

Residential Tenancies Tribunal

Application 2022 No. 0665 NL

Decision 22-0665-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 20 September 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "tenant1", did not participate in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "tenant2", did not participate in the hearing.
5. The landlord submitted an affidavit (L#1) confirming that she served tenant1 electronically on 07 September 2022 and provided proof of service (L#2). The landlord also submitted an affidavit (L#3) confirming that she served tenant2 electronically on the same day and provided proof of service (L#4).
6. The details of the claim were presented as a fixed term agreement that started October 2020 and a subsequent renewal of which was set to expire 31 October 2022. Monthly rent was set at \$1,600.00, exclusive of utilities and a security deposit in the amount of \$1,200.00 was collected 29 October 2020. A copy of the written rental agreement was provided (L#5).
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant is responsible for proving 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

8. The landlord is seeking the following:
 - Payment of rent in the amount of \$3,200.00;
 - Payment of utilities in the amount of \$67.32;
 - Compensation for damages in the amount of \$1,832.00;
 - To retain the security deposit in the amount of \$1,200.00.

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*.
10. Also relevant and considered in this case is sections 15 and 19 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

11. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. 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.
13. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
14. The landlord testified that she attempted to make contact with the tenants on 03 July 2022 after not receiving rent for the month of July. She then visited the property on 05 July 2022 and posted a 24 hour notice of landlord's entry. The landlord testified that she found the premises abandoned on 06 July 2022 and so she issued a notice of abandonment on that day before taking possession on 07 July 2022. The landlord also testified that neighbours of the rental premises informed her tenant1 allegedly vacated sometime in the final week of June 2022 and that tenant2 vacated on or about 01 July 2022.
15. The landlord testified that she made an application to dispose of abandoned possession on 10 August 2022 due to the substantial amount of personal belongings left in the rental premises. This file number is 2022-119.

Issue 1: Payment of Rent (\$3,200.00)

Relevant Submissions

16. The landlord testified that the rental premises is a single family dwelling located at [REDACTED]. She submitted a copy of her rent ledger (L#6) and testified that rent was often received late, but that she did not mind so long as rent was received prior to her having to pay her own mortgage. The landlord testified that she never issued a termination notice to the tenants, and that as per paragraph 11 above, she took possession of the rental premises on 07 July 2022 after posting a notice of abandonment on 06 July 2022 because rent was not paid for that month and the premises appeared abandoned.
17. Regarding the rental agreement with the tenants, the landlord testified that she had them sign the submitted copy of the fixed term rental agreement because she needed proof of a dependable income so that she could purchase her own residence. The landlord testified that she was otherwise comfortable with the tenants having a month-to-month rental agreement. She stated that she was looking for compensation for rent for the month of July and August 2022 because she understood that the tenants have to give 60 days notice to vacate.

Analysis

18. There was a fixed term agreement in place between the landlords and tenants that was set to expire on 31 October 2022. According to 18(1)(c) of the Act:
 - 18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises*
 - (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*
19. As such, I accept the landlord's request for the full amount of rent for the months of July and August 2022 as compensation for the abandonment of her rental premises.

Decision

20. The landlord's claim for rent succeeds in the amount of **\$3,200.00**.

Issue 2: Payment of Utilities (\$67.32)

21. The landlord submitted a Utility Ledger (L#8) outlining her claim for compensation for utilities at the rental premises. She testified that she received notice on 05 July 2022 from NL Power that the tenants had requested that billing

be stopped as of 01 July 2022. She submitted the July 2022 invoice from NL Power in the amount of **\$33.66** along with the August 2022 invoice in the amount of **\$39.74** (L#10). The landlord testified that she is seeking compensation for these two utility bills because they would have otherwise been paid by the tenants had they given proper notice of termination of their rental agreement.

Analysis

22. I accept the landlord's claim for compensation for utilities as presented and find that she is entitled to compensation in the amount claimed because she would not have otherwise been expected to pay these utility bills for the month of July and August 2022 since she would have expected her rental premises to be occupied and utilities to have been paid by the tenants.

Decision

23. The landlord's request for compensation succeeds in the amount of **\$73.40** (e.g., \$33.66 + \$39.74).

Issue 3: Compensation for Damages (\$1,832.00)

Relevant Submissions

24. The landlord submitted a Damage ledger (L#7) and each claim was reviewed against evidence provided. She testified that the house is 11 years old, and that she has owned the house for four years. She further testified that the basement floor is new, but that everything else in the house is original:
 - Murals in Bedroom (\$500.00)
 - Mural in Basement (\$500.00)
 - Damaged faceplates (\$10.00)
 - Cat smell – carpet replacement (\$500.00)
 - Home Cleaning (\$322.00)
25. Each of these claims was then assessed in accordance with standard practice that requires the applicant 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 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).
26. 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: Painting and Plaster for Mural Cover Up \$1,000.00

27. The landlord testified that she identified \$500.00 and \$500.00 as compensation for cover up of two murals as an estimate at the time of her application to this Tribunal. She submitted photos of the mural in the bedroom and in the bathroom, along with her two receipts for purchasing painting related supplies (L#11). These receipts included \$208.70 on 03 September 2022 and \$338.23 on 17 July 2022.
28. The landlord testified that the walls of the rental premises were newly painted prior to the tenants taking occupancy and that extensively plastering was required because the tenants appeared to have used hot glue to attach items to the walls throughout the rental premises. However, no pictures of this were submitted. The landlord also testified that the tenants smoked heavily in the unit, despite being prohibited from doing so, and that this was addition cause for her having to repaint the rental premises.
29. The landlord testified that she and her fiancé did the prep work and painting at the rental premises. She estimated that they spent 40 hours removing all of the items from the rental premises (related to the application for disposal of abandoned possessions identified in paragraph 15), and then preparing the walls for painting, for which she specifically estimated required 8 hours of time. The landlord also estimated that an additional 40-60 hours of time was spent between herself and fiancé painting the walls and trim of the rental premises. The landlord testified that she was also required to stain her deck, but that she did not claim compensation for this work.

Analysis: Painting and Plaster for Mural Cover Up

30. The landlord provided pictures of two murals in the rental premises, but did not provide other supporting photographic or other documentary evidence related to her request for compensation for painting and plastering of the rental premises. She testified that the tenants smoked, and she also testified that the tenants attached items with hot glue to the walls, however, without pictures of this damage, it is difficult to understand the full scope of damage being claimed.
31. Additionally, the landlord did not refer to either a pre-occupancy or post-occupancy inspection, or related documentation so as to clearly establish that the rental premises was indeed damaged by the tenants during their occupancy of the rental premises. Consequently, I find that the landlord failed to establish on the balance of probabilities that her full claim for hourly compensation was indeed required at the rental premises. As such, I will award compensation for 30 hours of labour only because I accept that two mural needed to be covered, and that the house needed to painted as a result of smoking.

32. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the maximum hourly wage for painting is \$23.20. Because the landlord's claim for compensation succeeds in the amount of 30 hours, this entitles theoretically entitles her to \$696.00 (e.g., 30 x \$23.20) as compensation for labour related to painting and plastering.
33. Regarding the landlord's claim for compensation for paint supplies, I accept that all items from the \$338.23 July receipt were painting related, however, no items from the September receipt actually appear to be painting related. Nor were any items explicitly flagged by the landlord.
34. Finally, because the maximum serviceable life of a paint job is 3-5 years in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, the landlord's potential compensation of \$1,034.23 (e.g., \$696.00 + \$338.23) must be depreciated and as the landlord testified that the rental premises was last painted prior to the tenants taking occupancy of the rental premises, I find that the landlords were required to paint after the original paint job had served only half of its expected serviceable life. As such, I find that the landlord is entitled to \$517.12 as financial compensation for painting (e.g., \$1,034.23 x .5).

Decision: Painting and Plaster – Mural Cover Up

35. The landlord's claim for compensation for bedroom mural and basement mural succeeds in the amount of \$517.12.

Damage # 2: Damaged faceplates (\$10.00)

36. The landlord testified that there were a number of damaged faceplates on the light switches and outlets. She did not provide a receipt for the purchase of the replacement plates.

Analysis - Damaged faceplates

37. Because the landlord did not submit documented evidence of costs incurred for replacing the faceplates, I was unable to verify the costs incurred. As such, her claim does not succeed.

Decision - Damaged faceplates

38. The landlord's claim for compensation for faceplates does not succeed.

Damage # 3: Cat smell – Carpet replacement (\$500.00)

39. The landlord testified that she discovered an abandoned cat when she took possession of the rental premises on 07 July 2022 and that she placed the cat

with the SPCA. The landlord testified that the smell left behind was “terrible” and that she had to run an ozone machine to try and reduce the smell. The landlord submitted a photo of extremely dirty and stained carpet in the split entry stairs of the rental premises (L#12) and testified that she had to replace this carpet. She submitted a receipt in the amount of \$236.70 and testified that she installed carpet herself, requiring 5 hours of labour.

Analysis: Cat smell – Carpet replacement

40. I accept the landlord’s testimony and evidence that the carpet in the split level stairway had to be replaced after she took possession of the rental premises. However, in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* the expected serviceable life of carpet, is 10 years and because the stairwell carpet that was replaced was understood to be original to the rental premises, it was due for replacement anyways.

Decision: Cat smell – Carpet replacement

41. The landlord’s claim for compensation for cat smells – carpet replacement does not succeed in any amount.

Damage item # 4: Cleaning (\$322.00)

42. The landlord submitted a receipt for cleaning in the amount of \$322.00 and testified that a team of two individuals spent five hours cleaning the rental premises. She testified that cleaning was required because it appeared the tenants just vacated the premises, as indicated in the number of possessions left behind and the fact that no cleaning appeared to have occurred. The landlord testified further that there was cat food and cigarettes everywhere, along with toys, and that there was brown water left in the sink. The landlord submitted a number of photos from the rental premises, indicating significant grim on doors and clear evidence of personal possession just left at the rental premises (L#15).

Analysis: Cleaning

43. I note that the date on the receipt of cleaning is 09 August 2022, more than a month after the landlord retook possession of the rental premises. That said, the landlord successfully established that at least 10 hours of cleaning was required based on her testimony and photographic evidence provided. As such, I find that she is entitled to compensation for 10 hours of time in accordance with the \$21.20 maximum wage identified in *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property* which entitles her to \$212.00 in compensation (e.g., 10 x \$21.20).

Decision: Cleaning

44. The landlord's claim for compensation for cleaning succeeds in the amount of \$212.00.

Summary Decision Damages

45. The landlord's claim for compensation for damages succeeds in the amount of \$729.00 (e.g., \$517.12 + \$212.00).

Issue 4: Security Deposit (\$1,200.00)

Relevant Submissions

46. The landlord provided proof of a \$1,200.00 security deposit having been collected 29 October 2020 and requested to retain the full value against monies owed by the tenants.

Analysis

47. 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.

48. Where the landlord's claim for damages and rent have succeeded in excess of the \$1,200.00 security deposit collected, she is entitled to retain the full value of this deposit.

Decision

49. The landlord is entitled to retain the full value of the \$1,200.00 security deposit collected.

Issue 5: Hearing Expenses

50. The landlord claimed the \$20.00 expense of applying for the hearing. As her application has been successful, the tenants shall pay this hearing expense.

Summary of Decision

51. The landlord is entitled to the following:

- To retain the full value of the \$1,200.00 security deposit collected.
- A payment of \$2,822.40, determined as follows:
 - a) Rent Owing..... \$3,200.00
 - b) Utilities.....\$73.40
 - c) Damages.....\$729.00
 - d) Hearing Expenses..... \$20.00
 - e) **Less Security Deposit.....(\$1,200.00)**
 - f) **Total.....\$2,822.40**

26 September 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal