

Residential Tenancies Tribunal

Applications: 2022 No. 0809 NL

Decision 22-0809-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 08 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" participated in the hearing and represented the interests of [REDACTED], the other applicant. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not participate and was not represented at the hearing.
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email of the claim on 27 October 2022. Proof of email service to the tenant and identified legal counsel was provided (L#2) and the landlord testified, that he served to the email address used for previous communications with the tenant.
4. The details of the claim were presented as a fixed term 12 month rental agreement that started on 01 October 2021. Monthly rent is set at \$1,385.00, and a security deposit in the amount of \$1,038.75 was collected. A copy of the written rental agreement was submitted (L#3).
5. 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

6. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$1,385.00;
 - An order for compensation for damages in the amount of \$1,400.00; and
 - An order for compensation for inconvenience in the amount of \$280.00;

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* (the *Act*).
8. Also relevant and considered in this case are sections 10 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the provided numbers: [REDACTED] or [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 so long as they have been properly served.
11. Because I was able to confirm that the tenant was properly served notice of the claim against him, I proceeded with the hearing in his absence as any further delay in these proceedings would unfairly disadvantage the landlord.
12. The landlord amended his application to include a claim against the full value of the \$1,038.75 security deposit.

Issue 1: Payment of Rent (\$1,385.00)

Relevant Submissions

13. The rental premises is a two apartment dwelling located at [REDACTED]. The tenant resided in the main floor 3 bedroom apartment (unit A) with his two children and ex-wife. The landlord testified that the tenancy ended in part because the tenant had an unapproved male tenant living in the premises, and that this male was causing problems with the lower level tenants.

14. The landlord submitted proof of email conversations with the tenant wherein the landlord's concerns with this unapproved male tenant were addressed (L#4). As shown in this email exchange, the tenant went from wanting to continue his tenancy on 10 August 2022 (see page 1 in L#4) to stating that he would not be renewing his lease on 19 August 2022 (see page 2 in L#4) to declaring on 29 August 2022 that he would be vacating in three days time (see page 3 in L#4). The landlord testified that he is seeking compensation for rent for the month of September 2022 in the amount of \$1,385.00 because in adequate notice of termination was provided by the tenant. The landlord submitted a copy of rental ledger showing that no payment was received for September 2022 and he also testified that he received notice from NL Power stating that power for the rental premises was switched back to his name effective 01 September 2022 (L#5).

Analysis

15. I accept the landlord's claim and evidence that he is owed rent in the amount of \$1,385.00 for the month of September 2022 because the landlord successfully established he had a fixed term rental agreement with the tenant and he also provided proof that the tenant only gave three days notice of termination. As such, I find that the landlord is entitled to compensation in the full amount claimed.

Decision

16. The landlord's claim for payment of rent succeeds in the amount of \$1,385.00.

Issue 2: Painting and Plastering (\$1,400.00)

Relevant Submissions

17. The landlord submitted a damage ledger outlining his claim for compensation for painting and plastering after he regained possession of the rental unit on 01 September 2022 (L#6). The landlord testified that he hired a painter and paid him \$650.00 to paint and plaster as required throughout the rental premises. He provided proof of text message communication with the painter (see pages 1-2 in L#7) as well as proof of payment in the amount of \$650.00 sent to the painter. The landlord also provided a receipt in the amount of \$431.46, dated 12 September 2022 for purchase of supplies used by the painter (see page 26 in L#8).
18. The landlord testified that painting was required to the areas identified in the damage ledger (e.g., walls, trim and doorways) due to various marks, dents, and stains left by the tenant after his occupancy. The landlord provided photos taken throughout the rental premises prior to (L#9) and post occupancy (L#8) as proof of the damage caused and stains left behind by the tenant. The landlord testified that the house was built in the 1960s, completely renovated in 2015/16, and last

painted in summer 2021, prior to it being occupied by the tenant. The landlord testified that he attempted to arrange a formal move out inspection with the tenant but was not successful.

Analysis

19. 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).
20. 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.
21. I find that the landlord successfully established the need for painting and plastering throughout multiple areas of the rental premises. I reviewed the prior to and post occupancy photos from the rental premises and I accept that this work was required to restore the rental premises to its prior occupancy condition.
22. Regarding the amount claimed for labour (e.g., \$650.00), I reviewed the landlord's text messages with the painter and note that the painter charged \$525.00 (17.5 hours) on 14 September 2022 and charged \$90.00 (3 hours) on 21 September 2022. As such, I will consider the claim for compensation for labour based on the 20.5 hours of labour reported by the contractor against the maximum hourly wage for painting of \$23.70 identified in Residential Tenancies Policy 9-005. This means that the landlord's potential compensation for related labour is \$485.85 (e.g., 20.5 x \$23.70).
23. Regarding the landlord's claim for painting supplies in the amount of \$431.46, I reviewed the receipt provided and noted that it include purchase of 76 Paint tray liners for \$151.21 (\$1.99 each). Because that many paint liners could not possibly be required while painting a 3 bedroom unit, I will consider compensation for 4 paint liners only (totalling \$7.96). This means that the landlord's potential compensation for painting supplies is \$266.67 (e.g., \$375.17 – \$151.24 + \$7.96 = \$231.89 x 1.15 (HST) = \$266.67).
24. Regarding the landlord's exact entitlement to compensation, Residential Tenancies Policy 9-005 establishes a serviceable life span of 3 – 5 years for interior painting. Accordingly, I find that the landlord incurred painting costs 3 years earlier than he could have reasonably expected (e.g., 4 years) and is

therefore entitled to 75% compensation of \$752.52 claimed (e.g., \$485.85 + \$266.67 = \$752.52). As such, I find that the landlord is actually entitled to compensation in the amount of \$564.39 (e.g., \$752.52 x .75 = \$564.39).

Decision

25. The landlord's claim for compensation for damages succeeds in the amount of \$564.39.

Issue 2: Compensation for Inconvenience (\$280.00)

Relevant Submissions

26. The landlord submitted an inconvenience ledger and testified that he is only seeking compensation in the amount of \$200.00 for monies paid to the cleaner (L#10). The landlord referred to proof of text correspondence with the cleaner as well as proof of payment sent to the cleaner in the amount of \$200.00 (see pages 4 – 5 in L#7). The landlord referred to photos submitted of the rental premises taken after the tenant vacated the rental premises (L#8) and testified that the cleaning was conducted after the plastering and paint work occurred.

Analysis

27. I accept the landlord's testimony and evidence as proof that this requirement for cleaning resulted from the tenant's use and occupancy of the rental premises. Accordingly, I find that the landlord successfully established on the balance of probabilities that he incurred costs in the amount of \$200.00 to have the premises professionally cleaned prior to renting to a new tenant.

Decision

28. The landlord's claim for compensation for inconvenience succeeds in the amount of \$200.00.

Issue 4: Security Deposit \$1,038.75

Relevant Submissions

29. The landlord referred to the written rental agreement provided as proof that a \$1,038.75 security deposit was collected on 10 September 2021 (see page 2 in L#3).

Analysis

30. 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.*

31. As the amount owing to the landlord for rent, damages and inconvenience is in excess of the security deposit collected, I find that the landlord is entitled to retain the full \$1,038.75.

Decision

32. The landlord shall retain the full value of the \$1,038.75 security deposit collected.

Issue 5: Hearing Expenses

33. The landlord claimed the \$20.00 expense of applying for hearing. As his claim as been successful, the tenant shall pay this hearing expense.

Summary of Decision

34. The landlord is entitled to retain the full value of the \$1,038.75 security deposit collected.
35. The landlord is entitled to an order of payment from the tenant in the amount of \$1,130.64, determined as follows:

a)	Rent.....	\$1,385.00
b)	Compensation for Damages.....	\$564.39
c)	Compensation for Inconvenience	\$200.00
d)	Hearing Expenses.....	\$20.00
e)	Less Security Deposit.....	\$1,038.75
f)	Total.....	<u>\$1,130.64</u>

17 November 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal