

Residential Tenancies Tribunal

Application: 2022 No. 0488 NL

Decision 22-0488-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 20 July 2022 via teleconference.
2. The applicant [REDACTED] as represented by [REDACTED], hereinafter referred to as "landlord1", participated in the hearing. Landlord1 testified that she is the Manager for [REDACTED] Inc.
3. The applicant [REDACTED] as represented by [REDACTED], hereinafter referred to as "landlord2", participated in the hearing. Landlord2 testified that he is the owner of [REDACTED].
4. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
5. The landlords provided an affidavit of service confirming that the tenant was served electronically of the claim against him (L#1). Landlord1 testified that she knew to serve electronically using the email addressed provided on the written rental agreement and proof of electronic service was provided (L#2).
6. The details of the claim were presented as a fixed term agreement that ran from 01 June 2021 through to 31 May 2022. Monthly rent was \$2,000.00 and a security deposit in the amount of \$1,500.00 was collected. A copy of the written rental agreement was provided (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 landlords are seeking the following:
 - An order for compensation paid for damages in the amount of \$12,374.00; and
 - An order for the security deposit in the amount of \$1,500.00 to be applied against monies owed.

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 10 and 14 of the *Act* along with the following policies:
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property.

Preliminary Matters

11. The tenant was not present or represented at the hearing and I was unable to reach him 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 tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

Issue # 1: Compensation for Damages (\$12,374.82)

Relevant Submissions

14. The rental premises is a [REDACTED] apartment complex located at [REDACTED]. The tenant resided in unit [REDACTED], a 1060 square foot unit, with two bedrooms and in-suite laundry. Monthly rent charges included all utilities and parking. Landlord2 testified that they mostly offer fully furnished units but that the tenant's unit was unfurnished except for a few pieces provided by the landlords. Landlord2 testified that they provide high quality rentals designed to cater to professionals.

15. Landlord1 testified that the tenant vacated the rental premises in the middle of May 2022 but that some belongings, as well as periodically the tenant's mother remained in the rental premises until the end of the month. Landlord1 testified that the rental premises was successfully re-rented for 01 June 2022 as they were provided access to the rental unit to complete the required repairs during the second half of May 2022.
16. Landlord2 testified that the majority of costs incurred for damages at the rental premises were costs for internal staff to complete required repairs and cleaning. He stated that Contractors were hired as required and material costs were separately identified. Landlord1 referred to a written summary document that she had prepared and submitted, where four different categories of costs were identified (L#4):
- Contractors & materials = \$5,347.32
 - Repairmen = \$3,930.00
 - Cleaning = \$2,397.50
 - Management = \$700.00
17. Each of these categories of costs were discussed and specific evidence was considered against each category during the hearing. A PDF exhibit list was provided, clearly identifying all photos and videos exhibits submitted as evidence of damage (L#5). The landlords did not provide a condition move inspection report, but testified that they submitted pre-move in photos to this tribunal. I note that these photos were submitted as hosted on a 3rd party site, and so I was not able to access them. I did however accept their testimony that they offer highly quality rental units that are designed to cater to professional individuals, as this was evident in the monthly rent costs (e.g., \$2,000) and pictures of the damaged unit provided.

DAMAGE CATEGORY 1 – CONTRACTORS & MATERIALS \$5,347.32

18. Five sub-categories of damage items were identified and reviewed.

#1 Plumbing \$163.88

19. Landlord1 testified that the kitchen and bathroom sink and toilet needed to be tightened. A video of the loose bathroom sink facet was submitted (L#6), along with a video of a patched together and very loose kitchen sink faucet (L# 7). Landlord1 testified that the plumbing bill for the work was 163.88. No documentary evidence related to the charge or payment was provided.

Analysis – Plumbing

20. The landlords did not provide any documentary evidence related to costs incurred related to the \$163.88 claim for compensation for plumbing work. Because this was not provided, I was unable to verify their claim. As such, their claim does not succeed.

Decision – Plumbing

21. The landlords' claim for compensation for plumbing does not succeed.

2 Appliance Repair \$3,477.08

22. Landlord1 testified that the tenant damaged a stove that had been new to the rental premises in 2021. She stated that tenant completely smashed the glass top of this stove in July 2021 and that the cost to replace this stove was \$960.00. A photos of the broken stove top was submitted (L#8) but the invoice for the new stove was not provided. Landlord1 further testified that the tenant also broken the new stove that was installed in July 2021 and indicated that the landlords incurred costs of \$115.00 to repair damage to warming drawer, trim and enamel. An invoice was not submitted for this work, but photos of the damaged stove were provided (L#8). Landlord1 also testified that an additional \$519.71 is required to restore the stove to full proper new like condition, however no specific work order or work estimate was provided. She confirmed that this latter work has not yet been completed.
23. Landlord1 testified that the tenant broke the handle of the fridge door and put a major dent in the front of it. A video was provided of the fridge, demonstrating that it would not stay closed and a photo was provided of damage to the fridge from the door being opened too wide (L#8). Landlord1 testified that she incurred costs of \$115.00 to fix the fridge so that the door would stay closed but did not provide a copy of this receipt. Landlord1 also testified that the cost to purchase a new fridge would be \$1,327.08 but did not provide a written estimate or sales Order. She stated that this cost has not yet been incurred, but that it would be required to ensure a fridge of the same quality that existed when the tenant moved in, would exist for future tenants of the rental unit.

Discussion Appliance Repair

24. I accept the testimony and evidence provided by the landlords that the actions of the tenants resulted in notable damage to a stove that was replaced, as well as damage to a second stove. I also accept testimony and evidence provided by the landlords that the actions of the tenant resulted in notable damage to the fridge. Because however, the landlords failed to provide invoices or receipts related to the two \$115.00 invoices claimed for fridge and stove repair, and also failed to provide the invoice or receipt related to the \$960.00 charge for a 2021 stove replacement, I was not able to verify the exact costs for compensation claimed.
25. Consequently, the landlords claim for compensation in the amount of \$1,190.00 for appliance repair and replacement does not succeed. Regarding the landlord's claim for the costs for additional repair work to the stove (\$519.71) and a new fridge (\$1,327.08), I find that the landlords failed to establish the requirement for either, as they did not submit written estimates of exact/anticipated costs required for these future purchases, and they also

provided evidence that the current fridge and stove in the rental unit are in working condition within an occupied rental unit.

Decisions Appliance Repair

26. The landlords' claim for compensation for appliance repair does not succeed.

3 Tile Repair \$300.00

27. Landlord1 testified that there was a broken tile and that this tile had to be replaced because there was a sharp edge, making it unsafe to walk on without shoes. She provided a picture of the broken tile (L# 9). No specific invoice or receipt was provided for the labour or material costs related to this tile replacement.

Analysis – Tile Damage

28. The landlords did not provide any documentary evidence related to costs incurred related to the \$300.00 claim for compensation for tile damage. Because this was not provided, I was unable to verify their claim. As such, their claim does not succeed.

Decision – Tile Damage

29. The landlords' claim for compensation for tile damage does not succeed.

#4 Front Door Damage \$900.00

30. Landlord2 testified that he anticipates it will cost \$900.00 to replace the front door because all doors in the building need to be uniform. He indicated that he did not have a receipt or purchase order related to this claim because he has not yet begun sourcing a replacement door. Landlord1 referred to a photo submitted depicting notable damage (split) to the interior of front door, likely as the result of the door being shoved or kicked open (L#10).

Analysis – Front Door Damage

31. The landlords did not provide any documentary evidence related to the anticipated costs of \$900.00 for replacing a damaged front door. Because this evidence was not provided, I was unable to verify their claim. Furthermore, a review of the photo and evidence provided indicate that the current front door remains in workable condition as the rental premises have been re-rented with the door as is. For both reasons above, the landlords' claim for compensation for the door replacement does not succeed.

Decision – Front Door Damage

32. The landlords' claim for compensation for front door damage does not succeed.

#5 Miscellaneous Supplies (\$946.65)

33. Landlord1 testified that she is seeking compensation for the following miscellaneous supplies required as part of the repair work at the rental premises (see page 3 on L#4):
- Kent \$18.03
 - Paint Shop \$24.10
 - Paint Shop \$63.25
 - Paint Shop \$100.80
 - Home Depot \$358.59
 - Home Hardware \$36.98
 - Miscellaneous cleaning supplies \$100
 - 2 Gallons of Ceiling Paint \$144.90
 - Miscellaneous repair and maintenance supplies \$100
34. No itemized receipts or proof of purchase was provided for any of these items.

Discussion – Miscellaneous Supplies

35. The landlords did not provide any documentary evidence related to their individual costs incurred related to the \$946.65 claim for compensation for miscellaneous supplies. Because this was not provided, I was unable to verify their claim. As such, their claim does not succeed.

Decision – Miscellaneous Supplies

36. The landlords' claim for compensation for miscellaneous supplies does not succeed.

Summary Decision – Contractors and Materials \$5,347.32

37. The landlords' claim for compensation for contractors and materials does not succeed in any amount.

DAMAGE CATEGORY 2 – REPAIRMEN = \$3,930

38. Landlord1 referred to her submitted notes and testified that she is claiming the costs incurred when she had to pull two of their repairmen men away from their regular tasks and have them focus on the repairs needed during the final two weeks of May 2022 (see page 1 on L#4). Landlord1 reviewed the bulleted list of work tasks completed by the two repairmen and testified that she is seeking compensation for:
- 92 hours of repairs at \$40 per hour \$3,680.00 and
 - 5 hours of repairs at \$50.00 per hour \$250.00.

39. Each item from this bulleted list was reviewed against photographic evidence provided:
- Front door patch – as discussed in paragraph 30;
 - Replace 10 year old bathroom door - photos of door damaged beyond repair were provided (L#11);
 - Replace bathroom door handle;
 - Replace door stop in bathroom – photo provided (L#11);
 - Replace laundry room bi-fold door – photo of laundry room with no door provided (L#11);
 - Replace hall linen closer door knob;
 - Repair hall linen closet door;
 - Repair master bedroom closet door – photo provided (L#11);
 - Straighten loose pendant light – photo provided (L#11);
 - Fix desk chair leg – video provided (L#11);
 - Fix master bedroom door stop and frame – 3 photos provided (L#11);
 - Deep clean black tile grout – photos provided (L#11);
 - Remove red tape from living room walls – photo provided (L#11);
 - Repair dent on pot left in unit;
 - Paint touch ups in hallway and living to cover marks and dents – multiple photos provided (L#11);
 - Repair bathroom dents and holes and paint as needed – photo provided (L#11);
 - Plaster and paint other holes and dents including bedroom which could not be colour matched – photos provided;
 - Paint water damaged moulding behind toilet – photos provided (L#11);
 - Paint damaged bedroom moulding.
40. Landlord1 also noted dents in the laminate flooring and testified that these dents could not be repaired but will need to be later replaced. Landlord2 estimated that these floors were 7 or 8 years old. Photos were provided (L#11).
41. Regarding time spent on specific tasks identified paragraph 39, landlord1 testified that either she or landlord2 met daily with the repairmen to identify work that needed to be done and confirm progress on work completed. Landlord1 testified that no specific task-by-task hourly breakdown was identified, but testified that she clearly identified all work completed in her notes provided for each bullet (see page 1 – 2 on L#4).
42. Regarding the general conduct of the tenant while he resided in the rental premises, landlord2 testified that he is on the condo board and that the board received multiple noise complaints from neighbours of the tenant. Landlord1 also testified that they had previously tried to evict the tenant for *Interference with Peaceful Enjoyment and Reasonable Privacy* under section 24 of the *Act* but they ended up allowing him to stay once a lawyer got involved.

Analysis – Repairmen

43. 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).
44. 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.
45. Specific to the general state of the rental unit at the time the tenant took occupancy and then returned possession of the unit, I was not able to access the “pre-occupancy photos” provided by the landlords as they were shared in an inaccessible format. I did however accept their testimony that they provide higher end units to working professions. As such, I accept the landlords testimony that the rental premises was in good shape prior to the tenant’s occupancy and that any damage noted by the landlords, would not have existed in any substantial form prior to the tenants occupancy.
46. Regarding the actions and behaviours of the tenant as suggested by the landlords, a review of the photos provided suggest that the tenant often moved forcefully or aggressively throughout the rental unit, causing assorted damage that as shown in the many pictures and videos, was way beyond regular use. Dozens of examples of such damage from repeated rough behaviour were carefully photographed across the extent of the rental unit and the landlords also testified to previous efforts to evict the tenant due to his behaviour. As such, I find that the landlords successfully established that the tenant caused the reported damage in the rental.
47. Regarding the landlords’ entitlement to compensation, I note that they claimed 97 hours of labour for their two repairmen. Because the work tasks were project managed by the landlords and because each task was fully described and the majority of damaged items needing repair or replacement were carefully photographed, I find that it is reasonable that 97 hours of labour were required to restore the rental premises to the “high end” state required of the landlords.
48. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, specific labour hours can be claimed in a maximum amount of \$21.20 per hour. As such, I find that the landlords’ claim for compensation for time spent by their repairmen, succeeds in the amount of \$2,056.40 (e.g., 97 x \$21.20).

Decision – Compensation for Repairmen

49. The landlords' claim for compensation for repairmen hours succeeds in the amount of \$2,056.40.

DAMAGE CATEGORY # 3 – CLEANING \$2,397.50

50. Landlord1 referred to her written summary (L#4) and testified that she is seeking compensation for 68.5 hours of cleaning at a rate of \$35.00 an hour. Landlord1 testified that the cleaners are staff cleaners, and that they had to be pulled away from their regular duties to assist with the required repairs and cleaning in the rental premises after the tenant provided access in mid May 2022. Landlord1 testified that the two cleaners can usually clean a vacated rental premises within 4 – 8 hours, and so the landlords are seeking compensation because multiple times that typical amount of cleaning was required in this claim.
51. Landlord 2 testified that there was an unusual level of debris and dirt left across the unit and indicated that multiple photos were provided (L#12). Landlord1 testified that:
- The cleaners did an initial clean so that the landlords could create a work list for repairs;
 - The cleaners were onsite and cleaning while the repairmen were working, and;
 - Once the repair were complete, the cleaners conducted a final clean.

Analysis - Cleaning

52. The landlords successfully established through their pictures and testimony that there was indeed significant debris across all areas of the rental premises. Regarding the actions and behaviours of the tenant as suggested by the landlords, it was apparent that no cleaning was completed by the tenant prior to his providing access to the landlords for them to complete repairs in the middle of May 2022.
53. Where the landlords successfully claimed that 97 hours of work by staff repairmen was required to restore the rental premises to a high state of functionality, I find it unreasonable that 68.5 hours of cleaning were required for a 1,060 square foot rental unit. In particular, I note how landlord1 claimed an initial clean, continual cleaning during repairs, and then a final clean.
54. Where it had been mentioned that the landlords conducted these repairs while the tenant still had possession of the unit, I expect this continual cleaning was done as an mitigation effort to ensure that the tenant's possession were not negatively impacted. Given however, that the landlords were able to do this repair work while being paid rent, and were immediately able to secure a new tenant, I find that this additional cleaning during repairs, was a service they chose to provide.

55. As such, I find it reasonable to award compensation at twice the landlords' maximum cleaning costs for vacated units. This means, that where a max of 16 hours (e.g., 8 hours for two workers) is required for cleaning a typically vacated unit, I will allow the landlords to claim 32 hours of cleaning time (e.g., 16 hours of cleaning time by two workers).
56. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, cleaning hours can be claimed in a maximum amount of \$21.20 per hour. As such, I find that the landlords' claim for compensation for time spent by their cleaners, succeeds in the amount of \$678.40 (e.g., 32 x \$21.20).
57. The landlords' claim for compensation for cleaning succeeds in the amount of \$678.40.

Damage Category 4 – Project Management \$700.00

58. Landlord1 referred to her written summary (L#4) and testified that they are seeking compensation for 14 hours of spent managing the repair and cleaning process during May 2022. Landlord1 indicated that they have claimed their management hours at \$50 an hour for a total of \$700.00 (e.g., 14 x \$50.00)

Analysis – Project Management

59. The landlords are seeking compensation for a task required of them as landlords with responsibility for maintaining their rental unit in a "*good state of repair and fit for habitation*" under 10(1)(1) of the *Act*. This Tribunal does not consider compensation hours for management costs a charge that can be passed along to departing tenants.

Decision – Project Management

60. The landlords' claim for compensation for project management does not succeed.

Summary of Compensation for Damages

61. The landlords' claim for compensation for damages succeeds in the amount of \$2,734.80 (e.g., \$2,056.40+ \$678.40)

Issue 2: Security Deposit Relevant Submissions

62. Proof of a \$1,500.00 security deposit having been collected on 10 May 2021 is provided on page 2 of the rental agreement (L#3). Landlord2 testified that they would like to retain the full amount of the security deposit against monies owed.

Analysis

63. 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.

64. The landlords claim for compensation for damages has succeeded in excess of the \$1,500.00 security deposit collected. As such, I find that they are entitled to retain the full amount of this deposit to offset monies owed.

Decision

65. The landlord's application to retain the tenant's security deposit succeeds in the amount of \$1,500.00.

Issue 4: Hearing Expenses

66. The landlords claimed \$20.00 for the expense of applying for the hearing.

67. As their claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision


68. The landlord is entitled to the following:

- An order to retain the full security deposit in the amount of \$1,500.00.
- Payment from the tenant in the amount of \$1,254.80, determined as follows:

a) Compensation for Damages.....	\$2,734.80
b) Hearing Expenses.....	\$20.00
c) Less Security Deposit.....	(\$1,500.00)
d) Total.....	<u>\$1,254.80</u>

01 August 2022

Date


Jaclyn Casler
Residential Tenancies Board