

Residential Tenancies Tribunal

Application 2022-1034-NL

Decision 22-1034-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 22-January-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. Tenant1’s phone number ([REDACTED]) was out of service and tenant2’s number ([REDACTED]) went directly to voice mail; a message was left. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served tenant1 with notice of the hearing, electronically ([REDACTED]) by text-message, and tenant2 electronically ([REDACTED]) by email, on 19-December-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. The landlords are seeking
 - Compensation for damages \$6,251.00
 - Hearing expenses \$77.50

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 is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Residential Tenancies Policy 9.

Issue 1: Compensation for damages \$6,251.00

Landlords' Position

8. Landlord1 provided the written rental agreement (LL#02) and stated the terms as follows: The agreement is for a one year term beginning 15-April-2022 until 15-April-2023. The tenants moved out on 31-July-2022. They agreed to pay \$1,400.00 on the first day of each month. The payments however, were often paid in installments and when the tenants moved out they were still owing \$1,100.00 in rent. They had paid a security deposit of \$800.00 on 22-March-2022; landlord1 said that they retained the deposit towards rent owed.
9. Landlord1 stated that the day after the tenants moved she was speaking with tenant2 on the phone. Tenant2 had told her that their last night at the rental they had friends over to help them move and that people were using drugs. The police were called and after they arrived tenant2 was taken to a shelter. She said that tenant2 was difficult to understand and not making sense.
10. Landlord1 also said that tenant1 contacted them by text (LL#11) and had acknowledged that tenant2 had done some damages and left a mess.
11. Landlord1 explained that she and landlord2 live on the Labrador portion of the province and that the rental is on the Newfoundland portion. She said that there was a lot of garbage and mess left behind. They were hoping to have friends get rid of the garbage but there was just too much stuff. She acknowledged that tenant2's mother did come by and tried to pack up the garbage, however they finally had to hire a company to clean up the garbage and the house.
12. Landlord1 submitted into evidence the invoice (LL#08) for the work carried out by B'ye the Bay Cleaning Services. The work listed on the invoice is for 100 hours labor at \$37.00 an hour, plus supplies and taxes: for a total of \$5,701.70. The work completed is as follows:
 - Removal of all garbage and debris from building
 - Complete washing and sanitizing of two levels
 - Repairing and plastering of holes in walls
 - Painting of back bedroom, 2 accent walls in living room and kitchen cupboards
 - Mowing and trimming all grass around the home
 - Removal of garbage in the garage

- Dumpster rental
 - Removal of cat scent from flooring and walls
13. The landlords also provided pictures (LL#05 – LL#10) showing the garbage which was left behind and damages to the house. Landlord1 stated that the cleaners said they had to clean 5 times to remove the smell of cat urine from the house.
 14. Landlord1 said that the last time the house was painted was in 2019 and both landlords believe that of the 100 invoiced hours for labor, approximately 15 hours would have been used for painting the walls and cupboards.
 15. In addition to the damages completed by B'ye the Bay Cleaners; the front window was broken out and landlord1 provided the picture (LL#03) of the damaged window and the receipt for window repair (LL#04) totaling \$550.00.
 16. Landlord1 testified that they didn't do a walk through before or after the tenancy. As she stated in paragraph 11, they live in Labrador and the rental is in Newfoundland. She said that their friends took the pictures of the condition of the house after the tenants moved. She also included texts (LL#14) from tenant1 on 28-April-2022, just after they took occupancy, where he described the place as beautiful; she believes this text as well as the text (LL#11) saying that tenant2 had done some damages, shows that when the tenants moved in the house was in good condition .
 17. The landlords are seeking \$6,251.00 in compensation for the cost of repairs to the house after the tenants moved.

Analysis

18. 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.

19. 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 cost 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.

20. The evidence, including pictures, show that the cleaning required and damages are not caused by depreciation and as per Section 10.2 of the *Act*; they are the responsibility of the tenants. The additional evidence of text conversations with tenant1 support the testimony of landlord1 that the house was in good condition when the tenants moved in. In addition to this, the landlords provided receipts showing the actual cost paid to repair the house after the landlords regained possession of the property. The applicants have met all three conditions for a damage claim as listed in paragraph 19.
21. The landlords estimated that the cleaning company spent approximately 15 hours painting. Painting is an ongoing requirement for any property owner. Our policy states that paint should last approximately 5 years. The landlords acknowledge that the house was painted in 2019 and was 3 years old at the time of the repairs. This depreciation must be factored in. As the paint had 2 years lifespan remaining, the landlords will be reimbursed for this cost. $\frac{2}{5}$ ths of 15 hours equals 6 hours. The $\frac{3}{5}$ ths of the 15 hours would be the expense of the landlords and therefore 9 hours labor will be removed from the cost of the billing: $9 \times \$37.00 \text{ per hour} \times \text{taxes} = \382.95 .
22. In addition to the cost of the cleaning company, I find that the cost to repair the broken window will also be fully compensated totaling \$550.00.
23. I accept the landlords' evidence and testimony that the tenants caused damage and left the house requiring repairs and cleaning. I find that the tenants shall reimburse the landlords \$5,868.75 for the costs incurred, as follows:
- Cleaners\$5,701.70
 - Less 9 hours painting (382.95)
 - Window repair 550.00
 - Total \$5,868.75

Decision

24. The landlords' claim for compensation for damages succeeds in the amount of \$5,868.75.

Issue 2: Hearing expenses reimbursed \$20.00

25. The landlords submitted the receipts for \$20.00 for the cost of the application (LL#12) and \$57.50 for their affidavit to be notarized (LL#01); pursuant to policy 12.01, as their claim has been successful they are entitled to reimbursement of those costs from the tenant.


Summary of Decision

26. The tenants shall reimburse the landlords \$5,946.25, as follows:

- Damages \$5,868.75
- Hearing Expenses..... 77.50
- Total \$5,946.25

January 26, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office