

## Residential Tenancies Tribunal

Application 2023 No. 0042 NL  
2023 No. 0084 NL

Decision 23-0042-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 9:12 AM on 14 February 2023 via teleconference.
2. The applicants [REDACTED] and [REDACTED], hereinafter referred as "tenant1" and "tenant2" both participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as "the landlord".
3. The tenants provided an affidavit of service confirming that they served the landlord by email on 15 January 2023 and proof of service to [REDACTED] was provided (T#1). The landlord confirmed receipt of service but did not provide an affidavit of service related to her own service of the tenants. Both tenants however agreed to waive their right to service and proceed with the hearing.
4. The details of the tenancy were presented as an originally fixed term rental agreement that started 01 May 2020 for which a copy of the original written rental agreement was provided (T#2). Once this agreement expired, the tenancy became month-to-month. Monthly rent was set at \$1,250.00 (including \$50.00 towards wifi) due at the first of the month, and a security deposit in the amount of \$625.00 was collected.
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. 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 tenants are seeking the following:
  - Rent refunded in the amount of \$1,200.00;
  - Payment of Other in the amount of \$50.00 for refund of wifi;
  - Compensation for inconvenience in the amount of \$2,850.00; and
  - An order for return of security deposit in the amount of \$600.00.
7. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$2,786.49; and
  - An order to retain the \$625.00 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 sections 10 and 19 of the *Act*.

## Preliminary Matters

10. Tenant1 joined the call from an international location. She dropped off the call on multiple occasions and proceedings were generally paused until she returned. Tenant1 referenced the monthly rate of rent (\$1,200.00) and the security deposit (\$600.00) listed in the rental agreement to state that they are incorrect. Both sides agreed that monthly rent was increased to \$1,250.00 to include wifi (from the first month onwards) and that a \$625.00 security deposit was collected. Consequently, the tenants' request for refund of rent and payment of other will be dealt with as one issue in this report.
11. The rental premises is a two unit apartment located at [REDACTED] [REDACTED]. The main floor unit is occupied by the landlord and the lower unit was occupied by the tenants, who are mother and daughter. Tenant2 lived in the premises throughout the tenancy, while tenant1 would come and go during the end of the tenancy as she began living elsewhere.
12. The landlord testified that the premises were built in the 1960s and that she has owned it for 10 years. She testified that she comprehensively renovated the lower unit after she bought it because it was previously used as a Doctors office. Both parties agreed that the premises was mostly furnished, and that the only major furniture provided by the tenants was the bedroom set used by tenant1.

**Issue 1: Refund of Rent \$1,200.00**  
**Payment of Other – Refund of Wifi \$50.00**

**Tenants' Position**

13. Tenant1 testified that they are claiming a refund of rent (e.g., \$1,200.00) for monies paid for December 2022 along with a refund of wifi (\$50.00) for that same month. She testified that this is because tenant2 texted the landlord on 15 November 2022 to provide one month's notice that they would be vacating on 15 December 2022. Tenant1 referred to text messages submitted between tenant2 and the landlord as evidence (T#3). Tenant2 testified that she had trouble paying rent during the final months of her tenancy, and tenant1 testified that they are seeking the refund of rent for December 2022 because this represents money the landlord had her grandfather pay in their name. Tenant2 testified that the landlord always told her, it did not matter when rent was paid, so long as it was paid.

**Landlord's Position**

14. The landlord also referred to text messages between herself and tenant2 and testified that she only received notice on 27 November 2022 of a specific date on which the tenants would be vacating her lower apartment (L#2). Prior to this, the landlord testified that tenant2 only suggested she was leaving and never provided an exact date.

**Analysis**

15. The landlord and tenants agreed there was a month-to-month rental agreement in place and that rent was due at the first of the month. Consequently, I find that the tenants failed to establish on the balance of probabilities that they are entitled to the refund of rent for the month of December 2022. This is because section 18(1)(b) of the *Act* requires that the tenants provide "*not less than one month*" notice of termination "*before the end of a rental period*". Specific to this dispute, this means the rental period ran from the first of the month to the last of the month for the tenants since they were renting month-to-month. Consequently, even if the tenants gave proper notice (which was not clear) on 15 November 2022, such notice could only be considered legal notice that the tenancy was ending on 31 December 2022. As such, I find that the landlord is entitled to retain rent monies (including \$50.00 for wifi) received for the month of December 2022 and that the tenants are not entitled to any refund or payment of other.

**Decision**

16. The tenants' claim for Return of Rent does not succeed in any amount.
17. The tenants' claim for Payment of Other does not succeed in any amount.

## **Issue 2: Compensation for Inconvenience \$2,850.00**

### Tenants' Position

18. Tenant1 referred to a written ledger submitted that outlines the tenants' requests for compensation (T#4):
  - Neglected plumbing \$1,000.00;
  - Never fixed flooring damage \$500.00;
  - Entering premises without permission \$500.00;
  - Verbal harassment and threats \$500.00;
  - Non-renewal of lease \$250.00;
  - Repairs out of pocket \$100.00.
19. The tenants did not submit any photos or other visual evidence in support of their claims. Tenant1 testified that there was no move in condition inspection or photos taken of the premises from prior to move in. Related to their claims for compensation, she testified that there was significant water damage caused across the floor of the premises after the toilet backed up earlier in the tenancy, and that this damage was never fixed. Tenant2 acknowledged causing this backup as a result of accidentally flushing bandages, and testified there was a second issue with the toilet in early December 2022. Tenant2 denied causing this second back up.
20. This December 2022 backup was reported to the landlord who then allegedly entered the premises without permission, causing stress to tenant2 who was at work. Tenant2 referred to text messages submitted and testified that the landlord harassed her after she provided notice that she was vacating. Tenant1 testified that they are also seeking compensation for the non-renewal of the lease because the tenants wanted stability and they also wanted some record of their rental rates. Regarding the claim for out of pocket repairs, tenant1 did not discuss this in depth. She did however testify, that there were a series of smaller issues with the plumbing during the tenancy, but that these were not reported to the landlord, because they did not want to bother her.

### Landlord's Position

21. Regarding the plumbing, the landlord testified that there were two issues she was aware of and that she promptly responded to both. She testified that she entered the premises only to deal with the plumbing concern and submitted two bills from plumbers as evidence of her efforts to resolve tenant concerns (L#3). The landlord testified that plumbing issues were the result of the tenants flushing "unflushables". When asked how she knew this, the landlord testified that the plumber removed such items from the tenants' connection to the rest of the house.

## **Analysis**

22. I accept that the tenants submitted an itemized claim for compensation for inconvenience. However, I find that they failed to establish on the balance of probabilities that there are entitled to financial compensation in any amount.
23. Regarding their claim for inconvenience related to plumbing and related damage from plumbing issues, the tenants did not provide any documentary evidence that I could review so as to verify the impacts on their day to day use and occupation of the rental premises. Consequently, I could only accept the landlord promptly responded to the two issues reported by the tenants and dispatched a plumber on both occasions.
24. Regarding the tenants' claim for inconvenience for the landlord allegedly entering the premises without permission, 10(1)(5) of the *Act* allows for landlords to enter the premises without notice in case of emergency. Considering that the tenants testified to significant water damage from the original incident of a backed-up toilet, I find that the landlord acted reasonably when she entered the premises without permission in December 2022 to attend to the reported plumbing issue.
25. Regarding the tenants' claim for compensation for alleged harassment and threats, all parties were informed during the hearing that this tribunal does not have jurisdiction to consider monetary penalties for such relational considerations.
26. Regarding the tenants' claim for compensation for the landlord's non-renewal of a fixed term lease, I find there is no legal foundation for the tenants to make such a claim. In particular, I find that there is no requirement for the landlord to provide tenants with stability of tenure since landlords and tenants alike are entitled to peaceful enjoyment and reasonable privacy under 10(1) (7) of the *Act*. A guarantee of tenure could be seen as an infringement upon such rights.
27. Regarding the tenants claim for compensation for small repairs completed in the premises, I previously noted that this claim was not explained in depth. As such, no entitlement for compensation can be considered.
28. In sum, as shown in paragraphs 23-28 I find that that the tenants failed to establish on the balance of probabilities that they are entitled to financial compensation for inconvenience in any amount.

## **Decision**

29. The tenants claim for compensation for inconvenience does not succeed in any amount.

### **Issue 3: Compensation for Damages \$2786.49**

#### Landlord's Position

30. The landlord submitted a screenshot of a spreadsheet outlining her claim for damages in the amount claimed (L#5). Each of the items identified in this spreadsheet were individually reviewed during this hearing to receive relevant testimony and evidence. Of note, is that the landlord submitted a series of photos related to her claims of documented damage to the following furniture items and a section of wall (L#5):
  - Couch
  - Dining room chair
  - Doors to bathroom and washroom
  - Lamp and headboard
31. Regarding costs to replace items said to be damaged, the landlord referred to the spreadsheet provided where she wrote in costs related to either the original cost or planned replacement purchase. The landlord testified that she submitted screenshots of current costs from various stores for purchase of replacement item, however, these screenshots were not located.
32. The landlord submitted claims for painting after the tenants vacated, however, she did not provide receipts related to the purchase of paint and she also did not submit documentary evidence related to the either the pre or post occupancy condition of the damaged walls. She testified that the premises were last painted prior to the tenants taking occupancy and that tenant2 left a desk which she sold for \$20.00. The landlord recorded this \$20.00 against her claims for compensation.
33. The landlord also claimed payment of \$180.00 for late fees charged to the tenant for July 20 through December 2022. When asked to clarify the exact dates that rent had been received in full for each of the months identified, the landlord testified that she accurately calculated her entitlement to rent for each month.

#### Tenants' Position

34. The tenants denied damaging the rental premises and argued that all allegedly damaged items were damaged prior to their taking occupancy of the rental premises. Tenant2 specifically testified that the premises were not freshly painted prior to occupancy as the landlord claimed. Regarding the landlord's claim for compensation for late fees, tenant2 testified that she was repeatedly told by the landlord that late payments were fine. Regarding the landlord's claim for compensation related to plumbing, tenant2 testified that they already paid for  $\frac{1}{2}$  of the original plumbing invoice because she acknowledged she caused the issue. The tenants however denied causing the second major plumbing issue in December 2022 however, and testified that they understood it was related to a blockage underneath the laundry machines in their unit.

35. Tenant2 acknowledged leaving behind a desk and did not request that the landlord pay her the financial benefit received by the landlord for selling the desk.

## Analysis

36. 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).

37. 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.

38. Regarding the landlords' claim for compensation for the damaged furniture and the damaged walls, these were all disputed by the tenants. Consequently, I find that the landlord failed to satisfy the test identified in paragraph 36 because she did not:

- Provide pictures of the premises prior to occupancy by the tenants;
- Provide photos of the damaged furniture prior to occupancy; or
- Provide verifiable documentation related to the costs of restoring damaged items (such as the walls) and or purchasing replacement items.

39. Regarding the landlord's claim for compensation for plumbing, I accept that she submitted two receipts for plumbing costs incurred in the rental premises. Where both parties agreed that the initial plumbing bill was shared, the only verifiable documentary evidence provided by the landlord for the reported issue in December 2022, was a visa receipt. Consequently, I was not provided with any verifiable documentary related to a) the location of the charge (e.g., was work even conducted at the rental premises?) or b) the actual cause of the necessary repair work. As such, I find that the landlord's claim for compensation for damages related to plumbing, furniture and her premises generally, does not succeed in any amount.

40. Regarding the landlord's credit to the tenants of \$20.00 against her claim for damages, I will not consider it further since tenant2 did not mention any claim against those funds. She only stated that she willingly left the desk behind at the rental premises.

41. Regarding the landlord's claim for late fees included in her larger claim for damages, I find that the landlord failed to establish that she was entitled to payment of specific late fees claimed since she failed to provide any verifiable evidence related to the exact days that rent was received in full between August and December 2022 (e.g., the period of time for which she charged monthly late fees). Consequently, I find that the landlord's claim for late fees as damage, does not succeed in any amount.

## **Decision**

42. The landlord's claim for compensation for damages does not succeed in any amount.

## **Issue 4: Security Deposit \$625.00**

### **Relevant Submissions**

43. The landlord and tenants agreed that a security deposit in the amount of \$625.00 was collected. The landlord requested to retain the full value of the security deposit and the tenants have applied to have the full value returned.

### **Analysis**

44. 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.*

45. Because the landlord's claim for compensation for damages did not succeed in any amount, I find that the tenants are entitled to the full return of the security deposit paid.

### **Decision**

46. The landlord is not entitled to retain any portion of the security deposit.
47. The landlord shall pay to the tenants \$625.00, representing the full return of the security deposit.

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

48. The tenants and landlord both claimed the \$20.00 expense of applying for the hearing. Tenant1 also claimed the 30-40 euro cost incurred for calling into the teleconference line from an international occasion. In accordance with Residential Tenancies Policy 12-01 Recovery of Fees, because neither party's claim succeeded in excess of the amount of the security deposit collected, I find that both parties are required to pay their own hearing expenses.

### **Summary of Decision**

49. The tenants' claim for Return of Rent does not succeed in any amount.
50. The tenants' claim for Payment of Other does not succeed in any amount.
51. The tenants claim for Compensation for Inconvenience does not succeed in any amount.
52. The landlord's claim for Compensation for Damages does not succeed in any amount.
53. The landlord is not entitled to retain any portion of the Security Deposit.
54. The landlord shall pay to the tenants \$625.00, representing the full return of the Security Deposit.

24 February 2023

Date

  
Jaclyn Casler  
Residential Tenancies Tribunal