

Residential Tenancies Tribunal

Applications 2022 No. 1061 NL
2023 No. 0212 NL

Decision 22-1061-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 06 April 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” participated in the hearing and represented the interests of her husband [REDACTED]. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2” also participated in the hearing.
3. The hearing date for application 2022-1061-NL was originally scheduled for 08 March 2023 but postponed due to inadequate service of evidence between the parties. Notice of this postponement was sent by the Residential Tenancies Office. Tenant1 was then provided with his documents to serve upon the landlords on 09 March 2023. He testified that he sent the landlord all information related to his claim by registered mail on 27 February 2023, the same day it was submitted to the Residential Tenancies Office. Tenant1 testified that he then served the landlord with formal notice of his claim on 20 March 2023 but failed to submit an affidavit of service with proof of service. The landlord nevertheless acknowledged receipt of both document packages, and testified that she wished to waive her right to service so that we could proceed with both claims.
4. The parties had an originally fixed term rental agreement that started 01 September 2019 (L#1) and ended on 31 December 2021. Monthly rent was set at \$1,000.00, with utilities paid separately and a security deposit in the amount of \$750.00 was collected.
5. 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. In these proceedings the standard of proof 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

6. The landlord is seeking the following:
 - An order for compensation paid for inconvenience in the amount of \$13,062.23; and
 - An order to retain the full value of the \$750.00 security deposit.
7. The tenant is seeking the following:
 - An order for rent to be refunded in the amount of \$7,600.00;
 - An order for compensation paid for inconvenience in the amount of \$4,614.00;
 - An order for payment of Other in the amount of \$1,466.75; and
 - An order for the full return of a \$750.00 security deposit

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, 16 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a single family dwelling on rectangular lot (70 x 140) located at [REDACTED]. Of note is that the landlords reside next door in [REDACTED]. The landlord testified that the rental premises is approximately 26-28 years old.
11. Tenant1 raised a jurisdictional concern and formally requested that the landlord's application be dismissed since it was made to the Residential Tenancies Office on 22 November 2022, which he believed to be beyond the one year timeframe allowed by 42(1) of the *Act*. He justified this request by referring to a section 18 termination notice that was received on 29 September 2021 with a stated move out date of 31 December 2021 (T#1). All parties were informed that 29 September 2021 is only considered the date "notice" is provided, and not the date that the tenancy itself is terminated. Consequently, I seized jurisdiction of this dispute since the landlord's application was received on 22 November 2022 (e.g., within the 1 year time frame allowed by the *Act*).

Issue 1: Landlord's Request for Compensation for Inconvenience (\$13,062.23) General Submissions

12. The landlord submitted a written summary of her itemized claims for compensation (L#2). Each of these claims were individually reviewed to allow

both parties to provide relevant testimony and refer to documentary evidence submitted.

Landlord Inconvenience #1 – Yard Repair (\$6,095.00)

Landlord's Position

13. The landlord submitted a quote from Marine Contractors (L#3) in the amount claimed for removal of her deck to allow for the decontamination of the soil beneath it, replacement of her same deck, and then installation of new sod around its perimeter. The landlord referred to carefully maintained evidence of dog feces she located in the tenant's yard. Multiple photos were submitted (L#4). The landlord also referred to text messages submitted where she repeatedly requested that the tenants clean up the feces (L#5).
14. The landlord testified that the work is needed to deal with the smell left behind by the tenants' dogs. The landlord testified that the tenants' dogs regularly relieved themselves on the deck which created the smell. She also testified that the dogs wrecked the lawn around the deck. The landlord agreed that no move in or move out condition inspection was conducted with the tenants and that no visual evidence of the condition of the property prior to occupancy by the tenants was submitted.

Tenant's Position

15. Tenant1 disputed the quote provided by the landlord. He testified that the deck was in poor condition prior to tenancy and that the quote provided suggests that it will be demolished. Tenant1 denied that his dogs would urinate or defecate on the deck but acknowledged urine burns in the lawn on the perimeter of the deck caused by his dogs. However, tenant1 testified that this was only because he shortened his dogs' leads to ensure their own safety in response to the landlords' near constant presence on the property of his rental premises. Tenant1 testified that his requests to conduct both a move in and move out condition inspection were refused by the landlord.

Analysis

16. It is noted in the rental agreement that the tenants were allowed to have "2 medium dogs" (see clause 6 in L#1). Where the landlord spent a significant amount of time speaking to her efforts spent monitoring the tenants' actions in response to the bathroom habits of their two dogs, she provided surprisingly little verifiable evidence related to her actual claim for compensation. I also found her to be contradictory with her claims that the soil under the deck needed to be "decontaminated" to deal with the smell since she also claimed that the deck itself is fine and she wants it retained. This did not make sense because a reasonable person would have expected the deck itself to be damaged by the alleged bathroom habits of two animals.

17. With respect the portion of the claim involving the re-sodding of lawn, I accept tenant1's admission that the lawn was burnt by his dogs' urine. However I also accept that this only happened as a result of tenant1 trying to keep his dogs safe by shortening their leads in response to the landlords' frequent presence on the tenants' property. Consequently, I find that the landlord failed to establish on the balance of probabilities that the actions of the tenants alone resulted in her claim for compensation.

Decision

18. The landlord's claim for compensation for inconvenience related to the yard does not succeed in any amount.

Landlord Inconvenience #2 – Cleaning (\$250.00)

Landlord's Position

19. The landlord referred to her signed rental agreement (L#1), specifically clause 14 where it is written that:

Tenant hereby agrees to accept the property in its present state of cleanliness. They agree to return the property in the same condition or better, or pay a minimum \$250.00 cleaning fee to cover Landlord costs for having the property professionally cleaned"

20. She also referred to photos submitted from the premises days after the tenants vacated (L#6) to depict the claimed need for cleaning. She testified that she spent 10 hours cleaning so as to return the premises to the same "immaculate state" it was in when the tenants first took occupancy. The landlord emphasized that there was dirt behind appliances, sink drains and toilet seats.

Tenant's Position

21. Tenant1 rejected the landlords claim for cleaning and testified that they thoroughly cleaned prior to vacating. He referred to photos submitted (T#3).

Analysis

22. While I acknowledge that the landlord included a \$250.00 cleaning charge in her rental agreement, I find that she failed to establish on the balance of probabilities this much cleaning was indeed required. I say this because I was not provided with visual evidence related to the condition of the premises prior to occupancy by the tenants needed to verify whether or not the tenants left the premises in worse condition than when it was acquired. Consequently I will arbitrarily award compensation for \$67.50 for three hours of cleaning (e.g., 3 x \$22.50) in accordance with Residential Tenancies Policy 09-05.

Decision

23. The landlord's claim for compensation for cleaning succeeds in the amount of \$67.50.

Landlord Inconvenience #3 – Painting & Stairwell Repair (\$5,290.00)

Landlord's Position

24. The landlord referred to a quote said to be submitted from Pomeroy Contracting in the amount claimed for complete painting in the premises, plaster repair and replacement of a "stair spindle" damaged by the tenants (L#7). The landlord testified that the premises was previously painted in 2018 and that she tried to get multiple quotes for the work needed, but that she could only get the quote submitted. She referred to photos of the damaged newel post (L#8) at the base of the stairway and testified that that tenants drilled multiple holes without permission to hang a baby gate.
25. Then regarding the need for painting, the landlord testified that she allowed the tenants to paint the baby's room but argued that the tenants got multiple spots of paint on the ceiling (L#9). The landlord also referred to photos depicting how the tenants "washed the texture off the walls" as well as various areas showing wall stains on the ceilings and the perimeter of windows throughout the premises. The landlord testified that this wall staining happened after a water leak caused by the tenants (L#10). In addition to these photos, the landlord made reference to various pictures of minor screw holes in the walls. She testified that the work required has yet to be completed and that that the quote is for 7,000 square feet of painting because the approximately 1800 square foot home has cathedral ceilings that also need to be painted. The landlord also claimed that the tenants would not close windows.

Tenant's Position

26. Tenant1 rejected the landlords claim for compensation and argued that the quote submitted does not identify component costs. Tenant1 acknowledged drilling holes into the newel posts and argued that these holes could easily be fixed with some wood glue and stain. Regarding the landlord's claim for painting, tenant1 testified that the water stain identified by the landlord occurred shortly after they took occupancy at no fault of their own. Tenant1 also spoke extensively of time spent during the tenancy moping up water from the wooden framed windows throughout the premises.

Analysis

27. According to Residential Tenancies Policy 09-05, the expected serviceable life of an interior paint job is 3 – 5 years. Where the landlord testified that the premises was painted in 2018, it could be argued that the paint job in question has exceeded its expected serviceable life for tenants who vacated on 31 December 2021. This conclusion is supported by the landlord's failure to submit verifiable evidence related to the condition of the premises prior to occupancy by the tenants.
28. Furthermore, regarding the landlord's claims of wall staining as shown in her various photos of staining and poor quality drywall seams along various areas of the ceiling in the premises, I find these photos support the tenants' claim that the windows in the premises would leak resulting in a consistent inflow of water which they attempted to manage (see paragraphs 74 – 78). I did not accept the landlord's argument that the tenants would leave windows open in the rain as she provided no convincing evidence that they did so either intentionally or through neglect. Likewise, I do not award any compensation to the landlord for the tenants' failure to provide notice of leaking windows as it appears likely that she would have denied and or rejected any such notice provided.
29. Consequently, I am unconvinced that the actions of the tenants, other than when painting the ceiling of the baby's room, resulted in the need to paint the ceiling. This means that I will arbitrarily award compensation to the landlord for \$250.00 for labour related painting of the ceiling in the baby's room.
30. Regarding the newel post, I accept the landlord's argument that this item was damaged by the tenants (e.g., the multiple drilled holes) and needing replacement. Where the landlord failed to submit replacement costs related to the newel post only, I accept upon review of photos depicting the interior of the rental premises, that the newel post is part of what could be called a "statement staircase". Consequently, I accept that the removal and replacement of this item so that it matches the rest of the stair case could easily cost \$500.00 and award compensation for such.
31. Lastly, regarding the landlord's claim for compensation for plaster repair, I reviewed the photos submitted and I agree that the tenants left a series of drill holes throughout the premises. Where the landlord failed to provide sufficient evidence on the balance of probabilities that these holes represented more than typical wear and tear, I will arbitrarily award compensation for \$50.00. Finally, regarding the landlords claim for compensation for "texture being worn off", I find she failed to submit convincing evidence of this claim and its significance so no specific compensation will be awarded.

Decision

32. The landlord's claim for compensation for painting and stairwell repair succeeds in the amount of \$800.00 (e.g., \$250.00 + \$500.00 + \$50.00.).

Landlord Inconvenience #4 – Keys (\$227.23)

33. The landlord attempted to claim compensation for the purchase of two new doorknobs for the rental premises, alleging that keys were not returned. She was informed that this tribunal does not award compensation for such costs as they are considered typical expenses related to security of the new tenant and thus a responsibility of a landlord.

Landlord Inconvenience #5 – Failure to Remove Garbage (\$750.00)

Landlord's Position

34. The landlord referred again to her rental agreement, (L#1), this time to clause 12 where it is written in part that:

“Tenant to maintain dwelling unit as follows:

--

2) Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3) Dispose from his dwelling unit all rubbish, garbage and other waste in a clean and safe manner.

--

Resident... acknowledges that failure to perform the obligations herein stipulated will be considered grounds for termination of this agreement and loss of any or all deposits.”

35. The landlord testified that the tenants would regularly keep piles of garbage bags, namely the bags of dog poop, on the porch of the premises for extended durations despite the availability of weekly garbage collection. The landlord testified that no visual proof of any such delays in disposal or of damage caused none was available.

Tenant's Position

36. Tenant1 rejected the landlords claim for compensation and testified that any and all refuses was regularly removed.

Analysis

37. Where the landlord claimed that she is entitled to the full value of the tenants' security deposit for violating a custom rental agreement (e.g., not the standard template agreement with its standards tenancy conditions) I disagree. In particular, I found the landlord disingenuous with her claims for damage and compensation considering she is not seeking compensation for the deck itself. Additionally, where the landlord failed to provide verifiable proof of the tenants

using the deck to store garbage for an indeterminate amount of time, I can only accept the testimony of tenant1 who stated that he regularly disposed of any and all garbage. Consequently, I find that the landlord failed to establish on the balance of probabilities that she is entitled to compensation.

Decision

38. The landlord's claim for compensation for removal of refuse does not succeed in any amount.

Landlord Inconvenience #6 – Late Fees (\$150.00)

Landlord's Position

39. The landlord referred again to the rental agreement and testified that she is entitled to compensation in the amount claimed because it is written that any late payment results in a \$50 charge by the tenants. She stated that rent was paid late on August 2020, May 2021 and September 2021.

Tenant's Position

40. The tenant acknowledged that rent was paid late, but testified it was only 1 day late and not three because as written in the rental agreement, rent is to be paid on the first day of each month.

Analysis

41. Section 15 of the Residential Tenancies Act, 2018 states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

42. The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

43. Regarding this dispute, I accept that parties agree there were three occasions in which rent was paid late. With respect to how many days late, I accept that the parties disagreed when rent was due. Given that the landlord is responsible for establishing her right to compensation on the balance of probabilities, I find that she failed to fully establish that rent was due on the day *before* the first of every month. Consequently, I accept the tenant's dispute of the claim and find that the landlord is entitled to \$15.00 compensation for the three occasions that the tenants were 1 day (e.g., \$5.00 charge) late paying rent.

Decision

44. The landlord's claim for compensation related to late fees succeeds in the amount of \$15.00.

Landlord Inconvenience #7 – Rent Increase Withheld (\$300.00)

45. The landlord testified that she is seeking payment of \$300.00 representing the \$100.00 rent increase not paid by the tenants between October 2021 and December 2021. As discussed later in this report (see paragraphs 54-57) the landlord was found to have not issued a valid rental increase and so her claims for compensation do not succeed in any amount.

Landlord Inconvenience #8 – Withhold Damage Deposit (\$750.00)

46. The landlord's request to retain the full value of the tenant's damage deposit is dealt with in Issue 6 of this report.

Summary Decision – Landlord's Request for Compensation for Inconvenience

47. The landlord's total request for compensation for inconvenience succeeds in the amount of \$882.50 (\$67.50+ \$800.00 + \$15.00).

Issue 2: Tenant's Claim for Compensation for Inconvenience (\$4,614.00) General Submissions

48. Tenant1 submitted a written summary of his itemized claims for compensation (T#2) including \$1,780.00 for time spent responding to the claim, \$534.00 for two days lost from work due to the stress of the landlords and \$2000.00 for a "campaign of harassment" from the landlord. He was informed that this tribunal has no jurisdiction for considering pain or suffering or punitive damages and so he withdrew these three portions of his claim. The remaining claim for inconvenience was considered as follows:

Tenant Inconvenience #1 – Electric Utility Payments (\$300.00)

Tenant's Position

49. Tenant1 testified that he is seeking compensation as a result of the landlord refusing to allow the tenants to have the electric utility account for the premises in their name for the duration of the tenancy. He testified that there were three occasions where power was lost at the premises without notice which was especially stressful because the tenants had a newborn at the time. Tenant1 was unable to provide any supporting evidence to confirm the days or times of these occurrences.

Landlord's Position

50. The landlord agreed that she retained the electric account for the rental premises for the majority of the tenancy and that she only allowed/requested that the tenants manage it directly from September 2021 onwards. She testified that she is often not provided notice from the electric utility if and when power is lost.

Analysis

51. The applicant is responsible for establishing their entitlement to compensation. Specific to the tenant's claim related to payment of electricity charges, I find that tenants failed to establish on the balance of probabilities that the landlord's doing so in fact caused financial inconvenience.

Decision

52. The tenants' claim for compensation for inconvenience does not succeed in any amount.

Issue 3: Refunded or Rebate of Rent (\$7600.00)

General Submissions

53. As shown on the written request for compensation (T#2), the tenants outlined four areas where they are requesting the return of rent paid including:
- Improper rent increase \$300.00
 - Loss of back storage \$2,800.00
 - Loss of yard freedom
 - i. Inability to maintain lawn \$1,200.00
 - ii. Loss of access to shed \$2,800.00
 - Trailer blocking driveway \$500.00

Request #1 Refund of Rent Increase Paid \$300

Tenants' Position

54. Tenant1 testified that the landlord provided verbal notice in January 2021 that she was considering a rental increase which caused tenant2 to state that such an increase would not be workable for them. Tenant1 testified further that the landlord was then absent for a number of months, which resulted in the much discussed issue with an alleged pile of feces in their lawn discovered by an associate of the landlord in June 2021. This discovery was then said to have caused the landlord to demand that rent would be increased \$100.00 a month effective July 2021. Tenant1 testified that they paid this increase for July, August and September 2021 before discovering it was an improper increase and so they stopped.

Landlord's Position

55. The landlord agreed with the tenant's timeline. She stated that she needed to increase rent because she was renting the premises for less than her mortgage and insurance costs. This meant she was losing money. The landlord also agreed that no written notice was ever provided to the tenants of the rental increase.

Analysis

56. I accept that both parties agree that the tenants' monthly rent was increased without proper written notice as is required by section 16 of the *Act*. Consequently, I find that the tenants are entitled to their requested refund of \$300.00 in response to the three months they paid \$100.00 more than required.

Decision

57. The tenants request for rent to be refunded succeeds in the amount of \$300.00.

Request #2 – Storage at Back of House (\$2,800.00)

Tenants' Position

58. Tenant1 testified that the landlord "refused" to provide keys to the back door of the residence and that they used this area for their own storage. He calculated that he is entitled to compensation in the amount claimed because it represents \$100.00 of inconvenience for the 28 months of the tenancy. No visual or other documentary evidence was submitted to verify the claim related to storage lost or inconvenience suffered.

Landlord's Position

59. The landlord agreed that she utilized storage at the rental premises for the purpose of storing lawn chairs. She testified that the tenants never asked for permission or access to the space in question.

Analysis

60. I find that the tenants failed to establish on the balance of probabilities that they are entitled to compensation for any possible or perceived loss of storage on the rear of the premises. I say this because no evidence was submitted outlining the parameters of expected storage or storage lost. Consequently, this specific claim for compensation does not succeed in any amount.

Decision

61. The tenants' claim for compensation for refund of rent related to storage on the premises does not succeed in any amount.

Request #3 – Loss of Storage in the Shed (\$2,800.00)
- Loss of Right to Lawn & Property Maintenance (\$1,200.00)

Tenants' Position

62. Tenant1 testified that they attempted to work with the landlord because the rental market is tough. He stated that they were never given a choice about the lawn and that maintenance of the lawn was just taken from them soon after moving in. He also argued that he was not able to maintain the lawn because he was not able to store his own lawn mower and other tools at the property since the shed on the property was full with the landlord's lawn maintenance tools. The tenant testified that this was in contravention of clause 25 of the rental agreement which reads:

"the tenant is responsible for maintaining the cutting of the lawn on a weekly basis. The landlord will supply a garden shed in which to keep the lawn mower and other lawn care items"

63. Tenant1 testified that he did not feel comfortable using someone else tools (e.g., the push mower) to maintain the lawn. Furthermore, as noted in the tenant's claim for compensation for inconvenience related to harassment, the tenant referred to text messages received from the landlord monitoring their every action in the yard as well as every action of their dogs in the yard.

Landlord's Position

64. The landlord testified that the purpose of clause 25 in the rental agreement was to depict that tools were available for the tenant to maintain the lawn and yard. Consequently, she testified that she did not find it right or proper that the tenants are requesting compensation for work that was done on their behalf. The landlord testified at one point, that she only rented the rights of the house to the tenants, and not the rights of the property. The landlord also testified that the shed on the property is left open for anyone to access at any time. She stated that she attempted to be kind with the tenants and that she wished tenant1 would take initiative and maintain the lawn.

Analysis

65. These two claims for compensation are very much related to the landlord's first claim for compensation discussed between paragraphs 13 through 18. Where I found that the landlord failed to establish she was entitled to any compensation for claimed damage to her premises, I accept on the balance of probabilities that the actions of landlord very much interfered with the rights as well as responsibilities of the tenants to both enjoy and maintain the entirety of the premises. I say this because, no reasonable person would spend the time spent by the landlord over multiple years photographing feces left by dogs on property that is not technically theirs to enjoy because they have rented it.
66. Where I accept that the landlords did indeed maintain the lawn, this does not mean that they should necessarily be penalized for doing so. However, with respect to the landlord's conduct while doing so I find that this was likely driven in part by her testimony that she was losing money while renting to the tenants. That said, I also find that the landlord failed to provide any evidence that the tenants were not otherwise responsible in the maintenance of the landlord's premises during their tenancy. As such, I find it likely that they also would have maintained the lawn if and where given the chance to do so using their own lawn equipment.
67. With respect to the tenant's claim for compensation for the lack of access to the shed which they valued at \$100 a month for 28 months and or \$100.00 for not maintaining the lawn for the 12 months it was free of snow during the tenancy, I find that the tenants are entitled to some compensation. Where the landlord carefully catalogued feces during all months, even the winter time, I find that the tenants are entitled to total compensation for loss of free and reasonable access to all external areas of the premises (e.g., yard and porch) during the tenancy at the rate of \$100.00 for each of the 28 months of the tenancy. I therefore find that they are entitled to \$2,800.00 as rental rebate for this specific claim related to the yard.

Decision

68. The tenants' claim for refund of rent related to use of the yard and shed succeeds in the amount of \$2,800.00.

Request #5 – Trailer in the Driveway (\$500.00)

Tenants' Position

69. Tenant1 testified that the landlord parked a retaliatory trailer in their driveway to both block their access and complicate their day to day. Tenant1 indicated that no visual evidence of this trailer was available or provided. Tenant1 did however ask that his father in law appear because he was a witness to the parking of the trailer in the driveway. [REDACTED] appeared as a witness and testified that a trailer was parked in their driveway from August 2021 until December 2021 (however he initially stated "until September or December") and that he knows this because he remembers having to maneuver around this trailer when helping the tenants move out.

Landlord's Position

70. The landlord initially denied parking the trailer in the tenant's driveway, but then agreed that she had parked the trailer in their driveway for a period of time. She denied that the trailer was parked for the full duration and testified that she only parked the trailer in the tenants' driveway with tenant1's permission while he was out of town.

Analysis

71. The tenants as the applicants are responsible for establishing on the balance of probabilities that they suffered an inconvenience as a result of the landlords' actions. I find that the tenants failed to do so because they did not provide any verifiable pictures of the supposed trailer in the driveway, and their witness also initially stated that the trailer was only parked from August to September, which the landlord had argued was done with the permission of tenant1. Consequently, I find that this particular claim does not succeed in any amount.

Decision

72. The tenant's claim for compensation for refund of rent related to the trailer does not succeed in any amount.

Summary Decision Refund of Rent

73. I find that the tenant's total claim for refund of rent succeeds in the amount of \$3,100.00 (e.g., \$300.00 + \$2,800.00)

Issue 4: Payment of Other (\$1,466.75)

Tenant's Position

74. Tenant1 referred to his written summary (T#2) and testified that they should be entitled to compensation for time spent cleaning water from leaking windows (\$1,400) as well as time spent removing debris from the premises after the landlords responded to a water leak. He provided a comprehensive series of photos related to the alleged leaks (T#5) as well as a photo of the drywall debris (T#6). Tenant1 acknowledged that all such efforts were willingly undertaken by the tenants with no record of conversation with the landlords provided related to either matter.

Landlord's Position

75. The landlord testified that her son has been residing in the premises once occupied by the tenants and that he has only reported that one window leaks during the past year. She rejected the tenants' claims for compensation and testified that the windows would have only ever leaked after the tenants failed to close them. She referred to multiple text conversations as evidence of her claims (L#11).
Regarding the tenants claim for compensation related to removal of drywall debris, she stated that she has no record of being contacted by the tenant regarding this matter. The landlord stated that the house is approximately 26 years old and that it has wooden windows.

Analysis

76. Although considerable time was spent by the tenant1 in reviewing his evidence of supposed window leaks, I find that his evidence was not convincing because he failed to submit evidence that he had brought this issue to the landlord's attention prior to their spending multiple hours supposedly maintaining the integrity of the walls and windows. So even though I rejected the landlord's claim for compensation related to plaster repair in paragraph 24 – 32, I also reject the tenants' claims because the landlord cannot be penalized for not responding if they are not given timely notice of an issue to maintain. Additionally, I reject the tenant's claim for compensation for drywall removal that they freely removed. Consequently, I find that the tenants claim for compensation for payment of other does not succeed in any amount.

Decision

77. The tenant's claim for payment of other does not succeed in any amount.

Issue 6: Security Deposit (\$750.00)

Relevant Submissions

78. The landlord has requested to retain the full value of the deposit against monies owed and the tenants have requested it be returned.

Analysis

79. 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.

80. Through this report, I have found that both sides are entitled to some compensation

| LANDLORD | TENANT |
|-----------------------------------|---------------------------|
| Inconvenience \$882.50 | Refund of rent \$3,100.00 |
| Tenant owed minus landlord owed = | |
| Total | \$2,217.50 |


81. Where the tenants' claims for compensation for refund of rent successfully exceeded those of the landlord's claim for inconvenience, I find that the tenants' claim succeeds in the balance of \$2,217.50. Consequently, I find that the landlord's has no claim on the tenant's security deposit and must therefore return the full \$750.00 to the tenants.

Summary Decision

82. The landlord's claim against the security deposit does not succeed in any amount.
83. The tenants' claim against the security deposit succeeds in the full amount of \$750.00.
84. The landlord shall pay to the tenants, the amount of \$2,967.50, determined as follows:
- a) Balance of Refund of Rent.....\$2,217.50
 - b) PLUS Security Deposit.....\$750.00
 - c) Total.....\$2,967.50

19 April 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal