

Residential Tenancies Tribunal

Application 2022-0827-NL
2022-0916-NL

Decision 22-0827-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 06-December-2022 and reconvened at 9:03 a.m. on 25-January-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenants stated that they served the landlord with notification of the December hearing date by email on 05-October-2022, the landlord said that the email he received was for an earlier hearing date. He believes that he did receive notification for today’s date as well, but doesn’t recall when. He agrees that he did receive adequate notice. The landlord declared that he served the tenants with notification of today’s hearing by email on 27-November-2022; the tenants confirmed receipt of notification.
5. Tenant2 did not have his phone charged for the second hearing date in January, tenant1 relayed that we could proceed in his absence, she represented their party at that time.

Issues before the Tribunal

6. The Landlord is seeking:
 - Compensation for damages \$5,396.64
 - Security deposit applied to monies owed \$1,050.00

The tenants are seeking:

- Security deposit refunded \$1,050.00

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, Section 14 Security deposit and Residential Tenancies Policy 9.

Issue 1: Compensation for damages \$5,396.64

Landlord's Position

9. The landlord said that he entered a rental agreement with the tenants for a one year term beginning 01-August-2021 and ending 31-July-2022. He did regain possession at the end of the term; the end of the lease was by mutual agreement. The tenants paid \$1,400.00 each month for rent; due on the first day of each month. On 25-July-2025 they paid a security deposit of \$1,050.00; the landlord is still in possession of the deposit.
10. The landlord stated that he has no idea who actually lived in the house. He said both of the tenants moved out during the term of the lease and rented the rooms of the house to other individuals. He explained that he was never informed that this was happening or asked permission for subletting. He acknowledges that he understood tenant1 and tenant2 were going to have two additional roommates, however, he did not agree to them renting individual rooms to different individuals or know that both tenants had moved out of the house. He confirms that when he regained possession of the house there were 4 people living there and 3 of them stayed and are now his tenants.
11. The landlord disputes that the tenant1 lived there until August. He said that in May (LL#03) she informed him that she was in Ontario and would be there for a while.
12. The landlord is seeking the following for damages:

| | | |
|--------------------------|---|------------|
| Bathroom repair | Remove damages and dry out 6hours Replace damage and plaster 6 hours Painting 4 hours 16 hours total | \$400.00 |
| Materials | Plaster, primer, paint and drywall (ceiling paint, wall paint, primer, plaster and trim) | \$150.00 |
| Refrigerator | New handle | \$112.86 |
| Cleaning | | \$458.85 |
| Paint entire house | Tenants smoking in house | \$2,875.00 |
| Cabinet repair | 2 hours labor \$50.00 Supplies \$20.00 | \$70.00 |
| Kitchen & porch flooring | Replace flooring | \$1,252.93 |

| | | |
|---------|------|------------|
| Garbage | Dump | \$50.00 |
| Total | | \$5,396.64 |

13. In August of 2021 the landlord said that he texted the tenants concerning a leak coming from their bathroom into the basement apartment (LL#04). The tenants gave him permission to enter. The landlord discovered that there was no shower curtain and tenant2 told him they were taking showers, he determined this caused the leak and did damage. In the text message the landlord told the tenants that they would be responsible for the damages. He said that tenant2 texted back and said he would have to go to small claims court to get payment for the damages. The landlord provided pictures showing the water damages caused (LL#08).
14. For the repairs to the downstairs basement the landlord is claiming 16 hours personal time totaling \$400.00. He said he had just painted the basement apartment within the last 6 months. He did not submit the receipts for the supplies but estimated the cost to be \$150.00.
15. When the landlord regained possession of the house the handle was off the door to the refrigerator. The landlord submitted pictures of the refrigerator both before (LL#05) and after (LL#07). He doesn't know how the handle came off the fridge. He said that the tenants had another older fridge, that they owned and this is not the one he is claiming for. He believes the fridge to be 6 years old, based on the serial number he thinks it was built in 2016. He stated that he doesn't see rust on the fridge in the tenant's evidence picture (TT#04). He provided a receipt for the handle totaling \$112.86 (LL#04).
16. The landlord submitted pictures showing that the house required cleaning (LL#09) and he submitted a receipt (LL#04) for the cleaning dated 18-August-2022 or \$458.85. He stated that on 04-August-2022 he had checked the house and that the tenants' cleaner was still there and she told him she was to only clean for 4 hours. His pictures were taken at 5:00 on 04-August-2022. The landlord also submitted pictures (LL#12) that are time stamped for 10-August-2022, showing that the house was left unclean. When he sent in a cleaner on 18-August-2022 he was under the assumption that the tenants' cleaner had left shortly after he was there and that the place would still require cleaning. He said that the pictures that tenant1 submitted shows the areas that her cleaner cleaned, he stated that his pictures show where tenant1's cleaner didn't clean.
17. The landlord testified that the subletting tenants were smoking in the house, in violation of the rental agreement he had with tenant1 and tenant2. He said that the entire house has to be painted; he submitted a quote (LL#04) for \$2,875.00. He also provided a quote (LL#04) for \$4,025.00 for painting with furniture in the house; he agreed that the lower price would apply because the tenants wouldn't be responsible for the current furniture. He said in June of 2021, before the tenants took possession, the entire house was painted. He submitted pictures showing a cigarette burn mark on the flooring and smoke damages on the kitchen walls (LL#07), as well as, text messages with tenant1 (LL#03) where she states that she has given a termination notice to the tenants who were smoking. At this point, he said that he hasn't scheduled the painters.
18. The landlord stated that he had all new flooring in the kitchen in the months before the tenants moved in. This flooring would have been 1 year old at the time that their lease was up. He provided the receipt (LL#04) for the flooring that was laid in 2021. He explained that they no longer carry that flooring and he would therefore have to replace

the flooring instead of repair. To date, he hasn't replaced the flooring yet, as it is expensive and he is waiting for it to be covered by tenant1 and tenant2. When discussing his photographic evidence (LL#07) he believed there was only one burn mark on the flooring.

19. The landlord submitted for a kitchen cabinet repair, he provided pictures (LL#12) showing that the cabinet had separated. He repaired the cabinet himself, he is seeking 2 hours labor at \$50.00 and \$20 for supplies. He did not provide a receipt because he had the supplies on hand.
20. The landlord is also seeking compensation for garbage removal \$50.00. He said he had to take a bag of garbage that was left in the porch to the dump. He provided a picture (LL#12).

Tenants' Position

21. Tenant1 confirmed the details of the rental agreement. She believes she moved in on 24-July-2021 and that the agreement began on 01-August-2021. Tenant2 said he did move out in October because he didn't get along with one of the other roommates. Tenant1 declared that she remained in the house until the summer and that she did bring in friends as roommates to share the cost of the house. Later she explained that she did leave the province in January.
22. Tenant1 said that she had made arrangements for a cleaner to clean the house before it was returned to the landlord. She said that the tenants who were living there couldn't find the time to permit the cleaner to come in before the end of July and the cleaner subsequently went in 04-August-2022.
23. Tenant1 confirmed there were 5 people living at the house in total. She said that the landlord understood that she was bringing in roommates and that whenever there were issues she dealt directly with the renters who rented from her.
24. Tenant1 believes that the handle on the fridge was glued on and that the area around the screws was rusted. She provided a picture (TT#04). She said that the handle just came off. She said that the handle was left at the house. Tenant2 said that the freezer in the fridge didn't work a few days after they moved in. When the repair person came in that the repair person told him the fridge was at least 10 years old.
25. Tenant1 acknowledges that the house required cleaning. She provided pictures (TT#05) and a receipt showing that the house was cleaned by her cleaning service on 04-August-2022. Included she provided a text thread showing the time stamp for 04-August-2022 at 7:02 pm. This is sent from the cleaner and she stated there would be no reason for the cleaner to lie about this. Some of the tenants who had rented from her continued with the landlord and are still living there. She clarified that the cleaning done by the landlord's cleaner was done weeks later; she disputes that she is responsible for the cleaning after her cleaner completed the work on 04-August-2022. Tenant1 points out that the landlord didn't come back in the following days after the tenant cleaned. She said that the landlord was renting in August and that those tenants could have left the place untidy.

26. Tenant1 questions when the landlord took the picture of the smoke on the ceiling. She said that the tenants who rented from her knew that the house was non-smoking and that they wouldn't have smoked in the main part of the house. She submitted the text from one of her tenants (TT#06) where the tenant is saying that the burn mark is from a hot pan and that the flames went up the wall. That tenant also told tenant1 that the mark on the floor is repaired. She said that they had suspicions that two of the tenants who were living there might have been smoking, so she gave them both a three month termination notice and they moved.
27. Tenant1 believes that the kitchen cabinet should be considered normal wear and tear. She points out that the landlord had to push the cabinet back together and glue. She disputes that they are responsible for this.
28. Tenant1 points out that the people who are living at the house now are the people that were living there and renting from her. She said she didn't leave any garbage behind and believes that the cleaner she hired would have removed any garbage. She disputes that she is responsible for the garbage removed by the landlord and that it could be from the tenants who are still living there.

Analysis

29. 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.

30. I find the landlord has proven his claim for damages to the bathroom caused by the tenants showering without a curtain, he has shown from his photographic evidence of the damages and his ongoing text messages with the tenants that their negligent behavior caused this damage. I accept that the landlord required 16 personal hours to

complete this repair. The landlord did not, however provide receipts for supplies, therefore his claim of \$150.00 for those supplies fails. This tribunal does consider salary for personal labor at minimum wage plus \$8.00 totaling \$21.70 an hour. $\$21.70 \times 16 \text{ hours} = \347.20 . I find that the claim for damages to the bathroom succeeds in the amount of \$347.20.

31. The landlord's evidence confirms that the handle on the door of the fridge came off while the tenants were living there. The tenants' claim that the handle was rusted is not supported by their photographic evidence. The landlord has also submitted evidence of the cost of this repair by including the receipt totaling \$112.86. I find that the tenants shall pay \$112.86 for the cost of this repair.
32. The issue of the cost of the house cleaner is more complex. The burden of proof in this claim is that of the landlord. Tenant1 did provide proof that her cleaner cleaned on 04-August-2022 and the landlord also provided proof that his cleaner did clean on 18-August-2022. The landlord has also shown, through his photographic evidence, that many areas of the house are unclean on 10-August-2022. It is not clear however, that the respondents are responsible for the unclean condition. The current tenants who are living at the house made this mess, but the question remains did the uncleanliness occur while the tenants had tenant1 as a landlord or did it occur while the landlord was their landlord in August 2022. As the landlord has not shown proof of when the uncleanliness occurred and there is a gap between when tenant1's cleaner cleaned and later the landlord's cleaner arrived, he has not shown that tenant1 is responsible for this damage.
33. The landlord's photographs and tenant1's message evidence confirm that there was smoking in the house. In addition to the smoking, a pan that caught fire and damaged the paint on the wall and ceiling in the kitchen. The landlord provided two separate quotes for the cost of this repair. The lower cost, for painting without furniture will be applied. In accordance with policy 9-3 depreciation will also be considered. The paint was 1 year old at the time the tenant moved out, our policy determines that interior paint should last up to 5 years. The paint should have 80% of its life span still available. I find that the tenants shall pay to the landlord 80% of \$2,875.00 which equals \$2,300.00 for the cost of the house to be repainted.
34. The landlord's claim to replace the flooring has not been proven: tenant1 said that the current tenant fixed the damages to the flooring caused by the burn mark from the pot. The landlord claimed that the flooring is only one year old and is no longer in stock or able to be repaired, yet the current tenant made a repair to the floor at the time of the claim. In addition to this, the landlord stated that there was just one burn mark on the flooring, which appears to be the same burn mark the current tenant said was made by the pot and not a cigarette burn. Nonetheless, the burn in the flooring has already been repaired. I find that the landlord's claim for flooring fails.
35. I agree with tenant1 that the separation of the kitchen cabinet is a general upkeep repair and the landlord is responsible for this work. I find the landlord's claim for this damage fails.
36. The landlord has also claimed for the removal of one bag of garbage. As the tenants switched landlords but remained in the same housing, it is reasonable to assume that the current tenants are responsible for the garbage that the landlord removed from the

house. I accept tenant1's testimony that her cleaner would have removed any garbage left behind by her. The landlord's claim for garbage disposal fails.

37. I find that the tenants shall pay to the landlord \$2,760.06 for damages as follows:

- Bathroom repairs \$347.20
- Fridge handle 112.86
- House painted 2,300.00
- Total \$2,760.06

Decision

38. The landlord's claim for damages succeeds in the amount of \$2,760.06.

Issue 2: Security deposit applied to monies owed \$1,050.00

Issue 3: Security deposit refunded \$1,050.00

Landlord's Position

39. The landlord received notification of the claim for security deposit on 05-October-2022. He declared he filed a counter claim to apply the security deposit to damages on 07-October-2022.

Tenants' Position

40. The tenants applied for a refund on 12-September-2022 and she confirmed served the landlord of the first hearing date on 05-October-2022.

Analysis

41. As per Section 14 of the *Residential Tenancies Act, 2018*:

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.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a **tenant makes an application** under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to **make an application** to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to 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.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

42. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. As the landlord filed a claim within the 10 day period and has been successful in his claim for damages totaling \$2,760.06 (paragraph 38), I find that the landlord shall retain the full security deposit against monies owed.

Decision

43. The landlord's claim for the security deposit to be applied to monies owed succeeds in the amount of \$1,050.

44. The tenant's claim for the return of the security deposit fails.

Issue 4: Hearing expenses reimbursed \$20.00

45. Both the landlord and tenant had hearing expenses, however neither submitted their receipts and are therefore not entitled to reimbursement of that cost.

Summary of Decision

46. The tenants shall pay to the landlord \$1,710.06 as follows:

| | |
|----------------------------------|-------------------|
| • Damages | \$2,760.06 |
| • Security deposit applied | <u>(1,050.00)</u> |
| • Total | <u>\$1,710.06</u> |

The landlord shall retain the security deposit against monies owed totaling \$1,050.00.

January 27, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office