

Residential Tenancies Tribunal

Application 2022-1078-NL
2023-0164-NL

Decision 23-1078-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 26-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The applicant submitted an authorized representative form (TT#01), naming [REDACTED] [REDACTED] as his representative. [REDACTED] did not participate in the hearing and was attending as a support person for the tenant.

Issues before the Tribunal

5. The tenant is seeking:
 - Rent refunded \$522.00
 - Security deposit refunded \$372.00

The landlord is seeking:

- Damages \$4,232.79

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, and Section 14: Security deposit, as well as, Residential Tenancies policy 9.

Issue 1: Rent refunded \$522.00

Tenant's Position

8. The tenant stated that he was in a verbal rental agreement with the landlord. He submitted the terms (TT#02) of the agreement that were provided for Income Support. He said that he rented a basement apartment beginning 01-July-2021 until 01-October-2022. His rental period is from the first day of the month until the last. His rent was \$900.00 per month due on the 1st day of the month. The tenant confirmed that a security deposit of \$372.00 was paid to the landlord. His terms (TT#02) show a payment of \$450.00, however it was agreed by both parties that a payment of \$372.00 was made.
9. The tenant explained that the landlord had given him a termination notice and they signed a mediated agreement that the tenant would move out on 01-October-2023.
10. The tenant stated that his rent was paid by Income Support and Eastern Health. The portion paid by Income Support, \$522.00, was paid to the landlord for the month of October and he had moved on 01-October-2022. A letter was submitted (TT#03) confirming that \$522.00 was paid to the landlord for October.
11. The tenant is seeking reimbursement of this rent.

Landlord's Position

12. The landlord confirmed the details of the rental agreement as stated by the tenant.
13. The landlord agrees that he received payment of the rent from Income Support totaling \$522.00, on behalf of the tenant for the month of October 2022.
14. The landlord states he has retained this rent because he was assessing the damages left behind by the tenant.

Analysis

15. Rent is paid for the use and enjoyment of a residential premises. Both parties acknowledge that the tenant moved on 01-October-2023, as the tenant was in possession of the premises for the first day of the month, a daily rate shall be calculated and applied. $\$900.00 \times 12 \text{ months} = \$10,800.00 \text{ a year divided by } 365 \text{ days} = \29.59 . The landlord shall return \$492.41 to the tenant, as follows: $\$522.00 - \$29.59 = \$492.41$

Decision

16. The tenant's claim for rent succeeds in the amount of \$492.41.

Issue 2: Security deposit returned \$372.00

Tenant's Position

17. As stated in paragraph 8 the tenant confirms a security deposit of \$372.00 was paid to the landlord.
18. The tenant stated that he applied for return of the security deposit and his documents show (TT#04) he sent the landlord notification of that claim on 10-February-2023.
19. The tenant is seeking full return of his security deposit.

Landlord's Position

20. The landlord agrees that the tenant paid \$372.00 security deposit, he did not file a claim to retain this deposit. He states he was holding it against damages to the apartment.

Analysis

21. As per Section 14 of the *Residential Tenancies Act, 2018*:

Security deposit

14. ...

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to 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.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

22. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. If they don't file the claim in the 10 days, then the security deposit is to be returned to the tenant. This failure to file a claim does not impede the landlord's ability to claim for damages.
23. The security deposit is the property of the tenant and held in trust by the landlord. I find the landlord shall therefore return the security deposit totaling \$372.00 to the tenant

Decision

24. The tenant's claim for return of the security deposit succeeds in the amount of \$372.00.

Issue 3: Damages \$4,232.79

Landlord's Position

25. The landlord submitted a worksheet for damages (LL#01), as follows:

Damages	Cost
Exterior door	\$1,546.98
Flooring	2,199.75
Extra day living in apartment	30.66
Labor to clean 5.5 hours x 2 people	238.70
Cleaning supplies	35.00
Paint rollers brush time repair ceiling in bathroom	76.20
Travel time	65.10
Travel gas	40.00
total	\$4,232.39

26. The landlord provided a text message sent to him from the tenant (LL#09) in the message the tenant explains that he has locked himself out and can't get back into the apartment. He said he had to break the door. The tenant tells him he has done a temporary repair on the door. The landlord provided pictures showing that the door is split (LL#06, LL#07, and LL#08). He said that the door is 8 years old. He provided the receipt for the repair (LL#10) for \$1,546.98.
27. The landlord said that the tenant had emptied a fire extinguisher and used the extinguisher to damage the flooring in the living room. Pictures provided (LL#03, LL#04, and LL#05). He said that the flooring was 7/8 years old and that he couldn't match the floor. He also explained that the flooring was in this room as well as the hallway. He said that the flooring company recommended that the entire area be replaced. He provided a receipt for the cost of this work (LL#05) \$2,199.75.

28. The landlord is seeking labor for two people to clean the apartment. He estimated that it took himself and a staff 8 hours each to clean. He submitted pictures into evidence (LL#11, LL#12, LL#13, LL#14, LL#15 and LL#16). He explained that under the sink, in the sink, and the fridge were all dirty, there was also garbage thrown into the toilet. He did not submit the staff time sheet, he is seeking personal hours as awarded from our office of minimum wage + \$8.00 an hour for 16 hours. He stated that he used cleaning products that he had on hand and is seeking \$35.00 towards the cost.

Tenant's Position

29. The tenant confirmed that he had to break in the door. He points out that the door remained broken and the landlord did not repair the door while he lived there. He explains he was locked out and felt he had no choice but to break in as it was winter and he wasn't dressed appropriately.

30. The tenant doesn't dispute the damages to the flooring. He believes that most people would have left over flooring and that they could repair the damaged section instead of replacing the entire floor.

31. The tenant disputes the amount of time it took the landlord to clean the unit, he believes that at most it would take one person a couple of hours to finish the cleaning.

Analysis

32. The landlord has already been awarded the cost of the day's rent in Section1. The landlord did not speak to travel or painting in his testimony, as listed in the compensation ledger; these costs will not be considered.

33. 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.

34. The tenant has acknowledged that he locked himself out of the apartment and that he damaged the door, he pointed out that the landlord never made repairs to the door. In accordance with Section 10 of the Act, it is the responsibility of the tenant to repair their damage. The landlord is entitled to compensation for this loss, when considering depreciation, this door is estimated to be 8 years old, in accordance with our policy a door should last 15 years the landlord will therefore be reimbursed $15 - 8 = 7$ years, $7/15$ ths x \$1,546.98 = \$721.92.
35. The tenant also didn't dispute the damages to the flooring, he disputed the cost of the repairs based on his belief that the landlord should have had replacement parts, however, the landlord had testified that he was unable to match the floor. The landlord is entitled to compensation for this loss, when considering depreciation, this flooring is estimated to be 7 or 8 years old, in accordance with our policy laminate flooring should last 10 years the landlord will therefore be reimbursed $10 - 7.5 = 2.5$ years, $2.5/10$ x \$2,199.75 = \$549.84.
36. Lastly the landlord is seeking 8 hours for two people to clean, the tenant did question the amount of time required. The landlord's evidence does clearly show that under the sink, the fridge and the toilet required cleaning. The landlord may have spent additional time cleaning, but he never provided evidence to support a claim for that time. I accept the tenant's evaluation of time required and will award the landlord 3 hours personal time at our approved rate of $(\$13.70 + 8.00 = \$21.70)$ 3 hours x \$21.70 = \$65.10.
37. The tenant shall pay to the landlord \$1,327.86 in damages, as follows:

- Door \$721.92
- Flooring 540.84
- Personal time 65.10
- Total \$1,327.86

Decision

38. The landlord's claim for damages succeeds in the amount of \$1,327.86.

Issue 4: Hearing expenses reimbursed \$20.00

39. Both parties submitted receipts for hearing expenses. As both parties have been awarded compensation, the amount of filing fees will be set off.

Summary of Decision

40. The tenant's claim has been successful totaling \$864.41 as follows:

- Rent 492.41
- Security deposit 372.00
- Totaling \$864.41

The landlord's claim for damages has been successful totaling \$1,327.86.

The tenant shall pay to the landlord \$463.45, as follows:

- Damages \$1,327.86
- Less Rent and security deposit (864.41)
- Totals \$463.45

The landlord shall retain rent and security deposit totaling \$864.41 against monies owed for damages.

June 02, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office