

## Residential Tenancies Tribunal

Applications: 2022 No. 0649 NL

Decision 22-0649-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 1:54 PM on 13 December 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing, as did her representative, [REDACTED], hereinafter referred to as the “tenant’s representative”.
4. The landlord provided an affidavit of service (L#1) related to an originally scheduled hearing date of 01 November 2022 along with proof of service (L#2). This hearing date was then postponed to 13 December 2022, and notice of this postponement was provided by the Residential Tenancies Office (A#1).
5. The details of the claim were presented as a fixed term rental agreement that started on 01 September 2022 and was set to expire on 31 August 2022 for which a copy of the written rental agreement was provided (L#3). Monthly rent was set at \$700.00 and a security deposit in the amount of \$400.00 was collected.
6. 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. The standard of proof, in these proceedings, 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

7. The landlord is seeking the following:
  - Validity of termination notice determined;
  - An order for rent to be paid in the amount of \$700.00;
  - An order for compensation paid for damages in the amount of \$7,150.00;
  - An order for late fees to be paid in the amount of \$25.00; and
  - An order to retain the full value of the security deposit in the amount of \$400.00.

## 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, 15 and 19 of the *Act*.

## Preliminary Matters

10. The rental premises is a 73 year old structure located at [REDACTED]. It was purchased by the landlord in spring 2021, upon which the premises was “prettied up” and no major renovations were completed. The landlord testified that the premises is a small 3 bedroom bungalow that was rented furnished to the tenant.
11. The landlord (L# 4) and applicant (T#1) both submitted exhibit lists to summarize large amounts of documentary evidence submitted from each side. Both sides confirmed that they received all evidence as required from the other side and that they were ready to proceed with the hearing. Both sides were also instructed that if they wanted documentary evidence considered in the hearing, they had to bring it to my attention.

## Issue 1: Validity of Termination Notice

### Landlord's Position

12. The landlord referred to a termination notice issued to the tenants on 08 July 2022 with a stated move out date of 13 July 2022 (L#5). The landlord acknowledged receiving other termination notices from the tenant, including an initial three month notice, then a two month notice, and then a notice to vacate within five days. The landlord testified that she is only seeking validity of termination notice that she issued. The landlord testified that she served this notice because she did not receive payment of rent from the tenant for the month of July 2022.

## Tenant's Position

13. The tenant acknowledged receipt of this termination notice and agreed that she did not pay rent for July 2022. The tenant also referred to her own termination notice issued to the landlord on 28 June 2022 (T#2). She testified that this notice was issued for peaceful interference under section 24 of the *Act* and that it identified a stated move out date of 13 July 2022.
14. The tenant further testified that she previously gave the landlord notice via text message on 15 June 2022 that she would be vacating the rental premises at the end of the rental term because she had purchased her own premises (T#3). The tenant testified that she then agreed to facilitate viewing of the premises on 19 June 2022. However, as the tenant testified, things turned poorly, as demonstrated in the text chain provided, due to concerns raised by neighbours on the state of the rental premises (T#4). The tenant stated that she never issued the landlord a notice of termination specific to habitability or breach of material term. The tenant referred to a series of text messages between herself and the landlord as further justification for issuance of the section 24 notice because the landlord had been accusing her of a “destroyed home”. The tenant then made reference to a separate written request for “early release from lease” that was sent to the landlord on 22 June 2022 requesting that the tenancy be terminated on 31 July 2022 instead of 31 August 2022 as required by the lease (T#7).
15. The tenant's representative testified that his role is to advocate on behalf of the tenant and bring attention to the safety and habitability risk faced by the tenant while residing in the rental premises. The tenant's representative emphasized the poor state of the electric panel and how concerns with wiring were worsened during bad weather. The tenant's representative also stated that the behaviour of the landlord during the hearing should be evidence of the landlord's conduct towards the tenant, as justification for issuance of the section 24 notice of termination.

## **Analysis**

16. I accept that the landlord and tenant referred to multiple termination notices issued near the end of the tenancy. Specific only to the validity of the section 19 termination notice issued by the landlord on 08 July 2022, the relevant section of the *Act* reads as follows:

### ***Notice where failure to pay rent***

**19. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b),***

...

***(b) where the residential premises is***

***(i) rented from month to month,***

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

*the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

*(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.*

17. Consequently, I find that the notice issued by the landlord on 08 July 2022 identifying a move out date of 13 July 2022 was not valid because it failed to provide the “*not less than 10 days*” after service for the notice for the tenant to vacate.

## **Decision**

18. The notice to terminate issued by the landlord on 08 July 2022 was not a valid notice.

## **Issue 2: Payment of Rent (\$700.00)**

### **Landlord's Position**

19. The landlord testified that the tenant vacated on 14 July 2022 and she secured new tenants from 01 August 2022 onwards. As such, the landlord testified that she is seeking rent for the month of July 2022 in the amount of \$700.00.

### **Tenant's Position**

20. As previously noted in paragraph 13, the tenant agreed that she did not pay rent for July 2022 and that she vacated on 14 July 2022.

## **Analysis**

21. Regardless of the validity of the termination notice issued by the landlord on 08 July 2022, I find that the tenants vacated the premises after being provided notice of termination from the landlord. Consequently, I find that the landlord is entitled to payment of rent in the amount of \$322.14 representing rent owed until the day the tenant's vacated (e.g., 14 July 2022).

$\$700.00 \times 12 = \$8,400.00 / 365 = \$23.01$  per day for rent  
 $\$23.01 \times 14 = \$322.14$  for rent from 01 July through to 14 July 2022

## Decision

22. The landlord's claim for payment of rent succeeds in the amount of \$322.14.

## Issue 3: Payment of Late Fees (\$25.00)

### Relevant Submissions

23. The landlord has assessed late fees in the amount of \$25.00 because she did not receive payment of rent for July 2022.

## Analysis

24. 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.*

25. 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.*

26. As noted in paragraph 21, I found that the landlord was entitled to payment of prorated rent for the month of July 2022. Because the tenant has been in arrears since at least 02 July 2022, the landlord's claim for late fees succeeds in the amount identified.

## Decision

27. The landlord's claim for late fees succeed in the amount of \$25.00.

### Issue 3: Compensation for Damages (\$7,150.00)

#### General Considerations

28. 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).
29. 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.
30. The landlord provided a series of 30 photos of the interior and exterior of the rental premises prior to the tenant taking occupancy (L#6). The tenant also provided a smaller series of photos from prior to move in (T#7). Specific to visual evidence from move out of the rental premises, the tenant provided video (T#8) and a comprehensive series of photos (T#9). The landlord testified that she provided her visual evidence upon move-out as part of her larger submission of documentary evidence related to her claim for compensation for damages (L#7).
31. Also of note is that the tenant resided in the rental premises with her partner, two dogs and two cats. The tenant testified that her lease states that “animals allowed” with no specification (see page 4 in L#3). The landlord disputed that tenant’s understanding that dogs were allowed and testified that she “had no idea about the dogs, whatsoever” during the tenancy.
32. Specific to the landlord’s claim for compensation for damage, she referred to Exhibit C#48 (see page 50 in L#7) and testified that she is seeking compensation for:
  - Furniture replacement \$3,000.00
  - Screens \$120.00
  - Carpet \$910.00
  - Labour \$2,800.00
  - Materials \$692.00

## **Damage Item 1 – Furniture \$3,000.00**

### Landlord's Position

33. The landlord testified that the following pieces of furniture were destroyed and taken to the dump:
- Gray/Green Loveseat “Beige Couch” \$500.00
  - Rust Lounger Chair \$400.00
  - Long Couch and Matching Chair \$1,100.00
  - Mattress and box spring \$700.00
  - Storage Bench \$400.00
34. The landlord testified that she does not have receipts related to any of the items claimed above, and that she identified “best guess” prices based on what she could see for sale locally. The landlord also testified that she did not know the age of any of the items destroyed because all items came with the house in April 2021. The landlord testified that all items were in immaculate condition on purchase and referred to photos of the destroyed item as provided with her series of move in photos (L#6). She testified that some items were destroyed by the tenant's animals and others were destroyed by being left out in the shed by the tenant.
35. In response to the question about furniture restoration, the landlord testified that she relied on the new tenants to assess the state of the furniture and that based on them informing her the furniture was not worth keeping, it was thrown out.

### Tenant's Position

36. The tenant testified that all items were very old and none of them were intentionally damaged. The tenant referred to her own copy of the lease agreement where it was written that “*any furniture belong to landlord that is left at property and not being used must be move into the shed*” (T#10). The tenant testified that she simply moved the identified furniture into the shed and that she informed the landlord of each item moved. The tenant acknowledged that her cats scratched the arm of the beige couch but testified that she shaved off any scratches. The tenant also refuted the landlord's claim for damage to the rust coloured chair. The tenant's representative identified himself as a restoration expert and asked if the landlord had attempted to restore any of the damaged furniture.

## **Analysis**

37. The landlord did not provide any verifiable documentary or other evidence related to costs incurred for replacing any damaged furniture. Nor has she replaced any of the items. Furthermore, the landlord also failed to establish on the balance of probabilities that the tenant damaged the furniture through either willful or

negligent actions. Rather, I accept that the tenant mitigated damage on one item (e.g., shaved scratched) and moved furniture items out to the shed as was instructed to by her rental agreement. Consequently, I find that the landlord failed to satisfy the test for damages identified in paragraph 28 above.

### **Decision – Furniture**

38. The landlord's claim for compensation for furniture does not succeed in any amount.

### **Damage Item 2 – Screens \$120.00**

#### Relevant Submissions

39. The landlord had no receipts or other documentary evidence related to costs for repairing screens. This claim was not discussed in detail during the hearing. Because no explicit testimony or evidence was received, no decision can be provided.

### **Decision**

40. The landlord's claim for compensation for screens does not succeed in any amount.

### **Damage Item 3 – Carpet \$910.00**

#### Landlord's Position

41. The landlord testified that she had to replace the carpet in the tiny room, the three bedrooms and the living room after the tenant vacated. The landlord referred to an invoice and receipt provided in the amount of \$910.00 for the purchase of this carpet (see page 49 in L#7). The landlord testified that she got a really good deal and that she had to replace the carpet due to extensive staining discovered on the bottom of the carpets. She stated that the staining was from "*dog urine and that kind of thing*" and that there was also urine on the walls based on the smell. The landlord testified that multiple photos of stained carpet are provided in Exhibit C (L#7). The landlord testified that the carpet was previously in good condition, that she did not know the exact age of the carpet replaced, but that certain sections were at least 15 years old if not older.

#### Tenant's Position

42. The tenant disputed the landlord's claim for compensation for carpet replacement. She testified that the carpets were very old and that her pets were all properly trained and would not have urinated or defecated within the house.



The tenant also referred to her move out evidence provided and testified, that as shown in the video and series of photos, the carpets looked just the same on move out as on move in. The tenant's representative asked the landlord to explain how she decided that any stains were the result of animals, let alone the tenant's animals.

### **Analysis – Carpet**

43. According to Residential Tenancies policy 09-005, the expected serviceable life of good quality carpet is 10 years. Because the landlord did not know how old the carpet was (her best guess was 15 years) I find that the carpets she replaced had exceeded their expected serviceable life.

### **Decision**

44. The landlord's claim for compensation for carpets does not succeed in any amount.

### **Damage Item 4 – Labour \$2,800.00**

#### General Submissions

45. The landlord testified that she secured new tenants for the rental premises on 18 July 2022 and that they cleaned and "gutted" the rental premises prior to taking occupancy on 01 August 2022. The landlord referred to an invoice submitted in the amount claimed with the following line items (L#8):
- Garbage clean up from House and Shed \$500.00
  - Carpet Removal and Cleaning \$500.00
  - Carpet Pick up and Install \$600.00
  - Wallpaper removal prep \$300.00
  - Painting Walls \$500.00
  - Extreme Interior Deep Clean \$300.00
  - Outdoor Clean Up \$100.00
46. [REDACTED], one of the two new tenants appeared as a witness to explain the scope of work captured by the invoice submitted. [REDACTED] testified that the house was "destroyed", with bad smells and lots of work was required to restore the carpet, walls and yard. [REDACTED] testified that she was paid \$2,800.00 for the work completed and that was she not provided with any rebate for rent. The landlord testified that she was not present for this work, but that [REDACTED] kept her up to date. The landlord also testified that the [REDACTED] was a qualified person to she was a former property manager.
47. The landlord also called a second witness. [REDACTED]. [REDACTED] identified herself a local real estate professional and testified to the negative smells that said to be evident in the rental premises after the tenant vacated. [REDACTED]

acknowledged that she did not enter or personally observe the interior of the rental premises prior to it being occupied by the tenant.

#### **Damage Item 4A: Garbage Clean Up**

##### Landlord's Position

48. The landlord referred to the invoice submitted and testified that she was charged \$500.00 for 6 trips to the dump to remove items from the rental premises (e.g., house and shed). The landlord testified that she was told by her new tenants that there were broken items left behind by the tenant that needed to be taken to the dump.

##### Tenant's Position

49. The tenant testified that there were a lot of items in the shed prior to them taking occupancy of the rental premises. The tenant also testified that she removed all of her items from the house and the shed.

#### **Analysis - Garbage Clean Up**

50. The landlord and tenant disputed this claim. I find that the landlord failed to establish on the balance of probabilities that the tenant was the cause (either wilfully or negligently) of the \$500.00 she was charged for removing items from the property. In particular, I note that neither party brought my attention to either pictures of a truck loaded for the dump, or receipts from the 6 visits to the dump. Consequently, I was unable to verify the landlord's claim for compensation.

#### **Decision – Garbage Clean Up**

51. The landlord's claim for compensation for garbage removal does not succeed in any amount.

#### **Damage Item 4B: Carpet Removal and Floor Cleaning \$500.00 4C: Carpet Pickup and Install \$600.00**

##### Landlord's Position

52. The landlord argued against the serviceable life policy for carpet and testified that she should still be entitled to compensation for replacement of the carpet due to the amount of dog urine that was involved. When asked if she submitted any documentary evidence of visible staining on the front facing surface of the carpet, the landlord testified that "whatever you see is there" (referring to L#7) and that she relied upon evidence provided to her from [REDACTED]. [REDACTED] testified that

she really bothered by the smell in the rental premises prior to removing the carpet.

#### Tenant's Position

53. The tenant did not provide specific additional comment.

#### **Analysis – Carpet Removal, Cleaning, Carpet Pickup and Install**

54. The landlord and tenant disputed this claim. I find that the landlord failed to establish on the balance of probabilities that the tenant was the cause (either wilfully or negligently) of any documented damage to the carpet of the unknown age. Where as noted in paragraph 46 and 47, the landlord presented witnesses who attested to the smell of the rental premises after the tenants vacated, she provided no similar witness who testified to the smell of the rental premises upon occupancy by the tenants. Furthermore, I do not dispute that there were multiple stains discovered on the underside of the carpet removed from the rental premises. This carpet was of an unknown age in a premises that was recently purchased by the landlord. Just because there were stains, does not mean that they can be attributed to the tenant.

#### **Decision – Carpet Removal, Cleaning, Carpet Pickup and Install**

55. The landlord's claim for carpet removal, cleaning, pick and install does not succeed in any amount.

#### **Damage item 4D: Wallpaper Removal \$300.00**

##### Landlord's Position

56. The landlord testified that she is charging for wallpaper removal because there were a number of damaged sections of wallpaper that were identified while the tenant was vacating. The landlord stated that she was told, that the wallpaper had "fallen off" but that by looking at the photos (see assorted pages in L#7), it appears more likely that the wallpaper was "torn off". The landlord testified that there had been wallpaper installed in all bedrooms as well as in the back porch but that she was primarily concerned with the bedrooms. .

##### Tenant's Position

57. The tenant testified that the wallpaper was old (20 or 30 years) and falling off and that she attempt to preserve it where possible as instructed by the landlord. The landlord testified that she communicated with the landlord on multiple occasions during her tenancy regarding her concerns with the wallpaper (T#11).

## **Analysis – Wallpaper Removal**

58. According to Residential Tenancies policy 09-005, the expected serviceable life of good quality wall paper is 8 years. Because the landlord did not know how old the wallpaper was, and visual inspection of the damaged wallpaper suggests that it is in excess of 20 years old, I find that the wallpaper that was removed in the rental premises has exceeded its serviceable life.

## **Decision – Wallpaper removal**

59. The landlord's claim for compensation for wallpaper removal does not succeed in any amount.

## **Damage Item 4E: Painting \$500.00**

### Landlord's Position

60. The landlord testified that the living room had been freshly painted and that it had to be repainted because it was completely full of scuff marks (see page 46 in L#7). The landlord testified that the three bedrooms that were previously covered in wallpaper were also painted. [REDACTED], the witness for the landlord who completed the work, did not specifically identify which portion of her claim was spent on the living room wall and which was spent on painting the bedrooms.

### Tenant's Position

61. The tenant disputed the claim for painting.

## **Analysis – Painting**

62. The landlord submitted a single photo of scuffs on a wall that had been painted one year prior. I note that these scuffs are also evident in the move out video provided by the tenant. This wall appears to be a larger wall, and I note that the reported scuffs only appear to cover one section of the wall. I also note, that the witness, [REDACTED], provided no information on whether or not she attempted to first clean the wall to remove the scuffs. Consequently, I find that I am unable to calculate any proportionate compensation entitlement for the landlord specific to the living room wall scuffs. I will nonetheless arbitrarily award compensation in the amount of \$31.16 because I acknowledge the scuffs.

## **Decision - Painting**

63. The landlord's claim for compensation for painting succeeds in the amount of \$31.16.

## **Damage Item 4F: Extreme Deep Clean \$300.00**

### Landlord's Position

64. [REDACTED], the new tenant who completed the work, was asked how many hours she spent cleaning. [REDACTED] testified that she did not know, but that it was "more than 20 for sure". She also testified that she and husband are not young people, and so they cleaned at their own pace.

### Tenant's Position

65. The tenant disputed the claim for cleaning and testified that she cleaned the premises prior to vacating. She referred to her photos and video submitted as evidence of the state of the state of the premises upon her vacating.

## **Analysis – Extreme Deep Clean**

66. The landlord and tenant disputed the claim for deep cleaning. The tenant provided comprehensive evidence of how the premises appeared after vacating, just as the landlord provided comprehensive visual surface evidence of the state of the premises prior to the tenant take occupancy. From comparing these two sets of photos, the only conclusion I can make is that the tenant did appear to thoroughly clean the interior of the stove. Otherwise, everything else in the rental premises appears to have been left in the same state of cleanliness as when the tenant took possession. If and where the witness, [REDACTED] provided the tenant with close up photos of any particular grime, I was not able to ascertain that this grime was indeed caused by the tenant because no similar photos were provided from prior to the tenancy. As such, I will arbitrarily award one hour of compensation for cleaning in the amount of \$21.70 (as per Residential Tenancies Policy 09-005) specific to the stove.

## **Decision – Extreme Deep Clean**

67. The landlord's claim for compensation for the extreme deep clean succeeds in the amount of \$21.70.

## **Damage Item 4G: Yard Clean Up \$100.00**

### Landlord's Position

68. [REDACTED], the new tenant who completed the work, testified that her partner cleaned up the yard and also mowed down the long grass. She stated that lots of dog feces was picked up. The landlord testified that the yard is partially fenced and referred to photos of dog feces submitted (see page 17 in L#7).

### Tenant's Position

69. The tenant testified that there are quite a few dogs that run free in the area and that she always cleaned up after her pets. The tenant disputed the charge for mowing the lawn and testified that she had coordinated mowing as required with the neighbour. The tenant also testified that they had never mowed the "back back yard" but that it was always like that.

## **Analysis – Yard Clean Up**

70. The landlord and tenant disputed the claim for yard clean up. I reviewed the before and after photos provided by both sides, and I note that the landlord provided assorted photos of the yard in her "prior to occupancy submission" (see pages 8 – 11). Consistent with the testimony provided by the tenant, I note that sections of the lawn appeared long prior to occupancy and I also acknowledge evidence of the partial fence for the property of the rental premises. Consequently, I find that the landlord failed to establish on the balance of the probabilities that the tenant alone was responsible for the yard work valued at \$100.00 completed by the subsequent tenants.

## **Decision – Yard Clean Up**

71. The landlord's claim for compensation for yard cleaning does not succeed in any amount.

## **Damage Item 5 – Materials (\$692.0)**

### Landlord's Position

72. The landlord's claim for materials is related to her claim for carpet and labour. She testified that all receipts are provided in exhibit C 26 (see page 28 in L#7). The landlord's witness for the Labour, [REDACTED], also spoke to the claim for Materials. [REDACTED] testified that she purchased paint, brushes, cleaners,

### Tenant's Position

73. The tenant disputed the claim for labour and made reference to other electrical work that was required at the rental premises. The tenant's representative also made reference to the electrical situation.

## Analysis – Materials

74. I accept that the landlord has claimed compensation for carpet replacement and labour for carpet replacement. I also accept that the landlord has claimed compensation for wallpaper removal, painting and general cleaning. Regarding this specific claim for Materials, I find that the landlord failed to satisfy the third part of the test of validity identified in paragraph 28, because the format in which she provided the receipts was not readable. Though the original text photos may have been visible, this original readability was diminished after the individual photos were submitted as a single screenshot. Consequently, I was unable to verify the list of materials purchased.
75. Furthermore, as noted in paragraph 44, the landlord's claim for compensation for carpet did not succeed, and as noted in paragraphs 65 and 69, her claim for labour was only partially successfully. This means, that the landlord also failed to establish on the balance of probabilities that the tenant was the cause of the damages said to be fixed by the Materials purchased.

## Decision - Materials

76. The landlord's claim for Materials does not succeed in any amount.

## Summary Decision – Damages

77. The landlord's claim for compensation for damages succeeds in the amount of \$52.86 (e.g., \$31.16 + \$21.70).

## Issue 4: Security Deposit \$400.00 Relevant Submissions

78. The rental agreement provides evidence of a \$400.00 security deposit collected on 12 August 2021(L#3).

## 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.*

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*(12) A landlord who does not make an application in accordance with subsection*

*(11) shall return the security deposit to the tenant.*

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*(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. As the amount owing to the landlord for rent, late fees and damages equals the amount of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$400.00 security deposit.

### **Decision**

81. The landlord shall retain the full value of the \$400.00 security deposit.

### **Issue 5: Hearing Expenses**

82. The landlord claimed the \$20.00 expense of applying for this hearing along with a \$20.00 charge incurred for submitting a sworn affidavit of service (L#9). A review of this charge for the affidavit however, suggests it was a charge related to "passports" and because passports are not a recognized hearing expense, the landlord's claim for compensation does not succeed.
83. Furthermore, I find that the landlord is not entitled to compensation for the hearing application fee because, in accordance with Residential Tenancies Policy 12-001, applicants are not able to claim application fees as a hearing expense if and when their claim for compensation does not succeed in excess of the security deposit collected.




## Summary of Decision

84. The landlord is entitled to retain the full value of the \$400.00 security deposit against the \$400.00 owing by the tenant, determined as follows:

a) Rent.....	\$322.14
b) Late Fees.....	\$25.00
c) Compensation for damages.....	\$52.86
d) LESS Security Deposit.....	(\$400.00)
e) Total.....	<u>\$0.00</u>

23 December 2022

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal