

## Residential Tenancies Tribunal

Applications 2023 No. 0091 NL

Decision 23-0091-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 1:49 PM on 21 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2" also participated in the hearing.
3. Two affidavits of service were provided by the landlord confirming that both tenants were served notice of the claim by email on 01 February 2023. Proof of service was also provided related to emails sent on 01 February 2023 and 07 February 2023 after tenant1 contacted the Residential Tenancies Office indicating that she could not access the initial attachment sent by the landlord.
4. The details of the claim were presented as an initially fixed term rental agreement that started 23 January 2021 and ended 30 November 2022 as a month-to-month rent. Monthly rent was set at \$1,400.00 and all parties agreed that the full value of the security deposit collected was applied against rent owed to the landlord for November 2022. A copy of a written rental agreement was not provided.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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 landlord is seeking Compensation for Damages in the amount of \$1,568.94.

## **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 is section 10 of the *Act*.

## **Preliminary Matters**

9. The rental premises is located at [REDACTED]. The parties agreed that the tenancy ended on 30 November 2022 after the tenants gave one months notice of their intention to vacate.

### **Issue 1: Compensation for Damages (\$1568.94)**

#### Landlord's Position

10. The landlord testified that she is seeking compensation for the cost of replacing the fridge in the rental premises. She testified that the damaged fridge was five years old at the time the tenants took possession of the premises in January 2021. She submitted a series of photos (L#3) to depict documented damage to the fridge, and testified that this damage was documented "a week or so" after the tenants vacated. The landlord called a repair man because the fridge was warm and submitted an appliance repair invoice in the amount of \$68.94 (L#4). The landlord testified that she was informed that the motherboard had failed and that her best option was to purchase a new fridge. No documentation related to costs incurred for a replacement fridge was submitted and the landlord denied the tenants' claims that they reported concerns with the fridge prior to the end of their tenancy.

#### Tenants' Position

11. Tenant1 testified that the fridge was "blinking" near the end of their tenancy and that they offered to have the appliance repair man, who was attending to the dishwasher, look at the fridge. This offer was allegedly refused by the landlord. Tenant1 testified that the fridge was left in the same condition except for an internal compartment door that had fallen off. Tenant2 testified that he had informed the landlord of this broken compartment, and that the landlord was allegedly "fine with it".

## **Analysis**

12. 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).
13. 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.
14. Regarding the landlords' claim for compensation for a replacement fridge, I find that she did not satisfy the test provided in paragraph 12 because:
- She did not provide verifiable costs for the replacement of the fridge;
  - She failed to establish on the balance of probabilities that the tenants were responsible for her needing a new fridge. Where the landlord testified that the "motherboard had failed" it was unclear how such a failure was the responsibility of the tenants.

## **Decision**

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

27 February 2023

Date

Jaclyn Casler  
Residential Tenancies Tribunal