

Residential Tenancies Tribunal

Applications: 2022 No. 0907 NL
2022 No. 0945 NL

Decision 22-0907-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 11:06AM on 11 January 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “tenant1” participated in the hearing. The co-applicant, [REDACTED], hereinafter referred to as “tenant2” did not participate. The tenants were also represented at the hearing by [REDACTED], [REDACTED], hereinafter referred to as the “tenants’ representative” (T#1).
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” participated in the hearing.
4. Two affidavits of service were provided by the landlord (L#1) confirming that he served each tenant notice of his counterclaim by registered mail on 23 November 2022. Tenant1 indicated that she received notice of this mail, but did not pick it up. A review of tracking confirms that neither package was picked up, however, subsection 42(6) of the *Residential Tenancies Act* considers items served by registered mail, to be served 5 days after the registered mail is sent.
5. The tenants provided an affidavit of service (T#2) confirming that they properly served the landlord by registered mail prior to the original hearing date of related to the originally scheduled hearing date of 22 November 2022. Notice of rescheduled hearing was then provided by the Residential Tenancies Office (T#3) for the hearing date of 11 January 2023.
6. The details of the claim were presented as a month-to-month rental agreement that started November 2021 for which a copy of the rental agreement was provided (L#2). Monthly rent is set at \$1,322.00 and a security deposit in the amount of \$700.00 was collected.

7. 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. 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

8. The tenants are seeking validity of termination notice determined;
9. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$2,240.00;
 - An order for vacant possession.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
11. Also relevant and considered in this case is sections 10 and 22 of the *Act* as well as policy 07-002 Failure to Complete Repairs.

Preliminary Matters

12. Tenant2 was not present and I was unable to reach him by telephone. Tenant1 indicated tenant2 did not have a phone with him, and that she did not know where he went. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
13. 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 he has been properly served.
14. I proceeded with the hearing in the absence of tenant2 as he had been properly served and his interests were represented by the tenants' representative.

Issue 3: Compensation for Damages (\$2,240.00)

General Considerations

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. The rental premises is located at [REDACTED] is a three bedroom, one bathroom, single family dwelling occupied by the tenants. The landlord testified that the house was built in the 1960s and that he installed new flooring, new kitchen cupboards, new light fixtures, new bathroom fixtures and painted throughout prior to the premises being occupied by the tenants.
18. The landlord provided a limited series of photos (L#3) related to a written request for repairs (L#4). The landlord also submitted a damage ledger (L#5) outlining his claims for compensation in the amount of \$2,240.00. Each of these claims were reviewed against evidence and testimony provided.

Damage Item 1 – Front door replacement (\$400.00) and install (\$200.00)

Landlord's Position

19. The landlord referred to the photo submitted of the damaged door box (see page 6 in L#3) and testified that he expects total costs in the amount of \$600.00 to replace the front door of the rental premises.

Tenants' Position

20. Tenant1 acknowledged causing the damage to the door and testified they kicked in the door after forgetting their keys.

Analysis

21. The landlord did not provide any verifiable documentary or other evidence related to the expected costs for replacing the front door (e.g., purchase and install). Tenant1 nonetheless acknowledged causing the damage. As such, I will

arbitrarily award compensation to the landlord in the amount of \$300.00 for the replacement of the door.

Decision – Front Door Replacement

22. The landlord's claim for compensation for front door replacement succeeds in the amount of \$300.00.

Damage Item 2 – Gyproc – 2 Sheets \$40.00

Landlord's Position

23. The landlord testified that he requires two sheets of drywall to repair the various holes in the walls caused by the tenants. He did not provide receipts or other documentation related to these costs. When asked if he provided photos of damaged walls, he indicated that he believed he did.

Tenants Position

24. Tenant1 testified that tenant2 had a seizure one day and that this caused damage to the gyprock. This was the only gyprock damage that she acknowledged.

Analysis – 2 Sheets Gyprock

25. I reviewed the request for repairs photos submitted by the landlord and noted a single photo of a small section of damaged drywall (see page 1 in L#3). I also noted tenant1's dispute of the landlord's claim for compensation with her acknowledgement that a section of drywall was damaged by a seizure. Because I was not provided with access to these photos, or other documentary evidence from the landlord to verify costs, I was not convinced that two sheets of gyprock were required for repairs in the rental premises.

Decision

26. The landlord's claim for compensation for two sheets of gyprock does not succeed in any amount.

Damage Item 3 – Interior plaster and paint \$200.00

Landlord's Position

27. The landlord testified that he expects to incur costs in the amount claimed to restore the walls after the tenants vacate. He testified that the walls were last

painted in fall 2021. The landlord also testified that the tenants smoke in the rental premises despite it being a no smoking unit.

Tenant's Position

28. Tenant1 denied smoking and testified that tenant2 smokes outside. The tenants' representative testified that tenant1 does not smoke and that the interior of the rental premises smells like smoke.

Analysis – Interior Plaster and Paint

29. According to Residential Tenancies policy 09-005, the expected serviceable life of a paint job is 5 years. Where the landlord is seeking compensation for damages prior to the rental premises being vacated by the tenants, I find that he failed to establish on the balance of probabilities that this damage currently exists, and or that it will still exist after the tenants vacate. Additionally, I note that the landlord only provided a single photo of a single small hole in the gyprock as evidence, and no verifiable financial information was provided. Consequently, the landlord's claim for compensation does not succeed.

Decision

30. The landlord's claim for compensation for interior plaster and paint does not succeed in any amount.

Damage Item 4 – Smoke Residue Cleaning \$500.00

Landlord's Position

31. The landlord testified that he received an estimate for cleaning the rental premises of smoke residue after the tenants vacate. He testified that such cleaning was required because it is a non-smoking unit.

Tenants' Position

32. As noted in paragraph 28, tenant1 denied smoking in the rental premises however the tenants' representative acknowledged the premises smelling of smoke.

Analysis –Smoke Residue Cleaning

33. As noted in paragraph 29, it would be presumptive to award compensation for an issue that may or may not exist when the landlord takes back possession of the rental premises. I also note that the landlord did not provide verifiable evidence related to the expected costs for smoke residue cleaning. Consequently, I find

that the landlord failed to establish on the balance of probabilities that he is entitled to compensation in the amount claimed for smoke residue cleaning.

Decision – Smoke Residue Cleaning

34. The landlord's claim for compensation for smoke residue cleaning does not succeed in any amount.

Damage Item 5: Broken Window \$600.00

Landlord's Position

35. The landlord testified that he incurred costs in excess of \$600.00 to replace a broken kitchen window in the rental premises. He testified that he was not notified of this broken window, and that he only became aware of it when driving past. The landlord acknowledged that he was previously told by the tenants, that they had no idea who broke the window. He testified further that to his knowledge, no police report was filed by the tenants and so the tenants are responsible for the window.

Tenant's Position

36. Tenant1 acknowledged that the kitchen window was broken and testified that it was "beat in" from someone on the outside. She testified that she did not know who broke the window.

Analysis – Broken Window

37. The landlord and tenant1 agreed that the kitchen window was broken and had to be replaced. I accept the landlord's argument that the tenants are responsible for the damaged window, particularly, since no evidence was provided indicating an alternative cause. That said, I find the landlord is only entitled to 50% compensation (e.g., $\$600.00/2 = \300.00) for the amount claimed since he did not submit verifiable documentation related to costs incurred.

Decision – Broken Window

38. The landlord's claim for compensation for a broken window succeeds in the amount of \$300.00.

Damage Item 6: “Stolen” Gyproc \$300.00

Landlord’s Position

39. The landlord testified that 15 sheets of gyprock left in the bottom floor of the rental premises, have since disappeared. Consequently, the landlord is seeking compensation in the amount claimed to replace the sheets of gyprock that allegedly went missing.

Tenants’ Position

40. Tenant1 testified that she is in a wheelchair and that she has not been down to the bottom floor of the rental premises. She also testified that she has no knowledge of the allegedly missing gyprock.

Analysis – “Stolen” Gyprock

41. The landlord and tenant disputed this claim. I find that the landlord failed to establish on the balance of probabilities that he is entitled to compensation for damages in accordance with the test identified in paragraph 15.

Decision – “Stolen” Gyprock

42. The landlord’s claim for “stolen” gyprock does not succeed in any amount.

Summary Decision Damages

43. The landlord is entitled to compensation in the amount of \$600.00 for damages (e.g., \$300.00 + \$300.00).

Issue 2: Vacant Possession Validity of Termination Notice

Landlord Submissions

44. The landlord testified that he issued the tenants a written request for repairs on 30 September 2022 (L#4) and that he served this request by taping inside the rental premises. The landlord testified that he identified the items needing to be repaired after conducting a periodic inspection of the rental premises. He provided photographic evidence in support of the items needing to be repaired (L#3). The landlord testified that he identified a required completion date of 05 October 2022 and that even though he was aware that tenant1 was in the hospital, tenant2 had enough time to “at least start” required repairs.

45. As per this request, the tenants were to:
- Replace the main door entrance
 - Replace the bedroom door
 - Repair all holes in gyprock
 - Fully clean rental premises of smoke residue
46. The landlord testified that he issued a termination notice under section 22 of the *Act* on 05 October 2022 after he confirmed that none of the required repairs were completed, or even started (L#6). The termination notice was a template notice that identified a stated move-out date of 14 October 2022. The landlord testified that he served it by taping it to the door of the rental premises on the day it was issued. The landlord testified that he later texted a picture of all notices to the tenants' representative on 13 October 2022 after she requested them.

Tenants' Position

47. Tenant1 acknowledged receiving the written request for repairs and acknowledged causing the door damage reported. As noted previously, she denied smoking in the premises but the tenant's representative acknowledged that the interior of the rental premises smells of smoke. Tenant1 testified that she did not complete the required repairs because she was in the hospital at the time, as known by the landlord. When asked, tenant1 testified that the rental premises was in worse condition currently than it was when she first took possession.
48. Regarding the termination notice issued by the landlord, tenant1 denied being served the termination notice on the day issued as the landlord testified (e.g., 05 October 2022). The tenants' representative testified that she reached out to the landlord to request copies of all notices provided which were then received on 13 October 2022.

Analysis

The landlord is seeking vacant possession of the rental premises after issuing the tenant with a termination notice under section 22 of the *Act*, **Notice where tenant's obligation not met** which reads in part:

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is

required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

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

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

49. Pursuant to **Policy 07-002 Failure to Complete Repairs**, the landlord may give the tenant written notice to clean or repair the damage when a tenant fails to keep the premises clean or repair damages. If the tenant fails to comply within 3 days or a reasonable period, the landlord may give the tenant a termination notice of not less than five days.
50. Specific to this dispute, the landlord testified that he issued the request for repairs on 30 September 2022 and that he then issued a termination notice on 05 October 2022 once he confirmed that the required repairs were not completed. Where tenant1 testified that she did not receive the termination notice on the day issued, I found that her testimony did not align with this office receipt of her original claim for Validity of Termination notice on 12 October 2022. Consequently, I find that the timelines for service provided by the landlord are in accordance with the requirements of the *Act* and associated policies.
51. Based on a review of all evidence and testimony, I find that the landlord successfully established on the balance of probabilities that his issuance of the 05 October 2022 termination notice was justified because:
- The scope of damage visible in the photos captured 30 September 2022 matched the landlord's testimony regarding the condition of the rental premises on 05 October 2022.
 - Tenant1 acknowledged the documented damage and further acknowledged that no repairs were completed prior to 05 October 2022 as required.
 - The landlord testified that he confirmed on 05 October 2022, that the damaged items, including the damaged front door, were not repaired or replaced prior to 05 October 2022. Upon doing so, he issued the termination notice.
 - The tenants' representative acknowledged evidence of smoking inside the rental premises – this was an item that needed to be addressed by the written request for repairs issued on 30 September 2022.
52. I therefore find that the termination notice issued to the tenants on 05 October 2022 termination notice issued under section 22 of the *Act* to be a valid notice as it meets all the requirements therein.

Decision


53. The termination notice issued on 05 October 2022 is a valid notice.
54. The landlord's claim for an order for vacant possession of the rented premises succeeds.
55. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Summary of Decision

56. The termination notice issued on 05 October 2022 is a valid notice.
57. The landlord is entitled to the following:
 - Compensation for damages in the amount of \$600.00.
 - An order for vacant possession of the rented premises.
 - The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

16 January 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal