

## Residential Tenancies Tribunal

Application 2023-0390-NL

Decision 23-0390-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:01 a.m. on 20-June-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.

### Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served both tenants with notification of today’s hearing by pre-paid registered mail. The packages were sent on 26-May-2023 and were delivered to the tenants on 26-May-2023 and 07-June-2023. Both tenants confirm receipt of notification as stated by the landlord.
5. The landlord’s application was amended to include security deposit applied to monies owed \$1,200.00.

### Issues before the Tribunal

6. The landlord is seeking:
  - Damages \$9,085.00
  - Security deposit applied against monies owed \$1,200.00

### 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: Damages \$9,085.00

### Landlord's Position

9. The landlord submitted the written rental agreement held with the tenants (LL#02). The tenants moved in on 08-January-2022 and had a term agreement until 07-January-2023. They remained in the house until 07-April-2023 with a monthly agreement beginning once the term agreement ended. The tenants paid \$2,400.00 a month rent; their rental period is from the 08<sup>th</sup> day of each month until the 07<sup>th</sup> day of the following month. Rent is due in full on the 08<sup>th</sup> day of every month. The tenants paid a security deposit on 19-December-2021 of \$1,200.00 and the landlord stated he is still in possession of the deposit.
10. The landlord said he gave the tenants a three month termination notice and that he regained possession of the house on 07-April-2023.
11. The landlord stated that he sought out 3 different quotes for each damage he is claiming. He did not provide a copy of the quotes (evidence is to be submitted at least 3 days before the hearing), instead he took the lowest quote for each damage and provided a damages ledger (LL#03) as follows:

Description	Cost
Remove and replace front door	\$4,100.00
Replace damaged trim around windows on main floor and paint bedroom, and kitchen	1,350.00
Caulk and paint new windows	750.00
Remove and replace 2 ft. section of countertop	200.00
Remove and replace carpet in basement bedroom	1,500.00
Taxes	1,185.00
Total	9,085.00

12. The landlord stated that they did a walk through before the tenants moved in and again when they moved out. He submitted a taped conversation (LL#04) of the walk through when the tenant's moved out. He also submitted pictures of the house before the tenants moved in (LL#16 – LL#23).
13. The landlord said that he had been to the house because the washer had broken and he returned to clean the fireplace. When he returned he noticed that the front door frame had split. He provided a picture (LL#05), the tenants told him it was from the cold weather, however he said a contractor stated that this splitting wouldn't have happened from the cold weather but instead by force. He said that the door is original to the house and is 9 years old. To have it replaced will cost \$4,100.00.
14. The landlord said that the quote for \$1,350.00 is to replace the trim around the window, as well as, paint and plaster the walls in the bedroom and kitchen. He submitted

pictures showing that there are dog scratches around the door frame (LL#07) and the window (LL#08). He has also submitted pictures showing that there is some damages to the walls (LL#09 – LL#15). The landlord said that the house was painted last in 2021 on the main floor and he is unable to determine when it was last painted upstairs. The landlord pointed out that some of the damages may have been done during the move by the tenants' movers and he points out that in picture LL#10 there are some paint flecks on the floor.

15. The landlord disputes the tenants' claim that the marks on the wall are from his couch. He does confirm that he also had a dog in the house and that some of the scratches are from his dog.
16. The landlord is also seeking \$750.00 to caulk and paint around two windows damaged by dog scratches (LL#08 and LL#11).
17. The landlord is seeking \$200.00 to replace approximately 2 feet of countertop (LL#24) that was burnt. He said that he might not be able to match this exactly and that although there is a small part damaged, to replace that section will cost \$200.00 but to redo the entire kitchen, so that everything matches, will cost about \$800.00. The countertop is 9 years old.
18. The landlord submitted pictures of a stain on the downstairs carpet (LL#25). He said that he has tried a number of cleaning products and is unable to remove the stain. He said that the room is about 10 x 12 and the stain is about 1 x 1. The carpet is original to the house and 9 years old.
19. The landlord said he tried to find the lowest estimate for the repairs and to be fair.

#### Tenants' Position

20. Tenant2 confirmed the details of the rental agreement. He said that they found new housing and moved in on 01-April-2023 and the landlord did regain possession of this house on 07-April-2023.
21. Both tenants take exception to the taped conversation submitted by the landlord. They said that they had no knowledge of the fact that they were being taped.
22. Tenant1 said that when they moved into the house they had to lock the door to keep it shut. She said otherwise the door would come open. She said that they had no keys to the other doors and had to use this door to enter and exit the house. Tenant2 said that the door wouldn't open freely in the winter and the frame split. He believes that the cost to repair the door is too high, he estimates that to replace the frame around the door should only cost between \$600.00 and \$700.00.
23. Tenant1 confirms that the damages to the upstairs bedroom wall/paint was caused by them. She said that there was a plastic basketball net affixed to the wall and that when they removed it, it did take the paint and some of the drywall off, as shown in picture LL#09. She disputes that the movers did damage and believes that they were very

careful with the move. She acknowledges that her dog may have done some of the scratches, however there were scratches there from another dog when they moved in. She continues that the marks on the downstairs wall (in picture LL#15) are from the landlord's couch. She said that they used this room as a dining room and used another room for the living room. She explains that they didn't have any furniture on that wall to create those marks. She disputes the cost of the repair \$1,350.00 and states that most of the damages are just wear and tear and that this is to be expected. Tenant1 confirmed that they didn't do any painting while they lived at the house.

24. Tenant2 confirms that they damaged the countertop and it is not esthetically pleasing. He said it was an accident.
25. Tenant1 said that her son wasted something on the carpet. She believes that a professional cleaner should be able to remove this stain and questions why they would replace the entire carpet. Tenant2 also disputes the size of the stain and believes it is only about a couple of inches around.
26. The tenants believe that the bulk of the damages are wear and tear. They dispute the cost assessments provided by the landlord.

## Analysis

27. In relation to the submitted tape of the walk through with the tenants, in accordance with section 184 of the Criminal Code, we follow the one-party consent rule. This means that recording private conversations is legal provided one of the participants' consents to the recording. Additionally, there is to be no expectation of privacy, therefore a recording is not permitted for example in a private dwelling. As this recording appears to be recorded in the landlord's property after the tenants have moved, it is technically permitted. The recording was reviewed, and revealed minimal information about the damages as it was a voice recording and didn't show evidence of the damage.

28. 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:***

#### ***1. Obligation of the Landlord -***

***(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.***

***(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.***

***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.

29. The landlord's evidence clearly shows that the door frame is split, the tenants stated that the door was sticking in the cold weather and that this caused the frame to split. The landlord states that the contractor informed him that this split would be caused by force not by the impact of the weather. I believe that both these situations could be true. If the door was sticking due to the cold weather, it is possible that the tenants could have damaged the door frame by the force used to open or close the door. The tenants' statement that the cold caused the splitting verifies the landlord's claim that the damages occurred while the tenants were in possession of the home.
30. That being said, I agree with the tenants that the value assigned to the door of \$4,100.00 is excessive. The pictures show what appears to be a steel door that has no damages and that the damage is to the interior wooden door frame. As the landlord did not provide the quotes he received from the three contractors which would have explained the repairs required, I find that based on the photographic evidence submitted, the door frame required repairs. Due to the lack of evidence, of the actual cost for this repair, I am left with no alternative but to award an arbitrary amount for the landlord's loss of \$500.00 to repair the door frame.
31. The landlord is seeking \$1,350.00 for the trim around the window, as well as, to paint the walls in the kitchen and bedroom. Tenant1 acknowledges that the upstairs wall was damaged by them, however she states that the downstairs damages to the wall were there when they moved in and were caused by the landlord's couch. In accordance with Residential Tenancies Policy 9-3, the adjudicator must consider depreciation the landlord was unable to determine when the upstairs bedroom was painted last and he has not proven that the claim by the tenants that his couch created the marks on the downstairs wall is incorrect. I therefore find that the landlord's claim for these damages fails.
32. The landlord has shown that there was damage to the trim and corners. I accept his evidence that the trim had a number of marks and that he had to paint these areas. The landlord stated that it was last painted three years ago and Residential Tenancies Policy 9-3, determines that interior paint should last 3 – 5 years. This means that the painting was nearing the end of its lifespan. However, once again due to the lack of evidence, of the actual cost for this repair, I am left with no alternative but to award an arbitrary amount for the landlord's loss of \$200.00 to paint the baseboard and trim.
33. Additionally the landlord is seeking \$750.00 to caulk and paint new window trims. The landlord's evidence clearly shows that there are scratch marks around the window trims

that are recent as the scratches show the wood under the paint. The scratches on the door frame however, show painted scratches. As the tenants did not paint, it would be apparent that the landlord's pet made those scratches as they have been painted over. To replace the boards and repaint would be a small job and I will award an arbitrary amount for the landlord's loss of \$150.00.

34. There is no dispute concerning the damages to the countertop both parties confirm that the damages were accidental and that the tenants are responsible. Residential Tenancies Policy 9-3, determines that countertops should last 15 years. As the house is currently 9 years old the countertop would have 6 years lifespan remaining. I accept the landlord's valuation of \$200.00 and he shall be awarded  $6/15 \times \$200.00 = \$80.00$ .
35. Lastly the landlord is seeking \$1,500.00 for the carpet in the downstairs bedroom, once again the tenants accept responsibility for this damage. The carpet is 9 years old and Residential Tenancies Policy 9-3, determines that interior carpet should last 10 years. Therefore as the carpet is nearing the end of its lifespan the landlord shall be awarded  $1/10 \times \$1,500.00 = \$150.00$  to repair this damage.

### Decision

36. The tenants shall reimburse the landlord \$1,242.00 for damages plus taxes, as follows:

• Door frame.....	\$500.00
• Paint trim .....	200.00
• Window trim .....	150.00
• Countertop .....	80.00
• Repair/replace carpet .....	150.00
• Taxes .....	<u>162.00</u>
• Total .....	<u>\$1,242.00</u>

### Issue 2: Security deposit applied to monies owed \$1,200.00

#### Relevant Submissions

37. The landlord stated in paragraph 9 that the tenants paid a security deposit of \$1,200.00 and he still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

### Analysis

38. The landlord's claim for loss has been successful, paragraph 36; he shall retain the \$1,200.00 deposit as per Section 14 of the *Residential Tenancies Act, 2018*, 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**

39. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,200.00. The tenants shall pay to the landlord the balance of the damages  $\$1,242.00 - 1,200.00 = \$42.00$ .

## **Summary of Decision**

40. The landlord shall retain \$1,200.00 of the tenant's security deposit in compensation for damages.

The tenants shall pay to the landlord \$42.00 for damages.

July 4, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office