

Residential Tenancies Tribunal

Application 2022-No.560-NL

Decision 22-0560-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 31-August-2022
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents’ absence so long as they have been properly served. The landlord submitted an affidavit with his application stating that he had served the tenants with notice of the hearing, electronically on 01-August-2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Compensation for damages \$1,806.34
 - Security deposit applied to monies owed \$450.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14 Security deposit and Residential Tenancies Policy 9.

Issue 1: Compensation for Damages

Relevant Submissions

8. The landlord submitted the written rental agreement he has with the tenants (LL#02). They have a term agreement from 26-November-2021 until 30-November-2022. The tenants moved in on 26-November-2021, they pay \$750.00 on the first day of each month. They paid a \$450.00 security deposit in November before they moved in and the landlord is still in possession of this deposit.
9. The landlord said he gave them a termination notice because they were smoking in the unit, which violated their rental agreement. He was awarded an Order of Possession that the Sherriff's department enforced on 06-June-2022.
10. The landlord submitted the condition report that is signed by himself and the tenants when they first took occupancy (LL#03). The report shows that the unit was freshly painted throughout just before they moved in in November and that the washroom was newly renovated. It also shows that there were some marks on the flooring in the kitchen and repairs done to the flooring in the porch.
11. The landlord also provided a report on the damages after the tenants were evicted. His list of expenses are as follows:

| Damage | Cost |
|---|-----------------|
| Stove replaced | 250.00 |
| Replacement of entrance door | 666.99 |
| Paint and cleaning supplies Walmart | 123.40 |
| Blinds, door jam, plaster, painting supplies Kent | 665.95 |
| Disposal of abandoned belongings | 100.00 |
| Total | 1,806.34 |

12. The landlord included in his damage report (LL#04) pictures of the stove before occupancy and after. The entire glass top is broken out of the stove. He provided estimates for the purchase of a new stove ranging from \$859.99 - \$1,099.99. He said he found a replacement stove for \$250.00 used so he paid cash for the stove. He is seeking reimbursement.

13. The landlord provided a picture of the entrance door, he said it appeared someone had kicked it in and that it was beyond repair. He said it is a steel door about 15 years old. He provided the receipt from Hickey's (LL#04) for \$666.90. He is seeking reimbursement.
14. The landlord said that there was a strong smell of smoke throughout the apartment. He said he used an air purifier and washed down the walls and ceilings. He said this made a difference, but in the end, he had to paint the apartment. He provided a receipt for the cost of the supplies \$123.40 (LL#04), he also included also included a receipt for plaster and paint supplies from Kent (LL#04) for \$665.95. He is seeking reimbursement.
15. The landlord included pictures of the blinds he said that they were new in November, after the tenants moved they were too dirty to keep and there were cigarette burns (shown in evidence LL#04). The cost is \$35.98 and 21.98, this expense is included in the Kent receipt in paragraph 14.
16. The landlord said there were some personal items left behind and he stored them in a shed until receiving permission to dispose of them. Once he received permission, he said he borrowed a trailer and brought everything to the dump he said that the trips is 100kms return and he is seeking 3-4 hours personal time.

Analysis

17. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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.

18. 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)

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.

19. The landlord has proven the damages to the stove, although he didn't provide a receipt for the used stove he purchased, the estimates for a new replacement show that the used alternative is a reasonable cost. The landlord's claim for this succeeds in the amount of \$250.00
20. The submitted evidence clearly shows that the door frame is cracked beyond repair. As indicated in paragraph 18 this board will consider depreciation when determining an award for losses. The door is 15 years old and our Policy estimates that a steel door should last 15 years. Although the landlord has proven that the door was damaged by the tenant, the door has lasted for its full life expectancy and the cost of replacement will not be awarded.
21. The landlord has meet the burden of proof for the cost of painting due to the tenants smoking in the apartment. The cost to replace the blinds that have cigarette holes burned in them will also be awarded. He has provided the receipts from Walmart and Kent and shall be reimbursed the full amount as the condition report shows that the paint and the blinds were only six months old at the time the tenant was evicted. This claim succeeds in the amount of \$789.35.
22. The landlords request for \$100.00 for the disposal of personal items is within reason. Mileage for a provincial employee is \$0.4509. Therefore $100 \times .0.4509 = \$45.09$ Add to this 3.5 hours to drive the return trip and to pack and offload the belongings; $3.5 \text{ hours} \times \21.20 (this board's approved personal rate) = \$74.20. The total exceeds the \$100.00 sought by the landlord; the tenants shall pay this expense.
23. The tenants shall pay to the landlord \$1,139.25 as follows:
 - Replacement of the stove \$250.00
 - Cost of painting and blinds 789.25
 - Cost of disposal of personal items ... 100.00
 - Total \$1,139.25

Decision

24. The tenants shall pay to the landlord \$1,139.25 for damages.

Issue 2: Security deposit applied to monies owed \$450.00

Relevant Submissions

25. As per paragraph 8, the landlord has declared that, the tenants paid a security deposit of \$450.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

26. The landlord's claim for losses has been successful, paragraph 24, and he 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

27. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$450.00.

Issue 3: Hearing expenses reimbursed \$20.00

28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision


29. The tenant shall pay to the landlord \$709.25, for damages and hearing expenses as follows:

- Damages \$1,139.25
- Hearing expenses 20.00
- Less security deposit (450.00)
- Total \$709.25

30. The landlord shall retain the security deposit of \$450.00

September 2, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office