

Residential Tenancies Tribunal

Application: 2022 No. 0747 NL

Decision 22-0747-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:05AM on 24 October 2022 via teleconference.
2. The applicants [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "Landlord2", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served personally of the claim against her, and that all evidence of the claim was provided. The tenant confirmed service.
5. The details of the claim were presented as long standing rental agreement that began in July 2015. Monthly rent was set at \$1,275.00, due at the first of the month and a security deposit in the amount of \$637.50 was collected.
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. The standard of proof, in these proceedings, 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 landlord is seeking an order for compensation for damages in the amount of \$3,620.00.

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* (the *Act*).
9. Also relevant and considered in this case are:
 - Sections 10 and 14 of the *Act*,
 - *Residential Tenancies Policies 9-005 Depreciation and Life Expectancy of Property*;
 - *Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Preliminary Matters

10. The rental premises is a two unit apartment in a residential building located at [REDACTED] and the tenant occupied the main floor apartment. The landlords became owners of the premises on 09 June 2022.
11. The tenant vacated the rental premises on 31 August 2022. The landlords had been expecting her to vacate the premises on 15 August 2022 in response to a section 18 termination notice that had been issued on 15 May 2022.
12. Landlord1 confirmed that he is holding the \$637.50 security deposit collected. He also stated that he is "still" looking to collect on the half month's rent in the amount of \$637.50 that had been identified on his original application to this tribunal. The tenant acknowledged this claim and agreed that she did not pay rent for her final two weeks of occupancy at [REDACTED].

Issue 1: Compensation for Damages (\$3,620.00)

Relevant Submissions

13. The landlord's submitted a damage ledger outlining their claims for compensation (L#2). These claims were grouped into the following categories and each was reviewed in turn against relevant evidence:
 - Cleaning \$480.00
 - Carpet Replacement \$1,500.00
 - Plaster Repair \$965.00
 - Painting \$500.00
 - Fuel – trips to stores \$75.00
14. The claim for door damage in the amount of \$100.00 was not specifically reviewed during the hearing because it was not brought up by the landlords.
15. Landlord2 testified that the rental premises was built in 2008 or 2009 and that the interior of the main floor apartment was likely original to the rental premises. He stated that he did not have copies of a move in condition inspection report for

when the tenant first took occupancy of the rental unit, nor did he have any pictures of the rental premises from prior to the tenant's occupancy.

16. The applicant in any damage claim is required 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).
17. 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.

Item 1 – Cleaning \$480.00

Landlord's Position

18. Landlord1 testified that a team of four women spent 6 hour each cleaning the rental premises and that he is seeking compensation in the hourly amount of \$20.00 for each of the 24 hours spent cleaning. Landlord1 referred to photos #1, #2 and #3 (see pages 1 – 2 in L#3) as evidence of the requirement for cleaning and spoke of the amount of debris and grime found behind the stove. Landlord1 testified that he would have provided a sworn statement from his cleaners if he knew this was required and declared that he was not calling any witnesses. He summarized his testimony by stating that, he would not have had women cleaning if the premises did not need to be cleaned.

Tenant's Position

19. The tenant testified that she cleaned the rental premises prior to vacating and that she was embarrassed to realize that she did not clean behind the stove.

Analysis – Cleaning

20. Because the landlords failed to provide verifiable evidence of the state of the rental premises prior to it being occupied by the tenant, they failed to establish on the balance of the probabilities that the tenant caused the landlord to incur costs related to 24 hours of cleaning services at the rental premises. Furthermore, photographic evidence of the landlord's requirement for cleaning seemed limited to cleaning behind the stove, which in itself would not require 24 hours of cleaning. For all of these reasons, the landlords' claim for compensation for cleaning does not succeed in any amount.

Decision – Cleaning

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

Item 2 – Carpet Removal \$1,500.00

Landlord's Position

22. Landlord1 testified that carpet had to be removed from the stair case, the master bedroom and the second bedroom because it was stained, damaged, and smelled of cat urine. He provided proof of purchase in the amount of \$1,684.32 for the purchase of laminate flooring (see page 23 in L#3) that he installed as a replacement to the carpet. Landlord1 testified that he is seeking compensation in the amount of \$1,500.00 because he is trying to be reasonable.

Tenant's Position

23. The tenant testified that she had 3 kids and that she lived in the rental premises for seven years. She also testified that she offered to have the carpets cleaned, but did not get this done because she was told by the landlord that he was replacing the carpets.

Analysis – Carpet Removal

24. Because the landlords failed to provide verifiable evidence of the state of the rental premises prior to it being occupied by the tenants, they failed to establish on the balance of the probabilities that the tenant caused the documented damage to the carpets. Furthermore, Residential Tenancies Policy 9-05 identifies the maximum expected life expectancy of good quality carpet to be 10 years. Because the carpets that were replaced were understood to be at least 13 or 14 years old, they were due for replacement. Consequently, I find that the landlord is not entitled to compensation in any amount.

Decision – Carpet Removal

25. The landlord's claim for compensation for carpet removal does not succeed in any amount.

Item 3 – Plastering \$965.00

Landlord's Position

26. Landlord1 testified that he spent 4 ten hour days plastering across the length of the rental premises and referred to the following photos as evidence: #5, #6, #7, #8, #9, #12, #15, #17, #20, #22, #24, #29, #30, #32 (see L#2). Regarding the contents of these photos, landlord1 testified that there had been multiple floating shelves throughout the rental premises and that it appeared as though these had

been “ripped off” the walls. Landlord1 also referred to a receipt in the amount of \$119.42 for the purchase of plaster supplies (see page 22 in L#3). He summarized by testifying that the unit was “not fit to live in” and that he’d been expecting to have a grace period after the tenant was to originally vacate on 15 August 2022, and that this damage was so problematic the landlords’ son had to reside elsewhere for a few days so that repairs could be completed.

Tenant’s Position

27. The tenant testified that her dad helped her remove shelves from the rental premises and that she recognized some damage had been caused. She testified that her dad was willing to help plaster, but that she did not have him plaster because the landlord informed her that he would be painting the entirety of the rental premises and that she understood this offer as including plaster.

Analysis – Plastering

28. Landlord1 made a point of testifying that he is seeking compensation for damages because he had expected that the tenant vacate the rental premises on 15 August 2022 in response to a termination notice that was issued to her in May 2022. Because however rent was due on the first of the month, and this notice issued on 15 May 2022 was contrary to section 18(2)(b) of the *Act* which requires that a notice of termination be issued “not less than 3 months before the end of a rental period”. As such, the notice would not have been valid.
29. Regarding the landlords’ claim for compensation, they did not provide verifiable evidence of the state of the rental premises prior to it being occupied by the tenants. This meant that they failed to establish on the balance of the probabilities that the tenant caused damage requiring 40 hours of plastering and assorted material costs. As such, the landlord’s claim for compensation does not succeed in any amount.

Decision – Plastering

30. The landlord’s claim for compensation for plastering does not succeed in any amount.

Item 4 – Painting \$500.00

Landlord’s Position

31. Landlord1 testified that he had to paint the master bedroom after he was forced to cut out a section of wall with wax on it (see pic 23 on page 14 in L# 3). He also testified that he was required to paint a crawlspace off of the master bedroom because the walls had been covered by what looked like “kids gone wild”. He referred to photo #27 on page 16 as evidence of this damage. He testified that he spent 20-30 hours painting the entirety of the rental premises and he also

referred to receipts from the paint shop in the amount of \$678.72 (e.g., \$339.19 and \$339.53) for purchase of paint.

Tenant's Position

32. The tenant testified that the rental premises was last painted in 2018 or 2019 using paint that had been purchased by the landlord. She reiterated that she lived in the rental premises for 7 years and that no damage was deliberate, it was just the result of living there for 7 years.

Analysis - Painting

33. According to Residential Tenancies Policy 9-005, the expected serviceable life of an interior paint job is three to five years. Because the rental premises was last painted in 2018 landlord or 2019, it could be argued that the premises was due to be painted. As such, the landlord's claim for compensation does not succeed in any amount.

Decision - Painting

34. The landlord's claim for compensation for painting does not succeed in any amount.

Summary Decision – Damages

35. The landlords' total claim for compensation for damages does not succeed in any amount.

Issue 2: Security Deposit \$637.50

Relevant Submissions

36. The landlords and tenant agreed that a \$637.50 security deposit was collected and landlord1 testified that he is still holding the full value of this deposit. The landlords and tenant also agreed that rent for the final month of tenancy, August 2022 was only half paid and that the amount of \$637.50 was outstanding. Because neither party provide evidence of a written agreement between themselves for disposal of the security deposit, I have added the matter of its disposal to this claim.

Analysis

37. 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.*

38. According to the landlords' records, a security deposit in the \$637.50 was collected and still being held by the landlords. Because the landlords and tenant agreed that rent is outstanding in the amount of \$637.50, I find that the landlord is entitled to retain the full value of the security deposit collected.

Decision

39. The landlords shall retain the full value of the \$637.50 security deposit collected.

Issue 2: Hearing Expenses

Relevant submissions

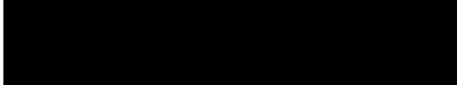
40. The landlords claimed the \$20.00 cost of applying for the hearing as well as the \$65.00 cost of hiring the process server who served the tenant at her place of employment. A receipt was not provided for the costs of the process server.
41. According to Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF, hearing expenses are not awarded if and where the award does not exceed the value of the security deposit collected. As such, the landlord's claim for compensation for hearing expenses does not succeed in any amount.

Summary of Decision

42. That the landlord shall retain the full security deposit in the amount of \$637.50.

03 November 2022

Date



Jaclyn Casler
Residential Tenancies Board