

Residential Tenancies Tribunal

Applications 2023 No. 0110 NL

Decision 23-0110-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:23 AM on 08 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” participated in the hearing. As did the respondent, [REDACTED], hereinafter referred to as “the tenant”.
3. The landlord provided an affidavit of service confirming that she served the tenant with notice of her claim by email on 14 February 2023 (L#1). Proof of email sent to [REDACTED] was provided (L#2). The tenant acknowledged the email used for service despite not receiving said notice via this email, and he did not dispute the landlord’s declaration of service to his mother via email to [REDACTED]. The tenant stated that he received notice of the hearing via text (from the landlord) and that he agreed to participate in the hearing. He also provided the landlord with a different email so that she could provide again all materials considered during the hearing.
4. The details of the claim were presented as a fixed term rental agreement that started 15 December 2021. Monthly rent was set at \$1,200.00 all inclusive and a security deposit in the amount of \$600.00 was collected.
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 the following:
- An order for payment of rent in the amount of \$4,825.00;
 - An order for compensation for damages in the amount of \$2,230.00; and
 - An order for return of the security deposit in the amount of \$600.00.

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*.

Preliminary Matters

9. The rental premises is a two unit building located at [REDACTED]. The tenant resided in the main floor unit.
10. The parties disputed when the rental agreement was set to expire. The tenant argued that it expired 31 December 2022 which is why he vacated without giving notice on 01 January 2023. The landlord testified that she had all tenants sign new fixed term rental agreement in April 2022 because she needed proof for financing a new rental premises. The landlord submitted a copy of the written rental agreement supposedly signed by the tenant on 04 April 2022 (L# 3) however the tenant denied that was his signature on document.
11. The parties agreed they did not conduct a move in condition inspection or a move out condition inspection. Consequently, the move in condition inspection report submitted by the landlord was not considered (L#4).

Issue 1: Payment of Rent (\$4,825.00)

Landlord's Position

12. The landlord submitted a rent ledger (L#5) and testified that the tenant owes \$4,825.00. However, she also testified that the tenant owes rent through to 31 March 2023 because the premises have not yet been rented and the tenant signed a fixed term rental agreement. The landlord submitted proof of the listing she posted two weeks after the tenant vacated (L#6). However, the landlord testified that she has not yet rented the premises because she has been checking references and everyone's are bad.
13. When asked for her response to the tenant's claim that it was not his signature on the rental agreement provided (L#3), the landlord testified that she does not know whose signature is the document.

Tenant's Position

14. As shown in the ledger, the tenant agreed that he owed \$2,425.00 in back rent as at 31 December 2022. However, the tenant denied owing the landlord rent past this date because he understood the rental agreement was over. He also testified that the signature said to be his on the copy of the lease signed 04 April 2022, was not in fact his signature.

Analysis

15. I accept that the landlord and tenant agree that \$2,425.00 in rent was owing as at 31 December 2022. Regarding the landlord's potential entitlement to rent for 2023, I accept that the landlord and tenant disagreed as to whether or not a second fixed term rental agreement was entered into during April 2022. I further accept that the tenant agrees he did not provide notice to the landlord that he would be vacating. Consequently, I find that the landlord is entitled to an additional payment of rent in the amount of \$1,200.00 (representing rent for January 2023), bringing the total amount of rent owing up to \$3,625.00.
16. Regarding the landlord's claim for rent for the months of February and March 2023, I note that her total claim for rent submitted is only through to 28 February 2023. Where the landlord submitted a rental agreement under seemingly false pretenses (e.g., she said it was signed by the tenant but the tenant claims it was not) I find that the landlord failed to establish on the balance of probabilities that she was entitled to payment of rent for February 2023 or March 2023 despite the rental unit remaining vacant.

Decision

17. The landlord's claim for rent succeeds in the amount of \$3,625.00.

Issue 2: Compensation for Damages (\$2,230.50)

General submissions

18. The landlord submitted a series of photos taken in the premises after the tenant vacated (L#7). The tenant reviewed these photos and agreed that they fairly represented the condition of the rental premises after he vacated. We then reviewed each item identified in the landlord's written claim for compensation so that relevant evidence and testimony could be considered (L#8).
19. 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).
20. 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 supplies (\$50.00)

General Submissions

21. The landlord did not submit receipts or other verifiable evidence related to her purchase of cleaning supplies for use in the rental premises. Consequently, her claim for compensation fails the test identified in paragraph 19 and does not succeed in any amount.

Damage 2 - Painting Supplies/Toilet Seat Cover (\$402.38)

General Submissions

22. The landlord did not submit receipts or other verifiable evidence related to her purchase of painting supplies or a toilet seat cover. Consequently, her claim for compensation fails the test identified in paragraph 19 and does not succeed in any amount. Nevertheless, the tenant acknowledged causing and then repairing a sizeable hole in a portion of drywall. He testified that he is willing to pay the landlord \$50.00 for time and materials for repainting this damaged section. As such, I find that the landlord's claim for compensation for painting succeeds in the amount of \$50.00.

Damage 3 – Time for cleaning, Dump Runs 40 hours (\$868.00)

Landlord's Position

23. The landlord referred to multiple specific photos submitted (L#7) and testified that two people spent two full days cleaning the premises after the tenant vacated (32 hours). She testified that multiple hours needed to be spent removing grease from throughout the premises and that she also had to use a steam cleaner on

the carpets. The landlord testified that the rental premises is approximately 1,200 square feet in size and that it took her weeks to get the smell out.

24. The landlord did not specifically speak to time required for dump runs.

Tenant's Position

25. The tenant acknowledged that he did not clean prior to vacating, and testified that someone was supposed to come and clean after he left.

Analysis – Time for cleaning

26. According to Residential Tenancies Policy 09-005, the maximum claimable hourly rate for cleaning is \$21.70. Where the tenant acknowledged that he did not clean the premises prior to vacating, I accept that the landlord is entitled to some compensation for cleaning. Because the landlord failed to submit any verifiable documentation related to the condition of the rental premises prior to it being occupied by the tenant, I find that she is only entitled to compensation for cleaning for half of the hours charged. This means that she is entitled to compensation for cleaning in the amount of \$347.20 (e.g., 16 x \$21.70)

Decision - Cleaning

27. The landlord's claim for compensation for cleaning succeeds in the amount of \$347.20.

Damage 4 - Missing Cutlery, dishes, pots, rugs, curtains (\$500.00)

General Submissions

28. The landlord did not submit receipts or other verifiable evidence related to the items said to be missing. She also testified that she has not and will not purchase replacement items. The tenant testified that he had some of his own stuff and that he did not know if he took the landlord's possession. Because the landlord could not verify what, if any of her possession existed prior to the tenancy and she also did not establish the cost of these items when initially purchased, I find that her claim for related compensation does not succeed in any amount. This is because she failed to satisfy the test identified in paragraph 19.

Damage 5 – Fuel for travelling from St. John's (\$185.14)

Relevant Submissions

29. The parties were informed that this tribunal does not recognize costs related to traveling between personal residences and rental premises. Consequently, this claim for compensation does not succeed in any amount.

Damage 6 – Broken Sink Faucet \$224.98
Relevant Submissions

30. The landlord did not submit receipts or other verifiable evidence related to the sink that was said to be broken. Nor did she provide verifiable receipts related to the purchase of items said to be needed to repair the broken sink. Furthermore, the tenant testified that he did not know the sink was damaged. Consequently, I find that the landlord's claim for compensation for damages does not succeed in any amount as she failed to satisfy the test identified in paragraph 19.

Summary Decision – Compensation for Damages

31. The landlords' total claim for compensation for the damages succeeds in the amount of \$397.20 (e.g., \$50.00 + \$347.20).

Issue 3: Security Deposit \$600.00
Relevant Submissions

32. The parties agreed that a security deposit in the amount of \$600.00 was collected. The landlord has requested to retain the full value against monies owed.

Analysis

33. 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.

34. Because the landlord's claim for compensation has succeeded in excess of the value of the security deposit, I find that she is entitled to retain the full amount.

Decision

35. The landlord is entitled to retain the full value of the \$600.00 security deposit.

Summary of Decision

36. The landlord is entitled to retain the full value of the \$600.00 security deposit.
37. The tenant shall pay to the landlord an amount of \$3,422.20, determined as follows:

a) Payment of Rent.....	\$3,625.00
b) Compensation for Damages.....	\$397.20
c) LESS Security Deposit.....	\$600.00
d) Total.....	<u>\$3,422.20</u>

10 March 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal