

Residential Tenancies Tribunal

Application 2022-0668-NL

Decision 22-0668-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 22-September-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED], hereinafter referred to as “the tenant” he attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that landlord1 had served the tenants with notification of the hearing, in person, on 06-September-2022. The hearing was rescheduled by our office and landlord2 served the tenants with notification of the change in hearing date on 17-September-2022. At the start of the hearing, neither of the tenants were in attendance and I was unable to reach them by phone. At 2:20 p.m. the tenant signed into the conference line and attended for most of the hearing.
5. The landlords were seeking rent and other – lost rent. The landlords removed the request for lost rent, as they didn’t feel they had adequate evidence to support their claim. The adjudicator removed the claim for rent because the tenants already have an order for rent to the end of the tenants’ tenancy 2021-0227-SJ.
6. The landlords adjusted the amount owed for compensation for damages from \$4,273.35 to \$9,045.85.

Issues before the Tribunal

7. The landlords are seeking
 - Compensation for damages \$9,045.85

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 decision are the following sections of the *Residential Tenancies Act, 2018*, Section 10 Statutory conditions and Section 42: Application to director.

Issue 1: Compensation for damages \$9,045.85

Landlord's Position

10. Landlord1 stated that the tenants entered a written rental agreement (LL#03) in December 2016. The tenants paid \$1,300.00 a month for rent, this doesn't include utilities. The tenants paid a security deposit of \$975.00 when they first took occupancy, however this security deposit was already applied to rent. The landlord said that the tenants struggled with rent payments and they had a previous hearing that resulted in an Order of Possession (2021-0227-■). The tenants moved out 30-July-2021.
11. The landlords are seeking compensation for damages, they filed this application on 26-July-2022. Throughout the hearing the following were removed from the damages sought.
 - Landlord1 removed the cost of the repair of the bedroom doors, she said her brother-in-law did the repairs and she is unsure of which receipts apply to this expense
 - She is not seeking reimbursement for the upstairs toilet
 - She is not seeking reimbursement for the cost to repair the hardwood floors
 - The fridge was replaced with a second hand fridge on Marketplace, she is not seeking reimbursement.
 - The stove was replaced with a second hand stove from Marketplace, no receipt
 - Dishwasher was replaced with a second hand from a family member
 - She removed the request for damages to the driveway. She said that the only quote she could get was to redo the entire driveway and she was only planning on seeking reimbursement for the patching.
12. Landlord1 said that both the front and back door were damaged. She provided pictures to show the damages (LL#03 – LL#06). She also provided a copy of the receipt (LL#07) for the replacement doors. The receipts are for \$279.99 for the back door and \$397.99 for the front door. She also provided the receipt (LL#10) from the contractor for \$368.00 for the cost to install both doors. Landlord1 said that the back door is 7 – 8 years old and the front door is 10 – 12 years old.

13. Landlord1 said that the blinds were damaged, she said that the blinds were new in 2012, and she had spent \$500.00 and that they would be 9 years at the time the tenant moved out. She said the blinds were broken and she provided a picture of the damages (LL#08). She submitted a receipt (LL#09) which lists the prices for the blinds as: 32.00 + 53.00 + 32.00 + tax = \$134.55.
14. Landlord2 said that the contractor for the doors was going to do many of the repairs. The amount of work was beyond what he had time for, so their family had to pitch in and do the work. They had to paint and plaster the house as well as a lot of cleaning.
15. Landlord1 said that they had to plaster and then paint. She said herself, her brother in law, her husband and a handy man all worked on the house. She provided receipts (LL#22 & LL#23) for the paint: one for 123.00, 201.91 & 63.24. She said that she understands that the house wasn't painted during the 5 years, but due to the holes in the walls everything had to be painted. She provided pictures of the areas plastered (LL#15 - #21). She is claiming 52 hours personal work hours: landlord2 said 17 hours for plastering and 35 hours for painting.
16. Landlord1 submitted 16 hours for cleaning. She said both herself and her mother put in a lot of hours trying to clean and that this claim is lower than the actual amount of time required. She provided pictures to show that it required cleaning (LL#11 - #14).
17. Landlord2 said that they were two years where they couldn't enter the house because the tenants were trying to keep them out. He suspects it was because of all the damages. He said that it was overwhelming when they went into the house. He said that they should have potentially evicted them years ago, but the tenant had their own family issues and they felt bad for them.

Tenant's Position

18. The tenant confirmed the details of the rental agreement.
19. The tenant said he believes that the front door would be original to the house, which would make the door 30 years old.
20. The tenant doesn't deny that the blinds are broken, however, he said that blinds do break, the mechanical system inside give out, he said he had replaced them in the past.
21. The tenant had a family responsibility and had to leave the hearing early.

Analysis

22. A landlord may apply to the director within one year of the end of an agreement when a provision of a rental agreement has been contravened. The landlords' application was opened on 26-July-2022 and the tenant's agreement ended when they moved on 30-July-2021. This application was filed within the maximum time frame permitted under the Act, as follows:

Application to director

42. (1) A landlord or tenant may, *within one year* after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;*
- (b) whether a provision of a rental agreement has been contravened; or*
- (c) whether a provision of this Act or the regulations has been contravened.*

23. The landlords have shown that both the front and back doors have been damaged beyond repairs. 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.

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 value to repair or replace the damaged item(s)

24. 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. The life expectancy for exterior doors is 15 years. The landlord had determined that the front door was 10-12 years old, however, the tenant questioned this and said he believed that the door would have been original to the house. As the damage to the door is not from wear and tear, I will accept the landlord's estimate of between 10-12 years. The door will be valued at 11 years old and therefore the damages for that door will be awarded for the remaining 4 years of potential life $4/15$'s of $\$397.99 = \106.13 .

25. The back door is reported to be 7 – 8 years old, 7.5 years of 15 is 50% of the life expectancy of the door. The damages to the back door will be awarded for the remaining 7.5 years or 50%. $50\% \times 279.99 = \$140.00$. The cost of the installation will be awarded at the higher rate of $50\% \times 368.00 = \$184.00$. I find that the total amount awarded for the two doors is $\$106.13 + 140.00 + 184.00 + \430.13 .

26. The landlords have shown, through their evidence, that the 9 year old blinds have been damaged and replaced at a cost of \$134.55. The tenant raised the question of life expectancy. Blinds.ca estimate the life span of blinds to be approximately 5 years. As the blinds have outlasted their life expectancy there will be no award for the replacement.
27. The landlords acknowledged that the house hadn't been painted for 5 years and our policy determines that the life expectancy for paint is 5 years and that the house is due to be painted. I acknowledge the argument, that due to the damages to the walls and that they are plastered, the walls had to be painted no matter how old they are, however, when factoring in depreciation, the opposing argument would be, if the walls weren't damaged they would still require painting after the 5 years. I therefore find that the landlords' claim for paint and painting fails.
28. The landlords' have shown through their testimony and evidence that there was a lot of damage to the walls that required plastering. Walls with proper care should last the lifetime of the home. The landlords claimed 17 hours personal wages to plaster. This board pays at a rate of minimum wage plus \$8.00 totaling \$21.20 for personal wages. The landlords shall be compensated fully for this loss at, 17 hours x \$21.20 = \$360.40.
29. Finally, the landlords have proven through their evidence that the home wasn't left in a clean condition and required cleaning. The landlords have claimed 16 hours and will be fully compensated for this claim 16 hours x \$21.20 = \$339.20.
30. The landlords are awarded \$1,129.73 for damages as follows:

• Doors	\$430.13
• Plastering	360.40
• Cleaning	<u>339.20</u>
• Total	<u>\$1 129 73</u>

Decision

31. The landlords' claim for damages are awarded at \$1,129.73.

Issue 4: Hearing expenses reimbursed \$20.00

The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#23) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

32. The tenants shall pay to the landlords \$1,149.73 for the cost of damages \$1,129.73 and hearing expenses \$20.00.

02 October 2022

Date

[Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office