

Residential Tenancies Tribunal

Applications 2022 No. 0608 NL
2022 No. 0683 NL

Decision 22-0608-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03AM on 22 September 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED] as represented by [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
4. An affidavit of service was provided by the tenant confirming that the landlord was served of the claim against them by registered mail on 27 July 2022 (T#1). The landlord confirmed receipt of service on 01 August 2022. The landlord testified that they did not serve the tenant because they “*assumed that the Residential Tenancy Office was responsible for serving notice of the rescheduled hearing.*”
5. The details of the claim were presented as an originally fixed term rental agreement operating since 01 November 2020. Monthly rent was set at \$905.00, including utilities, and a security deposit in the amount of \$447.50 was collected. The landlord provided a copy of the original written rental agreement (L#1) and agreed that the rental premises was vacated on the mutually agreeable date of 30 June 2022 after the tenant provided notice of his intention to vacate.
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 tenant is seeking the return of his security deposit in the amount of \$411.50.
8. The landlord is seeking the following:
 - Compensation for damages in the amount of \$4,512.00; and
 - An order for the security deposit to be retained in the amount of \$447.50.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is sections 10 and 14 of the *Act*.

Preliminary Matters

11. Correspondence previously provided to the landlord was reviewed and it was confirmed that the landlord had been instructed to serve the tenant of their claim. The tenant waived his right to service of the landlord's counter claim and so the landlord's counterclaim for compensation for damages was heard.
12. The rental premises is an apartment building located at [REDACTED]. The tenant resided in suite # [REDACTED].

Issue 1: Compensation for Damages (\$4,512.00)

Relevant Submission

13. The landlord submitted a copy of her damage ledger that contained three individual claims (L#2). Each of these claims was reviewed during the hearing:
 - Cleaning \$260.00
 - Smoke damage \$3,500.00
 - Administrative Fee \$752.00
14. These claims were then 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).
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.

Damage # 1 = Cleaning \$260.00

Landlord's Position

16. The landlord testified that cleaning was required of the rental premises after the tenant vacated, and that the cleaning rate was charged in accordance with Schedule B of the rental agreement. She further testified that 4 hours of cleaning was required, and that the stove, tub and bedrooms specifically required cleaning. The landlord did not submit a receipt or invoice related to cleaning, nor did she submit photos of the premises as evidence of cleaning required.

Tenant's Position

17. The tenant testified that he spent 1-2 hours cleaning each day for two weeks prior to vacating the rental unit, and that he left it "just as clean" as when he took possession of the unit. He spoke further to say that he also cleaned windows and behind appliances.

Analysis - Cleaning

18. The tenant disputed the charge for cleaning and the landlord did not submit any documentary evidence related to the reported charge for cleaning. Consequently, I find that the landlord failed to establish on the balance of probabilities that cleaning in the amount of \$260.00 was required. As such, her claim for compensation does not succeed.

Decision – Cleaning

19. The landlord's claim for compensation for cleaning does not succeed in any amount.

Damage # 2 – Smoke Damages (\$3,500.00)

Landlord's Position

20. The landlord identified the tenant's unit as a smoking permitted unit, and testified that she incurred contractor charges in the amount of \$5232.50 due to "excessive smoke" after he vacated. She testified that this invoice involved running an ozone machine, use of smoke blockers and two coats of paint to cover up stains on the wall. The landlord did not submit a copy of the invoice, but did submit three pictures of stained looking walls which she testified were "smoked out" (L#3). The landlord further testified that the tenant's unit was painted prior to move in, and that she conducted a move in and move out inspection with the tenant and that

the tenant signed the move out inspection report that noted this staining damage. However, copies of reports associated with these inspection were not submitted to this tribunal.

21. Regarding the discrepancy in costs between the contractor invoice and damage claim in the amount of \$3,500.00, the landlord testified that she is not seeking compensation for the full amount of the invoice because it is the practice of the landlord to not seek compensation for the full amount.

Tenant's Position

22. The tenant laughed when told of the damages claim against him. He testified that the rental unit was a smoking unit, so he smoked within the unit and that he generally smokes a pack a day. When asked of the stains on the wall, the tenant testified that he had "no idea" of what would have caused the stains, and suggested that the stains were located behind where had placed his furniture within the unit.

Analysis – Smoke Damage

23. I accept that the landlord and tenant agreed that the rental unit was a smoking unit. As such, I find that the landlord failed to establish on the balance of probabilities that the unit was indeed damaged by "excessive smoking" since she did not submit copies of the move in or move out condition inspection reports, nor did she submit a copy of the contractor invoice for the work completed. As such, I was unable to verify her claim.

Decision – Smoke Damage

24. The landlord's claim for compensation for smoke damage does not succeed in any amount.

Damage # 3 – Administrative Fee (\$752.00)

Landlord's Position

25. The landlord testified that she is seeking a 20% administrative fee associated with the contractor charges incurred because the tenant signed a rental agreement document that specifies that all damage charges are "subject to HST as well as a Northview administration fee of %20."

Tenant's Position

26. The tenant testified that he would not pay this fee.

Analysis – Administrative Fee

27. The landlord testified that she is entitled to a fee associated with work conducted in the rental premises after the tenant vacated and the tenant disputed this fee. I find that the landlord failed to establish on the balance of probabilities that she is entitled to compensation for this fee. This Administrative fee appears to be a charge related to the business of being a landlord – that is arranging for work that the landlord feels is appropriate in the rental unit.

Decision – Administrative Fee

28. The landlord's claim for compensation for an administrative fee does not succeed in any amount.

Summary Decision - Damages

29. The landlord's claim for damages does not succeed in any amount.

Issue 2: Security Deposit (\$447.50/\$411.50) Relevant Submissions

30. The tenant provided a receipt for payment of a security deposit paid on 30 October 2020 (T#2) and testified that he is seeking the return of \$411.50 because that is the amount identified on his receipt. The landlord testified that she is seeking to retain the security deposit in the amount of \$447.50 because that is the amount that she has record of being collected.

Analysis

31. 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.

32. Where the landlord's claim for damages has not succeeded in any amount, the tenant's claim for return of their security deposit succeeds in the full amount claimed of \$411.50.

Decision

33. The tenant is entitled to the return of his security deposit in the amount of \$411.50.

Issue # 3: Hearing Expenses

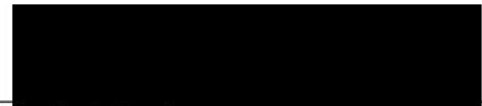
34. The tenant claimed the \$13.44 expense of serving the landlord by registered mail. As his claim has been successful, the landlord shall pay this expense.

Summary of Decision

35. The tenant's claim for the return of their security deposit succeeds in the amount of \$411.50.
36. The tenant is entitled payment from the landlord in the amount of \$424.94, determined as follows:
- a) Security Deposit\$411.50
 - b) Hearing Expenses.....\$13.44
 - c) Total.....\$424.94

26 September 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal