

Residential Tenancies Tribunal

Application 2023-0312-NL

Decision 23-0312-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 13-July-2023.
2. The applicants [REDACTED] and [REDACTED] are represented by [REDACTED] hereinafter referred to as "the landlord," he attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1 and tenant2," both attended by teleconference.

Preliminary Matters

4. There was a previous hearing date for this file, both parties attended and the file was postponed. Subsequently, both parties were served by Residential Tenancies via prepaid registered mail of today's hearing date. The mail was sent on 14-June-2023. Both parties confirm receipt of notification as stated.
5. The landlord amended his claim to include security deposit applied against monies owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,650.00
 - Utilities \$621.16
 - Damages \$7,344.74
 - Possessions returned/replaced \$2,287.16
 - Security deposit applied 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 18: Notification of termination of rental agreement, and Section 31: Abandonment of rental premises by tenant.

Issue 1: Rent \$2,650.00

Landlord's Position

9. The landlord submitted the rental agreement held with the tenants (LL#02). The tenants began their occupancy on 01-July-2019 and initially held a term agreement until 30-June-2020. At the end of this term the tenancy continued and the lease became monthly. The tenants pay \$1,250.00 a month for rent without utilities. Their rent is due in full on the first day of each month. On 15-June-2019 they paid a security deposit of \$625.00; the landlord is still in possession of the deposit.
10. The landlord said that the tenants moved out around 15-November-2022. He said that they did not give him notice and a neighbor told him that they had moved. When he went to the rental the door was left open and the lock was broken.
11. The landlord explained that the rent did not come in as agreed. Rent was often late and he confirms that he agreed to the inconsistent payments as long as the payments eventually came in. The rent ledger (LL#03) shows that there was a payment of \$150.00 that was carried forward from November 2021 and he said that they did not pay November 2022 rent. Additionally, he is seeking rent for December 2022, as they did not give him notice. He confirms that the house was rented again in January 2023. See ledger below:

Rent ledger
2023-0312-NL

Date	Action	Amount	total
1-Aug-21	rent due	1250.00	1250.00
1-Aug-21	payment	-1000.00	250.00
15-Aug-21	repairs in lieu	-250.00	0.00
1-Sep-21	rent due	1250.00	1250.00
13-Sep-21	payment	-1250.00	0.00
1-Oct-21	rent due	1250.00	1250.00
1-Oct-21	payment	-1250.00	0.00
1-Nov-21	rent due	1250.00	1250.00
19-Nov-21	payment	-800.00	450.00
23-Nov-21	payment	-300.00	150.00
1-Dec-21	rent due	1250.00	1400.00
20-Dec-21	payment	-1000.00	400.00
1-Jan-22	rent due	1250.00	1650.00
13-Jan-22	payment	-1000.00	650.00
1-Feb-22	rent due	1250.00	1900.00
14-Feb-22	payment	-900.00	1000.00
1-Mar-22	rent due	1250.00	2250.00
10-Mar-22	payment	-1100.00	1150.00

24-Mar-22		payment	-1000.00	150.00
1-Apr-22	rent due		1250.00	1400.00
22-Apr-22		payment	-1250.00	150.00
1-May-22	rent due		1250.00	1400.00
20-May-22		payment	-1250.00	150.00
1-Jun-22	rent due		1250.00	1400.00
17-Jun-22		payment	-1250.00	150.00
1-Jul-22	rent due		1250.00	1400.00
18-Jul-22		payment	-1250.00	150.00
1-Aug-22	rent due		1250.00	1400.00
15-Aug-22		payment	-1250.00	150.00
1-Sep-22	rent due		1250.00	1400.00
23-Sep-22		payment	-1250.00	150.00
1-Oct-22	rent due		1250.00	1400.00
20-Oct-22		payment	-1250.00	150.00
1-Nov-22	rent due		1250.00	1400.00
1-Dec-22	rent due		1250.00	2650.00

12. The landlord does agree that tenant1 did some work in lieu of rent and he indicates that the rent ledger (LL#03) shows that the tenants were credited for the work on 15-August-2021.

Tenants' Position

13. The tenants confirmed the details of the rental agreement and added that after the initial term they didn't sign another rental agreement.
14. Tenant2 said that they did give verbal notice. Tenant1 said that he had told the landlord on the phone that they were going to move. He said that they had ongoing issues with mold, pictures provided (TT#01 – TT#03) and that they could no longer live there, so they left. Tenant2 confirmed that they did not give the "landlord a notice to repair." Tenant1 argues that a formal notice should not be required, a landlord should repair the rental as he becomes aware of the issues.
15. Tenant1 said that there were always things going wrong in the house and he would fix them. The agreement with the landlord was that this work would be applied to rent owed.

Analysis

16. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent including the outstanding balance of \$150.00, as well as the rent for November 2022. In consideration of the rent for notice, both parties confirm that the tenants moved without providing written notice in compliance with the *Residential Tenancies Act, 2018*. I therefore find that the landlord incurred financial loss due to the tenants abandoning the property without notice and determine that the tenants shall pay December 2022 rent in lieu of their notice. Please see Section 18 and Section below:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;***
- (b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and***
- (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

And

Abandonment of residential premises by tenant

31. (1) Where a tenant has abandoned the residential premises, the landlord may enter and take possession of the residential premises.

- (2) A tenant is considered to have abandoned a residential premises where***
 - (a) the tenant has vacated the residential premises;***
 - (b) the rental agreement is not terminated in accordance with this Act or the rental agreement; and***
 - (c) rent is overdue.***

17. I accept the landlord's ledger and determine his claim succeeds.

Decision

18. The landlord's claim for rent succeeds in the amount of \$2,650.00

Issue 2: Utilities \$621.16

Landlord's Position

19. The landlord submitted a compensation worksheet for utilities owed (LL#04), as well as, the billing for November and December 2022 from NL Power with notification that the tenants had discontinued their service (LL#05). The billing periods are as follows:

- Nov 17 – Dec 9 \$185.35
- Dec 0 – Jan 1 \$435.81
- Total \$621.16

20. The landlord is seeking payment for utilities for the time period the tenants should have been responsible for the house.

Tenants' Position

21. Tenant2 submitted their billing record from NL Power (TT#04) showing that they fully paid the amount billed during their tenancy up until when they moved and removed their name from the utility billing.

Analysis

22. As it has been determined that the tenants abandoned their tenancy and were responsible for the rental until the end of their notice period (paragraph 16), so too are they responsible for the utilities during that time frame, as per their rental agreement and Section 10, of the *Residential Tenancies Act, 2018*, as follows:

Statutory conditions

10. 8. Disconnection of Services - A landlord or tenant shall not, without the written consent of the other party to the rental agreement, disconnect or cause to be disconnected heat, water or electric power services being provided to the residential premises.

23. I therefore determine that the tenants are responsible for the cost of electricity until the end of their notice period.

Decision

24. The landlord's claim for utilities succeeds in the amount of \$621.16.

Issue 3: Damages \$7,344.74

Landlord's Position

25. The landlord did not complete a condition report with the tenants prior to them taking occupancy, however, he did provide pictures (LL#06) of the unit from that time.
26. The landlord completed a damages ledger (LL#20) as follows:

Damages	Compensation
Refrigerator shelves broken	89.99
Stove glass top damaged – replace	776.14
Washer hose and switch damaged	159.16
Bathroom vanity light broken	34.49
Bi-fold doors damaged missing hardware	47.46
Bathroom towel ring missing	39.49
Bedroom lights broken missing globes	51.74
Receptacles, Switches, covers damaged and painted	73.56
Living room, hallway, stairs carpet dirty pet damages	230.00
Laundry room carpet severe dirty, damaged	211.80
Flooring replaced – damaged pets	1,236.89
Entire house extremely dirty – cleaning	424.88

Plaster/paint holes damages entire house	772.72
Cupboard door handles missing	19.97
Baseboards replaced for flooring	250.95
Shed – garbage – rodent feces – dumpster rental, dumping fees	731.50
Laborer – repairs, plaster/painting, garbage removal	2,194.00
Total	7,344.74

27. The landlord is seeking the replacement of the shelves on the fridge door. He said that they were off the fridge and found in another room in the house. He provided pictures from before the tenants took occupancy (LL#06) as well as, pictures showing that the pieces were off the door (LL#07) and found in another room (LL#07). He provided the receipt for the purchase of \$89.99 (LL#08). He said that the fridge is 10 – 15 years old.
28. The landlord also provided evidence of damages to the stove. He included before pictures (LL#06) as well as, after pictures (LL#07) showing that the glass top is scratched and damaged beyond repair. He said that the stove is 5 – 10 years old and is unrepairable, he provided a receipt for the replacement (LL#09) totaling \$776.13.
29. The landlord said that the washer hose and switch was damaged. He explained that they had provided a washer and dryer, however, the tenants had their own so they chose to use theirs and move his into the garage. The landlord noticed that the washer and dryer were missing, he confronted tenant1 about this and afterwards the washer and dryer was placed back into the garage. He said that the washer is 5 – 10 years old and that he believes that the damages occurred during the moving of the washer. He is seeking the cost of the parts to repair the damages \$55.66 (LL#08) and the cost of service \$103.50 (LL#08).
30. The landlord provided a picture showing the original vanity light in the bathroom (LL#06), the tenant had removed and replaced this light with a smaller light (LL#10). The original light was located on a shelf in the laundry room (LL#11) with the globes missing. He said that the tenant did not ask permission to make this change and has provided the cost to replace the light fixture \$34.49 (LL#08). He said that the light was 10 years old.
31. The landlord provided pictures of the bi-fold doors (LL#11) showing that they were off their track in the laundry room, closet upstairs and closet in the laundry. He provided the cost to repair the tracks totaling \$47.46 (LL#08).
32. The landlord said that the towel racks were off in the bathroom, before pictures (LL#06) and after (LL#10). He estimates them to be 10 – 15 years old. Receipts for replacement \$27.99 (LL#11) and 16.98 (LL#08) totaling \$51.71.
33. The landlord also provided before pictures (LL#06) and after pictures (LL#12) showing that the ceiling lights were broken. He provided a receipt for only one of the lights (LL#08) for \$51.74; he is waiving the cost of the other light. He said that the light is 15 years old.

34. The landlord submitted pictures to show that the tenant had painted a downstairs bedroom vibrant blue without his permission (LL#12) before (LL#06). He explained that the tenant had requested to paint the main living area, the landlord gave his permission and was satisfied with the result. Then tenant1 proceeded to paint the bedrooms in the house with bright colors and without the landlord's consent. The landlord was seeking the cost of the switch plates and covers, however he was unable to locate his receipts and subsequently waived this compensation.
35. The landlord stated that the carpets were very dirty and that there was a smell of pet urine. He provided before picture (LL#06) as well as, after pictures of the hall (LL#10) and living room (LL#13). He provided the receipt for the cost of cleaning, \$230.00 (LL#08). The landlord used the same company as the tenants, he said that the cleaner told him that this was one of the dirtiest homes he had ever been in. He explained that the tenants contacted him when they were moving and that they were walking over the flooring while he was trying to clean it.
36. The landlord stated that the carpet in the laundry room was beyond repair, he provided pictures to show before (LL#06) and after (LL#11). He said that the carpet is 25 years old and had to be replaced. The landlord submitted a receipt for \$265.56 (LL#08) for the flooring to be replaced.
37. The landlord also replaced the flooring in all four bedrooms, he provided picture from before (LL#06) and after (LL#12). He explained that the damages are not visual. The tenants had pets and the issue was pet urine. He said as they started cleaning the smell was overpowering. The contractor recommended that the only solution was to replace the flooring; he provided a text from them contractor stating same (LL#14). He said that in the 3 bedrooms with laminate the flooring was 15 years old and the one bedroom with carpet the flooring is 25 years old. He provided the receipts (LL#08) for \$1,236.89 for new laminate.
38. The landlord stated he did a mold assessment and provided them a dehumidifier. He explained that this is an older home without an air exchanger and that normal everyday living can create moisture build up that the tenants should manage by turning on the ceiling fans and vents. He said that the windows do not leak, but when cooking or showering steam can build up and run down the glass.
39. The landlord's picture folders (LL#07, LL#10, LL#11, LL#12 and LL#13) contain approximately 80 pictures that show the house was not clean. The landlord points out that there was food left in the fridge and cupboards, garbage in the laundry room and the bathrooms are not clean. He submitted receipts from a cleaning service for \$160.00 and \$100.00 (LL#09) as well as, receipts for \$70.07 (LL#08) for cleaning supplies; totaling \$330.07.
40. The landlord also submitted the cost of painting supplies. He submitted receipts for \$772.72 (LL#14). His pictures (LL#12) show that the painting was not done well and that there are places where there are spots of paint or areas that were not completely finished. He acknowledges that the tenant painted the living room area at his own expense. He clarifies that this was the only area that he gave permission for the tenant

to paint and that the other rooms were done without his consent. He said that these areas were painted last in 2017.

41. The landlord was unable to locate the receipts for the cupboard handles so he removed this compensation from his claim.
42. The landlord is also seeking the cost to replace the baseboards. He provided receipts for \$208.30 (LL#08). He said some of the baseboards were painted over (LL#12), but the issue was the old baseboards had to be removed to install the flooring and required replacing. He said that that original baseboard would be 10-15 years old.
43. The landlord submitted for the cost to dispose of the garbage left behind \$731.50 (LL#11). He had receipts for dumpster rental \$159.38, the cost for a company to dispose \$312.44 and the dumping fee \$259.67. The landlord submitted pictures (LL#14) of the shed showing garbage both inside and outside the shed.
44. Lastly the landlord submitted a general contractor's billing for \$2,194.00 (LL#09) to complete all the work inside and to load and dispose of the garbage.

Tenants' Position

45. Tenant2 said that the fridge was already open when they moved in and that they couldn't move it to clean under because the floor was warped.
46. Tenant1 explained that they just used the stove for regular use and tenant2 said that the stove was old.
47. Tenant2 said that the reason she used her own washer was that the landlord's washer was already broken.
48. Tenant1 stated that there was always trouble with the bathroom light and you couldn't see in the bathroom because it didn't work. He said that the former light was old and rusty.
49. Tenant1 disputes the issue with the bi-fold doors, he said that those type of doors always come off their tracks. He added that perhaps the doors fell off during the renovation, because the doors were fine when they left.
50. Tenant1 said that the towel racks were held to the wall with pins and they simply fell off.
51. Tenant1 stated that the lights were already missing the globes from the ceiling lights.
52. Tenant1 declared that he is a professional painter and would never paint over baseboards or switch plates. He said that this damage was there when he moved in and that he old freshened up the room with the same color paint. He said he also put

beautiful wall paper on the wall and questions why no one is giving him credit for this beautiful work.

53. Tenant1 refuses to believe that a person from the cleaning company would ever say that their home was the dirtiest home he'd ever been in and questioned the landlord's credibility. Tenant2 provided a receipt and pictures (TT#05 and TT#06), to show that they had a professional cleaner come in to clean the carpets. She said that the cleaning tech told her it was clean when he finished.
54. Tenant1 stated that there was nothing wrong with the laundry room floor.
55. Tenant1 questions the damages due to pet odor, he stated that they don't let their pets just use the bathroom inside and that their pets are clean. Tenant2 said that they had an ongoing issue with mold and this was causing issues. Tenant1 said that the windows leak. They provided pictures (TT#08 and TT#09).
56. Tenant1 stated that they did an awful lot of cleaning and it might not have been perfect but he questions the cost of supplies and cleaning.
57. Tenant1 states that he is a professional painter and that he did a good job painting.
58. Tenant1 said that they didn't have any garbage in or around the shed and that they kept the outside area beautiful.

Analysis

59. Tenant1's perception and testimony was not accurate and for the most part emotion based. He argued that clear damages were wear and tear, he disputed the cleanliness of the home, while the pictures clearly show an unclean space, he also testified that a room painted light grey with white trim was just touched up with the same color paint, however the pictures showed a vibrant blue paint that covered not only the walls but also the trim and switch plates. This has impacted his believability and has been detrimental to the weight given to his testimony.

That being said, the burden of proof in a damages file lies with the applicant. In accordance with 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 wilful 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)

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.

60. I accept that the landlord has shown for each item listed the condition both before and after the tenants' residency and the value of each item. The items listed below are not impacted by depreciation and the landlord will be awarded the full amount totaling \$2,163.46, as follows:

- Track repairs bi-fold doors\$47.46
- Towel racks51.71
- Carpet cleaning230.00
- Cleaner and cleaning supplies330.07
- Paint and supplies772.72
- Garbage disposal and cleanup..... 731.50
- Total..... \$2,163.46

61. Depreciation will be considered for the following items. Life expectancy is determined based on Residential Tenancies policy 9 – 6. Once life expectancy is determined, the award is based on the expected life remaining; i.e. if an item is 2 years old and it should last 10 years then there are 8 years of life that should be remaining. The award is then based on 8/10's of the cost or 80%. The items listed below show: compensation sought, age and life expectancy. Then the amount is awarded based on the percentage of the compensation owed.

Item	Age	Life exp	percentage	total
Fridge parts	12.5	12	0% X 89.99	0.00
Stove	7.5	12	4.5/12 X 776.13	291.05
Washer parts	7.5	11	3.5/12 X 103.50	30.19
Vanity light	10	15	5/15 X 34.49	11.50
Ceiling light	15	15	0% X 51.74	0.00
Laundry room carpet	25	10	0% X 265.56	0.00
Flooring bedrooms	17.5	10	0% X 1,236.89	0.00
Baseboard	12.5	life	100% X 208.30	0.00
Total				\$332.74

Note: when landlord gave an approximate age the median age is reflected

62. In the above chart, some items, although it has been shown that there is damage, due to the age of the item, there is no longer a monetary value, therefore nothing is awarded. I find that the tenants shall pay to the landlord \$332.74 in compensation for the above items.
63. Lastly the landlord sought compensation for the contractor who completed many of the repairs. He provided receipt of the two payments \$700.00 and \$1,494.00 (LL#09) and an email (LL#14) from the contractor. In the email the contractor said that he cleaned, plastered and removed a large amount of garbage; these costs are the responsibility of the tenant. However the landlord also painted and installed the flooring. There is no breakdown of the hours for each task. I am not awarding the landlord expenses for the installation of the flooring, because the flooring had exceeded life expectancy and required replacement, which is part of general upkeep, and subsequently the responsibility of the landlord. I did award the landlord the cost of the paint supplies previously, because the tenants had painted the rooms poorly and without the landlord's permission, however I'm not awarding for the cost of painting, because the house should have been scheduled to be painted as general upkeep at the time the tenants vacated.
64. As there is no accurate way to assess the time frames and costs for the contractor to clean, plaster, and remove the garbage, I will award an arbitrary amount and determine that the tenants shall pay to the landlord \$800.00 for this work to be completed.
65. I therefore find that the tenants shall pay to the landlord \$3,296.20 for damages as follows:
- Paragraph 60 \$2,163.46
 - Paragraph 63 332.74
 - Paragraph 64 800.00
 - Total..... \$3,296.20

Decision

66. The landlord's claim for damages succeeds in the amount of \$3,296.20.

Issue 4: Possessions returned/replaced \$2,287.16

Landlord's Position

67. The landlord submitted a damages ledger (LL#15) for the return or replacement of the following missing items:

Missing items

Items	Compensation
Dehumidifier	299.99
Yamaha generator	1,200.00
Wheelbarrow	149.49
Window air conditioner	228.84
Dining table and chairs	250.00
Patio table and chairs	228.84

Total	\$2,287.16

68. The landlord stated that he loaned the tenants the use of the dehumidifier because they had complained about mold and he was trying to help them cut down on the moisture. He never received it back. He said it was new in 2019.
69. The landlord stated that there was a generator in the garage and it is missing he shows it in the garage in picture (LL#16) and the picture is dated for 18-July-2021 and then he shows a second picture (LL#17) dated for 22-November-2022 where there is nothing in the spot where the generator was stored. He estimates it to be 10-15 years old and he believes a new one would cost \$5,000.00. He is seeking \$1,200.00.
70. The landlord said that he had a wheelbarrow in the shed and he went over to get it. When he checked it was gone. At that time he also noticed that his washer and dryer were missing. He spoke with tenant1 and said he would report this to the police. Shortly after the items were returned to the shed. He said after this conversation, things went downhill with his relationship with tenant1. He is seeking \$149.49 for the wheelbarrow.
71. The landlord stated he had an air conditioner in the laundry room that he purchased in 2015. There is a picture of it in the laundry room dated December 2017 (LL#18). It was not there when the tenants moved out. He is seeking \$228.84.
72. The landlord also had listed the dining room table and chairs as well as a patio table and chairs. He acknowledges that he has no photos to show they existed and removes them from his application.

Tenants' Position

73. Tenant2 said that the dehumidifier broke and they threw it away.
74. Tenant1 said that they never saw a generator in the shed or air conditioner.
75. Tenant1 said that the wheelbarrow was unusable and he threw it away.

Analysis

76. Once again we are faced with a "he said / she said" situation the tenants and landlords story for the most part does not line up and it is difficult to determine the actual facts of the matter. Additionally the landlord gave estimates of the amounts he is seeking and did not provide evidence to show how he determined his estimated amounts. That being said, the landlord has provided evidence that the following items were in the house or shed: dehumidifier, generator, wheelbarrow and air conditioner. The tenants have agreed that the wheelbarrow and dehumidifier were no longer working and that they threw them away. I will award the full amount sought for those items totaling \$449.48. I will award an arbitrary amount for the loss of the air conditioner, generator and dehumidifier of \$1,000.00.
77. I therefore determine that the tenants shall pay to the landlord \$1,449.48 in compensation for the missing items.

Decision

78. The landlord's claim for compensation succeeds in the amount of \$1,449.48.

Issue 5: Security deposit applied to monies owed \$625.00

Relevant Submissions

79. The landlord stated in paragraph 9 that the tenants paid a security deposit of \$625.00 on 15-June-2019 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

80. The landlord's claim for loss has been successful, 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

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

Summary of Decision

82. The tenants shall pay to the landlord \$7,391.84, as follows:

- Rent \$2,650.00
- Utilities 621.16
- Damages 3,296.20
- Possessions 1,449.48
- Security deposit (625.00)
- Total \$7,391.84

The landlord shall retain the \$625.00 security deposit.

July 25, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office