

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0529-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:19 a.m. on 28-February-2022.
2. The applicants, [REDACTED], hereinafter referred to as “landlord1 and landlord2” 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 landlords served the tenant by registered mail on 07-January-2022, they provided this board with the tracking number and a search indicated that the package was delivered to the respondent on 14-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 landlords are seeking:
 - Rent \$3,600.00
 - Possessions returned/compensation \$784.74
 - Compensation for damages \$3,839.00
 - Security deposit applied to monies owed \$900.00
 - Hearing expenses \$20.00

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

Issue 1: Rent \$3,600.00

Relevant Submissions

8. The landlords submitted a rent agreement (LL#01) and landlord1 testified that the tenant moved in 01-June-2018, at that time they signed a term agreement, they have signed agreements with the tenant through the years, the last agreement signed was for a term from 11-July-2020 until 11-July 2021. Landlord1 said that the rental period is from the 11th day of the month to the 10th day of the following month. The rent is \$1,800.00 for a fully furnished apartment and includes utilities, it is due on the 11th day of each month. The tenant paid a security deposit of \$900.00 on 11-May-2018 and the landlord is still in possession of that deposit.
9. Landlord1 reviewed the rent ledger (LL#02). He confirmed that the tenant's rent was up to date until the last payment made on 12-April-2021. There was no rent received for May or June.
10. Landlord2 said that the tenant sent her a text on 13-May-2021 and told her that she would be moving out on 30-June-2021. Landlord2 said that she told her she was disappointed but understood, she reminded her to make her rent payment and that it was due on the 11th. The tenant told her that she would pay \$1,200.00 for the half month; Landlord 2 said that she didn't make the May or June payment.
11. Landlord2 said that in the text that she was disappointed but understood, she conceded that this may have been interpreted by the tenant that she was released from her obligation as of the end of 30-June-2021.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlords agreed that the tenant may have understood that she was okay to move on 30-June-2021.
13. The tenant owes the full amount of rent for 11-May-2021 and she owes the part month of 11-30-June-2021. The daily rate of rent for the 20 days in June is as follows: \$1,800.00 x 12 months = \$21,600.00 per year divided by 365 days = \$59.18 per day. \$59.18 x 20 days = \$1,183.60.

14. The tenant owes the landlord $\$1,800.00 + 1,183.60 = \$2,983.60$ in rent.

Decision

15. The landlord's claim for rent succeeds in the amount of \$2,983.60.

Issue 2: Possessions returned/compensation \$784.74

Relevant Submissions

16. Landlord2 reviewed the submitted list (LL#03) of missing items:

- Bedding (2 comforter, 2 sheet sets, 2 mattress covers, 6 pillows ... \$350.00
- Décor (plants, center pieces, trinkets).... \$200.00
- Mop, broom and bucket..... \$45.00
- box spring.... \$161.00
- kitchen built in garbage bucket.... \$28.74

17. Landlord1 said that these items were taken from the apartment. The tenant had rented the apartment furnished and when she moved these items were missing. When the tenant moved in in 2018, these items were new. They have since replaced these items and are seeking compensation.

18. The landlord's submitted the following receipts (LL#06) for the items missing from the apartment:

- Garbage can \$28.74
- Décor items \$65.53
- Bedding \$28.74

Analysis

19. The landlord's entered into a rental agreement with the tenant for a furnished apartment. The tenant was entitled to enjoy those furnishings while living at the apartment, however, the ownership of the items is solely the landlords.

20. As the landlords had to replace the items listed they are entitled to compensation for their cost to replace, at current depreciated value, their missing property.

21. Although the landlords have provided a list of items in paragraph 16, this tribunal can only consider compensation for the items that the landlords provided a receipt for in paragraph 19; as there is no reliable way to determine the cost to the landlord's for items that do not have a receipt.

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

23. A typical kitchen garbage can lasts for 12 years, as per the International Association of Certified Home Inspectors, this garbage can is 3 years old and has reached 25% of its lifespan. The homeowners are therefore entitled to 75% of their purchase price of \$28.74. The tenant owes the landlords \$21.56 for the garbage can.

24. The landlords replaced the décor items that were missing when they regained possession of the apartment. Décor items typically last 5 years according to Good Housekeeping. This would indicate that the apartment items, being 3 years old had lasted 60% of their lifespan. The landlord would be entitled to 40% of the purchase cost of these items. $\$65.53 \times 40\% = \26.21 is owed to the landlords for this cost.

25. Bedding is also considered to last 5 years by Good Housekeeping. The bedding is also 3 years old and has therefore lasted 60% of its life cycle. The tenant owes the landlord for 40% of \$28.74 = \$11.50 for the cost to replace the bedding.

26. As the landlords submitted only 3 receipts to this tribunal and as there is no reliable way to determine the cost of items without receipts, I find that the tenant owes the landlord \$59.27 for the missing items as follows:

- Garbage can \$21.56
- Décor \$26.21
- Bedding \$11.50
- Total \$59.27

Decision

27. The landlords' claim for compensation for missing items succeeds in the amount of \$59.27.

Issue 3: Compensation for damages \$3,839.00

Relevant Submissions

28. The landlords submitted a list of damages (LL#04) as follows:

Item	Cost
Cracked stove top	250.00
Electrician install of stove top	50.00
Cigarette burn marks on hardwood	375.00
Toilet seat	46.99
Dress and nightstands damaged	200.00
Living room rug	318.02
Cleaning/fixing 12 hours @ \$25.00	300.00
Scrape on floor by front door	350.00
Queen mattress full of blood	459.62
Cover for dryer	50.00

Washer cover	50.00
New sofas	1,332.95
Delivery of sofas and mattresses	57.41
total	\$3,839.00

29. Landlord1 said that the stove top was completely cracked and unusable. He provided pictures of the damage (LL#05). Landlord2 said that the stove-top is 6 or 7 years old. Landlord1 said that he found one used for \$250.00. Landlord1 said that the tenant had admitted to breaking the stove-top. Once he purchased the stove-top, he paid an electrician install the stove top, who charged \$50.00. He did not provide receipts for the stove top or for the electrician.

30. Landlord1 said that the flooring is hardwood and there are cigarette burns on the hardwood. Landlord1 pointed out that as per the rental agreement (LL#01), the unit is a non-smoking unit. In addition to this damage, the skirting on the main door was damaged and that the tenant didn't repair the skirting or ask for it to be repaired by the landlord, then she continued to open the door which was scratching the floor. They provided pictures of this damage (LL#05). Landlord1 said that they had new flooring installed when they purchased the unit about 6 years ago. They have two items listed above for these damages \$375.00 + \$350.00 for a total of \$725.00. He did not provide receipts for this work.

31. Landlord2 said that the tenant had replaced the toilet seat, she had done this with a typical oval toilet seat; however the toilet is an elongated toilet, so that the seat wasn't an appropriate fit. They provided pictures of the toilet showing the incorrect seat (LL#05). Landlord2 said he purchased a toilet seat that fit the toilet for \$46.99; they did not submit a receipt.

32. Landlord1 said that the dresser and nightstand was purchased when they bought the unit 6 years. The finish on the furniture was damaged. Landlord1 said he is a woodworker and he did this repair himself it took him 4 hours to do the work; he is seeking \$200.00 for his time to do the repair.

33. The living room rug was purchased 3 years ago when the tenant moved in. Landlord1 said that the rug was absolutely filthy dirty and was beyond repair. They replaced the rug for \$318.02; they did not provide a receipt for this purchase.

34. Landlord2 said that the tenant had emailed her and said that she was going to have the unit professionally cleaned; she did not. Landlord1 said it looked like it hadn't been cleaned in the entire time the unit was rented; 3 years. Landlord1 said he did the cleaning and it took him 12 hours @ \$25.00 for a total of \$300.00.

35. Landlord2 said that the mattress was full of blood stains, the mattress is 6 years old. They provided pictures of this damage (LL#05). They replaced it for \$469.52; they did not provide a receipt.

36. Landlord2 said that the cover of the washer and dryer were both damaged and they replaced them from an appliance refurbishing store for \$50.00 each, for a total of

\$100.00. They provided pictures of this damage (LL#05). Both of these appliances are 6 years old; they did not provide a receipt.

37. Landlord1 said that they replaced the sofas in the apartment, both are also 6 years old. He said that the tenant smoked and that the sofas were filthy dirty they purchased them on sale for \$1,332.95. He said that the rental, as shown in the rental agreement (LL#01), is non-smoking. They did not provide a receipt for this purchase.
38. Finally, the landlords applied for the delivery of the mattresses and sofa which cost them \$57.41. They did not provide a receipt for this purchase.

Analysis

39. 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.

40. 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.

41. The landlords did provide documentation through pictures (LL#05) to show the damages that they repaired. They did not however, provide receipts, therefore they did not show the value to repair or replace their damaged items. This board cannot consider estimates provided by applicants, this is not a reliable or fair way to determine value. The replacement and repair of these items cannot be considered without receipts, as there is insufficient evidence to support the landlords' claims.
42. Landlord1 did state that he spent 4 hours refinishing the bedroom furniture and he spent 12 hours cleaning. I accept his testimony that he required 16 hours to do this work. This board accepts the rate of minimum wage + \$8.00 which is currently valued at \$20.75 per hour. The landlords' time is rated at $16 \times \$20.75 = \332.00 .

Decision

43. The landlords' claim for damages succeeds in the amount of \$332.00.

Issue 4: Security deposit applied to monies owed \$900:00

Relevant Submissions

44. As per paragraph 8, the landlords have declared that, the tenant paid a security deposit of \$900.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenant for the loss they have incurred.

Analysis

45. The landlord's claim for losses has been successful, paragraphs 15, 27 & 43, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

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

46. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$900.00.

Issue 5: Hearing expenses reimbursed \$20.00

47. The landlord submitted the receipt for \$20.00 for the cost of the hearing LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

48. The tenants owe the landlords \$2,474.87 as follows:

- Rent \$2983.60
- Possessions returned compensate 59.27
- Damage 332.00
- Less Security deposit..... (900.00)
- Total \$2474.87

The landlords shall retain the \$900.00 security deposit.

March 11, 2022

Date

