

Residential Tenancies Tribunal

Application: 2022 No. 0818 NL
2022 No. 0959 NL

Decision 22-0818-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:49PM on 07 December 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. An authorized representative form was submitted (L#1).
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" attended the hearing. Her friend, [REDACTED], hereinafter referred to as the "tenant's representative" also attended the hearing.
4. The tenant submitted an affidavit of service stating that she served the landlord personally on 03 September 2022 which she later corrected to 06 October 2022. The landlord confirmed service received. The landlord provided an affidavit of service confirming that she served the tenant by registered mail on 09 November 2022 (L#2). Proof of service was provided, and a review of the associated tracking number confirms that this package was delivered on 15 November 2022 (L#3).
5. The tenant however expressed concern that she was not provided with respondent documents, but rather the landlord's compilation of documents required. This concern was investigated and I was able to confirm that the tenant was indeed provided with all information related to the landlord's claim. Likewise, the landlord acknowledged that she was not provided with copies of the tenant's commentary on photos provided, but waived her right to access these files.
6. The details of the claim were presented as a long standing rental agreement that began on 01 August 2016 and ended on 01 September 2022. Monthly rent was most recently \$950.00 and a security deposit in the amount of \$425.00 was collected. The landlord provided a written copy of the rental agreement (L#2).

7. 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

8. The tenant is seeking the return of a \$425.00 security deposit.
9. The landlord is seeking the following:
 - An order for rent to be paid in the amount of \$950.00;
 - An order for compensation paid for damages in the amount of \$5,450.06;
 - An order for compensation paid for inconvenience in the amount of \$46.37;
 - An order for payment of other for \$1,000.00; and
 - An order for the use of the full security deposit in the amount of \$425.00.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also relevant and considered in this case are:
 - Sections 10, 14 and 18 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

12. The rental premises is an approximately 80 year old four-plex that previously served as base housing located on [REDACTED]. The tenant resided in unit [REDACTED] an end unit for the four-plex. The landlord testified that the premises have been owned by the applicant for approximately 15 years, and that she has personally operated it as a rental for the past 8 years. The premises is surrounded in grass and the backyard is shared between tenants.
13. It was determined at the start of the hearing, that the landlord's claim for compensation for inconvenience was better identified as a request for compensation for hearing expenses. Consequently, this section was removed from the claim.

14. It was also revealed during this hearing that the tenant previously applied to this tribunal for determination of validity of notice for a termination notice issued to her on 22 April 2022. The landlord had been attempting to issue a section 18 three month notice of termination but as per application 2022 No. 0448 – NL, the notice was found to be invalid (A#1). The tenant continued to reside in the rental premises until 01 September 2022 and it should be noted that a subsequent section 18 notice was issued to her on 01 August 2022.
15. Also of note is that the landlord agreed that the tenant should be permitted to submit additional evidence during the hearing regarding a public Facebook post been made by the landlord naming the tenant.

Issue 1: Payment of Rent (\$950.00)

Landlord's Position

16. The landlord testified that she is seeking compensation in the amount of \$950.00 for rent for the month of September because the tenant messaged on 24 August 2022 and stated that she would be vacating on 01 September 2022. Proof of the message received was provided (see page 2 on L#4). As noted in paragraph 13 above, the landlord testified that she issued a three month termination notice to the tenant on 01 August 2022 and that this notice was issued to the tenant's mailbox (L#5). This notice had a stated move out date of 31 October 2022.
17. The landlord responded to testimony provided by the tenant, and acknowledged that she in fact received payment for September 2022 rent in the tenant's name, but that she returned it. The landlord acknowledged previously posting on Facebook regarding her concerns with the tenant and stated that she did not currently have access to this post.

Tenants' Position

18. The tenant disputed the landlord's claim for rent and testified that she arranged for rent to be paid by [REDACTED] for the month of September 2022 despite her having secured alternative accommodations. However, the landlord refused this payment. After multiple rounds of questioning, the tenant testified that she was informed by a Homestead representative on 31 August 2022 that she needed to vacate the rental premises prior to 01 September 2022 since rent was returned. The tenant had initially testified that she was informed by the landlord that she had to vacate.
19. The tenant acknowledged being served a termination notice in August 2022 and testified that she vacated prior to 31 October 2022 because she found a rental and needed to jump on it. The tenant's representative referred to a Facebook post made by the landlord on the Landlord Support Group naming the tenant, and testified that this made it especially difficult for the tenant to find a new rental.

Analysis

20. I accept that both parties agree that rent had been paid for the tenant for September 2022 and that the landlord refunded money to the organization that paid it. Consequently, I find that the landlord failed to establish why she due money that she previously refused, especially since both parties appeared to agree that the tenant had secured alternative rental accommodations.

Decision

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

Issue 2: Compensation for Damages (\$5,450.06)

General Considerations

22. 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).

23. 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.

24. The landlord testified that she did not conduct a move in or a move out condition inspection report of the rental unit with the tenants. She testified that she provided a series of hard copy photos of the rental unit after the tenant vacated. These photos were not available to me during the hearing, however, I was able to view them as provided with commentary from the tenant (T#3). The landlord also noted that she cross referenced all photos against specific damages claimed in the provided damage ledger (L#6). Each of the 12 items with costs attached were reviewed separately during the hearing against relevant evidence. I was able to confirm after the hearing that the landlord's photos were submitted to this tribunal as claimed (L#8).

Damage Item 1 – Paint and Primer \$458.83

Landlord's Position

25. The landlord referred to a receipt submitted in the amount claimed and testified that she is seeking compensation for materials only (see page 1 in L#7). The landlord testified that the premises was freshly painted prior to it being occupied by the tenant in 2016, and that she is seeking compensation because extra paint was required to cover the dark colours of the rental premises. The landlord denied giving permission to the tenant to paint such dark colours and testified that painting was also required to cover the plaster work needed to repair excessive holes in the wall. The landlord testified that she provided the tenant with two gallons of light grey paint the year previous for painting.

Tenants' Position

26. The tenant denied that the premises was painted prior to her occupying it in 2016 and that she was approved by the landlord to paint walls red. She acknowledged being provided with the grey paint the previous year.

Analysis

27. According to Residential Tenancies policy 09-005, the expected serviceable life of an interior paint job is 3 – 5 years and in this dispute the interior paint job is understood to be at least 6 years old. Consequently, I find the claim for compensation for what appears to be 36 litres of paint/primer does not succeed because the premises was last painted by the landlord at least 6 years prior. This means that the grey paint provided last year is also not eligible for retroactive compensation because I consider this to be paint provided after a 5 year lifespan. Also of note, is that the landlord failed to specifically identify all that was painted (e.g., did she also paint over the grey paint?).

Decision – Paint and Primer

28. The landlord's claim for compensation for paint and primer does not succeed in any amount.

Damage Item 2 – Kitchen floor replacement \$441.55

Landlord's Position

29. The landlord testified that the kitchen floor was newly installed before the tenant occupied the premises. She referred to a receipt provided (see page 2 in L# 7) in the amount claimed and testified that she replaced the vinyl floor with tile for added durability. She testified that the vinyl floor appeared to be damaged from pulling stoves and fridge in and out and referred to a photo submitted (see page 18 in L#8). She also stated that she does not provide a fridge or stove in her

rentals, and that the floor damage was not so visible while a stove was installed, but it was visible when a fridge was installed. The landlord disputed that a previous tenant's fridge and or stove was present when the tenant occupied the rental premises.

Tenants' Position

30. The tenant testified that the floor was likely damaged when the previous tenant removed her fridge and stove. The tenant testified that she did not notify the landlord of this damage because she did not want to be bothersome.

Analysis

31. I acknowledge that the landlord documented two sections of damage to a newly installed (6 year old) floor and that she has since replaced a vinyl floor with tile. Because however, the landlord also testified that she made this replacement for enhanced durability and because she also submitted her rental agreements that documents how she does not provide a fridge or stuff, I was not convinced that the tenant was in fact the source of any damage with the original floor, either intentionally or through neglect.

Decision – Kitchen Floor replacement

32. The landlord's claim for compensation for the kitchen floor does not succeed in any amount.

Damage Item 3 – Re-stain Main Floor Materials (\$266.66) Labour (\$1,100.00)

Landlord's Position

33. The landlord testified that the floors are birch and likely original to the house (e.g., 80 years old). The landlord did not know when the floor were last stained, and suggested that it may have occurred 10 years prior. The landlord did not have pictures of the state of the floor prior to the tenant taking occupancy but she did submit a series of photos related to a specific stained area of the floor (see page 14 and 15 in L#8). The landlord testified that she has completed all work required to have the floors redone.

Tenant's Position

34. The tenant denied causing any specific damage to the floors.

Analysis – Restain floors – material and labour

35. According to Residential Tenancies policy 09-005, the expected serviceable life of a hardwood floor stain is five years. Because the floor in the rental unit was understood to have previously been stained approximately 10 years prior, this means that the landlord is not entitled to compensation for work that she would

have otherwise been expected to complete so as to maintain the rental premises in accordance with 10(1)(1)(a) of the *Act* which reads as follows:

Obligation of the Landlord -

(a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

Decision

36. The landlord's claim for compensation for materials and labour related to re-staining the floor does not succeed in any amount.

Damage Item 4 – Cleaning \$500.00

Landlord's Position

37. The landlord referred to a receipt for payment in the amount of \$500.00 for cleaning that occurred between 05 and 09 September 2022. The landlord testified that at least 50 hours of cleaning was required and noted that there was dirt in the closets and window ledges. The landlord referred to photos submitted (see page 11 – 13 in L#8).

Tenants' Position

38. The tenant disputed the claim for cleaning in the amount of \$500.00 and testified that she cleaned the best that she could in eight hours. The tenant referred to photos submitted of her cleaning the rental premises (T#3) and acknowledged that she did not clean the upstairs window ledges, but that she otherwise cleaned the rental premises.

Analysis – Cleaning

39. The landlord did not provide pictures of the premises prior to them being occupied for 6 years by the tenant and her family and so I accept the argument put forward by the tenant that she cleaned to the best of her ability prior to vacating. That said, I also accept that there was disagreement between the landlord and tenant regarding the final week of the tenants occupancy. Specifically, the tenant argued that she cleaned the best she could in 8 hours – 8 hours is not a significant amount of time to clean after a 6 year tenancy. Nevertheless, I was not convinced that an additional 50 hours of cleaning was required because the landlord only provided three zoomed in photos showing some dust. Consequently, I found that in reviewing the photos submitted by the tenant, that she successfully established on the balance of probabilities that the rental premises was left relatively clean state.

40. I will nonetheless award compensation for 5 hours of cleaning as I accept that the tenancy ended quickly after six years of use. According to Residential Tenancy Policy 09-05, the maximum claimable hourly rate of cleaning is \$21.70 an hour. Because I am awarding for 5 hours of cleaning, this means that the landlord is entitled to payment in the amount of \$108.50 (e.g., 5 x \$21.70).

Decision – Cleaning

41. The landlords claim for compensation for cleaning succeeds in the amount of \$108.50.

Damage Item 5 – Excessive Wall damage \$73.58

Landlord's Position

42. The landlord referred to a receipt provided in the amount claimed and testified that this was for the purchase of plaster to complete required wall repairs (see page 5 in L#7). The landlord testified that it seemed as though the tenant had changed the location of their wall mounted TV "every week" and referred to photos submitted (see pages 8 – 10 in L# 8).

Tenant's Position

43. The tenants disputed the claim and denied causing any excessive damage to the walls. She also denied changing the location of her TV regularly and testified that the landlord has placed a TV in the same location that she had.

Analysis – Excessive Wall Damage

44. The tenant disputed the claim and the landlord failed to submit documentation on the state of the walls prior to the tenancy. The landlord also failed to establish on the balance of probabilities that the documented damage was indeed excessive because she appeared to only provide photos of surface level (easily covered) wall repair in one room of the rental unit. Consequently, her claim for compensation does not succeed.

Decision

45. The landlord's claim for excessive wall damage does not succeed in any amount.

Damage item 6 – Lawn Damage \$180.24

Landlord's Position

46. The landlord testified that she incurred costs in the amount claimed and referred to receipts provided on page 6 and page 7 of L#7. The landlord also referred to photos submitted of a section of the lawn (see page 5 in L#8), showing tracks on it, and testified that the track damage was caused by a quad owned by a member

of the tenant's property. The landlord testified that she had to buy lime, fertilizer and lawn seed to restore the lawn.

Tenant's Position

47. The tenant testified that other tenants also had quads and that the area shown in the landlord's photo previously had a shed on it.

Analysis – Lawn Damage

48. The landlord did not provide photos of the state of the lawn prior to occupancy by the tenant. The landlord also previously testified that the grassed area of the rental premises is shared by all tenants. Consequently, I find that the landlord failed to establish on the balance of probabilities that the documented damage to the lawn was indeed caused by a member of the tenant's family.

Decision – Damaged Lawn Repair

49. The landlord's claim for compensation for damaged lawn repair does not succeed in any amount.

Damage Item 7 – Light Fixture Missing \$50.00

Landlord's Position

50. The landlord did not provide a receipt related to the replacement light fixture and she did not provide a picture of the original light fixture that was replaced. The landlord did provide a picture of the light fixture missing its cover (see page 7 in L#8).

Tenants' Position

51. The tenant testified that she removed the light cover when moving furniture and that she stored it safely in the rental premises.

Analysis – Light Fixture Missing

52. The landlord failed to establish on the balance of probabilities that she incurred costs in the amount of \$50.00 for replacement of a light fixture because she did not provide a receipt and the tenant testified that the cover was left at the rental premises.

Decision – Light Fixture Missing

53. The landlord's claim for compensation for a missing light fixture does not succeed in any amount.

Damage Item 8 – Kitchen Sink Damaged (\$419.00 + HST)

Landlord's Position

54. The landlord referred to a photo submitted and testified that a portion of the drain collar was damaged (see page 20 in L#8). The landlord testified that the sink with the damaged portion was likely original to the rental unit (e.g., 80 years old) and that she provided a quote for the amount claimed (see page 13 in L#7).

Tenants' Position

55. The tenant denied damaging any portion of the sink and asked why she has to pay to replace the whole sink when the landlord could have replaced only the damaged portion for significantly less money.

Analysis – Kitchen Sink Damaged

56. I accept that the collar of the kitchen sink drain was damaged. I do not however, accept that this damage justified the replacement of the entire sink because the damaged portion could have easily been replaced for significantly less money (e.g., +- \$20.00). Also of note, is that the landlord did not provide documentation related to the state of the sink collar prior to the rental unit being occupied by the tenant.

Decision – Kitchen Sink Damage

57. The landlord's claim for compensation for replacement of the kitchen sink does not succeed in any amount.

Damage Item 9 – Porch Floor Ceramic Cracked (\$309.00)

Landlord's Position

58. The landlord testified that she incurred costs in the amount claimed (see page 12 in L# 7) to replace 3 cracked tiles on the porch. The landlord referred to photos submitted showing a cracked tile (see page 19 in L#8) and testified that the tiles on the porch were likely original to the rental unit (e.g., 80 years old).

Tenant's Position

59. The tenant denied damaging the tiles and testified that the tiles are on the porch, which is the entry to the rental unit as well as the location of the laundry.

Analysis – Porch Floor Ceramic Cracked

60. The tenants disputed the landlord's claim for compensation and the landlord failed to establish on the balance of probabilities, that she was entitled to compensation because she did not provide pictures of the tile prior to occupancy,

and she also testified that the damaged tiles were likely 80 years old (e.g., well outside of the expected serviceable life of 10 years for tile).

Decision – Porch Floor Ceramic Cracked

61. The landlord's claim for compensation for porch floor ceramic cracked does not succeed in any amount.

Damage Item 10 – Garbage Removal \$25.00

Landlord's Position

62. The landlord testified that she incurred costs in the amount claimed to remove a filing cabinet and other garbage left behind by the tenant. She referred to photos submitted, (see page 6 and 21) but did not provide a receipt.

Tenants' Position

63. The tenant acknowledged leaving behind a filing cabinet and testified that any garbage bags (for which no photos were provided) left behind were because garbage pickup was the following day. The tenant testified that the landlord threw out a pair of \$150.00 sneakers that had been left to dry and she attempted to collect the following day.

Analysis – Garbage Removal

64. The tenants disputed the landlord's claim for compensation and suggested that she returned the following day to remove any remaining items. The landlord also failed to submit a receipt for expenses incurred. As such, she failed to establish on the balance of probabilities that she was entitled to compensation in the amount claimed.

Decision – Garbage Removal

65. The landlord's claim for compensation for garbage removal does not succeed in any amount.

Damage Item 11 – Widow Cracked screen broken (\$400.00 + HST)

Landlord's Position

66. The landlord testified that windows in the rental premises were installed 10 years prior. The landlord referred to a photo submitted (see page 4 in L#8) and testified that she has a quote in the amount claimed to replace a damaged window. The landlord testified that she is seeking compensation because the window was damaged by the tenant's son, who would play hockey on that exterior side of the rental premises. When asked why she did not just replace or patch the cracked

bottom corner of the window head (the damaged section), the landlord asked, why should I have to do that, when the windows were newly installed?

Tenants' Position

67. The tenant disputed the landlord's claim for compensation for a broken window and testified that other children would also play hockey on that side of the rental premises because it was the only space available to them.

Analysis – Window Cracked Screen Broken

68. The tenant disputed the landlord's claim for compensation and the landlord failed to establish on the balance of probabilities that documented damage was directly caused by the tenant (or her son) because:
 - The exterior of the rental premises was open and access to the damaged window did not appear restricted to the tenant and her family;
 - The landlord did not provide any pictures of the window prior to the rental unit being occupied by the tenant and her family;
 - The landlord did not provide any witnesses or other documentation to validate her claim that the window was indeed damaged by the tenant's son and no one else.

Decision

69. The landlord's claim for compensation for window replacement does not succeed in any amount.

Damage Item 12 – Siding Replacement Materials (\$280.00) Labour (\$400.00)

Landlord's Position

70. The landlord referred to photos submitted and testified that the landlord's son damaged multiple sections of the exterior siding by playing hockey outside of the rental premises (see page 1 – 3 in L#8). The landlord has not yet replaced the damaged siding that was newly installed 10 years prior.

Tenants' Position

71. The tenant denied damaging any section of the exterior siding and also denied knowledge of any damaged sections of siding. The tenant testified that other children in the rental premises would also play hockey on their exterior side of the rental unit.

Analysis – Siding Replacement Materials and Labour

72. The tenant disputed the landlord's claim for compensation and the landlord failed to establish on the balance of probabilities that documented damage was directly caused by the tenant (or her son) because:

- The exterior of the rental premises was open and access to the damaged section of siding did not appear restricted to the tenant and her family;
- The landlord did not provide any pictures of the exterior siding prior to the rental unit being occupied by the tenant and her family;
- The landlord did not provide any witnesses or other documentation to validate her claim that the siding was indeed damaged by the tenant's son and no-one else.

Decision - Siding Replacement Materials and Labour

73. The landlord's claim for compensation for a siding replacement materials and labour does not succeed in any amount.

Summary Decision – Damages

74. The landlord's claim for compensation for damages succeeds in the amount of \$108.50.

Issue 3: Compensation for Other (\$1000.00)

Landlord's Position

75. The landlord testified that she is seeking compensation in the amount claimed because a Facebook post made by the tenant allegedly caused a different tenant, from a different rental premises, to reach out and notify the landlord that he would not be pursuing his own rental agreement. The landlord referred to screen shots of the Facebook post in question, (see page 3 in L#4) and read into the record, how the post ended with the tenant writing, "do not rent from [the landlords]". The landlord also referred to a screen grab of her conversations with this other tenant (see page 3 in L#9) and testified that she did not seek compensation for the lost rental from him because she is "too trusting" and does not collect security deposits.

Tenant's Position

76. The tenant acknowledged posting on Facebook. She testified that she only posted to her own Facebook page and that she does not know this other individual who did not end up renting from the landlord.

Analysis

77. The landlord failed to establish on the balance of probabilities that her claim for compensation related to different tenant and a different rental unit, falls within the jurisdiction of the *Residential Tenancies Act* as it relates to her dispute with the named tenant. In particular, I found that no section of 47(1) of the *Act*, **Orders of the Director**, are appropriate for what appears to be a claim for compensation for slander resulting in financial loss. Consequently, the landlord would be

required to pursue a resolution to her specific claim in a court of competent jurisdiction.

Decision

78. The landlord's claim for compensation for Other does not succeed in any amount.

Issue 4: Hearing Expense

79. The landlord claimed the \$20 expense of applying for the hearing along with an expense in the amount of \$46.37 (see page 2 in L#9) for the cost of printing photographic evidence related to this hearing.
80. According to Residential Tenancies Policy 12-001, the application fee is not an eligible expense if and where the landlord's claim for compensation has not succeeded in excess of the security deposit collected. Consequently, I find that the landlord in this dispute is only entitled to compensation for the costs claimed for printing.

Decision – Hearing Expenses

81. The landlord is entitled to compensation in the amount of \$46.37 for Hearing Expenses.

Issue 5: Security Deposit \$425.00

Relevant Submissions

82. The landlord and tenant agreed that a \$425.00 security deposit was collected – the tenant requested that the full value be returned and the landlord applied to retain it.

Analysis

83. 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.*

84. As noted in paragraph 74, the landlord's claim for compensation for damages succeeds in the amount of \$108.50 and as noted in paragraph 81, her claim for hearing expenses has succeeded in the amount of \$46.37. Consequently, I find that the landlord's claim for compensation has succeeded in the amount of \$154.87 (e.g., \$108.50 + \$46.37 = \$154.87). Because this amount does not exceed the value of the \$425.00 security deposit collected, I find that the remaining \$270.13 shall be paid to the tenant.

Decision

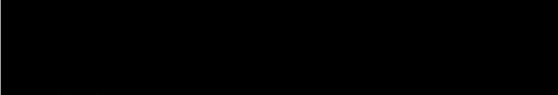
85. The landlord shall retain \$154.87 of the \$425.00 security deposit.
86. The landlord shall pay to the tenant \$270.13, representing the return of the remainder of the security deposit.

Summary of Decision

87. The landlord's claim for compensation for damages succeeds in the amount of \$108.50.
88. The landlord is entitled to compensation in the amount of \$46.37 for Hearing Expenses.
89. The landlord shall retain \$154.87 of the \$425.00 security deposit.
90. The landlord shall pay to the tenant \$270.13, representing the return of the remainder of the security deposit.

16 December 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal