

Residential Tenancies Tribunal

Application 2023-0177-NL

Decision 23-0177-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:16 p.m. on 27-March-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing; I did leave a message at the number provided ([REDACTED]). This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 he has been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by text-message, on 14-March-2023. Landlord1 confirms that they used this number to communicate. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
5. The landlords amended their application to increase compensation for damages from \$1,020.99 to \$1,110.80, as they forgot to give the cost including taxes for some of the items. In addition to this, landlord1 requested that hearing expenses be added to the claim totaling \$20.00.

Issues before the Tribunal

6. The landlords are seeking
 - Compensation for damages \$1,110.80

- Hearing expenses \$20.00

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*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, as well as, Residential Tenancy Policy 9.

Issue 1: Compensation for damages \$1,110.80

Relevant submissions

9. Landlord1 explained that they had entered a term lease with the tenant beginning 01-December-2018 until 30-November-2019. At the conclusion of this term they were in a monthly agreement. He said that when the tenant first moved in the rent was \$800.00 a month and by the end of his tenancy the rent had increased to \$840.00 a month. The rental period is from the first day of each month until the last; the tenant's rent was due on the 1st day of the month. The tenant had paid a security deposit of \$400.00 on 03-November-2018; this deposit has been awarded to the landlord for rent arrears in a previous decision (23-0019-NL).
10. Landlord1 said that the tenant had abandoned the apartment and he posted an abandonment notice on the door on 19-January-2023. On 20-January-2023 the tenant returned and moved his belongings.
11. When the tenant first moved in landlord1 had completed a condition report with the tenant (L#L02) which was signed and dated for 05-November-2018. When he moved out landlord2 completed the walk through and they both signed the completed condition report (LL#02) on 23-January-2023. She explained that the tenant was angry and moving the furniture on his own, this did some further damage.
12. The landlords submitted a damages ledger (LL#03) for the damages left to be repaired as follows:

| Description of damage | Cost |
|------------------------------------------------------------|--------|
| Shed lock | 14.94 |
| Plaster repair (porch and bathroom | 34.75 |
| Paint repair (porch and bathroom | 163.96 |
| Deep cleaning of Range (3 hrs. x \$25) | 75.00 |
| Disposal of furniture (1 hr + 51 kms) | 51.00 |
| Stove burner pan replacement parts | 46.00 |
| Additional chips in bathtub | 80.00 |
| Cleaning supplies | 53.39 |
| Light bulbs | 21.26 |
| Deep cleaning under/around range and fridge (2 hrs x \$25) | 50.00 |
| Replacement tub enclosure and cement | 430.69 |

13. Landlord2 said that the tenant had broken his key off in the lock on the shed. She said that the lock required replacement and cost \$14.94. She doesn't know how old the lock was. They provided the Canadian Tire receipt for the cost of a new lock (LL#04).
14. Landlord 2 said that when she did the walk through with the tenant, the towel rack was off the wall and required plastering and painting. In addition to this, she said that when the tenant came back to remove his items, he was angry and working by himself to take the furniture out. He did damage to the porch walls when he was moving the furniture. They provided pictures of the damages to the walls (LL#07 and LL#08), as well as, receipts from Kent (LL#05) for \$34.75 and the Paint Shop (LL#06) \$163.96, for the plaster and paint required to complete this repair. Landlord1 said that the apartment had been painted throughout in 2018 before the tenant took occupancy.
15. In addition to the damages to the wall in the bathroom landlord2 said that there were 2 chips in the bathtub and a hole in the tub surround. The landlords provided a picture of the hole in the tub surround (LL#07), as well as, a receipt from Kent for \$430.69 (LL#05) for the cost of the replacement surround. Landlord1 said that when the tenant moved in the tub had one chip in it and after he moved out there were 3 chips; he is seeking \$80.00 for the cost of the depreciation of the value of the tub. The landlords did not provide a picture of the damage to the tub. Landlord1 estimates that the tub and tub surround are approximately 20 years old.
16. Landlord2 said that the range was very dirty. She provided pictures of the burner covers (LL#09). Each one was completely rust covered. They provided a receipt from All Appliance (LL#10) for \$46.00 for the cost to replace the burner covers. In addition, they are seeking \$75.00 for 3 hours personal time for the time required to clean the stove. Landlord1 stated that the stove was new in 2019.
17. Landlord2 explained that the exterior of the stove, fridge and kitchen area required a deep cleaning that they are seeking \$50.00 for 2 hours personal time. In addition to this they have submitted the receipts from Shopper's Drug Mart and Canadian Tire for cleaning supplies (LL#13) totaling \$53.29.
18. Landlord1 said that he had to replace the light bulbs and provided the receipt (LL#14) totaling \$21.26.
19. Lastly, when the tenant moved his furnishings out, he had left a number of items in the driveway. Landlord2 said she asked him what he planned to do with those belongings and he told her someone would come a get them. She explained that there was a storm forecast for that evening, so they decided to bring the items to the dump. They are seeking 1 hour labor at \$25.00 and mileage for 52 kilometers at a cost of \$26.00, for a total of \$51.00.
20. Both of the landlords said that after the tenant moved they completed updates on the apartment but were careful to only apply for the cost of the damages left by the tenant.

Analysis

21. Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful
- or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

22. The landlords' have shown through their evidence that the cost to replace the lock to the shed was \$14.94. However, they did not provide any evidence that the damage exists or that the tenant was responsible through a negligent or willful act; this claim therefore fails.
23. The landlords' claim for the damages to the apartment walls has been proven through both their photographic evidence, as well as, the condition report. The landlords will receive full compensation for the cost to plaster and repair the walls \$34.75; as walls should last, in accordance with Residential Tenancies Policy 9-006, for the lifetime of the home. The claim for compensation for paint, however, is subject to depreciation. Paint in a residential home should last for 3-5 years. The landlords testified that the apartment was painted in 2018 prior to the tenant taking occupancy. The claim for paint therefore fails, as the apartment is currently due to be repainted and the cost of upkeep is the burden of the landlord not the tenant.
24. The damages to the bathtub and surround will also be subject to depreciation. Firstly, the damages to the bathtub have not been proven, there is no evidence of the damages, as the landlords did not provide pictures of the inside of the tub and no receipt for the cost of repairs. This tribunal can only deal with actual costs and not estimates based on suspected loss. The walls of the tub surround, in accordance with Residential Policy 9 should last 15 years. Although the landlords have given photographic evidence of the damage to the wall of the tub surround, he has estimated that the tub surround is 20 years old, therefore has outlasted its lifespan and therefore has no monetary value.
25. Landlord2 said that she and some of her family members spent 3 hours cleaning the stove and 2 hours cleaning the kitchen and fridge areas at a rate of \$25.00 an hour. I accept, based on the testimony and evidence, that she required 5 hours to complete these tasks, however this tribunal pays a personal rate of minimum wage + \$8.00 for a total of \$21.70 an hour. I find that the landlord shall be reimbursed 5 hours x \$21.70 for a total of \$108.50. In addition the cleaning supplies required of \$53.29 and the cost of

replacing the burner covers \$46.00 will also be reimbursed to the landlords by the tenant.

26. Landlord1 submitted the cost of replacing the light bulbs totaling \$21.26, he did not show however that the tenant is responsible for this loss. The light bulbs potentially could have outlived their lifespan. This claim therefore fails.
27. Lastly, the landlords are seeking \$51.00 for the disposal of the tenant's property left behind in the driveway. The landlord will receive \$21.70 for the 1 hour labor required (as applied in paragraph 25) and he will also be awarded the government rate for mileage of 52 kilometers x \$0.4089 totaling \$21.26.
28. It is the responsibility of the tenant to return the property to the landlord in the same condition as he received it. I therefore find that the tenant shall pay to the landlord \$285.50, as follows:

| | |
|---------------------------|-----------------|
| • Plaster | \$34.75 |
| • Cleaning labor | 108.50 |
| • Cleaning supplies | 53.29 |
| • Burner covers | 46.00 |
| • Disposal labor | 21.70 |
| • Mileage | <u>21.26</u> |
| • Total..... | <u>\$285.50</u> |

Decision

29. The tenant shall pay to the landlord \$285.50 in compensation for damages.

Issue 4: Hearing expenses reimbursed \$20.00

30. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#16) and pursuant to policy 12.01, as his claim has been successful, is entitled to reimbursement of that cost from the tenant.


Summary of Decision

31. The tenant shall pay to the landlord \$305.50 in compensation for damages and hearing expenses, as follows:

| | |
|--------------------------|-----------------|
| • Damages | \$285.50 |
| • Hearing expenses | <u>20.00</u> |
| • Total | <u>\$305.50</u> |

March 29, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office