

Residential Tenancies Tribunal

Application: 2022 No. 0886 NL

Decision 22-0886-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 21 November 2022 via teleconference.
2. The applicant, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not participate in the hearing.
4. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served electronically [REDACTED] on 17 October 2022 and proof of service was provided. The landlord testified that she also served by registered mail, but did not provide proof of this service.
5. The details of the claim were presented as a month-to-month rental agreement that started in May 2009. Monthly rent was geared to income and regularly readjusted down from the market rate of \$708.00, often on a monthly basis. A security deposit in the amount of \$250.00 was collected and a copy of the written rental agreement was provided (L#2). The landlord testified that the tenancy ended on 01 May 2022 when the tenant vacated on her own accord.
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 \$6888.73;
 - An order for compensation paid for damages in the amount of \$1,241.67;
 - An order for the use of the full security deposit in the amount of \$250.00.

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 19 of the *Act*,
 - *Residential Tenancies Policies 9-005 Depreciation and Life Expectancy of Property; And*
 - Rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at [REDACTED] or [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issue 1: Payment of Rent (\$6888.73)

Landlord's Position

13. The rental premises is a duplex located at [REDACTED].
14. The landlord provided a copy of her rent ledger and testified that she tried very hard to work with the tenant because the tenant was good at communicating. The landlord testified that the tenant last had a zero dollar balance on her

account some time in 2019, that her monthly rent was regularly adjusted based on proof of income, and that the tenant would “pay what she could”. The landlord stated that she is “disappointed” to be participating in the hearing and testified that the tenant owes \$6,778.73 in rent as at 30 April 2022, shown on the ledger.

15. The landlord testified that she attempted to establish a repayment agreement with the tenant, but that the first payment under this agreement did not go through because the tenant’s bank account was closed. Copies of all relevant correspondence were provided (L#4).

Analysis

16. I accept the landlord’s testimony and evidence and find that the tenant owes \$6,778.73 in rent through to 30 April 2022.

Decision

17. The landlord’s claim for rent succeeds in the amount of \$6,778.73.

Issue 2: Compensation for Damages (\$1,241.67)

General Considerations

18. 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).
19. 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.

Relevant Submissions

20. The landlord submitted a damage ledger (L#5) and series of photos taken of the rental premises after the tenant vacated (L#6). The landlord testified that a move in condition inspection would have been conducted and pictures taken, but that these documents were not provided to this tribunal. The landlord testified that the rental premises was built 20-25 years ago, has a floor plan of approximately

1800 square feet, and has three bedrooms. The landlord testified that she is seeking compensation for the following:

- Materials (replace light fixtures \$141.35 + \$21.20 HST)
- Labour \$129.12 (3 hours at \$36.89)
- Flat rate (\$950.00)

Damage Item 1 – Materials (Replace Light Fixtures \$162.55)

21. The landlord referred to photos submitted to illustrate how multiple light fixtures were either missing completely, or were missing bulbs and shades after the tenant vacated. The landlord testified that she did not know if the light fixtures were original to the rental premises, or installed prior to the tenant's occupancy in 2009. The landlord stated that she is seeking compensation for the light fixtures for the amount listed on the damage ledger. She did not provide receipts related to the purchase of these light fixtures.

Analysis – Materials

22. According to Residential Tenancies Policy 09-005, light fixtures have a serviceable life of 10-15 years. As such, even a light fixture installed in 2009 could be considered to have exceeded its serviceable life (e.g., 13 years). Consequently, the landlord's claim for compensation for materials related to replacing light fixtures does not succeed in any amount.

Decision – Materials

23. The landlord's claim for compensation for materials does not succeed in any amount.

Damage Item 2 – Labour \$129.13

24. The landlord referred to the damage ledger and testified that she is seeking compensation for the following labour items:

- Replace light fixtures – 2 hours at \$36.89
- Reattach range hood - .5 hour at \$36.89
- Replace Floor tiles 1 hour at \$36.89

25. The landlord referred to multiple photos submitted of damaged floor tiles along with a series of photos of the kitchen area.

Analysis – Labour

26. As noted in paragraph 23, the landlord's claim for compensation for replacement light fixtures did not succeed, and so the associated claim for labour related to replacing light fixtures also does not succeed.

27. Regarding the landlord's claim for compensation related to the range hood (e.g., .5 hour), I accept this claim as presented because there was a photo submitted (see page 6 in L#6) of a range hood at an odd angle.
28. Regarding the landlord's claim for compensation for floor tiles, there were multiple photos submitted of damaged floor tiles. Consequently, I also accept this claim for compensation as presented (e.g., 1 hour).
29. According to Residential Tenancies Policy 09-005, the maximum hourly claimable rate for general labour is \$21.70. Because the landlord successfully claimed compensation for 1.5 hours of labour, she will be awarded \$32.55 (e.g., 21.70 x. 1.5).

Decision – Labour

30. The landlord's claim for compensation for labour succeeds in the amount of \$32.55.

Damage Item 3 – Flat Rate \$950.00

31. The landlord referred to the damage ledger submitted and testified that she is seeking compensation for a flat rate amount of \$950.00. The landlord referred to multiple photos submitted of assorted grime across various surfaces in the rental premises, some items left behind in the rental premises, and "poor plaster work" on multiple walls. The landlord testified that the Flat Rate amount represented work done by contractors and that she did not have access to the original invoice by the contractor. The landlord also did not know how many hours of labour this invoice represented. The landlord attempted to have the Maintenance Manager join the call, however, that manager was not available.

Analysis – Flat Rate

32. The landlord failed to establish on the balance of probabilities that she incurred charges in the amount of \$950.00 and entitled to repayment in that amount because:
 - She did not provide verifiable evidence related to the flat rate cost incurred (e.g., a quote or invoice etc.). Nor did she know how many hours of labour were involved in the costs charged of \$950.00.
 - She did not provide photos of the rental premises prior to the tenant's occupancy of the rental premises so as to allow for a comparison of the rental premises prior to and post occupancy. This is important information for considering claims for cleaning and damage repair.
 - I found that the post occupancy photos provided did not depict any significant debris or other items left behind in the rental premises, the vast majority of photos depicted an empty premises. Consequently, it was difficult to ascertain what balance of the \$950.00 claim was consumed by the contractors' claim for "removal of all items".

Decision – Flat Rate Charge

33. The landlord's claim for compensation for the flat rate charge does not succeed in any amount.

Summary Decision – Damages

34. The landlord's claim for compensation for damages succeeds in the amount of \$32.55.

Issue 3: Security Deposit \$250.00

Relevant Submissions

35. Evidence of a \$250.00 security deposit having been collected in the amount of \$587.50 is contained within the rental agreement (L#2). The landlord testified that she received an email from the tenant during the hearing, stating the tenant wanted to again, establish a payment plan with the landlord. The landlord testified that she had no written agreement with the tenant on how to dispose of the security deposit.

Analysis

36. 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.*

37. As the amount owing to the landlord for rent and damages is in excess of the security deposit collected, I find that the landlord is entitled to retain the full amount of \$250.00.

Decision

38. The landlord shall retain the full value of the \$250.00 security deposit collected.

Issue 4: Hearing Expenses

Relevant submissions

39. The landlord claimed the \$20.00 expense of applying for the hearing. As her claim has been successful, the tenant shall pay this expense.

Summary of Decision

40. The landlord shall retain the full security deposit in the amount of \$250.00.

41. The landlord is entitled to payment from the tenant in the amount of \$6,581.28, determined as follows:

a) Rent.....	\$6,778.73
b) Compensation for damages.....	\$32.55
c) Hearing Expenses.....	\$20.00
d) Less Security Deposit.....	(\$250.00)
e) Total.....	<u>\$6,581.28</u>

21 November 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal