

Residential Tenancies Tribunal

Application 2022-0517-NL
2022-0601-NL

Amended Decision 22-0517-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 30-August-2022.
2. The applicant for the originating claim and respondent for the counterclaim, [REDACTED], hereinafter referred to as "the tenant" did not attend.
3. The respondents for the originating claim and applicants for the counterclaim, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. The landlords submitted an affidavit with their application stating that they had served the tenant with notice of a previous hearing date, by prepaid registered mail, on 27-July-2022. This hearing was rescheduled for today's date and both parties were served notification by our office through prepaid registered mail on 10-August-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
5. The tenant had filed the originating application 2022-0517-NL, this application was seeking rent refunded \$215.00 and possessions returned \$8,100.00. As she did not attend the hearing, her file has been dismissed.
6. The landlords amended their application to include current storage expenses; they have amended the amount of moving and storage from \$1,070.59 to \$1,299.44.

Issues before the Tribunal

7. The landlords are seeking:
 - Moving and storage expenses \$1,473.04
 - Compensation for damages \$3,641.00
 - Compensation for inconvenience \$2,335.00
 - Security deposit applied to monies owed \$425.00
 - Rent applied against monies owed \$261.00
 - Hearing expenses \$53.20

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*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Sections 14: Security deposit, and Section 32: Abandonment of personal property, as well as, Residential Tenancies Policy 9.

Issue 1: Moving and storage expenses \$1,473.04

Relevant Submissions

10. The landlords submitted the written rental agreement that they had with the tenant (LL#02). They had a term agreement from 01-June-2022 until 31-October-2022. The tenant had a previous agreement with another home owner. The landlords purchased the home in June and then entered into their own agreement with the tenant. The tenant pays \$1,400.00 each month. The rental period is from the first day of each month until the last and rent is due on the 1st day of each month. The tenant receives income support from two separate funders and the rent payment is received in two separate amounts. The tenant had paid a security deposit to the other landlord and the current landlords received \$425.00 security deposit when they purchased the house, they are still in possession of this deposit.
11. The landlord1 said that they received a rent payment of \$961.00 on 02-June-2022. The landlords had served the tenant with a termination notice on 10-June-2022 with a termination date of 16-June-2022. The tenant was arrested on 13-June-2022 and has not returned to the property.
12. Landlord1 provided video evidence of the tenant threatening her and the home (LL#26). In the video the tenant says to the landlord.

“Oh yeah, no way? (Inaudible) I promise you we have the papers right now we owe them that much money. We do not care that’s why we don’t get GST. So go ahead and (inaudible) we don’t give a *\$#%. We don’t care. You just bought this house, we’re going to waste all your *#%ing money. You want to *#%ing know how a living hell is just wait. Promise you won’t be able to look at this *#%ing house. Keep on recording cause I

don't give a *#% cause I already admitted it to the court what I did to (inaudible). Nothing you can do will stop it. Promise you there's no pipes left anymore, there's nothing. We almost just burnt the house down. So have fun when your dogs are burnt to death."

13. Landlord1 said that after the tenant was arrested they received notification of the tenant's court order (LL#33) stating that the tenant wasn't to return to the house or to have any contact with them. Landlord1 said that she contacted the tenant's social worker to inquire what the plan would be for the removal of the tenant's belongings. Landlord1 said that the social worker told them they wouldn't be taking care of the move, so that the landlords could do this and then send in the invoice (LL#09).
14. Landlord1 said that they brought the tenant's dog, who was abandoned after the arrest, to Humane Services, then they packed up the tenant's belongings and had the belongings placed in a storage unit. She said that it took 2 days to pack up the tenant's belongings and is seeking \$400.00 in personal wages. Landlord1 said it also took her 8 hours to clean the apartment and she is claiming \$168.00 for personal labour.
15. Landlord1 said that they sent in the billing to the Social Worker: Landlord1 said that the Social Worker contacted them and said, because they moved the items on 15-June-2022, and the tenant had previously been given a termination date for the next day, the belongings were removed before the 16-June-2022 termination date, now they were unable to access the funding for the move. They provided the email conversations stating the request and denial of the billing (LL#09).
16. The landlords submitted receipts for the evidenced moving costs:

Expense	Evidence #	cost
U haul rental	LL#04	93.79
Gas for U haul		20.00
Storage unit \$228.85 a month	LL#05, 06, & 07	686.55
Personal labor 2 x 10 hours @ 21.70 + tax		499.10
Personal labor 8 hours @ 21.70 + tax		173.60
Total		\$1,473.04

17. The landlords are seeking full compensation for this expense.

Analysis

18. Section 32 of the *Residential Tenancies Act, 2018*, states:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

(a) remove the personal property and immediately place it in safe storage; or

(b) store the personal property on the residential premises in a safe manner.

*(2) The personal property stored under subsection (1) shall be **stored for not less than 30 days** unless the tenant takes possession of the personal property before the 30 days have elapsed.*

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

(a) provide the director with an inventory of the property; and

(b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

.....

*(9) Where **a tenant or owner does not take possession of personal property within the 30 day period, the landlord may sell the personal property subject to the terms and conditions set by the director.***

(10) Where personal property is sold under subsection (9), the landlord

*(a) **may keep from the proceeds of the sale, the amount***

(i) of the costs reasonably incurred by the landlord for the removal, storage and sale of the personal property, and

*(ii) **necessary to satisfy an order made by the director for compensation payable to the landlord by the tenant; and***

*(b) **shall, at the earliest reasonable opportunity, deliver to the director***

*(i) **the proceeds of the sale, less the amount kept under paragraph (a), and***

*(ii) **a written statement of account regarding the sale and distribution of the proceeds.***

(11) The director shall hold the proceeds delivered by the landlord under subparagraph (10)(b)(i) in trust for the tenant or owner of the personal property in an interest bearing trust account in a financial institution located in the province authorized to accept deposits.

.....

19. It is the tenant's responsibility to move their belongings and according to the court order given to the landlords, the tenant was to make arrangements for the removal of her belongings. The tenant did not do this and the task then fell to the landlords. The landlord's obligation is to store for not less than 30 days. The tenant had filed the originating application (paragraph 5) seeking possessions returned. As the tenant failed to attend the hearing and that application has been dismissed, the landlords are no longer required to store the tenant's personal property. They shall in accordance with Section 32(9) sell the property and retain the costs awarded in this decision. They will provide the Director the remaining proceeds and a written statement of account regarding the sale and distribution of the proceeds.
20. The landlords have cared for the tenant's belongings in accordance with the Act and shall be compensated for their expense and personal time to pack and move the belongings. This board awards personal wages of minimum wage + \$8.00 for a total of \$21.20. The landlords shall be awarded 2 x 10 hours @ \$21.20 for a total of \$424.00 for

the cost of packing the tenant's belongings. They are also awarded 8 hours @21.20 for a total of \$169.60 for the cost of cleaning the apartment. The landlords shall also be awarded full compensation for the cost of storage and the cost of the rental van and gas as follows:

- Personal labour packing..... \$424.00
- Personal labour cleaning..... \$169.60
- Rental van 93.79
- Gas 20.00
- Storage unit 686.55
- Total \$1,393.94

Decision

21. The landlords' claim for moving and storage expenses succeeds in the amount of \$1,393.34.

Issue 2: Compensation for damages \$3,641.00

Relevant Submissions

22. The landlords provided a condition report (LL#09) from when they purchased the house the beginning of June 2022. The report is signed by the tenant on 06-June-2022. The landlords didn't do a final walk through with the tenant for safety reasons. Landlord1 submitted into evidence the photographic evidence of the damages to the apartment that happened from the 6 – 13 June 2022.
23. Paragraph 12 the landlords had submitted a verbal confrontation with the tenant. They also provided a number of videos showing just the audio of the tenant (LL#27 – LL#32). In these videos a person can be heard in a complete rage, there is screaming and loud thumping noises that sound as though the person is destroying the area they are in.
24. The landlords provided the a ledger for compensation for damages and I have added the evidence number for each claim, the claim for plastering is as follows:

Description of damages	Evidence #	cost
1 ft. by 1.5 ft hole in dining room wall	LL#10	50.00
1 ft by 2 ft hole in living room wall	LL#12	50.00
2 ft by 2 ft hole in foyer wall	LL#13	50.00
5 in by 3.5 in hole in bedroom wall	LL#14	20.00
1 ft by 2 ft hole in bedroom wall	LL#15	50.00
3 in by 2 in hole in stairwell wall	LL#15	20.00
3 in by 4 in hole in stairwell wall	LL#16	20.00
2 ft by 3 ft hole in kitchen wall	LL#17	50.00
1 in by 2 in hole in bedroom wall	LL#18	20.00
2 in by 2 in hole in bedroom wall	LL#18	20.00
Total		350.00

25. The landlords are seeking compensation for the supplies purchased for the wall repairs. They have provided receipts for the supplies as follows:
- Kent \$38.28
 - Canadian Tire 18.95
 - Dollarama..... 21.58
 - Dollarama..... 13.23
 - Total..... \$92.04
26. The landlords are also seeking personal time for painting the walls of \$870.00, landlord2 said it took 20 hours to do this work. He said that they were unable to color match the paint and had to paint the entire unit. They had just purchased the house and he was therefore unable to determine when it had been painted.
27. Landlord2 said that there was a door damaged and provided pictures (LL#20) he said the door was fine two weeks before but doesn't know how old the door is. He estimates it would be \$125.00 to be replaced.
28. Landlord1 had said that the tenant's dog was abandoned during the incident on 13-June-2022 and they were able to enter the next day to have it removed and cared for. She provided pictures of the bedroom he was in (LL#22, LL#23 and LL#24) showing that the dog was using this area for a bathroom. She said that the hardwood floor would need to be replaced due to the smell in the flooring. She estimates that it would cost \$15.00 a square foot for a total of \$1,650.00. They have not replaced the flooring.
29. Landlord1 said that after the tenant was arrested the dog was left in the apartment on its own. They had to find someone to take the dog and eventually made arrangements with Humane Services for them to care for the dog. She said that this took about 3 hours of her time and she is seeking \$20.00 personal labour.
30. The landlords are also seeking to have the carpet in the basement replaced due to cat feces and urine. The estimate it will cost \$300.00 to replace the carpet.
31. The landlords said that 3 bathroom drawers were stained with dyes and they purchased an insert for each drawer and are seeking \$30.00 for the cost.
32. Landlord2 said that they had to paint the interior doors and trim and they are seeking \$40.00 for his time.
33. Landlord1 said that the floor vents were damaged and they replaced them at a cost of \$40.00.

Analysis

34. Section 10 of the *Residential Tenancies Act, 2018*, states:

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.

35. 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 cost to repair or replace the damaged item(s)
36. 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. The landlords were new homeowners at the time of the damage and were unable to determine the age of the items damaged.
37. The landlords have shown through the submission of a condition report signed on 06-June-2022 and photographic evidence of the condition of the house on the 13-June-2022 that the tenant is responsible for damages to the house.
38. I accept that the holes in the walls are the responsibility of the tenant and determine that the landlords shall be compensated for the repairs. The claims for \$350.00 for plastering, and \$92.04 for supplies are acceptable. Also, the landlord has shown that these repairs are throughout the house and I therefore accept that the entire unit would require painting. Landlord2 stated that it took 20 hours to complete the painting, this board awards personal time of minimum wage + \$8.00 for a total of \$21.20. The landlords shall be awarded 20 hours @ \$21.20 for a total of \$424.00. The landlords are awarded therefore \$862.04 for the cost to plaster and paint the house.
39. I accept that landlord1 required time to make arrangements to have the dog cared for. She requested \$20.00 and stated it took her 3 hours. Based on her personal wage for 3 hours work, she will be awarded the lesser amount of \$20.00 as applied for.
40. The landlords also submitted a picture of the door that was damaged, this door would not be repairable and I accept the estimate of \$125.00 to replace the door and \$40.00 to paint the door and trim for a total of \$165.00.
41. The landlords claim for replacement of the carpet and hardwood, due to urine and feces from pets, is not supported by the landlord's evidence. Although they have provided pictures of the animal feces, they have not provided receipts or estimates, this is a large claim and would require proof of compensation to be awarded.

42. The landlords claim for damages to the cupboard drawers and floor vents are also not proven, there are no pictures or receipts to determine the compensation that should be awarded.
43. The landlords' claim for damages succeeds in the amount of \$1,047.04, as follows:
- Paint and plaster \$862.04
 - Replace door 165.00
 - Arrangements for dog 20.00
 - Total \$1,047.04

Decision

44. The landlords' claim for damages succeeds in the amount of \$1,047.04.

Issue 3: Compensation for inconvenience and rent loss \$2,335.00

Relevant Submissions

45. Landlord1 said that the tenant had been threatening towards both herself and the home. She provided video proof of one of the occurrences as stated in paragraph 11. Due to the tenant's actions, landlord1 said she was unable to work on 13-June-2022. She is seeking \$235.00 for this time.
46. The landlords said that they were unable to rent the apartment for 1 ½ months because they had to pack, clean and do repairs. Landlord1 said that they started advertising on 14-July-2022 on Facebook Marketplace. The following weekend they found a renter who started their rental agreement on 01-August-2022. The loss of ½ of June's rent and all of July is \$2,100.00.
47. The landlords are seeking \$2,923.00 for inconvenience as follows:
- Personal time \$235.00
 - Loss of rental income 2,100.00
 - Total \$2,335.00

Analysis

48. This board does not award time for an individual to attend court. The landlords claim for personal time fails.
49. The landlords are also seeking damages for loss of rent for the 1 & 1/2 months the house was being repaired and advertised for renting. The landlords had served the tenant with a termination notice and required the tenant to vacate the premises. The payment of rent is for use and enjoyment of the premises, as she was no longer permitted to use the property, she is not responsible for the rent.

50. The landlords' claim for compensation fails.

Decision

51. The landlords' claim for compensation fails.

Issue 4: Security deposit applied to monies owed \$425.00

Relevant Submissions

52. The landlords stated that they received \$425.00 security deposit from the previous home owners (paragraph 9) that is credited to the tenant, they are requesting that this be applied to monies owed.

Analysis

53. The landlord's claim for losses have been successful, paragraphs 19, 40 & 49, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

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

54. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$425.00.

Issue 5: Rent applied to monies owed \$261.00

Relevant Submissions

55. The landlords stated in paragraph 10 that they received a payment of rent on 02-June-2022 of \$961.00, as they had the tenant's belongings moved on 15-June-2022 they are crediting back the \$261.00 towards the other half of June's rent. The landlords are requesting to retain this rent towards monies owed.

Analysis

56. The board determines a daily rate of rent as follows $\$1,400.00 \times 12 \text{ months} = \$16,800.00$ a year divided by 365 days = $\$46.03$ a day. The tenant's belongings were in the apartment for 15 days for a total of $\$690.45$, therefore the tenant has overpaid rent by $\$270.55$. This amount will be applied to monies owed by the tenant.

Decision

57. The landlords' claim to retain the overpayment of rent against monies owed succeeds in the amount of $\$270.55$.

Issue 6: Hearing expenses reimbursed \$53.20

58. The landlord submitted the receipts for the cost of the hearing, the costs of prepaid registered mail totaling $\$53.20$ (LL#25) and pursuant to policy 12.01, is entitled to reimbursement of those costs from the tenant.


Summary of Decision

59. The tenant shall pay the landlord $\$1,798.03$, as follows:

• Moving and storage	\$1,393.34
• Compensation for damages	1,047.04
• Security deposit applied to monies owed	(425.00)
• Rent overpayment applied to monies owed	(270.55)
• Hearing expenses	<u>53.20</u>
• Total	<u>\$1,798.03</u>

January 30, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office