

Residential Tenancies Tribunal

Application 2022-0693-NL

Amended Decision 22-0693-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 26-September-2022 and reconvened at 1:38 p.m. on 28-September-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” did not attend the first day of the hearing, he did however, attend on the second day. The landlord submitted an authorized representative form (LL#01) naming [REDACTED] as his representative, [REDACTED] attended the teleconference both days, and will hereinafter be referred to as “the authorized representative.”
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 provided they have been properly served. The landlord submitted an affidavit (LL#02) with his application stating that he had served the tenant with notice of the hearing, electronically on 12-September-2022. The landlord stated that the tenant provided him the email address and they had used it for communication in the past. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$7,800.00
 - Compensation for damages \$25,032.32

- Security deposit applied to monies owed \$400.00
- Hearing expenses \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 14: Security deposit.

Issue 1: Rent \$7,800.00

Relevant submission

8. The authorized representative said that there was a verbal rental agreement with the tenant for a monthly rental. The tenant moved into the apartment on 01-August-2016 and he gave notice and moved out on 31-October-2021. The tenant paid \$800.00 rent on the first day of each month. He also paid a security deposit of \$400.00 on 31-July-2016; the landlord is still in possession of the deposit.
9. The authorized representative said that the tenant and landlord knew one another before the tenant started renting. The tenant was struggling to make his rent payments due to job loss and the landlord tried to give him a break by agreeing to him catching up with what was owed when he was working. The tenant did make some payments however he never caught up. The landlord submitted (LL#05) text conversations about the payments and (LL#03) a rent ledger. See below:

Date	Action	Amount	total
1-Aug-17	rent due	800.00	800.00
4-Aug-17	payment	-800.00	0.00
1-Sep-17	rent due	800.00	800.00
15-Sep-17	payment	-800.00	0.00
1-Oct-17	rent due	800.00	800.00
1-Nov-17	rent due	800.00	1600.00
1-Nov-17	payment	-800.00	800.00
1-Dec-17	rent due	800.00	1600.00
1-Jan-18	rent due	800.00	2400.00
1-Feb-18	rent due	800.00	3200.00
2-Feb-18	payment	-400.00	2800.00
1-Mar-18	rent due	800.00	3600.00
1-Apr-18	rent due	800.00	4400.00
1-May-18	rent due	800.00	5200.00
1-Jun-18	rent due	800.00	6000.00
1-Jul-18	rent due	800.00	6800.00
20-Jul-18	payment	-800.00	6000.00

1-Aug-18	rent due	800.00	6800.00
1-Sep-18	rent due	800.00	7600.00
28-Sep-18	payment	-800.00	6800.00
1-Oct-18	rent due	800.00	7600.00
28-Oct-18	payment	-800.00	6800.00
1-Nov-18	rent due	800.00	7600.00
25-Nov-18	payment	-800.00	6800.00
1-Dec-18	rent due	800.00	7600.00
21-Dec-18	payment	-800.00	6800.00
1-Jan-19	rent due	800.00	7600.00
25-Jan-19	payment	-400.00	7200.00
1-Feb-19	rent due	800.00	8000.00
4-Feb-19	payment	-800.00	7200.00
15-Feb-19	payment	-400.00	6800.00
1-Mar-19	rent due	800.00	7600.00
15-Mar-19	payment	-800.00	6800.00
1-Apr-19	rent due	800.00	7600.00
29-Apr-19	payment	-1000.00	6600.00
1-May-19	rent due	800.00	7400.00
1-Jun-19	rent due	800.00	8200.00
21-Jun-19	payment	-800.00	7400.00
1-Jul-19	rent due	800.00	8200.00
19-Jul-19	payment	-800.00	7400.00
1-Aug-19	rent due	800.00	8200.00
20-Aug-19	payment	-800.00	7400.00
1-Sep-19	rent due	800.00	8200.00
13-Sep-19	payment	-800.00	7400.00
1-Oct-19	rent due	800.00	8200.00
11-Oct-19	payment	-400.00	7800.00
25-Oct-19	payment	-400.00	7400.00
1-Nov-19	rent due	800.00	8200.00
7-Nov-19	payment	-400.00	7800.00
21-Nov-19	payment	-400.00	7400.00
1-Dec-19	rent due	800.00	8200.00
19-Dec-19	payment	-600.00	7600.00
1-Jan-20	rent due	800.00	8400.00
9-Jan-20	payment	-800.00	7600.00
1-Feb-20	rent due	800.00	8400.00
26-Feb-20	payment	-200.00	8200.00
1-Mar-20	rent due	800.00	9000.00
5-Mar-20	payment	-600.00	8400.00
20-Mar-20	payment	-200.00	8200.00
1-Apr-20	rent due	800.00	9000.00
20-Apr-20	payment	-800.00	8200.00
22-Apr-20	payment	-800.00	7400.00

1-May-20	rent due	800.00	8200.00
5-May-20		payment	-400.00
20-May-20		payment	-400.00
1-Jun-20	rent due	800.00	8200.00
7-Jun-20		payment	-800.00
1-Jul-20	rent due	800.00	8200.00
15-Jul-20		payment	-400.00
28-Jul-20		payment	-400.00
1-Aug-20	rent due	800.00	8200.00
5-Aug-20		payment	-800.00
1-Sep-20	rent due	800.00	8200.00
9-Sep		payment	-600.00
11-Sep-20		payment	-200.00
1-Oct-20	rent due	800.00	8200.00
15-Oct-20		payment	-800.00
1-Nov-20	rent due	800.00	8200.00
12-Nov-20		payment	-800.00
1-Dec-20	rent due	800.00	8200.00
14-Dec-20		payment	-800.00
1-Jan-21	rent due	800.00	8200.00
11-Jan-21		payment	-500.00
22-Jan-21		payment	-300.00
1-Feb-21	rent due	800.00	8200.00
5-Feb-21		payment	-600.00
19-Feb-21		payment	-200.00
1-Mar-21	rent due	800.00	8200.00
5-Mar-21		payment	-800.00
1-Apr-21	rent due	800.00	8200.00
1-Apr-21		payment	-800.00
1-May-21	rent due	800.00	8200.00
1-May-21		payment	-800.00
1-Jun-21	rent due	800.00	8200.00
1-Jun-21		payment	-800.00
1-Jul-21	rent due	800.00	8200.00
5-Jul-21		payment	-500.00
20-Jul-21		payment	-300.00
1-Aug-21	rent due	800.00	8200.00
4-Aug-21		payment	-800.00
1-Sep-21	rent due	800.00	8200.00
1-Sep-21		payment	-800.00
1-Oct-21	rent due	800.00	8200.00
3-Oct-21		payment	-800.00
tenant moved Oct 31,2021			

10. There was an error on the original document for 01-February-2019 where an \$800.00 payment is only credited as \$400.00. This has been corrected in the above table.
11. The landlord is seeking full compensation for the rent owed.

Analysis

12. Non-payment of rent is a violation of the rental agreement. I accept the authorized representative's testimony and evidence that the tenant did not pay rent totaling \$7,400.00.
13. The tenant shall pay the landlord the rent owed totaling \$7,400.00.

Decision

14. The landlord's claim for rent succeeds in the amount of \$7,400.00.

Issue 2: Compensation for damages \$25,032.32

Relevant submission

15. The authorized representative said that when the tenant moved out the apartment was left filthy. He said that there was pet hair everywhere and the smell of cat urine was overwhelming. He said that when the tenant moved into the apartment the landlord was aware that the tenant had a cat. In 2017 they noticed the tenant had a second cat. Before this tenant there were no pets in the apartment. They did not tell him he had to get rid of the cats.
16. In addition to the cat hair and urine, there was an unreported leak from the washing machine that damaged the flooring and created mold.
17. The tenant had also painted the apartment a dark color, he was given permission to paint a light color.
18. The authorized representative said that they live above the apartment and had noticed a smell of pet urine and inquired with the tenant about the issue. He provided a number of texts (LL#04) 30-March-2019, 16-November-2020, 15-February-2021, and 02-September-2021 where they ask why they are getting a smell of cat urine and telling the tenant that he has to keep the air exchanger on and take care of the kitty litter. In 2021 the authorized representative said that the tenant would be away for work for multiple days and the cats would be on their own.
19. When they attempted to clean up the cat urine damage they quickly realized that cleaning wasn't going to work and they had to tear up all the flooring in the apartment, they had to paint walls and use odor sealing paint to cover the odor. The landlord said that the cat urine had soaked through and provided pictures (LL#06), they had also

included black light photos to show the urine stains. The landlord said that the contractor charged \$320.00 for removal of the flooring and the disposal at the dump.

20. In addition to the damages caused by the cats, the landlord noticed that the washer was leaking. He said that the water had seeped through the flooring and into the concrete floor and there was mold. He said ½ the kitchen floor had to be removed and disposed of. He had an insurance adjuster come in to assess the damages and they said that the washer had been leaking for a while. The landlord said that insurance quoted \$11,000.00 to repair the damages from the washer, but they would not cover the damages by the cats. He said he didn't use insurance because he thought that if he put in a claim his cost of insurance would skyrocket. He said that the tenant was supposed to have insurance but he did not.
21. The landlord and the authorized representative hired a contractor and did some of the work themselves. They had received two quotes and the landlord said that the contractor they hired was able to start immediately and he had the lower of the quotes.
22. The contractor removed the flooring damaged by cat urine and the flooring damaged by the leak from the washer. When he removed the subfloor in the kitchen he had to replace the whole room because the original subfloor had an interlocking sections and the new interlocking system is thinner and would have created two differing heights in the flooring. He sloped the floor for the seam to the remainder of the apartment. The landlord provided receipts for the flooring (LL#07) \$844.18 and he said that the contractor charged him \$530.00 for this work.
23. The landlord said that the original flooring was laminate and he had it replaced with vinyl plank to avoid water damage in the future. He provided receipts for the plank (LL#07) for \$1,531.89 and he said that the contractor charged him \$1,280.00 for labor.
24. The landlord said that they tried to seal the baseboard but the contractor recommended that they replace it. He provided receipts for the cost of the baseboard materials (LL#07) \$231.71 and the contractor charged \$800.00 in labor.
25. The landlord said that the tub surround was damaged and cracked. He said he had an estimate for another tub surround for \$629.00 - \$723.00. The landlord said that they decided to go ahead with tile for better durability. He provided receipts for \$231.71 and he said that the contractor cost \$850.00 for the installation of the tiles and \$120.00 to dispose of the old tub surround.
26. The landlord said that the contractor removed all the remaining moldy items from the apartment and disposed them at a cost of \$430.00
27. The landlord said that the gypsum board that was replaced with what he had on hand, he said he had paid \$30.99 for a sheet. He said that the contractor charged \$850.00 and he calculated the cost of the supplies to be \$150.00, however he didn't have a receipt for supplies.
28. The landlord provided pictures to show that the bi-fold door to a closet was water damaged and soaked apart. The landlord provided the receipt for the bi-fold door \$243.34 and he said that the contractor charged \$80.00 to install.

29. The landlord said that the tenant had painted the apartment a dark color. He said that he had given permission for the tenant to paint it a lighter color. Because of the dark color the entire apartment had to be repainted. He submitted receipts for \$417.11 and the contractor charged \$1,700.00 for labor.
30. The landlord said he tried to offset the cost by completing some of the work himself. He said that while the tenant lived in the apartment he wanted to change the thermostats to programmable but the tenant always had an excuse why he couldn't come to do this work. The landlord suspects that it was because the tenant didn't want the landlord to see the damages. He said that when they took possession of the apartment, all the thermostats were set to off and three of them had short circuited. All the heaters were blocked with pet fur and had been sprayed by the cats. The landlord said that the heaters had to be replaced at a cost of \$224.21 (LL#07) and that it took him 2 hours personal labor to do this work. He provided pictures of the condition of the heaters (LL#06).
31. The landlord submitted pictures (LL#06) to show that the cabinets were not clean. He said he had to use mold control to clean them out and then he painted the cabinets. He also said that a kick plate was missing and he had to replace it. He provided receipts for the supplies (LL#07) \$124.15 and he said it took him 2 hours of personal labor to do the work.
32. He said that the bathroom vanity also had to be replaced he said that the bottom was swollen with pet urine and it was full of mold. He provided a receipts (LL#07) for \$297.85 and he said it took him 2 hours of personal labor to replace the cabinet.
33. The landlord said he sealed 90% of the wood instead of replacing it he provided receipts for the materials (LL#07) costing \$328.62 and he said it took 20 hours personal labor to do this work.
34. The landlord said that the contractor removed the drywall in the closet area about 12 – 16 inches up to ensure that the mold didn't progress. He said that the contractor charged \$350.00 for this. The contractor also cleaned up the mold in the apartment at a cost of \$550.00.
35. The landlord provided pictures of the receipts (LL#07), the damages (LL#06) and a repair quote from the contractor (LL#04). He said that the apartment was built in 2013 and was 9 years old when the tenant moved out.

Analysis

36. The landlord provided pictures and receipts for the supplies, to document the expenses incurred to repair the apartment. I accept that the apartment suffered water damages caused by an ongoing leak in the washer that was not reported to the landlord, and I also accept that the cats had caused damages by urinating or spraying the apartment.

37. 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)

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 for items not covered in this section I reference www.qualitycheckhomeinsepection.com.

38. The landlord had included in his quote for damages, repairs completed by a contractor, the landlord did not provide into evidence a receipt or proof of payment to this contractor. As there is no supporting evidence, this cost will not be considered in the decision. The bill for the contractor's labor equals \$7,860.00 as follows:

Replace subfloor	\$530.00
Install vinyl plank.....	1,280.00
Install baseboard	800.00
Removal of moldy items	430.00
Removal of moldy building supplies	550.00
Removal of drywall	350.00
Installation of gyproc	850.00
Removal of flooring	320.00
Install bi-fold door	80.00
Removal of tub surround	120.00
Install tiles	850.00
Paint apartment	<u>1,700.00</u>
Total	<u>\$7,860.00</u>

39. The landlord also stated that he checked with his insurance for the cost of repairs caused by the leaking washing machine. In accordance with Residential Tenancies policy 6-003 a landlord and a tenant must make every effort to minimize or "mitigate" their loss. This falls true for any person who takes an action against another individual. The landlord expressed concern that his insurance would increase should he submit a

claim for damages. This concern is reasonable, however, it is imperative that this is not to the detriment of the tenant. Some of the expenses are tied to the cost of the cat urine, which is not covered.

Expenses related to washing machine leak

40. The landlord provided receipts to show the expense of purchasing supplies for the subfloor which is \$844.18. The landlord said that the apartment was newly constructed 9 years ago. A sub-floor in a basement is expected to last up to 30 years. If this flooring is only 9 years old then the loss to the landlord will be 21 years. $21/30 \times 844.18 = \$590.92$.
41. The landlord said that he had laminate flooring and he replaced it with vinyl plank. He provided receipts for the plank (LL#07) for \$1,531.89. Laminate flooring has a life expectancy of 10 years and has therefore has $1/10^{th}$ of its lifespan remaining. $1/10 \times 1531.89 = \$153.19$.
42. The landlord also had to replace the baseboard at a cost of \$231.71. Baseboards should last the lifespan of the home. The tenant shall pay to the landlord \$231.71.
43. The landlord had estimated the cost of gyproc at \$150.00, however there was no supporting evidence for the cost and it will not be considered.
44. The total of the sub-floor, vinyl plank and the baseboards equals $\$590.92 + 153.19 + 231.71 = \975.82 . This total is below the cost of the insurance deductible and will be paid to the landlord by the tenant.

Expenses related to the cat urine and other expenses not covered by insurance

45. The landlord has shown that the bi-fold door has been soaked apart with cat urine and requires replacing. A bi-fold door should last 20 years and therefore still should have 11 years life expectancy left. The cost of the door $\$243.34 \times 11/20 = \133.84 . The tenant shall pay to the landlord \$133.84 for the loss of the bi-fold door.
46. The landlord replaced the heaters at a cost of \$224.21. Heaters should last the lifetime of the home. The tenant shall pay to the landlord $\$224.21 + 42.40 = \266.61 for the cost of the purchase and installation of the heaters.
47. The landlord also had to replace the bathroom cabinet at a cost of \$297.85 which was swollen with pet urine. A bathroom cabinet should last 20 years, and therefore it would still have a lifespan of 11 more years $11/20 \times \$297.85 = \163.82 . The landlord is also claiming 2 hours personal time to install the cabinet $2 \times \$21.20 = \42.40 . The tenant shall pay to the landlord $\$163.82 + 42.40 = \206.22 .
48. The landlord said that it took him 20 hours to seal the wood under the flooring and the walls to cover the smell of pet urine and purchased \$328.62 in supplies. $20 \text{ hours} \times \$21.20 = \$424.00$ labor + \$328.62 = \$752.62. The tenant shall pay to the landlord \$752.62 to seal the wood.

49. The landlord purchased tile to replace the tub surround costing \$231.71. The tube surround should last 15 years and therefore has 6 years lifespan remaining $6/15 \times \$231.71 = \92.68 . The tenant shall pay to the landlord \$92.68 for the cost of tile to replace the tub surround.

50. The landlord said that the entire apartment required painting, partly because of the dark paint, but also because some of the walls had to be cut to stop the spread of the mold. His painting supplies cost \$417.11. The apartment hadn't been painted by the landlord since before the tenant moved in. The paint is 5 years old, which is the life expectancy. Therefore the landlord will not be reimbursed for this expense.

51. The landlord also submitted for supplies \$124.15 and 2 hours personal time to clean and repair the cupboards in the kitchen, the cleaning of the apartment is the responsibility of the tenant. The landlord will be reimbursed this entire expense as most of the supplies are for cleaning $\$124.15 + 2 \text{ hours personal time } \$42.40 = \$166.55$.

52. The tenant shall pay to the landlord \$2,130.46, for the following expenses:

- Subfloor, vynal plank and baseboard \$975.82
- Bi-fold door 133.84
- Replace and install heaters 266.61
- Replace and install bathroom cabinet 206.22
- Supplies and labor to seal wood 752.62
- Bathroom tile 92.68
- Clean and repair kitchen cabinets 166.55
 - Total \$2,594.34

Decision

53. The landlord's claim for compensation for damages succeeds in the amount of \$2,594.31.

Issue 3: Security deposit applied to monies owed \$400.00

Relevant Submissions

54. As per paragraph 8, the landlord has declared that, the tenant paid a security deposit of \$400.00; he is still in possession of that deposit. He is requesting to retain that security deposit towards monies owed by the tenants for damages to the apartment.

Analysis

55. The landlord's claim for loss has been successful, paragraphs 14 and 53, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

56. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$400.00.

Issue 4: Hearing expenses reimbursed \$20.00

57. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#08) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

58. The tenant shall pay to the landlord \$9,614.34, as follows:

• Rent	\$7,400.00
• Compensation for damages	2,594.34
• Hearing expenses	20.00
• Less security deposit	<u>(400.00)</u>
▪ Total	<u>\$9,614.34</u>

The landlord shall retain the \$400.00 security deposit against monies owed.

October 12, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office