

Residential Tenancies Tribunal

Application 2022-No.119-NL
2022-No.174-NL

Decision 22-0119-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:04 p.m. on 07-June-2022.
2. The applicants, [REDACTED] and [REDACTED], represented by [REDACTED] [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED] represented by [REDACTED] [REDACTED], hereinafter referred to as "the landlord" attended by teleconference. The landlord provided an authorized representative form (LL#01) naming [REDACTED] as their representative.

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that he served the landlord of notification of the hearing electronically on 22-February-2022. The landlord provided proof of service (LL#02) stating she served the tenants of notification of today's hearing on 04-March-2022. Both parties confirmed receipt of notification as stated.
5. The landlord and tenant both submitted the rental agreement (LL#03 & TT#02) between the parties. They agree that the tenant moved in sometime in November 2019 and the agreement begins 01-December-2019 for a term until 30-November-2020. At the conclusion of the first year the tenants were in a monthly agreement. When the tenants moved in they paid \$1,295.00 a month rent. The rental period was from the first day of the month until the last, rent is due in full on the first day of each month. The tenant paid a security deposit of \$971.25 on 20-October-2019; the landlord is still in possession of the deposit. The tenant said that in December of 2021 the rent increased to \$1,400.00.

Issues before the Tribunal

6. The tenant is seeking
 - Security deposit refunded \$971.25.
 - Hearing expenses \$20.00

7. The landlord is seeking
 - Compensation for damages \$1,936.45
 - Security deposit applied \$971.25

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.

Issue 1: Tenant seeking security deposit refunded \$971.25

Issue 2: Landlord is seeking compensation for damages \$1,936.45

Issue 3: Landlord is seeking security deposit applied to monies owed \$971.25

Tenant's Position

10. The tenant said that he purchased a home and gave the landlord notice for 31-January-2022. He said that they moved out of the house on 05-January-2021. He said he cleaned the house for 5 days and then turned the keys over to the landlord on 10-January-2022. He said that they had paid rent for the full month of January.
11. The tenant doesn't believe that the house was dirty or damaged.
12. The tenant acknowledges that they did adhere stickers to some of the walls, he questions the cost being charged by the landlord to remove the stickers.
13. The tenant said that if the landlord was not happy with the condition of the house, then they should have told him and he would have come back to do what they wanted done. He said he had paid rent until the end of the month and that he had time to do what they wanted.
14. The tenant is seeking reimbursement of his security deposit \$971.25.

Landlord's Position

15. The landlord said that the property is managed by a property management company. She said that they completed the reports and billed for the cost of repair and cleaning.
16. The landlord provided a copy of the incoming condition report (LL#04), she indicates that everything in the home is documented as in good condition. She also points out that this is signed by the tenant.

17. The landlord then submitted the outgoing condition report (LL#05) completed on 19-January-2022. In the opening overview, she shows that it states "Place needs to be cleaned and repairs are required."
18. The outgoing inspection (LL#05) is a 52 page document that contains pictures of the damages and cleaning required. The main issues are: cleaning, painting, and decals removed. Pictures are as follows:

Cleaning

Area	Page	Picture #
Living room window	15	1/7
		2/7
		5/7
Living room baseboards	16	1/7
		4/7
		5/7
Dining room baseboards	18	1/3
		2/3
		3/3
Kitchen window	20	2/4
Kitchen cabinets	20	1/16
		2/16
		10/16
		13/16
		14/16
		16/16
Stove and oven	24	2/4
		3/5
		4/5
		5/5
Kitchen cabinets	25	8/14
		9/14
		12/14
Master bedroom window	30	2/10
Bathroom	31	4/9
		5/9
		7/9
		8/9
		9/9
Master bathroom	33	3/7
		4/7
		7/7
		1/4
Bedroom 2	35	5/16
		6/16
		7/16
		8/16
		9/16

Bedroom 2 window	36	1/7
		3/7
		6/7
		7/7
Bedroom 2 walls and baseboard	37	1/10
		4/10
		6/10
Bedroom 3 walls and baseboard	39	1/15
		2/15
		5/15
		8/15
		9/15
		10/15
		12/15
		13/15
Main bathroom shower	44	1/3
		3/3
Main bathroom cabinet	45	6/6
Rec Room window	51	10/16
		11/16

19. One of the frustrations of the landlord is that the tenants had adhered stickers to the walls for decoration. She said that the report they received back from the property management company, was that it took hours to remove the stickers from the walls. The stickers, when removed, often took the gyproc paper off the wall and then these areas had to be plastered and painted.

Pictures of the stickers are as follows:

Decals

Area	Page	Picture #
Kitchen	19	1/8
Bathroom	31	4/9
Master bathroom	32	Towel rack
Main bathroom	42	1/16
	43	Towel rack
	48	1/7
		4/7
		6/7

20. Many areas in the house had small chips in the walls and required painting. The landlord reports that it took 23 hours to paint and repair the walls. The pictures of these areas are as follows:

Painting

Area	Page	Picture #
Living room walls	14	9/16
		10/16
		11/16

		12/16
		13/16
Living room wall	17	5/5
		1/6
		5/6
Hallway	26	1/10
		2/10
		3/10
		4/10
		5/10
		6/10
		7/10
Master bedroom	27	1/13
		2/13
		3/13
		4/13
		6/13
		7/13
		8/13
	29	1/7
		2/7
		3/7
		4/5
		1/10
Master bedroom closet door	30	9/10
Bedroom 2	36	13/16
		14/16
		16/16
Bedroom 2 closet door	38	4/4

21. The landlord also pointed out that the dining room floor had scratches and the patio door had some damage. Pictures are as follows:

Damage

Area	Page	Picture #
Dining room floor	18	6/6
Patio door	19	2/6
		5/6

22. The landlord said that the house was painted in September 2019 and that the tenants were the first people to move in after it was painted throughout. The tenants moved in in November of 2019.

23. The landlord disputes the argument of the tenant, that the property management company should have contacted him if there were issues with the property. She said it is his responsibility to return the property in the same condition as it was when he first rented it.

24. The landlord submitted the invoice for the cost of repairs from the property management company (LL#06). They were invoiced as follows:

• Repairs to walls and painting	1,265.00
• Materials	178.87
• Cleaning and maintenance	240.00
• Taxes	<u>252.58</u>
○ Total	<u>1,936.45</u>

25. The landlord is seeking full reimbursement for the repairs \$1,936.45 and to apply the full security deposit to the money owed \$971.25.

Analysis

26. 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.

27. The landlord has met the requirements to show the tenant is responsible for the damages, she has provided reports from both before and after the tenancy, as well as pictures. She has also provided the invoice for the cost to have the repairs completed.

28. Nonetheless, the value of the cost of repairs must consider depreciation. The invoice provided (LL#06) shows that the cost to paint and repair the walls is \$1,265.00 and the materials cost \$178.87 for a total of \$1,443.87. The landlord stated in paragraph 22 that the house was painted in September 2019 before the tenants moved in. The tenant's lived there until January 2022 which is 2.5 years later. Section 9 of the Residential Tenancies Policy states that paint can last up to 5 years. This therefore means that the

painting completed in 2019 had reached half of its expected life. The landlord shall be reimbursed 50% of the cost for the painting: $50\% \times \$1,443.87 = \721.94 .

29. The invoice provided (LL#06) listed the cost of cleaning as \$240.00. As per Section 10 above it is the obligation of the tenant to keep the premises clean and therefore will be responsible for the entire cost of cleaning totaling \$240.00.
30. The invoice includes 15% sales tax, the tenant shall pay the landlord for damages as follows:
 - Repairs to the walls, painting and materials \$721.94
 - Cleaning 240.00
 - Taxes 144.29
 - Total \$1,106.23

31. The landlord has also applied to retain the full security deposit of \$971.25 against monies owed. Section 14 of the *Residential Tenancies Act, 2018*, states:

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*

32. As the landlord's claim for loss has been successful, paragraph 30, she shall retain the security deposit. The tenant's claim for reimbursement therefore fails.

Decision

32. The tenant shall pay the landlord for \$134.98 damages as follows:

- Damages \$1,106.23
- Less security deposit (971.25)
- Total \$134.98

And the landlord shall retain the full security deposit \$971.25

Issue 4: Hearing expenses reimbursed \$20.00

33. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#03) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the landlord as his claim was unsuccessful.

Summary of Decision

34. The tenant shall pay the landlord for \$134.98 damages as follows:

- Damages \$1,106.23
- Less security deposit (971.25)
- Total \$134.98

And the landlord shall retain the full security deposit \$971.25

June 8, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office