

## Residential Tenancies Tribunal

Applications: 2022 No. 0207 NL  
2022 No. 0254 NL

Decision 22-0207-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:32AM on 10 May 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
4. An affidavit of service was provided by the tenant confirming that the landlord was served of the original claim (T#1) and an affidavit was provided by the landlord confirming that the tenant was served of the counterclaim (L#1).
5. The details of the claim were presented as a tenancy that terminated on the mutually agreeable date of 1 March 2022 and a dispute regarding the \$400.00 security deposit that was collected from the tenant.
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

### Issues before the Tribunal

7. The landlord is seeking an order for compensation paid for damages in the amount of \$241.50.

8. The tenant is seeking an order for a refund of the security deposit in the amount of \$400.00.

## **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is section 10 and 14 of the *Act*.

## **Preliminary Matters**

11. The landlord took over management of the rental premises sometime between December 2021 and January 2022. The security deposit in question was paid to the previous landowner/landlord and transferred to the current landowner when the rental premises were sold. The security deposit is not maintained by the landlord. However, the landlord is able to return security deposits to tenants.

### **Issue 1: Refund Security Deposit (\$400.00) Compensation for Damages (\$241.50)**

#### **Tenant's Position**

12. The tenant first took occupancy of the rental premises on 1 September 2019, under a 12 month fixed term agreement, when it was owned by the former landlord. The tenant and current landlord then mutually agreed to terminate the continued month-to-month rental agreement on 1 March 2022, and the tenant moved out on that date.
13. The tenant provided a copy of her rental agreement with the former landlord acknowledging that a \$400.00 security deposit was collected (T#2). The tenant also provided a witness affidavit from the former landlord that declares in part, "the condition [of] the apartment when left by [the tenant] was seen by photos shown to me is in a higher state of cleanliness than (sic) when she moved in" (T#3).
14. The tenant provided a series of pictures taken throughout the rental premises depicting an empty unit, with all personal possession removed and all surfaces reasonably cleaned (T#4). These pictures were taken 27 February 2022.
15. The tenant provided a copy of an email from the landlord dated 11 March 2022 (T#5). In this email, the landlord apologizes for the delay, refers to a condition inspection report completed on 8 March 2022, states that professional cleaning is

required, and indicates that “the invoice for this service will have to be deducted from your deposit to cover the cost”.

16. The tenant stated that she received no response to multiple additional emails that she sent to the landlord. She also asked, why she was not given an opportunity to provide additional cleaning services and stated that she would have provided additional cleaning services if requested. The tenant also testified that she was notified of the inspection and or invited to participate.
17. When asked if the tenant had any other evidence she wanted to provide, the tenant stated that she should have been returned the entirety of her security deposit because the *Act* has a 10 day timeline for return for of security deposits.

### **Landlord's Position**

18. The landlord testified that the outgoing condition inspection report conducted on 8 March 2022 by a representative of her company, was the first time that her firm accessed and inspected the rental unit since they became responsible for managing the rental premises. A copy of this report was provided (L#2).
19. The landlord discussed the specifics of the outgoing condition inspection report and highlighted how each area of the rental premises were reviewed in detail and how multiple close up pictures provided of each specific area of the rental unit. There was no incoming inspection report to review because the unit was already occupied by the tenant when the landlord took over responsibility for the rental premises.
20. As per this outgoing inspection report, the underside of the fridge and stove were identified as needing cleaning, a hallway closet door did not latch, blinds were broken in the kitchen, and a bedroom closet door was identified as not closing properly. The landlord was not seeking compensation to repair any of these broken or faulty items.
21. The landlord stated that the outgoing condition inspection report reviewed by all parties in the course of the hearing, was accidentally not provided to the tenant in the abovementioned email dated 11 March 2022. When asked if the tenant participated in the outgoing condition inspection, the landlord stated that the tenant did not participate.
22. When asked why the inspection occurred 8 March 2022 when the tenant vacated the rental premises on 1 March 2022, the landlord testified that beginning of March 2022 was an exceptionally busy time with lots of move-ins and move-outs.
23. The landlord confirmed that the unit was vacant and would not have been accessed or entered between the tenant move out date and the day the inspection was conducted.

24. The landlord provided a professional invoice from a cleaning company dated 17 March 2022 in the amount of \$241.50 for 6 hours of cleaning at the rental premises (L#3). When asked why cleaning did not occur until that day, the landlord testified that the company who provided the invoice is their regular cleaner and that they too, were exceptionally busy.
25. Specific to this tenant who is requesting the return of her full security deposit, the landlord stated that the move out condition inspection report conducted on 8 March 2022 was the “first real look” that the landlord’s company had of the rental premises.
26. When asked why the difference in the remainder of the security deposit was not returned to the tenant following their receipt of the cleaning invoice (\$400.00 - \$241.50 = \$158.50) the landlord testified that her company does not typically return partial security deposits when tenants dispute the landlord’s claim against the deposit.
27. The landlord further stated that she did not respond to the additional emails from the tenant because she received notice of the tenant’s application to this tribunal dated 14 March 2022.

## Analysis

28. The tenant argued that she should have been returned the entirety of her security deposit because the *Act* has a 10 day timeline for return for of security deposits. However, if we look at the specific subsection of the *Act* in its entirety (ss. 14(9)) we see (emphasis added):

*(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.*
29. Because the landlord could reasonably anticipate based on their interpretation of the Condition Inspection report, that they would have a claim against the security deposit collected, they were no longer bound by the 10 day requirement of subsection 14(9) of the *Act*.
30. Specific however, to the landlord’s particular claim as presented to the tribunal, it was a claim for compensation for damages, and not a claim for security deposit applied against payment owed. Consequently, the applicant was 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).

31. This emphasis on “willful or negligent” stems from the Statutory Condition regarding “obligation of the tenant as found within clause 10(1)(2) of the Act.

*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.*

32. Pictures provided by both the landlord and the tenant were reviewed during the hearing. The tenant acknowledged that the pictures provided by the landlord showed zoomed in specifics, while pictures provided by the tenant showed room level detail only. Zoomed in pictures allow for a closer look at what appears to be an older but generally maintained rental unit.

33. The landlord provided a detailed overview of the outgoing condition inspection report that was created after the tenant vacated the unit. I noted that the text of the condition inspection report, identifying specific issues requiring remediation, was less detailed than the landlord’s testimony regarding the report. For example, the underside of the fridge and stove were the only items identified in written text, as needing cleaning.

34. Also relevant to this dispute, is the fact that the landlord only recently took responsibility for management of this unit. As such, the outgoing condition inspection report represented their first real look at the rental unit. Consequently, they had no baseline from an incoming inspection report to determine whether or how this specific tenant was the source of any damage or negligence (including failure to clean) in the rental premises.

35. The tenant did however submit a witness affidavit from her former landlord declaring the rental premises to be an in a “higher state of cleanliness” on her departure than when the tenant first took occupancy. The tenant lived in accordance with this former landlord for more than a year and then vacated her unit within a few months of the new landlord taking responsibility for the unit. Because the tenant provided testimony that she left her unit cleaner than when she moved into it, she expected to receive back her entire security deposit.

36. Compensation for damages as sought by the landlord, must meet the test for damages as set out in paragraph 33. Because there is no evidence submitted by the landlord to establish the condition of the unit prior to the tenant taking occupancy and the outgoing condition inspection report conducted on 8 March 2022 was the first time that the landlord assessed the tenant’s rental unit, the landlord has no evidence to establish that the tenant was responsible for any of the items identified in the move out condition inspection report. As such, the landlord’s claim for compensation for damages fails.

**Decision**

1. The tenant's claim for return of the security deposit succeeds in the full amount of \$400.00.

**Summary of Decision**

2. The tenant is entitled to payment in amount of \$400.00 for return of the security deposit.

17 May 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal