

Residential Tenancies Tribunal

Application 2022-No.11-NL

Decision 21-0011-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 31-March-2022.
2. The applicants, [REDACTED] and [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 him 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 he has been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by email on 16-March-2022 at 11:32 a.m. The landlord said that the tenant had provided him the email address at the start of the tenancy and they used this method of communication in the past. 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 his absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$1,687.50
 - Utilities \$1,412.28
 - Compensation for damages \$3,880.50
 - Inconvenience \$750.00
 - Other garbage removal and cleaning \$1,950.00
 - Possessions returned \$850.00
 - Security deposit applied against loss \$190.00
 - 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 10: Statutory Conditions, and Section 14: Security deposit, as well as, Residential Tenancies Policy 9: Claims for compensation.

Issue 1: Rent \$1,687.50

Relevant Submissions

8. The landlords submitted a rental agreement that they had with the tenant and his ex-partner. They moved into the house 15-April-2017, at that time they paid ½ a month's rent for the remainder of April. On 01-May-2017 they began a monthly agreement for \$1,075.00. The rental period is from the first day of the month until the last day of each month. The rent is due on the first day of every month and utilities are extra. The tenants paid a security deposit of \$380.00 on 29-March-2017; receipt provided (LL#03). Shortly after the tenants moved in the landlords reduced the rent to \$1,050.00.
9. In the spring of 2021, the landlords informed the tenants of a rent increase to \$1,125.00 beginning October 2021.
10. The tenants separated and in October 2021 an agreement was made with the tenant (LL#04) that he would become the sole lease holder. He also agreed to move by 01-January-2022; he subsequently moved the end of January 2022 and the landlords regained possession of the house 01-February-2022.
11. At the time the tenants separated, the landlords had an agreement with the other tenant for the disbursement of her share of the security deposit. The landlord is still in possession of this tenant's share of the security deposit, \$190.00.
12. The landlord said that the tenant's rent was often late and he left without paying for December and January rent. The landlord provided the rent ledger (LL#05). See below for August 2021 to termination date:

Rent ledger
2022-No.11-NL

Date	Action	Amount	total
1-Aug-21	rent due	1050.00	1050.00
20-Aug-21	rent paid	-1050.00	0.00
1-Sep-21	rent due	1050.00	1050.00
18-Sep-21	rent paid	-1050.00	0.00
1-Oct-21	rent due	1125.00	1125.00
19-Oct-21	rent paid	-1125.00	0.00

30-Oct-21	rent paid	-1125.00	-1125.00
1-Nov-21	rent due	1125.00	0.00
1-Dec-21	rent due 1/2 off for Christmas	562.50	562.50
1-Jan-21	rent due tenant didn't vacate	1125.00	1687.50

13. The landlord pointed out that in December they give a 50% discount on rent, as shown in the table.
14. The landlord is seeking \$1,687.50 for rent owed.

Analysis

15. Non-payment of rent is a violation of the rental agreement. I accept landlord1's testimony and submitted rent ledger as proof of rent owing. The tenant shall pay the landlords the balance owed of \$1,687.50.

Decision

16. The landlords' claim for rent owed succeeds in the amount of \$1,687.50.

Issue 2: Utilities \$1,412.28

Relevant Submissions

17. Landlord1 said that the oil tank for the house was due for replacement in September 2021; at that time they let the tenant know that this was upcoming. They reached out to the tenants and gave them a variety of options on how to go forward with oil purchase. Email included with this discussion (LL#10).
18. The decision chosen by the tenant was that the landlords would sign up for automatic delivery and pay for the initial fill up. Then every month the tank would be scheduled for a top up. The tenant would pay \$200.00 a month to the landlords. The landlords would share the invoices with the tenant, so that the tenant would know exactly how much oil is being purchased. Then after a number of months, if the tenant wasn't paying enough to cover the purchase or they were paying too much, the monthly rate would be adjusted.
19. The landlords included the cost of the oil payments in a utilities ledger and included the invoices from Harvey's Oil Ltd. (LL#11). See below:

Utilities Ledger 2022-No.11-NL

Date	Action	Amount	total
11-Sep-22	first oil fill	354.66	354.66
16-Sep-22	2nd delivery tank now full	455.70	810.36
16-Sep-22	initial set up responsibility of owner	-810.36	0.00
19-Oct-22	payment	-200.00	-200.00

26-Oct-22	oil delivered	240.81	40.81
30-Oct-22	payment	-200.00	-159.19
23-Nov-22	oil delivered	328.60	169.41
14-Dec-22	oil delivered	225.24	394.65
03-Jan-22	oil delivered	388.80	783.45
1-Feb-22	oil delivered	628.83	1412.28

20. The landlord is seeking \$1,412.28 for utilities owed.

Analysis

21. The landlords provided documentation (LL#10) indicating the agreement between the parties around the provision of oil.
22. The tenant agreed to pay the landlord for oil that was purchased.
23. The landlords provided receipts from Harvey's Oil showing the amount of oil purchased for the property in question and during the time that the tenant had possession. The landlords have shown that there was \$1,812.28 worth of oil purchased over a four month period and there was payment of \$400.00 during that same time period.
24. The tenant shall pay the landlord for the \$1,412.28 of oil purchased.

Decision

25. The landlords' claim for utilities owed succeeds in the amount of \$1,412.28.

Issue 3: Compensation for damages \$3,880.50

Relevant Submissions

26. The landlords provided a condition report (LL#12) showing the condition of the house when the tenant took possession. The landlord also provided a list of damages once the tenant moved out (LL#13).
27. The landlords submitted pictures of the exterior door showing that the dogs had scratched it. In addition to the scratches, landlord1 said that the door had been kicked in and the lock had to be engaged to keep the door closed. Landlord1 said that the door cost \$1,363.50 to replace: \$1,207.50 for the door (receipt LL#13) and \$156.00 for the new lock and handle (no receipt). The landlord said that the door is 7 years old. The condition report (LL#12) shows that the door is in good condition when the tenant moved in and is noted as "newer."
28. Landlord1 said that the French door had glass broken in one of the panels; he provided a picture of the damage (LL#13). He provided a cost estimate (LL#13) from Kent's

building supplies for \$190.05 + tax = \$218.56. He has not replaced the door yet. He said that the door is 16 years old.

29. The landlords provided pictures of the broken kitchen drawers and cupboards (LL#13). The landlords estimated that it was going to cost \$200.00, for supplies and personal time to complete this work. Landlord1 said it took him 5 hours to make the repairs. He said that he had glue and filler on hand and didn't provide receipts for supplies. He estimates the cupboards to be 16 years old. The condition report (LL#12) lists the cupboards as in good condition when the tenant moved in.
30. The landlords submitted pictures of holes in the walls and damages to the ceiling (LL#13), there was damage throughout the house. Landlord1 said that they estimate the cost to be \$650.00 to complete all this work, the estimate would include the cost of wallboard, drywall compound, paint and labour. Landlord1 said he believes this would take him 80 hours to complete: 50 hours to plaster and 30 hours to paint. He did not provide receipts for the cost of the materials. Landlord1 said that the house was painted in 2019 and 2020. Landlord1 voiced his frustration because the tenant is a plasterer by trade and he said that there was no reason for him to have not repaired the walls.
31. Landlord1 also included a picture showing that the shower head is missing (LL#13) in the bathroom. The landlord had a shower head that he had previously purchased for approximately \$20.00 and he didn't provide a receipt.
32. The landlords also provided pictures of the light fixtures (LL#13) that had the globes missing. Landlord1 said that there were 3 globes missing and the fixtures are 8 – 10 years old. They didn't provide receipts. He estimated the cost to be \$60.00 each for a total of \$180.00.
33. The landlords submitted a picture of the bedroom door (LL#13). Landlord1 said that the door was kicked in and that the door frame is still damaged, he said that the tenant replaced the actual door. Landlord1 said that the door is not painted and the door frame will still require work as it was damaged from being kicked in. Landlord1 said it will take him 2 hours to paint the door and repair the frame he has listed the cost of \$100.00. The condition report (LL#12) lists the door in good condition when the tenant moved in.
34. The landlords submitted a number of pictures of switch plates missing (LL#13) and landlord1 pointed out that one of the switch plates seems to be recessed into the wall, he said it is still working but will require work. They did not provide receipts.
35. The landlords provided a picture of the ceiling showing that the smoke alarm has been removed (LL#13). Landlord1 said that the replacement would be about \$60.00; they did not provide a receipt.
36. The landlords provided a picture of a cracked kitchen tile (LL#13). Landlord1 said that they had extra tiles on hand. He estimates that for labour it would take him 2 hours and has requested \$25.00. The condition report (LL#12) shows that the flooring had some damage when the tenant moved in.
37. The landlords provided pictures of the door from the kitchen into the cellar, (LL#13) to show that there is a large crack in the door. Landlord1 said that they had a door on

hand, he believes it would take 3-4 hours labour for him to replace and paint the door. The door is about 20 years old.

38. The landlords also provided pictures of the outside and interior cellar doors, both doors are damaged (LL#13) landlord1 said he will have to buy the materials and make a custom door. This will take him 8 hours. The original door is about 40 years old.
39. The landlords provided pictures of the door to the garage (LL#13). This door had been kicked in, the tenant had screwed the door shut to keep it closed. They provided an estimate from Kent to show the cost to replace the door is \$354.00 + tax = \$407.10. Landlord1 said that it would take him 8 hours to install this door. Landlord1 said that this door was 15 years old.
40. The landlords provided pictures of their wheelbarrow in the driveway and then a picture from 01-February-2022, when they regained possession of the house, of the wheelbarrow, damaged and thrown in with the garbage in the dumpster (LL#13). The wheelbarrow is about 18 years old and landlord1 looked up the cost online and to replace it would be \$125.00
41. The landlords submitted a picture (LL#13) of the French blinds from the living room window. The blinds are discarded on the cellar floor in the dirt. Landlord1 said that they are about 15 years old and would cost \$90.00 to replace. They did not provide a receipt.

Analysis

42. 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.

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.

43. 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)
44. 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.

45. The landlords provided this board with a condition report signed by the tenant at the start of their rental agreement. They then proved their claim by supplying this board with pictures of the damages in contrast to the condition report.
46. Landlord1 said that he is still working through the damages that were left in the home, some of the damages he has listed he hasn't started his repair and some of the repairs were completed with supplies already owned by the landlords. For items that do not have an accompanying receipt or estimate this board is unable to assess the value of reimbursement.
47. The following items do not have an estimate or receipt, therefore reimbursement for these items cannot be assessed:
- Handle and locking system for the main door
 - Shower head
 - Light fixtures
 - Switch plates
 - Smoke alarm
 - Wheelbarrow
 - French blinds
48. The remaining items will be considered as follows:

ITEM	RECEIPT	HOURS @ \$21.20	AGE
Front door	\$1,207.50		7 yrs
French door	\$218.56		16 yrs
Kitchen cupboards		5 hrs = \$106.00	16 yrs
Holes in walls throughout house paint		30 hrs = \$636.00	2 yrs
Holes in wall throughout house plaster		50 hrs = \$1,060.00	40 yrs
Bedroom door		2 hrs - \$42.40	20 yrs
Kitchen tile		2 hrs = \$42.40	16 yrs
Kitchen door to cellar		3 hrs. = \$63.60	20 yrs
Cellar door		8 hrs = \$169.60	40 yrs
Garage door	\$407.10		15 yrs

Personal work hours will be assessed at a rate of \$13.20 min. wage +8.00 = \$21.20

49. The first item the landlords are claiming is for the front door. As shown in paragraph 27 the front door was listed as in good condition and newer on the condition report (LL#12). The pictures submitted show that the door is damaged and I accept that it had to be replaced. According to our policy an exterior steel door should last 15 years; this door is 7 years old and should have therefore lasted 8 more years. The landlord submitted a

receipt for the door totaling \$1,207.50. The landlord is entitled to 8/15ths of the cost of the door. $\$1,207.50 \times 8/15 = \644.00 . The tenant shall pay the landlords \$644.00 for the cost of replacing the front door.

50. The landlords submitted pictures of the French door in the house. Landlord1 said that one of the glass panes was broken (as shown in the picture (LL#13)). The landlords submitted an estimate of the cost to replace this door at Kent (LL#13) totaling \$218.56. Our policy states that an interior door should last 20 years and this door, according to landlord1 in paragraph 28 is 16 years old. The landlords should expect this door to last another 4 years. The landlords are therefore entitled to 4/20ths of the cost of the door: $\$218.56 \times 4/20 = \43.71 . The tenant shall pay the landlords \$43.71 for the cost of replacing the French door.
51. The landlords submitted pictures of damages to the cupboards in the house. The condition report (LL#12) shows that the cupboards were in good condition when the tenant moved into the house. The cupboards were shown in the photos (LL#13) submitted by the landlords and they are in a state of disrepair. Landlord1 said that he used supplies that he already had on hand to do the repairs and that he did this work himself; it took him 5 hours at a cost of \$21.20 an hour totaling \$106.00. The landlords said that the cupboards are 16 years old. Our policy says that kitchen cupboards should last 20 years, the landlord is therefore entitled to be reimbursed for 4/20th of the cost of the repairs; $\$106.00 \times 4/20^{\text{th}} = \21.20 . The tenant shall pay the landlords \$21.20 for the cost of repairing the cupboards.
52. The landlords submitted a claim to paint and plaster the walls in the house. According to landlord1 the walls had been painted in the last two years. The landlords provided a number of pictures of damages throughout the house on the walls and on a ceiling. According to our policy paint should last 5 years, so there should still be 3 years before the landlords would be expected to paint. Landlord1 is only seeking the time required to paint 30 hours $\times \$21.20 = 636.00$. The tenant would be expected to cover 3/5th of the cost $\$636.00 \times 3/5 = \381.60 that is awarded in paragraph 53.
53. Landlord1 has shown that the walls required plastering, which he said is very time consuming, landlord1 said that an experienced person may be able to do this faster, but it would take him approximately 50 hours to repairs all the holes in the walls. $50 \text{ hours} \times \$21.20 = \$1,060.00$. According to the National Association of Home Builders walls should last the lifetime of the home. The landlords would be entitled to the full \$1,060.00 for plastering + the \$381.60 for painting, however they only applied for \$650.00 for this cost. This board will not award a greater amount then claimed, therefore the tenant will reimburse the full \$650.00 claimed by the landlords.
54. The landlords submitted pictures of a broken tile in the kitchen. The condition report (LL#12) states that the flooring had cracking when the tenant took occupancy. As there is no clear way to determine the amount of cracking present on the flooring when the tenant took occupancy, this board is unable to determine that the tenant is responsible for this damage and no repair cost will be awarded.

55. The landlords are claiming damage to the kitchen door leading to the cellar. Landlord1 said that the door was 20 years old, paragraph 37. The Residential Tenancies Policy says that interior doors should last 20 years. The kitchen door had last the full amount of its life expectancy and no repair cost will be awarded.
56. Landlord1 has shown that the cellar doors are damaged and that he will have to custom build a replacement. In paragraph 38, he said that this door is 40 years old. Our policy says that an outside wooden door will last 10 years. These doors have exceeded their life expectancy and no repair cost will be awarded.
57. Landlord1 has shown that the garage door was damaged by the tenant and will need to be replaced. The landlord stated in paragraph 39 that the door is 15years old. Our policy says that a steel door will last 15 years. The door has lasted the full amount of its life expectancy and no repair cost will be awarded.
58. The tenant shall reimburse the landlord for the following damages:
- Front door\$644.00
 - French door 43.71
 - Kitchen cupboards21.20
 - Holes in walls..... 650.00
 - Total\$1,358.91

Decision

59. The landlords claim for damages succeeds in the amount of \$1,358.91.

Issue 4: Inconvenience \$750.00

Relevant Submissions

60. Landlord1 said he provided a list of inconveniences (LL#14). He said that they arrived from [REDACTED] on 01-February-2022, and had assumed that he would be able to live in the house.
61. When he arrived he said that the house was in a terrible condition. He sealed up the doors, changed the locks and then cleaned up the garbage that had spilled out from the dumpster that was left by the tenant. He said that the inside of the house was uninhabitable.
62. Landlord1 said he had to stay with his brother for the next 10 days. Over those 10 days he traveled back and forth from [REDACTED] to [REDACTED] each day to coordinate pest control, garbage pickup, cleaning, etc. he is claiming \$25.00 a day x 10 days for his travel.

63. Landlord1 said that he is also claiming \$50.00 a day for the 10 days incidentals while he was living away from his home for the cost to stay at a family member's home while waiting for the house to be useable again.
64. He said that on 10-February-2022 the garbage bin was picked up and on the 11th the front door was replaced and the cleaning was done. He was then able to move into the house.
65. Landlord1 said that he had to use his annual leave and cash in some of his pension to cope with the loss he incurred from the damage to the house.
66. The landlords are seeking \$750.00 for inconvenience.

Analysis

67. Landlord1 said that he travelled from [REDACTED] to the house in [REDACTED] for 10 days to get the house in a reasonable state for habitation. Google Maps gives the approximate distance between these two locations as 37 kilometers, therefore 74 kilometers a day for 10 days = 740 kilometers. The government rate for mileage is currently \$0.5629 per kilometer x 740 = \$418.55. The landlords are seeking \$250.00 for mileage and as this board will not award a greater amount then claimed, the tenant will reimburse the full \$250.00 claimed by the landlords.
68. The landlord is also claiming \$50.00 a day for the inconvenience of living in transition for 10 days and having to stay with family during that time period at a total cost of \$500.00. I find the landlords mitigated the cost for accommodations by staying with relatives and the claim is reasonable; the tenant will reimburse the landlords \$500.00 for this inconvenience.

Decision

69. The landlords' claim for inconvenience succeeds in the amount of \$750.00.

Issue 5: Other / garbage removal and cleaning \$1,950.00

Relevant Submissions

70. The landlords submitted the pictures of garbage spilling out of the dumpster (LL#15), as well as, pictures of debris around the property there was also recycling and garbage in the shed. Landlord1 said the tenant wouldn't tell him who the dumpster belonged to, so he had to find the company who owned the dumpster. Once landlord1 did find the company, the company tried unsuccessfully to contact the tenant. The landlord asked the company if they would come take the dumpster and he would pay the bill.
71. The disposal company did collect the dumpster and charged the landlords \$350.00, receipt provided (LL#17).
72. Landlord1 said that the house was left in really poor condition and the landlords hired a company to come in and clean the house. The company provided a receipt (LL#17) and an email (LL#16) from the owner of the cleaning company; stating that this was one of the "worst cleanings" they had ever done. The email also said that a house this size would "normally take our team, one full day, with two ladies, this job however, took three full days." The receipt from the cleaning company is for \$1,500.00.
73. Landlord1 said he only had the cleaning company clean the main areas of the house and that he did the basement and shed himself to conserve on cost.
74. Landlord1 said that there was open pet food left out in the house and the doors were damaged by the tenant leaving gaps. He said that the gaps in the doors and the pet food left open made the place attractive to rodents. He had to put down a number of rodent traps and he ended up catching about 2 dozen mice. They are asking for \$100.00 for the cost of the traps; no receipt provided.

Analysis

75. I accept the landlords' documentation and the testimony of landlord1, that there was a great deal of garbage and cleaning to be done in the house. The landlords submitted receipts for the cost of the garbage removal \$350.00 and the cost of the cleaning service \$1,500.00. This board is unable to determine the cost of the pest removal as no receipts were provided. 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.

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76. It is the responsibility of the tenant to maintain the house in a clean state and repair damages. The cost of garbage removal and cleaning is the responsibility of the tenant and he shall reimburse the landlords \$1,850.00 for this expense.

Decision

77. The landlords' claim for garbage removal and cleaning succeeds in the amount of \$1,850.00.

Issue 6: Possessions returned \$850.00

Relevant Submissions

78. Landlord1 said there was a bar table left in the garage and they have included the picture of the garage showing the table (LL#18), they have owned the table for about 20 years and it was valued at \$300.00 at that time. They have not replaced the item and they do not have a receipt.
79. Landlord1 also said that the dryer in the picture is also missing, it is about 5 years old and they estimate it at \$400.00. They have not replaced the item and they do not have a receipt.
80. There is also a ramp in the picture (LL#18) which is 15 years old. Landlord1 said that he had reinforced the ramp and he estimates it to be valued at \$150.00. They have not replaced the item and they do not have a receipt.

Analysis

81. I accept the testimony of landlord1 that these items are missing, however, they have not replaced these items, provided receipts or estimates, therefore the value for reimbursement cannot be assessed.

Decision

82. The landlords' claim for possessions returned fails.

Issue 7: Security deposit applied against loss \$787.50

Relevant Submissions

83. As per paragraph 11, the landlords have declared that, the tenant paid a security deposit of \$190.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenant for rent and damages to the house.

Analysis

84. The landlords' claims for loss have been successful, 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

85. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$190.00.

Issue 8: Hearing expenses reimbursed \$20.00

86. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#19) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.


Summary of Decision

87. The tenant shall pay the landlord \$6,888.69 as follows:
- Rent\$1,687.50
 - Utilities1,412.28
 - Damages1,358.91
 - Inconvenience750.00
 - Garbage removal and cleaning1,850.00
 - Security deposit applied (190.00)
 - Hearing expenses reimbursed20.00
 - Total\$6,888.69

The landlord shall retain the security deposit of \$190.00.

April 7, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office