

Residential Tenancies Tribunal

Application 2022-No.242-NL
2022-No.318-NL

Decision 22-0242-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 04-July-2022
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating he had served the landlord with notification of the hearing by email on 11-April-2022, the landlord confirmed this service. The landlord served the tenant with notification of the hearing on 21-April-2022, the tenant confirmed this service.

Issues before the Tribunal

5. The tenant is seeking:
 - Security deposit refunded \$750.00

The landlord is seeking:

- Security deposit retained \$750.00
- Hearing expenses \$20.00

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 and Section 14 Security deposit.

Issue 1: Security deposit refunded \$750.00

Issue 2: Security deposit retained \$750.00

Landlord's Position

8. The landlord submitted a rental agreement (LL#01) that he held with the tenant. He said that the rental agreement was for a term from 01-January-2021 until 31-December-2021. At the end of the term the tenant moved out. The tenant paid \$1,300.00 a month which includes utilities. His rental period is from the 1st day of each month until the last and rent was paid in full on the 1st day of each month. The tenant paid the landlord a security deposit of \$750.00 on 04-December-2021 and the landlord is still in possession of the full deposit.
9. The landlord received notification of the hearing on 11-April-2022 and he filed a counter suit to retain the security deposit within the 10 days permitted.
10. The landlord submitted a picture of a burn on the counter top from the tenant's apartment (LL#02). He said that the counter is laminate and 10 years old. He said when the tenant moved in the counter was in good condition. He has not replaced the counter top. He said it is only a small area, however it would be difficult to match the counter top or the color. He was unable to determine the cost of the repair; he didn't provide an estimate.
11. The landlord provided two receipts for apartment cleaning (LL#03) \$161.00 completed 31-December-2021 and the other (LL#04) \$138.00 completed 19-December-2021. This also included a stem clean of the hallway carpet. The landlord said he doesn't live in the area and has this cleaning done twice a year to maintain the apartments.
12. The landlord said that the new tenants were concerned that the place wasn't clean enough so he had another company do a deep clean and they took out 5 or 6 bags of garbage (which did not belong to the tenant). While the cleaning company was there they also cleaned the oven, fridge and windows. The landlord said that this cost \$332.00 and was charged to his credit card. He did not provide a receipt.
13. The landlord also said that while the tenant was living there he had to replace the dryer vent and the dishwasher. The dishwasher was 8 years old and had black inside of it, picture provided (LL#05). The tenant had tried different methods to clean it but was unable to remove the stains. The new dishwasher was \$638.23; the landlord did not provide a receipt.
14. The landlord is seeking to retain the security deposit due to the upkeep and expense of the apartment.

Tenant's Position

15. The tenant provided his copy of the rental agreement (TT#02) and he confirms the details of the agreement as stated by the landlord in paragraph 8.
16. The tenant acknowledges that the burn on the counter top was due to placing a cast iron pan on the surface. He said that the damage is his fault. He had discussed this with the landlord and was under the understanding that the landlord was going to find a cheaper option to repair the damage by using a poxy.
17. The tenant said that the cleaners used by the landlord didn't do a good job. He said that when he moved, he didn't think that the apartment was any worse than when he moved in and he thought it was left clean. He doesn't agree that he should pay for the common areas to be cleaned or for the additional deep or excessive cleaning. He thought that the periodic cleaning was a service by the landlord and included in the cost of the rental.
18. The tenant said that he didn't damage the dishwasher and should not be expected to pay for the replacement.
19. The tenant is seeking the return of his security deposit.

Analysis

20. The landlord and tenant both agree that the tenant damaged the counter top. The landlord has not had this damage repaired and did not provide evidence to support his claim for this damage. His claim for the damage to the counter top fails.
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:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

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)

22. Although the landlord provided receipts for cleaning that took place both while the tenant lived at the apartment and after he moved, both the landlord's testimony and the tenant's indicates that this was a service he provided to ensure the upkeep of the apartments. This was not done due to a willful or negligent act committed by the tenant. This also applies to the replacement of the dryer vent or dishwasher.
23. When a landlord files a claim for damages, the damages are to be clearly outlined by the landlord in the complaint, so that the tenant is aware of the complaint against him. Further to this, the damages are to be caused by a willful or negligent act committed by the tenant. With the exception of the damage to the counter top, which has not been repaired, the landlord has not provided proof of any other damages, but instead provided proof of the cost of upkeep.
24. The cost of upkeep is not the responsibility of the tenant, but rather the responsibility of the landlord. The security deposit is the property of the tenant and held in trust by the landlord it is only to be retained in accordance with the *Act*. See Section 14 below:

Security deposit

14. (1) A landlord shall not demand from a tenant a security deposit that is

(a) more than the amount of rent payable for the first 2 weeks where the residential premises is rented from week to week;

(b) more than 3/4 of the amount of rent payable for the first month where the residential premises is rented from month to month; or

(c) more than 3/4 of the amount of rent that would be payable for the first month if rent was divided into a monthly payment where the residential premises is rented for a fixed term.

(2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.

(3) Where a landlord receives a security deposit that is more than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or may recover the overpayment together with interest on the amount of the overpayment at the rate prescribed in the regulations.

(4) Upon receipt of a security deposit, the landlord shall give the tenant a written acknowledgement of receipt stating the amount of the security deposit, the date of receipt and the residential premises and residential complex to which it applies.

(5) Within 2 banking days of receipt of a security deposit, the landlord shall deposit it in an interest bearing account located in the province at a financial institution authorized to accept deposits.

(6) *Where a landlord has 3 or more residential premises, the interest bearing account referred to in subsection (5) shall be a trust account used exclusively for security deposits.*

(7) *A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.*

(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.*

(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.

(11) *Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).*

(12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

(13) *Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

(15) *For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).*

25. The landlord's claim for damages fails.

Decision

26. The landlord's claim for damages fails. The landlord shall return the security deposit totaling \$750.00 to the tenant.

Issue 3: Hearing expenses reimbursed \$20.00

27. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, is not entitled to reimbursement of that cost from the tenant, as his claim is unsuccessful.

Summary of Decision

28. The landlord shall reimburse the tenant the \$750.00 security deposit.

July 18, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office