

Residential Tenancies Tribunal

Application: 2022 No. 0450 NL

Decision 22-0450-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 26 July 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 “the tenant”, did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served electronically of the claim against her. The landlord testified that the email she served was provided to her on the rental agreement. Proof of electronic service was also provided.
5. The details of the claim were presented as a month-to-month agreement that began 01 March 2021 and then ended on 02 December 2021 when the landlord regained possession of the rental premises. Monthly rent was \$750.00 and a security deposit in the amount of \$300.00 was collected. A copy of the written rental agreement was provided (L#2).
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 the following:
 - An order for rent to be paid in the amount of \$1,575.00,
 - An order for payment of late fees in the amount of \$75.00;
 - An order for compensation for inconvenience in the amount of \$760.00;
 - An order for compensation paid for damages in the amount of \$1,284.25;
 - An order for ½ of the \$300.00 security deposit (\$150.00) to be applied against monies owed.

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 (the Act)*.
9. Also relevant and considered in this case are sections 10, 14 and 19 of the *Act* along with the following policies:
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property
 - Residential Tenancies Policy 10-001 Claim against a Security Deposit

Preliminary Matters

10. The rental agreement was in the name of the tenant along with a [REDACTED]. The landlord testified that she accepted [REDACTED] was not longer a tenant in the rental unit as of 25 October 2021. The landlord also submitted a written explanation of her recognition of this change to her initial rental agreement with the tenant (L#3). She testified that rent was fully paid and no damages were noted prior to this change in tenancy of her rental premises.
11. The tenant was not present or represented at the hearing and I was unable to reach her by telephone despite trying multiple numbers. 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 respondent's absence so long as they have been properly served.
13. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Payment of Rent (\$1,575.00)

Relevant Submission

14. The rental premises is a single family dwelling located at [REDACTED].
15. The landlord submitted a copy of her rental ledger (L#2). She testified that she accepted biweekly payments of rent and that rent was paid in full from March 2021 through to October 2021 and then on 25 October 2021 she recognized that the tenant was the lone tenant for the rental premises. The landlord referred to a Termination for Cause notice that was issued on 25 October 2021 (T#5). This notice was issued under section 21, 22, and 24 of the *Act* and identified a stated move out date of 25 October 2021.
16. The landlord testified that she did not receive rent from the tenant for November 2021 despite the tenant retaining possession of the unit. The landlord testified that she regained possession of the rental unit on 02 December 2021 and that she was seeking rent for the month of December 2021 because the rental premises was so damaged that she was unable to rent it.
17. The landlord testified that she did not post a notice of abandonment on 02 December 2021 because her neighbours to the rental premises informed her that the tenant was seen moving her belongings during the previous week. Additionally, the landlord testified that she had communicated with the tenant's father who informed her the tenant had a new rental premises in [REDACTED].
18. The landlord testified that she was so bothered by the experience with this tenant that she listed the rental premises for sale and officially sold it in April 2022.

Analysis

19. I accept the landlord's claim and evidence that the tenant did not pay rent for November 2021 and then vacated the rental premises shortly thereafter. I also acknowledge that the landlord is seeking compensation for rent for the month of December because she claimed that the rental premises was so damaged that she was unable to rent it that month. However, the landlord also testified that she chose to list the property for sale instead of renting and sold the property shortly thereafter.
20. As the landlord had issued a termination notice for cause to the tenant and the tenant vacated the rental premises shortly thereafter, I find that the landlord is entitled to rent to the day that she regained possession of the rental unit in the amount of \$799.32. This amount was arrived at through the following calculations:
 - $\$750.00 \times 12 = \$9,000.00 / 365 = \$24.66$ per day
 - $\$24.66 \times 2 = \49.32 for December 1 – 2 2021
 - $\$750.00 + \$49.32 = \$799.32$ for total possible rental arrears

21. Where the landlord claimed that she was entitled to rent for the full month of December because her rental premises was so damaged she had to spent the month repairing and cleaning it, I find this testimony to be incompatible with the landlord's testimony that she put the house up for sale and sold it effective April 2022. Additionally, the landlord provided no evidence to suggest that she attempted to mitigate her losses for rent by posting the rental premises as available for rent. Consequently, her claim for supplemental compensation for rent for the month of December does not succeed.

Decision

22. The landlord's claim for rent succeeds in the amount of \$799.32.

Issue 2: Payment of Late Fees (\$75.00) Landlord's Position

23. The landlord has requested late fees in the amount of \$75.00. As noted in Issue # 1 above, the landlord testified that she has been owed rent since 02 November 2021.

Analysis

24. 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.*

25. 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.

26. As the tenant has been arrears since at least 02 November 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

27. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue # 3: Compensation for Inconvenience (\$1,575.00)

Relevant Submissions

28. The landlord testified that the house is 25 years old and that she owned it for 9 years. She stated that there was new paint and countertops prior to the tenants moving in, and that she installed new flooring and gyprock throughout in 2018. The landlord testified that she did not complete a move-in condition inspection report with the tenants because the rental unit was "freshly painted and spotless" at the time.
29. The landlord referred to a Compensation for Costs of Inconvenience worksheet that she submitted and testified that the amounts claimed represent compensation for her time spent cleaning the rental premises after the tenant vacated (L#5). The landlord testified that she is entitled to compensation for the following:
- 16 hours of cleaning fridge, cupboards and basement (\$240)
 - 2 hours for cleaning a bathtub filled with actual dirt (\$40)
 - 4 hours cleaning garbage from shed and garden (\$60)
 - 8 Hours cleaning walls in advance of painting (\$120)
 - 16 hours cleaning out garbage and furniture (\$300)
30. Each specific claim was discussed against evidence provided.

Inconvenience #1 - Kitchen and Basement Cleaning (16 hours \$240)

31. The landlord testified that she submitted a video as proof of how "destroyed" her house was by the tenant (L# 7). As per this video, the rental unit is empty with some minor debris in multiple areas. The landlord testified that she did not submit proof of the inside of the fridge, but that it was "so green" and it made her ill cleaning it.

Analysis and Decision

32. The evidence submitted by the landlord did not match her testimony. Where she claimed that her rental premises was destroyed, I found that the video provided of the rental premises depicted evidence of minor debris and a possible need for surface cleaning only. As such, I find the landlord's claim for compensation for cleaning for 16 hours to be excessive, but I will consider the validity of her claim for 8 hours of cleaning as it appeared that the tenant did not clean before they vacated the rental premises.
33. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum hourly wage for cleaning is \$21.20 an

hour. As such, an award of compensation for 8 hours of cleaning, would mean a maximum claimable costs of \$169.60 (e.g., 8 x \$21.20). The landlord's claim for compensation for cleaning succeeds in that amount.

Inconvenience #2 - Bathtub Cleaning (2 hours \$40)

34. The landlord testified that the bathtub for full of actual sand and dirt and that it took her two hours to remove the dirt and then clean the tub. However no specific picture of the bathtub before and after was provided to support her claims.

Analysis and Decision

35. Due to the landlord not providing supporting photographic or other documentary evidence related to the state of the bathtub after the landlord regained possession of the rental unit, the landlord failed to establish the exact state of the bathtub that necessitated two specific hours of cleaning. As such, her claim for compensation does not succeed.

Inconvenience #3 Shed and Garden Cleaning (4 Hours \$60)

36. Specific to her claim for cleaning the garden and shed, the landlord stated that no pictures of the shed or garden were submitted. She also testified that the contractors hired to remove possessions and debris from the house removed garbage and debris from the shed.

Analysis and Decision

37. Due to her not providing supporting photographic or other documentary evidence related to the state of the garden and shed after the landlord regained possession of the rental unit, the landlord failed to establish on the balance of probabilities why and how four additional hours of her time was required. As such, her claim for compensation for inconvenience for time spent on the garden and shed, does not succeed.

Inconvenience #4 Wall Cleaning (8 Hours \$120)

38. Specific to her claim for cleaning the walls, the landlord testified that the same video referenced above, was her evidence of the state of the rental premises and the requirement that complete painting was required. She also testified that the tenant had smoked extensively in the rental unit.

Analysis and Decision

39. The landlord testified that the rental premises was freshly painted prior to the tenants moving. She also testified that she found evidence of smoking inside and because of the smoking, she was required to paint. However, she failed to establish on the balance of probabilities that 8 hours of cleaning was required for

the walls. For instance, when reviewing the video provided of the unit, the walls, other than the one damaged section, appeared to be in good condition with no obvious stains. As such, her claim for compensation for cleaning the walls succeeds in a reduced amount only. Specifically, I find it reasonable to award compensation for two hours only as evidence provided suggested the rental premises was a small single family house.

40. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum hourly wage for cleaning is \$21.20 an hour. As such, an award of compensation for 2 hours of cleaning, would mean a maximum claimable costs of \$42.40 (e.g., 2x \$21.20). The landlord's claim for compensation for cleaning succeeds in that amount.

Inconvenience # 5 Garbage Cleaning (\$300.00)

41. Specific to her claim for 16 hours for cleaning garbage and furniture, the landlord referred to pictures submitted of her dump trailer filled tight with assorted furniture. The landlord testified that this furniture was broken and that from conversations with the father of tenant2, she was confident that tenant2 had no claims to furniture remaining in the rental premises. The landlord also testified that she had noticed clothing belonging to the former tenant amidst the possessions and so she contacted him to collect his possessions before the rental premises was cleaned.
42. The landlord testified that her claim for compensation represents time spent assisting the contractors she hired to do the work removing items from throughout the rental premises and taking them to the dump. She also testified that she provided her dump card for the [REDACTED] the contractors to use for their two trips. Proof of waste management receipts were provided indicating charges of \$16.80 on 04 December 2021 and \$8.40 on 07 December 2021 (\$25.20).

Analysis and Decision

43. The landlord failed to provide pictures of the interior of the rental premises when it was occupied by tenant2's possessions. All that was provided were the pictures of the dump trailer neatly loaded. I note however, that the 3 pictures provided depict a single load of items and not the two loads that were claimed. As such, there was no way for me to effectively assess the extent of the landlord's claim for compensation since no specific breakdown was provided to understand the significance of how the 16 hours of time was spent.
44. Receipts were however provided in the amount of \$25.20 for disposal at the [REDACTED] dump site, and so the landlords claim for compensation for garbage removal succeeds in that amount.

Inconvenience Summary Decision

45. The landlord's claim for compensation for inconvenience succeeds in the amount of \$237.20 (e.g., \$169.60 + \$42.40 + \$25.20).

Issue # 4: Compensation for Damages Inconvenience (\$1,284.25)

Relevant Submissions

46. The landlord provided a damage ledger outlining her claim for compensation (L#10). Each claim was specifically addressed including the following:
- Exploits Roofing to remove garbage (\$414.00)
 - Painting and plaster (\$720.00)
 - Paint Supplies (\$140.25)
 - Cleaning Supplies (\$10.00)
47. 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).
48. 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.

Damage # 1: Exploits Roofing (\$414.00)

Relevant Submissions

49. The landlord called [REDACTED] as a witness. He was hired to remove garbage and broken possession left at the unit. [REDACTED] testified he charged the landlord \$360 plus tax (\$414.00) for two 8 hour work days by a two men crew (32 hours total). [REDACTED] testified that his invoice also included charges for fuel for the two round trips to the [REDACTED] dump (a roughly 60KM round trip).

Decision and Analysis

50. I accept that the landlord hired the witness [REDACTED] to remove and dispose of items from the rental premises. Because her claim for compensation was backed up by testimony from [REDACTED], I accept that she incurred total charges of \$414.00. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum hourly claimable wage for cleaning is \$21.20. Where there was a reported 32 hours of work completed, this would be a

possible entitlement of \$678.40 (e.g., \$21.20 x 32). As however, the landlord has applied for compensation in the amount of \$414.00 only, her claim will succeed in that amount.

51. The landlord's claim for compensation for removal of garbage succeeds in the amount of \$414.00.

Damage #2: Paint and Plaster Labour (720.00)

Damage #3: Paint and Plaster Materials (\$140.25)

Relevant Submissions

52. The landlord testified that the entire house had to be painted because there were holes everywhere. She referenced a specific video submitted of an adult sized "body slam" type imprint in the gyprock (L#11). The landlord testified that she did not have an invoice for the paint and plaster materials claimed because she had paid that directly to her painter once he identified the material costs.
53. The landlord called [REDACTED] as a witness. He was hired to paint and plaster the whole house. [REDACTED] testified that he was required to paint the whole house (walls and ceiling) because of smoking and that he had to complete a lot of plaster work. [REDACTED] testified that this represented about 60 hours of work. [REDACTED] also testified that he was previously hired to paint the whole house before the tenants moved in.

Analysis

54. Specific to this claim for compensation for damage (smoking despite it not being permitted and wall damage), the landlord is claiming the costs for repairing damaged plaster and painting the full rental premises. Regarding her entitlement to compensation for costs incurred, the landlord testified that the rental premises was painted prior to the tenants' occupancy. This is relevant because *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* anticipates a 3 – 5 year serviceable life for paint jobs. Additionally, this same policy identifies a maximum hourly claimable wage for painting of \$23.20, an amount that is significantly higher than the apparent hourly wage paid by the landlord.
55. Where the landlord failed to provide specific documentary evidence related to costs incurred, she provided [REDACTED], her painter as a witness, to confirm that he was paid \$860.25 (\$720.00 + 140.25) for his labour and materials related to painting and plastering the rental premises.
56. Because the landlord had to be paint within a year of the rental premises being paint, I find that she is entitled to a depreciated percentage of costs claimed in the amount of \$860.25 (e.g., \$720.00 + \$140.25). Specifically, I find that she is entitled to $\frac{3}{4}$ of the claimed costs since the paint job had not served $\frac{1}{4}$ of its anticipated serviceable life. As such, I find that the landlord is entitled to compensation is the amount of \$645.19 (e.g., 860.25 x .75) in compensation for damage for painting and plastering required at the rental premises.

57. The landlord's claim for compensation for damages for painting succeeds in the amount of \$645.19.

Damage # 4 – Cleaning Supplies (\$10)
Relevant Submissions

58. The landlord testified that she did not have or provide receipts related to the \$10.00 she is claiming as compensation for damage.

Decision and Analysis

59. Because the landlord failed to provided documentary evidence specific to her costs incurred, and or proof of materials purchased, her claim for compensation for damages for cleaning supplies does not succeed in any amount.

Summary Decision – Compensation for Damages

60. The landlord's cumulative claim for damages succeeds in the amount of \$1,059.19 (e.g., \$414.00 + \$645.19).

Issue # 3: Security Deposit (\$300.00)
Relevant Submissions

61. Evidence of a \$300.00 security deposit having been collected and receipted was provided by the landlord (L#12). The landlord testified that she was seeking to retain only half of the deposit collected (e.g., \$150.00) because she considered the remaining \$150.00 to have been spent during the time she spent assisting tenant1 after she recognized he was no longer a tenant at her rental premises.

Analysis

62. 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.

63. I note that the Security Deposit receipt provided is made out to the former tenant who is not the named respondent in this claim. This is relevant because, according to **Residential Tenancies Policy 10-001 Claim against a Security Deposit**, the only tenant entitled to receive a refund of the security deposit is the tenant who is named on the receipt. Furthermore, I found it problematic that the landlord applied to retain \$150.00 of the \$300.00 because as she testified, she considered the other half of the security deposit to have been spent as a result of her efforts assisting the former tenant. This was inadequate because, 14(10)(a) of the *Act* enables landlords and tenants to enter into written agreement for such a disposal of the security deposit, but such written evidence was provided.
64. Regarding the landlord's general claim to retain the security deposit, I find that it is successful because her associated claims for compensation for rent, inconvenience and damages have succeeded in excess of the security deposit collected. Because the landlord failed to provide specific documentary evidence regarding her claimed prior disposition of the security deposit, I find that her other claims for compensation in this dispute will be offset by the full \$300.00 value of the security deposit collected, instead of the 50% claimed.

Decision

65. The landlord's claim for retaining the tenant's security deposit succeeds in the amount of \$300.00.

Issue 4: Hearing Expenses

66. The landlord claimed \$20.00 for the expense of applying for the hearing.
67. As her claim has been successful, the tenant2 shall pay this hearing expense.

Summary of Decision

68. The landlord is entitled to the following:

- An order to retain the full amount of the \$300.00 security deposit collected;
- Payment from the tenant in the amount of \$1,890.71, determined as follows:

a) Rent.....	\$799.32
b) Late Fees.....	\$75.00
c) Compensation for Inconvenience.....	\$237.20
d) Compensation for Damages.....	\$1,059.19
e) Hearing Expenses.....	\$20.00
f) Less Security Deposit.....	(\$300.00)
g) Total.....	<u>\$1,890.70</u>

29 July 2022

Date



Jaclyn Casler

Residential Tenancies Board