

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0477-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 19-January-2022.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her 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 respondent's absence so long as she has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, personally on 06-January-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

5. The landlord is seeking
 - Rent \$5,085.00
 - Compensation for damages \$1,602.58
 - Security deposit applied against loss \$787.50

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, Section 14: Security deposit, and Section 18: Notice of termination of rental agreement, as well as, Residential Tenancies Policy 9.

Issue 1: Rent \$5,085.00

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) that he had with the tenant and her partner. The agreement is a written 6 month term from 01-July-2018 until 31-December-2018. The rental period is from the 1st day to the last day of each month; the rent is due on the 1st day of each month. They paid a security deposit of \$787.50; the landlord still has this deposit in his possession.
9. At the end of the agreement the terms continued on a monthly basis. On 23-June-2019 the tenant sent a text (LL#04) saying that she had split with her partner. At this time she becomes the sole renter.
10. The landlord said that the tenant was suffering from some personal difficulties and she slipped into rental arrears. He attempted to make allowance for late payments and also made arrangements for a barter of work for rent. He provided a rent ledger (LL#03) to show the payments and arrears. He has included any credits he provided for work she had done.
11. The landlord's submitted text messages (LL#04) containing conversations about late rent payments.
12. In November 2020, the tenant told the landlord that she would be moving out in December 2020. She informed him, in the texts that she was out of the house, on 16-December-2020. As she is in a monthly agreement, he believes she owes for the month of December.
13. The rent ledger is as follows:

Rent ledger

Date	Action	Amount	total
1-Jul-18	rent due	1050.00	1050.00
1-Jul-18	rent paid	-1050.00	0.00
1-Aug-18	rent due	1050.00	1050.00
1-Aug-18	rent paid	-1050.00	0.00

1-Sep-18	rent due	1050.00	1050.00
1-Sep-18		rent paid	-1050.00
1-Oct-18	rent due	1050.00	1050.00
1-Oct-18		rent paid	-1050.00
1-Nov-18	rent due	1050.00	1050.00
2-Nov-18		rent paid	-1050.00
1-Dec-18	rent due	1050.00	1050.00
1-Dec-18		rent paid	-1050.00
1-Jan-19	rent due	1050.00	1050.00
9-Jan-19		rent paid	-1050.00
1-Feb-19	rent due	1050.00	1050.00
8-Feb-19		rent paid	-525.00
1-Mar-19	rent due	1050.00	1575.00
8-Mar-19		rent paid	-725.00
30-Mar-19		rent paid	-400.00
1-Apr-19	rent due	1050.00	1500.00
23-Apr-19		rent paid	-750.00
1-May-19	rent due	1050.00	1800.00
15-May-19		rent paid	-800.00
1-Jun-19	rent due	1050.00	2050.00
1-Jul-19	rent due	1050.00	3100.00
4-Jul-19		rent paid	-200.00
22-Jul-19		rent paid	-200.00
22-Jul-19		rent for dryer	-150.00
1-Aug-19	rent due	1050.00	3600.00
16-Aug-19		rent paid	-400.00
20-Aug-19		rent paid	-300.00
1-Sep-19	rent due	1050.00	3950.00
5-Sep-19		rent paid	-430.00
17-Sep-19		rent paid	-200.00
17-Sep-19		rent for paint patio	-500.00
1-Oct-19	rent due	1050.00	3870.00
19-Oct-19		rent paid	-400.00
1-Nov-19	rent due	1050.00	4520.00
1-Nov-19		Mom's pedicure	-60.00
1-Nov-19		wife's spa day	-450.00
2-Nov-19		rent paid	-200.00
4-Nov-19		rent paid	-150.00
16-Nov-19		rent paid	-250.00
28-Nov-19		rent paid	-200.00
1-Dec-19	rent due	1050.00	4260.00
19-Dec-19		rent paid	-375.00
30-Dec-19		rent paid	-350.00
1-Jan-20	rent due	1050.00	4585.00
24-Jan-20		rent paid	-250.00
1-Feb-20	rent due	1050.00	5385.00

1-Feb-20		rent paid	-1100.00	4285.00
1-Mar-20	rent due		1050.00	5335.00
13-Mar-20		rent paid	-1300.00	4035.00
1-Apr-20	rent due		1050.00	5085.00
5-Apr-20		rent paid	-750.00	4335.00
7-Apr-20		rent paid	-300.00	4035.00
1-May-20	rent due		1050.00	5085.00
1-May-20		rent paid	-525.00	4560.00
13-May-20		rent paid	-525.00	4035.00
1-Jun-20	rent due		1050.00	5085.00
10-Jun-20		rent paid	-1050.00	4035.00
1-Jul-20	rent due		1050.00	5085.00
8-Jul-20		rent paid	-1050.00	4035.00
1-Aug-20	rent due		1050.00	5085.00
5-Aug-20		rent paid	-1050.00	4035.00
1-Sep-20	rent due		1050.00	5085.00
1-Sep-20		rent paid	-525.00	4560.00
4-Sep-20		rent paid	-525.00	4035.00
1-Oct-20	rent due		1050.00	5085.00
30-Sep-20		rent paid	-1050.00	4035.00
1-Nov-20	rent due		1050.00	5085.00
5-Nov-20		rent paid	-1050.00	4035.00
1-Dec-20	rent due		1050.00	5085.00

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02).
15. I accept the landlord's testimony and submitted rent ledger (LL#03), as well as, the submitted text messages (LL#04), as evidence of rent being owed.
16. In a monthly agreement a tenant is expected to give a full month's notice, as per section 18 of the *Residential Tenancies Act, 2018*: see below:

Notice of termination of rental agreement

(1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

....

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

.....

17. As per the ledger, in paragraph 13, the tenant owes the landlord \$5,085.00.

Decision

18. The landlord's claim for rent succeeds in the amount of \$5,085.00.

Issue 2: Compensation for damages \$1,602.58

Relevant Submissions

19. The landlord submitted a table (LL#05) listing the damages he is seeking compensation for, see below:

Damage list

Item #	Description of damage	Amount
1.	Dog feces and garbage removal (16 hours)	\$320.00
2.	Garbage refuse curbside pickup	\$ 25.00
3.	Professional cleaning (inside house)	\$690.00
4.	Repairs to shed/garage door (2 hours)	\$ 40.00
5.	Disposal of broken clothes washer (2 hours)	\$ 40.00
6.	Purchase of new clothes washer	\$230.00
7.	Delivery and installation of clothes washer (2 hours)	\$ 40.00
8.	Replacement of dryer duct (1 hour)	\$ 20.00
9.	Dryer duct purchase	\$ 17.58
10.	Repair of attic hatch (1 hour)	\$ 20.00
11.	Replacement of back exterior door in kitchen (3 hours)	\$ 60.00
12.	Exterior door purchase (Facebook)	\$ 60.00
13.	Repair of broken handrail (2 hours)	\$ 40.00

20. Each item will be discussed according to issue.

Dog feces and garbage removal & curbside pickup \$345.00

21. The landlord provided pictures (LL#06) of the yard area after the tenant had left. The tenant had a large dog and there was dog feces left in the yard.

22. In addition to this, the pictures showed an old barbecue, tires, a child's swimming pool, other debris, recycling, cardboard boxes, etc.

23. The landlord said it took him a four days, doing about 4 hours work each time, to have the area cleaned up.

24. The landlord provided a receipt for the garbage collection (LL#07) from the [REDACTED] for \$25.00.

Professional cleaning inside house \$690.00

25. The landlord provided a condition report that he had completed with the tenant prior to her moving in (LL#09), he filled this out on his own after she left.
26. In addition to the condition report (LL#09) he also provided pictures of the house prior to the tenant taking occupancy (LL#11) showing the house in pristine condition.
27. After the tenant left he took pictures of the house and submitted them (LL#12), he pointed out that there is mold on the windows, the walls are scuffed and the unit has not been cleaned.
28. The landlord also said that the tenant was not to smoke inside the house, he acknowledges that she did smoke outside, however she must have also smoked inside because the house did smell of smoke and dog.
29. The landlord provided a receipt (LL#08) from [REDACTED] for the work that they completed to deep clean the house. The receipt is for \$690.00
30. He is requesting to be repaid for this cost.

Repairs to shed/garage door 2 hours labor \$40.00

31. The landlord submitted a picture (LL#13) of the garage door. He indicated that the wire and spring had broken off one of the sides. The loss of tension on one side skewed the door and it was hanging off balance. When he took the picture there was an old towel under one side to stop water from coming into the garage.
32. The landlord said he fixed this himself and it took him two hours. He is requesting 2 hours @ \$20.00 an hour.

Purchase of clothes washer, disposal and install \$310.00

33. The landlord said that after he regained possession of the house he realized that the washing machine was no longer working. He said that he purchased another washing machine (LL#14) and he and a friend of his: removed, purchased and installed the new washer.
34. The new washer that he purchased was refurbished and cost \$230.00. The washer that was in the home originally was also a refurbished purchase and he estimated it to be about 10 years old.
35. The landlord said it took himself and the friend 2 hours to do this work: 2 people at 2 hours x \$20.00 = \$80.00.
36. He is requesting the cost of the washer \$230.00 + the labor \$80.00 for a total of \$310.00.

Dryer duct purchase and install \$37.58

37. The landlord stated that when he replaced the washing machine, he wanted to move the dryer back alongside the washer. The tenants had them stacked with the dryer on top of the washer. This is not how they were originally placed.
38. He said when he went to move the dryer he noticed that the dryer vent was very short and he would require a longer vent to place the dryer back next to the washer.
39. He said that because he noticed this, only when they were changing out the washer, he had to make a return trip to the hardware store to purchase a new vent.
40. The landlord is asking 1 hour's wage of \$20.00 and the cost of the dryer vent (LL#15) for \$17.58, receipt provided.

Repair of attic hatch \$20.00

41. The landlord provided pictures of the before and after of the attic hatch (LL#16). The hatch was missing a piece of molding. The landlord did find this molding and affixed it to the ceiling.
42. The landlord said he could feel a draft from the hatch and he could not get the flat panel to lay correctly. After about an hour he realized that it was laid in upside down and therefore wasn't sealing.
43. He is requesting an hour's wage of \$20.00 to make this repair.

Purchase and replacement of back exterior door in kitchen \$120.00

44. The landlord is requesting reimbursement for the replacement of the exterior kitchen door. He has submitted a picture showing that the door has split, he said it looks like someone kicked it in.
45. Prior to the tenant taking occupancy the landlord had to replace this door for the same reason, he said he bought a used door that he suspected would be approximately 10 years old.
46. The landlord said he found this door on the Facebook buy and sell (no receipt) and was fortunate to get it for \$60.00. He is requesting the cost of the door as well as 3 hours labor (\$60.00).

Repair of broken handrail 2 hours labor \$40.00

47. The landlord said that the handrail for the stairs was knocked loose and cracked along a seam. He said it appeared that something had been dropped on it. He provided a picture with his evidence (LL#09).

48. The landlord said that he removed the railing and took it back to his workshop, he repaired this by gluing the railing and reinstalling it. He said it took 2 hours to do this work.

Analysis

49. Each item will be discussed according to issue.

Dog feces and garbage removal & curbside pickup \$345.00

50. I accept the landlord's testimony and photo documentation of the condition of the yard. It is reasonable to assume it would take many hours to clean up this area in preparation for new tenants.

51. The landlord testified that it took him 16 hours to do this work and he charged at a rate of \$20.00 an hour, which is an acceptable rate to this board.

52. The tenant also submitted the receipt from the town (LL#07) to have this garbage hauled away.

53. The landlord's claim succeeds in the amount of \$345.00.

Professional cleaning inside house \$690.00

54. The landlord submitted documentation to display that the house was not cleaned when the tenant moved out.

55. The landlord does request a walk through, with the tenant, in the text thread (LL#04) however she is unable to accommodate that request.

56. According to Section10 of the Residential Tenancies Act, 2018:

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

.....

57. 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)

58. The landlord's evidence, through pictures (LL#09, #10 & #12) show the condition of the home before and after, as well as, the documentation of the condition report both before and after. He has also provided a receipt for \$690.00 (LL#07) for the amount he was charged to have the house cleaned.
59. The evidence submitted meets our threshold and the landlord's claim succeeds in the amount of \$690.00

Repairs to shed/garage door 2 hours labor \$40.00

60. The landlord's picture (LL#13) shows that the wire is missing and that the door is askew. I accept his testimony that it took him 2 hours to repair this door.
61. The landlord's claim for repairs to shed/garage door succeeds in the amount of \$40.00.

Purchase of clothes washer, disposal and install \$310.00

62. The landlord stated that he purchase a refurbished washer to replace the original washer; which was also a refurbished purchase.
63. As per paragraph 57, the landlord is to show that damage exists, that the tenant is responsible and the cost to replace the damaged item.
64. 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.
65. According to the National Association of Home Builders, the life expectancy of a washer is 10 years. The landlord has not shown that the tenant was responsible for the washer being broken and the washer has reached its life expectancy.
66. As the original washer has reached its life expectancy, this cost of purchasing and installing a new washer is the responsibility of the landlord.
67. The landlord's claim for replacement of the washer fails.

Dryer duct purchase and install \$37.58

68. The landlord requested 1 hour's wage of \$20.00 and the cost of the dryer vent (LL#15) for \$17.58, receipt provided. He said that it took him about an hour to drive back to the hardware store and make the purchase.
69. Dryer vents require regular cleaning or replacement to ensure that lint does not build up and become flammable, this is a regular maintenance cost to the homeowner.
70. Although the vent was shorter than the landlord required to move the vent, it was not damaged or the responsibility of the tenant.

71. The replacement of the dryer vent is not the responsibility of the tenant and therefore the landlord's claim fails.

Repair of attic hatch \$20.00

72. The landlord's time to fix the hatch, of one hour, is due to the landlord not realizing that the hatch door is in upside down. This is a small error that could happen to anyone, however, it is not the responsibility of the tenant, there is no real damage, as the molding just needed to be reattached.
73. The landlord's claim for repair of attic hatch fails.

Purchase and replacement of back exterior door in kitchen \$120.00

74. The landlord purchased a door from an individual selling on Facebook and did not provide this board a receipt. It is not possible to determine the cost of the door without a receipt.
75. The landlord said that it took him 3 hours to pick up and install the door at a cost of \$60.00.
76. The landlord displayed in his pictures that the door was indeed split open and broken, it is irrelevant if the tenant did this through a willful or if it was just a negligent act, she still bears responsibility.
77. The National Association of Home Builders estimate the life span of an exterior door to be 20 years. As this door is already considered to be 10 years old when the tenant moved in (as per paragraph 45), it would have been 12.5 years when she moved out. 12.5/20 years is 62.5% of its life expectancy, the tenant will be responsible for the 37.5% of the life the door should have had remaining.
78. We are unable to verify the cost of the door, the cost of the installation is \$60.00 times 37.5% for a cost of \$22.50.
79. The landlord's claim for the exterior door succeeds in the amount of \$22.50.

Repair of broken handrail 2 hours labor \$40.00

80. A handrail should last the lifespan of the property. The landlord's claim for two hours at \$20.00 to repair the rail is reasonable.
81. The landlord's claim succeeds in the amount of \$40.00.

Decision

82. The landlord's claim for compensation for damages succeeds in the amount of \$1,137.50, as follows:

• Cleaning yard (dog feces, debris).....	\$ 345.00
• Professional cleaning interior house.....	690.00
• Garage door.....	40.00
• Exterior door.....	22.50
• Handrail.....	<u>40.00</u>
• Total.....	<u>\$1,137.50</u>

Issue 3: Security deposit applied against loss \$787.50

Relevant Submissions

83. As per paragraph 8, the landlord has declared that, the tenant paid a security deposit of \$787.50; he is still in possession of that deposit. He is requesting to retain that damage deposit towards monies owed by the tenant for rent and damages to the house.

Analysis

84. The landlord's claims for loss have been successful, paragraphs 18 & 82, 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

85. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$787.50.

Summary of Decision

86. The tenant owes the landlord \$5,085.00 for rent and \$1,137.50 for damages totaling \$6,222.50. The landlord shall retain the security deposit of \$787.50 against this loss. The tenant still owes the landlord \$5,435.00
87. The landlord shall retain the security deposit of \$787.50.
88. The tenant shall pay the landlord \$5,435.00 for rent and damages.

January 24, 2022

Date

