

Residential Tenancies Tribunal

Applications 2023 No. 0118 NL
2023 No. 0161 NL

Decision 23-0118-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 06 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", also participated in the hearing. She joined the hearing at 9:30am and testified that her legal name is not [REDACTED] as was identified in the tenant's application.
3. An affidavit of service was provided by the tenant (T#1) confirming that she served the landlord notice of her claim by email on 09 February 2023 and proof of service to [REDACTED] was provided (T#2). Because the landlord was not initially present at the hearing, proof of prior emails with the landlord through that address were requested and provided (T#3). After the landlord joined the call, we also reviewed her affidavit (L#1) and proof of service to the tenant by email on 28 February 2023 (L#2). It was then pointed out that the landlord failed to provide at least 10 days prior notice, however, the tenant testified that she was willing to waive her right to service.
4. The details of the claim were presented as a month-to-month agreement that started late August 2020 and ended 31 January 2023, with the tenant vacating a few days earlier. Monthly rent was set at \$1,000.00 and a security deposit in the amount of \$500.00 was collected for which a receipt was provided (T#4).
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 tenant is seeking the following:
 - An order for payment of other in the amount of \$300.00; and
 - An order for the full return of a \$500.00 security deposit

7. The landlord is seeking the following:
 - Validity of Termination Notice Determined;
 - An order for rent paid in the amount of \$1,000.00;
 - An order for payment of damages in the amount of \$673.50; and
 - An order to retain the full value of the \$500.00 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 are sections 10, 14 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a single family dwelling located at [REDACTED]. The tenant resided there with her child.

11. The hearing initially proceeded in absence of the landlord and dealt with the tenant's claim for dispute resolution only. It is noted that the landlord joined the line just prior to the recorder being turned off. This meant that the hearing continued with the tenant's claim as well as the landlord's counter claim.

Issue 1: Validity of Termination Notice Determined

Landlord's Position

12. The landlord testified that she received notice from the tenant in mid January 2023 that she would be vacating at the end of the month. She provided proof of the message received from the tenant (L#3). The landlord acknowledged that she previously issued the tenant a section 18 termination notice that included a stated move out date of 31 October 2022. The landlord denied that she was actively trying to remove the tenant from the premises.

Tenant's Position

13. The tenant testified that the landlord previously issued her a termination notice in July 2022 for her to vacate by the end of October 2022 (T#5). Consequently, the tenant testified that the landlord knew she was vacating and even gave the

tenant a positive reference to a future landlord. The tenant testified that she gave as much notice as she could to the landlord that she would be vacating.

Analysis

14. The validity of a termination notice depends on how the notice was served and its reasons for issuance. Specific to this dispute, the parties acknowledge that a section 18 termination notice was issued by the landlord in summer 2022. Both parties also agreed that the tenant then provided notice in the middle of January 2023 that she would be vacating at the end of the month. I reviewed the text of the tenant's termination notice and I note that she wrote:

"I know it is not a 30 day notice but that's the best I can do"

15. By the tenant's own admission, I accept that she did not issue the landlord a valid termination notice. Consequently, I find that the termination notice issued by the tenant is not a valid notice of termination.

Decision

16. The tenant's termination notice was not a valid termination notice.

Issue 2: Payment of Rent (\$1,000.00)

Landlord's Position

17. The landlord requested payment of rent in the amount of \$1,000.00 for February 2023 because the tenant did not give 30 days notice that she would be vacating.

Tenant's Position

18. The tenant testified that she does not owe money because the landlord previously told her to vacate and knew that she would be vacating.

Analysis

19. The applicant is responsible for establishing the rate of rent and their entitlement for payment of this rent. As noted in paragraph 16, I found that the termination notice issued by the tenant to the landlord was not a valid termination notice. Consequently, I find that the landlord is entitled to payment of rent in the amount of \$1,000.00 (for February 2023) as compensation for inadequate notice of termination. Because the tenant and landlord agreed that there was a month to month tenancy in place, this means that tenant's notice of termination could have

only been effective 28 February 2023, which is why she must pay compensation to the landlord.

20. Where the tenant argued that she should not be responsible for rent for February 2023 because the landlord previously issued her a termination notice, I did not accept this argument since the landlord herself testified, that she was not actively trying to remove the tenant from the premises. I accept this argument and find that the landlord effectively waived her own termination notice which means that the tenant's termination notice in mid January 2023 was the only notice in play. And because this notice was found to be invalid, I found that the landlord was entitled to payment of rent for February 2023.

Decision

21. The landlord's claim for payment of rent succeeds in the amount of \$1,000.00.

Issue 3: Compensation for Damages (\$673.50)

General Submission

22. The landlord submitted a written damage summary where she outlined her claims for compensation (L#4). She testified that she has done some work, but that more work is required. The landlord estimated time and effort required for the following work components (Totalling \$413.75). Each of these claims were reviewed against relevant evidence and testimony from both sides:

Damage # 1 Floor

Carpet Cleaning \$87.00
Embedded animal fur and general vacuuming \$43.50

Damage # 2 Walls

Baseboard stained with animal spraying \$21.75
Filthy walls in kitchen \$43.50
Decals ruined paint on walls

Damage # 3 Kitchen

Fridge not cleaned \$21.75
Stove not cleaned \$43.50
Cupboard not cleaned \$43.50

Damage # 4 Lights

Ceiling Lights not cleaned \$43.50

Damage # 5 Bathroom

Bathroom toilet, sink and tub unclean \$21.75

Damage # 6 Windows

11 Window and screens dirty \$43.50

Damage # 7 Yard

Junk left in yard

Garden covered in Dog Poop

23. The landlord and tenant agreed that no photos were submitted of the rental premises prior to occupancy. They also agreed that a move out condition inspection was not completed. Where the tenant testified there was an extensive rat problem in the premises, the landlord denied there was a rat problem.
24. 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).
25. 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 Floor

- Carpet Cleaning \$87.00 (machine rental)
- Embedded animal fur and general vacuuming \$43.50 (2 hours)

Landlord's Position # 1 Floor

26. The landlord testified that the carpet was not clean and that she needs to pay to rent a steam cleaner. She identified the cost of \$87.00 for renting this machine and she also identified an additional charge of \$43.50 for removing embedded animal fur and general vacuuming. The landlord testified that cats were permitted at the premises but not the dogs. She referred to photos submitted of stained and dirty carpet as well as pictures of the dogs in question (L#5).

Tenant's Position # 1 Floor

27. The tenant acknowledged that she left the carpet in an unclean condition and that she did not steam clean. She also acknowledged that she submitted photos of the carpet indicating the same unclean condition (T#6). The tenant acknowledged that she had cats and that she also had two dogs at one occasion

but not the full duration of the tenancy. The tenant asked to see the landlord's receipts.

Analysis # 1 Floor

28. Regarding the landlords' claim for compensation for carpet cleaning, I find that both sides acknowledge the carpet was left dirty. Where the tenant demanded to see the landlord's receipts for renting a steam cleaner, I accept that a charge of \$87.00 is reasonable for renting such a machine. Consequently, I find that the landlord's claim succeed as presented.
29. Regarding the landlord's claim for general vacuuming and removing embedded fur, I accept that there were cats and two unapproved dogs at the premises. With respect to the tenant's argument that dogs were not present for the whole duration, I find this claim is outweighed by her own photographic evidence showing clearly dirty carpets. Consequently, I find that the landlord's claim for compensation for time cleaning succeeds in the amount of \$43.40 (e.g., 2 x \$21.70 an hour in accordance with Residential Tenancies Policy 09-05).

Decision # 1 Floor

30. The landlord's claim for compensation for cleaning the floors succeeds in the amount of \$130.40 (e.g., \$87.00 + \$43.40).

Damage # 2 Walls

- Baseboard stained with animal spraying \$21.75 (1 hour)
- Filthy walls in kitchen \$43.50 (2 hour)
- Decals ruined paint on walls

Landlord's Position # 2 Walls

31. The landlord referred to photos submitted depicting decals on walls, a large brown stain above a heater and general smudges across multiple sections of wall (L#5). She testified that she will have to spend at least three hours cleaning and repairing the walls and that she has only managed to clean the brown stain from the wall above the heater. The landlord testified that the baseboards were stained and that the premises smelled bad, likely as the result of the tenant's animals praying.

Tenant's Position # 2 Walls

32. The tenant acknowledged leaving decals on the walls but testified they should come off easily. The tenant also acknowledged the stain on the wall above the heater but testified this was burnt by the heater and not a removable stain. Regarding the landlord's accusations of spraying, she testified that her animals were fixed and would not have sprayed within the premises.

Analysis # 2 Walls

33. I reviewed the photos submitted from both sides. Where neither side provided verifiable photos of the premises prior to move in, I accept that the tenant agreed she did not clean the stain above the heater or remove the decals prior to vacating. Though the tenant denied that her animals would have sprayed the baseboards, I accept that the landlord provided photos depicting dirty trim and doors throughout the premises. Consequently, I find that the landlord's claim for compensation for time cleaning succeeds in the amount of \$65.10 (e.g., 3 x \$21.70 an hour in accordance with Residential Tenancies Policy 09-05).

Decision # 2 Walls

34. The landlord's claim for compensation for cleaning the walls succeeds in the amount of \$65.10.

Damage # 3 Kitchen

- Fridge not cleaned \$21.75 (1 hour)
- Stove not cleaned \$43.50 (2 hour)
- Cupboard not cleaned \$43.50 (2 hour)

Landlord's Position # 3 Kitchen

35. The landlord referred to photos submitted and testified that she had to spend an hour cleaning cupboards, two hours cleaning the stove, and 1 hour cleaning the fridge (L#5). The landlord denied finding evidence of rodents in the cupboards.

Tenant's Position # 3 Kitchen

36. The tenant acknowledged that she did not clean the fridge. She stated that she cleaned the stove but not behind it. The tenant testified that she did not clean the cupboards because there was evidence of rat feces.

Analysis # 3 Kitchen

37. I reviewed the photos submitted from both sides. Whether neither side provided verifiable photos of the premises prior to move in, I accept that the tenant agreed she did not clean the cupboards, fridge, or behind the stove. Where the tenant argued that she did not clean the cupboards because of the rodents, I find that she failed to submit verifiable evidence for such a justification. Likewise, I note that the landlord did not provide any photos of the stove, but that the tenant acknowledged she did not clean behind it. Consequently, I find that the landlords claim for compensation for cleaning the kitchen succeeds in the amount of \$86.80 (e.g., 4 x \$21.70 an hour in accordance with Residential Tenancies Policy 09-05).

Decision # 3 Kitchen

38. The landlord's claim for compensation for time spent cleaning the kitchen succeeds in the amount of \$86.80.

Damage # 4 Lights

- Ceiling Lights not cleaned \$43.50 (2 hours)

Landlord's Position # 4 Lights

39. The landlord referred to a photo submitted and testified that time will need to be spent cleaning the lights (L#5).

Tenant's Position # 4 Lights

40. The tenant acknowledged that she did not clean the lights.

Analysis # 4 Lights

41. I reviewed the photos submitted from both sides. Due to the design of the light fixtures with the removable glass, I accept that at least two hours of time will be required to clean them. Where neither party provided verifiable photos of the premises prior to move in, I accept that the tenant agreed she did not clean the light fixtures. Consequently, I find that the landlords claim for compensation for cleaning light fixtures succeeds in the amount of \$43.40 (e.g., 2 x \$21.70 an hour in accordance with Residential Tenancies Policy 09-05).

Decision # 4 Lights

42. The landlord's claim for compensation for cleaning light fixtures succeeds in the amount of \$43.40.

Damage # 5 Bathroom

- Bathroom toilet, sink and tub unclean \$21.75 (1 hour)

Landlord's Position # 5 Bathroom

43. The landlord referred to a photo submitted of a stained toilet seat (L#5) and testified that time was and will be needed to properly clean the two bathrooms.

Tenant's Position # 5 Bathroom

44. The tenant testified that she cleaned the bathrooms and referred to photos she submitted (T#6). She indicated that there is a stain around the one toilet due to an unaddressed plumbing issue.

Analysis # 5 Bathroom

45. I reviewed the photos submitted from both sides. Whether neither side provided verifiable photos of the premises prior to move in, I accept that the tenant disputed the landlord's claim for compensation for cleaning. However, based on my review of other photos depicting partial, if any cleaning by the tenant, I find it highly likely that the landlord will be required to spend at least 1 hour, if not more, cleaning the two bathrooms. Consequently, I find that her claim for compensation succeeds in the amount presented.

Decision # 5 Bathroom

46. The landlord's claim for compensation for cleaning the bathroom succeeds in the amount \$21.75.

Damage # 6 Windows

- 11 Window and screens dirty \$43.50 (2 hours)

Landlord's Position # 6 Windows

47. The landlord referred to photos submitted and testified that she will have to spend at least two hours cleaning the windows and screen (L#5). The landlord testified that there was no mold, and that what is on the windows, is normal due to condensation which needs to be regularly cleaned.

Tenant's Position # 6 Windows

48. The tenant acknowledged that she did not clean the windows or the screens because they were moldy and there was no air exchange in the house. The tenant also mentioned insufficient heating.

Analysis # 6 Windows

49. I reviewed the photos submitted from both sides. Whether neither side provided verifiable photos of the premises prior to move in, I accept that the tenant acknowledged that she did not clean the windows or the screens. Where the tenant argued it was not her place to touch "mold" I agree with the landlord and find that the windows look like regular windows when they are not cleaned of condensation during the winter. Consequently, I accept that the landlord will be required to spend at least two hours, if not more cleaning and so her claim for compensation for cleaning succeeds in the amount claimed.

Decision # 6 Windows

50. The landlord's claim for compensation for cleaning windows succeeds in the amount of \$43.50.

Damage # 7 Yard

- Junk left in yard
- Garden covered in Dog Poop

Landlord's Position # 7 Yard

51. The landlord testified that there were items left in the yard and feces. She did not however assign a monetary value to this claim.

Tenant's Position # 7 Yard

52. The tenant acknowledged there may have been feces on the deck, but denied it was in the yard. She also acknowledged leaving some items in the yard. She testified that she did the best she could considering that she left in the winter.

Analysis/Decision # 7 Yard

53. Because this claim had no attached monetary value, it is not considered any further.

Summary Decision - Damages

54. The landlord's claim for compensation for damages succeeds in the amount of \$390.95 (e.g., \$130.40 + \$65.10 + \$86.80 + \$43.40 + \$21.75 + \$43.50)

Issue 4: Payment of Other (\$300.00)

Tenant's Position

55. The tenant testified that she is entitled to compensation in the amount of \$300.00 because rodents at the rental premises damaged her freezer. She referred to a photo submitted of the side of a freezer and testified that the photo depicts how a rodent has "chewed out the insulation" (T#6). The tenant acknowledged that the freezer still works and that she left it at the rental premises. She also testified that she has not yet purchased a new one as she has no room. The tenant referred to a text message exchange (T#7) with the landlord where the landlord writes: "*Have you got the rat trap. I cannot afford pest control*".

Landlord's Position

56. The landlord rejected the tenant's claim for compensation and testified that she cannot see any evidence of a rodent having chewed into the freeze. The landlord also denied there is a rodent problem at the rental premises.

Analysis

57. I reviewed the photos submitted from both sides and I accept that the tenant left a working freezer at the landlord's premises. Consequently, I find that the tenant failed to establish on the balance of probabilities that the actions of the landlord, either intentional or neglectful, resulted in her loss of the freezer. Rather. It appears as though the tenant willingly left the appliance at the landlord's premises.

Decision

58. The tenant's claim for payment of other does not succeed in any amount.

Issue 5: Hearing Expenses

59. The landlord and tenant both claimed the \$20.00 expense of applying for dispute resolution. As the landlord's claim has been largely successful, the tenant shall pay this expense.

Issue 6: Security Deposit (\$500.00)

Relevant Submissions

60. The tenant has requested the full return of her security deposit and the landlord has applied to retain it as compensation against monies owed.

Analysis

61. 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.

62. Where the landlord's claim for compensation for rent and damages has succeeded in excess of the tenant's security deposit, I find that she is entitled to retain the full \$500.00.

Decision

63. The tenant's claim against the security deposit does not succeed in any amount.

64. The landlord's claim against the security deposit succeeds in the full amount of \$500.00.

Summary of Decision

65. The tenant's termination notice was not a valid termination notice.

66. The tenant's claim for payment of Other does not succeed in any amount.

67. The tenant's claim against the security deposit does not succeed in any amount.

68. The landlord's claim against the security deposit succeeds in the full amount of \$500.00.

69. The tenant shall pay to the landlord, the amount of \$910.95, determined as follows:

a)	Rent.....	\$1,000.00
b)	Damages.....	\$390.95
c)	Hearing Expenses.....	\$20.00
d)	Less Security Deposit.....	\$500.00
e)	Total.....	<u>\$910.95</u>

15 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal