

Residential Tenancies Tribunal

Application 2022 No. 942NL
Application 2022 No. 1016NL

Decision 22-0942-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:50 PM on 12 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

3. The tenants are seeking an order for refund of security deposit in the amount of \$500.00.
4. The landlord is seeking the following:
 - An order for a payment of \$308.50 in compensation for damages; and
 - Authorization to retain the \$500.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is sections 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord amended her application at the hearing and stated that she was now only seeking \$208.50 in compensation for damages.

Issue 1: Compensation for Damages - \$208.50

Relevant Submissions

The Landlord's Position

8. The landlord entered into a verbal rental agreement with the tenants on 08 August 2022. The agreed rent was set at \$1000.00 per month and the tenants had paid a \$500.00 security deposit.
9. The tenants gave the landlord a 1-month termination notice in September 2022, and they vacated the unit on 08 October 2022.
10. The landlord stated that she was required to carry out some cleaning when the tenants moved out, and she is seeking \$108.50 in compensation for 5 hours of her personal labour to carry out that work.
11. She stated that the tenant had kept a cat at the unit, and there were cat hairs found in numerous places. She stated that she was required to clean all the floors, and she also had to clean out all the cupboards in the bathroom and the kitchen. Additionally, in the kitchen, the landlord claimed she also had to clean all of the dishes that were in the cupboards. She also testified that there was some dried-on soap in the shower.
12. In support of her claim, the landlord pointed to her submitted photographs showing that there was some hairs in some cupboards and drawers, and that there were some on the floor as well.
13. Besides this cleaning, the landlord also complained that the tenant had damaged scratched a wall, and she pointed to her submitted photograph showing that damage. The landlord stated that her husband repaired that damage and she is seeking \$100.00 for the costs of purchasing paint and plaster. No receipt was submitted with her application. The landlord stated that the rental unit was last painted 2 years ago.

The Tenant's Position

14. Tenant1 stated that she had spent 2 days cleaning the apartment before it was turned over to the landlord and she described the unit as being "spotless" when they moved out. She testified that she had swept and mopped the floor twice before she left, and she denied that there was any cat hair in the unit.

15. She did acknowledge, though, that she had not cleaned the inside of the microwave and that she had overlooked the glass door to the shower. She also conceded that she had not vacuumed out the drawers, but she claimed that they were clean when they had moved out. She argued, though, that it would not have taken 5 hours to address those 2 minor items.
16. With respect to the scratch on the wall, tenant1 stated that it would not have cost \$100.00 to repair that minor damage. She also pointed out that they had not conducted any incoming or outgoing walkthrough with the landlord and she stated that she could not be sure as to whether those marks were made during this tenancy, or whether they were there before they moved in.

Analysis

17. 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.

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.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) *determining the rights and obligations of a landlord and tenant;*
- (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

18. With respect to the cleaning, I accept the landlord's claim that the unit was not perfectly cleaned after the tenants moved out, and the tenants conceded that they had not wiped out the microwave or cleaned the shower door. The landlord's photographs also show that she had found some hairs on the floors and in some drawers. Based on that photographic evidence, I don't believe it should have taken the landlord any more than 2 hours to address these minor issues. As such, I find that she is entitled to \$43.40 in compensation (\$21.70 per hour x 2 hours).

19. With respect to the damaged wall, I agree with tenant1 that as there was not report of an incoming inspection, the landlord has failed to establish that this damage had been caused by the tenants during their tenancy. The landlord also failed to produce any evidence to show that she had incurred \$100.00 to purchase the materials to carry out the repairs. Hence, that portion of her claim does not succeed.

Decision

20. The landlord's claim for compensation for damages succeeds in the amount of \$43.40.

Issue 2: Security Deposit

21. The tenants had paid a security deposit of \$500.00 on 08 August 2022, and a copy of an e-mail money transfer receipt was submitted with their application. As the landlord's claim for compensation for damages was partly successful, that deposit shall be disposed of as follows:

a) Refund of Security Deposit \$500.00

b) LESS: Compensation for Damages (\$43.40)

c) Total Owing to Tenants..... \$456.60

16 January 2023

Date

John R. Cook
Residential Tenancies Tribunal