

Residential Tenancies Tribunal

Application 2023-0334-NL
2023-0428-NL

Decision 23-0334-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:11 a.m. on 30-May-2023.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
4. The tenant submitted an authorized representative form (TT#01), naming [REDACTED] hereinafter referred to as “the authorized representative.”

Preliminary Matters

5. The tenant stated that he sent notification of today’s hearing to the landlord by email on 25-April-2023; the landlord confirms receipt of notification.

The landlord submitted an affidavit (LL#01) stating that they served the tenant with notification of today’s hearing by email; the tenant confirms receipt of notification.

Issues before the Tribunal

6. The tenant is seeking:
 - Possessions returned \$4,150.00

The landlord is seeking:

- Rent \$650.00
- Damages \$3,680.00
- Security deposit applied to monies owed (\$450.00)

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 and Section 32: Abandoned personal property, as well as, Residential Tenancies policies 4 and 12.

Issue 1: Possessions returned \$4,150.00

9. The landlord and tenant entered a term rental agreement from 01-January-2021 – 31-December-2021; after the end of the term they had a monthly agreement. The tenant moved in 01-January-2021. The rent began at \$600.00 a month and later increased to \$650.00. He paid a security deposit of \$450.00 on 03-December-2020.

Tenant's Position

10. The tenant confirmed the details of his rental agreement. He said that the landlord gave him a termination notice for 28-February-2023 and he moved out the first week in March 2023.
11. The tenant stated that the landlord changed the locks on his door and he was locked out the first week of March. He said all of his belongings were still in the apartment and he was not able to retrieve them. He believes that the landlord threw everything out.
12. He submitted a possessions list (TT#02) as follows:

Item	Value
Camera	\$600.00
6 disc DVD player	200.00
Approximately 350 DVD's	1,750.00
Construction boots	100.00
Gold rope chain	1,500.00
Total	\$4,150.00

13. The tenant was upset that his belongings were thrown away and he believes that the items listed were stolen.
14. The tenant was unable to show proof of ownership and he hasn't replaced the items so he did not provide receipts or estimates for the cost. He was confused in his testimony and changed the value of the camera from \$600.00 to \$650.00. He also testified 450 DVD's instead of 350.

15. The authorized representative explained that although the tenant did not provide proof of ownership, the tenant is sincere in his belief that these items were in the apartment.
16. The authorized representative explained that he had contacted our office and was under the belief that they had 30 days to move the tenant's belongings after he moved out of the premises.
17. The authorized representative confirms the emails and conversations held with the landlord. He stated it is an unfortunate situation that arrangements weren't made to retrieve the items.

Landlord's Position

18. The landlord submitted a copy of the rental agreement (LL#02), she confirmed the details listed in paragraph 9. She also provided the termination notice served to the tenant (LL#03). She explained it was a Section 18 notice and there was no fault. She said that the homeowner wanted to sell the house and that was the reason for the termination of the rental agreement.
19. The landlord stated that the authorized representative had confirmed that the tenant had moved and that they then changed the locks on 15-March-2023 and disposed of the belongings by 24-March-2023.
20. The landlord explained in the past, with the properties that they manage, they have had tenants abandon their property; they then contact the tenants and see if they'll be picking the items up or disposing of them. She said that she had contact with the authorized representative by email (LL#01) on 16-March-2023 and he responded on 20-March-2023 telling her that the tenant didn't want his property, but wanting a few things. He asked if someone else could use the property left behind. The landlord followed up on 24-March-2023, stating that she was under the understanding through her contact with him that the tenant did not want the items and that they have been disposed of.
21. The landlord confirms, they did not provide our office with a list or seek permission to dispose of the items because they thought that they had already worked this out with the tenant's advocate.
22. Additionally, the landlord provided pictures of the unit, showing the condition of the apartment. She said that upon review of the photos and after speaking with the individuals hired to dispose, the items that the tenant applied for were not in the unit. She said that there appears to be 5 DVD's and she said that after contacting businesses and research she can't find a 6 disc DVD player, however she did find a 6 disc CD player. She has provided pricing for DVD's at \$10.48 and a DVD player at \$58.00. She is firm that the other items were not in the apartment.

Analysis

23. 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.

.....

(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.

...

24. The tenant's authorized representative is correct in stating that under the *Residential Tenancies Act, 2018*, a landlord is required to store the tenant's belongings for 30 days. However, as confirmed by both the authorized representative's and the landlord's testimony, as well as, the submitted email conversations about the belongings, the tenant did not want the belongings and he agreed to the disposal through his representative in writing, as shown above in Section 32 (5).

Decision

25. The tenant's claim for possessions returned fails.

Issue 2: Rent \$650.00

Landlord's Position

26. The landlord explained that the tenant's February rent payment was not paid. She submitted a rent ledger reflecting the non-payment (LL#05). As previously stated in paragraph 10 the tenant moved out the first week in March 2023. The landlord is not seeking rent after February.

Tenant's Position

27. The tenant confirmed that something happened with his February payment, he usually goes to their office to pay his rent. He said he was having issues with rats and that he had placed sticky pads around to catch them; he indicated he caught 45. He confirmed that he didn't give the landlord an order to complete repairs.

Analysis

28. In accordance with Residential Tenancies policy 4:

A tenant who requires a landlord to make repairs to the rental unit, may give the landlord a written request to make the necessary repairs within a reasonable time. Where a landlord fails to complete the necessary repairs within a reasonable period of time, the tenant may apply for the following:

- rebate of rent (based on actual costs incurred- ie. Laundromat services, heat loss due to failure to repair window or door, or loss of use of a portion of the rental unit due to leaky roof, etc.);*
- reduction in rent (until such time as the necessary repairs are completed);*
- rent to be paid to the Residential Tenancies Office in trust until an Order to make repairs is fulfilled by the landlord.*

29. Non-payment of rent is a violation of the rental agreement. If the tenant requires repairs he may give written notice to repair and a reasonable time for the request to be fulfilled. If this action is not successful he can apply to this department to pay rent in trust to us. He cannot stop rent payments, this is a violation of their rental agreement.
30. I accept the testimony of both parties and the submitted evidence that the tenant did not pay February's rent totaling \$650.00. I find that the tenant shall pay \$650.00 rent to the landlord.

Decision

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

Issue 3: Damages \$3,680.00

Landlord's Position

32. The landlord submitted the following damages ledger (LL#06)

Damages	cost
Clean kitchen, bathroom, floors, windows appliances, cat odor	\$345.00
Wash down walls due to cigarette smoke, plaster and 3 coats of paint to cover smoke, install smoke detector, replace broken handrail, paint cupboards	\$3,335.00
Total	\$3,680.00

33. The landlord said that they accept that there will be some wear and tear on the apartments they rent. She said that the rental agreement (LL#02) was for a non-smoking apartment and the tenant smoked. She said that there was so much smoke they had to wash down all the walls and then it took 3 coats of paint to cover the walls. There were also numerous marks on the walls that had to be plastered. She submitted pictures and it is clear that the apartment is very unclean (LL#04). She said that the unit was painted November 2020.

34. The landlord also shows in the pictures damages to a transition strip and a broken door.
35. She provided receipts for the work completed, the receipt for the cleaner (LL#07) is for both units in the house. The breakdown shows that the tenant's unit was 3 hours cleaning for 2 people at a cost of \$100.00 an hour + taxes for a total of \$345.00.
36. The second receipt (LL#01) is for a contractor. The receipt shows it is for the tenant's unit and lists the work as stated by the landlord. The total cost is \$3,335.00.

Tenant's Position

37. The tenant disputes that he smoked in the unit, he said he used to smoke out the window. He explains that the unit wasn't in good shape when he moved in and that he didn't have a chance to clean because he was locked out of the unit.

Analysis

38. Under 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 willful 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)
39. The unit shown in the pictures is in an unbearable condition. It is clear from the photo evidence, that a lot of work would have been required on this unit. It is also clear that the damages shown are not from wear and tear. I accept the landlord's claim for damages and find that the tenant shall pay the full amount of \$3,680.00 for the cost of repairs to the unit and cleaning.

Decision

40. The landlord's claim for damages succeeds in the amount of \$3,680.00.

Issue 4: Security deposit applied to monies owed \$450.00

Relevant Submissions

41. The landlord and tenant agree that the tenant paid a security deposit of \$450.00 and the landlord is 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 losses has been successful, paragraphs 31 and 40; she 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

43. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$450.00

Issue 4: Hearing expenses reimbursed \$20.00

44. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#03) and pursuant to policy 12.01, as his claim was unsuccessful he is not entitled to reimbursement of that cost from the landlord.

Summary of Decision

45. The tenant shall pay \$3,880.00, to the landlord as follows:

- Rent \$650.00
- Damages 3,680.00
- Less security deposit (450.00)
- Total \$3,880.00

The landlord shall retain the security deposit of \$450.00 against monies owed.

June 06, 2023

Date



Jacqueline Williams, Adjudicator
Residential Tenancies Office