

Residential Tenancies Tribunal

Application 2022-0796-NL
2022-0802-NL

Decision 22-0796-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:02 a.m. on 20-October-2022.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED], [REDACTED] did not attend. They will hereinafter be referred to as "landlord1 and landlord2."
3. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as "tenant1, tenant2 and tenant3." [REDACTED] and [REDACTED] attended by teleconference and represented their group, [REDACTED] did not attend.

Preliminary Matters

4. The landlords submitted proof (LL#01) of the emails, sent to the three tenant's separate emails, on 05-October-2022. Landlord1 stated that this is how he served the three tenants and tenant1 and tenant2 confirmed that they and tenant3 all received this notice as stated.
5. Tenant1 submitted an affidavit (TT#01) stating said she served both landlords of notification of todays' hearing by email on 05-October-2022. She said that the email to landlord2 came back as undeliverable and she attempted resending the email; it did not go through. Landlord1 stated that landlord2 is aware of today's hearing, and he is appearing on their behalf, he waved her right to service. Landlord1 confirmed his receipt of notice as stated.

Issues before the Tribunal

6. The landlords are seeking
 - Compensation for damages \$700.00
 - Hearing Expenses reimbursed \$20.00

The tenants are seeking

- Refund of security deposit \$700.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. 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: Compensation for damages \$700.00

Landlord's Position

9. Landlord1 submitted the written term agreement (LL#02) that they held with the tenants. The tenants moved in on 25-August-2021 and signed the agreement for 01-September-2021 – 31-August-2022. The tenants pay \$1,400.00 rent on the first day of each month. They also paid a security deposit on 07-July-2021 of \$700.00 of which the landlord still has possession.
10. Landlord1 said that the tenants wanted to have a month to month lease at the end of the term, he said that he and landlord2 were not in agreement with a monthly lease. The tenants gave notice and moved out on 28-August-2022. The landlords accepted the notice.
11. Landlord1 said that the tenants left the house in a condition where it could not be rented. He said that the tenants had a cat and that there was cat hair everywhere. He said that he didn't complete a condition report when the tenants moved in or a final walk through with the tenants when they moved out, but he did go there on 28-August-2022 with a potential renter. He said that the house reeked and that the potential renter stood in the doorway and said that they couldn't live there.
12. Landlord1 said that he and landlord2 have been weeks trying to clean up the home and that it is still not rented. They provided a compensation for damages list (LL#03) as follows:

| Description of damages | Cost |
|--|---------------|
| Replace living room curtains | 75.00 |
| Plaster/repaint paint scratches | 300.00 |
| Cut remaining section of lawn left uncut | 25.00 |
| Cleaning cat fur dirt windows, floors, windows coverings | 100.00 |
| Lost rent due to the house being un-rentable | 200.00 |
| Total | 700.00 |

13. Landlord1 provided pictures of the living room drapes (LL#05 & LL#06). He said that they are damaged by the cat and that the drapes are approximately 2 years old. He said that new drapes are \$75.00; no receipt provided.
14. Landlord1 said that he and landlord2 had to paint the entire main floor of the house, he provided pictures to show scratches on the walls (LL#07 – LL#15). He said he purchased 3 gallons of paint at \$50.00 each totaling \$150.00 and he is seeking \$150.00 for personal time to do the work, for a total of \$300.00. He didn't provide receipts for the paint. He said that the area was painted about 2 years ago.
15. Landlord1 provided pictures (LL#04 & L#16) to show that a section of the lawn was not cut. He said that picking up the lawnmower and cutting the lawn, took him 2 hours and is seeking reimbursement for his personal time \$25.00.
16. Landlord1 said that he and landlord2 have put in about 40 or 50 hours cleaning. He provided pictures of the cat fur (LL#17 – LL#23) showing cat fur around the window and dirt behind the boiler in the basement. He is seeking personal time of \$100.00.
17. The landlord is also seeking \$200.00 for the loss of rent, due to the house not being returned in the same condition as when the tenants first rented it. He said he had professional people looking to rent the house until they saw how dirty it was.

Tenant's Position

18. Tenant1 agreed to the details of the rental agreement, she said that the tenants paid their rent to her and she sent the full payment to the landlord. She confirms that the agreement was with all three tenants. She said that they were looking at purchasing a house and would have continued with a monthly rental agreement if the landlords had agreed. She provided into evidence a text message sent on 07-July-2022, to the landlord (TT#02), giving their notice for the end of August.
19. Tenant1 said that they didn't do a walk through when they first took occupancy, however she did take pictures of the condition of the house. She submitted a package of those pictures (TT#02) which are all time stamped for 25-August-2021 (the day they took occupancy).
20. The pictures show the damages to the walls and curtains are the same as what is shown in the landlords' evidence. Tenant1 said her pictures show that they were not responsible for the damages that the landlord is seeking compensation for. She said that they concede that they didn't clean behind the boiler in the basement and one of the windows.
21. Tenant1 then referred to the landlords' evidence of the lawn not mowed (LL#04 & LL#16), and she points out that there is no fence in the picture and that there is no clear boundary line between their yard and the backyard neighbor's yard. She said that they would mow to where they believed the boundary was and that no one ever told them that the boundary line was further back.

Analysis

22. 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)

23. The tenants' evidence of time stamped pictures, from the day they took occupancy, meet the burden of proof to show that they were not responsible for the damages sought by the landlord. The damages to the walls and curtains were from before the tenants took occupancy. The landlords' claim for damages to the walls and curtains therefore fails.

24. The tenants do not contest that they didn't clean behind the boiler and one of the windows. This is a minimal amount of work and I find that it would have required a maximum of 1 hour to complete. The landlord shall be awarded 1 hour personal time at the approved rate of \$21.70 an hour.

25. The tenants also do not dispute that there was one strip of grass between the house they rented and the back neighbor. As the boundary line was not clearly marked I accept the tenants' explanation and I find that the tenants were not willful or negligent in this duty. It is clear from the evidence, that the boundary line is not defined and that the remainder of the area has been mowed.

26. Finally, the landlord's claim for \$200.00 because the house is not rented fails. The damages that required time to repair predate the tenants and are the responsibility of the landlord.

27. I find that the landlords' claim for compensation succeeds in the amount of \$21.70.

Decision

28. The landlord's claim for compensation succeeds in the amount of \$21.70.

Issue 2: Security deposit refunded \$700.00

Tenant's Position

29. The tenants are seeking reimbursement of their security deposit.

Analysis

30. The landlord's claim for loss has been successful, paragraph 27, and they shall retain \$21.70 of the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

*14.(8) A security deposit **is not an asset** of the landlord but **is held** by the landlord **in trust** and may be used, retained or disbursed only as provided in this section.*

....

(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

30. The security deposit is the property of the tenants and I find, with the exception of the \$21.70 in compensation for damages, this deposit shall be returned to the tenants immediately. \$700.00 - \$21.70 = \$678.30

Decision

31. The landlords' shall return \$678.30 of the security deposit to the tenants.

Issue 3: Hearing expenses reimbursed \$20.00

Landlord's Position

32. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#35).

Analysis

33. Policy with this Section is that a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit. As the landlord was awarded \$21.70 and as the security deposit is \$700.00, I find that the landlords' claim for the filing fee does not succeed.

Decision

34. The landlord's claim for hearing expenses fails.

Summary of Decision

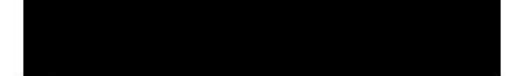
35. The landlords shall refund \$678.30 of the security deposit to the tenants, as follows:

- Security deposit \$700.00
- Compensation 21.70
- Total \$678.30

36. The landlords may retain \$21.70 for compensation for damages.

October 25, 2022

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office