

## Residential Tenancies Tribunal

Applications: 2023 No. 0219 NL

Decision 23-0219-00

Jaclyn Casler  
Adjudicator

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### Introduction

1. The hearing was called at 11:00 AM on 10 April 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2" attended the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not participate and was not represented. Landlord1 testified that the tenant's name was originally recorded as [REDACTED] on the rental agreement because this was before she got married and became [REDACTED].
3. An affidavit of service was provided by the landlord (L#1) confirming that the tenant was served by email on 27 March 2023 and comprehensive proof of service to [REDACTED] was provided (L#2). Landlord1 testified that she knew to serve the tenants to that address as it was provided on the rental agreement and previously used for communications between the landlords and tenants.
4. The details of the claim were presented as a repeating fixed term rental agreement that originally started on 01 March 2020 and terminated 01 March 2023. A copy of the most recent rental agreement was provided (L#3). Monthly rent was set at \$1,300.00 due at the first of the month, POU and a security deposit in the amount of \$600.00 was collected.
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. The standard of proof, in these proceedings, 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 landlord is seeking the following:
  - An order for compensation for damages in the amount of \$1,370.28; and
  - An order to retain the full value of the \$600.00 security deposit against monies owed.

## 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* (the *Act*).
8. Also relevant and considered in this case is section 10 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

## Preliminary Matters

9. The tenant was not present or represented at the hearing and I was unable to reach her by telephone 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*.
10. 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 they have been properly served.
11. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

### Issue 1: Compensation for Damages (\$1370.28.00)

#### Relevant Submissions

12. The rental premises is a single family dwelling located at [REDACTED]. [REDACTED] It is 25 years old and the landlords have owned it since 2019. The landlords did not submit a written damages ledger where they outlined their claims for compensation. They did however submit proof of receipts in the amount of \$170.37 (L#1) which were served to the tenant. The landlords also submitted proof of the following two additional receipts and a quote from Home Hardware (L#5):
  - New lock and painters tape (+ candy) \$65.29
  - Paint Supplies \$416.47
  - Door Replacement Quote \$384.73

13. The landlords submitted a series of photos (L#6) taken from the premises after the tenant vacated to depict the damage caused. Landlord1 testified that a new tenant took occupancy of the premises on 01 March 2023 (the same day the other tenant vacated) and that all repairs have been completed around this new tenant. No photos or other verifiable evidence was submitted to depict the condition of the premises prior to occupancy by the tenant who vacated on 01 March 2023. Landlord1 testified that she submitted a claim for compensation for damages because the tenant approached her requesting the return of her security deposit. In addition to the receipts claimed, landlord1 also testified and provided evidence of notable water damage throughout the basement ceiling said to be caused by the tenant.
14. Regarding the Home Hardware receipts, landlord1 testified that she was confused by our application forms and that she had estimated that \$600.00 in costs would be required to replace the broken door.
15. Regarding the landlord's claim for the door, landlord1 referred to the quote submitted in the amount of \$384.73 and testified that the damaged exterior door to the basement of the premises will be replaced in the spring. Landlord2 testified that he expects a few hours of labour will be required to remove the damaged door box and install the new door box frame. Landlord1 referred to the photo submitted of the damaged door box (L#6) and testified that the broken door is likely original to the premises. No particular information was provided about why or how they believed the door was damaged.
16. Regarding the landlords' claim for compensation for painting materials, landlord1 referred to the receipt submitted in the amount of \$416.47 and testified that landlord2 has spent 32 hours to date painting within the premises. Landlord2 testified that he expects an additional 16 hours of labour is required. Landlord1 testified that she does not know when the premises were last painted prior to occupancy by the tenant, but that "everything looked good" when they bought the premises in 2019.
17. Regarding the landlords' receipt from Home Hardware in the amount of \$65.29, landlord1 testified that the tenant did not return all keys and so the new tenant requested that the locks be changed. This charge was not considered further since it is seen as a typical expense of a landlord.
18. Regarding the four originally claimed receipts amounting to \$170.37:
  - \$26.54: Landlord1 testified that a piece was required to fix a broken door knob (picture provided) and deck screws were required to hold the broken door box in place prior to the door being replaced in the spring.
  - \$66.52: Landlord1 testified that a new door knob was required for the interior door leading down to the basement and that a replacement light switch was also required. Photos of both items were provided.

- \$46.89: Landlord1 referred to photos submitted and testified that two separate transition pieces were missing from the laminate flooring premises and so replacement items had to be purchased.
- \$30.42: Landlord1 testified that they discovered a smoke detector was missing when they viewed the property and had to buy a replacement. Additionally, they had to purchase a door stop because they discovered the tenant had repeatedly opened a door into the wall causing repeated damage. Landlord1 also testified that they originally anticipated having to purchase 2 smoke detectors, but they later found one detector stored elsewhere within the premises.

## Analysis

19. 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).
20. 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.
21. Regarding the landlords' assorted claims for damages, I find that they failed to fully satisfy this test since they did not submit any convincing verifiable proof related to the tenant being the cause of any of the reported damage. Furthermore, according to Residential Tenancies Policy 09-05, the average expected life of an exterior door is 15 years and the average expected serviceable life of an interior paint job is 2 – 5 years. This means, that while I accept that a door box was broken and needs replacement for a total cost of approximately \$450.00 (e.g., quote plus labour) I will only award compensation for \$225.00. Then regarding the paint job, I accept that some damage, such as the major holes in the wall behind the door knobs and the unexplained water damage, are beyond regular wear and tear and deserving of compensation. As such, I will arbitrarily award \$204.63 as compensation specific to painting.
22. Regarding the other incidental items identified as purchased in the amount of \$170.37 and discussed above in response to the four non Home Hardware related receipts, I find that the landlords successfully established on the balance of probabilities that they are entitled to this compensation as the damage claimed (e.g., missing and broken interior door knobs and smoke detectors) is not representative of usual wear and tear.

## Decision

23. The landlord's claim for damages succeeds in the amount of \$600.00 (e.g., \$170.37 + \$225.00 + \$204.63).

## Issue 2: Security Deposit \$600.00

### Relevant Submissions

24. The rental ledger provides evidence of a \$600.00 security deposit (L#3).

### Analysis

25. 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.*

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(12) *A landlord who does not make an application in accordance with subsection*

(11) *shall return the security deposit to the tenant.*

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(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.*

26. As the amount owing to the landlords for damages equals the value of the security deposit collected, I find that the landlords are entitled to retain the whole amount.

## Decision

27. The landlords shall retain the full value of the \$600.00 security deposit.

### **Issue 3: Hearing Expenses**

28. The landlords claimed the \$20.00 expense of applying for this hearing. As their claim for compensation has not succeeded in excess of the security deposit, they shall remain responsible for this expense.

### **Summary of Decision**

29. The landlord is entitled to the following:

- The landlord's claim for damages succeeds in the amount of \$600.00.
- The landlords shall retain the full value of the \$600.00 security deposit.

19 April 2023

Date

Jaclyn Casler  
Residential Tenancies Tribunal