

Residential Tenancies Tribunal

Application 2022-0909-NL

Decision 22-0909-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 24-November-2022 and then reconvened at 9:10 a.m. on 25-November-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference on 24- November-2022 but failed to attend on 25-November-2022.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that a process server notified the tenant of the hearing on 20-October-2022. The tenant confirmed the details of his notification. All parties agreed to reconvene, at the conclusion of the first hearing, for the time of the second hearing.

Issues before the Tribunal

5. The landlord is seeking:
 - Compensation for damages \$32,560.64
 - Compensation for damages – loss of rent \$2,350.00
 - Security deposit applied \$480.00
 - Hearing Expenses \$260.00

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, as well as, Residential Tenancies Policy 009.

Issue 1: Compensation for damages \$32,560.64

Landlord's Position

8. The landlord said that he entered a verbal rental agreement with the tenant in February 2020. The tenant paid \$700.00 rent per month and utilities are not included. The rental period is from the first day of each month until the last day and rent is due, in full, on the first day of each month. The landlord said that the tenant paid a security deposit of \$480.00 when he first moved in and that the landlord is still in possession of that deposit. The landlord said that the tenant gave notice 15-June-2022 that he would be moving the end of the month. The landlord said he was expecting that the tenant would have given him a full month's notice. The tenant did move on 30-June-2022.
9. The landlord said that the apartment was left in very poor condition after the tenant moved out. He said that it was very dirty, there were damages and there was something unidentifiable on all the walls that had to be removed, sanded and refinished. The landlord provided pictures (LL#02) of the apartment before the tenant moved in. The landlord said that the renter prior to this tenant kept the apartment in immaculate condition as shown in the pictures.
10. The landlord submitted a damages list (LL#05), as follows:
- Damages to shower unit, hole in the shower causing water to seep into the wall behind the tub surround and into the downstairs apartment; pictures provided (LL#03)
 - Plaster and paint throughout
 - Broken shelves in fridge
 - Broken drawer in stove
 - Repairs to flooring where transition strip is damaged and missing
 - Professionally cleaned throughout.
11. The landlord said that the appliances in the before pictures were the property of the previous tenant. He didn't submit for the replacement of the appliances because he had replaced the appliances in the pictures before the tenant moved in. He said he didn't have anything to show the condition of those appliances. He is therefore waiving his claim for appliances from the above list.
12. The landlord also provided an estimate from the contractor (LL#05) totaling \$32,560.64. The breakdown is as follows:

Item	Cost	Including taxes
Water seal behind surround	563.40	647.91
Tub and shower	2,400.00	2,760.00

Toilet replacement	301.99	347.29
Vanity cabinet	2,205.97	2,536.87
Remove flooring	6,000.00	n/a
Vinyl flooring	6,500.00	\$7,475.00
Baseboard	530.00	609.50
Compound for walls	72.58	83.47
Plaster tape	5.38	6.19
Sanding wall	599.90	n/a
Paint	859.90	988.89
Repair and refinish cabinets	3,000.00	n/a
Clean apartment	500.00	n/a
Labor	4,500.00	n/a
Casing	248.00	285.20
Screws	10.00	11.50
Brad nails	8.49	9.76
Brad nails	7.99	9.19

13. The landlord said that he contacted the tenant to do a walk through on the day he moved. The tenant said he wasn't available, so the landlord took the pictures provided, to show the condition of the apartment when he regained possession (LL#04).
14. The landlord provided pictures of the bathroom before and after the tenant lived there. The bathroom is incredibly unclean and the tenant has removed the shower door from the tub enclosure (LL#04 pictures 16A and 18A) and the shower door is in the laundry room. The holes from the door are visible in the picture. In addition to this the picture shows that the tub enclosure has been cracked (LL#04 picture 18A). The landlord said that due to the damages to the tub, water was able to get behind the enclosure and into the walls. There was a leak caused in the downstairs bathroom from this damage and the landlord provided pictures (LL#03).
15. The landlord said that a plumber was sent to check out where the leak in the downstairs apartment was coming from. They thought it was from water left running and it was only after the tenant moved that they realized it was accumulating from the holes in the shower.
16. The landlord is seeking reimbursement from the tenant for the cost of the tub enclosure and the water seal underneath the enclosure. The landlord said that he believes the tub enclosure to be 8 – 10 years old. The landlord is also seeking the cost of the vanity cabinet and toilet. He said that once the tub came out everything had to be moved and updated. He estimates these items at 8 – 10 years as well. The cost to update the bathroom totaling \$6,292.07, is as follows:

- Tub enclosure \$2,760.00
- Water seal 647.91
- Vanity cabinet 2,536.87

- Toilet 347.29
- Total..... \$6,292.07

17. The landlord said that there was tile flooring in the apartment. He provided pictures showing that it was lifted and damaged (LL#04 pictures 1A, 2A, 4A, & 12A). The landlord said that the flooring was in good condition when the tenant moved in. The landlord was unable to estimate how old the flooring was, he said he took over 5 years ago so the flooring is at least 6 years old. The landlord is seeking \$14,084.50 for the replacement of the flooring. The cost to replace the flooring also includes taking up the old floor and putting in new baseboard as follows:

- Remove floor \$6,000.00
- Vinyl..... 7,475.00
- Baseboard 609.50
- Total..... \$14,084.50

18. The landlord provided pictures of the walls (LL#04 pictures 9A & 17A) showing that there was something smeared on the apartment walls. The landlord said that the walls had to be washed, sanded, prepped and painted due to this substance. He said that the entire apartment was painted 2 years before. The cost of this repair totaling \$1,678.45 is as follows:

- Compound for walls \$83.47
- Plaster 6.19
- Sanding wall 599.90
- Paint 988.89
- Total \$1,678.45

19. The landlord provided pictures of the cabinets (LL#04 pictures 1A & 12A) in the kitchen. The cabinets are unclean. His estimate is that the cabinets cost \$3,000.00 to repair and refinish. He said that the cabinets are 10 years old.

20. The landlord's estimate for the cost of cleaning the apartment is \$500.00. The landlord said that the apartment was very dirty. He provided pictures (LL#04).

21. The final billing is a cost for supplies and labor for the entire project totaling \$4,815.65 is as follows:

- Labor \$4,500.00
- Casings 285.20
- Screws 11.50
- Brad nails 18.95
- Total \$4,815.65

Tenant's Position

22. The tenant agrees with the terms of the rental agreement and the ending of his lease, as stated by the landlord.

23. The tenant initially didn't recall the conversation with the landlord about the walkthrough, however, he did remember after, that he was working and couldn't attend when the landlord reached out to him.
24. The tenant recalls the plumber coming to his apartment to check to see if the leak in the apartment below was coming from an issue with his apartment, he said that they didn't find an issue with his washroom at that time.
25. The tenant said that he had friends over when he moved and they cleaned out the apartment, but acknowledges that they could have done a better job cleaning.
26. The tenant said he didn't know what was smeared on the walls.

Analysis

27. 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.

28. I accept the landlord's claim and evidence that the tenant left the apartment in an unclean state. The tenant said that he and his friends cleaned the apartment out, this statement is open to interpretation. I accept that the tenant removed his belongings and garbage but it is clear that they did not clean. The tenant doesn't dispute that the apartment is not clean.
29. The landlord has shown through his evidence that the tenant damaged the bathroom tub enclosure by removing the shower door and there are holes in the soap holders. The landlord provided evidence of water damages under the shower and in the walls. I accept that the tenant is responsible for this damage. The landlord said that the tub

enclosure is about 10 years old. In accordance with Residential Tenancies Policy 9-005 a tub enclosure should last 15 years. Therefore there are 5 years remaining; the tub enclosure and water seal cost the landlord $\$2,760.00 + 647.91 = \$3,407.91$. The tenant shall reimburse the landlord for $5/15 \times \$3,407.91 = \$1,136.00$.

30. The landlord had also claimed for the cost of the replacement of the toilet and the vanity cabinet. The landlord said that once the tub came out that the remainder had to be upgraded. The cost of upgrading an apartment is not the burden of the tenant and the landlord's claim for these repairs fail.
31. The landlord said that there was damages to the tile flooring in the apartment and he estimates the age to be 6 years old. The pictures provided show that the tile flooring appears to be peel and stick cushion floor tiles that are of a low grade. In accordance with Residential Tenancies Policy 9-005 vinyl sheet flooring (low grade) is expected to last 6 years. As this flooring has outlived its life expectancy, although it may have been in good condition and functional, it no longer has any monetary value. The cost to remove and replace this flooring is the burden of the landlord, not the tenant. This claim for loss fails.
32. The landlord has shown that the tenant smeared something on the walls that was costly to remove and repair. He said that the entire unit was painted 2 years ago. The damages to the walls are entirely the fault of the tenant and the repair shall be completely the responsibility of the tenant totaling \$689.56, as follows:
- Compound for walls \$83.47
 - Plaster 6.19
 - Sanding wall 599.90
 - Total \$689.56
33. The cost of paint totaling \$988.89 is part of regular upkeep. The landlord said that the apartment was painted throughout 2 years ago. In accordance with Residential Tenancies Policy 9-005 paint should last 5 years. Therefore the paint should have 3 years life expectancy remaining. The tenant shall reimburse the landlord for $3/5 \times \$988.89 = \593.33 for the cost of paint and primer.
34. The landlord provided pictures of the cabinets in the kitchen, it is evident that the cabinets are unclean, however damages have not been shown. The landlord has failed to prove this claim.
35. The landlord submitted for \$500.00 cleaning, included in his estimate, he has shown that this was necessary and it is the expectation and responsibility of the tenant to complete this work. The landlord shall be compensated fully for this expense.
36. The landlord's estimate has a blanket cost for labor and supplies. The cost of supplies appear to be tied to the cost of repairs to the flooring and the cabinets, this cost will not be awarded as those repairs are not the responsibility of the tenant. The cost of labor has not been broken down to show how many hours for each job. It is realistic to

assume that the cost to repair the walls and to install the tub surround would be time consuming. The remainder of the work: painting, replacing the flooring and cabinets would also require a number of hours. Based on other projects I will estimate that the plastering of the walls and install of the tub enclosure would require 1/3 of the labor billed. I find that the tenant will reimburse the landlord $1/3 \times \$4,500.00 = \$1,500.00$.

37. I find that the tenant shall reimburse the landlord \$4,418.89, for damages as follows:

- Tub enclosure and water seal \$1,136.00
- Repair of walls 689.56
- Paint and primer 593.33
- Cleaning 500.00
- Labor 1,500.00
- Total \$4,418.89

Decision

38. The landlord's claim for damages succeeds in the amount of \$4,418.89.

Issue 2: Compensation for damages rent loss \$2,350.00

Landlord's Position

39. The landlord has shown (paragraph 37) that the house was in a state of disrepair when he regained possession after the tenant moved 30-June-2022. He said he had new renters lined up to take possession on 01-July-2022. Due to the condition of the apartment and the repairs required the apartment was not ready until the middle of September 2022.
40. The landlord said that he had a contractor working on the outside of the building at the time the tenant moved out. He was able to contract that person to do the repairs required in the apartment. The contractor finished the exterior job and started on the apartment in early August and the apartment was almost completed 15-September-2022, at that time a new renter moved in.
41. The landlord said he couldn't find a contractor to begin the work immediately.
42. The landlord is seeking rent for July, August and September totaling \$2,100.00 for the time that his new tenants were unable to take occupancy due to the repairs that were being done. The landlord said that he had applied for the full month of September when he applied because he didn't know how long the repair was going to take.
43. The landlord said that the tenant also discontinued his heat and light, which then transferred to the landlord. The landlord is seeking reimbursement for this cost, totaling \$250.00. He said that he has received billing as follows:
- 13-July-2022 \$11.57

- 09-August-2022 37.38
- 07-September-2022 45.63
- Total \$94.58

44. The landlord didn't submit the billing for the heat and light.

Tenant's Position

45. The tenant said that the landlord brought the tenants by for a viewing on 14-June-2022 and he said that if the apartment was in a condition that was un-rentable, they should have noticed during the viewing.

Analysis

46. I accept the landlord's testimony that his new tenants could not take occupancy until the repairs were completed and he lost rental income during that time. Based on the landlord's testimony, it appears that the actual time required to complete the repairs was from early August until mid-September. The landlord said that the contractor that completed this work was doing exterior work on the building and began the apartment once the outside was completed. As the landlord hired the contractor to complete both jobs, it would seem that the landlord, as the purchaser of the service, could determine the order of the work. The landlord could have directed the contractor to complete the apartment first to mitigate the loss and have tenants move in sooner. The work in the apartment only required about one month and therefore the landlord shall be reimbursed \$700.00 for the one month.
47. The landlord also submitted for the heat and light bill that the tenant had disconnected when he moved. The landlord did not provide any supporting documentation to show the actual cost he incurred and subsequently I find that this claim fails.

Decision

48. The landlord's claim for damages due to loss of rent succeeds in the amount of \$700.00.

Issue 3: Security deposit applied to monies owed \$480.00

Landlord's position

49. As per paragraph 8, the landlord has declared that, the tenants paid a security deposit of \$480.00; he is still in possession of that deposit. He is requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

50. The landlord's claim for losses has been successful, paragraphs 38 & 48, he shall retain 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

51. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$480.00.

Issue 4: Hearing expenses reimbursed \$260.00

52. The landlord submitted receipts for \$260.00 for the cost of the hearing he submitted two receipts of \$120.00 each (LL#06 & 07) for the cost of a process server and his receipt of \$20.00 (LL#08) for the cost of his application fee and pursuant to policy 12.01, is entitled to reimbursement of those costs from the tenant.

Summary of Decision


53. The tenant shall pay to the landlord \$4,898.89, as follows:

- Damages \$4,418.89
- Compensation for lost rent 700.00
- Hearing expenses 260.00
- Less Security deposit (480.00)
- Total..... \$4,898.89

The landlord shall retain the security deposit against monies owed.

November 30, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office