would not have been so extensive.

Winterizing hot tub

58. Landlord1 stated that the rental unit was equipped with an outdoor hot tub, and the tenants were responsible for maintaining it during their tenancy. She complained that the hot tub was not returned to them in the same condition as it was when they moved in. In particular, landlord1 pointed out that in February 2021, when the tenants moved in, the hot tub had been "winterized", but when they moved out at the end of July 2021, they had not winterized it. They are seeking \$165.00 in compensation for the costs of winterizing that hot tub. No receipt was submitted with their application.

The Tenants' Position

Gas for travel

59. Tenant1 argued that it was not her fault that the landlords did not realize that stores would not be open on that long weekend.

Maintenance for lawn care

60. Tenant1 stated that they had mowed the lawn a day or so before they vacated, and she pointed to her submitted photographs showing the condition of the lawn on the date they vacated.

Additional renovations due to flood

61. Tenant1 stated that the flood occurred at 4:00 AM and when they discovered the issue they immediately started to clean up the water, and they unclogged a drain. She also claimed that she had removed any items from the floors so that they would not suffer any water damage, and they placed fans and dehumidifiers in that basement to deal with the moisture. Tenant1 acknowledged that she had not notified the landlord until around 1:00 PM the following day, but she pointed out that the landlord never raised any objections at that point.

Winterizing hot tub

62. Tenant1 stated that they had agreed to maintain the hot tub during their tenancy, and this included cleaning and applying the proper chemicals, and she testified that she had even replaced the filter. She also testified that when they vacated they had cleaned the hot tub. However, tenant1 testified that she had no agreement with the landlords that they were required to winterize the hot tub, and she pointed out that there was no sense in doing so as they moved out in the middle of the summer.

Analysis

63. The costs of travelling to a rental property to address maintenance concerns or to address tenant complaints is the cost of doing business for a landlord. And in any case, no receipts for these costs were submitted with the landlords' application, and I am of the view that it is not the fault of the tenants that the landlords had decided to live so far away from their place of business.

64. With respect to the lawn, the tenants photographs show that that lawn did not require mowing when they vacated, so that claim also fails.

65. Although it was conceded by the tenants that there was a delay of about 9 hours between the time the flood occurred and the time they notified the landlords about it, no evidence was presented at the hearing to establish that that delay caused the costs of repairs to rise or to account for the fact that there was a \$300.00 discrepancy between the repair costs and the award from the insurance company.

66. And with respect to the hot tub, no evidence was presented by the landlords to establish that the tenants had agreed to winterize the hot tub before they vacated, and I agree with the tenants that it would not have been a reasonable assumption to do so, given that they vacated on 31 July 2021, the middle of the summer.

Decision

67. The landlord's claim for compensation for inconvenience does not succeed.

Issue 5: Hearing Expenses

68. The tenants paid a fee of \$20.00 to file their application. As their claim has succeeded, the landlords shall pay that hearing expense.

Issue 5: Security Deposit

69. The tenants paid a security deposit of \$600.00 on 07 February 2021 and receipt of that deposit is acknowledged in the submitted rental agreement. As the tenants' claims have been successful, that deposit shall be refunded to them, as outlined in this decision and attached order.

Summary Decision

70. The tenants are entitled to the following:

- a) Refund of Rent..... \$200.00
- b) Utilities \$200.00
- c) Refund of Security Deposit \$600.00
- d) Hearing Expenses \$20.00

- e) LESS: Compensation for Damages (\$59.42)

- f) Total Owing to Tenants..... \$960.58

27 October 2022

Date

John R. Cook
Residential Tenancies Tribunal