

Residential Tenancies Tribunal

Applications 2023 No. 0092 NL

Decision 23-0092-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15AM on 28 February 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not participate and were not represented at the hearing.
3. Three affidavits of service was provided by the landlord confirming that the tenants were served by email on 9 February 2023 and 11 February 2022 (L#1). Proof of emails sent to [REDACTED] and [REDACTED] were provided (L#2). The landlord testified that he had no contact information for [REDACTED] and so he served her to [REDACTED] as he understands her to be the wife of [REDACTED].
4. The details of the claim were presented as an intended fixed term rental agreement that started in September 2022 for which a written rental agreement was provided (L#3). The tenancy ended early on 04 December 2022 after the tenants were removed by the sheriff in response to an Order for Vacant Possession (2022-0934-NL) issued by this tribunal. Monthly rent was set at \$1,000.00 and a security deposit in the amount of \$500.00 was previously disposed of against rental arrears.
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 landlord is seeking an order for compensation for damages in the amount of \$2,536.50.

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 tenants were not present or represented at the hearing and I was unable to reach them by telephone at either of the two phone numbers provided: [REDACTED] or [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 they have been properly served.
11. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
12. The rental premises is a three bedroom single family dwelling located at [REDACTED]. The landlord testified that he built it 35 years ago and has owned it since. He stated that the premises were newly painted prior to the tenants taking occupancy in September 2022.

Issue 1: Compensation for Damages (\$2536.50)

Landlord's Position

13. The landlord submitted a written ledger outlining his claim for compensation for damages in the amount identified (L#4) as well as a series of photos organized room by room depicting the condition of the rental premises prior to occupancy, after occupancy, and after repairs (L#5).

General Repairs \$1,400.00

14. The landlord testified that he hired a local man to repair a series of holes kicked and or punched into the drywall of all rooms of the premises. He testified that the heaters also needed to be repaired. He submitted a written invoice from the man hired in the amount claimed for labour and materials (L#6). The landlord testified that this man spent 40 hours completing repairs and again referred to comprehensive photos submitted of damages and damages repaired throughout the rental premises.

Replace two doors \$300.00

15. The landlord testified that he needs to replace the hallway and bathroom door because of various holes kicked into them. He referred to photos submitted of the damaged doors (L#7) as well as a quote for replacement of the damaged doors in the amount of \$253.00 (L#8). The landlord testified that he expects at least \$47.00 in labour costs to remove the damaged doors and install the new doors. He stated that the damaged doors were no more than 10 years old.

Replace Stolen Dryer \$698.00

16. The landlord testified that he provided a dryer in the rental premises and provided a photo (L#9) of the machine that he estimates was 12 years old. He submitted a series of photos of “the cheapest” new dryer in the amount claimed (L#10).

Remove abandoned property \$100.00

Remove Garbage to Landfill \$38.50

17. The landlord referred to a series of photos submitted that depict a layer of garbage and other refuse left at the rental premises after the tenants were removed (L#11). He testified that he is seeking compensation for his time in gathering items as well as compensation for paying a neighbour with a truck \$50.00 to take all materials to the dump for him. The landlord testified that he spent three hours organizing and that he submitted a written invoice from his neighbour in the amount of \$50.00 (L#12).

Analysis

18. 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).

19. 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.
20. Regarding the landlords' claim for compensation for \$1,400.00 for labour and materials for repairing all damages to the walls and other items of the rental premises, I find that he successfully established on the balance of probabilities that he is entitled to the amount claimed. By providing photos of the premises prior to occupancy, he established that damages were caused by the tenants. And by testifying that the premises were painted prior to occupancy, and by also providing an written invoice from the person hired for the work, the landlord clearly established that \$1,400.00 of repair work was completed at the premises. As such, I find that he is entitled to compensation in the amount claimed.
21. Regarding the landlord's claim for compensation for two damaged doors, I accept that the doors were damaged during the tenancy because the landlord provided photos of before and after. I also accept that the purchase and installation of two replacement doors will cost at least \$300.00. Where the landlord testified that the doors were 10 years old and Residential Tenancies Policy 09-05 establishes the expected serviceable life of interior doors to be 20 years, I find that the landlord is entitled to compensation for the damaged doors in the amount of \$150.00 (e.g., $\$300.00/2$).
22. Regarding the landlord's claim for compensation for a missing dryer, I accept that a 12 year old dryer had been provided at the rental premises and that it was not left at the premises after the tenants vacated. I also accepted that the landlord will incur pre-tax costs of at least \$698.00 to replace that missing dryer with the cheapest replacement option. According to Residential Tenancy Policy 09-05, the expected serviceable life of a clothes dryer is 14 years. Because the new dryer will be replacing a 12 year old appliance, I find that the landlord successfully established on the balance of probabilities that he is entitled to compensation in the amount of \$114.67 (e.g., $\$698.00 \times 1.15 = \802.70 AND $\$802.70/14 = \57.34 AND $\$57.34 \times 2 = \114.67).
23. Regarding the landlord's claim for compensation for time spent and other monies paid to remove and dispose of items left at the rental premises after the tenants were removed by the sheriff, I find that the landlord successfully established that the tenants left a substantial amount of debris and other broken items at the rental premises. Consequently, I accept that the landlord had to pay a neighbour \$50.00 for use of his truck to take items to the dump, and that the landlord spent time gathering such items to be taken to the dump. Where the landlord testified that he spent 3 hours doing this work, I find that his claim for compensation for labour succeeds in the amount of \$65.10 (e.g., $3 \times \$21.70$ the maximum hourly rate for cleaning identified in Residential Tenancies Policy 09-05).

24. As such, I find that the landlords' total claim for compensation related to garbage and item removal succeeds in the amount of \$115.10 (e.g., \$65.10 + \$50.00).

Decision

25. The landlord's claim for compensation for damages succeeds in the amount of \$1,779.77 (e.g., \$1,400.00 + \$150.00 + \$114.67 + \$115.10).

Issue 2: Hearing Expenses

26. The landlord claimed the \$20.00 expense of applying for the hearing. As his claim has been successful, the tenants shall pay his hearing expenses.


Summary of Decision

27. The tenants shall pay to the landlord an amount of \$1,799.77, determined as follows:

- a) Damages.....\$1,779.77
- b) Hearing Expenses.....\$20.00
- c) Total.....\$1,799.77

06 March 2023

Date


Jaclyn Casler
Residential Tenancies Tribunal