

Residential Tenancies Tribunal

Application 2022 No. 687NL
Application 2022 No. 782NL

Decision 22-0687-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 26 September 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, were also in attendance.

Issues before the Tribunal

3. The tenants are seeking the following:
 - An order for refund of security deposit in the amount of \$1000.00; and
 - An order for a payment of \$625.46 in compensation for inconvenience.
4. The landlords are seeking the following:
 - An order for a payment of \$1000.00 in compensation inconvenience;
 - An order for a payment of rent in the amount of \$1500.00;
 - An order for a payment of \$2195.00 in compensation for damages; and
 - Authorization to retain the \$1000.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and William & Rhodes Canadian Law of Landlord and Tenant.

Issue 1: Compensation for Damages - \$2195.00

Relevant Submissions

The Landlord's Position

7. The landlords and the tenants entered into a 1-year, fixed-term rental agreement on 01 July 2020, and a copy of the executed lease was submitted with the landlords' application. The agreed rent was set at \$1500.00 per month, and it is acknowledged in the lease that the tenants had paid a security deposit of \$1000.00.
8. At the end of May 2022, the landlords issued the tenants a termination notice requiring that they vacate on 31 August 2022. On 02 July 2022, the tenants issued their own termination notice to the landlords indicating that they would be moving on 31 July 2022. The tenants vacated on that date and the landlords sold the house on 01 September 2022.
9. After the tenants moved out, the landlords discovered that there were significant damages caused to the rental unit, and with their application, they submitted the following breakdown of the costs they had incurred to carry out the required repairs:

• Repair broken tile	\$200.00
• Painting in living room	\$800.00
• Sweep for garage door.....	\$22.95
• Replace drawer lid	\$168.29
• Cleaning and labour for painting	\$694.40
• Gasoline.....	\$200.00
• 3 sets of curtains	\$110.16
Total.....	<u>\$2195.80</u>

Broken tile

10. With their application, the landlords submitted a photograph showing a tile in the kitchen floor, and landlord1 pointed out that there is a star-shaped crack in that tile, and he claimed that there is a crack in the one next to it. Landlord1 figured that this damage was caused by someone dropping something on that tile. The landlords had the tile repaired after the tenants moved out, and with their application they submitted a receipt from TM showing that they were charged \$200.00 to have that work carried out.

Painting in living room

11. Landlord1 stated that he was required to repaint the living room after the tenants moved out and with his application he submitted a copy of a receipt showing that he was charged \$800.00 to have that work carried out. Landlord1 claimed that

the tenants had made numerous holes in the walls where they had been hanging pictures, and he also complained that there were about 8 hooks with Command strips affixed to the ceiling. Landlord1 stated that the tenants had allowed these strips to dry out, and they could not be removed with their tabs, but rather had to be pried off the ceiling, causing damage. The unit was last painted in 2015 when it was built.

Sweep for garage door

12. Landlord1 pointed to his photographs showing that the sweep on the bottom of the door to the garage was cracked and in pieces. He replaced that sweep at a cost of \$22.95 + tax, and a copy of that receipt was submitted with his application.

Replace drawer lid

13. Landlord1 pointed to another photograph showing that there was a crack in a crisper drawer lid in the refrigerator. The landlord stated that he ordered a new drawer lid, and he pointed to an e-mail receipt showing that he was charged \$168.29.

Labour for cleaning and painting

14. In addition to the painting that was required in the living room, for which the landlords had hired a professional, landlord1 also complained that there were holes in the walls in the other rooms of the house which also had to be plastered, and then repainted. He also stated that the tenants had stuck stars to the ceilings in one of the bedrooms, and these also could not be removed without causing damage.
15. In addition to the painting, landord2 stated that she had to spend 4 days, at 4 hours a day, carrying out cleaning at the property. She complained that the oven racks were dirty, that the cupboards were dirty, and that the tenants had even left some items in these cupboards. She claimed that the whole house was “really dirty and dusty” and she testified that she had to clean the windows, window screens and the vents. She also stated that there was a lot of wear and tear in the bathroom. In support of their claim for cleaning, landlord1 pointed to a photograph showing the back of a door.

Gasoline

16. Landlord1 stated that he lives outside of St. John's, where the rental unit is located, and the gasoline for a roundtrip from his home to the rental unit, and back again, costs about \$50.00. He claimed that he had made 4 such trips to deal with the issue of cleaning and painting, as identified in the previous 2 paragraphs. No receipts were submitted with his application.

3 sets of curtains

17. Landlord1 stated that the tenants were permitted to keep 1 small dog in the unit during their tenancy, and no other pets were allowed. However, landlord1 stated that the tenants had acquired another dog during their tenancy, as well as a cat, and he claimed that this cat had damaged 3 sets of sheer curtains that were in the windows at the rental unit. In support of that claim, he pointed to his photographs showing these curtains after the tenants had moved out. The landlords submitted a screenshot from Amazon with their application showing that it would cost \$110.16 to replace those curtains.

The Tenants' Position

Broken tile

18. Tenant2 argued that none of the tiles in the rental property had been properly installed and he claimed that the grout for the tiles in the porch, bathroom and kitchen was all "coming up", and he said it had been like that since they moved into the property. He also testified that he pointed this problem out to the landlord a few months after they had moved in, but it was not addressed. With respect to the crack in the tile, tenant1 denied that they had dropped anything on that tile, and she suggested that that crack occurred there because it was a high-traffic area. Tenant2 also complained that the receipt submitted by the landlords is just a "scribble on a piece of paper".

Painting in living room

19. Tenant2 stated that they had placed 5 Command strips above the windows and 2 above the bar. He acknowledged that they had forgotten to remove those strips when they vacated, but he pointed out that he had deliberately used Command strips because they would not cause any damage to the walls when properly removed. With respect to the ceiling, tenant2 claimed that this ceiling was already damaged when they moved in as a result of "snowmageddon". He also reiterated the landlord's own claim that as the unit was last painted in 2015, it was probably due to be repainted soon anyhow.

Sweep for garage door

20. Tenant2 stated that he was unaware that any damage had been caused to this door sweep, and he claimed that if it was damaged, it was not because of any deliberate or malicious action on their part, but should just be attributed to normal wear and tear.

Replace drawer lid

21. Tenant2 stated that this drawer lid was already cracked when they first moved in. In order to prevent any additional damage, tenant2 stated that he removed this lid from the refrigerator and it was stored for the duration of their tenancy.

Tenant1 pointed out that there was no report of incoming inspection showing that this drawer lid was not cracked when the tenancy began.

Labour for cleaning and painting

22. Tenant2 acknowledged that he had put some stars on the ceiling and that he forgot to remove them before he vacated. He argued that if he had done an outgoing walkthrough with the landlords, this issue could have been identified and he would have removed these stars without causing any damage. Regarding the walls, tenant2 stated that he had repaired any damage he had caused during this tenancy and he had only left some small holes in the walls where he had been hanging pictures.
23. Both tenants denied that any cleaning was required after they vacated. Tenant1 claimed that the unit was “immaculate” when they vacated and tenant2 pointed out that in the videos he submitted, taken on the day they vacated, it is evident that the property was thoroughly cleaned. Tenant2 also claimed that the unit was not clean when they first moved in.

Gasoline

24. Tenant2 stated that he is not liable for the costs of the landlords’ gasoline, and he argued that where the landlords choose to live is their choice and their responsibility.

3 sets of curtains

25. Tenant2 stated that these curtains were too long, and they would cover the baseboard heaters under each of the windows. She stated that she noticed that the bottoms of these curtains were already damaged and burnt when the tenancy first began, and she stated that during their tenancy she had these curtains tied up so that they would not catch fire. She denied that this damage was caused by their pets.

Analysis

26. 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.

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)

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.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

27. I accept the landlords' claim that a tile in the kitchen is damaged. However, I was not persuaded that this damage was done deliberately or negligently, and it was the tenants' contention that it happened from the normal use of the floor, i.e., walking on it. Landlords have to expect that there will be some wear and tear to floors, walls, etc., as a result of such normal use, and tenants are not liable for this sort of damage. I reach the same conclusion about the door sweep.
28. With respect to the painting, that claim also fails. Landlords are expected to repaint the walls in a rental property every 3 to 5 years, as a result of normal wear and tear, and as this unit was last painted in 2015, this was work that the landlords would soon have carry out anyhow.
29. With respect to the damaged drawer lid, the tenants claim that that lid was already cracked when the tenancy began, and given that the landlords presented no evidence showing the condition of that refrigerator when the tenancy began, e.g., before-photographs or an incoming condition report, I have to conclude that the landlord's had failed to establish that this damage was caused during this

tenancy. I've reached the same conclusion about the 3 sets of curtains—the tenants claimed that they were already damaged when they moved in.

30. No evidence was presented by the landlords showing that the unit required any cleaning after the tenants moved out, and the tenants own video shows that the property was left in a very clean state. Hence, that claim does not succeed.
31. As the landlords' claim for damages has failed, their claim for the costs of purchasing gasoline to travel to the rental unit to carry out repairs also fails. Furthermore, no receipts were submitted by the landlords showing the costs that they had incurred, and I also agree with the tenants' argument that they cannot be held accountable for the landlords' decision to live so far away from their rental property.

Decision

32. The landlords' claim for compensation for damages does not succeed.

Issue 2: Compensation for Inconvenience - \$1000.00

Relevant Submissions

The Landlords' Position

33. Landlord1 stated that having to carry out all the cleaning and painting at the property after the tenants moved out was very stressful. The landlords are seeking \$1000.00 as compensation.

The Tenants' Position

34. Tenant2 argued that landlords ought to expect some normal wear and tear at a rental property after tenants move out, and any stress that a landlord suffers, as a result, should be expected.
35. Tenant2 stated that the unit was left in good condition when they moved out, as seen in their submitted video. He also pointed out that there was no indication in the lease that they were not allowed to hang pictures on the walls at the rental property.

Analysis

36. I agree with tenant2's argument. Dealing with maintenance issues at a rental property, especially those surrounding normal wear and tear, is part of the job of being a landlord. In any case, the landlords presented no evidence at the hearing to establish that they had incurred the costs they are seeking here.

Decision

37. The landlords' claim for compensation for inconvenience does not succeed.

Issue 3: Rent - \$1500.00

Relevant Submissions

The Landlords' Position

38. Landlord1 stated that he only received notice that the tenants were terminating their agreement on 02 July 2022. He pointed out that this was not a clear month's notice, and the landlords are seeking an order for a payment of rent, for August 2022, in lieu of a proper notice of termination.
39. Landlord2 stated that they had made no efforts to re-rent the property for August 2022 as they were in the process of selling it. She also pointed out that they would have been unable to rent the unit anyhow because of the damages caused by the tenants.

The Tenants' Position

40. Tenant2 stated that he had verbally informed the landlords in June 2022 that they would be moving at the end of July 2022, and he testified that, on 30 June 2022, he had sent the landlords a Facebook Message indicating that he was moving at the end of the July 2022 and he also informed them in that message that he would send him a proper notice by e-mail.
41. Tenant1 stated that the landlords knew that they were moving at the end of July 2022, and she claimed that the landlords wanted them to move sooner.

Analysis

42. Landlord1 is correct to point out that as the tenants had issued him a termination notice that off by 1 day, it is invalid. Where tenants vacate a rental property without first giving a proper notice, they are considered to have abandoned the property, and the tenants would be liable for any damages caused by the abandonment, including any loss of rental income suffered by the landlords.
43. However, statutory condition 4, set out in section 10 of the *Residential Tenancies Act, 2018*, states:

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:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

That is, landlords have a legal duty to take all reasonable steps to minimize their loss of rental income after tenants abandon residential premises. This is usually achieved by readying the unit for rent and by trying to get new, paying, tenants as soon as possible.

44. But the landlords stated that they made no efforts to put new tenants in place and they pointed out that they were in the process of selling the property. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing the issue of mitigation of damages, the authors point out that:

In *Canadian Medical Laboratories Ltd. v. Stabile* (1992), 25 R.P.R. (2d) 106 (Ont. Gen. Div.), it was held that sale of the property by the landlord does not satisfy the duty to mitigate as it ends the landlord's ability to re-rent the demised premises.

45. As the landlord's did not mitigate their loss of rental income after the tenants moved out, their claim for compensation for lost rent for the month of August 2022 does not succeed.

Decision

46. The landlord's claim for a payment of rent does not succeed.

Issue 4: Compensation for Inconvenience - \$625.46

Relevant Submission

The Tenant's Position

47. Tenant2 stated that they were interested in purchasing the rental property from the landlords, and they had engaged a lawyer to draft a purchase agreement. Tenant2 stated that the landlords would not sign the agreement that they had drafted, and the agreement that the landlords had drawn up did not offer them any protection, and their lawyer advised them not to sign it. The negotiations eventually stalled, and someone else ended up purchasing the house.
48. Tenant2 claimed that the landlords never had any intentions to sell the house to them, and he stated that they had always intended to sell it to a friend of theirs.

As such, he argued that he had needlessly hired a lawyer and had incurred \$625.46 in lawyer fees. The tenants are seeking an order for a payment of that amount.

The Landlord

49. Landlord1 stated that they had tried their best to sell the house to the tenants. He argued that the fees the tenants had incurred are their own costs and it was not the landlords' fault that the tenants were not able to come up with a proper sales agreement.

Analysis

50. Although I accept the tenants' claim that they had incurred costs to hire a lawyer while they were negotiating with the landlords about the sale of the house, I was not presented with any evidence to establish that the landlords were not negotiating in good faith, or that they had designs to drive up the lawyer fees the tenants were charged. As such, this portion of the tenants' claim does not succeed.

Decision

51. The tenants' claim for compensation for inconvenience does not succeed.

Issue 5: Security Deposit

52. The tenants submitted a copy of a receipt with their application showing that they had paid a security deposit of \$1000.00 on 21 April 2020. As the landlords' claim for damages and rent has not succeeded, they shall refund the full amount of that deposit to the tenants.

Issue 6: Hearing Expenses

53. With their application, the tenants submitted a receipt showing that they had paid \$20.00 to file this application, and \$30.00 to have their affidavit of service witnessed by a commissioner of oaths.

Analysis

54. Policy with this Section is that the party who receives an award shall have their hearing expenses awarded also. It is also policy that an applicant may only claim the filing fee if the amount they are awarded is greater than the security deposit. It is also policy with this Section that applicants may not claim the costs of hiring a commissioner of oaths as these commissioners are not permitted to charge fees.

Decision

55. The tenants' claim for hearing expenses does not succeed.

Summary of Decision

56. The landlords shall refund to the tenants the \$1000.00 security deposit.

20 December 2022

Date



John R. Cook
Residential Tenancies Tribunal