

Residential Tenancies Tribunal

Applications 2023 No. 0202 NL
2023 No. 0270 NL

Decision 23-0202-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 01 May 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. He was supported by [REDACTED] who did not provide testimony during the hearing.
3. An affidavit of service was provided by the tenant (T#1) confirming that he originally served the landlord with notice of his claim by email on 13 March 2023 and proof of service to [REDACTED] was provided (T#2). The landlord provided his own affidavit of service regarding his serving the counterclaim to the tenant by registered mail on 12 April 2023 (L#1). A review of tracking associated with this service confirms that it was picked up by the tenant on 20 April 2023.
4. The details of the claim were presented as a month-to-month agreement that started in 2018 and ended 03 November 2022 when the tenant vacated. Monthly rent was set at \$850.00, POU and a security deposit in the amount of \$425.00 was collected. No proof of a written rental agreement was provided.
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 full return of a \$425.00 security deposit.
7. The landlord is seeking the following:
 - Payment of rent in the amount of \$85.00;
 - Compensation for damages in the amount of \$515.70; and
 - An order to retain the full \$425.00 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 two apartment building located at [REDACTED]
[REDACTED] The tenant resided in the top floor unit, unit A.

Issue 1: Payment of Rent (\$85.00)

Landlord's Position

11. The landlord testified that he issued the tenant a notice to vacate by 30 November 2022 and that after doing so, the tenant gave him notice in mid October 2022 that he would be vacating 31 October 2022. The landlord is requesting compensation for three days that the tenant retained possession of the unit in November 2022. He testified that the tenant left the key to the premises on the evening of 03 November 2022 and he received it on 04 November 2022.

Tenant's Position

12. The tenant agreed that he originally meant to vacate 31 October 2022 and that some of his belongings remained in the unit until 03 November 2022. The tenant also agreed that he did not pay for the time in November 2022 that his belongings remained in the rental unit. He disputed the landlord's claim for rent because he testified the landlord was actively in the rental premises from 01 November 2022 onwards, packing the tenant's possessions and cleaning. The tenant testified that his efforts to vacate were slowed by the landlord's actions.

Analysis

13. I accept that both parties agree rent was not paid for November 2022 despite the tenant retaining possession of the unit. Regarding the tenant's dispute of the landlord's claim for this period of time, I was not persuaded by his claim because the tenant had previously given notice that he would vacate by 31 October 2022. Consequently, I find that the landlord's claim for rent succeeds on a pro-rated basis that the tenant retained possession of the unit.

$\$850.00 \times 12 = \$10,200.00 / 365 = \$27.95 \text{ per day}$
 $\$27.95 \times 3 = \$83.85 \text{ for rent from November 1 – November 3 2022}$

Decision

14. The landlord's claim for payment of rent succeeds in the amount of \$83.85.

Issue 2: Compensation for Damages (\$515.70)

Landlord's Position

15. The landlord referred to a statement of claim submitted (L#2) and explained that he is seeking compensation for time spent cleaning and repairing the rental premises between 01 November 2022 and 04 November 2022. The landlord explained that he had to do the work when he did because the original sale date of the premises to its new owners was 04 November 2022. The landlord testified that he had "no choice but to clean". The landlord referred to photos taken of the premises on 01 November 2022 and 02 November 2022 to illustrate the need for his action in advance of a pending house sale (L#3). He agreed that he allowed the tenant to park a trailer on the premises, and that he needed to clean up the area to make it presentable after the trailer was removed.
16. The landlord explained his claim as consisting of:
 - 16 hours self labour cleaning
 - 5 hours removing debris, repairing walls, repairing ground beneath the tenant's trailer on the property;
 - Mileage to the dump for removal of debris \$40.00
 - An additional item of miscellaneous supplies \$20.00 was not discussed.

Tenant's Position

17. The tenant testified that he attempted to vacate by 31 October 2022 but that some of his possessions remained in premises until 03 November 2022. He testified that the landlord did not at any point tell him that he would be charged for the cost of the landlord's efforts. The tenant acknowledged the following:

- Cleaning was required and stated that he believed a professional cleaner charging \$25 an hour would need 8 hours to clean.
- He caused some holes in the walls of the rental unit but tried to patch them. He argued that any damage should be considered normal wear and tear.
- He parked a trailer with the landlord's permission on the property and he had laid down various materials to prevent grass from growing and damaging the underside of the trailer. He did not remove all of these items or fully "tidy up" the area prior to vacating.
- He left some garbage at the premises that needed to be removed. He testified that he had a friend close by who would have removed these items at no cost. Consequently, he rejected the landlord's claim for compensation.

Analysis

18. 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).
19. 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.
20. Regarding the landlords' claim for compensation for damages, I accept that both parties agreed that the landlord completed repair and cleaning within the rental unit while the tenant retained possession. Where the landlord testified that "he had no choice but to clean" I accept that he spent at least 21 hours of his time organizing and cleaning the rental unit. However, I also accept that the landlord's efforts at doing so were not in anyway coordinated with those of the tenants. That said, I also accept that the tenant acknowledged the landlord was engaged in required work. Consequently, I find that the landlord's claim for compensation for labour succeeds as presented in the amount of \$455.70.
21. Regarding the landlord's claim for compensation for mileage for traveling to the dump to dispose of the tenant's refuse, I have no way of determining whether or not this claim is reasonable and valid. Consequently, I find that it does not succeed. Nor does his claim for compensation for miscellaneous supplies since no verifiable documentation was provided in support of his claim.

Decision

22. The landlord's claim for compensation for damages succeeds in the amount of \$455.70.

Issue 3: Security Deposit (\$425.00)

Relevant Submissions

23. The tenant has requested the full return of his security deposit and the landlord has applied to retain it as compensation towards monies owed.

Analysis

24. 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.

25. Where the landlord's claim for compensation for damages and rent has succeeded in excess of the \$425.00 security deposit collected, he shall retain the full value of it against monies owed by the tenant.

Decision

26. The landlord's claim against the security deposit succeeds in the amount of \$425.00.

27. The tenant's claim for return of the security deposit does not succeed in any amount.

Issue 4: Hearing Expenses

28. The landlord claimed the \$20.00 expense of applying for this application along with the cost of \$14.88 for serving the tenant by registered mail (see receipt on page 2 in L#1). As his claim has been successful, the tenant shall be required to pay this \$34.88 hearing expense.

Summary of Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$425.00.

30. The tenant's claim for return of the security deposit does not succeed in any amount.

31. The tenant shall pay to the landlord \$149.43 as the return of the remaining security deposit.

a)	Rent.....	\$83.85
b)	Damages.....	\$455.70
c)	Hearing Expenses.....	\$34.88
d)	LESS Security Deposit.....	<u>(\$425.00)</u>
e)	Total.....	<u>\$149.43</u>

05 May 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal