

## Residential Tenancies Tribunal

Application 2022-No.13-NL

Decision 22-0013-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 11:23 a.m. on 19-April-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference

### Preliminary Matters

4. The landlord submitted an affidavit of service (LL#01) stating that he served the tenant with notification of the hearing electronically on 25-January-2022; the tenant confirmed service.
5. The landlord submitted a rental agreement (LL#02) that he had with the tenant. It is a written term agreement from 12-December-2020 until 31-December-2021. The tenant pays \$1,550.00 per month for rent; utilities are not included. The rental period is from the 1<sup>st</sup> day of the month until the last; rent is due in full on the first day of the month. The tenant paid a security deposit on 12-December-2020 of \$1,162.50; he is still in possession of the full deposit. The tenant moved out on 04-November-2021.
6. The tenant agrees with the terms of the rental agreement as stated by the landlord; she said that she received the keys on the 11-December-2020 and had possession as of that date.

### Issues before the Tribunal

7. The landlord is seeking:
  - Compensation for damages \$4,556.99
  - Rent \$206.68

- Loss of rent \$516.70
- Security deposit applied to monies owed \$1,162.50

## 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 and Section 14: Security deposit, as well as, *Residential Tenancies* policy 9: Claims for damage to rental premises.

## Issue 1: Compensation for damages \$4,556.99

### Landlord's Position

10. The landlord provided photos of the house from the real estate agent's listing (LL#05), the landlord purchase the house on 11-December-2020 and the tenant took possession the next day. He didn't provide a condition report.
11. The landlord submitted a ledger showing the compensation he is claiming, as follows:

Description	cost
Removal of abandoned property and first clean	300.00
Plastering and painting of walls and ceiling	2,400.00
Door replacement, window ledge and second clean	956.99
Dump run	100.00
Fridge door	800.00

12. The landlord submitted the conversations he had with the tenant to arrange a time for a walk though after she moved out (LL#04). They did not do this together; he did provide pictures of the house when he regained possession. The landlord said he had two cleaners come and clean the initial garbage left behind; one for inside and the other for outside. He provided pictures of belongings left throughout and a receipt for inside cleaning for \$100.00 and outside cleaning for \$200.00 (LL#06).
13. The landlord said that he had to pay someone to plaster and paint the walls and ceiling. He said that he believes that the house was painted just before it was sold to him a year ago. The landlord provided photos to show the damages: dent in stairway, dents and scratches on walls, a dent from a door knob damaging the wall, damage to living room wall that appears to be multiple small holes, damage to kitchen wall, and liquid sprayed on the wall in the stairway and on a bedroom ceiling. He said that the contractor said the entire house would require painting. He provided the receipts (LL#06) for painting \$1,800.00 and \$600.00 for plastering.

14. The landlord provided a receipt (LL#06) for repairs as follows:

Description	cost
3 interior bedroom doors \$89.96	269.88
1 bathroom door	79.99
1 closet door	74.99
1 piece of pine for window ledge	10.00
1 piece of board for back deck	22.00
1 light fixture	29.99
1 towel rack	19.99
1 chain kit for toilet	7.99
1 bracket kit for interior door	12.99
Taxes	79.17
Labour for handyman	250.00
Labour for cleaner	100.00

15. The landlord provided pictures showing damages to two of the bedroom doors, the master bedroom and another bedroom door that are damaged. There is also a picture of the washroom door with damages. He said that the doors appear to be kicked or punched.
16. The landlord provided a picture of the window ledge that he believes was chewed on by the tenant's dog. (LL#05).
17. The landlord said that the back deck was burnt, he provided pictures (LL#05). He said the deck is approximately 13 years old.
18. The landlord said a light fixture was missing, he did not provide pictures.
19. The landlord said that the towel rack in the ensuite off the master bedroom was bent and had to be replaced. He did not provide pictures.
20. The landlord said that the toilet was not working and the chain kit was replaced.
21. The landlord also billed for the labour for the handyman and the cleaner for the second clean required.
22. The landlord said that the door on the fridge is broken, he said that it will cost \$800.00 to replace. He did not provide pictures or a receipt.

#### Tenant's Position

23. The tenant disputes that the pictures are accurate, she believes the house was older and more worn than the pictures show.
24. The tenant said that she had offered to come back and clean up after she moved out.

25. The tenant said that her mother is a contractor and she believed that the damages to the walls should only cost between \$700.00 and \$800.00. She said that the picture of pinholes in the living room wall is probably pop sprayed over the wall and that the hole in the wall from the door knob is because there is no door stop.
26. The tenant said that the garbage that was left behind was left by the other tenants in another apartment in the house and that she kept the yard clean.
27. The tenant said that they didn't burn the back deck and the issue was the wood had rotted and her father almost fell through.
28. The tenant said that there wasn't any light fixtures missing.
29. The tenant said that they always used the washroom off their bedroom and there was no damage to the towel rack and the toilet was working.
30. The tenant said that the fridge door was broken and she had to tape it shut. She said she told the property manager about this and it was never repaired.

## Analysis

31. 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.*

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.

32. The landlord's pictures clearly display a house that was left in an unclean, damaged and untidy state. I accept the pictures and receipts that the landlord had the house cleaned on two separate occasions totaling \$300.00 and the yard was cleared at a cost of

\$100.00. It is also apparent that there was a lot of garbage left behind and I accept that it would cost \$100.00 for someone to deliver this to the dump. As per section 10 of the *Residential Tenancies Act, 2018*, the tenant is responsible to keep the premises clean and repair damages. The tenant indicated that she offered to return and clean the house, however, from the landlord's submitted text messages (LL#04) as shown in paragraph 12, the tenant would not agree to a time for a walk through and there was no discussion about her returning to clean. I find the tenant owes \$500.00 for this work to be done.

33. The landlord stated that the house was painted just before it was sold to him, which would mean it was painted 1 year prior. It is reasonable to believe that the house would have been painted prior to it being listed for sale, although the tenant states the house was more run down than the pictures indicate, the pictures show a well maintained beautiful home at the time of purchase; the day before she took possession. The landlord has meet the burden of proof to show that after the tenant moved the walls had been damaged and the cost of the repair. Our policy states that paint should last 5 years and the National Association of Home Builders estimate that walls should last the lifetime of the home. As the house was painted 1 year prior and should not require paint for 4 more years the landlord will be reimburse 4/5's of his cost for paint or 80%:  $80\% \times \$1,800.00 = \$1,440.00$ . The landlord will be reimbursed the full amount of \$600.00 for plastering the holes and damages to the walls. The tenant shall pay \$2,400.00 for this work.
34. The landlord claimed for 3 bedroom doors, however he only provided pictures of two damaged bedroom doors, the doors were clearly kicked or punched. He is also claiming a bathroom door and has provided a picture showing a hole punched in it. He claimed a closet door which was off its hinges and he is claiming the bracket kit. The closet door didn't look damaged in the pictures, but just needed to be rehung. I find that the landlord will be reimbursed for 2 bedroom doors @ \$89.96 = \$179.92, 1 bathroom door \$79.99 and the bracket kit for the closet door \$12.99. For a total of \$272.90 for repairs of the doors. I am not awarding for the 3<sup>rd</sup> bedroom door or the closet door as the landlord has not shown this damage.
35. I accept the picture of the window ledge being damaged by the dog and the replacement of the ledge at \$10.00.
36. I am not awarding for the towel rack, chain kit for the toilet or light fixture as the landlord did not shown this damage and has not proved his claim.
37. I will not award for the cost of the repairs of the fridge, the landlord did not provide receipts and the tenant said that the fridge was like that while she lived at the house.
38. I will not award for the repair to the back deck, I accept that the tenant said there was wood rot and that the deck was not burned.
39. I will also award \$200.00 for the cost of the handyman; the landlord had claimed \$250.00 and as most of the supplies are awarded, the cost to have the repairs completed will be awarded at 80%.

40. I find the tenant is responsible to pay the landlord \$3,382.90 for damages as follows:

- Garbage ..... \$500.00
- Paint and plaster ..... 2,400.00
- Doors replaced ..... 272.90
- Window ledge ..... 10.00
- Handyman ..... 200.00
- Total ..... \$3,382.90

### Decision

41. The landlord's claim for damages succeeds in the amount of \$3,382.90.

### Issue 2: Rent \$206.68

#### Landlord's Position

42. The landlord said that he served the tenant with notice on 30-August-2021 that he would not be renewing her lease. He said that he told her at that time that if the tenant found a place earlier they could discuss an earlier lease termination; he provided the email thread of the conversations (LL#04).
43. 08-October-2021 the landlord said he received an email from NL Power (LL#04) saying that the tenant was closing the electricity account effective 31-October-2021. He said he then asked her was she planning on leaving.
44. The landlord provided the text thread (LL#04) showing she said that she would be out by the 1<sup>st</sup> and then she later has a death in the family and is unable to move until 04-November-2021.

#### Tenant's Position

45. The tenant said that it was her intent to be out of the rental on the first, however, due to a death in the family she was out of town and couldn't move until the 4<sup>th</sup> of November.
46. The tenant said that the landlord told her she could stay until the end of the month.

### Analysis

47. I accept that the tenant stayed into November because she had a death in the family, however, she did not inform the landlord of any of her intentions and her actions show disregard for the landlord's rights under their rental agreement.

48. I find that the tenant does owe the landlord for the rent during the time she had possession of the house.
49. The tenant shall pay the landlord a daily rate of rent from November 01 -04, 2022, as follows:  $\$1,550.00 \times 12 \text{ months} = \$18,600.00$  per year divided by 365 days =  $\$50.96$  a day  $\times 4 \text{ days} = \$203.84$ .

### **Decision**

50. The landlord's claim for rent succeeds in the amount of \$203.84

### **Issue 3: Loss of Rent \$516.70**

#### Landlord's Position

51. The landlord has shown (paragraph 41) that the house was in a state of disrepair when he regained possession after the tenant moved 04-November-2021. He said it took in excess of 10 days to complete repairs and have the house ready for the new renters.
52. The landlord had told the tenant in a text message (LL#04) that the new renters were just waiting on her move, for them to move in on the 6th. The landlord said there was more damage and cleaning than he expected, so the new renters agreed to move in once the work was completed. On the 15-November-2021 the new renters placed their belongings in the house and started paying rent. There were still repairs ongoing, however, the landlord said he was not suffering a loss of rent after the 15<sup>th</sup> because the new tenants had begun their agreement.
53. The landlord is seeking loss of rent for the 10 days that his new tenants were unable to take occupancy due to the repairs that were being done.

### **Analysis**

54. I accept the landlord's testimony that his new tenants could not take occupancy until the repairs were completed and he lost rental income during that time.
55. The tenant shall pay the landlord a daily rate of rent from November 06 -14, 2022, as follows:  $\$1,550.00 \times 12 \text{ months} = \$18,600.00$  per year divided by 365 days =  $\$50.96$  a day  $\times 9 \text{ days} = \$458.64$ .

### **Decision**

56. The landlord's claim for loss of rent succeeds in the amount of \$458.64.

#### Issue 4: Security deposit applied to monies owed \$1,162.50

##### Landlord's Position

57. As per paragraph 5, the landlord has declared that, the tenant paid a security deposit of \$1,162.50; 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 apartment.

##### **Analysis**

58. The landlord's claim for losses has been successful, paragraphs 20 & 50, and he 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**

59. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,162.50.

##### **Summary of Decision**

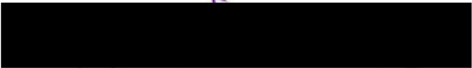
60. The tenant shall pay the landlord \$2,882.88 as follows:

- Damages ..... 3,382.90
- Rent ..... \$203.84
- Loss of rent ..... 458.64
- Less security deposit ..... (1,162.50)
  - Total ..... \$2,882.88

The landlord shall retain the security deposit of \$1,162.50.

April 29, 2022

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office