

Residential Tenancies Tribunal

Application 2022 No. 0453 NL &
2022 No. 0465 NL

Decision 22-0453-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:18 AM on 28 July 2022 via teleconference.
2. The applicant, [REDACTED], represented by [REDACTED] through power of attorney (T#1), and hereafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “landlord1”, participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “landlord2”, participated in the hearing.
5. The tenant provided an affidavit of service confirming that the landlord was served electronically and proof of service was provided (T#2). The landlords provided an affidavit confirming that the tenant was served electronically of the counter claim against her (L#1).
6. The details of the claims were presented as a month-to-month agreement from 15 October 2021 to 30 April 2022. Monthly rent was \$1,350.00 and a security deposit in the amount of \$675.00 was collected. A copy of the written rental agreement was provided (T#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. In these proceedings the standard of proof 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 tenant is are seeking the return of a \$675.00 security deposit.
9. The landlords are seeking to retain \$345.00 of the \$675.00 security deposit collected.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also relevant and considered in this case is sections 10 and 14 of the *Act* and *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*.

Preliminary Matters

12. The rental premises is a two bedroom two bathroom unit in a condominium complex located at [REDACTED]. The landlords own unit # [REDACTED] and they rented it to the tenant.

Issue 1: Security Deposit (\$675.00) Tenant's Position

13. The tenant testified that she has power of attorney for her mother who is 99 years old. Her mother resided in the rental unit independently until 10 March 2022 when she was moved into long term care. The tenant testified that rent was paid through to 30 April 2022 and that she provided notice of termination in early March via email or text.
14. The tenant testified that there was no willful or negligent damage in the rental unit. She testified that there were holes made and left in the wall and ceiling to hang swag lamps, but that this was just part of "regular everyday living". The tenant stated that the landlords were not asked for permission to install the swag lamps because there was nothing in the rental agreement indicating that permission had to be asked.
15. The tenant agreed that the state of the rental unit when her mother moved in was well kept and new.

Landlords' Position

16. Landlord1 testified that everything was new in the rental unit when the tenant took occupancy. He testified, that had the tenant put holes in the walls only, they

would not have sought compensation but because there were holes in the new stucco ceilings, this was “devastating”.

17. Landlord1 referred the 9 pictures submitted to emphasize that there were swag hook holes in the ceiling of the living room and each of the two bedrooms (L#2). Landlord2 testified that it was really surprising to see the swag hooks left behind because all previous tenants have used lamps only in the rental unit.
18. Landlord1 testified that he got 4 or 5 quotes for the work needed to patch the “like 50 holes” in the walls and remove and patch the damage from removing the swag hooks in the ceiling for the living room and two bedrooms. He submitted the receipt from a contractor who charged him \$345.00 for repairing and repainting the holes in the walls and ceilings (L#3). Landlord1 testified that every other quote was at least twice this amount and that the work involved multiple trips and multiple hours to plaster, sand, plaster sand, and the paint.

Analysis

19. The landlords and tenant disagree on how to dispose of the \$675.00 security deposit collected. The tenant wants the full amount of the security deposit returned to her mother, and the landlords are looking to retain \$345.00 as compensation for damages incurred to multiple areas of the wall and ceiling.
20. 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).
21. 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.
22. Regarding the claimed damage in this case, the tenant testified that the damages caused were not willful or negligent. However she also acknowledged that the swag hooks were installed in the living room and both bedrooms without permission. Regarding her legal obligations as a tenant, the Statutory Tenant Obligations found in 10(1)(2) of the *Act*, require tenants to repair any damages caused. However, the tenant acknowledged that these damages were not repaired because they reflected “regular everyday living”. The landlords countered this by arguing that every other tenant they have had, has just used lamps in the rental unit.

23. I find that the damages claimed by the landlords and evidenced in pictures submitted, was willful damage because as the tenant acknowledged, swag lights were willfully installed in the ceiling without permission of the landlords. I also accept the evidence from the landlords of their incurred costs of \$345.00 to restore the stucco ceiling to its original freshly installed state as well as patch and paint approximately 50 holes in the walls. Because landlord1 testified that he endeavoured to secure quotes from multiple individuals and that the charges incurred were the cheapest by half, I find that the landlords claim for compensation for damages succeeds as presented.

24. Regarding the legal process for making claims against security deposits collected, this is set out within the following provisions of section 14 of the *Residential Tenancies Act, 2018* as set out below:

(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.

25. Where the tenant applied for the return of their security deposit, and the landlords filed a successful counterclaim, the landlords are entitled to retain their claimed portion of the security deposit and return the remainder to the tenant.

Decision

26. The landlords' application for retaining the tenant's security deposit succeeds in the amount of \$345.00.

27. The tenant's application for the return of their security deposit succeeds in the amount remaining from the landlord's claim.

Hearing Expenses

28. The landlords submitted a hearing expense claim for the costs of the \$20.00 application fee (L#4).
29. As the landlords' claim has been successful, the tenant shall be required to pay this expense.


Summary Decision

30. The landlords are entitled to retain \$365.00 from the \$675.00 security deposit collected. This total is determined as follows:

a) Compensation for Damage.....	\$345.00
b) Hearing Expense.....	\$20.00
c) Total.....	<u>\$365.00</u>

31. The tenant is entitled to the return of \$310.00 of the \$675.00 security deposit collected.

01 August 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal