

Residential Tenancies Tribunal

Application 2022-No.125-NL

Decision 22-0125-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 28-July-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” 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, as there was no number available. 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 landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, by sending the notice to her father’s address. The landlord was unable to serve the tenant herself and applied for substituted service (LL#02) she was given permission to send the information to the tenant’s father’s address. The tenant’s father’s contact information was often used as the way to have contact during the tenant’s tenancy. The landlord served notification by sending the package by prepaid registered mail on 20-June-2022. She provided this board with the tracking number and it shows that the package was picked up on 29-June-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 landlord is seeking:
 - Compensation \$3,077.22
 - Utilities paid \$15.94

- Hearing expenses \$44.87

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, Section 14: Security deposit, Section 32: Abandoned personal property, as well as, Residential Tenancies policy 9: Claims for compensation.

Issue 1: Compensation for damages \$3,077.22

Relevant Submissions

8. The landlord submitted a copy of the rental agreement (LL#03). The initial agreement is for a term 01-November-2020 until 31-October-2021. This then became a monthly agreement. The tenant pays \$1,400.00 rent, utilities are not included, and she pays the rent on the 1st day of each month. The tenant also paid a security deposit of \$700.00 on 27-October-2020.
9. The tenant gave the landlord notice that she was going to move out in mid-January 2022. She was having some financial difficulties; she and the landlord agreed to use the \$700.00 security deposit to cover rent for the first two weeks of January 2022. The landlord applied the deposit to the rent as agreed and is no longer in possession of the deposit.
10. When the tenant moved out there were a number of damages and the tenant also had belongings left behind. The landlord submitted a list of the damages (LL#04) as follows:

Item #	Description of Damages	Compensation Claimed
1.	Large hole & hitch in upstairs carpet	\$1,400.00
2.	Door stops missing	\$5.73
3.	Cleaning (inside house and garbage outdoors)	\$350.00
4.	Packing & storing belongings	\$250.00
5.	Storm door torn off back door	\$500.00
6.	Deck rail torn off side of deck (approximately 6' long)	\$300.00
7.	Kitchen window screen metal frame damaged beyond repair	\$50.00
8.	Large hole in center of oak Kitchen cupboard	\$96.19
9.	2 Living room curtains taken from house	\$25.30
10.	Repairs to bathroom door frame & 2nd damaged cupboard	\$100.00
	TOTAL:	\$3,077.22

11. The landlord said that there was a large hole in the upstairs carpet as well as a smaller hitch in another room; pictures provided (LL#05 & LL#06). She said that the carpet was purchased in 2006 and is currently 16 years old. The landlord checked into the cost of replacing the carpet and discovered it was much cheaper to put in laminate. The landlord provided the text where she is explaining this to the tenant (LL#07). At that time she told her it would be \$1,400.00. The landlord actually spent \$1,405.94 for laminate and \$1,601.40 to install for a total of \$3,007.34. Receipts provided (LL#37 & LL#38). The landlord is only seeking \$1,400.00 because she is factoring in depreciation.
12. The landlord said that there were doorstops missing. She said she also had to replace them when the last tenant moved as well and that they are 1.5 years old. She is seeking \$5.73, receipt provided (LL#40).
13. The landlord is seeking personal time for cleaning both inside and outside the house. (Pictures LL#09 – LL#29). She said it took her two days and is seeking 14 hours personal time at \$350.00.
14. The landlord said in addition to cleaning she had to pack and store the tenants belongings (LL#09 – LL#29). She contacted the tenant and told her that it would be costly to have movers come take the property. They made arrangements for the tenant's father to come collect her belongings after 2 days. The landlord stored the belongings in the living room. She is seeking 2 days @ \$50.00 a day, totaling \$100.00 for storage. She is seeking 6 hours personal time to pack totaling \$150.00.
15. The landlord said that the storm door had been blown off. She said that the door is 8 years old. She provided a quote from Kent (LL#42) for \$917.55. She is seeking \$500.00 because she is taking depreciation into consideration.
16. The landlord said that the deck railing was torn off. She provided a picture of where it was (LL#28). A neighbor told her that the tenant's boyfriend had torn it off when the police were called to the house. The landlord said that the railing is 16 years old. She is seeking \$50.00 for supplies and 5 hours personal time at \$250.00. She said she was able to salvage a lot of the wood from the old railing.
17. The landlord said that the kitchen window screen was destroyed and she provided a picture (LL#32). She said she had to purchase new. She provided a receipt from Kent (LL#41) for \$39.82.
18. The landlord said that there was a large hole in the center of her kitchen oak cupboards. She provided a picture (LL#33). She said it appears someone punched it. She is seeking \$96.19. She did not provide a receipt.
19. She said that she had curtains in the living room and the tenant had taken them with her belongings. She said that the curtains are 2.5 years old and that she is seeking \$25.30 to replace them.
20. The landlord is also seeking \$100.00 for personal time to repair a door frame (LL#34) that was split and appeared to be from someone kicking in the door. She also had to do repairs to a different kitchen cupboard where it appears someone drove a knife straight through. She said that this work took her 2 hours to complete.

Analysis

21. 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.

22. I accept the landlord's claim that the tenant damaged the carpet as shown in the photographs, however, as stated above, life expectancy must be considered when determining the value to replace items. According to Residential Tenancies Policy 9-005 good grade carpet has a life expectancy of 10 years. The landlord stated in paragraph 11 that the damaged carpet is 16 years old and has therefore exceeded its life expectancy. I find that the landlord's claim for damage to the carpet fails.

23. The landlord had doorstops missing and the replacement cost was \$5.73, I accept that the doorstops went missing during the tenant's tenancy and I find that she shall reimburse the landlord for this cost totaling \$5.73.

24. The landlord provided a number of pictures showing that the house was left with the tenant's belongings, garbage and uncleaned. I accept that the landlord required 14 hours to do this cleaning. This Board's accepted rate of pay for a personal hourly rate is \$21.20. I therefore find that the tenant shall pay the landlord 14 hours x \$21.20 for a total of \$296.80.

25. I accept that the tenant could not make arrangements to retrieve her belongings for two days and that the landlord moved the belongings into the living room. The landlord had claimed \$50.00 a day for the storage, as the belongings remained in the house. I will award a daily rate of rent for 2 days as follows: \$1,400.00 x 12 months = \$16,800.00 divided by 365 days = \$46.03 a day x 2 days = \$92.06. In addition to the 2 days storage I accept that the landlord required 6 hours personal time to pack the belongings: 6 x

$\$21.20 = \127.20 . I find the tenant shall pay to the landlord $\$92.06 + 127.20 = \219.26 for the packing and storage of her belongings.

26. The landlord is seeking compensation for the replacement of the storm door. I accept the landlord's testimony that the door was damaged while the tenant lived at the house. Residential Tenancies Policy 9-005 states that a storm door should last 15 years; the landlord said that the door is 8 years old. I find that the tenant will pay for the remaining life expectancy of 7 years: $7/15 \times \$917.55 = \428.19 .
27. The landlord's compensation for the deck fails as the deck is 16 years old and Residential Tenancies Policy 9-005 estimates that at deck will last 15 years and it has exceeded its life expectancy.
28. The landlord's submitted evidence of the broken window screen is indisputable. The screen and frame are damaged beyond repair and I find that the tenant shall pay to the landlord the cost of replacement totaling $\$39.82$.
29. The landlord did not provide a receipt for her costs to replace the kitchen cupboard door nor for the cost to replace the missing curtains, without providing evidence to support the claims for these costs, I am unable to assess the value in an accurate manner.
30. I accept that the landlord required 2 hours to complete repairs to the door frame and the cupboard door with the slit that goes through the center. I find that the tenant will pay to the landlord the cost of her personal time 2 hours $\times \$21.20 = \42.40 .
31. The tenant shall reimburse the landlord $\$1,032.20$ in compensation for damages as follows:
 - Doorstops $\$5.73$
 - Personal time cleaning 296.80
 - Packing and storing belongings 219.26
 - Storm door 428.19
 - Screen window replacement 39.82
 - Personal time repairs 42.40
 - Total $\$1,032.20$

Decision

32. The landlord's claim for compensation for damages succeeds in the amount of $\$1,032.20$.

Issue 2: Utilities paid $\$15.94$

Relevant Submissions

33. The landlord said that the tenant took her name off the utilities on 13-January-2022, however she had possession of the house until 15-January-2022. The landlord provided

the NL Power bill (LL#39) which is from 13-January until 24-January: 11 days costing \$88.84. She is seeking reimbursement of \$15.94 for the tenant's last two days.

Analysis

34. Utilities are not included with the cost of the tenant's rent, as stated in paragraph 8. The tenant should not have removed her name from the NL Power bill until her tenancy ended.
35. I accept the submitted billing and find that the breakdown is as follows: 88.84 divided by 11 days = \$8.08 a day x 2 days = \$16.16. The landlord is seeking \$15.94 and this shall be the maximum amount awarded. The tenant shall pay to the landlord \$15.94.

Decision

36. The landlord's claim succeeds in the amount of \$15.94.

Issue 3: Hearing expenses reimbursed \$44.87

37. The landlord submitted the receipt for \$20.00 for the application fee, \$13.44 for the cost of registered mail and \$11.43 for the cost of a flash drive to store evidence. She is seeking reimbursement of \$44.87 for the cost of the hearing (LL#36) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

38. The tenant shall pay to the landlord \$1,093.01, as follows:

• Damages	\$1,032.20
• Utilities	15.94
• Hearing expenses	44.87
• Total	<u>\$1,093.01</u>

August 3, 2022

Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office