

Residential Tenancies Tribunal

Applications: 2022 No. 0472 NL

Decision 22-0472-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 18 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 “tenant1”, did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “tenant2”, did not participate in the hearing.
5. Two affidavits of service were provided by the landlord (L#1) confirming that each party was served electronically of the claim against them. The landlord testified that he served both parties using contact information provided for communications on the rental agreement. Proof of service to each party was also submitted part of the same document referenced above.
6. The details of the claim were presented as a written fixed term 12 month agreement with rent set at \$1,350.00 per month since 01 February 2022. A copy of the written rental agreement was provided, and this agreement included proof of a \$675.00 security deposit having been collected (L#2). The rental agreement was terminated on 30 June 2022 after the landlord served notice of abandonment to both tenants (L# 3).
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:
 - Payment of rent in the amount of \$3,300.00.
 - Compensation paid for damages in the amount of \$2,146.50; and
 - The security deposit in the amount of \$675.00 to be applied against monies owing.

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 is section 14 and 19 of the *Act* and rule 29 of The Rules of the Supreme Court, 1986 and:
 - Residential Tenancies Policy 06-002 Abandoned Personal Property,
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property

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 respondent's 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 landlord resides in [REDACTED] and relied upon personal associates to serve notice in person to his former tenants where required.

ISSUE 1: PAYMENT OF RENT (\$3,300.00)

Relevant Submissions

15. The landlord submitted a rental ledger and testified that he had a verbal agreement with tenant1 to receive bi-monthly payments of the \$1,350.00 rent

(L#4). With this system in place, the tenant testified that he was surprised to receive only a \$200.00 payment from tenant1 on 04 May 2022. Even still, he testified that he gave tenant1 a few weeks before reaching out to tenant2 on or about 21 May 2022 to inquire about payment of May rent. He testified that tenant2 informed him that tenant1 had vacated the rental premises and that she alone was unable to pay rent.

16. The landlord testified that he agreed to rent to the tenants knowing that tenant1 would be paying the bills as tenant2 was unemployed with two small kids. The landlord testified that tenant1 never reached out about vacating the rental premises, and never for instance submitted a formal request to the landlord to be relieved of his obligations under the rental agreement. As such, the landlord has brought his application for dispute resolution against both tenant1 and tenant2.
17. The landlord testified that he issued the tenants with a termination notice under section 19 of the Act on 04 June 2022. The stated move out date was 15 June 2022. The landlord provided proof of service of the notice having been taped to the door of the rental premises (L#5). He testified that he also served electronic copies of the termination notice to both tenants by email.
18. The landlord testified that he issued the notice because tenant2 initially promised to be out of the rental premises by 31 May 2022 and then 04 June 2022. However, she did not vacate and no further rental payments were made so the landlord issued the termination notice. According to his records, the tenants were in arrears in the amount of \$2,625.00 when the notice was issued.
19. The landlord testified that tenant2 requested that she could remain in the rental premises until 30 June 2022, however, from conversations with both tenant2 and the tenant in the main floor apartment of the rental premises, the landlord became aware that the two young children had been apprehended by social services and that tenant2 was no longer actively living in the rental unit.
20. The landlord testified that he served both tenant1 and tenant2 notice of abandonment on 29 June 2022 notifying them of his intention to retake possession of the unit on 30 June 2022 (L#3). The landlord testified that he received no response to this notice and so he proceeded to take possession of his rental unit.
21. The landlord testified that he was seeking payment of rent from 01 February 2022 through to 14 July 2022 because he was only able to secure a new tenant from 15 July 2022 onwards. Regarding monies owing for rent, the landlord testified that he is owed \$2,625.00 in rent.

Analysis

22. I accept the landlord's claim and evidence that the tenants fell significantly behind in rent during May 2022, that only a partial payment was received for May 2022 and that no rent was received for June 2022.

23. Regarding the actual amount of money owed to the landlord, I agree with his calculations that he is owed \$2,625.00 (Please see the table below).

	Rent	Received	Difference
February	\$1,350	\$1000	-\$350
March	\$1,350	\$1,575	+\$225
April	\$1,350	\$1,350	0
May	\$1,350	\$200	-\$1150
June	\$1,350	0	-\$1350
Total	\$6,750	\$4,125	\$2,625

24. Where the landlord had testified that he is entitled to rent in the amount of \$675.00 for the period of 01-14 July 2022 when he was unable to rent the unit, I note that the \$2625.00 claimed in rent as show in paragraph 21 represents money owing until 30 June 2022.

Decision

25. The landlord's claim for rent succeeds in the amount of \$2,625.00.

ISSUE 2: COMPENSATION FOR DAMAGES (\$2,146.50)

Relevant Submissions

26. The landlord submitted a series of photos said to be taken throughout the rental unit in January 2022 prior to the tenant's taking occupancy (L#6). These photos depict a nice unit that was left clean and empty for the tenants to occupy. The landlord also submitted a series of 24 photos taken throughout the rental premises after he took possession of the unit on 30 June 2022 (L#7). The photos depict significant disarray, hoarding (layers upon layers of possessions), debris and filth throughout the entirety of the unit. Floors and counter space are not even visible in the majority of the photos. The landlord highlighted how a number of these photos included evidence of drug use.

27. The landlord submitted a damages spreadsheet outlining associated dates and reasons for the \$2,146.50 in damages claimed (L#8). Each item was reviewed in detail and relevant evidence was considered during the hearing.

Damage 1 – Garbage removal from property (\$115.00)

Relevant Submissions

28. The landlord testified that he received complaints from the upstairs tenant who relayed that complaints had also been received from neighbours of the rental premises regarding garbage stacked outside of the entry door to the rental unit (see page 3 of L#8). The landlord testified that he texted tenant2 on 16 May 2022

asking if tenant1 could take care of the garbage “today or tomorrow” and if not, that he would collect and dispose of the garbage for a fee. The landlord did not submit proof of these conversations.

29. The landlord claimed the costs of 1 hour of labour for two labourers to remove the garbage that was accumulated outside of the rental unit entrance way. This work happened on 18 May 2022 while the tenants were still in possession of the unit. He submitted an invoice in the amount of \$115.00 that he paid as evidence (see page 4 in L#8).

Analysis

30. The landlord is seeking \$115.00 for costs he incurred without providing convincing documentation on why he incurred the costs while the tenants retained possession of the unit. Yes there was garbage outside of the unit, but no proof of a municipal complaint with associated deadlines was provided, nor was proof of conversations with tenant2 regarding the landlords request for garbage removal provided. As such, even though the landlord provided proof of payment for garbage removal, he failed to establish on the balance of probabilities that he was required to incur those costs when he incurred them. For instance, based on the evidence provided, it seemed reasonable that this exterior garbage removal could have occurred as part of the general clean up of the rental premises once the landlord regained possession of the rental premises.

Decision

31. The landlord’s claim for costs for garbage removed on 18 May 2022 does not succeed.

Damage # 2 - Install New Door Lock \$130.00

Relevant Submissions

32. The landlord testified that he was informed by tenant2 that she had lost keys for the rental unit and had been accessing the unit through the window. The landlord submitted screenshotted proof of e-transfer payment in the amount of \$130.00 to a [REDACTED] for the purposes of “changing lock on basement apartment door”. The landlord testified that this was for the replacement of a deadbolt and the main door handle.

Analysis

33. I accept that the landlord incurred unexpected costs. However, changing locks and or re-keying locks is considered to be a normal practice when tenants move from a property. This is not a “damage” expense to be passed along to the departing tenants.

Decision

34. The landlord's claim for compensation for re-keying locks does not succeed.

Damage # 3 – Storage Unit Rental 2 Months (\$701.50)

35. The landlord testified that he arranged storage costs for tenant2 because she indicated to the landlord in communications, that she was unable to pack up and remove her items at the time that he took possession of the rental unit. The landlord testified that he informed the tenant that he would do this work at cost, however, documentary proof of these communications was not provided.
36. The landlord testified that he rented a 10x20 storage unit in a nearby Metro Storage location for July and August 2022. The monthly cost for this rental unit is said to be \$350.75, for which a screen shot of an online invoice was provided (see page 6 in L#8). The invoice does not specify the rental of the storage unit and or physical address of the company. Such information was only provided by the landlord upon questioning. The landlord testified that he expects to incur the second VISA charge of \$350.75 on 01 August 2022.
37. The landlord also testified that he sent tenant2 \$100 so that she could purchase materials for packing and that he also sent someone to her property with \$80 worth of packing materials. The landlord stated that he was not claiming these costs currently, but that he wanted it acknowledged that he incurred such costs.
38. The landlord testified that he did not make an application to the residential tenancy office for disposal of personal possessions but that it was his next step to make such an application.

Analysis

39. The landlord as the applicant is responsible for establishing on the balance of probabilities that he is entitled to compensation in the amount claimed. The landlord acknowledged that he provided commercial storage on request of tenant2 and that he did so without first making an application to the residential tenancies officer for disposal of personal possession.
40. According to *Residential Tenancies Policy 06-002 Abandoned Personal Property*, where a tenant vacates a residential premises and leaves personal property on the residential premises, they are required to:
 - Remove the personal property and immediately place it in safe storage for a period of not less than 30 days; or
 - Store the personal property on the residential premises in a safe manner.
41. If and where the items left in the rental premises, are deemed to be worth less than the cost of removing, storing or selling the personal property, the landlord

can make an application to this tribunal for immediate disposal of the personal property. Because the landlord did not submit the inventory of possessions to this tribunal, it was difficult to determine the possible resale value of the items stored in the case that they are not claimed by the tenant. However, judging by the sheer amount of items stored, it appeared like that the resale costs of items stored should be in excess of the full costs claimed for damages by the landlord.

42. Where the landlord was able to establish that the possessions he stored, were stored on the request of the tenant and not necessarily abandoned, I find that the agreement outlined by the landlord in paragraph 35 qualifies as an item against which the Director can order repayment in accordance with 47(1)(b) of the Act which reads as follows:

Order of Director

47. (1) After hearing an application the director may make an order

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

43. As such, I find that the landlord convincingly established, based on his oral testimony and his proof of receipts related to the storage unit, that he is entitled to compensation in the costs claimed.

Decision

44. The landlord's claim for compensation for damages related to storage costs succeeds in the amount of \$701.50.

Damage 4 – Labour to pack and store boxes, remove debris

45. The landlord submitted proof of an e-transfer sent on 11 July 2022 to a [REDACTED] [REDACTED] in the amount of \$1,000 for payment of removal of abandoned belongings from the rental unit. This included 30 hours of labour (\$30 an hour) and \$100.00 for mileage for 7 trips to the storage unit in the truck and one trip to the dump (See page 7 in L#8).

46. The landlord testified that [REDACTED] generated an itemized list of possessions that were stored, however this document was not submitted to this tribunal. The landlord testified that his next step is photograph each of the bags that have been stored in the 10x20 storage unit.

47. The landlord testified that he contacted some moving companies to check their prices prior to making arrangements with [REDACTED] for removal of the tenant's possession from the rental unit. The landlord testified that food stuff, garbage and unsanitary items were taken to the dump, but otherwise all possessions including couches and beds, baby goods, and clothing were taken into storage.

Analysis

48. The landlord as the applicant is responsible for establishing on the balance of probabilities that he is entitled to compensation in the amount claimed. The landlord acknowledged that he provided commercial storage on request of tenant2 and that he did so without first making an application to the residential tenancies officer for disposal of personal possession.
49. According to *Residential Tenancies Policy 06-002 Abandoned Personal Property*, where a tenant vacates a residential premises and leaves personal property on the residential premises, they are required as per section 32 of the Act, to:
 - Remove the personal property and immediately place it in safe storage for a period of not less than 30 days; or
 - Store the personal property on the residential premises in a safe manner.
50. If and where the items left in the rental premises, are deemed to be worth less than the cost of removing, storing or selling the personal property, the landlord can make an application to this tribunal for immediate disposal of the personal property. Because the landlord did not submit the inventory of possessions to this tribunal, it was difficult to determine the possible resale value of the items stored in the case that they are not claimed by the tenant. However, judging by the sheer amount of items stored, it appeared like that the resale costs of items stored should be in excess of the full costs claimed for damages by the landlord.
51. Where the landlord was able to establish that the possessions he stored, were stored on the request of the tenant and not necessarily abandoned, I find that the agreement outlined by the landlord in paragraph 35 qualifies as an item against which the Director can order repayment in accordance with 47(1)(b) of the Act which reads as follows:

Order of Director

47. (1) After hearing an application the director may make an order

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

52. As such, I find that the landlord convincingly established, based on his oral testimony and his proof of receipts related to paying for the services necessary to remove and pack salvageable items into storage as required by section 32 of the Act, that he is entitled to compensation. Regarding entitlement to exact costs, the maximum hourly rate for labour as per *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, is \$21.20.
53. Where the landlord claimed 30 hours of work, this would result in a maximum charge of \$636.00 (e.g., \$21.20 x 30). I therefore find that the landlord's claim for storage of the tenants' possession succeeds in the amount of \$736.00 (e.g., \$636.00 + \$100 mileage).

Decision

54. The landlord's claim for compensation for damages related to packing items for storage succeeds in the amount of \$736.00.

Damage 5 – Cleaning \$200.00

55. The landlord testified that he secured the set price services of a cleaning contractor who sends "2 or 3" people at a time to clean. Based on his sharing of the move out condition inspection photos (L#7), the landlord testified that he was quoted \$200 for cleaning of his unit and that this represented 2.5 hours of cleaning by "2 or 3" people. The landlord submitted proof of an e-transfer sent to an [REDACTED] in the amount of \$200 for cleaning in the rental unit on 12 July 2022.

Analysis

56. As per *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum amount of money that can be claimed for hourly cleaning is \$21.20.

57. Where the landlord claimed 2.5 hours of work, this would result in a maximum charge of \$53.00 per person cleaning (e.g., \$21.20 x 2.5). Given the apparent state of the rental premises, as shown in pictures, I find it highly likely that a team of 3 persons would have been required for cleaning during that time in order to clean effectively. As such, I find that the landlord's claim for cleaning succeeds in the amount of \$159.00 (e.g., \$53.00 x 3).

Decision

58. The landlord's claim for cleaning succeeds in the amount of \$159.00.

SUMMARY DECISION DAMAGES

59. The landlord's claim for compensation for damages succeeds in the amount of \$1,596.50 (\$701.50 + \$736.00 + \$159).

ISSUE # 3: SECURITY DEPOSIT (\$675.00)

Relevant Submission

60. The landlord applied to retain the full amount of the \$675.00 security deposit as compensation for monies owing. Proof of the security deposit having been collected was provided on the rent ledger submitted to this tribunal (L#4).

Analysis

61. Administrative requirements for claims against security deposits can be found within section 14, sub 10, 12 and 14 of the *Residential Tenancies Act*, which reads as follows:

(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.*

62. Because the amount of money successfully claimed by the landlord exceeds the amount of the security deposit collected, I find that the landlord is entitled to retain the full return of \$675.00.

Decision

63. The landlord's application to retain the tenant's security deposit succeeds in the amount of \$675.00.

Issue 4: Hearing Expenses

64. The landlord claimed \$20.00 for the expense of applying for the hearing.

65. As his claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

66. The landlord is entitled to the following:

- To retain the tenants' security deposit in the full amount of \$675.00;
- A payment of \$3,566.50, determined as follows:
 - a) Rent Owing..... \$2,625.00
 - b) Compensation for damages.....\$1,596.50
 - c) Hearing Expenses.....\$20.00
 - d) **Less security deposit.....(\$675.00)**
 - e) Total.....**\$3,566.50**

05 August 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal