

Residential Tenancies Tribunal

Application 2023-0385-NL

Decision 23-0385-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 25-July-2023.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord," attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone [REDACTED] at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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 he has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of an earlier hearing, electronically [REDACTED] on 11-June-2023. This hearing was rescheduled and the tenant was notified by our office on 27-June-2023 by prepaid registered mail [REDACTED] [REDACTED] As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. There was a previous hearing concerning this address (2022-0188-NL), although there was a financial award in this decision, the security deposit was not applied for or awarded. The landlord's application has been amended to include security deposit applied to monies owed in this decision.

Issues before the Tribunal

6. The landlord is seeking
 - Compensation for damages \$22,931.51
 - Security deposit applied against monies owed \$1,800.00

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 19: Notice where failure to pay rent.

Issue 1: Compensation for damages \$22,931.51

Relevant Submissions

9. The landlord submitted the rental agreement held with the tenant (LL#02). They had a term agreement from 01-June-2020 until 31-May-2021, the tenant remained in possession of the property and the agreement then became monthly. The landlord rented him both the upstairs and downstairs units in a house. The tenant paid \$2,500.00 on the first day of each month, this includes heat. The tenant took possession on 01-June-2020. The tenant paid a security deposit of \$1,800.00 on 31-May-2019; the landlord is still in possession. The landlord had a previous file (2022-0188-NL) and he received an Order of Possession. The Sheriff's Department reclaimed his house on 03-May-2022.
10. The landlord submitted before (LL#04) and after pictures (LL#05, LL#06 and LL#07) of the house. The landlord stated that there was a lot of damage done to the house, there was garbage left behind and the place was not cleaned or cared for.
11. The landlord provided a list of 101 items that required repair (LL#03). For the purpose of the decision the items will be addressed according to damages not rooms; as follows:

Description	Compensation
Doors – replacement and locks	2,946.85
Cleaning supplies	268.22
Plaster and paint	3,253.38
Cleaning Plaster and paint labor	9,600.00
Window blinds / shower curtains	838.00
Flooring / carpet	1,436.00
Waste disposal	87.36
Building supplies drywall and repair	503.73
Appliances	1,900.00
Rent	7,500.00
Total	\$28,333.54

12. The landlord provided pictures of the doors in the first floor back porch, front porch (broken window) and French doors (broken windows). He also provided evidence of damages to the second floor middle living room door (LL#06) and the third floor bathroom door and front bedroom door (LL#07). He submitted a receipt for the cost of repairs to the doors and locks (LL#11) \$2,645.00. The landlord said that the front door is about 60 years old, he was unable to determine the age of the French doors and the other doors are approximately 3 – 4 years old.
13. The pictures submitted by the landlord clearly show a large older home with absolutely no attempt made at cleaning, (LL#05, LL#06 & LL#07). The landlord stated that it appeared to never have been cleaned. He submitted his receipts for cleaning supplies totaling \$268.22 (LL#09).
14. The landlord also showed through his photographic evidence (LL#05, LL#06 & LL#07), that the entire home required painting and additionally, there were holes and marks on many of the walls that needed to be plastered. He provided receipts for these supplies totaling \$3,253.38. (LL#10). He said that the entire place was painted in 2019.
15. The landlord is seeking the cost of labor to both paint and clean, as well as, remove garbage and debris. He said himself and his brother were working 40 hours a week for 2 months. He submitted his calculation (LL#12) for the labor as follows: 2 people at 40 hours a week x 8 weeks = 640 hours x \$15.00 an hours \$9,600.00.
16. The landlord submitted for the cost of window blinds \$763.00 and shower curtains \$75.00. He said that on most windows the blinds were missing and on some they were damaged. There was one photo provided (LL#06). He said that the shower curtains were beyond repair. He did not submit receipts for these items.
17. The landlord submitted receipts for the cost to repair flooring \$1,436.00 (LL#11). There were pieces of hardwood missing from the first floor living room and to the linoleum flooring in the first floor front porch, kitchen and bathroom (LL#05). On the second floor the linoleum had to be replaced in the bathroom (LL#06) and on the third floor the linoleum was replaced in the bathroom (LL#07). The linoleum was 3 – 4 years old and the hardwood is original to the house, 60 years.
18. He submitted receipts for the cost of his waste disposal totaling \$87.36 (LL#09).
19. He also submitted the receipts for the cost of drywall and supplies for repairs, totaling \$503.73. (LL#08).
20. The landlord is seeking the cost of the replacement of the first floor stove, microwave and clothes washer as well as the 2nd floor stove, microwave and clothes washer. He estimates that cost to be \$1,900.00. He did provide pictures of the stoves and washers (LL#05 & LL#06). He explained he didn't provide receipts because when they determined that the house would be sold, they no longer needed to purchase these items.

21. Lastly the landlord is submitting for the cost of lost rent \$7,500.00. He explained he had to enforce an Order of Possession on 03-May-2023. He stated that the house was not rentable in the condition it was left in. He stated that it was decided, after the house was repaired to list it for sale instead of as a rental. It subsequently was sold in October 2023.

Analysis

22. 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)

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.

23. It is clear that the landlord's property was damaged and unclean at the time he regained possession.

24. The landlord had damages to the doors and any doors that had windows the glass was broken. In accordance with Policy 9-6 doors are expected to last 20 years. The front door, with an approximate age of 60 years therefore will not be compensated. The remaining 5 doors will be awarded at a rate of $20 - 3.5 = 16.5$ years remaining. As there is a single billing for all the doors I shall divide the cost equally as follows: $\$2,645.00 \times 5/6 = \$2,204.17$. The estimated cost for the 5 doors is \$2,204.17 and this will be multiplied by the lifespan remaining: $16.5/20 \times \$2,204.17 = \$1,818.44$. The tenant shall compensate the landlord \$1,818.44 for the replacement of the doors.

25. The landlord's evidence shows that the entire house required painting. His submitted cost for paint is \$3,253.38. In accordance with Policy 9-6 paint is expected to last 5 years as the landlord claims the entire residence was painted in 2019 this would mean that the paint at the time the tenant moved in is 3 years old and has 2/5's of its life remaining. He shall be awarded $2/5 \times \$3,253.38 = \$1,301.35$ for the cost of paint.

26. The landlord has shown that the flooring was damaged in many of the rooms with linoleum and the hardwood is damaged in the first floor living room. Hardwood should

last the lifetime of the home. The linoleum should last 10 years and the landlord claimed it is 3.5 years old, with 6.5/10 lifespan remaining. His receipts do not identify or breakdown the flooring, I therefore find he will receive full compensation for the hardwood an estimated value of \$700.00 and $6.5/10 \times \$736.00 = \478.40 for the linoleum: totaling $\$700.00 + 478.40 = \$1,178.40$ for flooring.

27. The landlord will receive full compensation for the personal time required by himself and his brother to paint, repair and clean. The amount for painting should have depreciation considered, however the landlord rated their hourly rate as \$15.00 and we will award personal time at minimum wage $\$13.35 + 8.00 = \21.35 , this reduced cost sought for personal time will offset any depreciation concerns. The landlord is seeking \$9,600.00 and will be fully compensated by the tenant for this work.
28. The landlord will also be fully compensated for the cost of his cleaning supplies \$268.22, waste disposal \$87.36 and supplies for repairs \$503.73 totaling \$859.31.
29. The landlord will not be compensated for the cost of window blinds and shower curtains, he did not provide receipts or evidence to support this claim.
30. The landlord provided evidence of damages to his appliances but no receipts or estimates, I accept that he incurred loss and will therefore apply an arbitrary award of \$1,500.00.
31. The landlord is seeking rent for three months, of \$7,500.00, for the period of time when the repairs are ongoing. I accept that it took the 8 weeks to complete the repairs and I accept that the house was not in a rentable condition when the landlord regained possession. I will therefore award for that 8 week period ending 30-June-2022. According to their previous decision (2022-0188-NL) there has been a daily rate of \$82.19 awarded up to the date of the removal of the tenants: 03-May-2022. The landlord is already awarded 3 days rental $\times \$82.19 = \246.57 . I therefore will deduct this from the \$5,000.00 rent for a total of \$4,753.43; this will be awarded for rent owed.

Decision

32. The tenant shall pay to the landlord \$21,010.93, for damages as follows:

Doors	\$1,818.44
Paint	1,301.35
Flooring	1,178.40
Personal time	9,600.00
Cleaning supplies/waste disposal	859.31
Appliances	1,500.00
Lost rent	4,753.43
Total	<u>\$21,010.93</u>

Issue 2: Security deposit applied against monies owed \$1,800.00

Relevant Submissions

33. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$1,800.00 on 31-May-2019 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

34. The landlord's claim for losses has been successful and 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

35. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,800.00.

Issue 4: Hearing expenses reimbursed \$20.00

36. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#13) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

37. The tenant shall pay to the landlord \$19,230.93, as follows:

Damages	\$21,010.93
Hearing expenses	20.00
Less security deposit	<u>(1,800.00)</u>
 Total	<u>\$19,230.93</u>

The landlord shall retain the security deposit of \$1,800.00 against monies owed.

August 1, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office