

Residential Tenancies Tribunal

Application [REDACTED]
[REDACTED]

Decision 21-0059-01

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 16-June-2022.
2. The applicants, [REDACTED] and [REDACTED] are represented by [REDACTED] hereinafter referred to as "the tenant" he attended by teleconference; his wife was not available to attend.
3. The respondents and counter-applicants, [REDACTED] and [REDACTED] both attended the hearing by teleconference, they are represented by [REDACTED] hereinafter referred to as "the landlord."

Preliminary Matters

4. The tenant submitted affidavits stating that he served both landlords via email on 28-February-2022; the landlord confirmed service. The landlord also submitted an affidavit stating they served the tenants with notification of the hearing on 02-June-2022 via email; the tenant confirmed service.

Issues before the Tribunal

5. The tenants are seeking:
 - Security deposit refunded \$675.00.
 - Hearing expenses reimbursed \$20.00

The landlords are seeking:

- Compensation for damages \$725.00
- Security deposit applied against monies owed \$675.00
- Hearing expenses reimbursed \$45.00

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 decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions, and Section 18: Notice of termination of rental agreement, as well as, Residential Tenancies Policy 9: Claims for compensation.

Issue 1: Security deposit refunded \$675.00

Issue 2: Compensation for damages \$725.00

Issue 3: Security deposit applied against monies owed \$675.00

Landlord's Position

8. The landlord confirmed that they entered a written rental agreement with the tenants on 01-July-2020 for a monthly term. The tenants pay \$1,350.00 a month for rent, the rental period is from the first day of the month until the last and rent is due on the 1st. The landlord confirmed that they were trying to sell the house and they asked the tenants if they could move out by 01-December-2021.
9. The landlord acknowledges that they had an agreement with tenants around moving out, she said that they didn't charge November rent. She said they would have given a letter of recommendation, but the tenants had already secured a new place. She said that they intended to refund the security deposit after they did an inspection.
10. The landlord said that they live out of province and had to have the house inspected, cleaned and repaired by people who live in the community.
11. The landlord said that the rental agreement was for a non-smoking home and that the tenant smokes. She said that the back porch area smelled of smoke and had to be repainted.
12. The landlord said that the home was not left in a clean condition and required 14 hours cleaning by a local woman.
13. The landlord provided pictures to show that the stove (LL#05), oven (LL#06), fridge (LL#07), Kitchen cupboards (LL#08, LL#12, LL#13, & LL#14), garbage bin area (LL#09), all required cleaning.
14. The landlord also provided pictures on the bathroom sink (LL#11), dust and pet fur on the floors and staircase (LL#10, LL#19, LL#20 and LL#15).
15. There were also pictures of items and garbage left behind. (LL#16 and LL#21).
16. The landlord also showed water damage in the front porch (LL#17 and LL#18).
17. The landlord provided a breakdown of the cost of repairs and cleaning, as follows:
 - Cleaning of house \$350.00
 - Removal of items 50.00

- Painting 250.00
- Other 75.00
- Total \$725.00

18. The landlord said that the house is in a small town and two local people completed the work, they did not provide her with receipts. She said she had this work completed in March 2022.
19. The landlord is seeking to retain the security deposit against the \$725.00 cost and for the tenant to reimburse them \$50.00 for the remainder of the cost.

Tenant's Position

20. The tenant gave the details of the rental agreement as stated in paragraph 8. The tenant also provided a copy of the rental agreement (TT#03).
21. The tenant provided the email concerning the termination of the tenancy between himself and the landlords (TT#04). The email is dated 30-September-2021 in the email the tenant points out to the landlord that they are entitled to a three month notice but agreed to move by the end of November 2021, under the following four conditions:
 - *"No rent to be paid by us for the month of November*
 - *Security deposit in the amount of \$675.00 that was paid to you on June 25th 2020 be refunded as soon as possible.*
 - *Letter of reference from you with your contact information for future potential landlords*
 - *I will only have correspondence with these matters with you and not the new owners."*

The landlords' response is "We are good with your terms that you have listed. We really appreciate everything you have accommodated in the past year."

22. The tenant said that they didn't pay November rent, but never received a letter of recommendation and their security deposit wasn't refunded.
23. The tenant disputes that the house was left unclean. He provided pictures of the house from when he moved (LL#06 through to LL#22). He said he took these pictures when he moved. He questioned when the landlord took their pictures and informed her that the time stamp on the pictures shows they were taken on 04-March-2022.
24. The tenant points out that this is four months after he vacated. He said that he doesn't know who has had access to the house during that time period and that his pictures clearly show that the house was clean.

25. The tenant acknowledges that it's possible that the two garbage bags were his, but he said that the mirror was never theirs, so it was left behind and the two chairs in the garage were new, so he left them for someone else to enjoy, because they didn't have room for the chairs when packing.
26. The tenant also states that he never smoked in the house.
27. The tenant said that they had an agreement and that the landlords are supposed to refund the security deposit of \$675.00.

Analysis

28. Both the landlord and tenant have provided pictures showing the condition of the house. The landlord's pictures are close-ups designed to show the specific issue that they want addressed. The tenant's pictures are a view of each area showing an overview of each room. The tenant did raise the point of when were the pictures taken and upon checking the time stamp it is shown that the tenant's pictures were taken on 24-November-2021 and the landlords' pictures are taken on 04-March-2022.
29. The tenant's point stating he can't be responsible for what has occurred to the house in the four months since he left, is valid. He said he has no idea if someone else lived there during that time or who has been coming and going with the sale of the house.
30. In addition to this issue, the landlord hasn't provided any receipts to show the value of the work completed on the house. Section 10 of the Residential Tenancies Act, 2018, states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

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)

Therefore although it is the responsibility of the tenant to keep the premises clean and repair damage, in a damage claim the applicant has to show that not only the tenant is responsible for the damage, but also the cost of repairs.

31. The landlord has failed to prove their case by not providing receipts, as well as, by the time lapse of 4 months between when the tenant moved out and when the pictures are taken; there is no certainty about the activity in and around the premises during this time period.
32. Finally, Section 18 of the Residential Tenancies Act, 2018, states:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;***
- (b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and***
- (c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.***

.....
(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

.....

33. The tenant provided the email conversation (TT#04) detailing the agreement to a reduced notification to accommodate the needs of the landlords. On 30-September-2022 the landlord stated "We are good with the terms that you have listed." The landlord is now stating that they would not have agreed to return the security deposit without an inspection. However, when they needed the tenants to accommodate their time lines, she agreed to the return of the security deposit.
34. The landlords' claim for damages fails. The landlords shall return the security deposit to the tenants.

Decision

35. The tenants' claim for return of their security deposit succeeds.

Issue 4: Hearing expenses reimbursed \$20.00

36. The landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and the receipt for the cost of the Commissioner of Oaths for \$25.00. The tenant submitted the cost for the hearing \$20.00 (TT#05) and as the tenants' claim is successful, pursuant to policy 12.01, the tenants are entitled to reimbursement of that cost from the landlords.

Summary of Decision

37. The landlords shall return the \$675.00 security deposit and the \$20.00 hearing expense for a total of \$695.00 to the tenants.

June 21, 2022

Date

