

Residential Tenancies Tribunal

Applications: 2022 No. 0563 NL

Decision 22-0563-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 30 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. He testified that he represents the interests of his wife, [REDACTED] at the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not participate in the hearing.
4. An affidavit of service was provided by the landlords (L#1) confirming that the tenant was served personally of the claim against him on 19 July 2022.
5. The details of the claim were presented as verbal month-to-month rental agreement that started July 2020 and terminated on the mutually agreeable date of 30 June 2022. Monthly rent was \$1,275.00 and a security deposit in the amount of \$600.00 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. 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

7. The landlord is seeking the following:
 - An order for compensation paid for damages in the amount of \$5,133.75;
 - An order for rent to be paid in the amount of \$1,275.00; and
 - An order to retain the security deposit in the amount of \$600.00.

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 section 10 of the *Act* and Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property

Preliminary Matters

10. 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*.
11. 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.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
13. The rental premises is a single family home located at [REDACTED]. The tenant resided in the approximately 1200 square foot 3 bedroom main floor apartment. The basement is a separate rental unit occupied by other tenants. The landlord testified that he replaced multiple broken items throughout the rental premises using materials he had on hand since he is a builder, and because he had those items on hand, he was not seeking compensation for them.
14. 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).
15. 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.

Issue #1: Compensation for Damages (\$5113.75)

Relevant Submissions

16. The landlord testified that the house was brand new with all new appliances and fixtures when the tenant moved in. He also testified that no formal move in or move out condition inspection was completed and that the tenant moved out on bad terms.
17. The landlord testified that he provided the tenant with a USB file along with printed pictures of all evidence considered during the hearing. The landlord testified that he rented to the tenant only, knowing that the tenant's girlfriend, his son, and his daughter may come to visit. However, the landlord testified that there were at least 4 persons living permanent at the rental premises during the final 4-5 months of the tenant's occupancy.
18. The landlord submitted a damage ledger related to his claim for compensation (L#2). Each segment of this claim was reviewed during the hearing against relevant evidence submitted in accordance with the exhibit list provided (L#3).

DAMAGE 1: Cupboard Door (\$503.76)

Relevant Submissions

19. The landlord submitted a photo of the damaged kitchen cabinet door (L#4) and testified that the costs to repair the damage was so high because the entire unit had to be replaced. The landlord submitted a receipt from Kent in the amount of \$503.76 for a 36 inch EZ Reach Grey Shaker (see page 3 in L#2) for the replacement cabinet. The landlord testified that the unit had to be replaced from Kent because the original cabinets were purchased from Kent.

Analysis

20. I accept the landlord's testimony and evidence that a previously brand new kitchen cabinet door was significantly damaged by the tenant, and that in order to fix the broken door, he had to replace the larger cabinet piece. As such, I find that the landlord is entitled to compensation with accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* which specifies that kitchen cabinets have an expected serviceable life of 20 years. Because the damaged cabinet was 2 years old, it had only served a 10th of its serviceable life, thereby entitling the landlord to compensation in the amount of %90 of the claimed costs (e.g., $\$503.76 \times .90 = \453.38).

Decision

21. The landlord's claim for compensation for a damaged kitchen cabinet succeeds in the amount of \$453.38.

DAMAGE 2: Cleaning Services (\$352.50+ \$450.00 = \$802.50)**Relevant Submissions**

22. The landlord provided a comprehensive series of photos to depict the state of the rental premises after the tenant vacated (L#5). He testified that the bathrooms were particularly disgusting, with toilets left full of feces and urine as well as other mysterious fluids all over the walls. The landlord also showed multiple photos depicting assorted grease and other materials over multiple walls and testified that significant deep cleaning was required. As an example, the landlord testified that the floors had to be mopped and scrubbed multiple times and that “deep deep cleaning was required throughout”. The landlord testified that the majority of cleaning occurred prior to his completing the necessary repairs, and indicated that a final seven hours of cleaning was done after his repairs were completed.
23. The landlord submitted a receipt for cleaning services from [REDACTED] in the amount of \$352.00 for 23.5 hours of cleaning and an invoice from [REDACTED] in the amount of \$450.00 for 30 hours of cleaning (see page 9 in L#2). The landlord testified that both individuals charged \$15.00 for their cleaning services.

Analysis – Cleaning Services

24. I accept the landlord’s testimony and evidence that significant cleaning was required across the full extent of the 1,200 square foot, 3 bedroom rental premises that had been occupied by the tenant and at least three other individuals who had been living in the rental premises.
25. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum hourly wage for cleaning is \$21.20 an hour. Where the landlord has requested compensation for 53.5 hours (e.g., 23.5 + 30 hours) of cleaning, this would entitle him to \$1,134.20 in compensation. As however, the landlord has requested \$802.50 in compensation, his claim shall succeed in that amount.

Decision – Cleaning Services

26. The landlord’s claim for compensation for cleaning succeeds in the amount of \$802.50.

DAMAGE 3: Cleaning Supplies (\$209.18)**Relevant Submissions**

27. The landlord testified that he was required to purchase \$209.18 worth of cleaning supplies for use by the professional cleaners he retained. The landlord provided supporting receipts for the purchase of assorted cleaning supplies in the amount of \$191.00 from the following business:

- Pipers \$28.96 (see page 4 in L#2)
- Canadian Tire \$137.03 (see page 5 in L#2)
- Dollarama \$25.01 (see page 8 in L#2)

Analysis – Cleaning Supplies

28. I accept the landlord's testimony that he was required to purchase assorted cleaning supplies for use in the rental premises after the tenant vacated. However, a review of the receipts provided for these cleaning items, raised some questions. For instance:
- The only cleaning item I accept from the abovementioned Piper's receipt is for the SOS pads (e.g., $\$2.69 \times 1.15 = \3.09).
 - As indicated on the Canadian Tire receipt, the landlord purchased a large pack of garbage bags, however, he did not provide any evidence of belongings or debris left in the rental premises needing to be removed. As such, I find that his claim for \$25.29 (e.g., $\$21.99 \times 1.15$) does not succeed but that the remainder of the \$111.74 claim succeeds as presented (e.g., $\$137.03 - \25.29).
 - As indicated on the Dollarama receipt, I do not accept the charges for two mini-paint rolls (\$1.00 each) or the putty knife (\$2.00) because these are paint and plaster related tools and are not cleaning supplies. As such, I find that this receipt succeeds in the remainder of \$20.41.

Decision – Cleaning Supplies

29. The landlord's claim for compensation for cleaning supplies succeeds in the amount of \$135.24 (e.g., $\$3.09 + \$111.74 + \$20.41$).

DAMAGE 4: General Labour Landlord \$875.00

Relevant Submissions

30. The landlord provided a comprehensive series of photos and a comprehensive video to depict the state of the rental premises after the tenant vacated (L#6). The landlord testified that there were scratches and gouges across multiple sections of each wall, particularly in the one bedroom where the tenant had a gym space and installed then removed, what appeared to be LED strip lights throughout the room. The landlord also provided proof of the extensive plastering he completed throughout the rental unit. He also referred to a broken heater that he had to take apart and realign in the living room, along with other necessary repairs to door ways and closet doors. The landlord testified that he also assisted with painting, but did not specify the exact number of hours spent painting.
31. The landlord submitted a receipt for his 35 hours of labour completed at the rental premises (see page 10 in L#2). He claimed an hourly wage of \$25.00 for a total of \$875.00 in compensation.

Analysis - General Labour Landlord

32. I accept the landlord's testimony and evidence that he was required to spend at least 35 hours of his time completing general labour at the rental premises after the tenant vacated. I find that he successfully established on the balance of probabilities that the full 35 hours was required in response to assorted damage caused by the tenant's actions. Regarding his entitlement compensation, the maximum hourly wage for general labour according to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* is \$21.20 an hour. Where landlord1 specified that 35 hours of labour occurred, this would mean a maximum claimable costs of \$742.00 (e.g., 35 x \$21.20).

Decision

33. The landlord's claim for compensation for general labour succeeds in the amount of \$742.00.

DAMAGE 5: Painting (\$875.00)

Relevant Submissions

34. The landlord testified that his wife was required to spend 35 hours painting the rental premises to cover plaster repairs done on every wall of the rental premises, for which comprehensive photographic proof was provided (see multiple examples in L#6). The landlord provided a receipt for the \$875.00 cost for this labour (see page 10 in L#2) and previously testified that the rental premises was brand new, with new paint when the tenant moved in.

Analysis: Painting

35. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the expected serviceable life of a coat of paint is 3 – 5 years and the maximum hourly wage for painting is \$23.20 an hour. Where the landlord specified that 35 hours of painting occurred, this would mean a maximum theoretical claimable costs of \$812.00 (e.g., 35 x \$23.20). Regarding depreciation, I find that the large amount of plastering required made it so that complete painting was required regardless of the age of the previous paint job.

Decision- Painting

36. The landlords' claim for compensation succeeds in the amount of \$812.00.

DAMAGE # 6: Paint Supplies (\$300.31)**Relevant Submissions**

37. The landlord submitted a receipt from Kent in the amount of \$300.31 for paint supplies purchased (see page 6 in L#2).

Analysis – Paint Supplies

38. I accept the landlord's testimony and evidence that he was required to purchase \$300.31 in painting supplies so as to paint every wall in the rental premises after the tenant vacated the rental premises.

Decision – Paint Supplies

39. The landlord's claim for compensation for painting supplies succeeds in the amount of \$300.31.

DAMAGE # 6: Fridge (\$799.00)**Relevant Submissions**

40. The landlord submitted two photos of the front facing exterior of the fridge in the rental premises (L#7). One picture depicts a noticeable dent in the door of the freezer compartment and the other picture depicts a noticeable dent in the door of the fridge compartment. The landlord testified that he is claiming costs in the amount of \$799.00 because this was the cost he incurred when he bought the fridge new in 2020. The landlord testified that he expects current replacement costs to be higher, and that he would not consider replacing the door only of the fridge as previous experiences have shown that doing so tends to be more costly and less reliable than replacing the entire appliance.
41. The landlord testified that the damaged fridge remains in the rental unit and that it is fully functional. He testified further that he wishes to replace the appliance because the dents are not appropriate for his otherwise new rental unit.

Analysis – Fridge

42. I accept the landlord's testimony and evidence that the exterior door of the fridge in the rental premises was damaged as a result of two noticeable dents and that these dents were significant in new rental units such as the rental premises. The landlord successfully established that this damage was caused during the tenant's occupancy of the rental unit. However, the landlord failed to establish the exact cost of the damage incurred because he did not provide written documentation on possible costs, such as quotes, for fixing the dented doors. As

such, I am unable to verify the extent of his claim for compensation in the amount of \$799.00 and so it does not succeed.

Decision

43. The landlord's claim for compensation for the fridge does not succeed.

DAMAGE # 7: Dishwasher (\$499.00)

Relevant Submissions

44. The landlord submitted two exterior photos of the dishwasher to depict a noticeable dent in the bottom left corner of the front door (L#8). The landlord testified that he is claiming costs in the amount of \$499.00 because this was the cost he incurred when he bought the fridge new in 2020. The landlord testified that he expects current replacement costs to be higher.
45. The landlord testified that the damaged dishwasher remains in the rental unit and that it is fully functional. He testified further that he wishes to replace the appliance because the dent is not appropriate for his otherwise new rental unit.

Analysis

46. I accept the landlord's testimony and evidence that the exterior door of the dishwasher in the rental premises was damaged as a result of a noticeable dent and that this dent was significant in a new rental unit such as the rental premises. The landlord successfully established that this damage was caused during the tenant's occupancy of the rental unit. However, the landlord failed to establish the exact cost of the damage incurred because he did not provide written documentation on possible costs, such as quotes, for fixing the dented door. As such, I am unable to verify the extent of his claim for compensation in the amount of \$799.00 and so it does not succeed.

Decision

47. The landlord's claim for compensation for the dishwasher does not succeed.

DAMAGE # 8: Garage Door Facing (\$250.00)

Relevant Submissions

48. The landlord submitted three pictures of the damaged garage door facing on the 14x14 garage that was available for the tenant to use (L#9). The landlord testified that this garage was newly built and available to the tenant shortly after he moved in. The landlord testified that he believed the damage was caused while

the tenant moved his various utility vehicles and other items in and out of the garage. The landlord further testified that he did not submit a receipt or quote related to the costs of fixing the damage to the garage door facing because he was not provided with documentation from the person hired to fix the damage.

Analysis

49. I accept the landlord's testimony and evidence that the garage door facing was significantly damaged as a result of the tenant's actions and behaviour at the rental premises. As however, the landlord did not submit written documentation on possible costs, such as quotes or receipts, for fixing the damaged facing, I am unable to verify the costs for fixing the damaged. Consequently, his claim for compensation does not succeed.

Decision

50. The landlord's claim for compensation for garage door facing does not succeed.

Summary Decision - Issue # 1 Damages

51. The landlords' total claim for compensation for damages succeeds in the amount of \$3,245.43 (\$453.38+ \$802.50+ \$135.24 + \$742.00+ \$812.00+ \$300.31).

Issue # 2 – Compensation for Rent (\$1275.00)

Relevant Submissions

52. The landlord testified that the tenant provided notice of termination in mid May 2022 and that they mutually agreed to terminate the month-to-month tenancy as at 30 June 2022. The landlord testified that he requested access to the rental premises so that he could show it to future tenants during the month of June 2022 but was repeatedly refused access by the tenant. As such, the landlord testified that he was unable to ascertain damage and or address damage in June so that he could secure tenants for the month of July 2022. Consequently, the landlord testified that he is seeking compensation for rent for the month of July 2022 as he was only able to secure tenants for the month of August 2022 once he completed the majority of the reported damages to the rental unit.

Analysis

53. The landlord successfully established that the actions of the tenant prevented him from showing the rental unit during June 2022 and also resulted in the landlord having to complete significant work in the rental premises and that this made for a delay in their ability to re-rent the rental premises. As such, I find that

the landlord is entitled to compensation for rent in the full amount for the month of July 2022.

Decision

54. The landlord's claim for compensation for rent succeeds in the claimed amount of \$1,275.00.

Issues # 3 – Hearing Expenses

55. The landlord claimed the following hearing expenses:
- \$20.00 for the expense of applying for the hearing (L#10);
 - \$63.12 (e.g., \$34.38 + \$28.74) for the costs of purchasing two USBs for the purposes of delivering digital copies of all evidence to this tribunal and to the respondent;
 - \$29.72 for the costs for printing hard copies of pictures, used as evidence, from Walmart (L#12).
56. The landlord also submitted a receipt from Staples in the amount of \$56.56 but could not recall what this receipt represented and so his claim for compensation in this amount was not considered.
57. According to **Residential Tenancies Policy 12-001: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF**, the costs of copying and printing etc. are allowable hearing expenses. As the landlord's claim for compensation has been successfully, the tenant shall pay his hearing expenses in the amount of \$112.84 (e.g., \$20.00 + \$63.12 + \$29.72).


Summary of Decision

58. The landlord is entitled to a payment of \$4,633.27, determined as follows:

a) Compensation for Damages.....	\$3,245.43
b) Compensation for Rent.....	\$1,275.00
c) Hearing Expenses.....	\$112.84
d) Total.....	<u>\$4,633.27</u>

09 September 2022

Date


Jaclyn Casler
Residential Tenancies Board