

Residential Tenancies Tribunal

Application 2022-No.076-NL
2022-No.224-NL

Decision 22-0076-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 17-May-2022
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
4. [REDACTED], of [REDACTED], was also in attendance.

Preliminary Matters

5. The tenant submitted an affidavit (TT#01) stating that he served the landlord in person of notification of today’s hearing on 15-March-2022. The landlord also submitted an affidavit (LL#01) stating that they served the respondent of notification of the hearing by prepaid registered mail on 26-April-2022. The tracking number indicates that the package was not delivered, however it is our policy to consider prepaid register mail delivered after 5 days. Both service of notices meet the standard and are considered good service.

Issues before the Tribunal

6. The tenant is seeking refund of the security deposit \$400.00.
7. The landlord is seeking damages \$678.00 as well as hearing expenses reimbursed \$20.00.

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 is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, as well as, Residential Tenancies Policy 12.

Issue 1: Security deposit refunded \$400.00

Issue 2: Compensation for damages \$678.00

Tenant's Position

10. The tenant submitted the rental agreement (TT#02). The tenant said he was living out of province and found an ad to take over an individual's lease. He made arrangements and signed the lease on 27-August-2020 and took occupancy on 04-October-2020. The tenant included a "Leaseholder Addendum Agreement" (TT#02) stating the same. The tenant said he pays \$810.00 per month. The agreement was for a term from 01-January-2020 – 31-December-2020. The tenant then signed another year lease for the same terms, the lease would end 31-December-2021. The tenant moved out on 31-December-2021. The original lease holder paid a \$400.00 security deposit to the landlords and this deposit is now credited to the current tenant.
11. The tenant said that when he received the envelope with the keys to his apartment there was only one copy of the apartment key, the front door key and the mailbox key. He said that there were issues with the mailbox key and he reached out to the landlord. The landlord then provided him with a different key.
12. The tenant also provided a letter sent to him by the landlord (TT#03 & TT#04) on 22-December-2020. In the letter the landlord is telling him how to rectify an issue he is having with mold in the apartment. The tenant said that there was mold everywhere in the apartment. He said that he could hear water running in the walls and found a puddle of water under his mattress. One of the things recommended by the landlord was for him to purchase a dehumidifier. He said that he did purchase one.
13. The tenant said that when he moved there was no damage to the apartment, he cleaned the entire apartment and left the keys on top of a counter in the kitchen. He said that the only issue was the mold which was ongoing and he had reported shortly after moving in.
14. The tenant is seeking the refund of his security deposit \$400.00.

Landlord's Position

15. The landlord agrees with the terms of the rental agreement as stated, with the exception of they considered the apartment in the possession of the tenant when he signed the Addendum Agreement on 27-August-2020.
16. The landlord received notification of this claim on 15-March-2022 and subsequently filed a counter claim on 23-March-2022.

17. The landlord said that they had to clean the apartment after the tenant left and they are also applying for reimbursement for the cost of the keys.
18. The landlord submitted the rental agreement (LL#02) and directed the tribunal to "Schedule B" which lists deductions against security deposits. Numbers 13, 14, and 15 show a \$50.00 charge for the apartment key, mailbox key and main entrance key. The landlord said that they only received one apartment and one main entrance key. She said that each tenant is provided two keys at the start of their tenancy. She said that she was applying for the mailbox key, but in light of the issues with the key as stated by the tenant in paragraph 11, she will amend her claim to remove the cost of the mailbox key. The landlord is seeking \$100.00 for the two missing keys.
19. The landlord said that they had to clean the baseboards, walls, oven, cabinets, heaters, blinds and light fixtures. She said that the apartment was very dirty and it took 6 hours to clean. She said she has pictures showing the dirt; she did not submit those pictures to the tribunal. She said that they had a cleaning company that cleans the apartments and charges \$65.00 an hour. She said that they hired another company that only charges \$40.00 an hour. She is changing her claim from \$390.00 for cleaning to \$240.00 to reflect the cost incurred by them from the new company. No receipt submitted into evidence.
20. The last charge the landlord is claim is a 20% administrative charge. This charge is included in the rental agreement on the schedule B (LL#02). Schedule B states "... other expenses incurred by the landlord... cost plus 20%." Based on the current amounts claimed \$100.00 for keys + 240.00 for cleaning totaling \$340.00; the landlord is seeking 20% of the total claim of \$340.00 = \$68.00.
21. The landlord is requesting that the damages be first applied to the security deposit and the remaining be then paid by the tenant.

Analysis

22. 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)

23. The landlord has not provided adequate evidence to support their claim: they have not provided pictures to show the damages, receipts to show the cost of repair or shown that the tenant is responsible.

24. I accept the tenant's statement stated he cleaned the apartment and had an ongoing mold issue that he had addressed with the landlord, he proved this ongoing issue with the letter provided into evidence (TT#03 &04). He also said that when he took over the lease agreement the former tenant only provided him with one set of keys that he left, as instructed by the landlord, in the kitchen.

25. The burden of proof is on the landlord and they did not meet that burden. The security deposit is the property of the tenant and it is held in trust by the landlord. *Section 14 of the Residential Tenancies Act, 2018*, states:

Security deposit

14.

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

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26. As the landlord's claim for damages did not succeed, they shall return the security deposit in full to the tenant.

Decision

27. The tenant's claim for security deposit reimbursed, succeeds in the amount of \$400.00.

Issue 2: Hearing expenses reimbursed \$20.00

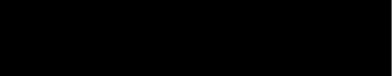
28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the tenant, as their claim did not succeed.

Summary of Decision

29. The landlord shall return the full security deposit of \$400.00 to the tenant.

May 19, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office