

Residential Tenancies Tribunal

Application 2022 No. 1070 NL

Decision 22-1070-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 24 January 2023 via teleconference.
2. The applicant [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" respectively, also participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not participate in the hearing.
3. The landlords provided an affidavit of service confirming that they served the tenant via email on 29 December 2022 (L#1). Proof of service to the email address [REDACTED] was provided (L#2).
4. The details of the claim were presented as a month-to-month rental agreement that started in November 2019. Monthly rent was \$925.00 throughout and a security deposit in the amount of \$500.00 was collected. A copy of the original written rental agreement was provided (L#3).
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 landlords are seeking the following:
 - An order for compensation for inconvenience in the amount of \$1,070.50;
 - An order for compensation for damages in the amount of \$760.00 and
 - An order to retain the full value of \$500.00 security deposit.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
8. Also relevant and considered in this case is sections 10 of the *Act*.

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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.
11. 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.
12. I ended the hearing in response to escalating verbal abuse from both landlords. Landlord2 was upset about a previous order issued by myself requiring the landlords to pay the tenant monies as a refund for rent (see Order 2022 No. 721NL) and landlord1 was upset about document management related to this dispute. He claimed that additional documentary evidence, including receipts and pictures were submitted with his application for dispute resolution. I doubled checked with front counter staff in the Mount Pearl office after the hearing and they verified that all materials submitted by landlord1 were included in his digital file.

Issue 1: Compensation for Inconvenience \$1,070.50

Relevant Submissions

13. The rental premises is a condo unit previously owned by the landlords. Landlord1 testified that the tenant vacated on 30 November 2022 and that he changed the locks to the premises on 01 December 2022. He testified that the landlords agreed to this end of tenancy. Landlord1 testified that his claim for compensation for inconvenience is in response to the tenant allegedly leaving all of her belongings and furniture in the premises. The landlords submitted an inconvenience ledger outlining their claim for compensation (L#4).

14. Landlord1 read his claims for inconvenience into the record. He claimed 14 hours of personal labour removing belongings and testified that he received an email on 04 December 2022 from the tenant informing him that he could dispose of all of her belongings. A copy of this email was not submitted. Nor were photos or other documentary evidence provided related to the condition of the rental premises after the tenant vacated. Landlord1 testified that receipts were not provided for the \$110.00 cost of borrowing a truck and trailer, but that receipts were provided for costs incurred in renting a storage locker and having the rental premises professionally cleaned.
15. Landlord2 testified that the landlords had a very short timeframe to get everything finished and cleaned in the rental premises before it was sold to new owners. Landlord1 testified that he does not expect to get any money from the tenant because she has “gone back overseas” and that he “just wants to be done with it”.

Analysis

16. I accept that the landlords submitted a financial claim for inconvenience in the amount of \$1,070.50 to this tribunal. I also accept that they were previously required to pay monies to the tenant for a refund of rent for her experience in the rental premises. That said, the merits of the previous order, have no bearing on the landlords’ current claim for compensation because, as set out in paragraph 5, the applicants (the landlords in this case) are responsible for establishing on the balance of probabilities that they are entitled to compensation.
17. Specific to the itemized list for compensation for inconvenience submitted by the landlords, I find that they failed to establish on the balance of probabilities that they were entitled to any compensation because:
 - No verifiable evidence was provided on the state of the rental premises prior to or post occupancy;
 - No verifiable receipts or other documentary or testimonial evidence was provided in support of the landlord’s claims that any of the claimed costs were incurred.
18. Consequently, I find that the landlords’ claim for compensation for inconvenience does not succeed in any amount.

Decision

19. The landlords’ claim for compensation for inconvenience does not succeed in any amount.

Issue 2: Compensation for Damages \$760.00

Relevant Submissions

20. The landlords submitted a damage ledger outlining their claims (L#5). Landlord1 testified that he had to replace the two year old countertop with a counter top he got from a buddy. No receipt was provided for the amount claimed of \$450.00, nor were photos provided of either countertop. Landlord1 testified that a bedroom had to be painted due to excessive debris on the walls and that the rental unit was previously painted prior to the tenant taking occupancy in 2019.

Analysis

21. 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).
22. 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.
23. Regarding the landlords' claim for compensation for the countertop I find they failed to satisfy the test identified in paragraph 21 since they did not:
- Provide pictures of the damaged countertop; or
 - Provide verifiable documentation related to the costs of the replacement countertop.
24. Regarding the landlords claim for compensation for painting, I note that the tenant took occupancy in November 2019 and vacated three years later in November 2022. According to Residential Tenancies Policy 09-05, the average serviceable lifespan of an interior paint job is 3 – 5 years. Because the room that was painted by the landlords three years prior, and no photos were provided of the state of the room to validate any complaints of excess debris, I find that the landlords failed to satisfy the test provided in paragraph 18.

Decision

25. The landlords' claim for compensation for damages does not succeed in any amount.

Issue 3: Security Deposit \$500.00

Relevant Submissions

26. The rental agreement provides evidence of a \$500.00 security deposit (L#3). The landlords have requested to retain the full value of the security deposit against monies claimed to be owed by the tenant.

Analysis

27. 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.

28. As the landlords' claim for compensation have not succeeded in any amount, I find that the full value of the security deposit must be returned to the tenant.

Decision

29. The landlords are not entitled to retain any portion of the security deposit.
30. The landlord shall pay to the tenant \$500.00, representing the full return of the security deposit.

Summary of Decision

31. The landlords' claim for compensation for inconvenience does not succeed in any amount.
32. The landlords' claim for compensation for damages does not succeed in any amount.
33. The landlords are not entitled to retain any portion of the security deposit.
34. The landlords must pay to the tenant, \$500.00 representing the full return of the security deposit collected.

30 January 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal