

Residential Tenancies Tribunal

Applications 2023 No. 0102 NL

Decision 23-0102-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 1:50 PM on 01 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1" and "landlord2" respectively both participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as "the tenant". She participated on behalf of her husband, [REDACTED] who was unable to participate in the hearing.
3. Two affidavits of service was provided by the landlords confirming that the tenants were served on 15 February 2023 (L#1). Landlord1 confirmed that the tenant was served in person and that her husband was served electronically, as well as in person on 17 February 2023. Because the affidavit of service related to landlord1's service of the husband, was for service according to unapproved electronic means, I reviewed internal records for communication made with my office from the husband. In doing so, I noted that the husband contacted my office on 17 February 2023 and cited the landlord's case number. Consequently, I accept that both the tenant and her husband were provided notice of the landlords' claim at least 10 days prior to the hearing.
4. The details of the claim were presented as a long standing rental agreement that started in 2004 and ended on 28 December 2022. It was a month-to-month rental agreement when it ended, and monthly rent was \$900.00 (at the end of the tenancy), due on the first of the month, POU and a security deposit in the amount of \$300.00 was collected in 2004.
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 landlords are seeking the following:
 - An order for compensation for damages in the amount of \$5,141.39;
 - An order for compensation for utilities in the amount of \$52.80; and
 - An order for return of the security deposit in the amount of \$300.00.

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 and 14 of the *Act*.

Preliminary Matters

9. The rental premises is a two unit building located at [REDACTED]. It has been owned since it was built by the landlords approximately 25 years ago. The tenants occupied the main floor of the premises which is approximately 1,200 square feet with three bedrooms and 1 bathroom and laundry available on the lower level. The parties agreed that notice was given in the middle of November 2022 by the tenants that they would vacate which was accepted by the landlords.
10. The parties also agreed that there was no visual evidence or other documentation related to the condition of the rental premises prior to move in. The parties agreed that there was a move out condition inspection that occurred on 28 December 2022, however, they disagreed on how this inspection ended. Of note, is that the parties agreed that component items flagged as damaged throughout the premises, were original to the premises.

Issue 1: Compensation for Damages (\$5,141.39)

General submissions

11. The landlords submitted a written claim for damages that specifically identified claims for component specific materials as well as task specific labour (L#3). We reviewed these claims one by one to ensure that both parties had a chance to provide relevant evidence and testimony each claim.
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 there was a violation of section 10 of the *Act* which establishes landlord and tenant obligations towards the premises. This tribunal uses a three part test which requires the following elements be satisfied before compensation can be considered:

- 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.

Damage 1 = Cleaning and garbage removal

- Labour
 - 2 hours cupboards (2 X \$21.20)
 - 2 hours behind appliances (2 X \$21.20)
 - 2.5 hours remove and dispose of garbage (2.5 X \$21.20)

Landlord's Position

14. Landlord1 referred to photos submitted (see file folder 13, 14 and 15 in L#6) and testified that he had to spend time cleaning cupboards and behind appliances in the kitchen. He also referred to other photos submitted (see file folder 2 in L#6) and testified that he had to collect garbage left behind by the tenants and take it to the dump. Landlord1 testified that owns multiple rental premises and that they are always left clean for new tenants.

Tenant's Position

15. The tenant acknowledged that she failed to clean the two cupboards photographed by the landlord. She also acknowledged that she did not clean behind the appliances because the fronts were on fabric and she worried that she would have damaged the floor if she pulled the appliances out. The tenant also stated that she did not clean the range-hood because said range-hood has allegedly been broken for multiple years. She testified in general that the premises were not excessively dirty but also not clean prior to occupancy.
16. The tenant rejected the landlords' claim for compensation for garbage removal, stating that it was garbage day, the day after they vacated and so landlord1 could have just left the garbage out for pickup. The tenant acknowledged that she did not place the garbage items at the end of the driveway for pick-up, stating that this was not possible because of the birds. She referred to evidence submitted of a garbage schedule for that day (T#1).

Analysis – Cleaning and garbage removal

17. The tenant acknowledged that she did not complete the work for which the landlords are seeking compensation. However, I also acknowledge that I was not provided with any verifiable documentation related to the exact condition of the rental premises prior to occupancy by the tenants. Consequently, I am unable to determine whether or not the tenants left the premises in a better, similar, or worse state than when they first took occupancy. Accordingly, I will arbitrarily award the landlords compensation for 2 hours of labour where 6.5 hours were claimed. Because the landlord claimed hourly labour in the amount of \$21.20 which is less than the maximum hourly rate allowed by Residential Tenancies Policy 09-05, I find that his claim succeeds in the amount of \$42.40 (e.g., \$21.20 x 2).

Decision - Cleaning and garbage removal

18. The landlord's claim for compensation for cleaning and garbage removal succeeds in the amount of \$42.40.

Damage 2 = Painting and Plastering

- Materials \$75.10 (Receipt provided see page 1 in L#4)
- Labour = 8 Hours plaster and 6 hours paint (e.g., 14 x 21.20 = \$296.80)

Landlord's Position

19. Landlord1 testified that he expected the premises were freshly painted prior to occupancy by the tenants in 2004. He also testified that he does not recall providing the tenants with paint during the 18 year tenancy. The landlord referred to a series of photos submitted after the tenants vacated to depict scratches on siding and various corners throughout the house (see file folder 18 in L#6). He also referred to a series of photos submitted to depict the comprehensive plaster repairs completed throughout the house (see file folder 8 in L#6). He testified that this repair work was in response to beyond normal wear and tear, especially the plaster that had worn off the metal corners. He also testified that some of the damage appeared to have been caused by a cat which was not approved for the premises.
20. Landlord1 testified that he is only claiming a portion of time and materials spent on painting because he recognized this was the first time that painting happened in at least 18 years.

Tenant's Position

21. The tenant rejected the landlords claim for compensation for painting and plastering. She testified that the premises was not freshly painted prior to their move in and that any damage that occurred was normal wear and tear.

Analysis – Painting and Plastering

22. According to Residential Tenancies Policy 09-005, the expected serviceable life of a paint job is 3 – 5 years. Specific to this tenancy, the rental premises was not painted for a period of at least 18 years. Where the landlord has claimed compensation for a portion of his efforts to restore the premises to its original condition, I find that he failed to establish on the balance of probabilities that the damages he flagged, were beyond normal wear and tear. Yes, the documented damage could be considered noticeable after a year long tenancy, however, I accept the tenant's argument that any regular wear and tear was compounded by time (e.g., 18 years). Consequently, I find that the landlords' claim for compensation for painting and plastering does not succeed in any amount.

Decision - Painting and Plastering

23. The landlord's claim for compensation for painting and plastering does not succeed in any amount.

Damage 3 - Replace damaged bi-fold and door

- Materials
 - Door and doorknob \$133.37 (Receipt provided see page 3 in L#4)
 - Hardware for repairs \$6.85 (Receipt provided see page 4 in L#4)
- Labour
 - Replace paint bi-fold door 4 hours
 - Replace paint bedroom door 5 hours
 - Repair/Replace Door knob 1 hour

Landlord's Position

24. Landlord1 referred to photos submitted and testified that the tenants removed an original bi-fold door and left a new replacement (see file folder 6 in L#6). He stated that time was required to paint and install the bi-fold door. Landlord1 then referred to other photos submitted and testified that he had to purchase and install a new bedroom door and door knob (see file folder 6 in L#6). He stated that he had to paint both the door and bi-fold door prior to installation.

Tenant's Position

25. The tenant rejected the landlords claim for compensation for labour related to installation of the bi-fold and bedroom door. She testified that she left the bi-fold door for landlord1 to install because she figured he would be faster with the work. The tenant acknowledged damaging the bedroom door during move-out.

Analysis – Door and BI-fold door replacement

26. According to Residential Tenancies Policy 09-005, the expected serviceable life of interior doors is 20 years and the expected serviceable life of interior door knobs is 15 years. Consequently, I find that the landlord's claim for compensation related to the bi-fold and bedroom door does not succeed in any amount since both the door and bi-fold were original to the premises that is understood to be at least 25 years old.

Decision - Replace damaged bi-fold and door

27. The landlord's claim for compensation for replacement of the door and bi-fold door does not succeed in any amount.

Damage 4 - Light bulbs and light fixtures

- Materials
 - Light bulbs \$37.53 (Receipt provided see page 5 in L#4)
 - Patio Outdoor Light \$45.99
- Labour
 - Replace missing lightbulbs 2 hours
 - Replace patio light 1 hour

Landlord's Position

28. Landlord1 referred to photos submitted depicting a broken exterior light fixture as well as a series of interior light fixtures with missing bulbs (see file folder 4 in L#6). Landlord1 testified that all light fixtures would have had bulbs when the tenants first took occupancy and that the damaged fixture was original to the premises.

Tenant's Position

29. The tenant acknowledged some missing light bulbs and stated that certain bulbs were removed because the fixtures provided too much light. She testified that she would have willingly replaced the lightbulbs had landlord1 not aggressively taken back the keys on 28 December 2022 thereby ending the tenancy. The tenant acknowledge awareness of the damaged exterior light fixture and claimed that this damage was due to a storm. She testified that she never at any point informed the landlord of the damaged light fixture.

Analysis – Light bulbs and light fixtures

30. The parties agreed there were various missing light bulbs in the light fixtures of the rental premises after the tenancy ended. Consequently, I will award compensation to the landlords for the purchase of replacement light bulbs in the

amount of \$37.53 as well as compensation for 1 hour of labour in the amount claimed of \$21.20 an hour.

31. Regarding the damaged exterior light fixture, I accept that both parties agree that it was damaged. According to Residential Tenancies Policy 09-05, the expected serviceable life of an exterior light is 15 years. Because the damaged exterior light was understood to be approximately 25 years old, I find that the landlords claim for compensation does not succeed in any amount.

Decision - Light bulbs and light fixtures

32. The landlord's claim for compensation for the lights and light fixtures succeeds in the amount of \$58.73 (e.g., \$21.20 + \$37.53).

Damage 5 - Replacement of blinds throughout premises

- Materials (see L#4 for receipts)
 - Blinds for kitchen/bedroom
 - Blinds for bedroom#1 and #2
 - Blinds for Living room window
 - Blinds for bathroom
- Labour
 - Replace blinds throughout house 6 hours

Landlord's Position

33. Landlord1 referred to photos submitted depicting either missing or broken blinds and testified that he had to purchase replacements (see file folder 7 in L#4). He denied the original blinds were beyond their expected serviceable life and testified that he has taken possession of premises occupied for longer durations than this dispute, and that the blinds are still useable.

Tenant's Position

34. The tenant disputed the landlord's claim for labour related to installing replacement blinds. She acknowledged that some blinds were missing and testified that she removed them because they were cheap and broken. She referred to photos she submitted (T#1) in addition to the landlords.

Analysis – Replacement of blinds throughout premises

35. According to Residential Tenancies Policy 09-005, the expected serviceable life of interior drapes/blinds is 5 – 10 years. Because the damaged blinds, where they still existed were understood to be approximately 25 years old, I find that the landlords' claim for compensation for the purchase of replacement blinds, does not succeed in any amount.

Decision - Replacement of blinds throughout premises

36. The landlords' claim for compensation for blinds does not succeed in any amount.

Damage 6 - Replacement of Hallway and Master bedroom flooring

- Materials
 - Laminate flooring (quote provided see page 12 in L#4))
- Labour
 - 10 hours

Landlord's Position

37. Landlord1 referred to photos submitted depicting the poor state of carpet throughout the premises and testified that he will have to remove and replace carpet from the master bedroom and hallway (see file folder 9 in L#6). He testified that this work has not yet been completed and that he has quoted replacing it with laminate as the cheapest possible option. The landlord acknowledged that the damaged carpet was original to the premises and stated that some damaged areas appear to have been damaged by a cat which was not approved for the premises.

Tenant's Position

38. The tenant acknowledged staining the carpet in spots and also patching a section of carpet beneath the bedroom door that had become damaged. She rejected the landlords claim for compensation because the carpet was old.

Analysis – Replacement of flooring

39. According to Residential Tenancies Policy 09-005, the expected serviceable life of good quality carpet is 10 years. Consequently, I find that the landlord's claim for compensation for carpet replacement does not succeed in any amount since at 25 years old, it has far exceeded its expected serviceable life.

Decision-Replacement of flooring

40. The landlord's claim for compensation for flooring replacement does not succeed in any amount.

Damage 7 - Repair bathroom closet flooring

- Labour
 - 3 hours

Landlord's Position

41. Landlord1 referred to photos submitted depicting curled up vinyl sheet cushion flooring (linoleum) between the bathroom flooring and the bathroom closet space (see file folder 10 in L#6). He testified that he always keeps materials on hand, which he used to pull up the affected floor and replace it.

Tenant's Position

42. The tenant acknowledged the damaged linoleum and testified there were two toilet backups that resulted in an overflow of water and made reference to evidence submitted (T#1). She also testified that there was just a seam between the sections of the linoleum that became damaged.

Analysis – Repair bathroom closet flooring

43. According to Residential Tenancies Policy 09-005, the expected serviceable life of good quality vinyl sheet cushion flooring is 10 years. Consequently, I find that the landlord's claim for compensation does not succeed in any amount since the damaged flooring was at least 25 years old and has far exceeded its expected serviceable life.

Decision— Repair bathroom closet flooring

44. The landlord's claim for compensation for the bathroom closet flooring does not succeed in any amount.

Damage 8 - Repair Corner of the House

- Materials and labour - \$1996.40 (Quote provided see page 11 on L#4)

Landlord's Position

45. Landlord1 referred to photos submitted depicting the corner of the house with vinyl siding as well as zoomed in photos depicting two damaged sections on the vertical corner cap of this siding (see file folder 5 in L#6). He testified that he first became aware of a potential issue in 2012 when he received complaints about the tenants' son playing hockey on a backyard ice rink at the premises. The landlord indicated that the car owned by the bottom floor tenant had been damaged by hockey pucks, and that he understands the corner piece of the vinyl siding to have also been similarly damaged.
46. Landlord1 referred to text messages with the tenant's husband where he put in writing that the tenants needed to repair the damaged corner piece of siding prior to vacating (see page 1 in L#7). Landlord1 testified that the tenant's husband acknowledged this request (as shown in the texts) and committed to repairing the damage but encountered difficulties as a result of being unable to source

comparable materials (see page 12 in L#7). Landlord1 testified that the scope of work for repairing the corner piece is so high because the original corner piece is wider than what is currently manufactured and additional siding needs to be added when the new corner piece is installed. He also testified that proper installation is labour intensive because all siding needs to be removed and re-installed with the installation of the new corner piece.

Tenant's Position

47. The tenant acknowledged photos of the damaged corner siding but denied that her son caused the damage. The tenant also rejected the landlord's timeline of events and referred to photos he submitted from 2018 (L#5) which did not include the damaged corner piece of siding. The tenant also denied that her husband ever committed to the landlord's request that the tenants replace the damaged corner piece. She suggested that the damage was caused by any of the many storms that have occurred over the years.

Analysis – Repair Corner of the House

48. According to Residential Tenancies Policy 09-005, the expected serviceable life of vinyl siding is 50 years. This would mean that the tenant's damaged siding has only served half of its expected life. Specific to the landlord's request for compensation for damage, I reviewed the photos submitted and accept that there are two fist sized sections of the corner piece that are cracked apart and open to the elements. I accept the landlords' argument that the damage was human caused and not caused by storms, as argued by the tenant.
49. Regarding the landlord's claim for financial compensation, I accept that they submitted a professional quote from a recognized business for the necessary repair work. I also accept that the landlords submitted documentary evidence summarizing text message conversations with the tenant's husband where the matter of repairing the damaged corner was discussed. Consequently, I accept that the landlords successfully established on the balance of probabilities that the tenants damaged the corner piece of siding while it was only halfway through its expected serviceable life of 50 years. This means that I find the landlords are entitled to compensation for damages in the amount of \$998.20 (e.g., \$1,996.40 x .5).

Decision-- Repair Corner of the House

50. The landlords' claim for compensation for the corner of the house succeeds in the amount of \$998.20.

Other claims for damage

- Gas for truck \$250.00
- Time spent collecting materials 6 hours

51. The parties were informed that this tribunal does not entertain or consider claims from landlords related to costs incurred in the business of being landlords. I therefore find that the landlords' related claims do not succeed in any amount.

Summary Decision – Compensation for Damages

52. The landlords' total claim for compensation for the damages succeeds in the amount of \$1,099.33 (e.g., \$42.40 + \$58.73 + \$998.20.).

Issue 2: Compensation for Utilities \$52.80

Landlord's Position

53. Landlord1 referred to an invoice submitted for the premises for utilities consumed between 23 December 2022 and 01 January 2023 in the amount of \$78.29 (L#8). He testified that he was surprised by the early notice from NL Power that the tenants closed their utility account. He stated that he is seeking compensation from the tenants in the prorated amount of \$52.80.

Tenant's Position

54. The tenant testified that they closed their utility account because they were no longer living in the rental premises from 23 December 2022 onwards.

Analysis

55. I accept that the parties disputed this charge. I also accept that the parties previously agreed that the key to the rental premises was returned to landlord1 on 28 December 2022. Consequently, I find that the tenants are responsible for the payment of utilities through to that day in the amount of \$52.20.

$$\$78.29 / 9 \text{ (days charged on bill)} = 8.70 \times 6 \text{ (days key retained)} = \$52.20$$

Decision

56. The landlords' claim for compensation for utilities succeeds in the amount of \$52.20.

Issue 3: Hearing Expenses

57. The landlords claimed the \$20.00 expense of applying for the hearing. Where their claim for compensation has been partially successful, I find that the tenants shall pay this expense.

Issue 4: Security Deposit \$300.00

Relevant Submissions

58. The parties agreed that a security deposit in the amount of \$300.00 was collected on 11 September 2004. According to the publicly available security deposit interest calculator, this deposit generated \$6.00 in accordance with the regulations. As such, I find that there was a total security deposit in the amount of \$306.00 held by the landlords.

Analysis

59. 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.

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(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.

60. Because the landlords' claim for compensation has succeeded in excess of the value of the security deposit plus interest, I find that they are entitled to retain the full amount.

Decision

61. The landlords are entitled to retain the full value of the \$306.00 security deposit.

Summary of Decision

62. The landlords are entitled to retain the full value of the \$306.00 security deposit.

63. The tenants shall pay to the landlords an amount of \$865.33, determined as follows:

- a) Compensation for Damages..... \$1,099.33
- b) Payment of Utilities.....\$52.20
- c) Hearing Expenses.....\$20.00
- d) Retain Security Deposit.....\$306.00
- e) Total.....\$865.33

08 March 2023

Date



Jaclyn Casler

Residential Tenancies Tribunal