

Residential Tenancies Tribunal

Application 2022 No. 0538 NL

Decision 22-0538-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 27 September 2022 via teleconference.
2. The applicants [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" respectfully, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" also participated in the hearing.
4. Landlord1 provided two separate affidavits of service, confirming that she served both tenants individually by email on 20 July 2022 and also provided proof of service for both emails (L#1). Landlord1 testified that she knew to serve electronically because she used the emails provided on the rental agreement.
5. The details of the claim were presented as a month-to-month rental agreement that started 01 December 2021, and landlord1 permitted early occupancy from 13 November 2021. Monthly rent was set at \$1,200.00 POU and a security deposit in the amount of \$425.00 was collected.
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:
 - Payment of rent in the amount of \$1,200.00; and
 - Payment of damages in the amount of \$4,368.15.

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 case is sections 10 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

10. Landlord1 testified that the rental premises located at [REDACTED] was built in the 1980s, that she has owned it since fall 2021, and that she completed some minor cosmetic renovations prior to renting to the tenants. The tenants occupied the approximately 1200 square foot main floor apartment with two 5 year olds, and the basement apartment was occupied by other tenants.
11. Landlord1 testified that she issued the tenants a section 18 notice on 03 May 2022, with an effective date of 30 August 2022 because she kept getting complaints from the occupants of the basement apartment. She testified further to say that she issued the tenants with a section 19 notice on 7 June 2022 that identified a move out date of 18 June 2022. Tenant1 testified that he vacated on that day, and landlord1 testified that she took possession of her rental premises on 20 June 2022 and that she was able to secure new tenants from the middle of July 2022 onward.
12. Landlord1 testified that she wished to apply the \$425.00 security deposit collected against monies owed by the tenants.

Issue 1: Payment of Rent (\$1200.00)

Landlords' Position

13. Landlord1 testified that rent was not received for the month of June and that she accepted that the tenants vacated the rental premises on 18 June 2022.

Tenants' Position

14. Tenant1 testified that he could not recall whether or not he paid rent for June 2022.

Analysis

15. I accept the landlords' testimony and evidence that the tenants did not pay rent for June 2022, and that as per paragraph 11, they issued a section 19 termination notice which resulted in the tenants vacating the rental premises on 18 June 2022. As such, I find that the landlords are entitled to payment of rent up until that day and I calculate that they are entitled to payment of rent in the amount of:

$$\begin{aligned}\$1,200.00 \times 12 &= \$14,400.00 / 365 = \$39.45 \\ \$39.45 \times 18 &= \$710.10\end{aligned}$$

Decision

16. The landlords' claim for compensation for rent succeeds in the amount of \$710.10.

Damages - \$4,368.15

Landlord's Position

17. The landlords submitted a paid invoice for work completed at the rental premises in the amount of \$4,368.15 for work that was completed in June 2022 at the rental premises after the tenants vacated (L#3). Landlord1 testified that she received a higher quote from a different company that would have required her rental unit to sit vacant for a month, and so she proceeded with the company used. Contractor notes on this invoice stated that there were several dents in many walls, mouldings were chipped, and walls needed to be painted to cover up stains, including marker stains and that garbage also had to be removed. Landlord1 testified that she submitted comprehensive photos of the damage to this tribunal, however, the photos were not available. She also indicated that the repair work was done by a team of two workers over the span of five days, but that she was unsure of the exact number of hours worked.
18. Landlord2 testified that the doors in the rental premises were maybe replaced in the middle of its life but that he was unsure of the exact age of the doors and the closet doors. He stated that they did some plaster repairs and also painted the bedrooms prior to renting to the tenants. Landlord1 testified that she conducted a move in inspection prior to renting to the tenants, but that she did not conduct a move out inspection with the tenants because they had already vacated. For either inspection, the landlords did not complete a formal condition inspection report.

Tenants' Position

19. Tenant1 verbally reviewed the pictures provided to him by the landlords and acknowledged that each of the documented pieces of damages were caused by his child while they resided in the rental premises. Tenant1 testified that he is in the process of seeking medical assessment for his child so as to arrange

appropriate supports, and that he recognized repair work was needed, but that he thought the requested repair costs were high.

Analysis

20. The applicant in a 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 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).
21. 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.
22. I accept that the landlords and tenant1 agree that substantial damage was caused at the rental premises during their tenancy, and I also accept that landlord1 costed multiple options for repair of the damaged items and proceeded with the repair work by the lowest priced and fastest contractor. With respect to the items identified on the invoice, I find that the front door knob (\$160.00), bedroom door (\$203.00 for door and knob) and closet door replacements (\$200.00) are not eligible for compensation because the landlords, as per paragraph 18, were unable to clearly identify the age of the previously existing doors and closet doors.
23. With these values removed from the invoice submitted, I find that the amount remaining for compensation related to plaster and painting throughout the rental premises is \$3,805.15 and I accept landlord1's testimony that this work was required before she could secure new tenants in the rental premises. However, I am not able to award full compensation to the landlords for this work because:
 - The landlords had very recently purchased the property and were not able to provide complete records on the age of the damaged items in the rental premises (e.g., when all areas of the rental premises were previously painted, such as the ceiling);
 - The landlords did not complete move in or move out condition inspection reports, nor did they provide the adjudicator with photographic evidence of the documented damages across the rental premises; and
 - The invoice provided by the contractor did not identify repair time spent across particular areas of the rental premises, and so I am unable to confirm what portion of painting and plastering time was for areas repaired in the bedrooms by the landlords prior to renting.

24. As such, I will arbitrarily award compensation in the amount of \$1,260.00 because tenant1 agreed that one of his children caused assorted damage in the rental premises and the landlords successfully established that they incurred repair charges far in excess of the amount awarded.

Decision

25. The landlord's claim for compensation for damages succeeds in the amount of \$1,260.00.

Issue 3: Security Deposit (\$425.00)

Relevant Submissions

26. Landlord1 testified that she wished to apply the full value of the \$425.00 security deposit collected against monies owed by the tenants, and testified that she has no written agreement with the tenants to date on how to dispose of the monies collected. Tenant1 acknowledged the amount of the security deposit collected.

Analysis

27. 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.

28. Where the landlords' claim for damages has succeeded in excess of the security deposit collected, the landlords are entitled to retain the full amount of the \$425.00 security deposit collected.

Decision

29. The landlords are entitled to retain the full amount of the \$425.00 security deposit collected.

Issue 4: Hearing Expenses

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

Summary of Decision

31. The landlord is entitled to the following:

- An order for payment in the amount of \$1,565.10, determined as follows:

| | | |
|----|-----------------------------------|--------------------------|
| a) | Rent..... | \$710.10 |
| b) | Damages..... | \$1,260.00 |
| c) | Hearing Expense..... | \$20.00 |
| d) | LESS Security Deposit..... | \$425.00 |
| e) | Total..... | <u>\$1,565.10</u> |

04 October 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal