

Residential Tenancies Tribunal

Applications: 2022 No. 0806 NL
2022 No. 0825 NL

Decision 22-0806-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:08 AM on 03 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. This hearing was originally scheduled and then twice postponed with notice of the most recent postponement provided by the Residential Tenancies Office (RT#1). The applicants and respondents confirmed receipt of this notice.
5. The details of the claim were presented as a fixed term rental agreement that started on 01 September 2021 and was set to expire on 31 August 2022 for which a copy of the written rental agreement was provided by both parties (L#1). Monthly rent was set at \$3,850.00 and a security deposit in the amount of \$2,850.00 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 tenants are seeking the return of the full \$2,850.00 security deposit.

8. The landlord is seeking the following:
 - Compensation paid for inconvenience in the amount of \$700.00;
 - Compensation paid for damages in the amount of \$940.00;
 - Payment of rent in the amount of \$7,600.00;
 - Payment of late fees in the amount of \$75.00; and
 - To retain the security deposit in the amount of \$2,850.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case are sections 10, 14, 15 and 21 of the *Act*.

Preliminary Matters

11. The rental premises is 6,000 square foot structure built in 2005 with multiple garages. The landlord purchased the property in 2011 after a fire and completed extensive renovations in 2012. He then resided in the premises with his family until March 2020. The landlord testified that he completed an attached ensuite apartment in 2014/15. The landlord also testified that windows and doors to the rental premises were updated during his renovations, but that garage doors were not.
12. Tenant1 submitted various photos, written documents and videos to this tribunal and to the landlord on 29 and 30 December 2022. She testified that she also requested guidance on how best to amend her application for dispute resolution at that the same time so that she could amend her monetary claim. Because this hearing was originally scheduled in early November and twice postponed on this request of the tenant, this new request was refused. Tenant1 was advised that she is welcome to submit a subsequent application for dispute resolution to this tribunal if she is inclined to do so.
13. Regarding the documentary evidence submitted by the tenants, the majority of these items were not specifically identified, or referred to during the hearing. Nor were they organized in any logical or summary fashion. The landlord submitted a series of photos taken after the tenancy for each of his claimed items, but did not submit any pre-occupancy documentation. He testified that he has pictures from the advertisement that he posted prior to the tenants taking occupancy, however, these pictures were not submitted.

Issue 1: Compensation for Inconvenience \$700.00

Landlord's Position

14. The landlord referred to an invoice dated 05 September 2022 for services rendered 20 August 2022 at the rental premises (L#2). He testified that the tenants arranged their own cleaners, but that it was determined additional cleaning was required. The landlord also testified, that even with this additional cleaning, further cleaning was still required and that the new tenants who occupied the premises in October 2022 requested a reduction in rent due to the state of cleanliness in the rental premises.
15. The landlord's property manager, [REDACTED], attended the hearing as a witness and testified that the premises was left in a worse condition than when the tenant first took possession of it in late summer 2021. [REDACTED] specifically testified that a "deep cleaning" was required. The landlord acknowledged the "secret video" captured by tenant1 of the move out condition inspection completed by his property manager.

Tenants' Position

16. Tenant1 testified that she arranged her own cleaner and referred to an invoice submitted in the amount of \$1,199.00 (see page 4 in T#1). Tenant1 then referred to a witness affidavit provided by the cleaner, [REDACTED], regarding her own experience with the condition of the rental premises during the time she was contracted to clean (see page 9 and 10 in T#1). Tenant1 also referred to a video she captured during their move out inspection that was completed with the property manager on 01 August 2022. An email link to this video was submitted to the tribunal (T#2).
17. Regarding the state of the rental premises prior to occupancy, tenant1 testified that the landlord only offered cleaning after they moved in. Tenant1 also testified that she took occupancy of the premises a week or so prior to the official lease start date of 01 September 2021.

Analysis

18. The tenants' dispute the landlord's claim for compensation for cleaning and neither party submitted verifiable documentation related to the condition of the premises prior to or post occupancy. Where tenant1 testified that she captured and submitted a video captured during their move out inspection with the property manager, this video was not submitted in an accessible format. Regardless, a post occupancy video without a pre-occupancy video does not allow for comparison. This meant that I was unable to verify whether or not the tenants left the premises in better or worse condition of cleanliness than when they first took occupancy. Consequently, I find that the landlord failed to establish on the balance of probabilities that he was entitled to compensation for cleaning.

Decision

19. The landlord's claim for compensation for inconvenience does not succeed in any amount.

Issue 2: Compensation for Damages (\$940.04)

General Considerations

20. 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).
21. 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.
22. The landlord provided damage ledger summarizing his claim for \$940.04 (L#3) along with a focused series of related photos (L#4). As previously noted in paragraph 13, the landlord did not provide photos or other documentation related to the state of the rental premises prior to occupancy by the tenants. Each of the landlord's claims were reviewed separately so that specific testimony and evidence could be considered.

Damage Item 1 – Garage Door Remotes \$280.60

Landlord's Position

23. The landlord testified that he had to replace three garage door remotes after the tenants vacated. The landlord's witness, [REDACTED], who served as property manager, testified that he left the three garage door remotes for the tenants when they took possession in 2021.

Tenants' Position

24. Tenant1 testified that the garage door remotes never worked and that they may have gone missing during their tenancy. Tenant1 also referred back to the landlord's testimony regarding the garage doors, and how they were not replaced during his renovations of the rental premises.

Analysis

25. The landlord did not provide any verifiable documentary or other evidence related to costs incurred for replacing the garage door remotes. Furthermore, the tenants disputed his claim and argued that the remotes never worked in the first place. Consequently, I find that the landlord failed to satisfy the test for damages identified in paragraph 20 above.

Decision – Garage Door Remotes

26. The landlord's claim for compensation for garage door remotes does not succeed in any amount.

Damage Item 2 – Property Manager Clean Up \$247.25

Landlord's Position

27. The landlord referred to an invoice submitted by his property manager in the amount claimed (L# 6) and also referred to photos submitted (L#4). In particular, the landlord referred to specific photos of left behind items belonging to the tenant's children. The landlord's witness and property manager, [REDACTED], testified that he had to load a dump trailer of items and referred to photos submitted of this loaded trailer (L#4). The witness testified that he has a corporate account with the dump.

Tenants' Position

28. Tenant1 disputed the landlord's claim for dump runs and testified that any items left behind, were items left behind by the previous tenant. Tenant1 also testified that she hired her own garbage removal company prior to vacating the premises.

Analysis

29. The tenants disputed the landlord's claim for compensation and the landlord failed to satisfy the test for damages identified in paragraph 20 above. He did not establish on the balance of probabilities that items left behind by the tenants only, were the cause of him incurring costs in the amount of \$247.25 for removal by his property manager.

Decision

30. The landlord's claim for property manager clean up does not succeed in any amount.

Damage Item 3 – Invoice from [REDACTED] \$345.00
Landlord's Position

31. The landlord referred to an invoice submitted from a [REDACTED] in the amount claimed (L#7). He also referred to photos submitted of a laundry sink full of paint, along with photos of paint on the floor, as well as photos of a kitchen missing some cabinet doors (L#4). The landlord testified that the tenants asked to change the kitchens in the rental premises, despite the kitchens being fairly new. He testified that part of his claim is for costs to finish kitchen work not completed by the tenants. The landlord disputed the tenants claim that there was no water at the rental premises when they vacated, and argued that he attempted to have the issue resolved, but that the tenants rejected his offers of assistance.

Tenant's Position

32. Tenant1 made reference to the invoice and witness affidavit from her cleaner to testify that the cleaner tried her best considering there was "no water" at the rental premises when the cleaning occurred. Tenant1 also testified that she and her husband put many thousands of dollars of their own money into the rental premises, as shown in the kitchen renovations as well as a separate room update. Tenant1 testified that she would have to look through her evidence to see if she had any record of her reporting issues with the water at the rental premises.

Analysis – [REDACTED]

33. The tenants disputed the landlord's claim for compensation and specifically argued that they tried to clean the best they could. I therefore find that the landlord's claim for compensation succeeds in the amount claimed because the tenants acknowledged that they caused the issues, when they testified, that they attempted to resolve them the best they could.

34. Where the tenants claimed that they added thousands of dollars of value to the landlord's premises, they did not provide any evidence to suggest that these efforts were done on the request of the landlord. Subsequently, I gave this testimony from the tenants little weight and found it had no relevance for the other claims of damage raised by the landlord.

Decision

35. The landlord's claim for compensation for [REDACTED] succeeds in the amount of \$345.00.

Damage Item 4 – Materials from Kent (\$67.19)

Landlord's Positions

36. The landlord testified that he incurred costs in the amount claimed for materials purchased for repair work completed in Damage #3 above. He referred to a receipt from Kent in the amount claimed for the purchase of these items (L#8).

Tenants' Position

37. The tenants did not provide a specific comment.

Analysis – Materials from Kent

38. Because the landlord's claim for compensation for repair work using these items succeeded, as noted in paragraph 35, I find that his claim for purchase of these materials also succeeds.

Summary Decision – Damages

39. The landlord's claim for compensation for damages succeeds in the amount of \$345.00.

Issue # 3: Payment of Rent (\$7,600.00)

Landlord's Position

40. The landlord testified that he is seeking compensation for two months rent (August 2022 and September 2022) because the tenants did not give adequate notice. He specifically referred to text messages sent between himself and tenant1 (L#9) which provide evidence of the landlord asking if the tenants wanted to continue renting. The landlord testified that tenant1 went from wanting to stay "very long term" on 19 July 2022 to then declaring on 22 July 2022 that they will be vacating. The landlord acknowledged that tenant1 submitted a tenant's notice to vacate for reasons for un-inhabitability prior to vacating.
41. Regarding the tenants reasons for vacating, the landlord acknowledged that there had been various leaks reported by the tenants, but testified that he always promptly sent someone to address any concerns. The landlord also testified that he was more than willing to provide alternative accommodation to the tenants while he investigated concerns for mould, but that the tenants did not provide any medical documentation that would have justified their claim. The landlord specifically testified, that he was not convinced at the time, that there were specific issues of mould in the rental premises as the only proof provided by tenant1, was pictures of her at the hospital.
42. The landlord testified that his property manager then arranged for mould testing, based on air quality, to occur at the rental premises and referred to the report submitted (L#10). As shown in this report, the landlord testified that no noticeable

mould was located at the rental premises, other than an issue that was addressed in the ensuite.

Tenants' Position

43. Tenant1 testified that she submitted her text messages and that these text messages were proof of repeatedly reporting various leaks in the rental premises (T#3). She also testified that her family were all sick while residing in the rental premises, and that it was only after she was rushed to the hospital on 23 July that she put it all together and realized that living in the house was making her sick. Tenant1 specifically referred to Ambulatory Incident Report from 23 July 2022 (see page 7 in T#1) along with a doctors' note dated 26 July 2022 (see page 6 in T#1). Tenant1 also submitted proof of her having emailed (T#4) the landlord a tenants notice to terminate under section 21 (Premises Uninhabitable) on 25 July 2022 (T#5).
44. Tenant1 testified that she submitted photos of mould (T# #6) along with a witness affidavit from a friend who would visit the rental premises and allegedly got sick (T#7). Tenant1 also referred back to the invoice and affidavit from the cleaner she hired because this cleaner charged extra for "mould precautions" and the cleaner also claimed to have gotten sick after the cleaning. Tenant1 referred to the landlord's mould assessment, and testified that the Government of Canada, does not recommend testing the air for mould (T#5).

Analysis

45. The landlord is seeking compensation for rent monies lost (August 2022 \$3,800.00 and September (\$3,800.00) after the tenant's vacated on 01 August 2022. Where the landlord had a fixed term rental agreement set to expire on 31 August 2022, the landlord also provided evidence of text communication with the tenant on 19 July 2022 wherein she declared her interest and desire in remaining "very long term" within the rental premises. On 22 July 2022 however, tenant1 then communicated that she would vacating, and on 25 July 2022 tenant1 provided formal notice that she would vacating under section 21 of the *Act, Premises Uninhabitable* which reads in part:

21.

(2) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where an action of, or a failure to act by, a tenant makes a residential premises unfit for habitation, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises effective immediately.

(3) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the person providing the notice;
- (b) state the date on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

46. Pursuant to **Policy 07-006 Premises Uninhabitable**, if a person believes the residential unit is not in compliance with the Occupancy and Maintenance Regulations under the *Urban and Rural Planning Act*, they are required to contact the enforcement authority which is the municipality. Such documentation is important for the landlords to establish on the balance of probabilities, that tenant1 and tenant2 were justified in vacating the rental premises on 01 August 2022. However, the tenants did not provide evidence of having contacted appropriate enforcement officials. Furthermore, as noted by the landlord, tenant1 only provided the landlord with official medical documentation on 30 December 2022, long after the tenancy ended.

47. Where **Policy 07-006 Premises Uninhabitable** allows for a termination notice to be issued in cases where the parties responsible do not appear to be taking steps to remedy the situation, I found the evidence and testimony put forward by the landlord and tenants indicated that the landlord was responsive to issues raised. Furthermore, tenant1 provided evidence of her own text message chains with the landlord's property manager, and a review of these texts messages also indicate that the property manager was responsive to any reports of leaks as they were raised by the tenants. Consequently, I find that the landlord successfully established on the balance of probabilities that he maintained his obligations under 10(1)(1) of the *Act*, which reads as follows:

1. *Obligation of the Landlord* -

- (a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*
- (b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

48. This means that the landlord successfully established on the balance of probabilities that the tenants were not justified in issuing their notice of termination under section 21 of the *Act*. This is because the tenants failed to issue this notice in accordance with **Policy 07-006 Premises Uninhabitable** which requires official documentation from appropriate authorities regarding any specific concerns. As such, I find that the landlord is entitled to his claim for payment of rent in lieu of notice in accordance with 18(1)(c) of the *Act* which reads as follows:

Notice of termination of rental agreement

18. (1) *A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises*

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

49. Because the landlord testified that he secured new tenants from 01 October 2022 onwards, I find that the landlord is entitled to rent in the amount claimed representing rent owed for the months of August 2022 and September 2022.

Decision

50. The landlord's claim for payment of rent succeeds in the amount of \$7,600.00.

Issue 4: Payment of Late Fees (\$75.00)

Relevant Submissions

51. The landlord has assessed late fees in the amount of \$75.00 because he did not receive payment of rent for August or September 2022.

Analysis

52. 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.

53. 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.

54. As noted in paragraph 49, I found that the landlord was entitled to full payment of rent for August 2022 (\$3,800.00) and September 2022 (\$3,800.00). Because rent has been outstanding since at least 02 August 2022, I find that the landlord's

claim for compensation for late fees succeeds in the full amount allowed by the minister.

Decision

55. The landlord's claim for late fees succeed in the amount of \$75.00.

Issue 5: Security Deposit \$2,850.00

Relevant Submissions

56. The rental agreement provides evidence of a \$2,850.00 security deposit collected on 21 August 2021(L#1). The tenants applied for the return of the full deposit, and the landlord applied to retain it against monies owed.

Analysis

57. 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.

58. As the amount owing to the landlord for rent, late fees and damages exceeds the amount of the security deposit collected, I find that the landlord is entitled to retain the full amount of the \$2,850.00 security deposit.

Decision

59. The landlord shall retain the full value of the \$2,850.00 security deposit.

Issue 5: Hearing Expenses

60. The landlord claimed the \$20.00 expense of applying for this hearing along with the expense of a commissioner of oaths. Because no receipts was provided for the charge of a commissioner, only his claim for hearing expenses will be considered. Likewise, the tenants claimed the costs for a commissioner of other related to their affidavits provided in the amount of \$180.00, however, no receipt for these services appear to have been submitted. Accordingly, I find that the tenant shall pay the landlord's hearing expenses of \$20.00 because the majority of the landlord's claims for compensation were successful.

Summary of Decision

61. The landlord is entitled to retain the full value of the \$2,850.00 security deposit;

62. The landlord is entitled to payment from the tenants in the amount of \$5,190.00, determined as follows:

a) Rent.....	\$7,600.00
b) Late Fees.....	\$75.00
c) Compensation for Damages.....	\$345.00
d) Hearing Expenses.....	\$20.00
 e) LESS Security Deposit.....(\$2,850.00)	
f) Total.....	<u>\$5,190.00</u>

09 January 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal