

Residential Tenancies Tribunal

Application 2022-No.471-NL

Decision 22-0471-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 19-July-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenants with notice of the hearing, by email, on 07-July-2022. Landlord1 said that the email was provided to them by the tenants and used for communication. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. The landlords amended their application to remove premises vacated. The tenants have vacated the property.

Issues before the Tribunal

6. The landlords are seeking:
 - Rent paid \$3,200.00

- Late fees \$75.00
- Compensation for damages \$2,126.68
- Security deposit applied to monies owed \$900.00
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$3,200.00

Relevant Submissions

9. The landlords submitted a copy of the rental agreement (LL#02) that they had with the tenants. Landlord1 said that they initially had a six month agreement from 08-July-2019 until 31-January-2020. After this they are in a monthly agreement. She said that the tenants pay \$1,300.00 a month; due on the 1st day of each month. She said that they paid their security deposit in increments, by mid-September-2019 they had paid the full deposit of \$900.00. The landlord is still in possession of the deposit.
10. The landlord said that the tenants moved out in the middle of June. She said that they had given the tenants numerous termination notices due to late rent. The last notice (LL#03) was for 15-June-2022. Landlord1 had spoken to tenant1 and asked if they were going to be out on 15-June-2022. She said that tenant1 wouldn't commit to being out by the 15th. Landlord1 said that tenant1 said that they might be out by then, she later said that they'd try to be out by 17-June-2022.
11. On 15-June-2022 landlord2 said he sent the tenants a text asking to gain entry to complete some repairs. At that time, he said, tenant1 told him she didn't know if it would be okay for him to go in, she had moved to Toronto. He said, she told him the kids were supposed to get everything out and that they might have it done she wasn't sure. He finally gained entry on 17-June-2022. He said he asked her about getting the keys back. He said that they never returned the keys.
12. Landlord1 said that the tenants were frequently behind in rent payments. She submitted a rent ledger, see below:

Rent ledger
2022-0471-NL

Date	Action	Amount	total
1-Dec-21	rent due	1300.00	1300.00
3-Dec-21		payment	-1000.00
1-Jan-22	rent due	1300.00	1600.00
13-Jan-22		payment	-1000.00
1-Feb-22	rent due	1300.00	1900.00
19-Feb-22		payment	-1050.00
26-Feb-22		payment	-250.00
1-Mar-22	rent due	1300.00	1900.00
1-Mar-22		payment	-1300.00
1-Apr-22	rent due	1300.00	1900.00
1-Apr-22		payment	-1300.00
1-May-22	rent due	1300.00	1900.00
1-Jun-22	rent due	1300.00	3200.00

13. The landlords are seeking full rent for June, they acknowledge that they gave notice for 15-June-2022, however, the tenants wouldn't commit to a date that they were going to be out. They never returned the keys. The house required cleaning and damages repaired before it could be rented. She said that it is still not ready to be rented, but are expecting to list it for August.

Analysis

14. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant wouldn't commit to a date that they would be moved out. I also accept their testimony that due to the decisions of the tenants to not commit to a move out date, or inform them when they actually moved. That the landlords were unable to have the house ready for new renters and did suffer a loss of rent for the last half of June. I find that the tenants did not pay rent owed totaling \$3,200.00.

15. The tenants shall pay the landlords the rent owed totaling \$3,200.00.

Decision

16. The landlord's claim for rent succeeds in the amount of \$3,200.00.

Issue 2: Late Fees \$75.00

Relevant Submissions

17. The landlords are seeking the maximum amount of late fees permitted; \$75.00. Landlord1 said that the tenants were frequently late with their rent payments and that the rent was in arrears beginning 02-December-2021 and is still in arrears. She said they haven't received any money from the tenants since 01-April-2022.

Analysis

18. 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.

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.*

19. As the tenant has been arrears since 02-December-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for damages \$2,126.68

Relevant Submissions

21. The landlords are seeking compensation for damages. They provided a compensation ledger (LL#05) as follows:

Item	Cost
Cleaning company	\$920.00
Cleaning supplies	16.57
Toilet repairs	30.10
Tub Caulking	18.39
Washer	200.00
Black out curtains	110.38
3 Curtain poles (Missing)	127.65
Bathroom pole	53.44
8 LED bulbs	91.91
Carpet repair in basement	150.00
Light shade (missing)	\$18.39
Additional cleaning and repairs 14 personal hours	296.80
Dump run	75.00

22. The landlord said that the house was incredibly dirty. They hired a company and provided a receipt (LL#06) for cleaning totaling \$920.00. Landlord1 also provided a screen shot of the email (LL#07) describing the work that was done. The cleaning company said in the email "it was disgusting how a person could live like this" and that they had "4 workers there for 7 hours each for a total of 28 hours." It described the dirt as being "embedded" and the odour as "unbelievable." In addition to this the landlord provided pictures showing what required cleaning, as follows:

- Bathrooms: exhibits LL#08 – LL#18
- Bedrooms: exhibits LL#19 – LL#25
- Kitchen: exhibits LL#26 – LL#44
- Living room and front porch area: exhibits LL#45-LL#58

23. Landlord1 also provided pictures LL#59 – LL#72 to show that the house was in good condition just before the tenants took occupancy.

24. In addition to the cleaning completed by the cleaners, the landlord submitted receipts for cleaning supplies, silicone, and toilet parts, (LL#73) to do additional cleaning and repairs in the bathrooms. Landlord1 said that although the cleaners did a good job, there was additional cleaning required and submitted a receipt from Walmart for \$16.57 for the supplies.

25. She said that the silicone around the counters and tub had to be replaced (LL#08) and she supplied a receipt from Kent's for \$18.39.

26. She also submitted a receipt for toilet seat parts from Kent totaling \$30.10. She said that there was damage to the flush on one of the toilets and provided pictures (LL#74 and LL#75). Landlord1 said that this toilet was just installed in 2017 and was only 4 years old. The other toilet had the toilet seat broken and the caps and hinges needed to be replaced, pictures provided (LL#15). She said that this toilet had a new seat installed in 2016 and the seat is 5 years old.

27. Landlord1 said that she bought a used washer 13-November-2021. She said she paid \$250.00 for the washing machine. She doesn't know the actual age, but she said 6 months after she purchased the washer, the tenants had broken it. She submitted a picture (LL#76) showing that the tenant had washed black out curtains and that the rubber was all over the drum. In addition to this she supplied a picture of the washer (LL#77) showing residue from fabric softener in the drain marked for bleach. She said her husband attempted to fix the washer but was unable to repair the damage.
28. The blackout curtains that the tenant washed are the property of the landlords and 3 years old. Landlord1 submitted pictures (LL#78 & LL79) showing that the curtains are ruined. She also provided a picture (LL#80) showing the price at Kent's for \$55.19 a panel. She is seeking reimbursement for two panels totaling \$110.38.
29. Landlord1 said that the curtain rods in the bedrooms are missing (LL#82) the brackets were left but the poles were missing. She said that they were 3 years old. She provided pricing from Kent to show the cost of replacement $37.29 + \text{tax} \times 3 = \128.65 .
30. She also said that the bathroom rod was missing (LL#83). She said that the pole was 3 years old. She provided pricing from Kent to show the cost of replacement (LL#84) totaling $46.19 + \text{tax} = \$53.12$.
31. Landlord1 said that when the tenants came to view the house, landlord2 was very thorough about explaining that the house has new LED lights throughout. He told them, at that time, if a light goes out that it should be replaced with LED bulbs. She said at the time the tenants were laughing and said that they wouldn't take his LED bulbs. She has provided pictures showing the missing LED bulbs that are either not replaced or replaced with a regular bulb (LL#84, LL#85, LL#87 and LL#88). She said that there are 8 missing bulbs. She provided Kent pricing to show the cost of replacement (LL#86). Each bulb is \$9.99. $8 \times 9.99 + \text{tax} = \91.91 . The bulbs are 3 years old.
32. Landlord1 said that there was a light shade missing from one of the ceiling lamps (LL#85). She said that the light fixture was about 9 years old. She found a replacement shade at Kent's (LL#86) for $15.99 + \text{tax} = \$18.38$.
33. Landlord1 said that landlord2 had to do a dump run to get rid of the garbage left behind. He said he disposed of the washing machine, bed frame, exercise equipment, a deep fryer, old dishes, and a cat scratching post. He said he is seeking mileage from [REDACTED] to the [REDACTED] dump and personal time totaling \$75.00.
34. Landlord2 said that they had to rekey the front and back door and it cost $\$15.98 + \text{tax} = \18.38 .

35. Landlord2 said that while the tenants were living there he went to the house to check on the basement, because of a leak with the washer, and noticed that someone was living in the basement and that their mattress was on the floor. He said he told them, at that time, that the mattress was going to ruin the carpet. They provided pictures to show that there is a mark in the carpet where it is raised up. They have contracted someone to lift the carpet, trim the excess underlay and relay the carpet. This cost \$150.00. He included the text with the tenant, where we told her the cost and she agreed to the work being done. (LL#91)
36. Landlord1 and landlord2 are seeking 14 hours personal time for the work that they have had to do: 14 hours @ \$21.20 = \$296.80.

Analysis

37. 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:

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.

38. The landlords' photographic evidence clearly shows a home that was not cleaned or cared for. The submitted billing and email from the cleaning company supports the claim that the house was not clean and required a lot of cleaning. I accept the landlords' receipt for work done and find that the tenants shall pay to the landlords \$920.00 for the cost of the cleaning company.
39. I further accept the landlords' claim that once the cleaning company completed their work, that the landlords had additional cleaning and some repairs required especially in the kitchen and washroom areas. The landlords claimed \$16.57 for cleaning supplies, and \$18.39 for silicone, as well as, 14 hours personal time to complete the work at \$296.80. I find the supplies and time required to be reasonable based on the photographic evidence and testimony provided. The tenants shall pay to the landlords \$331.76, as follows:
 - Cleaning supplies \$16.57
 - Silicone 18.39
 - Personal time 296.80
 - Total \$331.76

40. I accept that both toilets required repairs, one to the seat and the other to the flush and that the cost to the landlord for supplies is \$30.10. 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)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6. According to that policy toilet seats should last 10 years. These toilets were 4 and 5 years old and had worked for a period of 50% of their life span. The tenants will therefore compensate the landlords for 50% of the \$30.10 for a total of \$15.05.

41. I do not find for the landlord for the cost of the washing machine. The machine was purchased used and I can't determine, with any certainty, the value of the machine or the age.

42. I accept that the washing of the landlords' blackout curtains has destroyed them. Lined curtains are expected to last 5 years and these curtains are 3 years old. The landlord is claiming \$110.38 and shall receive 2/5ths of the cost (40%). $40\% \times 110.38 = \$44.15$. The tenants shall reimburse the landlords \$44.15 for the cost to replace the curtains.

43. I accept the landlords' claim for the missing rods in the bathroom and bedrooms totaling $53.12 + 128.65 = \$181.77$. Rods should not require replacement. The tenants will pay for the replacement of the rods totaling \$181.77.

44. The landlord is claiming \$91.91 for the replacement of the LED blubs. It is understood that tenants are to leave the rental in the same condition as when they moved in and I accept that the landlord did have LED bulbs in all the light fixtures at that time. This would determine that the blubs are three years old. LED bulbs are estimated to last between 3 – 5 years. Tenants are not responsible for regular wear and tear. These bulbs lasted within the range of their life span. The pictures show that the tenants did replace the bulbs, although not with LED. They have meet their obligation and I find that they are not responsible for this cost.

45. The landlords are claiming the cost of a lamp shade from their light fixture of \$18.38. I accept that one of the three shades are missing and that it had to be replaced. According to our policy a light fixture is expected to last 15 years. This fixture is 9 years old and the tenants will be responsible for the remainder of the life span, 6 years. $6/15\text{ths or } 40\% \times \$18.38 = \$7.35$. I find that the tenants shall pay the landlords \$7.35 for the cost to replace the lampshade.

46. The submitted pictures show that there was garbage and belongings left behind that required disposal at the dump. The landlords are claiming \$75.00 for personal time and travel. Google maps estimates this trip at 34 kms therefore 68 return. Mileage for a provincial employee is \$0.4509. Therefore $68 \times .4509 = \$30.66$. Add to this 2 hours to

drive the return trip and offload the belongings; 2 hours x \$21.20 = \$42.40. I find that the tenants shall pay to the landlords \$30.00 + 42.40 = \$72.40.

47. The landlords are seeking \$18.38 for the rekeying of the doors. It is incumbent upon the tenants to return their keys, which they did not. However, the landlord did not provide evidence to show the cost of the key replacement and therefore the claim fails.
48. I do find that the tenants shall pay the landlord \$150.00 for the cost of repairing the carpet in the basement. I accept that the landlord informed them that the placement of the mattress directly on the carpet could damage the floor and this damage is shown in the pictures submitted. The tenants shall therefore pay \$150.00 to the landlord for the cost of this repair.

Decision

49. The landlords claim for damages succeeds in the amount of \$1,722.48, as follows:

• Cleaning	\$920.00
• Cleaning supplies and personal time.....	331.76
• Toilets repaired	15.05
• Black out curtains	44.15
• Curtain rods	181.77
• Lamp shade	7.35
• Dump run	72.40
• Carpet	<u>150.00</u>
• Total	<u>\$1,722.48</u>

Issue 4: Security deposit applied against monies owed \$900.00

Relevant Submissions

50. As per paragraph 9, the landlords have declared that, the tenants paid a security deposit of \$900.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenant for rent and damages to the house.

Analysis

51. The landlords' claims for loss have been successful, paragraphs 16, 20 & 49, they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

14. (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

Decision

52. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$900.00.

Issue 5: Hearing expenses reimbursed \$20.00

53. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#91) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

54. The tenants shall pay \$4,177.48 to the landlords, as follows:

• Rent.....	\$3,200.00
• Late fees	75.00
• Damages	1,722.48
• Hearing expenses	20.00
• Less security deposit	<u>(900.00)</u>
• Total	<u>\$4,177.48</u>

The landlords shall retain the \$900.00 security deposit.

July 29, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office