

Residential Tenancies Tribunal

Application: 2022 No. 0961 NL

Decision 22-0961-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:47PM on 08 December 2022 via teleconference. It was originally scheduled for 11:00AM but then postponed to later in the same day to accommodate the on record request of the tenant.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. She was supported at the hearing by her spouse, [REDACTED]. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend the hearing.
3. The landlord provided an affidavit of service (L#1) confirming that she served the tenant by email ([REDACTED]) and proof of service was provided for an email sent on 05 November 2022 (L#2). The tenant was then provided with an additional copy of the Respondents document by the Residential Tenancies Office (A#1) after the tenant stated on record, that she had blocked the landlord’s email.
4. The details of the claim were presented as a rental agreement that began on 01 June 2020 and ended 30 June 2022. Monthly rent was \$1,100.00.00 and the landlord could not recall the exact amount of the security deposit collected. A copy of the current rental agreement was provided (L#2).
5. 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

6. The landlord is seeking an order for Compensation for Other in the amount of \$2,875.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also relevant and considered in this case are:
 - Sections 10, 14 and 18 of the *Act*,
 - *Residential Tenancies Policies 9-005 Depreciation and Life Expectancy of Property*;
 - *Residential Tenancies Policy 12-001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*;

Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone despite making contact with her earlier in the day when I placed the initial courtesy call to [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 she has been properly served.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
12. The landlord testified that she sold the rental premises in the middle of July 2022 and that she was required to drop the price and repair assorted damages prior to the sale completing. Related to this, the landlord testified that the security deposit was previously disposed of based on a verbal agreement with the tenant for such damages. It was also determined that the landlord's claim for "Other" was in fact a claim for Compensation for damages.
13. 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).
14. 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.

Issue 1: Compensation for Damages (\$2,875.00)

Relevant Submissions

15. The rental premises is a condo townhouse located at [REDACTED]. The landlord testified that it was built in the early 1970s, with four bedrooms and one washroom. The land testified that she has photos of the rental premises prior to occupancy by the tenant but did not submit them. She did however, submit a series of photos taken after the tenant vacated, as well as a series of photos taken after necessary repairs were completed (L#4). The landlord testified that she did not complete a move in or move out condition inspection report, but that she did inspect the premises before and after move out with the tenant.
16. The landlord testified that she is seeking compensation in the amount of \$2,875.00 and referred to a professional invoice in the amount claimed (L#5). The landlord testified that a team attended to the rental premises, chemically cleaned the walls and then painted them so as to remove the staining from incense and candles in every room that had resulted in soot stains in every room (see L#4).
17. The landlord testified that the tenant had tried to claim there was mold on the walls and not soot from the candles and incense burned in every room. The landlord also testified that the tenant and her family were disruptive to her previous sales attempts, and would claim “mold” to prospective buyers. The landlord testified that she had the premises inspected, and as noted on the professional invoice submitted, it was “soot” and not “mold” that was cleaned and painted over. The landlord testified that the premises was painted prior to it being occupied by the tenant and her family in summer 2020.
18. The landlord testified that she helped the tenant find a new rental premises and stated that the tenant allegedly promised to pay costs incurred by the landlord to clean and paint the walls.

Analysis

19. According to Residential Tenancies policy 09-005, the expected serviceable life of an interior paint job is 3 – 5 years and in this dispute the interior paint surface is understood to be 2 years old. Based on the landlord's testimony and evidence, I accept that there was extraordinary damage to the walls to the rental premises from what indeed appears to be soot. Consequently, I accept the landlord's testimony that this was the result of incense and candles burned by the tenant within the rental premises.
20. I specifically find that the landlord is entitled to 50% compensation of the amount claimed because the painted surface from summer of 2020 did not last for the expected four years as a result of interior candle and incense use. Consequently, I find that the landlord is entitled to compensation in the amount of \$1,437.50. (e.g., \$2,875.00 x .5). Where the landlord testified that the tenant allegedly offered to pay the whole costs, I was unable to verify these claims since the tenant did not attend the hearing.

Decision

21. The landlord's claim for compensation for damages succeeds in the amount of \$1,437.50.

Issue 2: Hearing Expense

22. The landlord claimed the \$20 expense of applying for the hearing along with the expense of an AirBnB and cost of gas for traveling to the rental premises. The landlord testified that the latter two expenses were incurred when attending to the rental premises when the tenant vacated. Because these expenses are unrelated to the act of the landlord applying for this dispute or attending to this hearing, I find that they are not eligible hearing expense.
23. The tenant shall however pay the landlord's expense of applying for the hearing since the landlord's claim for compensation for damages was partially successful.


Summary of Decision

24. The tenant shall pay to the landlord, an amount of \$1,457.50 determined as follows:

- a) Compensation for Damages.....\$1,437.50
- b) Hearing Expenses.....\$20.00
- c) Total.....\$1,457.50

16 December 2022

Date


Jaclyn Casler
Residential Tenancies Tribunal