

Residential Tenancies Tribunal

Application: 2022 No. 0879 NL

Decision 22-0879-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:05AM on 17 November 2022 via teleconference.
2. The applicant, [REDACTED] as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" also participated in the hearing.
4. Two affidavits of service was provided by the landlord (L#1) confirming that each tenant was served personally of the claim against them on 11 October 2022. The tenants confirmed service.
5. The details of the claim were presented as a month-to-month rental agreement that started on 01 September 2020. Monthly rent was \$1,175.00 POU, due on the first of the month, and a security deposit in the amount of \$587.50 was collected. The tenants vacated the rental premises on 01 September 2022 and a copy of the written rental agreement was provided (L#2).
6. 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

7. The landlord is seeking the following:
 - An order for rent to be paid in the amount of \$587.50;
 - An order for compensation paid for damages in the amount of \$6,076.01;
 - An order for payment of utilities in the amount of \$67.19;
 - An order for payment of cleaning costs in the amount of \$250.00; and
 - An order for the use of the full security deposit in the amount of \$587.50.

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 14, 15 and 23 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

10. The rental premises is a two unit apartment building located at [REDACTED] [REDACTED]. The tenants resided in unit A, the main floor unit and separate tenants resided in the downstairs apartment. The landlord indicated that the rental premises was constructed five years prior.
11. There were a number of discrepancies between the claim amounts on the landlord's application and his actual claim documents. However, these discrepancies were not flagged by the landlord and so I will be using the claim specific values on documents provided by the landlord (not the application for dispute resolution) going forward. This means that I will be considering the landlord's claim for \$6,076.01 for damages and \$250.00 for cleaning costs, within Damages amount of \$6,351.31 noted in the landlord's damage ledger.

Issue 1: Payment of Rent (\$1,175.00)

Landlord's Position

12. The landlord provided a copy of his rent ledger and testified that he is owed rent for the month of September 2022 (\$1,175.00) because the tenants gave 5 days notice of termination on 26 August 2022. The landlord acknowledged that he attended the rental premises in early August 2022 after the RNC were called regarding the tenant in the basement unit. The landlord also acknowledged being verbally informed by tenant1 at the time, that tenant1 would be vacating if the

landlord did not have the basement tenant removed. The landlord testified that he did not remove the basement tenant because the RNC allegedly informed him, that he cannot force a tenant out if rent is paid in full. The landlord also testified that he did not personally observe the reported altercation involving the downstairs tenant.

13. The landlord testified that the tenants found a replacement tenant for their rental unit, however, this new tenant did not take occupancy of the rental unit when originally intended (e.g., 01 September 2022). The landlord testified that she only took possession on 01 October 2022 because she requested that the landlord first repair various damaged items within the rental unit. The landlord specifically had the replacement tenant visit the rental premises and then report back.

Tenants' Position

14. The tenants disputed the landlord's claim for rent and testified that they had a replacement tenant available. Tenant1 also testified that they should not be required to pay rent because they provided the landlord with five days written notice of termination in response to the early August 2022 event where the RNC attended to the basement tenant. Tenant1 testified that this basement tenant allegedly threatened to "stab a neighbour in the throat" in front of tenant1's 10 year old daughter. Tenant1 testified that they vacated the rental premises for the safety of their children, and acknowledged that he did not issue a formal notice for termination to the landlord, such as required under section 23 of the *Act*, landlord's interference with peaceful enjoyment and privacy as a result of his failure to evict the offending basement tenant.
15. Regarding their intended replacement tenant who was to take possession 01 September 2022, both tenants testified repeatedly throughout the hearing of how the allegedly damaged items were damaged prior to their taking possession of the rental unit. Tenant1 also testified that the replacement tenant took occupancy of the rental premises earlier than indicated by the landlord (e.g., 20 September 2022 instead of 01 October 2022). Tenant2 then testified that the replacement tenant is the grandmother of her children and that the tenants in fact, moved into the nearby rental premises previously occupied by the replacement tenant.

Analysis

16. I accept that the landlord and tenants agree there was an incident in early August connected to the actions of the basement tenant, and that the RNC allegedly advised the landlord against removing the basement tenant if their rent was paid in full. Concerns with the basement tenant then led to the tenants vacating the main floor of rental premises because they felt it was unsafe to live with their family within the same rental premises. I also accept that the tenants did not cite a particular section of legislation when they provided their notice of termination.

17. Regarding the tenants' efforts to retain a replacement tenant from 01 September 2022 onwards, I received conflicting evidence. I was also informed that the replacement tenant is the grandmother of tenant2's children. Taking this into consideration, along with the tenants' claims that the majority of damage items were pre-existing, I was not convinced by the landlord's testimony in paragraph 13. I specifically find that the landlord failed to establish on the balance of probabilities that he is entitled to payment of rent in the amount claimed because he failed to provide verifiable evidence that the tenants alone, were responsible for the damages that allegedly resulted in his not receiving rent for the month of September 2022.
18. Without supporting documentation (either of the state of the premises or his conversations with the replacement tenant), I was not able to confirm for example, that the replacement tenant did not on her own free will, negotiate an agreement with the landlord that had him first repair the rental premises. That this replacement tenant was a grandmother of the tenants' children, caused me to doubt the landlord's argument that she had no knowledge of the state of the rental premises prior to her agreeing to rent.

Decision

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

Issue 2: Payment of Utilities (\$67.19)

Landlord's Position

20. The landlord claimed costs of \$67.19 incurred in response to the tenants cancelling their NL Power account on 26 August 2022. He did not submit proof of the email from NL Power regarding this cancelation, nor did he provide bills from NL Power in this amount.

Tenants' Position

21. Tenant1 testified that he previously offered to pay this money to the landlord. Both tenants acknowledged that they owe the landlord \$67.19 because they terminated their NL Power account on 26 August 2022.

Analysis

22. Because the tenants acknowledge this expense as a valid expense, I will award the landlord compensation for the full amount despite his failure to provide documentary evidence to support his claim.

Decision

23. The landlord's claim for payment of utilities succeeds in the amount of \$67.19.

Issue 3: Compensation for Damages (\$6,351.31)

General Considerations

24. 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).
25. 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.
26. The landlord testified that he did not conduct a move in or a move out condition inspection report of the rental unit with the tenants. He provided a series of photos of the rental unit after the tenants vacated (L#3), but did not provide photos of the rental unit prior to occupancy in 2020. Also of note, is that the photos provided by the landlord were not organized in any logical way (e.g., room by room) or consistently identified.
27. The landlord also submitted a damage ledger specific to the repairs completed at the rental premises (L#5). Each of the 14 items with costs attached were reviewed separately during the hearing against relevant evidence. Of note is that the tenants referred to a series of text conversations throughout the hearing but they did not submit any evidence to this tribunal.

Damage Item 1 – What is the damaged item? No associated cost – not discussed

Damage Item 2 – Cleaning \$200.00

Landlord's Position

28. The landlord testified that he and his wife spent 40 hours cleaning the rental premises. He vaguely referred to photos submitted (L#4) showing debris behind appliances in the rental unit, and testified that he had to clean windows because it looked like "someone sprayed coke" all over.

Tenants' Position

29. The tenants disputed this claim for cleaning. Tenant1 testified that they did their best to clean prior to vacating and tenant2 testified that multiple hours of cleaning were required after they first took occupancy of the rental premises. Tenant2 stated that the rental unit was left in no worse shape than when they first took possession of it two years prior. Tenant1 acknowledged the dirty window sills and dirt shown behind appliances in the pictures, and apologized. Tenant1 summarized his testimony by stating that it was hard to clean because they were texted constantly to ask if they have yet vacated the rental premises.

Analysis - Cleaning

30. I acknowledge photos depicting a rental unit requiring cleaning behind appliances, and I accept that the landlord and his wife spent 40 hours cleaning. Because however, I was not provided with equivalent photos or other documentation related to the state of the rental premises prior to occupancy, I am unable to ascertain the extent to which this cleaning was directly caused by the tenants. Regardless, the tenants acknowledged not cleaning window sills and behind appliances, and so I will arbitrarily award compensation to the landlord for 4 hours of cleaning. According to Residential Tenancies Policy 09-005, the maximum claimable hourly rate for cleaning is \$21.70 and so I find that the landlord is entitled to \$86.80 (e.g., 4 x \$21.70).

Decision - Cleaning

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

Damage Item 3 - Removal of black marks, gum and dirt on laminate \$50.00

Landlord's Position

32. The landlord testified that 2.5 hours was spent removing a series of marks and requested compensation for his time. The landlord acknowledged that no photos were submitted depicting the offending marks, nor were photos provided of the flooring prior to occupancy by the tenant.

Tenant's Position

33. The tenants disputed this labour claim related to the laminate flooring. Tenant2 testified that any marks on the floor existed prior to their occupancy of the rental premises.

Analysis – removal of black marks, gum and dirt from laminate flooring

34. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for floor cleaning. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision

35. The landlord's claim for compensation for removal of black marks, gum and dirt from laminate flooring did not succeed in any amount.

Damage Item 4 - Replacement of Front Entry Carpet

Landlord's Position

36. The landlord referred to photos submitted (see P2 in L#3) of a dirty looking entry way carpet and testified that he incurred costs in the amount of \$789.74 for replacing it. The landlord testified that he has receipts but that he did not submit them to this tribunal. He also stated that the original carpet was 3 years old.

Tenants' Position

37. The tenants disputed this claim for compensation and they also disputed the age of the carpet. Tenant2 testified that she steam cleaned the carpet when she first took possession of the rental unit. Tenant1 then testified that they did not steam clean the carpet prior to vacating because they were allegedly informed that the carpet would be replaced after they vacated.

Analysis – Front entranceway carpet replacement

38. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for carpet replacement. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Front entranceway carpet replacement.

39. The landlords claim for compensation for carpet replacement does not succeed in any amount.

Damage Item 5 – Laminate and Tile Flooring Replacement

Landlord's Position

40. The landlord testified that he had to replace 5 year old flooring throughout the rental premises because it was chipped as a result of the tenants. The landlord stated that he has a receipt but that he did not submit it. The landlord acknowledged that he did provide photos of the flooring prior to the occupancy by the tenants.

Tenant's Position

41. The tenants disputed the claim for flooring replacement. Tenant1 testified that the flooring was damaged and appeared to be separating when they took occupancy. Tenant2 testified that she tried to bring the landlords attention to the laminate flooring when they first moved in.

Analysis – Laminate and Tile Flooring Replacement

42. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for flooring replacement. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision

43. The landlord's claim for compensation for laminate and tile flooring replacement does not succeed in any amount.

Damage item 6 – supply and install ½ and ¼ round in kitchen

44. This item was not specifically discussed during the hearing. The landlord's claim for compensation does not succeed in any amount because he failed to establish on the balance of probabilities that:
 - The previous items were indeed damaged by the tenants; and
 - That he in fact incurred the specified replacement costs.

Damage Item 7 – drywall repairs and painting \$1,100.00

Landlord's Position

45. The landlord testified that he paid his contractors \$1,100.00 to fix damage to the drywall in the rental premises and paint. He did not provide a receipt and he also did not refer to any specific photos depicting the state of the drywall after the tenants vacated. The landlord testified that some parts of the rental premises were painted prior to it being occupied by the tenants, but he also did not directly

connect these areas to the areas said to have required painting after the tenants vacated.

46. The landlord returned to the question of drywall repair later in the hearing to specifically address concerns with the door of the master bedroom.

Tenants' Position

47. Tenant1 testified that they caused some damage to the walls when removing the posters and items hung by their teenagers (see P# in L#3). He spoke further to state that he was unable to paint over this damage due to the time constraints of vacating within 5 days. Tenant1 also testified that he previously offered to the landlord, that the landlord could retain the full value of the security deposit as compensation for some of the items claimed by the landlord.
48. Regarding the door in the master bedroom, tenant2 acknowledged accidentally damaging two pieces of molding. Tenant1 testified that it after this happened that they observed what appeared to be a structural problem with the placement of the door box and how this impacted the door itself. Tenant1 referred to a picture of this door box provided on the middle of the left hand side of the P2 photo document (L#3).

Analysis – Drywall repair and painting

49. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for drywall repair and painting. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants. That said, the tenants did acknowledge causing some minor damage and so I will arbitrarily award compensation in the amount of \$308.51.

Decision - Drywall repair and painting

50. The landlord's claim for compensation for drywall repair and painting succeeds in the amount of \$308.51.

Damage Item 8 – Removal of garbage (\$75.04)

Landlord's Position

51. The landlord referred to photos provided of garbage piled outside of the rental premises (see P2 in L#3) and testified that he incurred costs in the amount of \$75.04 to purchase bags for removing the garbage and then removing said garbage. He did not provide any receipts or other documentation related to these costs.

Tenants' Position

52. Tenant1 acknowledged the pictures provided or garbage bags outside of the rental premises and testified that he personally bagged all garbage and also removed all garbage himself.

Analysis – Removal of Garbage

53. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for garbage removal. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Removal of Garbage

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

Damage Item 9 – Replacement of all window screens (\$50.00)

Landlord's Position

55. The landlord testified that he incurred costs well in excess of the amount claimed to replace all window screens in the rental premises. He did not provide any documentation or fully explain his claim for \$50.00. Nor did he provide any visual documentation related to the state of the window screens prior to the rental premises being occupied by the tenants.

Tenants' Position

56. Tenant1 testified that there was only a single window screen in the rental premises when they took possession, and that this screen was torn prior to their moving in.

Analysis – Window Screens

57. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for replacement of window screens. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Window Screens

58. The landlord's claim for compensation for window screens does not succeed in any amount.

Damage Item 10 – Replace Closet and Swing Doors \$1190.80

Landlord's Position

59. The landlord testified that he incurred costs in the amount claimed to replace purchase and properly replace damaged closet and swing doors in the rental premises. He did not directly refer to any photos provided after the rental premises and he acknowledged that he had no documentation of the state of the rental premises prior to it being occupied by the tenants. The landlord testified that he had the receipt for the amount claimed, and acknowledged that he did not submit the receipt to this tribunal.

Tenants' Position

60. Tenant1 testified that all doors and closet doors were in the same shape as when they took possession as when they vacated. Tenant2 testified that she attempted to have the landlord fix the broken doors after they took originally took possession of the rental premises. Tenant1 testified that the one door replaced by the landlord, was in the exact same proper condition as when it was installed, as when they vacated.

Analysis – Replace Closet and Swing Doors

61. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for replacement of closet and swing doors. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Replace Closet and Swing Doors

62. The landlord's claim for compensation for replacement of closet and swing doors does not succeed in any amount.

Damage Item 11 – Repair Tub

Landlord's Position

63. The landlord referred to a photo provided of a stain in a tub and testified that he had to purchase a repair kit to remove this stain. He did not provide documentation related to costs incurred for repairing the tub and he did not provide evidence related to the tub prior to the tenants' occupancy of the rental premises.

Tenants' Position

64. Tenant1 testified that there was drywall repair work occurring prior to their occupancy of the rental premises, and that contractors appeared to be using the tub for cleaning their tools. Tenant1 testified that he believes this was the cause of the stain in the tub, and that the stain did not bother his family because they would only shower in the tub.

Analysis – Repair Tub

65. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for tub repair. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision

66. The landlord's claim for compensation for tub repair does not succeed in any amount.

Damage Item 12 – Heater replacement \$162.34

Landlord's Position

67. The landlord testified that he had to replace the heater in the kitchen because it was hanging off the wall. He did not provide photos prior to occupancy or post occupancy of the damaged heater. He also did not provide any documentation related to the claimed costs incurred.

Tenants' Position

68. Tenant2 testified that a part of the heater in the kitchen got caught on her sock one day and "popped off" but that this part was easily "popped back in". The tenants both disputed the landlord's claim that the heater was hanging off the wall when they vacated the rental premises.

Analysis – Heater Replacement

69. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for heater replacement. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision

70. The landlord's claim for compensation for a heater in the rental unit does not succeed in any amount.

Damage item 13 – Repair Laundry room floor

Landlord's Position

71. The landlord testified that he incurred costs in the amount of \$80.00 to repair a damaged section of the laundry room floor. He did not provide documentation related to payment of costs incurred and he also did not provide documentation of the state of the laundry room floor prior to the tenants' occupancy of the rental premises.

Tenants' Position

72. Tenant1 confirmed that the post occupancy photo of the laundry room floor could be found on the top right of P2 in L#3. Tenant2 testified that this floor was likely damaged by the large dogs of the previous tenant. She testified that she has two 5 pound dogs who would be incapable of such damage. The tenants both testified that the floor was damaged prior to their occupancy of the rental premises.

Analysis – Laundry Room Floor Repair

73. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for laundry tub repair. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Laundry Room Floor Repair

74. The landlord's claim for compensation for laundry room floor repair does not succeed in any amount.

Damage Item 14 – Smoke Alarm Replacement \$47.45

Landlord's Position

75. The landlord testified that he incurred costs to replace a smoke alarm that was hanging from the ceiling after the tenants vacated. He did not provide evidence of the state of the affected smoke alarm prior to or post occupancy by the tenants and he also did not provide any documentation related to the costs incurred for replacing the affected smoke alarm.

Tenants' Position

76. The tenants denied that a smoke alarm was left hanging from the ceiling. Tenant2 specifically testified that they never once touched any of the smoke alarms during their occupancy of the rental premises.

Analysis – Smoke Alarm Replacement

77. The landlord and tenants disputed this claim and provided competing testimony. The landlord also failed to provide verifiable documentation related to costs incurred for smoke alarm replacement. As such, he failed to establish on the balance of probabilities that he either incurred these costs and or that the costs were related to actions of the tenants.

Decision – Smoke Alarm Replacement

78. The landlord's claim for compensation for smoke alarm replacement does not succeed in any amount.

Damage Item 15 – Time spent picking up and delivering materials \$100.00

79. The landlord testified that he is seeking compensation for time spent picking up and delivering materials for repair work at the rental premises. The landlord and tenants were informed that this tribunal does not consider claims for compensation from landlords for their time spent doing the work required of landlords. As such, the landlord's claim for compensation for time spent does not succeed in any amount.

Summary Decision Damages

80. The landlord's total claim for compensation for damages succeeds in the amount of \$395.31 (\$86.80 + \$308.51).

Issue 4: Security Deposit \$587.50

Relevant Submissions

81. Evidence of a \$587.50 security deposit having been collected in the amount of \$587.50 is contained within the rental agreement (L#2). Tenant2 testified that he previously offered that the landlord retain the full value of the security deposit against the assorted claims.

Analysis

82. 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.*

83. As the amount owing to the landlord for utilities, damages, and hearing expenses matches the amount of the security deposit collected, I find that the landlord shall retain the full amount of the security deposit.

Decision

84. The landlord shall retain the full value of the \$587.50 security deposit collected.

Issue 5: Hearing Expenses

Relevant submissions

85. The landlord submitted a receipt in the amount of \$125.00 related to costs incurred for serving the tenants individual notice of his application for dispute resolution (L#5). He also claimed the \$20.00 expense of applying to this tribunal for disputed resolution.
86. According to Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF, hearing expenses for filing fees are not awarded when the landlord's award does not exceed the value of the amount of the security deposit collected. Because the landlord's larger claim for compensation was somewhat successful, I find that he is entitled to compensation for the invoiced hearing expenses of \$125.00.

Decision

87. The tenants shall pay the landlord \$125.00 in hearing expenses.

Summary of Decision

88. That the landlord shall retain the full security deposit in the amount of \$587.50.
89. The landlord is not entitled to payment from the tenants because the amounts awarded for compensation equal the amount of the security deposit collected.
 - a) Utilities owing.....\$67.19
 - b) Compensation for damages.....\$395.31
 - c) Hearing Expenses.....\$125.00
 - d) **Less Security Deposit.....(\$587.50)**
 - e) Total.....**\$00.00**

23 November 2022
Date

Jaclyn Casler
Residential Tenancies Tribunal