

Residential Tenancies Tribunal

Application 2023-0191-NL

Decision 23-0191-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 10-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. Both parties confirmed receipt of notification of today’s hearing, by email on 31-March-2023, from the Residential Tenancies Office.
5. Both parties referenced a previous hearing with our office. File number 2022-0680-NL. This file was dismissed, as the tenant had a new residence as of 15-September-2022, however, a verbal agreement was made on 22-September-2022 for the landlord to unlock the house and permit the tenant to retrieve her belongings.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,250.00
 - Compensation for damages \$2,684.00
 - Security deposit retained against monies owed \$625.00

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.

Issue 1: Rent \$1,250.00

Landlord's Position

9. The landlord submitted a written rental agreement held with the tenant (LL#02). The scanned copy was not legible, he reviewed the details of their rental agreement. He stated that the tenant had a written monthly agreement beginning August 2020 and ending July 2022. He said she paid \$1,250.00 for rent due on the 1st day of each month. Prior to her taking occupancy she paid a security deposit of \$625.00. A receipt for the security deposit was provided (LL#03).
10. The landlord submitted a rental ledger (LL#04). Although it shows that rent was paid on the first day of every month, he states that rent was often paid after the 1st day of the month. The rent ledger shows that rent was paid for July 2022 but not for August. When questioned why rent is sought for August, if the tenant moved out in July, the landlord repeatedly informed this board that the tenant moved out in July not August.
11. He is seeking rent for August totaling \$1,250.00.

Tenant's Position

12. The tenant disputed the terms of the rental agreement, she said that she moved in the middle of July 2020, not August 2020. The tenant stated she didn't receive receipts for rental payments and she did not request them from the landlord.

Analysis

13. The landlord appeared to be confused about the dates of the tenancy. In reference to his provided documentation, it seems that according to the rent ledger, the tenant did move in the middle of July 2020, as stated by the tenant. Additionally, in reference to the file referenced in paragraph 5, the tenant had secured a new rental the 15-September-2022 and her belongings were moved on 22-September-2022. It is the burden of the landlord to prove his claim. In light of the provided documentation, I will accept, that despite the landlord's verbal testimony that the tenant moved in July, she did in fact move in September and was living at the house in August. The landlord was clear that the tenant's last rent payment was in July 2022.
14. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's documents submitted into evidence that the tenant did not pay rent after July and will award him August's rent of \$1,250.00.
15. The tenant shall pay the landlord the rent owed totaling \$1,250.00.

Decision

16. The landlord's claim for rent succeeds in the amount of \$1,250.00.

Issue 2: Compensation for damages \$2,684.00

Landlord's Position

17. The landlord submitted 4 damage ledgers, one for each area that required repair, as follows:
- Damages to the bathroom (LL#05) \$724.00
 - Damages to the bedroom (LL#06) \$680.00
 - Damages to the hallway (LL#07) \$225.00
 - Cleaning and maintenance (LL#08) \$1,600.00
- * it should be noted that the amount sought in the application and the total sought in the damage ledgers are not the same.
18. The landlord said that prior to the tenant moving in, the entire house was renovated. He had a previous tenant who had done a fair bit of damage and all the flooring was replaced and the walls were painted.
19. The landlord's damage ledger (LL#05) for the bathroom is as follows:

Description	Compensation
Replace toilet	250.00
Replace towel rack	120.00
Door jamb/trim replace	125.00
Paint and plaster wall	100.00
6 hours labour @ \$21.50	129.00
Total	\$724.00

20. The landlord did not provide any receipts for the work carried out. He claims he was told by our office that this would not be required. He said that the toilet tank was cracked. No picture provided. The towel rack was off the wall and missing. The door jamb was cut into and damaged and he had to plaster and paint the washroom. The landlord did include pictures of the damages to the bathroom walls and the door jamb. He said all of this was completed during the remodel in 2020.
21. The landlord's damage ledger (LL#06) for the bedroom is as follows:

Description	Compensation
Damage to all 4 walls – paint, labor and materials	
Paint and materials	250.00
20 hours labour	430.00
Total	\$680.00

22. The landlord explained that this bedroom belonged to the tenant's son. He said that the son had taken a toy or some other instrument and damaged the walls. He provided pictures (LL#06).

23. The landlord did concede that the tenant's father-in-law payed \$600.00 for the damages to the tenant's son's room.

24. The landlord's damage ledger (LL#07) for the hallway is as follows:

Description	Compensation
Replace sheet of gyprock	25.00
Labour for installation and finishing	200.00
Total	\$225.00

25. The landlord said that there was a volleyball slammed at the hallway wall, picture provided (LL#07). He said when he showed the damage to the tenant she acknowledged that it was a large dent. Initially he tried to plaster the damage, but in the end he said he had to replace the drywall to repair it. He is seeking the cost of the drywall as well as 6 hours personal time to do the repair.

26. The landlord included a ledger for lawn care and snow removal, as follows:

Description	Compensation
Lawn care Aug – Sept 2020	300.00
Snow removal 2020	150.00
Lawn care and snow removal 2021	300.00
Lawn care July 2022	200.00
Total	\$950.00

27. The landlord said that the tenant did not mow the lawn or clear the snow and this was her responsibility. He reminded her that he had two people doing this and she had given them lemonade. He confirmed that he did not give her a written notice to complete this work.

28. The final damages are included in the ledgers below (LL#08), as follows:

Description	Compensation
Cleaning of interior windows 7 hours	150.00
Hardware for bathroom window	120.00
Cleaning of house 10 hours	0.00
Moving her belongings 10 hours x two people	430.00
Total	\$700.00

29. The landlord explained that last year when the tenant moved he had given her a termination notice, and that he was issued an Order of Possession from Residential Tenancies; she did not move. He changed the locks himself and arrangements were made with our office for him to open the house and permit her to move personal belongings. He said that nothing was packed and he had two other people helping him. He said that when the tenant and another person showed up with a moving truck, he unlocked the doors and everyone moved her belongings out of the house. Then it required cleaning.

Tenant's Position

30. The tenant explained that renovation work was being done on the house at the end of her tenancy. She said while they were working in the house the place was in a state of upheaval. She did her best to accommodate the work being completed.
31. The tenant said that she didn't agree with any of the damages to the bathroom, she did however confirm that the towel rack was off the wall. She said it wasn't secured/anchored to the wall properly and came off.
32. The tenant acknowledges that her son damaged the walls of his bedroom with a nerf gun. She said she believes that her father-in-law had paid the landlord around \$900.00 for this repair to be done.
33. The tenant said that she wasn't there when the hallway was damaged and she doesn't remember the damage. She also believes that there was more money paid for the additional damages but she doesn't know how much or when the payment was made.
34. The tenant declared that the landlord only had the lawn mowed once when he was getting the house ready for sale. She said herself and the downstairs tenant mowed the lawn and shoveled the snow. She continued that the neighbor usually cleared the driveway with his snow blower and they shoveled the rest.
35. The tenant said that before she had a chance to move the landlord had locked her out of the house. After they made arrangements with our office she hired a truck, for the second time, and they moved her belongings out. She said nothing was ready to be moved because he had locked her out and prevented her from packing her stuff.

36. The tenant said that she has been unwell and that she didn't have the opportunity to provide this board with her evidence. She said that her electronic files are at her workplace and she has been working from home due to illness.

Analysis

37. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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)
38. The onus is upon the landlord to prove his case. He must show that not only that the damages occurred, but also the value to repair or replace the damaged items. The landlord stated that he was told by this office that he would not require receipts, however, section 8 of the applicant's package clearly outlines what is accepted as evidence and receipts are listed as acceptable proof. It is not realistic to claim for thousands of dollars' worth of damages and not provide evidence of the purchase of the supplies claimed. I therefore find that the landlord will not be awarded any compensation for the following supplies:
- Toilet\$250.00
 - Towel rack120.00
 - Door jamb/trim125.00
 - Paint and materials250.00
 - Gyproc25.00
39. The landlord has shown through his evidence that there were damages to the walls that required plastering and painting. Through his own testimony, he acknowledged that he received payment for the damages to the tenant's son's bedroom. I find that he was paid for this repair and it will not be considered further. The other two rooms: the bathroom and hallway, have been shown to have damages and would have required repair, he stated that both of these areas required 6 hours work each for a total of 12 hours. This board pays at a rate of minimum wage + \$8.00 for a total of \$21.70. 12

hours x \$21.70 = \$260.00. I find that the tenant shall pay for the cost of the landlord's time to complete repairs to the bathroom and hallway, totaling \$260.00.

40. The landlord stated that the tenant was responsible for snow clearing and lawn care. The tenant confirmed that both she and the downstairs tenant completed this work. I accept her version that the landlord only did this once the year that he was selling the house. The landlord acknowledged in paragraph 27 that he didn't give her written notice to complete this work and his response, that "you gave them lemonade," appears to indicate that this was a singular event as stated by the tenant. The landlord's claim for lawn mowing and snow clearing fails.
41. In consideration of the landlord claiming for moving the tenant and cleaning the house after she moved, I must consider the ongoing events at the time of the tenant's move. Both parties acknowledge that the landlord changed the locks on the house and had to make arrangements to have the house opened and give the tenant access to move her belongings. The moving of personal belongings and the cleanliness of the rental is the sole responsibility of the tenant. That being said, the tenant had pointed out in paragraph 35 that the house wasn't cleaned or packed, because she was unable to access the property. It is unrealistic to expect the tenant to pack and clean when she has no access to the property. Additionally, it is in violation of Section 10 of the Residential Tenancies Act, 2018 for a landlord to change the locks during a tenant's residency, see below:

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:

....

6. Entry Doors - Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

The landlord had testified that he was given an Order of Possession in paragraph 29, but I must point out in paragraph 5, his previous file number was dismissed and that he therefore was not awarded an Order of Possession. The landlord violated the *Act* which resulted in the tenant not being able to access her belongings or complete her move. She cannot be held liable for his breach of contract. Although I accept that the landlord did move the tenant's belongings and clean the house afterwards, the fault rests with him and his claim for compensation fails.

Decision

42. The landlord's claim for compensation for damages succeeds in the amount of \$260.00.

Issue 3: Security deposit applied to monies owed \$625.00

Relevant Submissions

43. As per paragraph 9, the landlord has declared the tenant paid a security deposit of \$625.00; he is still in possession of that deposit. He is requesting to retain that security deposit towards monies owed by the tenant for damages to the house.

Analysis

44. The landlord's claim for loss has been successful, paragraphs 16 & 42, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

45. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$625.00.

Summary of Decision


46. The tenant shall pay to the landlord \$885.00 for rent and damages as follows:

- Rent..... \$1,250.00
- Damages260.00
- Less security deposit (625.00)
- Total \$885.00

The landlord shall retain the security deposit of \$625.00 against monies owed.

May 12, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office