

Residential Tenancies Tribunal

Application 2022-0871-NL

Amended Decision 22-0871-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 16-November-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED] [REDACTED] she is hereinafter referred to as "the tenant" she attended by teleconference. Tenant2, [REDACTED], did not attend.

Preliminary Matters

4. The landlords provided an affidavit stating that they served the tenants by prepaid registered mail on 29-October-2022 and the tracking number [REDACTED] shows it was received on 02-November-2022. The tenant confirms receipt of the notification as stated.

Issues before the Tribunal

5. The landlords are seeking
 - Rent \$1,400.00
 - Late fees \$75.00
 - Compensation for damages \$2,614.50
 - Other/ proceeds from loss of sale of house \$4,900.00
 - Security deposit applied against monies owed \$700.00
 - Hearing Expenses \$49.76

Legislation and Policy

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

7. 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 009.

Issue 1: Rent \$1,400.00

Landlord's Position

8. Landlord1 said that they had a written rental agreement (LL#02). The tenants moved in on 01-September-2020 and they moved out on 16-July-2022. The tenants pay \$1,400.00 rent due on the first day of each month. A security deposit of \$700.00 was paid on 06-August-2020; they are still in possession of the deposit.
9. Landlord1 said that the tenant gave him notice on 01-July-2022 that they would be moving on 15-July-2022, he said that she moved out on 16-July-2022. Landlord1 said that they accepted her notice.
10. Landlord1 provided a breakdown of the compensation they are claiming (LL#27). He did not submit a rent ledger, but stated that he is seeking rent for the month of July. He said they had not paid rent for this month.
11. Landlord1 acknowledges that the claim breakdown lists August as the month they are claiming rent. He said that this is a typo and that the rent was not paid in July.

Tenant's Position

12. The tenant agreed with the terms of the rental agreement as stated.
13. The tenant pointed out that the landlords' claim breakdown states that he is seeking rent for August and that she was not living in the house in August.

Analysis

14. Non-payment of rent is a violation of the rental agreement. The tenant has pointed out that the claim for damages (LL#27) submitted by the landlord indicates August rent. I accept that the landlord intended for the claim to be for July, however, the tenant has a valid point.
15. A respondent in an application is to be given 10 days' notice of the hearing. The notice tells the respondent what issues are to be decided on. In addition to this, our policy is that the respondent is to be given evidence 3 days prior to the hearing, thereby giving them time to compile a defense. The claim submitted by the landlord indicates August rent and because of the landlord's mix-up in the dates, it has made the claim ambiguous and has therefore not given the tenant proper notice of the issue to be decided upon. The information provided to the tenant by the landlord indicates that the decision is for August rent. I therefore find that the claim for rent fails.

Decision

16. The landlords' claim for rent fails.

Issue 2: Late fees \$75.00

Landlord's Position

17. The landlord is seeking late fees for rent not paid.

Analysis

18. As it has been determined in paragraph 16 that the claim for rent fails, this renders this claim invalid.

Decision

19. The landlords claim for late fees fails.

Issue 3: Compensation for damages \$2,614.50

Landlord's Position

20. Landlord1 said that they didn't do a condition report or walk through at the start of the tenancy.

21. Landlord1 provided a picture of the stairway railing (LL#03) he indicates that there are large screws attaching the rail to the wall. He said that the rail is 15 years old. He is seeking 15 hours labor at \$20.00 to complete this repair. He provided another picture of a different part of the railing (LL#05) he said that there are screws put through the wood and he is charging 1 hour labor at \$20.00.

22. Landlord1 said that the tenant had left some belongings in the kitchen and in the shed. She contacted him because she was missing the items in the kitchen and he told her he had them. He provided a picture (LL#04). He said she didn't have a truck to get the items so he offered to bring them to her. He is seeking \$100.00 for the delivery of the items he said it took about 2 hours personal time.

23. Landlord1 submitted a number of pictures of holes in the walls or marks (LL#06, 07, 08, 10, 16, & 17) that required plaster. He also submitted a pictures showing LED lights along the ceiling (LL#09) he said that when they were removed it took paint and plaster off the wall down to the gyproc paint, this had to be plastered. A welcome sign (LL#11) and a coat hanger rack (LL#14) , as well as shelves that had to be removed (LL#13, 15) these places also had to be plastered. Landlord1 said it took him about 20 hours to do this work. He also had to purchase the supplies for those materials, receipt submitted (LL#28) \$60.27.

24. Landlord1 said that they then had to paint the entire house. He provided receipts for the paint and supplies (LL#28). He said that it took him 30 hours to paint at \$20.00 per hour. He said that the entire house was painted in 2019. Receipts for painting supplies are for $42.68 + 74.32 + 25.01 + 275.80 = \399.81 .

25. Landlord1 said that some of the moldings and doors were damaged with screws (LL#12 – LL#18). He supplied receipts for the trim (LL#28) for \$71.99 and it took him 6 hours at \$20.00 per hour to do this work.
26. Landlord1 said that they had to clean the kitchen, the bathrooms and then later they cleaned the entire house due to the plaster. He also said there was garbage left in the kitchen that they had to dispose of, he provided a picture (LL#24). There are 9 hours left to his claim for this work at \$20.00.

Tenant's Position

27. The tenant said that when they moved in the landlord didn't have time to freshen up the house between their tenancy and the previous tenants. She said that the landlord explained that he wants to keep his properties in really good condition and that he would have preferred time between the two renters. She said that they really needed housing so they agreed that any freshening up that was required could be done after they moved in.
28. The tenant said that they didn't put the screws in the staircase railing.
29. The tenant said that she did leave items behind in the move. This was not intentional and she thought that perhaps the kitchen items might have been left in the dishwasher because they were overlooked. She said she completely forgot about the items in the shed. She said that she was going to make arrangements to have a truck go get the items and landlord1 offered to deliver them to her. At the time, she thought that he was just being kind, she didn't realize he was going to charge her for the delivery.
30. The tenant said that they did not put all those holes in the walls, she provided pictures (TT#07, 08, 09, 10 & 11) to show that some of the damages were present when they moved in. She stated earlier in paragraph 27 that the house wasn't painted before they moved in. She said that her partner had taken the pictures when they got possession of the house. She acknowledges that they did put up the LED lights, the coat rack and the shelves. She said her son did have posters in his room and that there were some small pin holes in his bedroom wall from the posters.
31. The tenant said that they didn't put any screws in the moldings or doors, this was done before they moved in. She said that she found it odd that someone would put large screws in the doors.
32. The tenant points out that the garbage that the landlord is submitting for in the kitchen (LL#24) is actually the parts and manuals for his appliances. She said that they did clean the kitchen and washrooms and she provided pictures (TT#01 – TT#04).

Analysis

33. Section 10 of the *Residential Tenancies Act, 2018* states:

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:

1. 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.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

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.

34. In consideration of damages, it must be considered that both parties have an obligation to the other in the care and maintenance of the property. It is in the best interest of both parties for a walk through and condition report to be completed upon the start and commencement of a rental agreement. The purpose of the report is for the protection of all concerned. It is apparent from the testimony of both parties that the landlord did not have adequate time to prepare the home for the tenants and that responsibility for the condition of the home and damages within cannot be clearly identified by the landlords.
35. The landlords' claim for damages to the railing and wood panels caused by large screws is not clearly the fault of the tenants. The tenant stated that this was done prior to her occupancy and the landlord has provided no evidence to show when the damage occurred. I therefore find that this claim fails.
36. Both parties confirmed that the tenant left items behind in the move. The landlord is seeking compensation for the delivery of those items, however, the tenant was under the belief that the landlord had done this as a courtesy and was not expecting a charge. She was planning on making arrangements when the offer of delivery was granted. I accept that she believed that the offer was a courtesy and that there was no expectation of a charge. The landlords should have informed her of the cost if there was a charge for this service. I therefore find that this claim fails.
37. The tenant has discredited the landlords' claim for damages to the walls, the evidence of pictures from the day they moved in clearly show that most of the damages were caused prior to their occupancy. The tenant does acknowledge their damages cause by shelving and the LED lights. I will therefore accept that the tenant owes half the cost of the plastering supplies and labor. The landlords had submitted 20 hours to do this work at \$20.00. He also had to purchase the supplies for those materials, receipt submitted (LL#28) \$60.27. Therefore $\$20.00 \times 20 \text{ hours} = \$400.00 + \$60.27 \text{ in supplies} = \460.27 . Half of the cost is \$230.14. I find that the tenants shall pay to the landlord \$230.14 for the cost of labor to plaster the holes in the walls.
38. The landlord said that the house was painted in 2019 and that due to the damages he had to paint the entire house. As it has been shown that damages existed before the tenants took occupancy, it can be deducted that this repair was already required and the cost of upkeep is the responsibility of the landlord, as per Section 10 of the Act. I therefore find that this claim fails.

39. Landlord1 has shown that there are screws in the moldings and the doors the tenant states that this damage preexists her tenancy. The landlords' claim for damages caused by large screws is not clearly the fault of the tenants. The tenant stated that this was done prior to her occupancy and the landlord has provided no evidence to show when the damage occurred. I therefore find that this claim fails.
40. The landlords are also claiming to clean the kitchen and bathroom areas as well as the dust from the plastering. The tenants' photo evidence shows that the garbage in the kitchen is the information and attachments that comes with the purchase of appliances and that the pictures of the bathrooms and kitchen show that the house was cleaned when the house was returned to the landlords. I therefore find that this claim fails.

Decision

41. The landlords' claim for damages succeeds in the amount of \$230.14.

Issue 4: Other/proceeds from loss of sale of house \$4,900.00

Landlord's Position

42. Landlord1 submitted a purchase agreement (LL#27) for the sale of his house. He said he had an offer on the house and the purchaser wanted him to evict the tenants with 30 days' notice. He said because he had to give 3 months' notice he turned down the offer. Then the tenant only gave him 15 days' notice.
43. He later sold the house to another purchaser for \$4,900.00 less than the first offer. He believes that the tenant should reimburse him for this loss.

Tenant's Position

44. The tenant said that had the landlord told her of the offer she may have been able to move within the month.
45. The tenant questions where in the *Residential Tenancies Act, 2018*, does it state that the tenant shall pay for the loss of income on the sale of a house?

Analysis

46. In accordance with Section 18 of the *Residential Tenancies Act 2018*, as follows:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

- (a) *not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and*

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

It is the obligation of the landlord to provide the tenant with 3 months' notice if he chooses to end a rental agreement. The landlord and tenant can decide to accept a shorter notice period, as the landlord agreed he accepted a two week notice from the tenant, paragraph 9.

47. This expectation of 3 months' notice is not an arbitrary condition enforced on the landlord by the tenant, it is a condition determined by the *Act*, based on the contract that the landlord entered. The landlord's decision to abide by his contract was a decision that he made, without discussion with the tenant. The tenant had said that she may have been able to leave sooner had he discussed this with her; that being said, she was well within her rights to expect 3 months' notice.
48. Additionally, after the first offer on the house did not go through, the landlord's decision to accept a lower offer, was also made independently of the tenant.
49. The tenant was not in a position to determine the outcome of the real estate agreement made by the landlords and an outside party. She did not cause him to lose the first sale and she did not force him to accept the deal he eventually agreed to. The tenant has no responsibility in the landlords' decision.

Decision

50. The landlords' claim for compensation for loss on the sale of the house fails.

Issue 5: Security deposit applied to monies owed \$700.00

Landlord's Position

51. As per paragraph 8, the landlords have declared that, the tenants paid a security deposit of \$700.00; they are still in possession of that deposit. They are requesting to retain that security deposit towards monies owed by the tenants for damages to the apartment.

Analysis

52. The landlord's claim for losses has been successful, paragraph 41, in the amount of \$230.14, they shall retain this amount from the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

53. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$230.14.

Issue 6: Hearing expenses reimbursed \$49.76

54. The landlord submitted the receipts for \$20.00 for the cost of the hearing (LL#26) and \$29.76 for the cost of prepaid registered mail (LL#01). Policy with this Section is that a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit. As the landlord was awarded \$230.14 and as the security deposit is \$700.00, the landlord's claim for the filing fee does not succeed.

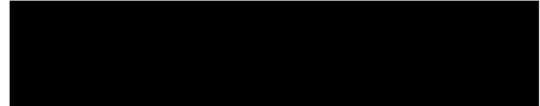
Summary of Decision

55. The landlords shall retain \$230.14 of the security deposit.

The landlords shall return \$469.86 of the security deposit to the tenants.

December 07, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office