

Residential Tenancies Tribunal

Application 2022-0812-NL

Decision 22-0812-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:30 a.m. on 17-November-2022.
2. The applicant, [REDACTED] are represented by [REDACTED], hereinafter referred to as “the landlord” as well as, the authorized representative (LL#01) [REDACTED], both attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” tenant1 did not attend the hearing and tenant2 did attend by teleconference.

Preliminary Matters

4. Tenant1 was not present or represented at the hearing and I was unable to reach him by telephone [REDACTED] 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, so long as he has been properly served. The landlord submitted an affidavit (LL#02) with the application stating that they had served tenant1 with notice of the hearing, electronically, by text, to the above number, on 03-November-2022. As tenant1 was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord and his authorized representative requested that tenant2 be removed from the application. They said that they had a previous hearing and decision (2022-0495-NL), at that time it was determined that tenant2 moved out in early June 2022 and that tenant1 was the sole lease holder until a possession order was enforced in August 2022. She was removed from the lease and is not part of this application. I accepted their request and consider her a witness in the hearing. She will still be referred to as “tenant2.”

Issues before the Tribunal

6. The landlords are seeking:
 - Compensation paid for damages \$16,520.00
 - Possessions returned / compensation \$2,160.00
 - Hearing Expenses \$20.00

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, as well as, Residential Tenancies Policy 009.

Issue 1: Compensation for damages \$16,520.00

Landlord's Position

9. The landlord submitted a written rental agreement he had with the tenants (LL#03). They moved in 10-May-2021, tenant2 moved out 03-June-2022 and tenant1 moved out 01-August-2022. The rental period is from the 10th- day of the month until the 9th day of the next month. Rent is \$800.00 with utilities up to \$200.00 included, the tenant is to pay any utilities beyond the \$200.00 cap. The property is furnished. They paid a security deposit of \$400.00 on 10-May-2021 and that was awarded in the previous decision (2022-0495-NL).
10. The landlord said that at the end of his tenancy, tenant1 abandoned the property for a couple of weeks with cats left inside. There was also a male cat locked in the shed. The cats subsequently urinated and did a lot of damage to the house and the furnishings.
11. The landlord provided the following pictures, quotes and a list of items (LL#05) damaged by the cats and their urine:

| # | Description | Age | Claim | Replacement cost |
|----|---|--------|--------|------------------|
| a) | 1 Rose color sofa & chair | 20 yrs | 500.00 | 2,009.98 |
| b) | 1 double mattress set | 10 yrs | 700.00 | 799.99 |
| c) | 1 single mattress set | 10 yrs | 400.00 | 799.99 |
| d) | 1 double bed headboard, metal frame, dresser and nightstand | 30 yrs | 500.00 | 1,044.44 |
| e) | 1 single bed headboard, metal frame, dresser and nightstand | 15 yrs | 450.00 | 1,519.98 |
| f) | 3 mattress pads, pillow, bedding sets | 5 yrs | 220.00 | 1,207.05 |

| | | | | |
|----|---|-------|----------|------------|
| g) | Living and dining room laminate flooring \$1,658.39 material and \$1,140.00 labor | 8 yrs | 2,200.00 | \$2,798.39 |
|----|---|-------|----------|------------|

12. The authorized representative removed from the compensation list, the following damaged items that were the property of tenant1:
 - Brown sofa
 - 1 coffee and end tables
13. The landlord had submitted for the front door and lock. They were requesting \$1,000.00 to replace both, however they were able to salvage the door and chose to just replace the lock. The door and lock are 5 years old. They have provided their estimate (LL#05) of \$19.97.
14. The back door is also damaged. They provided pictures (LL#05) showing that the window box is pushed out of place and tenant1 had a knife in the door frame to stop anyone from opening the door. The door is 15 years old, they listed \$1,000.00 for the replacement and the quote provided is \$638.97.
15. The landlords provided pictures showing that four interior doors had a door knob that they estimate to be 60 years old. The door knob is the old fashioned glass knob with a long switch plate that has a locking system above the knob. Tenant1 had removed this from each of the four doors, picture provided (LL#05). The authorized representative said that they thought that they were going to have to replace the doors because a current door knob wouldn't cover the holes made by the traditional knob. They did find a replica knob and provided the online quote of \$285.99 each for a total of \$1,143.96.
16. The landlord said that tenant1 reported to him that they had a leak in the shower. The landlord said he told tenant1 would send his guys up to do the repairs right away. The landlord said that tenant1 told him not to worry about it, he already had it fixed. The landlord said tenant1 didn't fix the issue and there was a leak from the upstairs shower which caused water damages, the damages are both upstairs and the ceiling and wall below. The list is as follows:
 - Bathtub and surround and install
 - Replace 10 x 6 wall around the tub in the bathroom
 - Replace 30" sq floor section under the tub
 - Replace porch ceiling 4' x 6'
 - Replace kitchen ceiling 4' x 10'
 - Replace kitchen wall 4' x 6'
 The cost of materials (LL#05) provided is \$1,613.08 and labor 64 hours @ \$35.00 = \$2,240.00 (LL#09) for a total of \$3,853.08.
17. The landlord had submitted for the replacement of the fan in the bathroom. They estimated it to be 8 years old. The screen was broken and they couldn't find a replacement so they had to replace the unit. They had estimated \$250.00 however the quote for the replacement is for \$157.58.
18. The landlord submitted a picture (LL#05) for a hole in the dining room wall. The authorized representative estimated \$125.00 and their quote came in for 4 hours labor and \$25.00 for supplies.

19. The landlord submitted a picture of a burn on the kitchen countertop (LL#05). They provided a quote of \$810.00 for material (LL#05) and \$300.00 for labor. The landlord said that the countertop is 8 years old.
20. The authorized representative said that the stove was very dirty and could not be cleaned. She said it is 10 years old and that it had to be replaced. She estimated the replacement will cost \$400.00 and that a new replacement quote is \$744.00.
21. The authorized representative said that they paid a local gentleman \$500.00, for the disposal of the items. She said that they used a local guy to go to the local dump. They didn't have a receipt for the local person. They used a local cleaner to clean the home. They also do not have a receipt for her.
22. The authorized representative provided a receipt for the cost of having the house treated for fleas for \$230.00.
23. They also submitted for the cost of picking up and putting together the furniture the authorized representative estimated 40 hours @ \$25.00 for a total of \$1,000.00.

Tenant's Position

24. Tenant2 said that she was locked out and couldn't get her belongings. When she would go to the house to try to get her stuff back she could see the cats in the windows. She said that a male cat was separated and tenant1 had him in the shed. She said that tenant1 wouldn't permit her entry to the house and that her and her son's belongings were also damaged.
25. Tenant2 said that they had ongoing issues with the water coming down from upstairs, she said that tenant1 had told her that the issue was with the window needing to be replaced. She said that when arrangements were made with the landlord to come for repairs, that tenant1 would leave and go out so that they couldn't come in.

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.

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.

27. I accept the claim of the landlord that the cats damaged furnishings and the flooring while they were locked in the house. The following items have outlived their life expectancy and although may have been in good condition and functional, they no longer have any monetary value.
 - Rose color sofa and chair
 - Double bed headboard, dresser, nightstand
 - Single bed headboard, dresser, nightstand
 - 3 mattress pads, pillow, bedding sets
28. The double mattress and single mattress are both 10 years old and should have had 15 years life expectancy, they have 5 years expectancy remaining. The quote for these items are \$799.99 each, the cost will be awarded with depreciation considered: $2 @ \$799.99 = \$1,599.98 \times 5/15 = \$532.79$. Tenant1 shall pay to the landlord \$532.79 for the replacement of the mattresses.
29. The laminate flooring in the living room and dining room is 8 years old with a life expectancy of 10 years, it has 2 years life expectancy remaining. The cost will be awarded with depreciation considered: the quote for repairs is $\$2,798.39 \times 2/10 = \559.68 . Tenant1 shall pay to the landlord \$559.68 for the replacement of the flooring.
30. The landlord replaced the door knob on the front door. The lock is 5 years old and should last 15 years, the lock has 10 years life expectancy remaining. The cost will be awarded with depreciation considered: the quote for the lock is $\$19.97 \times 10/15 = \13.31 . Tenant1 shall pay to the landlord \$13.31 for the replacement of the lock.
31. The landlord replaced the back door and the door knob. The door and lock are 15 years old and although may have been in good condition and functional, they no longer have any monetary value.
32. The authorized representative submitted for replica door knobs at a cost of \$285.99 each. She said that the original knob was approximately 60 years old. She explained that the holes required to attach this knob is different from the modern style doors and that had they not found a replica then they would have had to replace the doors as well. I accept that an item being vintage adds value instead of depreciates value and I find that tenant1 will reimburse the landlord for 4 door knobs at \$285.99 each totaling \$1,143.96.
33. The landlord and authorized representative said that due to an unrepairs leak in the washroom they had to replace wall, floors and ceilings at a cost of supplies \$434.08 and labor of \$3,853.08 totaling \$4,287.16. Walls, floors and ceilings should last the lifetime of the home and tenant1 shall pay the full amount for this repair. They also had the cost of the tub surround \$1,179.00 the tub surround is 8 years old and should last 15 years the tub surround has 7 years life expectancy remaining. The cost will be awarded with depreciation considered: the quote for the tub surround is $\$1,179.00 \times 7/15 = \550.19 .

The cost awarded for this work to repair the leak is $\$4,287.16 + \$550.19 = \$4,837.35$. Tenant1 shall pay to the landlord \$4,837.35 for this repair.

34. The landlord submitted for the replacement of the bathroom ceiling fan. The fan is 8 years old and a bathroom ceiling fan should last 20 years. The fan should last 12 more years. I accept their claim that the screen was broken and that they could not find a replacement. The cost will be awarded with depreciation considered: the quote for the screen is $\$157.58 \times 12/20 = \94.55 . Tenant1 shall pay to the landlord \$94.55 for the replacement of the ceiling fan.
35. The landlord's evidence shows that there is a hole in the dining room wall, walls should last the lifetime of the property and the tenant shall pay the full amount claimed \$125.00 for this repair.
36. The landlord's evidence shows that there is a burn mark on the kitchen counter. The counter top is 8 years old and should last 15 years. The cost will be awarded with depreciation considered: the quote for the counter is $\$1,110.00 \times 7/15 = \518.00 . Tenant1 shall pay to the landlord \$518.00 for the replacement of the countertop.
37. The landlord submitted for the cost to replace the stove. The stove is 10 years old and it should last 12 years. The cost will be awarded with depreciation considered: the quote for the stove is $\$744.00 \times 2/12 = \124.00 . Tenant1 shall pay to the landlord \$124.00 for the replacement of the stove.
38. The landlord's submission for garbage disposal and cleaning is not supported by receipts. He has failed to prove the value of the claim and it therefore fails.
39. The landlord provided a receipt for flea treatment totaling \$230.00. I accept this claim and find that the tenant shall pay to the landlord \$230.00 for the cost of a flea treatment on the house.
40. The landlord submitted the cost of picking up and assembling the furniture. They provided a time sheet for staffing of 40 hours @ \$25.00 totaling \$1,000.00.
41. The claim for purchases of furniture doesn't include taxes. This will be reflected in the decision.
42. I find that tenant1 shall pay \$10,352.19 to the landlord for damages as follows:
 - Mattresses \$532.79
 - Flooring 559.68
 - Front door knob 13.31
 - Door knobs 1,143.96
 - bathtub leak repair 4,837.35
 - Ceiling fan 94.55
 - Counter 518.00
 - Stove 124.00
 - Taxes 1,171.55
 - Subtotal 8,997.19
 - Dining room wall 125.00
 - Flea treatment 230.00
 - Staffing 1,000.00

- Total \$10,352.19

Decision

43. The landlord's claim for damages succeeds in the amount of \$10,352.19.

Issue 2: Possessions returned / compensation \$2,160.00

Landlord's Position

44. The landlord and authorized representative went through the list of items that are missing they provided a list (LL#06) and a list of compensation with pictures of the items and quotes for replacement (LL#07). The list is as follows:

| # | Description | Age | Claim | Replacement cost |
|------|--|--------|--------|------------------|
| I | Dryer | 10 yrs | 300.00 | 745.00 |
| II | Washer | 5 yrs | 400.00 | 739.95 |
| III | 1 dark blue sofa | 15 yrs | 400.00 | 1,299.95 |
| IV | 1 double headboard, metal frame, 1 dresser and 2 nightstands | 12 yrs | 900.00 | 2,266.71 |
| V | 4 table lamps | 12 yrs | 160.00 | 179.92 |
| VI | 3 standing lamps | 10 yrs | 160.00 | 224.92 |
| VII | 1 32" flat screen t.v. | 6 yrs | 350.00 | 249.99 |
| VIII | 1 twin box spring and mattress | 8 yrs | 400.00 | 799.99 |

45. The authorized representative said that it was the responsibility of the landlord to repair or replace the washing machine when it broke. The landlord said that they were never told that the washer was broken. The washer is missing.

Tenant's Position

46. Tenant2 said that the washer stopped working and that they purchased a replacement. She believed that it was their responsibility to replace it.

Analysis

47. I accept the testimony and evidence provided by the landlord that the above noted items are missing. Tenant1 shall financially compensate the landlord for the financial loss of the items.

48. The landlord provided the below list of items missing from the home along with the age and cost of each item. This list has been updated to include the expected lifespan to be included in the calculation:

| # | Description | Age | lifespan | Claim | Replacement cost |
|------|--|--------|----------|--------|------------------|
| I | Dryer | 10 yrs | 14 yrs | 300.00 | 745.00 |
| II | Washer | 5 yrs | 11 yrs | 400.00 | 739.95 |
| III | 1 dark blue sofa | 15 yrs | 15 yrs | 400.00 | 1,299.95 |
| IV | 1 double headboard, metal frame, 1 dresser and 2 nightstands | 12 yrs | 15 yrs | 900.00 | 2,266.71 |
| V | 4 table lamps | 12 yrs | 15 yrs | 160.00 | 179.92 |
| VI | 3 standing lamps | 10 yrs | 15 yrs | 160.00 | 224.92 |
| VII | 1 32" flat screen t.v. | 6 yrs | 11 yrs | 350.00 | 249.99 |
| VIII | 1 twin box spring and mattress | 8 yrs | 15 yrs | 400.00 | 799.99 |

49. As stated in paragraph 26 in accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of property. Life expectancy of property is covered in Residential tenancies policy 9-6.

50. The dark blue sofa will not be considered as it has outlived its lifespan and I have determined that it no longer has any monetary value. The remaining items will be compensated based on life expectancy, as follows:

- Washer is 5 years old and should have lasted 11 years: therefore $6/11 \times 739.95 = \$403.61$. As the application is for \$400.00 the landlord will be awarded that amount.
- Double headboard, frame, dresser nightstands is 12 years and should last 15 years: therefore $3/15 \times 2,266.71 = \$453.34$ the landlord will be awarded this amount.
- Table lamps are 12 years and should have lasted 15 years: therefore $3/15 \times \$179.92 = \35.98 the landlord will be awarded this amount.
- Standing lamps are 10 years old and should have lasted 15 years: therefore $5/15 \times 224.92 = \$74.97$ the landlord will be awarded this amount.
- Flat screen t.v. 6 years and should have lasted 11 years: therefore $5/11 \times 249.99 = \$113.63$ the landlord will be awarded this amount.
- Twin box spring and mattress is 8 years old and should last 15 years: therefore $7/15 \times 799.99 = \$373.33$ the landlord shall be awarded this amount.
- Prices will be calculated with taxes.

51. I find that tenant1 shall pay to the landlord in \$1,668.94 compensation for missing items as follows:

| | |
|---------------------------|-------------------|
| • Washer | \$400.00 |
| • Bedroom furniture | 453.34 |
| • Table lamps | 35.98 |
| • Standing lamps | 74.97 |
| • Flat screen t.v. | 113.63 |
| • Twin box spring | 373.33 |
| • Taxes | <u>217.69</u> |
| • Total | <u>\$1,668.94</u> |

Decision

52. The landlord's claim for compensation for missing items succeeds in the amount of \$1,668.94.

Issue 3: Hearing expenses reimbursed \$20.00

53. 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.

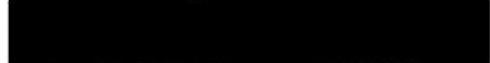
Summary of Decision

54. Tenant1 shall pay to the landlord \$12,041.14, as follows:

| | |
|--------------------------------|--------------------|
| • Damages | \$10,352.19 |
| • Compensation for items | 1,668.94 |
| • Hearing expenses | <u>20.00</u> |
| • Total | <u>\$12,041.14</u> |

November 28, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office