

Residential Tenancies Tribunal

Application 2023-0269-NL

Decision 23-0269-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:06 a.m. on 04-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
4. Tenant2 relayed that, [REDACTED], hereinafter referred to as tenant3, would not be attending.

Preliminary Matters

5. The landlord submitted an affidavit with proof of service (LL#01) showing that he served each of the tenants personal notice of today’s hearing date on 07-April-2023. Tenant1 confirmed receipt of notification as stated by the landlord.

Issues before the Tribunal

6. The landlord is seeking
 - Damages \$8,790.00
 - Security deposit applied against monies owed \$800.00

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 10: Statutory conditions, and Section 14: Security deposit, as well as, Residential Tenancies Policy 9

Issue 1: Compensation for damages \$8,790.00

Landlord's Position

9. The landlord submitted the rental agreement held with the tenants (LL#02). The agreement lists tenant1 and tenant2, as well as, two other individuals. The two other individuals didn't move in, instead tenant3 moved in.
10. The landlord stated that the tenants took occupancy on 01-May-2021 and they had a year term ending on 01-May-2022, they then began a monthly term. The tenants gave notice and moved out on 15-March-2023. They paid \$1,650.00 each month for rent including internet and cable. Prior to their tenancy they paid \$800.00 security deposit on 30-March-2021; the landlord is still in possession of that deposit.
11. The landlord submitted a condition report for the house which he completed with the tenants (LL#02). The condition report listed everything as good, however the form is a standard form and only covered the general structure i.e. walls, floors, windows, etc.
12. The landlord said that after the tenants moved out, they did a walk through and that they never filled out a form, however any damages were discussed with tenant1 at that time. The landlord submitted a compensation for damages ledger (LL#03), see below:

Description of damages	Compensation
Custom made blinds in the living room	\$1,500.00
Handmade curtains in the dining room	240.00
Curtains/drapes in all 3 bedrooms - \$200 x 3	600.00
Cleaning of carpet in dining room	250.00
Main floor hardwood repair	1,000.00
Window sills, door trims, master bedroom door replacement	450.00
Replacement – light fixture in kitchen	200.00
Paint job – walls (main and 2 nd floor)	2,800.00
Paint job – ceiling (main floor)	1,400.00
Wet cleaning of entire house	350.00
Total	\$8,790.00

13. The landlord said that his family lived in the house prior to the tenants renting. The house was decorated for his family and included some expensive furnishings. He said that his wife had custom ordered blinds and that they were installed in 2020. The fabric was so delicate that they installed an electric fireplace and requested that the tenants use this to heat the room so that the baseboard heater wouldn't burn the fabric. The tenants initially had two cats and later two more cats moved into the house, the landlord provided pictures (LL#04) showing the original state of the curtains and after they had been clawed and damaged by the cats.
14. The landlord also provided before and after pictures of the curtains in the dining room and bedrooms that were also damaged by the cats. As of the date of the hearing, the

landlord has not replaced any of the curtains and they are still hanging in the windows. The landlord estimated, based on his own previous purchase price the cost of the windows, as shown in the table, paragraph 12, totaling \$2,340.00.

15. The landlord also provided pictures of the before and after condition of a natural wool rug in the dining room (LL#04). The landlord said it was stained and that he is seeking \$250.00 to have the rug cleaned. He has not had this work completed and he estimated the cost.
16. The landlord submitted pictures of the hardwood. He said that the entire house was renovated in 2020 and the hardwood was installed at that time. He provided pictures (LL#04) showing that the floor had scratches. He believes that the scratches can't be buffed out and that the planks that are damaged will have to be replaced. He estimates that this will cost \$1,000.00 based on the pricing from the year the flooring was installed.
17. The landlord is seeking \$450.00 for the cost to clean and paint the window sills and door trims, as well as, to replace a bedroom door that is cracked. Pictures provided (LL#04). The landlord stated that the window sills appear to be scratched by the cats and the door appears to have been slammed which caused it to crack. He is seeking \$150.00 for the door and \$300.00 to paint the trim.
18. The landlord is seeking \$200.00 for the cost of replacing a kitchen light. The landlord said that there are three hanging lights in the kitchen. He explains that the lights are 10 years old. He provided a picture (LL#04) it shows that the light has a metal decorative outside and a glass interior. In one of the lights the glass has been broken. He believes he will have to replace all three lights because he doesn't think he can buy a replacement.
19. The landlord is seeking \$2,800.00 to paint the walls in the house and \$1,400.00 to paint the main floor ceiling. He said that he would hire professional cleaners and that they are very expensive. The house was renovated and painted throughout in 2020. He said that there are a lot of pinholes in the walls and ceilings. He said that it appeared that decorations were hung and that this damaged the walls. He doesn't accept that this is wear and tear.
20. Lastly the landlord is seeking \$350.00 to clean the house. He did not provide pictures but explained that the issue was with the smell of kitty litter. He said that his family has a cat and they clean the litter every time the cat goes to the washroom. The tenants had four cats living there and he believes they weren't cleaning the litter often enough. He said that the place smelled and that the downstairs tenant put insulation around the door that joins the two units to block the smell. He said that when they cleaned they found cat poop under the door next to the litter. The landlord said he paid \$250.00 cash to have the place cleaned and he estimates that he paid \$100.00 in supplies.
21. With the exception of the cleaning the landlord stated that the work has not been completed on the house as he is waiting for an amount to be awarded prior to completing this work.

Tenants' Position

22. Tenant1 confirmed the details of the rental agreement as stated by the landlord. He said that he and tenant3 would give their share of the rent to tenant2 and she would pay their rent to the landlord.
23. Tenant1 confirms that they completed a condition report before moving in and that the house was in good condition. Tenant1 said that when they did the walk through after they moved out, he did the inspection with the landlord's son and there were two other people there. He assumed that the people were potential renters, but he was told after that they were there as witnesses for the landlord.
24. Tenant1 explained they were told to take extra care with the curtains and that tenant2 told the landlord, at the time, that he could remove the expensive items if he was concerned about them. He explained that they were very careful when dealing with the curtains and he never noticed the cats damaging them.
25. Tenant1 said that the issue with the rug is not staining. He said that there is a large window in the dining room and that the rug has faded from the sunlight. He points out that the rug was there the full 2 years while they lived there and was there before they moved in.
26. Tenant1 acknowledges that there was one chip in the flooring by the back door. This picture is not included in the landlord's evidence. Tenant1 said that the pictures submitted are minor scratches or possibly residue and that a carpenter had told him that they could be buffed out.
27. Tenant1 confirms that the trim required painting and cleaning. He said that the door cracked because the door handle is the wrong size and it caused the door to crack, he said that the door wasn't slammed.
28. Tenant1 acknowledges that tenant2 accidentally hit the light in the kitchen and broke the glass. He said he works at a hardware store and that the landlord could probably have a replacement glass ordered.
29. Tenant1 confirms that they did decorate the house for events like Christmas and that there may be pin holes caused by this. He explains that while they lived there they were actually living and that of course they would have decorated for events like Christmas. He believes that this should be considered normal wear and tear.
30. Tenant1 said that they cleaned the litter every three days and he disputes that there was any smell. He said he was friends with the former downstairs tenant and that the downstairs tenant never complained to him about any smell from the litter. He also said that before they moved he scrubbed all the walls and floors.

Analysis

31. 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)

32. 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.

33. The landlord has not proven that the tenants are responsible for the cleaning of the rug in the dining room, the tenant put forth that this is not staining, but instead it is fading caused by sunlight. Further to this a quick internet search shows that for proper care of an expensive rug, the rug should be cleaned every 12 – 18 months. As this rug was in the dining room and there is an expectation that people would be eating, then the landlord should have mitigated his loss by ensuring that the rug was properly maintained. The landlord's claim for the rug fails.

34. The landlord has also not shown that the tenants are responsible for the damages to the bedroom door. It is unclear if the door was damaged by slamming or if as the tenant stated, was damaged by the ill-fitting door knob. In the picture provided the door knob doesn't appear to fit properly and this adds weight to the tenants' argument. The landlord's claim for the bedroom door fails.

35. The landlord has also not shown the loss incurred to clean the house, he provided no pictures of the litter, no statement from the former tenant and no receipt for the cleaner or the cost of cleaning supplies. The landlord was aware that there would be cats living at the unit and the risks that this could pose. The landlord's claim for cleaning fails.

36. The landlord's claim for painting could be considered if receipts were provided, however with this being said, the landlord has acknowledged that the house was painted 3 years ago and therefore, in accordance with our policy 9-005 which states interior paint would last 3 -5 years, would be considered general upkeep and is required to be painted again. The landlord was unable to determine when the trim was painted which indicates

that this work has probably been completed in excess of the 3 – 5 years ago. The landlord's claim for painting fails.

37. The landlord's claim for the hardwood, to have planks replaced, seems excessive based on the pictures provided into evidence. The floor does show some scratches, which would require buffing and refinishing, however the landlord didn't submit an estimate for that work. The landlord's claim for hardwood repair fails.
38. The landlord is seeking a large compensation for the damages he perceives are the fault of the tenants. Despite the value of the claim, the landlord has not shown this tribunal any estimates or receipts for the loss claimed. As stated in paragraph 30, it is incumbent on the landlord to show the value to repair or replace the damaged items. It is not sufficient for the landlord to estimate a cost and provide no receipt or quote for work to be done. In the absence of this evidence I am unable to accurately determine the value of the loss claimed.
39. It is clear that the curtains and the light fixture were damaged during the time that the tenants were living at the house. The tenants have not disputed this damage. As stated in paragraph 38 it is impossible to accurately determine the value of these items and it is my belief that the estimate of \$2,340.00 for curtains and \$200.00 for the light fixture are high. Based on the lack of evidence, I am left with no alternative but to award an arbitrary amount for the landlord's loss of \$700.00.

Decision

40. The landlord's claim for damages succeeds in the amount of \$700.00.

Issue 2: Security deposit applied to monies owed \$800.00

Relevant Submissions

41. The landlord stated in paragraph 10 that the tenants paid a security deposit of \$800.00 and he still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

42. The landlord's claim for loss has been successful, paragraph 40; he shall retain \$700.00 of the \$800.00 deposit as per Section 14 of the *Residential Tenancies Act, 2018*. Also in accordance with 14 (8) of the Act he shall return the \$100.00 balance to the tenants, see below:

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.

Decision

43. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$700.00. He shall return the \$100.00 balance to the tenants immediately.

Summary of Decision

44. The landlord shall:

- Retain \$700.00 of the tenants' security deposit in compensation for damages
- Return the remainder of the security deposit \$100.00 to the tenants immediately

May 11, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office