

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0292-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 15-March-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2” 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 respondents fail 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 landlord submitted an affidavit (LL#01) stating that he served the tenants of notification of the hearing on 25-September-2021, the hearing was postponed and Residential Tenancies served all parties by Registered mail on 21-January-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlord said that tenant2 had moved out in the summer of 2020. The landlord had served tenant1 with a termination notice (LL#02) on 30-March-2021 with a termination date of 15-April-2021 for failure to pay rent. The landlord continued to try to contact tenant1 after he served her the notice, to no avail; he posted a notice of abandonment (LL#03) on 15-July-2021 and regained possession of his property on 16-July-2021.
6. Since the filing of this application, the landlord reports that tenant2 had passed away in the fall of 2021.

Issues before the Tribunal

7. The landlord is seeking:
- Rent \$4,000.00
 - Damages \$6,855.00
 - Other/storage costs \$814.00
 - Security deposit applied against monies owed \$425.00
 - Hearing Expenses

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 Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 17: Record of tenant's payments, Section 31: Abandonment of residential premises by tenant, and Section 32: Abandonment of personal property, as well as, the Residential Tenancies Policy Manuel.

Issue 1: Rent \$4,000.00

Relevant Submissions

10. The landlord said he entered a verbal rental agreement with both tenants in the summer of 2015. They had a month to month agreement for \$950.00 per month; utilities are not included. The rental period was from the 1st day of the month until the last, rent is due the 1st day of each month. The tenants paid a security deposit of \$425.00. As noted above in paragraph 5, tenant2 moved out in the summer of 2020.
11. After tenant2 moved out the unit fell into rent arrears. Tenant1 receives income support for a portion of her payment. The rent ledger from June 2019 – July 2021 is below:

Rent ledger

Date	Action	Amount	total
1-Jun-19	rent due	950.00	950.00
1-Jun-19	income support	-700.00	250.00
1-Jun-19	rent tenant's portion	-250.00	0.00
1-Jul-19	rent due	950.00	950.00
1-Jul-19	income support	-700.00	250.00
1-Jul-19	rent tenant's portion	-50.00	200.00
1-Aug-19	rent due	950.00	1150.00
1-Aug-19	income support	-700.00	450.00
1-Aug-19	rent tenant's portion	-450.00	0.00
1-Sep-19	rent due	950.00	950.00

1-Sep-19		income support	-700.00	250.00
1-Sep-19		rent tenant's portion	-250.00	0.00
1-Oct-19	rent due		950.00	950.00
1-Oct-19		income support	-700.00	250.00
1-Oct-19		rent tenant's portion	-250.00	0.00
1-Nov-19	rent due		950.00	950.00
1-Nov-19		income support	-700.00	250.00
1-Dec-19	rent due		950.00	1200.00
1-Dec-19		income support	-700.00	500.00
1-Jan-20	rent due		950.00	1450.00
1-Jan-20		income support	-700.00	750.00
1-Jan-20		rent tenant's portion	-250.00	500.00
1-Feb-20	rent due		950.00	1450.00
1-Feb-20		income support	-700.00	750.00
1-Feb-20		rent tenant's portion	-250.00	500.00
1-Mar-20	rent due		950.00	1450.00
1-Mar-20		income support	-700.00	750.00
1-Mar-20		rent tenant's portion	-250.00	500.00
1-Apr-20	rent due		950.00	1450.00
1-Apr-20		income support	-700.00	750.00
1-May-20	rent due		950.00	1700.00
1-May-20		income support	-700.00	1000.00
1-Jun-20	rent due		950.00	1950.00
1-Jun-20		income support	-700.00	1250.00
1-Jun-20		rent tenant's portion	-500.00	750.00
1-Jul-20	rent due		950.00	1700.00
1-Jul-20		income support	-700.00	1000.00
1-Aug-20	rent due		950.00	1950.00
1-Aug-20		income support	-700.00	1250.00
1-Sep-20	rent due		950.00	2200.00
1-Sep-20		income support	-700.00	1500.00
1-Oct-20	rent due		950.00	2450.00
1-Oct-20		income support	-700.00	1750.00
1-Nov-20	rent due		950.00	2700.00
1-Nov-20		income support	-700.00	2000.00
1-Dec-20	rent due		950.00	2950.00
1-Dec-20		income support	-700.00	2250.00
1-Jan-21	rent due		950.00	3200.00
1-Jan-21		income support	-700.00	2500.00
1-Feb-21	rent due		950.00	3450.00
1-Feb-21		income support	-700.00	2750.00
1-Mar-21	rent due		950.00	3700.00
1-Mar-21		income support	-700.00	3000.00
1-Apr-21	rent due		950.00	3950.00
1-Apr-21		income support	-700.00	3250.00
1-May-21	rent due		950.00	4200.00

1-May-21	income support	-700.00	3500.00
1-Jun-21	rent due	950.00	4450.00
1-Jun-21	income support	-700.00	3750.00
1-Jul-21	rent due 1-16 of July	499.69	4249.69
1-Jul-21	income support	-700.00	3549.69

Daily rate for July 2021 - \$950 x 12 months = \$11,400.00

\$11,400.00 divided by 365 days = \$31.23 per day

\$31.23 a day x 16 days in July = \$499.69

12. The landlord is seeking payment for rental arrears.

Analysis

13. Non-payment of rent is a violation of the rental agreement. The tenants are both individually and collectively responsible, for the apartment.
14. The tenants owe the landlord \$3,549.69 in rent.

Decision

15. The landlord's claim for rent succeeds in the amount of \$3,549.69.

Issue 2: Damages \$6,855.00

Relevant Submissions

16. The landlord said that after he took possession of the apartment on 16-July-2021, the tenants' belongings were still there and the apartment had a number of damages that required repair. He provided an itemized list of damages (LL#05) as follows:
- Bedroom and bathroom door frames needed to be replaced
 - Holes in various walls
 - Walls and paint damaged throughout the apartment
 - Baseboards damaged
 - Front door required to be replaced
 - Vanity in bathroom required to be replaced
 - Kitchen fridge required replacement
 - Cabinet doors in kitchen cupboard required repair
17. The landlord didn't provide an inspection report before or after the tenants had occupancy of the apartment. He said that he purchased the home in 2010 and it was built in the 1980's time period. He said prior to the tenants moving in, the apartment was in good repair.

18. The landlord provided pictures of damages to the bedroom and bathroom door frames (LL#06: pictures # 03, 05 & 06). The door frames are clearly damaged and appear to be caused by the door being kicked in. The landlord believes that the door frames are original to the house and therefore approximately 40 years old. The landlord supplied the receipts (LL#07: receipt #03) \$114.15 + 15% tax for a total of \$131.27 for the cost of the colonial casings moldings.
19. The landlord also provided pictures of holes punched in the walls (LL#06: pictures 01 & 02). The landlord submitted receipts for the cost of paint, plaster and supplies (LL#07: receipt numbers 01, 02 and 04). The total cost for paint and supplies is \$399.89 + 15% tax = \$459.87.
20. As well as the cost for supplies the landlord submitted the cost of the painter (LL#08) that was sent to him through text message. The painter plastered and painted for \$1000.00.
21. The landlord said the apartment would have been painted prior to the tenants moving in 2015; six years prior.
22. The landlord said that the baseboard was torn off next to the kitchen and had to be replaced; the landlord did not provide a picture of that damage. The landlord submitted the receipt (LL#07: receipt #4) for \$13.52 + taxes = \$15.55.
23. The landlord said that it appeared that the front door had been repeatedly kicked in. He believes that the front door is original to the house (approximately 40 years old). There was not a receipt provided for the door.
24. The landlord said that many of the doors were off the vanity in the bathroom. He did not provide pictures of this damage. The kitchen cabinets were also damaged; no pictures included. He said that he installed shelving on the top in the kitchen and replaced the doors on the bottom. He provided the receipt for the repairs (LL#07: receipt #03). \$710.89 x 15% tax = \$817.52.
25. The landlord did provide a picture of the fridge (LL#06: picture #04). The fridge was very dirty and the landlord said his wife cleaned the appliance. He said that although she managed to clean the fridge, there was a really bad smell that they couldn't get out. They had to purchase a new fridge. No receipt provided.
26. The landlord said that he paid a handyman to do the repairs required, he provided the text thread with the amount paid (LL#08) saying \$1,000.00 and an additional \$2,000.00. The contractor said he was charging at a rate of \$20.00 an hour.

Analysis

27. 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. As shown below:

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.

....

28. 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.

29. The landlord did not provide a condition report to this board to show the condition of the apartment prior to the tenant taking occupancy. He did however, report in paragraph 17 that the unit was in good repair when the tenants took occupancy. He also provided pictures of damages (LL#06), that exceed normal wear and tear. I accept his testimony that the apartment was in good repair and I accept his submitted pictures to show damage as stated by the landlord.

30. In addition to showing that the damage exists and that the respondent is responsible; the landlord must also show the value to repair or replace the damaged items. The landlord did provide receipts (LL#07) for some of the damage he is claiming and he provided his text documentation of the charges for a contractor and a plaster/painter (LL#08). The landlord did not provide receipt for the following damages: Front door and replacement of the fridge. These damages will not be considered.

31. In paragraph 18 the landlord is seeking compensation for the bedroom and bathroom door frames. He believes that they are original to the house and he submitted receipts totaling \$131.27. The National Association of Home Builders finds that walls, ceilings and finishing should last the lifetime of the home. The landlord should not have to replace these finishes, therefore the tenants will be responsible for the entire cost of replacement; \$131.27.

32. In paragraph 18 the landlord is claiming for repair of holes in the walls and provided receipts for \$459.87 (LL#07) as well as the cost of the plaster/painter for \$1,000.00 (LL#08). As shown in the above paragraph the National Association of Home Builders finds that walls, ceilings and finishing should last the lifetime of the home. However, according to the Residential Tenancies policy 9, paint is expected to last 3 – 5 years. The landlord had indicated in paragraph 19 that the apartment was painted prior to these

tenants moving in 6 years ago, this then means that the landlord should expect to be freshly painting this apartment and this is not the burden of the tenant.

33. The landlord should not, however, have to repair holes in the walls. Upon review of the submitted receipts the drywall compound cost \$15.62 + tax = \$17.96. The plaster/painter charged the landlord \$1,000.00 and it is reasonable to assume at least half of this time was spent plastering. I therefore find that the tenants are responsible for the product and repair of the holes in the walls costing \$517.96.
34. The landlord claimed for the baseboard next to the kitchen to be replaced; it was missing. His receipt is for \$15.55 taxes included and as the National Association of Home Builders finds that walls, ceilings and finishing should last the lifetime of the home, I find that the tenants are responsible for this cost; \$15.55.
35. The last repair considered is the replacement of the bathroom vanity and the repair of the kitchen cupboards. The landlord stated that the doors were off and that the top kitchen cupboards were so damaged they removed them and just put in open shelves. He submitted receipts for \$817.52 taxes included. According to the Residential Tenancies policy 9, cabinets and countertops are expected to last 20 years, as this is original to the house and approximately 40 years old, it has exceeded its life expectancy, the cost of repair falls to the landlord.
36. Finally, the landlord had hired a contractor to do the repairs, the cost of the contractor was \$3,000.00 (LL#08). I accept that the apartment required a lot of work, however, the only repairs that have been determined to be the responsibility of the tenant are the holes in the wall, for which they are expected to cover the cost of the plasterer, and for the replacement of the door frames and a piece of baseboard, it is reasonable to believe that this work would have taken a contractor a negligible amount of time and that the overall billing was for repairs to home components that required replacement. The tenants are not responsible for this cost.
37. The landlords claim for repairs succeeds in the amount of \$664.78, as follows:
 - Door frames (paragraph 31) \$131.27
 - Holes in walls (paragraph 33) 517.96
 - Baseboard (paragraph 34) 15.55
 - Total \$664.78

Decision

38. The landlord's claim for damages succeeds in the amount of \$664.78.

Issue 3: Other/Storage Costs \$814.00

Relevant Submissions

39. The landlord said in paragraph 5, that the tenant had abandoned the apartment and he regained possession on 16-July-2021. The landlord said that the tenant had walked

away and left her belongings. He said there was food in the fridge, dirty dishes in the sink and the washing machine was filled with water and dirty clothes.

40. The landlord said he reached out to Residential Tenancies to determine what his next steps should be. He said that after he gave her a termination notice she would not respond to his texts. He provided a text thread (LL#11) which shows communication from him, to her asking her to call and saying that she's been given a termination notice and she owes rent. He finds out in June that the electricity has been cut, he tries to contact her again, to no avail.
41. Once he regained possession of the property, he said that the place was very dirty and there was damages, in addition to this all of her belongings were still at the apartment. Under the guidelines of Residential Tenancies he rented a storage unit with Metro Self Storage.
42. He provided receipts (LL#09) showing he paid \$271.40 for the periods ending 21-August-2021, 15-September-2021 & 13-October-21. The tenant took over the storage unit in mid-October. He said for the purpose of clarity, she was upset that some items were not in the unit. He said some of the items were badly damaged and he disposed of them.
43. The landlord is seeking reimbursement of the 3 months storage costs $3 \times \$271.40 = \814.20 .

Analysis

44. When a tenant abandons their property it is incumbent upon the landlord to mitigate the loss to the tenant. Abandonment of property is covered under Section 32 of the Residential Tenancies Act, 2018:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

(a) remove the personal property and immediately place it in safe storage; or

(b) store the personal property on the residential premises in a safe manner.

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

....

*(6) The **tenant** or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably **incurred** by the landlord to remove and store the property.*

....

45. The landlord did remove and safely store the tenants' items and tenant1 did take possession of said items 3 months later. As the landlord did take the necessary steps to safely store the items for the 3 month period and as tenant1 is now in possession of the belongings, it is the tenants' responsibility to pay the full cost of the storage.

Decision

46. The landlord's claim for storage costs succeeds in the amount of \$814.00.

Issue 4: Security deposit applied against monies owed \$425.00

Relevant Submissions

47. As per paragraph 10, the landlord has declared that, the tenants paid a security deposit of \$425.00; 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

48. The landlord's claim for losses has been successful, paragraphs 31, 33 and 34, he 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

49. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$425.00.

Issue 5: Hearing expenses reimbursed \$20.00

50. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#10) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

51. The tenants shall pay the landlord \$4,623.47 as follows:

- Rent\$3,549.69
- Damages664.78
- Storage cost814.00
- Hearing expenses20.00
- Less security deposit (425.00)
 - Total\$4,623.47

The landlord shall retain the security deposit against monies owed \$425.00.

March 21, 2022

Date

