

Residential Tenancies Tribunal

Applications 2022 No. 1081 NL
2023 No. 0058 NL

Decision 22-1081-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03AM on 21 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated in the hearing.
3. An affidavit of service was provided by the tenant (T#1) confirming that she served the landlord notice of her claim by email on 07 January 2023 and proof of service was provided (T#1). The landlord confirmed receipt of service. The landlord testified that he submitted an affidavit of service, however, I could not locate it. The tenant confirmed that she received notice of the landlord's counterclaim on 18 January 2023 and that she agreed to proceed with the hearing.
4. The details of the claim were presented as a month-to-month agreement that started August 2019 and ended 04 November 2022. Monthly rent was set at 1,200.00 and a security deposit in the amount of \$600.00 was collected. The tenant provided proof of the original written rental agreement (T#2).
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 tenant is seeking the full return of a \$600.00 security deposit.

7. The landlord is seeking the following:
 - Compensation for damages in the amount of \$5,845.25; and
 - An order to retain the full \$600.00 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 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a two apartment building located at [REDACTED]. The tenant resided in the main floor unit with her children.
11. The premises are more than 40 years old and were purchased by the landlord in 2003. The landlord testified that he previously lived in the main floor unit with his wife and that it was comprehensively modernized about 8 years ago. The parties agreed that the tenant completed a walk through on move in and move out with the landlord's wife. The parties also agreed that the tenant was given one month's notice on 01 October 2022, to vacate the premises because the landlord was attempting to sell. The parties also agreed that the tenant vacated shortly thereafter on 04 November 2022.
12. The landlord testified that he is not seeking compensation for damages in the amount claimed. But rather, that he is only seeking damages in the amount of the \$600.00 security deposit.

Issue 1: Compensation for Damages (\$600.00)

Tenant's Position

13. The tenant testified that she was given one month's notice to vacate and that she vacated as requested. The tenant testified that she cleaned to the best of her ability during the short amount of time she was given. Regarding the yard of the rental premises, the tenant acknowledged having placed a pool in the yard and that she anticipated the impacted grass will grow back.

Landlord's Position

14. The landlord submitted proof of a receipt for cleaning at the rental premises in the amount of \$845.25 (L#1) as well as a series of photos taken from the rental premises after the tenant vacated (L#2). He testified that he gave the tenant one month notice to vacate because he had been trying to sell the house and he was getting feedback that it was terrible. The landlord testified that he is a

professional landscaper by trade, and that the tenant's use of an aboveground pool in the yard, killed the grass beneath it. Pictures of the yard damage were provided (L#2). .

Analysis

15. 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).
16. 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.
17. Regarding the landlords' claim for compensation for damages in the amount of the security deposit, I accept that he submitted an invoice for cleaning in an amount that exceeds the value of the security. Because however, the landlord failed to provide any verifiable documentary evidence related to the condition of the rental premises prior to the tenant's occupancy, I find that the landlord failed to establish on the balance of probabilities that cleaning in the amount of \$845.25 was required after the tenant vacated.
18. Regarding the landlord's documentation of other alleged damages at the rental premises, I acknowledge that the tenant admitted to having installed an aboveground pool in the yard and that this pool impacted the grass. Where the tenant was optimistic that the grass would grow back, the landlord, a professional landscaper by trade, testified that it would not. Consequently, I will arbitrarily award compensation for damages in the amount of \$100.00 related to the damaged grass.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.

Security Deposit (\$600.00)

Tenant's Position

20. The tenant has requested the full return of her security deposit and the landlord has applied to retain it as compensation towards damages allegedly caused by the landlord.

Analysis

21. 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.

22. Where the landlord's claim for compensation for damages has succeeded in the amount of \$100.00, he shall retain that portion of the security deposit. He shall pay the tenant \$500.00 representing the full and final return of the remaining security deposit.

Decision

23. The landlord's claim against the security deposit succeeds in the amount of \$100.00.

24. The landlord shall pay to the tenant \$500.00 as the return of the remaining security deposit.

Summary of Decision

25. The landlord's claim for compensation for damages succeeds in the amount of \$100.00.
26. The landlord's claim against the security deposit succeeds in the amount of \$100.00.
27. The landlord shall pay to the tenant \$500.00 as the return of the remaining security deposit.

27 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal