

Residential Tenancies Tribunal

Applications 2022 No. 0844 NL
2023 No. 0014 NL

Decision 22-0844-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:03AM on 08 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as "the landlord".
3. This hearing was previously scheduled and postponed multiple times due to various reasons. Notice of this most recent hearing date was served to both parties by the Residential Tenancies Office and confirmed by both parties (T#1).
4. The details of the claim were presented as a verbal month-to-month agreement that started summer 2019. Monthly rent was originally set at \$750.00 a month and due on the 15th each month. Both parties agreed that a security deposit was collected in the amount of \$400.00 and that monthly rent at the end of the tenancy had been increased to \$800.00.
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. In these proceedings the standard of proof 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 tenant is seeking the following:
 - Validity of Termination Notice Determined;
 - An order for rent to be refunded in the amount of \$975.00;

- An order for compensation for inconvenience in the amount of \$3,240.00; and
- An order for payment of Other in the amount of \$247.40.

7. The landlord is seeking the following:

- An order for payment of damages in the amount of \$2,000.00; and
- An order to retain the full value of the \$400.00 security deposit.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

9. Also relevant and considered in this case are sections 10, 14 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a basement apartment located at [REDACTED]. The Landlord resides in the main floor unit.

11. The tenant requested validity of a termination notice determined. Both parties agreed that a section 21 termination notice (T#2) was issued by the landlord on 22 September 2022 after a water leak that occurred in the main floor of the rental premises. This water leak impacted the lower floor unit and the tenant provided some pictures of this impact (T#3). Both parties agreed that the tenant vacated on 15 October 2022 and both parties agreed that rent was paid in full for that final month. Consequently, I will not consider the matter of validity since I find it to be immaterial to the remainder of the claim's put forward by the tenant and landlord.

12. Regarding the tenant's claim for compensation for inconvenience, I reviewed her multi-page document where she outlined a series of 36 issues to which she attached a sum of \$90.00 (T#4). I informed the tenant during the hearing that this tribunal has no jurisdiction for matters of pain or suffering and she testified that she will withdraw her claims for psychological compensation. Consequently, this claim was only briefly explored during the hearing before being dismissed for lack of jurisdiction.

Issue 1: Refunded or Rebate of Rent (\$975.00)

Tenant's Position

13. The tenant testified that she is seeking a rebate of rent because the landlord improperly increased her rent. She provided her bank statements as proof of payment history on how rent was originally \$750.00, then it became \$775.00 in April 2022 before increasing again to \$800.00 as of July 2022 (T#0).

14. The tenant testified that she paid these increases despite the landlord's failure to provide proper legal notice of the increase. She also testified that she is seeking a refund for the full amount of rent paid for her final month of tenancy after the leak occurred because the premises was unliveable due to the harassment and interference she received.

Landlord's Position

15. The landlord agreed that she increased the tenant's rent, but argued that she only did so after providing notice. She stated that rent was increased in June with three months notice, and then further increased in August with additional notice. The landlord denied interfering with the tenant and testified she was only doing her best to maintain her property after the leak occurred

Analysis

16. I accept that both parties agree that the tenant's monthly rent was increased from the original amount of \$750.00 and that it was first increased to \$775.00 before increasing further to \$800.00 a month. Though the parties disagreed on the question of "notice" of this increase being provided, I find on the balance of probabilities that the tenant was correct in her claim for refund of rent due to improper notice. Specifically, I find that the landlord failed to give notice in accordance with section 16 of the *Act* and so I reviewed the tenant's bank statements to calculate her exact entitlement to compensation. Upon doing so, I note that the tenant is entitled to a refund of rent in the amount of \$225.00 as shown in the table below.

15 – 15 Each Month	Rent Paid	Overpayment
March 2022	\$750.00	\$0.00
April 2022	\$775.00	\$25.00
May 2022	\$775.00	\$25.00
June 2022	\$775.00	\$25.00
July 2022	\$800.00	\$50.00
August 2022	\$800.00	\$50.00
September 2022	\$800.00	\$50.00
Total		\$225.00

17. Regarding the tenant's claim for refund of total rent paid in September 2022 (for the period of 15 September – October 15 2022) I find that the tenant failed to establish on the balance of probabilities that she was entitled to this rent. Specifically, I find that the tenant did not provide any supporting evidence of unreasonable and or illegal conduct of the landlord who testified repeatedly during the hearing that she was just doing her best to remediate a significant water leak that impacted both units at the rental premises. Consequently, I find

that the tenant's claim for refund of rent only succeeds for the portions that she overpaid as a result of improper notice from the landlord.

Decision

18. The tenant's claim for refund of rent succeeds in the amount of \$225.00.

Issue 3: Compensation for Damages (\$2,000.00)

General Submission

19. The landlord submitted a written damage summary where she outlined her claims for compensation (L#4). She testified that she has done some work, but that more work is required since repair work is not yet complete. The landlord and tenant agreed that no photos were submitted of the rental premises prior to occupancy. They also agreed that a move out condition inspection was not completed.
20. 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).
21. 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.

Damage # 1 New Lock \$200.00

General Submissions

22. The landlord was informed that this tribunal does not recognize costs of changing locks as an expense that can be passed along to the tenant. Consequently, the landlord's claim for compensation does not succeed in any amount.

Damage # 2 Stove Drawer Fixed (\$100.00)

Landlord's Position

23. The landlord referred to photos submitted of the broken stove drawer and testified that costs of \$100.00 are required to fix the drawer (L#3). However she

did not provide any verifiable receipts or other documentation related to these costs. The landlord testified that she did not previously known that the stove was damaged.

Tenant's Position

24. The tenant referred to item #7 from her compensation for inconvenience sheet (T#4) and testified that the drawer has been broken off of the stove for a long time.

Analysis - Stove Drawer

25. I find that the landlord's claim for compensation related to the stove drawer does not succeed in any amount because she failed to establish on the balance of probabilities that the tenant broke the stove and she also failed to provide any verifiable documentation related to costs for fixing the stove.

Decision - Stove Drawer

26. The landlord's claim for compensation for the stove does not succeed in any amount.

Damage # 3 Repair Windowsill in Bedroom \$200.00

Landlord's Position

27. The landlord referred to photos submitted (L#3) and testified that the window sill in the bedroom occupied by the tenant has to be rebuilt as a result of water and other staining damage from the tenant's plants. The landlord did not submit any verifiable documentation related to costs incurred for repairing this sill.

Tenant's Position

28. The tenant acknowledged keeping plants on that window sill and testified that marks left on the sill were superficial and could have been fixed with a coat of paint.

Analysis - Repair Windowsill in Bedroom

29. I reviewed the evidence and testimony provided and find that both parties agree that the tenant's plants in the window sill caused at least some damage. Where the landlord provide a photo to suggest that the sill has to be completely rebuilt, I acknowledge that she submitted a photo of a stained sill with a section of torn out drywall beneath it. However, given that this is a zoomed in photo without context and I was also not provided with a complete photo of the same sill prior to occupancy, I am unable to verify the exact scope of damage said to have been caused by the tenant. As such, where the tenant acknowledged some residual

staining, I will arbitrarily award compensation to the landlord in the amount of \$50.00.

Decision # 3 Repair Windowsill in Bedroom

30. The landlord's claim for compensation for the window sill succeeds in the amount of \$50.00.

Damage # 4 - Floor in Kitchen \$1000.00

Landlord's Position

31. The landlord referred to photos submitted (L#3) and testified that the flooring was damaged by the tenant and her squat machine. She stated that the flooring was newer and needs to be replaced but has not yet been replaced. The landlord did not submit any receipts related to expected costs. She testified that the flooring was damaged by the gym mats the tenant had down.

Tenant's Position

32. The tenant referred to the landlord's photo of the kitchen floor and denied damaging it. She specifically mentioned a pink section on the flooring and stated that it existed prior to her occupancy of the unit.

Analysis # Kitchen Floor

33. I reviewed the evidence and testimony provided and find that the parties disagreed on the scope of damage to the kitchen floors. Because both parties failed to provide documentation related to the condition of the floors prior to occupancy, and because the landlord did not provide any verifiable evidence related to any expected costs, the landlord did not satisfy the test identified in paragraph 19. Consequently, I find the landlord's claim for compensation does not succeed in any amount.

Decision # 4 Kitchen Floor

34. The landlord's claim for compensation for flooring does not succeed in any amount.

Damage # 5 Apartment not cleaned (\$200.00)

Landlord's Position

35. The landlord referred to photos (L#3) submitted and testified that the apartment was not properly cleaned prior to the tenant vacating. She testified that six hours of cleaning was required and that there were sticky marks everywhere.

Tenant's Position

36. The tenant disputed the landlord's claim for compensation for cleaning.

Analysis - Cleaning

37. I reviewed all evidence and testimony provided. Upon doing so, I found that the landlord successfully established on the balance of probabilities that at least 4 hours of cleaning was required unrelated to any flood damage that occurred. Consequently, I find that the landlord's claim for compensation succeeds in the amount of \$86.80 (e.g., 4 x \$21.70 as per Residential Tenancies Policy 09-05).

Decision - Cleaning

38. The landlord's claim for compensation for cleaning succeeds in the amount of \$86.80.

Damage # 6 Bedroom Blind \$300.00

Landlord's Position

39. The landlord referred to a photo submitted (L#3) and testified that she will have to replace a damaged blind. She did not submit verifiable evidence related to costs incurred for the damaged blind, but testified that she knew it cost \$300.00 because the same blind was installed in her son's room.

Tenant's Position

40. The tenant disputed the landlord's claim for compensation and testified that she never used the blind in question.

Analysis - Bedroom Blinds

41. I reviewed the evidence and testimony provided and find that the parties disagreed on the scope of damage to the blinds in question. Because both parties failed to provide documentation related to the condition of the blinds prior to occupancy, and because the landlord did not provide any verifiable evidence related to any expected costs, the landlord did not satisfy the test identified in paragraph 19. Consequently, I find the landlord's claim for compensation does not succeed in any amount.

Decision - Bedroom Blinds

42. The landlord's claim for compensation for bedroom blinds does not succeed in any amount.

Summary Decision - Damages

43. The landlord's claim for compensation for damages succeeds in the amount of \$136.80 (e.g., \$50.00 + \$86.80)

Issue 4: Payment of Other (\$247.40)

Tenant's Position

44. The tenant testified that she incurred costs of \$247.50 to secure a UHaul to assist with moving. She referred indirectly to bank records submitted and stated that she did not submit verifiable receipt related to the costs of the UHaul incurred. The tenant also testified that she would not have otherwise incurred UHaul costs because she has lots of friends with trucks who could have helped out if she had longer notice of the requirement to vacate.

Landlord's Position

45. The landlord rejected the tenant's claim for compensation and testified that she had a months notice that she needed to vacate.

Analysis

46. I reviewed the evidence and testimony submitted from both sides and I find that the tenant failed to establish on the balance of probabilities that she even incurred UHaul costs related to her move from the rental premises because she did not submit a detailed receipt or other detailed documentation. Furthermore, I accept the landlord's dispute of this claim because I agree that the tenant had nearly a month's notice that she would need to vacate. This was likely enough time to call a friend with a truck. Consequently, I find that the tenant's claim for compensation for other does not succeed in any amount.

Decision

47. The tenant's claim for payment of other does not succeed in any amount.

Issue 6: Security Deposit (\$400.00)

Relevant Submissions

48. The landlord has applied to retain the full value of the security deposit as compensation against monies owed.

Analysis

49. 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.

50. As was shown in this report, I found that both parties have a partial claim for compensation

Tenant Claim	Landlord Claim
\$225.00	\$136.80

51. Where the tenant's claim for refund of rent in the amount of rent succeeds in excess of the landlord's claim for compensation for damages, I find this leaves the tenant with a residual claim for compensation of \$88.20. Because the landlord failed to establish any other claim against the tenant's security deposit, I find that the tenant is entitled to the full return of the \$400.00 security deposit.

Decision

52. The landlord's claim against the security deposit does not succeed in any amount.

53. The tenant is entitled to the full return of the security deposit.

Issue 5: Hearing Expenses

54. Both the tenant and the landlord claimed the \$20.00 expense of applying for the hearing. Because the tenant's claim succeeded in excess of the value of the security deposit collected, I find that the landlord shall pay this expense. Likewise, I find that the landlord shall pay her own hearing expense in accordance with Residential Tenancies Policy 12-01.

Summary of Decision

55. The tenant's claim for payment of other does not succeed in any amount.

56. The landlord's claim against the security deposit does not succeed in any amount.

57. The tenant is entitled to the full return of the security deposit.

58. The landlord shall pay to the tenant, the amount of \$508.20 determined as follows:

a)	Refund of Rent.....	\$225.00
b)	Hearing Expenses.....	\$20.00
c)	Return of Security Deposit.....	\$400.00
d)	LESS Landlord Damages.....	\$136.80
e)	Total.....	<u>\$508.20</u>

21 March 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal