

Residential Tenancies Tribunal

Application 2023-0194-NL

Decision 23-0194-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 03-April-2023 and reconvened at 9:17 a.m. on 24-May-2023.
2. The applicants [REDACTED] and [REDACTED] are represented by [REDACTED] hereinafter referred to as "the tenant" she attended by teleconference.
3. The respondent, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" he attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that she served the landlord of notification of the 03-April-2023 hearing, electronically on 21-March-2023; the landlord confirmed receipt of notification. The tenant also submitted an affidavit (TT#01) stating that she served the landlord notification of the 24-May-2023 hearing date on 12-May-2023; the landlord confirmed receipt of second notification.
5. There have been two previous files for this tenancy, (2022-0726-NL) the landlord was awarded rent arrears and vacant possession. The landlord also filed for (2022-177) application to dispose of abandoned personal property; this file was reported as resolved on 14-December-2022.

Issues before the Tribunal

6. The tenants are seeking:
 - Security deposit refunded \$700.00
 - Rent refunded \$7,800.00
 - Compensation for inconvenience \$1,600.00
 - Damages \$37,249.95
 - 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 16: Rental increase, and Section 32: Abandoned personal property, as well as Residential Tenancies Policies 6, 9 and 12.

Issue 1: Security deposit refunded \$700.00

Tenants' Position

9. The tenant said that they entered a written term rental agreement with the landlord beginning 15-May-2020 until 15-February-2021; then they were in a monthly agreement. She said that they paid \$1,100.00 rent each month; their rental period was from the 1st day of the month until the last. She said that they paid a security deposit of \$700.00 on 01-May-2020 and provided proof of payment (TT#02).
10. The tenant confirmed that the landlord received an order of possession and that her family moved on 31-October-2022.
11. The tenant said that they are seeking reimbursement of the full security deposit; \$700.00.

Landlord's Position

12. The landlord confirmed the details of the rental agreement and the payment of \$700.00 security deposit. He said that they used the deposit against the award for rent (file 2022-0726-NL). The landlord was unsure if the deposit was awarded in the decision. They did not file a counter claim for the deposit.

Analysis

13. The landlord's award for rent (2022-0726-NL) does not include the amount of security deposit paid. The security deposit was not applied for, or awarded, in the previous decision.
14. As per Section 14 of the *Residential Tenancies Act, 2018*:

Security deposit

14. ...

(8) *A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.*

(9) *Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.*

(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.

(11) Where a **tenant makes an application** under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to **make an application** to the director under paragraph (10)(b).

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

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to 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.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

15. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim from the date they are notified of the application. If they don't file the claim in the 10 days, then the security deposit is to be returned to the tenant. The landlord may have believed that he was able to apply the security deposit against the monies owed, however he did not apply for the security deposit and it was not awarded.
16. The security deposit is the property of the tenant and held in trust by the landlord. I find the landlord shall therefore return the security deposit totaling \$700.00 to the tenant

Decision

17. The tenants' claim for security deposit succeeds in the amount of \$700.00.

Issue 2: Rent refunded \$7,800.00

Tenants' Position

18. The tenant said that they were renting a main floor three bedroom house with apartments underneath. She said she was told that she would have the entire main floor and that there was a storage area where she didn't have access.
19. She explained that around August 2020 that the ceiling fell in in her son's bedroom. She said that the ceiling was tile and that tiles dropped out and she submitted pictures showing the ceiling falling in (TT#03, TT#04 and TT#05).
20. She said that she contacted the landlord and they sent in a contractor. She refused him entry, she said that there was a Covid outbreak and they had a newborn baby in the house.

21. The tenant explained that her son was not able to use the bedroom after this happened. He slept in the living room.
22. The tenant stated that the landlord never fixed the ceiling and that the downstairs tenants were renting a two bedroom for \$700.00, she believes, because her area is larger, that they should only be paying \$800.00 a month as there are only two usable bedrooms. She is seeking \$300.00 rent x 26 months = \$7,800.00.

Landlord's Position

23. The landlord said that the storage area on the main floor has access only from the outside. It was always understood that she wouldn't have access to this storage area.
24. The landlord stated that the company has [REDACTED] every day they respond to requests for repairs and they have a hired contractor to do this work. He said that their process is for the tenants to fill out a maintenance request and submit it to the company to have work done. He states the tenant never filled out a maintenance request for any work to be done, however, because she notified them by phone, they still sent someone each time she reported that something needed to be done. He said that she would never permit anyone to enter.
25. The landlord submitted an affidavit (LL#01) from the contractor who does repairs for the rentals. The contractor states that they tried multiple times to gain entry and she would not let them in to complete any repairs.
26. The landlord acknowledges that they could give notice of entry and go into the rental, but he said that the tenant owns two large dogs and that it wasn't safe to go in without the tenant.

Analysis

27. The loss of space in a rental is considered a rental increase, as per Section 16 of the *Residential Tenancies Act, 2018*, see below:

Rental increase

16. (5) Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

(7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, facility, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.

28. The tenants application for rent refunded would definitely qualify for a reduction in rent, based on the photographic evidence, it is clear that this room would not be able to be used. However, in Residential Tenancies Policy 6-003 it states "a person who sues another for damages has a responsibility to minimize those damages, as far as reasonable." The tenant is seeking rent refunded due to a loss of use and enjoyment of one of the bedrooms. This loss is considered damages. The tenant, by not permitting entry, was in violation of the *Act*, the landlord has a right to entry and the tenant is the cause of the ongoing issue and repair not being completed.
29. The tenant may have made the initial complaint and the initial response may have been during a Covid outbreak, however, this situation continued for 26 months and the tenant did not minimize the damages in a manner that is reasonable.

Decision

30. The tenants' claim for rent refunded fails.

Issue 3: Compensation for inconvenience \$1,600.00

Tenants' Position

31. The tenant said that when she was moving out they had rented a truck. She said that there was an issue of mold in the rental and that their belongings were covered in mold.
32. The tenant contacted the City of [REDACTED] and the Department of Health about the issue. She states she was told by them that she had to take everything off the moving truck and disinfect everything with javex.
33. The tenant said it took over a month to clean and disinfect everything, they were working on it for over 100 hours. She said that the compensation is for the cost of the rental of the truck and the cost of the professional movers. She did not submit a receipt.
34. The tenant recalls that she reported this issue to the landlord over a year and a half before they moved out. She confirms she refused the contractor entry and they provided her with a cleaning product and told her to clean with javex and vinegar.

Landlord's Position

35. The landlord confirmed that they did not receive a maintenance request from the tenant. He does say that they also responded to the issue of mold and numerous times were refused entry. He refers to the sworn affidavit submitted (LL#01) and also directs us to the second affidavit provided by the home owner. The homeowner stated that once they regained entry to the house, they found dirt that they washed off but no mold.

Analysis

36. Once again, this claim is for loss or damages. The tenant acknowledges that she continued to refuse the contractor entry as she was concerned about Covid. It is unclear if the issue was with the storage of her belongings or with the house itself.

37. As stated in paragraph 28, Residential Tenancies Policy 6-003 it states "a person who sues another for damages has a responsibility to minimize those damages, as far as reasonable." If the issue of the mold is due to a condition with the rental, the tenant, by not permitting entry, was in violation of the *Act*, the landlord has a right to entry and the tenant is the cause of the ongoing issue and repair not being completed.

38. I therefore find that due to the tenant's actions she is at fault and the landlord is not responsible for this loss.

Decision

39. The tenants' claim for inconvenience fails.

Issue 4: Damages \$37.249.95

Tenants' Position

40. The tenant provided the following list of items damaged (TT#06)

Items	Compensation
Fire pit	60.00
Tupperware containers	100.00
Leather coat	400.00
Boots	800.00
Shoes	1,200.00
Children's toys	1,000.00
Child's Little Tykes Desk	180.00
Stroller	300.00
Patio table and chairs with four cushions	350.00
Shovels	100.00
Socket set and tools	800.00
Food	1,000.00
Double bed frame and 10" memory foam mattress	1,000.00
2 Christmas trees pre lit	750.00
Christmas decorations	400.00
2 rubber mats @ 39.99	79.98
2 black floor mats @ 39.99	79.98
1 beige and brown rubber mats	39.99
Hose caddy	100.00
Tires for ford F-150	1,200.00
Blankets	350.00
Chain link fence gate	900.00
Pull out couch	1,400.00
Wooden doll house	350.00
2 single box spring mattresses	1,000.00
1 queen box spring and mattress	1,200.00

1 white bed single with night stand	900.00
1 crib and mattress	600.00
2 night stands	500.00
1 dresser	900.00
2 boxes of clothes	1,000.00
Loads of toys	1,500.00
Dora the explorer jumping castle	380.00
Infant swing	200.00
Infant bassinet	200.00
Eversaucer	100.00
Pink battery motorized car	600.00
Red battery motorized car	700.00
Pink battery scooter	350.00
Cricut explorer machine	350.00
Cricut supplies	1,000.00
Bbq	250.00
Drill Makita	100.00
Compound mitre saw	400.00
Table saw	300.00
C's clothes	2,000.00
Purses – leather	250.00
Blankets	400.00
Bed sheets	300.00
Towels	200.00
Dishes	450.00
Pots and pans	500.00
Sensor light over garage	100.00
B's clothes	2,000.00
J's clothes	2,000.00
S's clothes	2,000.00
J's clothes	1,500.00
J's clothes	2,000.00
Sheet metal	60.00
Coats	900.00

41. The tenant submitted pictures to show the mold in the home (TT#07. TT#08 & TT#09). She also submitted pictures of mold on her personal belongings (TT#10, TT#11 & TT#12). She said that the mold was so bad that their pet Guinea pig died (picture TT#13). She provided numerous pictures showing her belongings in clear garbage bags, in the dumpster or around the property (TT#14).
42. She explained that a lot of her belongings had to be disposed of due to the mold. She said that they threw some of the belongings away. She said that the landlord disposed of the remaining items.
43. The tenant said that she had a number of personal issues ongoing at the time of the move. She was unable to determine which of the items she threw away and which the landlord disposed of. She said she has no receipts and that they are staying with family so many of the items have not been replaced.

44. She stated that she moved 31-October-2022 and the Sheriff's changed the locks on the house. She said that the landlord was permitting her to enter and remove her belongings after this happened. She said she received a call from our office asking if she wanted her belongings and she told the caller yes. She told the landlord she was going to have everything removed by the end of November, but her son told her on 26-November-2022 that everything was gone. She said that they locked the garage, where they had stored her belongings (TT#15) and she could only retrieve her things when the landlord allowed her in.
45. The tenant is seeking compensation for her belongings.

Landlord's Position

46. The landlord stated that the tenant left the house in terrible shape. He also referred to the affidavit (LL#01) submitted by the homeowner who had written that she left the premises in bad shape, in his statement he said he permitted her access after the Sheriff's had left to get her belongings and she didn't pick them up. He said that there was garbage all over the property and in the shed that they had to dispose of.
47. The landlord said after the tenant moved out they applied to our office to dispose of the items (paragraph 5, 2022-177). He said her belongings were stored in the shed and provided pictures (LL#02 & LL#03). He disputes that the shed was locked; he said that she had access to the shed. He explained that he followed our process and that the belongings were to be stored for 30 days.
48. The landlord explained they were having contact with the tenant and making arrangements for her to remove anything she wanted, he therefore thought the problem was resolved. He submitted a screenshot (LL#04) from 27-November-2022 where he asks when she will have her items removed and she tells him "they'll get the rest by midnight on the 30th." He states nothing was disposed of by them until after 01-December-2022.
49. The landlord also said that because they had communication with the tenant and believed that they had taken what they wanted, as stated in the text (LL#04), that when our office followed up he said they could close the file.

Analysis

50. There are two issues at play in the compensation the tenant is seeking. The first is damages to the property due to mold; as stated in paragraphs 28 and 37, "a person who sues another for damages has a responsibility to minimize those damages, as far as reasonable." It has already been established that the tenant's actions are the cause for the issue to be unresolved.
51. The second issue to be considered, is did the landlord dispose of the tenants' property in violation of the Act and what property was disposed of?
52. Section 32, of the *Residential Tenancies Act, 2018*, states:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

(a) remove the personal property and immediately place it in safe storage; or

(b) store the personal property on the residential premises in a safe manner.

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

(a) provide the director with an inventory of the property; and

(b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

(4) The director may, on application by the landlord under section 42, authorize the landlord to dispose of personal property referred to in subsection (1) where the director believes on reasonable grounds that

(a) the personal property has no monetary value;

(b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or

(c) the storage of the personal property would be unsanitary or unsafe.

(5) This section does not apply where a landlord and a tenant have made an agreement in writing with respect to the storage of the tenant's personal property.

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

....

In accordance with Section 32 of the Act, the landlord acted in a responsible manner. The tenant indicated that she was given time to retrieve her belongings, her dispute is that she believes that the landlord disposed of the items in advance of 01-December-2023, but has provided no evidence to support that claim. Further to this in any damages 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)

The tenant did not provide evidence to show that the landlord was responsible or negligent. She was also not able to determine, what was disposed of by the landlord, or subsequently the value of said items.

53. I find that the tenant did not provide evidence to support their claim and therefore the tenants' claim for compensation for damages fails.

Decision

54. The tenants' claim for compensation for damages fails.

Issue 5: Hearing expenses reimbursed \$20.00

55. The tenants submitted the receipt for \$20.00 for the cost of the hearing (TT#16) and pursuant to policy 12, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the award is equal to the security deposit hearing expenses will not be awarded.

Summary of Decision

56. The landlord shall reimburse the tenants \$700.00 for their security deposit.

June 02, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office