

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0254-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 11-January-2022.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlords submitted an affidavit (LL#01) with their application stating that landlord1 had served the tenants with notice of the hearing, by email on 22-October-2021. The landlords also included a screenshot (LL#02) of the sent emails. The landlords confirmed that they were provided the email addresses from the tenants when they took occupancy of the apartment and used this form of communication with the tenants. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. The landlords amended their claim of compensation for damages and other, to include all items under “compensation for damages.” They also added the cost of replacing the apartment door to the claim. The claim is now for compensation for damages: \$1,567.55.

Issues before the Tribunal

6. The landlords are seeking:
 - Compensation for damages \$1,567.55
 - Security deposit applied to monies owed \$400.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, as well as, Residential Tenancies policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Issue 1: Compensation for damages \$1,567.55

Relevant Submissions

9. The landlords provided the written rental agreement (LL#03) with their evidence. Landlord 2 said that they entered into this agreement on 01-August-2020, the tenants paid \$800.00 a month rent; utilities were not included. The agreement was for a monthly term from the 1st day of the month to the end of each month. Rent is due on the first day of the month. The tenants paid a \$400.00 security deposit and the landlord is still in possession of that deposit.
10. Landlord2 said, in January of 2021, they served the tenants with a 3 month notice to terminate and the tenants then moved on 30-May-2021.
11. Landlord2 submitted many documents and pictures to give a true indication of the condition of the apartment. One of her documents (LL#05) is a comprehensive list of damages and garbage that was left behind, with pictures and receipts included. She also included a table (LL#04) listing the breakdown of the cost incurred to make the apartment rentable. See below:

Item	Time	Cost	Amount
Bulk Garbage	1 hour	\$25.00	\$ 25.00
Cleaning apartment	10 hours	\$20.50	\$ 205.00
Plaster and paint main bedroom and living room ceiling	20 hours	\$20.50	\$ 410.00
Paint			\$ 33.55
Replace damaged flooring			\$ 232.06
Repair damaged step	2 hours	\$20.50	\$ 41.00
Replace outside door			\$ 620.94
Total			\$1,567.55

12. Landlord2 stated that the apartment is in their home and that the house is 7 years old. She said that they did a walk through before the tenants moved in and the apartment was in perfect condition. She did not do a walk through with the tenants when they left.

Bulk Garbage removal \$25.00

13. Landlord2 submitted pictures (LL#05) of the apartment displaying a large variety of bulk items left behind by the tenants that had to be disposed of. The items included, but are not limited to, the following: A broken and torn couch, 2 living room chairs that are badly stained with the stuffing coming out and are broken, old suitcases, stained and torn mattresses, pillows, cookware, a broken dresser with drawers missing, a T.V. with a broken screen, a broken T.V. stand, drug paraphernalia, an old microwave, etc.
14. Landlord2 said that they got a quote from their town for bulk garbage removal, it was \$25.00. She submitted a copy of the quote (LL#05).
15. Landlord2 said that they chose to remove the items and bring them to the dump themselves. They are requesting the amount that they would have had to pay the town to remove the items; \$25.00. She has indicated on her chart shown in paragraph 11, that it took 1 hour to remove the items.

Cleaning the apartment \$205.00

16. Landlord2 said that she and landlord1 cleaned the apartment. She said it took them 5 hours with both of them cleaning, to complete this work.
17. Landlord2 submitted pictures of the unclean state of the apartment (LL#05). The apartment was filled with garbage, the pictures show not only broken and discarded items but also, actual garbage left around. There are empty take out containers, old drink containers, drug paraphernalia, etc. left on the floor mixed in with old broken furniture and clothing. The sink in the kitchen is filled with brown dirty water and utensils, the bathtub is full of clothing and random belongings, the fridge is filled with old food and the floor, baseboards, walls and windows are splattered with black dirt.

Plaster and paint main bedroom and living room ceiling: \$410.00

18. Landlord2 submitted pictures of the main bedroom walls (LL#05) the walls had pictures spray painted with black paint. The pictures were of satanic images, drug propaganda, and another symbol, each symbol is at least 2-3 feet high and wide. As well as the spray painted images, there are at least 3 holes in the wall that appear to be punch holes. There are a number of dents in the wall that appear to be from kicks.
19. In the pictures of the plastering (LL#05) there appears to be at least a hundred spots that were plastered.

20. Landlord2 said that they also had to paint the ceiling in the living room. She said she did not send the picture because the damage didn't show. She said that the entire living room ceiling was peppered in tiny pin holes.
21. Both landlords completed the work required. Landlord2 said that it took 20 hours to do this work (as shown in the chart, paragraph 11).

Paint \$33.55

22. Landlord2 submitted the cost of the paint for the bedroom (LL#06). She did not submit the cost of the plaster, or the cost of paint for the living room ceiling.

Replace damaged flooring \$232.06

23. Landlord2 submitted pictures of the laminate flooring damage. The pictures show scratches, gouges, water damage that has caused lifting and bubbling and damage that shows dark circles on a part of the floor (LL#05). The damage occurred after the tenants moved in.
24. Landlord2 submitted a receipt for flooring (LL#07) for \$464.12. She said that they decided to change the floor in another room to have it look the same. She said that the quality of the flooring is .12mm, which is the same as was originally there prior to the tenants moving in. She is submitting for 50% of the cost, to cover the cost of the room that was damaged. The other half of the cost was to replace flooring in another room; the other flooring was not damaged and was changed for cosmetic reasons, not due to fault of the tenants.
25. Landlord2 said that the flooring is the original floor and is 7 years old.

Repair damaged step \$41.00

26. Landlord2 submitted a picture of the damaged step from the apartment. She said that the tenants were using a security bar to keep the door closed (white pole, about 3 feet seen in evidence picture next to the dishwasher)(LL#05). Security bars are used to keep someone from entering in an area, they are positioned so that a door cannot be forced open.
27. The security bar is pushed tightly against the outside door and the step this created a hole in the flooring and dented the step.
28. Landlord1 fixed this damage himself and the work took 2 hours. They are seeking \$41.00 for the labour to fix the step.

Replace outside door: \$620.94

29. The landlords submitted a picture of the outside door showing water seeping in from outside. Landlord2 said that the door was warped from the pressure of the security bar (paragraph 26). Landlord2 said that the door was not repairable, it is the original door and 7 years old.
30. Landlord2 submitted the receipt for the door (LL#08)

Analysis

31. Section 10.(1)2. of the *Residential Tenancies Act, 2018*, states that:

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.

32. 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)

33. The landlords provided this board with evidentiary proof of damage and uncleanliness through pictures provided into evidence. They also provided estimates and receipts to show the value of the repairs. I accept the landlord's testimony that the apartment was not in this condition when the renters began their occupancy.

34. 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. This property is currently 7 years old. The tenants rented this property for a period of 9 months from August 2020 – May 2021 as per paragraph 9. Landlord2 testified that they had completed a walk through with the tenants prior to them taking occupancy and that the property was in perfect condition at that time.

35. This board will follow the list of compensation for damages outlined in the table (LL#04) in paragraph 11 and decide each item in order, as was done in the Relevant Submissions section above.

Bulk Garbage removal \$25.00

36. The landlords provided a comprehensive list of items and pictures of same to this board. The tenants left a great deal of broken and discarded items behind once they moved. To estimate the value of having these items removed, the landlords provided a quote from their community's bulk garbage collection, of \$25.00 to pick up the items and have them disposed.
37. The landlords estimated that bringing these items to the dump took them approximately 1 hour. The amount of items and furniture disposed of, would have taken two people at least this amount of time. The cost of labour for two people working an hour, would exceed the \$25.00 request. Two individuals would have been necessary to load and off-load the larger items. The \$25.00 request is conservative for the work required.
38. The landlords' claim succeeds in the amount of \$25.00.

Cleaning the apartment \$205.00

39. Landlord2 said that they both cleaned the apartment together and it took 5 hours each. She is claiming the hourly wage permitted by this board of \$20.50. 10 hours x 20.50 = \$205.00.
40. The documentation provided (LL#05) shows an apartment that is incredibly unclean and not cared for. The tenants left dirty dishes in dirty water in the sink, the floor is littered with broken items and garbage, there is drug paraphernalia mixed in with the debris, and the walls, windows, baseboard and flooring are unclean.
41. Paragraph 31 outlines the requirements of a tenant; it states a tenant shall keep the premises clean. The tenants' neglect of the apartment is evident in the pictures. I accept that it would take 10 hours of cleaning in this apartment.
42. The landlords' claim succeeds in the amount of \$205.00.

Plaster and paint main bedroom and living room ceiling: \$410.00

43. The landlords submitted photos showing the damages to the walls in the main bedroom, the walls not only had holes punched in them, there are also kick marks and areas that are spray painted.
44. Landlord2 said that they also had to repair and paint the ceiling in the living room, she did not submit pictures of that area because she said that the ceiling was peppered with pin holes and it doesn't show in the pictures.
45. Landlord2 said, in paragraph 21, that it took 20 hours of work to plaster and paint these rooms. The picture of one of the plastered walls in the bedroom shows mostly plaster on the wall, as there was so much damage done to this wall.

46. Landlord2 said, in paragraph 12, that the apartment was in perfect condition before the tenants moved in, she was unable to provide a condition report, however, it is reasonable to believe that the apartment was not rented with holes in the walls and spray painted pictures. The damage done to the main bedroom is without regard for the owner, and it is reasonable to believe it would take 20 hours to repair this damage.
47. The landlords' claim for plastering and painting succeeds in the amount of \$410.00.

Paint \$33.55

48. As stated in paragraph 22 the landlords submitted a receipt for paint (LL#06) for \$33.55. As shown in paragraphs 46 & 47 this work was necessary. The landlords did not request materials for plastering or tools to complete this work. They also only submitted a request for the bedroom paint and did not request the payment for ceiling paint for the living room. The request for one tin of paint is reasonable.
49. The landlords' claim for paint succeeds in the amount of \$33.55.

Replace damaged flooring \$232.06

50. The landlords provided pictures (LL#05) showing flooring that was scratched, water damaged and stained. The flooring is 7 years old and was undamaged prior to the tenants living there.
51. The landlords submitted a receipt into evidence (LL#07) for \$464.12, landlord2 said that they decided to lay floor in two of the rooms but only one of the rooms had been damaged by the tenants.
52. They are requesting half of the cost of the received flooring.
53. The landlords laid the floor themselves, however they did not request compensation for completing this work.
54. As the floor is 7 years old, life expectancy must be considered. Laminate flooring, according to the National Association of Homes Builders has a life expectancy of 25 years. As the floor is 7 years old ($7/25 = 28\%$) the homeowner will be compensated for 72% of the cost of flooring. $72\% \times \$232.06 = \167.08 .
55. The landlords' claim for flooring succeeds in the amount of \$167.08.

Repair damaged step \$41.00

56. The landlords' provided a picture (LL#05) of the step that had been damaged, as well as, a picture of the security bar (LL#05) that the tenants used to secure their outside door from opening.
57. Landlord2 said that the tenants propped the bar against the door and the pressure it caused wore away the flooring and put a dent in the floor. The picture submitted into

evidence (LL#05) indicates that this is a reasonable explanation, as the hole in the floor appears to be the same size as the circumference of the bar.

58. I accept that the damage was done by the bar and that the tenants are responsible for this damage.
59. Landlord2 said that it took 2 hours to repair the step and submitted a claim for the hourly wage of 2 hours x \$20.50.
60. The landlords' claim to repair the damaged step succeeds in the amount of \$41.00.

Replace outside door: \$620.94

61. Landlord2 said that after the tenants moved they noticed that the outside apartment door was leaking and provided pictures (LL#05). She said that the pressure from the security bar had caused the door to warp and was not repairable.
62. They provided a receipt for the cost of the door (LL#08).
63. Landlord2 said that the door is the original door and is 7 years old.
64. As the outside door is 7 years old, life expectancy must be considered. Outside doors, according to the National Association of Homes Builders has a life expectancy of 20 years. As the door is 7 years old ($7/20 = 35\%$) the homeowner will be compensated for 65% of the cost of flooring. $65\% \times \$620.94 = \403.61 .
65. The landlords' claim for replacement of the door succeeds in the amount of \$403.61.

Decision

66. The landlords' claim for compensation for damages succeeds in the amount of \$1,285.24 as follows:

Item	Amount
Bulk Garbage	\$ 25.00
Cleaning apartment	\$ 205.00
Plaster and paint main bedroom and living room ceiling	\$ 410.00
Paint	\$ 33.55
Replace damaged flooring	\$ 167.08
Repair damaged step	\$ 41.00
Replace outside door	\$ 403.61
Total	\$1,285.24

Issue 2: Security deposit applied to monies owed \$400.00

Relevant Submissions

67. As per paragraph 9, the landlords have declared that, the tenants paid a security deposit of \$400.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

68. The landlord's claim for losses has been successful, paragraph 66, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

14. (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

Decision

69. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$400.00.

Summary of Decision

70. The tenants owe the landlord \$1,285.24 in damages.

- The landlords shall retain the security deposit of \$400.00 and
- The tenants shall pay the remainder of the damages, \$885.24, to the landlords.

January 14, 2022

Date

