

Residential Tenancies Tribunal

Application 2022 No. 0514 NL

Decision 22-0514-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 28 September 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the landlord" participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" respectively, also participated in the hearing.
4. The landlord provided two separate affidavits of service, confirming that he served both tenants individually by text and by email and also provided proof of service (L#1). Tenant2 acknowledged service, but tenant1 denied service. The landlord testified that he previously attempted to serve the tenant2 at work and that he also hired a sheriff to serve tenant2 but was not successful.
5. The details of the claim were presented as a month-to-month rental agreement that started back in December 2091. Monthly rent was originally set at \$750.00 but was then reduced to \$650.00. A security deposit in the amount of \$350.00 was collected and a copy of the original written rental agreement was provided.
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. 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

7. The landlord is seeking the following:
 - Validity of Termination notice determined;
 - Payment of rent in the amount of \$650.00;
 - Payment of damages in the amount of \$2,272.63;
 - Possessions returned \$150.00;
 - Compensation for other in the amount of \$200.00;

- An order to retain the security deposit in the amount of \$350.00.

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 is sections 10 and 23 of the *Act*.

Preliminary Matters

10. The landlord testified that the rental premises is a 850 sqft, 2 bedroom single family dwelling on 2 acres of land located at [REDACTED]. The house was built in the 1930s-40, and the landlord purchased it approximately 20 years ago at which time he conducted extensive renovations.
11. The tenants lived in the rental premises with their two parrots and a Pomeranian.

Issue 1: Validity of Termination Notice

Landlord's Position

12. The landlord testified that there "issues" with the washing machine at the rental premises, which he replaced and then replaced again with the original washer (both of which he claimed to be extensively dirty see L# 0) causing his to pursue relocating the washing machine to the second bedroom which the tenants were using as a den. The landlord indicated that the tenants refused this request. He testified further that he attended the rental premises on Mothers Day weekend (May 2022) to pick up a dehumidifier that he had left at the rental premises, and that he communicated to tenant2 his desire to discuss raising the rent so that he could conduct some renovations. The landlord testified that he made this request verbally and that this request was non-specific, but it was still refused. The landlord testified that he was then issued a termination notice by the tenants and a copy of this notice was provided (L#3). The landlord denied previous knowledge of the tenants' safety concerns with his dog.

Tenants' Position

13. Tenant2 testified that she was without laundry from February 2022 and that she was frustrated with the landlord, who she felt was not responsive to concerns within the rental premises. She testified that she had to spend three months doing laundry at her mothers place, and this was after she waited 9 months for the roof of the rental premises to be repaired, and so she issued the landlord a termination notice under section 24 of the *Act* after he attended to the rental premises and stated that he wished to increase the rent which she felt was unreasonable since she has not had access to laundry for three months. Tenant2 testified that she also issued the notice because she has a small dog and she was concerned about the landlord repeatedly bringing his dog, and allowing the neighbours dog on to the yard of the rental premises. Tenant2 testified that she served the termination notice by email on 13 May 2022 and that she and tenant1 moved out of the rental premises two weeks later on 27 May 2022, as this was the suggested timeline provided on the notice template.

Analysis

14. According to Residential Tenancies Policy 07-005, tenants may give the landlord notice that the rental agreement is terminated and the tenant is vacating the residential premises on a specified date not less than 5 days, but not more than 14 days, after the notice has been served. The tenants in this case, testified that they issued the landlord with notice of termination because he verbally informed them that he was seeking to raise rents when they were frustrated by what they described a failure to maintain the rental premises. Tenant2 also spoke of her concerns regarding the landlord's dog being on the rental premises, and that this was worrisome because she feared for the safety of her small dog.
15. Termination notices issued under section 23 of the *Act*, are for Interference with peaceful enjoyment and reasonable privacy, which is considered an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant. This is typically considered a separate category from what the tenants described as their perception of the landlord's failure to maintain their rental premises (e.g., breach of material term for failure to maintain the rental premises in a "good state of repair and fit for habitation during the tenancy" as per 10(1)(1) of the *Act*).
16. I nonetheless accept the tenants' testimony and evidence that the behaviour of the landlord in requesting a verbal rental increase after not satisfactorily resolving matters of functioning laundry in the rental premises, could be considered an unreasonable interference against peaceful enjoyment since the ability to do laundry, is an important part of daily life. I further accept that the landlord failed to establish on the balance of probabilities that he indeed provided the tenants with a workable laundry solution that did not otherwise impact their use of the rental premises (e.g., he wanted to move the washer, tenants opposed, and he failed to prove that the tenants were successfully using the then current laundry option).
17. Tenant2 also spoke of her repeated concerns with the landlord's dog the yard of her rental premises, as a safety concern for her small dog. Consequently, I find that the landlord's actions made it so that the tenants could not live peacefully or privately at the rental premises.

Decision

18. The termination notice issued in 13 May 2022 was a valid notice.

Issue 2 – Rental Arrears (\$650.00)

Landlord's Position

19. The landlord testified that he is owed rent for June 2022 because the tenants only gave 2 weeks notice that they were moving.

Tenant's Position

20. Tenant2 testified that she did not believe they owed the landlord rent for June because they paid full rent for May 2022 and they issued him a termination notice that saw them vacate the rental premises on 27 May 2022.

Analysis

21. As per paragraph 17, the termination notice issued by the tenants was a valid notice and so, the landlord is not entitled to payment of rent for the month of June 2022.

Decision

22. The landlord's request for payment of rent does not succeed in any amount.

Issue 3: Compensation for Damages (\$2,272.63)

Relevant Submissions

23. The landlord submitted a damage ledger and each claim was reviewed during this hearing against relevant evidence and testimony provided (L#4). The landlord also submitted a series of photos taken from prior to the tenants occupancy (L#5), as well as a series of photos taken after the tenants vacated the rental premises (L# 6). The tenants testified that they agreed both sets of photos fairly represented the state of the rental premises on move in and move out.

- Interior Cleaning
 - i. Cleaning by landlord and wife = \$172.50
 - ii. Professional cleaning = \$805.00
- Countertop
 - i. Replacement = \$745.13
 - ii. Installation = \$200.00
- Exterior Clean up = \$150.00
- Paint, Primer, Misc Supplies = \$200.00

24. These claims were assessed in accordance with standard practice that requires applicants in any damage claim to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- That the damage for which 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).

25. 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 = Interior Cleaning

Landlord's Position

26. The landlord testified that he and his wife spent at least 5 hours each cleaning the rental premises before they realized that they needed to call in professionals to clean due to concerns with bird poop on multiple surfaces. He referred to the difference in the rental premises between the move in and move out photos to illustrate the need for cleaning, and specifically identified bird poop throughout, dirty window sills, dust and dirt

throughout as well as uncleared appliances. The landlord also referred to previously received testimonials from when he operated the rental premises through AirBnB and testified that he received 5 stars for cleanliness (L#7).

27. Regarding his claim for professional cleaning, the landlord testified that he contacted two local companies who refused to do the work, but that he managed to get a contractor from [REDACTED] to come and do the work as a three person team. He submitted an invoice in the amount of \$805.00 for 28 hours of cleaning (L#8) and testified that he also charged \$25.00 an hour for time spent by himself and his wife, for a total claim of an additional \$172.50 (e.g., 6.9 x 25). The landlord also referred to short videos he had submitted of bird poop left behind on a shelf and on top of kitchen cabinets within the rental premises (L#9).

Tenants' Position

28. As noted in paragraph 13, both tenants agreed that the landlord's photos fairly depicted the state of the rental premises on move in and on move out. Tenant1 testified that his family helped with cleaning the rental premises prior to vacating, and tenant2 stated that she did not conduct as much cleaning as she would have liked. Had she known about the bird poop above the cupboards, tenant2 testified that she would have cleaned it, even though she was rushed by trying to move within the two week window she gave her landlord. Both tenants testified that the felt the amount of compensation being sought for cleaning, was high.

Analysis – Interior Cleaning

29. I accept that tenants and landlord agree that the rental premises needed to be cleaned once the tenants vacated. Regarding the landlord's entitlement to compensation for cleaning, I find that he successfully established that cleaning was required because he provided comparison photos from around the rental premises prior to move in and after move out, with the move out photos depicting significantly dirty appliances, a fair amount of grime and dust, and some bird poop throughout the rental premises. Considering however, that two birds resided within two adults within the rental premises for 2.5 years, I did not find the amount of grime and or bird poop to be extraordinary, especially considering that this living was done within 850 sqft of space, alongside a small dog. As such, I find that the landlord is entitled to compensation for cleaning, but not in the amount claimed, and based on a review of the photos provided, I find it reasonable that the landlord be compensated for 19 hours of cleaning and not the 38 hours of cleaning that was claimed (e.g., 28 on invoice, and 10 hours claimed between himself and his wife).
30. In accordance with *Residential Tenancies Policy 9-005*, the maximum hourly rate that can be charged for cleaning is \$21.20, and so I find that the landlord is entitled to compensation is the amount of \$402.80 for cleaning of the rental premises (e.g., \$21.20 x 19hrs).

Decision – Interior Cleaning

31. The landlord is entitled to compensation is the amount of \$402.80 for cleaning of the rental premises (e.g., \$21.20 x 19hrs).

Damage # 2: Counter tops

Landlord's Position

32. The landlord testified that the damaged counter tops are laminate and that they were installed about 20 years ago. He provided a quote for replacement and estimated that it would cost an additional \$200.00 to install the replacement counter tops. He referred to specific pictures submitted of the small damage marks to the countertop (L#6).

Tenants' Position

33. Tenant1 acknowledged causing the documented damage to the counter top.

Analysis – Countertops

34. I accept that the landlord and tenants agree that the counter tops were damaged during the tenants' occupancy of the rental premises. According to *Residential Tenancies Policy 9-005*, laminate counter tops have an expected serviceable life of 15 years. Because the damage was reported approximately 20 years after the counter tops were installed, this means the counter tops to be replaced have exceeded their serviceable life and the landlord is not entitled to compensation for any damage incurred.

Decision – Counter tops

35. The landlord's claim for compensation for countertop damage does not succeed in any amount.

Damage # 3: Yard Clean up \$150.00

Landlord's Position

36. The landlord testified that he is seeking compensation for time spent collecting garbage and other refuse left in the yard, including a set of tires as well as time spent re-bagging the "14 or 15 garbage bags" left by the tenants and taking all of this to the dump. He submitted two videos of the garbage bags left behind by the tenants to demonstrate that he had to spent time re-bagging the bags that had been left, and also that the bags exceeded the capacity of the garbage box. The landlord testified that he is "being reasonable" and not seeking compensation for mileage or tipping fees because he used his household garbage card to dispose of the garbage left behind by the tenants.

Tenants' Position

37. Tenant1 denied leaving garbage in the yard and denied that the tires collected were his tires. Regarding the garbage bags that were left behind, tenant2 testified that these were all moved to the garbage box, and that collection was in a few days. Tenant1 also testified that there are significant issues at the rental premises with crows and rats spreading garbage across the yard, which is something that he tried to clean up after. Tenant1 also spoke about how a significant portion of the yard is neglected for many years prior to his occupancy, and so any garbage that the landlord would have collected from the yard would not have been related to the actions of the tenants.

Analysis – Exterior Garbage collection

38. I accept that the landlord was required to collect and remove garbage after the tenants vacated the rental premises. Where the tenants testified that they left all garbage in the garbage box, I accept the video evidence provided by the landlord indicating the garbage left behind exceeded the capacity of the box. Furthermore, I also accept the tenants' testimony regarding concerns with crows and rodents and garbage at the rental premises, both of which would have required the landlord to remove the garbage and dispose of it as he did. Regarding the landlord's entitlement for compensation for exterior garbage removal, I find that it succeeds in half the amount claimed because the tenants disputed the claim and also testified that they placed all garbage in one central location. As such, I find that the landlord is entitled to compensation in the amount of \$63.60 (e.g., 3hrs x \$21.20, the maximum hourly wage available under Residential Tenancy Policy 09-005).

Decision – Exterior Garbage collection

39. The landlord's claim for compensation succeeds in the amount of \$63.60.

Damage # 4: Paint, Primer, Misc Supplies

Landlord's Position

40. The landlord testified that he was required to paint the whole rental premises after the tenants vacated and that he was required to plaster a number of holes as well. He testified that he last painted the rental premises "maybe 4 years ago" and that he had previously compensated the tenants for the cost of the paint they purchased for painting portions of the rental premises after moving in. The landlord testified that he was being reasonable by not seeking compensation for the costs of his labour in painting the rental premises, and that he was just seeking compensation for materials. The landlord did not submit a receipt for the purchase of the painting supplies and testified that there was no noticeable damage to the walls as a result of his documented concerns with bird droppings throughout the rental premises.

Tenants' Position

41. The tenants both disputed the landlord's charge for compensation for painting supplies, denied causing any noticeable damage to the walls, and also denied causing any damage without permission. Tenant2 testified that they only painted with permission, and also testified that tenant1 plastered over any holes they had left in the rental premises.

Analysis – Misc Supplies

42. According to Rental Tenancy Policy 09-005, the expected serviceable life of a paint job is 3 – 5 years, and because the landlord testified that he believed the rental premises was last painted "maybe 4 years ago" the paint job could be considered to have exceeded its serviceable life and was due for replacement. Furthermore, the landlord did not provide any documentation related to his costs claimed for supplies, and so I was unable to verify costs, regardless of entitlement for compensation.

Decision – Miscellaneous Supplies

43. The landlord's claim for compensation or miscellaneous supplies does not succeed in any amount.

Summary Decision – Damages

44. The landlord's claim for compensation for damages succeeds in the amount of \$466.40 (e.g., \$402.80 + \$63.60)

Issue 4: Possessions returned \$150.00

Landlord's Position

45. The landlord testified that he is seeking compensation for the loss of two antique table lamps that had been left in the rental premises. The landlord referred to a picture provided at the move in inspection (L#5) and testified that he has not been able to locate the two lamps. He testified that the \$150.00 value claimed is what he estimated the lamps are worth.

Tenants' Position

46. The tenants denied taking or removing the table lamps. Tenant1 testified that the lamps were removed by the landlord when he removed the end table from the rental premises and that these items were removed by the landlord early on in the tenancy.

Analysis

47. The landlord failed to establish on the balance of probabilities that the tenants removed the lamps from the rental premises, and also failed to establish that the actual replacement costs of the two lamps is \$150.00 as claimed. Furthermore, tenant1 testified that the landlord was actually responsible for the removal of the table lamps from the rental premises. As such, his claim for compensation does not succeed.

Decision

48. The landlord's claim for compensation return of possessions does not succeed in any amount.

Issue 5: Compensation for Other \$200.00

Landlord's Position

49. The landlord submitted a written summary outlining his claim for compensation for \$200.00 (L#11) and explained that he is seeking compensation for time spent researching how best to address the bird droppings left in the rental premises. The landlord testified that he rented to the tenants knowing that they had two birds.

Tenants' Position

50. The tenants' disputed the landlord's claim for compensation for \$200.00 for time spent.

Analysis

51. I accept the tenants' dispute of the landlord's claim for compensation for time spent researching in relation to bird feces left at the rental premises. The landlord testified that he rented to the tenants knowing that they had two birds and so I consider any time spent in relation to those birds, time spent by a landlord conducting regular business of a landlord who permitted birds in his rental premises.

Decision

52. The landlord's claim for compensation for Other does not succeed in any amount.

Issue 6: Security Deposit (\$350.00)

Relevant Submissions

53. The landlord provided proof of receipt for the \$350.00 security deposit collected and tenant2 testified that she believes the landlord is entitled to retain the full value of the security deposit collected as compensation for time and money spent cleaning the rental premises after they vacated.

Analysis

54. 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.

55. Where the landlord's claim for damages has succeeded in excess of the security deposit collected, the landlord is entitled to retain the full amount of the \$350.00 security deposit collected.

Decision

56. The landlord is entitled to retain the full amount of the \$350.00 security deposit collected.

Issue # 7: Hearing Expenses

57. The landlord claimed the \$20.00 application fee as a hearing expense. As his claim has been mostly successful, the tenants shall pay this expense.

Summary of Decision

58. The landlord is entitled to the following:

- To retain the security deposit in the full amount of \$350.00.
- An order for payment in the amount of \$136.40, determined as follows:
 - a) Compensation for Damages\$466.40
 - b) Hearing expenses.....\$20.00
 - c) **LESS Security Deposit(\$350.00)**
 - d) Total.....**\$136.40**

04 October 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal

