

Residential Tenancies Tribunal

Application: 2022 No. 0269 NL

Decision 22-0269-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:16PM on 16 June 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “tenant1”, did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “tenant2”, did not participate in the hearing.
5. An affidavit of service was provided by the landlord (L#1) confirming that the tenants were each served by email of the claim against them. The landlord testified that she served the addresses used by the tenants to pay rent via ETransfers.
6. The details of the claim were presented as an originally fixed term rental agreement that started 01 October 2019 and transitioned to a month-to-month rental. Monthly rent was originally set at \$1,350.00 and then increased to \$1,400.00 after the landlord discovered that an additional dog (3 dogs total) were residing in the rental unit. A security deposit in the amount of \$650.00 was collected and a copy of the written rental agreement was provided (L#2).
7. 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

8. The landlord is seeking the following:
 - An order for rent to be paid in the amount of \$1,400.00;
 - An order for compensation paid for damages in the amount of \$6576.50;
 - An order for late fees to be paid in the amount of \$75.00; and
 - An order for the use of the full security deposit in the amount of \$650.00.

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 are:
 - sections 14, 15 and 19 of the *Act*,
 - *Residential Tenancies Policies 9-005 Depreciation and Life Expectancy of Property*;
 - *Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*; and
 - Rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

11. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. 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 respondents' absence so long as they have been properly served.
13. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
14. The rental premises is a single family home located at [REDACTED]. The landlord testified that she has owned the house for 25 years and resided in it for 13 years. The landlord testified that she last renovated the rental premises in summer of 2019 prior to the tenants taking occupancy.
15. The tenants vacated the premises on 2 May 2022 after a termination notice was issued to them for non-payment of rent under section 19 of the *Act* on 06 April 2022 (L#3). This termination notice identified a move out date of 30 April 2022.

16. The landlord amended her claim for damages down to \$5,986.22 and her claim for rent up to \$2,100.00.

Issue 1: Payment of Rent (\$2,100.00)

17. The landlord provided a copy of her rent ledger showing a comprehensive history of payments received from tenant1 and tenant2 during the time they occupied her rental premises (L#3). The landlord reviewed the rent ledger and explained that she permitted the tenants to make two equal payments each month. The landlord testified that no payments of rent were received for April or May 2022. Total arrears were identified as \$2,800 on the ledger.
18. The landlord testified that she is seeking rent for the month of April 2022 and rent for ½ month of May 2022 for the period of time that she was unable to rent due to the tenants vacating on the 2nd of the month. Consequently, she amended her total amount of rent owing to \$2,100.00.

Analysis

19. I accept the landlord's claim and evidence that the tenants were in arrears for the month of April and May 2022. Regarding the exact amount of money owing, I disagree with the landlord's claim for ½ the rent for May 2022 because she issued them a termination notice in April requiring them to vacate by 30 April 2022. As such, I find that the landlord is entitled to rent to the day that she confirmed the tenants vacated the rental premises – that is 02 May 2022.
20. I therefore calculate the total arrears owing as at 02 May 2022 to be \$1,492.06. This amount was arrived at through the following calculations:

$$\begin{aligned} \$1,400 \times 12 &= \$16,800 / 365 = \textbf{\$46.03} \text{ per day} \\ \$46.03 \times 2 &= \$92.06 \text{ for May 1 - 2, 2022} \\ \$1,400.00 + \$92.06 &= \textbf{\$1,492.06} \text{ for total rental arrears} \end{aligned}$$

Decision

21. The landlords' claim for rent succeeds in the amount of \$1,492.06.

Issue 2: Payment of Late Fees (\$75.00)

Relevant Submission

22. The landlord has requested the payment of late fees in the maximum amount of \$75.00 as her tenants have been in arrears since at least 02 April 2022.

Analysis

23. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

24. The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

25. As the tenant has been arrears since at least 2 April 2022, the calculated amount of late fees are:

- 1st day late 02 April 2022 @ \$5.00 = \$5.00
- Subsequent days 03 April – 16 June 2022 @ \$2.00 (75 Days) = \$150.00
- Total allowable: \$75.00

Decision

26. The landlords' claim for late fees succeed in the amount of \$75.00.

Issue 3: Compensation Paid for Damages (\$5,986.22)

General Considerations

27. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- That the damage they are claiming compensation, exists;
- That the respondent is responsible for the reported damage through a willful or negligent act; and
- The value to repair or replace the damaged item(s).

28. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

29. The landlord submitted a comprehensive condition inspection report conducted on the entirety of the rental premises, prior to and post occupancy for tenant1 and tenant2. She testified to its contents during the hearing to establish that the state of her property was significantly negatively impacted by the tenants (L#00).
30. The landlord also submitted a damage ledger specific to the repairs required and completed at the rental premises (L#5). The items on this ledger included original anticipated costs (some of which were adjusted down) for materials and associated labour. Each item was itemized and cross referenced to relevant invoices and receipts. The landlord also submitted a comprehensive event log related to all of her activities regarding tenant1 and tenant2 and their occupancy of her rental premises.
31. Each claimed damage item was reviewed separately during the hearing.

Item 1 - Rekey Locks Relevant Submissions

32. The landlord testified that she was not provided keys for the rental unit. She submitted proof of a text conversation with tenant2 who acknowledged losing a keys (L#8a), as well as a professional invoice from a locksmith to re-key three doors (L#8b) in the amount of \$145.50.

Analysis

33. Changing locks or re-keying locks is considered to be a normal practise when tenants move from a property. This is not a “damage” expense to be passed along to the departing tenant.

Decision

34. The landlord’s claim for compensation for rekeying locks does not succeed.

Item #2 Garbage removal \$517.50 Relevant Submissions

35. The landlord testified that the tenants left extensive garbage, debris and empty bottles around the yard of the residential premises. The sheer amount of garbage required the landlord to retain the services of a professional junk hauler to assist with the removal process. The landlord submitted a series of photos (L#9) depicting a significant amount of debris from around the yard and also provided a copy of the invoice for junk removal in the amount of \$517.50 (L#10).

Analysis

36. The landlord provided sufficient evidence to establish that actions of the tenants caused her to retain the services of a professional junk hauler to assist with remediation of the yard of her rental premises.

Decision

37. The landlord's claim for compensation for garbage removal succeeds in the amount of \$517.50.

Item #3 Pressure Washing \$117.24

Relevant Submissions

38. The landlord provided testimony and evidence to indicate that the tenants had allowed their dogs to regularly defecate and urinate on the back deck creating a large mess on the deck. She submitted photos of the mess (L#11) and also submitted proof of purchase for deck cleaner in the amount of \$17.24 along with evidence of a \$100.00 withdrawal from her bank account said to be for paying someone to pressure wash the deck.

Analysis

39. The landlord provided sufficient evidence to establish that the tenants were the source of her having to retain professional assistance for the purposes of pressure washing the deck to remove accumulated feces.
40. However, no evidence was provided of a formal receipt of the work required and nor was an approximation of hourly labour identified so as to calculate entitlement to hourly compensation according to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. As such, no entitlement to compensation can be calculated related to the claim for \$100 in labour but the claim for compensation for deck cleaner succeeds in the amount presented.

Decision

41. The landlord's claim for compensation for pressure washing succeeds in the amount of \$17.24.

Item #4 Repair gate on chain link fence \$30.00

Relevant Submissions

42. The landlord provided testimony and evidence to indicate that the tenants had damaged the gate to the chain link enclosure in such a way that she was required to retain professional assistance. She submitted photographic evidence of the damage to the fence (L#13) as well as proof of her having removed \$40.00

from her bank account for the purpose of paying someone \$30.00. She testified that she need to pay someone with the right tools and more strength than her to fix the fence.

Analysis

43. The landlord provided sufficient evidence to establish that the tenants were the cause of her having to pay for someone to assist with the repair of her chain link fence gate. However, no evidence was provided of a formal receipt of the work required and nor was an approximation of hourly labour identified so as to calculated entitlement to hourly compensation according to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. As such, no entitlement to compensation can be calculated.

Decision

44. The landlord's claim for compensation for repairing the gate on the chain link fence does not succeed.

Item #5 Fruit fly treatment \$12.63

Relevant Submissions

45. The landlord testified that the tenants were responsible for a significant colony of fruit flies within the rental premises. She was not able to provide photographic proof of fruit flies, due to the nature of the problem, but she did provide proof of purchase of a fruit fly trap in the amount of \$12.63 (L# 15).

Analysis

46. The landlord provided sufficient evidence to establish that actions of the tenants were the source of her significant fruit fly problem. Considering the amount of debris that was removed from the yard of the rental premises, I found that it probable that similar property maintenance standards would be enforced in the interior of the rental premises, thereby leading to the reported fruit fly problem.

Decision

47. The landlord's claim for compensation for fruit fly treatment succeeds in the amount of \$12.63.

Item #6 Biohazard cleaning \$2,583.44

Relevant Submissions

48. The landlord provided testimony and evidence depicting a significant mess throughout the extent of her basement of the rental premises for which she provided photos (L#16). The landlord testified that she suspected significant

blood splatter and so she called the police who sent a team to investigate and take samples. She provided confirmation of a police file that was opened on 03 May 2022 related to the call (L#17).

49. The forensic investigator who attended her rental premises advised her to secure the services of a properly qualified bio-hazard team to clean her basement. The landlord testified that this work has yet to be completed, but that she received a quote from a qualified firm in the amount of \$2,584.00. A copy of this quote was submitted (L#18).

Analysis

50. The landlord provided sufficient evidence to establish that actions of the tenants caused her to requiring the services of a properly qualified firm to provide professional bio-hazard cleaning of the basement in her rental premises.

Decision

51. The landlord's claim for compensation for bio-hazard cleaning succeeds in the amount of \$2,583.44.

Item #7 Kitchen and Bathroom cleaning \$140.00

Relevant Submissions

52. The landlord provided testimony and evidence that she was required to pay for professional cleaning of the kitchen and bathroom. She provided series of photos (L#19) taken after the tenants vacated the rental premises and testified to how much labour was required to remove wax and other materials from surfaces as noted on the condition assessment move out report (L# 00). The landlord also provided proof of a \$140.00 withdrawal from her bank account, said to be for paying cleaners (L#20). She testified that this was for seven hours of cleaning.

Analysis

53. The landlord provided sufficient evidence to establish that actions of the tenants caused her to retain the services of professional cleaner after the vacated the rental premises.
54. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, hours spent for cleaning and other activities can be claimed in the amount of \$21.20 an hour. Because the landlord testified that 7 hours of work was required, this would result in a total charge of \$148.40 (\$21.20 x 7). As however, she only claimed \$140.00 for labour, her claim will succeed in that amount.

Decision

55. The landlord's claim for compensation for kitchen and bathroom cleaning succeeds in the amount of \$140.00.

Item #8 Plastering and Painting \$600.00

Relevant Submissions

56. The landlord provided testimony and evidence that depicted assorted significant damage across the extent of the main floor of her rental premises. Multiple photos were submitted of fist size and other notable damages done to the gyprock (L# 21). The landlord also submitted proof of her withdrawing \$600.00 from her bank account for the purpose of paying for painting and plastering (L#22). She testified that this accounted for all the plastering work and approximately 12 hours of painting.

Analysis

57. The landlord provided sufficient evidence to establish that the tenants were the source of her having to pay for professional support to patch multiple significant holes in gyprock and then paint so as to cover the plaster patches. Regarding her entitlement for compensation, the *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, expects painting to be done every 3 – 5 years. Because the landlord testified that the unit was last painted in 2019, it could be argued that the unit was due to be painted. However, I find that the damage caused by the tenant1 and tenant2 was far in excess of typical wear and tear expected on paint and painted surfaces.
58. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, hours spent for painting can be claimed in the amount of \$23.20 an hour. Because she testified that approximately 12 hours of painting was required, this means that she is entitled to \$278.40 (\$23.20 x 12) in compensation specific to painting.
59. Regarding compensation for plastering, no specific hourly figures for labour were provided, however, evidence of significant plastering was provided along with relevant testimony. As such, I find that the landlord's claim for compensation for plastering succeeds in the difference of the \$600.00 claimed in labour for plastering and painting (e.g., \$321.60).

Decision

60. The landlord's claim for compensation for painting and plastering succeeds in the amount of \$600.00.

Item #9 Paint supplies \$291.28

Relevant Submissions

61. The landlord provided testimony and evidence that the entire unit had to be repainted so as to cover the extensive plastering that was required (as was shown in the photos submitted L# 21). She provided a copy of the invoice for related painting supplies (L#23).

Analysis

62. The landlord provided sufficient evidence to establish that the tenants were the source of her having to pay for extensive plastering, painting and related supplies. Regarding her entitlement for compensation, the *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, expects painting to be done every 3 – 5 years.
63. Because the landlord testified that the unit was last painted in 2019, it could be argued that the unit was due to be painted. However, I find that the damage caused by the tenant1 and tenant2 was far in excess of typical wear and tear expected on paint and painted surfaces and so the landlord is entitled to compensation in the amount claimed.

Decision

64. The landlord's claim for compensation for paint supplies succeeds in the amount of \$291.28.

Item #10 Repair damaged window screens \$293.25

Relevant Submissions

65. The landlord provided testimony and evidence to indicate that the tenants inflicted significant damage to 7 window screens. Photos were provided for each of the damaged screens (L#24) and an invoice for repairing the 7 damaged screens was also submitted (L#25).

Analysis

66. The landlord provided sufficient evidence to establish that the tenants were the source of her having to pay for professional repair of 7 window screens. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, window screens are expected to have a serviceable life of 15 years. Because the landlord testified that the screens were in good condition in 2019, I will consider the screens that had to be repaired to be a fifth of the way through their serviceable life. As such, the landlord is entitled to compensation for 4/5th (%80) of the value claimed (e.g., \$234.60).

$$\$293.25 \times .80 = \$234.60$$

Decision

67. The landlord's claim for compensation for the repair of 7 window screens succeeds in the amount of \$234.60.

Item #11 Replace Door Frames \$66.60

Relevant Submissions

68. The landlord provided testimony and evidence to indicate that the tenants caused significant damage to a number of door frames across the rental premises. A series of photos were provided (L# 26) along with an invoice from the lumber store in the claimed amount of \$66.60.

Analysis

69. The landlord provided sufficient evidence to establish that actions of the tenants caused her to purchase materials to replace damaged door frames in her rental premises. Because *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* does not even identify "door frames" as an item that typically depreciates, I will award compensation for the full amount claimed.

Decision

70. The landlord's claim for compensation for repairing door frames succeeds in the amount of \$66.60.

Item #12 Bi-fold Repair and Replacement \$206.94

Relevant Submissions

71. The landlord provided testimony and evidence that the tenants were the source of missing and damaged bi-fold doors. Photos were provided of the damaged doors (L#28) and a copy of the invoice from the lumber mart for buying a replacement door and a repair kit was provided (L#29).

Analysis

72. The landlord provided sufficient evidence to establish that actions of her tenants caused her to replace and repair impacted bi-fold doors in her rental unit. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, such doors have expected serviceable life of 20 years. Because the landlord provided the condition inspection report along with pictures of the missing doors, I am sufficiently convinced that doors were missing and doors were damaged. However no information was provided on the bi-fold doors that were damaged and or removed. As such, I will award compensation for ½ of the amount claimed on the assumption that the doors were at least 10 years old.

Decision

73. The landlord's claim for compensation for repair and replacement of bi-fold doors succeeds in the amount of \$103.47.

Item #13 Missing Bathroom cabinet \$149.48

Relevant Submissions

74. The landlord testified that the tenants caused the bathroom cabinet to become unsalvageable (as noted in the condition inspection report). However, she did not submit an invoice or receipt related to the replacement cabinet as it has yet to be purchased.

Analysis

75. Based on other testimony provided by the landlord, it is highly probable that the tenants were the cause of the bathroom cabinet becoming unusable. However, she did not provide sufficient evidence to justify the costs of the cabinet and nor did she specify the age of the damaged item.

Decision

76. The landlord's claim for compensation for replacement of a bathroom cabinet doors does not succeed.

Item #14 Handrail hardware \$32.36

Relevant Submissions

77. The landlord provided testimony and evidence that the tenants caused the removal of the hardware for the handrail in the rental premises. She provided photographic evidence of the altered handrail which was shown to be attached to the wall using a series of clothes hooks (L#30). The landlord submitted a receipt related to the purchase of replacement handrail hardware for the rental premises (L#31).

Analysis

78. The landlord provided sufficient evidence to establish that the actions of the tenants caused her to purchase new hardware for the handrail in the rental premises and then rehang the impacted handrail. Because *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* does not even identify "handrail hardware" as an item that typically depreciates, I will award compensation for the full amount claimed since the amount claimed appeared to be reasonable.

Decision

79. The landlord's claim for compensation for handrail hardware succeeds in the amount of \$32.36.

Item #15 Labour cleaning and repairs \$800.00

Relevant Submissions

80. The landlord testified that she has been working away at the rental premises bit by bit since she regained possession on 02 May 2022 and that she has been paying for professional support for the items that she is unable to complete herself due to an arm injury. The landlord testified that there has been at least 80 hours of professional labour spent at the rental premises to date and that the rental premises is still not ready to rent to new tenants.
81. The landlord provided comprehensive evidence related to the labour required (L#32) cross referenced against photographic justifications (L#33). It was an extensive list, ranging from floor repair, to electrical, to carpentry, to plumbing and yard repair. The landlord also submitted her receipts for removing \$800.00 in cash from her bank account for the purposes of paying for related labour (L#34).

Analysis

82. The landlord provided sufficient evidence to establish that actions of the tenants caused her to have to pay for labour in the amount of \$800.00. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, hours spent for cleaning and other activities can be claimed in the amount of \$21.20 an hour. Because she testified that approximately 80 hours of work was required, this would result in a total charge of \$1,696.00 (80x 21.20). As however, the landlord has only claimed \$800.00 for labour, her claim will succeed in that amount.

Decision

83. The landlord's claim for compensation for labour costs related to assorted jobs at the rental premises succeeds in the amount of \$800.00.

Issue 4: Security Deposit \$650.00

Relevant Submissions

84. Evidence of a \$650.00 security deposit having been collected in fall 2019 is contained within the rental agreement (L#2).

Analysis

85. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(12) A landlord who does not make an application in accordance with subsection

(11) shall 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.

86. According to the landlords' records, a security deposit in the \$650.00 was collected.

87. The landlord is seeking to use the full amount of the security deposit against rent monies owing.

88. As the amount owing to the landlord for rent, late fees and damage is in excess of the security deposit collected, I find that the landlord is entitled to use of the full amount of the security deposit.

Decision

89. As the landlord's monetary claim has been successful, they shall retain the full security deposit to be used against money owing.

Issue 5: Hearing Expenses Relevant submissions

90. The landlord submitted an expense claim in the amount of \$112.58 (L#35).

91. The landlord claimed \$20.00 for the expense (L#36) of applying for the hearing and \$65.00 for the cost of hiring a process server who was able to serve the tenants the termination notice in April 2022 (L#37). The landlord also claimed the costs of two memory sticks (\$27.58) for the purposes of submitting evidence to the tenant and to this tribunal (L#38).
92. I accept the landlords claim for costs for the memory sticks due to the sheer amount of photographic and other documentary evidence provided. I also accept the costs for the application fees. However, according to Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF, I cannot accept the cost of a process server because this cost relates to the cost of serving the termination notice and not costs specific to her application for dispute.
93. As the landlord's claim has been successful, the tenants shall pay her hearing expenses in the amount of \$47.58 (Memory sticks and application fee).

Summary of Decision

94. That the landlord shall retain the full security deposit in the amount of \$650.00.
95. The landlord is entitled to the following payment from the tenant:
- | | |
|----------------------------------|-------------------|
| a) Rent owing..... | \$1,492.06 |
| b) Late fees | \$75.00 |
| c) Compensation for damages..... | \$5,499.12 |
| d) Hearing Expenses..... | \$47.58 |
| e) Less Security Deposit..... | (\$650.00) |
| f) Total..... | <u>\$6,463.76</u> |

05 July 2022

Date



Jaclyn Casler
Residential Tenancies Board