



Residential Tenancies Tribunal

Application 2023-0537-NL

Decision 23-0537-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 17-July-2023.
2. The applicants [REDACTED] [REDACTED] hereinafter referred to as "the landlord," she attended by teleconference.
3. The respondents, [REDACTED] [REDACTED] hereinafter referred to as "the tenant," he attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit stating that she served the tenants with notification of today's hearing electronically on 06-July-2023. The tenant confirmed notification as stated.
5. The landlord amended other from \$613.44 to \$678.15.

Issues before the Tribunal

6. The landlords are seeking
 - Rent \$1,976.00
 - Utilities \$1,055.58
 - Damages \$2,773.36
 - Other \$678.15
 - Security deposit applied to monies owed \$1,482.00

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 15: Fee for failure to pay rent.

Issue 1: Rent \$1,976.00

Issue 2: Utilities \$1,055.58

Landlord's Position Rent

9. The landlord submitted the written term agreement (LL#02) held with the tenants. The agreement submitted is the most recent agreement, it begins on 01-May-2022 and ends on 30-April-2023. The tenants moved in on 20-October-2020 and held two previous term agreements prior to this agreement. The tenants pay \$1,976.00 each month for rent; due on the 1st. They also paid a security deposit of \$1,482.00 on 19-October-2022.
10. The landlord stated that the tenants moved out without formal notice on 20-December-2022. She received an email on 22-November-2022 telling her it was their intent to move by 20-December-2022. She said that she discussed appropriate notice with the tenants at that time.
11. She is seeking rent for the month of January 2023 in lieu of notice. She provided a ledger (LL#03). She said that the tenants are not able to break their lease until 30-April-2023, however, she would accept 2 months' notice which would include the months of December and January. She said that they didn't take possession of the house back until 05-January-2023 and there was work required to prepare it for new renters. New renters took occupancy in February 2023.

Landlord's Position Utilities

12. The landlord is also seeking the utilities for this time period. She has provided a ledger (LL#04) as well as the receipts for the electricity \$120.31 for December (LL#06) and \$432.32 for January (LL#07).
13. She is also seeking the estimated cost to refill the propane tank \$344.96 after the tenants moved. She explained it was filled prior to them moving in and that they required it to be filled upon the end of the lease.
14. Additionally, she is seeking the cost of utilities for the downstairs apartment for the month of October 2020 totaling \$151.95, when a leak was caused by the upstairs tenants.
15. The total amount sought is \$1,055.48, as follows:

December 2022	\$120.31
January 2023	436.37
Propane	344.96
October	<u>153.84</u>
Total	<u>\$1,055.48</u>

Tenant's Position

16. The tenant confirms the details of the rental agreement.
17. The tenant agrees that the landlord is entitled to two months' notice and agrees to reimburse rent, the electricity and propane as requested.

Decision

18. The tenant shall reimburse the landlord \$1,976.00 for rent and \$1,055.48 for utilities.

Issue 3: Damages \$2,773.36

Landlord's Position

19. The landlord submitted a damages ledger (LL#08) as follows:

Damage	Compensation
Water cleanup and repair in basement suite	
• Dehumidifier rental	\$289.80
• Materials	80.00
• Labor 8 hours @ \$25.00	200.00
Repair and reseal driveway	200.00
1x1 hole in master bedroom wall 1 hr @ \$25.00	25.00
Replace toilet flapper and handle x 2	75.00
Replace non-working light bulbs	134.77
Replace front door seal	40.00
Repair/repaint front window sill	
• Materials	80.00
• Labor 8 hrs @ \$25.00	200.00
Repair/stain bottom hardwood stair tread	
• Materials	20.00
• Labor 8 hrs @ \$25.00	200.00
Replace towel rack materials and .5 hrs labor @ \$25.00	66.15
Replace dryer vent/repair/repaint wall	100.00
Repair/repaint/reinstall bedroom door header	90.00
Repair/plaster/paint wall in main bath	190.00
Steam clean master bedroom incl 3 hrs labor @ \$25.00	107.64
Deep cleaning 30 hours @ \$25.00	675.00
Total	\$2,773.36

20. The landlord submitted for the water cleanup and repairs to the basement when the tenants first took occupancy. They had changed out the landlords' washer and dryer for their own. The washer attachment wasn't secure and created a leak. She submitted for a ten day rental of a dehumidifier \$289.80 (LL#09) and \$80.00 for plaster and paint as well as 8 hours for personal time at \$25.00 for her husband to do the repair. She said this was a brand new unoccupied downstairs apartment and the new tenants were about to take occupancy.
21. The landlord submitted a video to show that there had been spill of gas or oil in the driveway (LL#15). She is seeking \$200.00 to have the driveway repaired.
22. The landlord is seeking damages to repair a small dent in the master bedroom wall totaling \$25.00
23. The landlord submitted receipts (LL#16) to replace the toilet flappers and handles on two toilets, as well as pictures (LL#19 and LL#20) to show that they are broken.
24. She amended the cost of the replaced light bulbs she had listed \$134.77 however she is actually seeking \$65.51 + one hour labor at \$25.00.
25. The landlord is seeking the costs to repair both the window sill (Materials \$80.00) and the bottom hardwood tread (Materials \$20.00). She is seeking 8 hours labor for each of these jobs, 16 hours x \$25.00 = \$400.00.
26. The landlord submitted for the cost to repair the seal around the front door. She submitted the receipt for the seal (LL#16) for \$22.09 + taxes totaling \$25.40 and the remaining \$14.60 is for personal labor.
27. The landlord is seeking the cost to replace the towel rack in the downstairs bathroom. She provided a picture of the rack prior to the occupancy (LL#17) as well as a picture of it off the wall after they regained possession (LL#25). She provided a receipt (LL#16) for the cost of replacement of \$35.19 + tax = \$40.47 and half and hours labor x \$25.00.
28. The landlord said that they had to replace the bedroom door header, she did not provide a picture. She provided a receipt for \$9.76 (LL#16) and she said that they used their own paint. She said that this area was last painted 3 years ago. She is seeking \$90.00 for labor and supplies.
29. The landlord is seeking the replacement of the dryer vent and damages to the wall behind the dryer. She explained in paragraph that 19 the tenants switched out their washer and dryer for their own. She provided a video (LL#17) to show the damages. She did not provide receipts, she explained that her husband had a spare dryer vent and he had paint and supplies, he use what they had on hand to complete this repair. She believes that the room was painted 3 years before. She is seeking \$100.00 for this work.

30. The landlord submitted for the cost of painting the wall in the main bathroom \$190.00 she provided a before picture (LL#18) and an after picture showing water damage (LL#20). They used their own supplies and she is seeking \$190.00 for supplies and 3 – 4 hours labor @ \$25.00. She said that the room was last painted 3 years ago.
31. The landlord is seeking the cost to rent and steam cleaner to clean the carpet in the master bedroom. She said that they agreed to the tenants having a dog and that the carpet just required cleaning. She provided a receipt for the cost of the steam cleaner rental (LL#21) for \$42.54 and is seeking 3 hours labor @ \$25.00 for a total of \$117.54.
32. The landlord is seeking the cost to deep clean the house she said that it took in excess of 30 personal hours @\$25.00 an hour totaling \$750 however her listed amount is \$675.00. She said it was very dirty and required a lot of work. She provided pictures (LL#22 – LL#30).

Tenant's Position

33. The items listed in the first part of the damages ledger, (paragraphs 19 – 24) the tenant accepts responsibility for those damages as stated and there is no dispute.
34. The tenant explained that they are expats and moved here during the height of Covid. He said that they took the house without prior viewing. He recalls that there were some issues, and although they didn't fill out the proper paper work for repairs, he does dispute being responsible for issues that were present when they first moved in. He disputes the cost of the replacement of the seal around the door, he said that this was sticking since they moved in. He also recalls that the towel rack was missing a screw and whenever they placed a towel upon it the rod would fall off, so they left it off. He disputes the cost of the door header, he states that this was broken when they moved in.
35. The tenant agrees that they did damage the window ledge and bottom step, he does question the cost of the labor, but accepts the cost of the supplies \$80 + \$20 = \$100.00.
36. The tenant confirms that he did move the washer and dryer out of the laundry room. He doesn't agree that he did any damage and he said that the hose is flexible and would not cause damage.
37. The tenant doesn't believe that they caused the bubbling on the bathroom wall, he said that the wall must have been improperly finished.
38. The tenant confirms that the carpet required cleaning, he disputes the pricing.
39. The tenant also confirms that the place required additional cleaning, he said he did his best but didn't get it clean. He does question the cost of the cleaning.

Analysis

40. The tenant accepts the following damages without dispute and will reimburse the landlord \$930.61 as follows:

Water cleanup dehumidifier	\$289.80
Materials.....	80.00
Driveway	200.00
Hole in master bedroom	25.00
Toilet supplies	75.00
Light bulbs	65.51
Labor.....	<u>195.30</u>
Total.....	<u>\$930.61</u>

41. The landlord has listed 9 hours labor for the items agreed to by the tenant in paragraphs 19-24. This tribunal rewards personal labor at a rate of minimum wage at that time of $\$13.70 + 8.00 = \21.70 per hour, the amended total for labor is \$195.30.

42. The landlord also doesn't dispute the damages to the window sill and step. He accepts the cost of supplies \$100.00. I agree with the tenant that 16 hours to complete this work does seem excessive and will award 4 hours labor at the approved rate of \$21.70 an hour totaling \$86.80.

43. 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)

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.

44. The landlord has not proven the following damages, I believe that the tenant was forthright about the damages he caused, I accept his testimony that these issues were present when he moved in, with the exception of the damages by the dryer vent. In response to the damages caused by the dryer vent, the damages appear to be scuff marks and could potentially have been cleaned and the vent itself would require routine replacement as part of upkeep. The landlord's claim for these items fails.

- The seal around the front door
- The towel rack
- Bedroom door header and
- Damages caused by the dryer vent

45. I accept the landlord's claim to paint the washroom the pictures show that the paint has bubbled on the wall, this is typically caused by water damage. The landlord has not proven the cost of the supplies as there were no receipts provided. I do accept her assessment that this work required 3 – 4 hours labor. Therefore 3.5 hours x \$21.70 an hour = \$75.95.

46. Both parties agree that the bedroom carpet required cleaning. The landlord has proven the cost of the rental of a steam cleaner \$42.54 and I accept that she would require 3 hours labor to complete this work 3 hours x \$21.70 - \$65.10.

47. I also accept that the deep cleaning of this home would require 30 hours. This home is very large and dirt that is left for long periods can become embedded and would require multiple cleanings. I will award 30 hours labor to complete this work 30 hours x \$21.70 = \$651.00.

Decision

48. The tenant shall pay to the landlord \$1,909.46, in damages, as follows:

- Damages without dispute \$930.61
- Window sill and step 186.80
- Paint washroom 75.95
- Carpet cleaning 65.10
- Deep cleaning 651.00
- Total \$1,909.46

Issue 4: Other \$678.15

Landlord's Position

49. The landlord has provided a compensation list for "other" as follows:

Items	Compensation
Meals	53.37
Gas	432.24
Late fees	75.00
Snow clearing 3 hours @ \$25.00	75.00
Total	\$613.44

Note: the landlord removed the cost for the steam cleaner rental as it was double billed.

- 50. The landlord provided the receipts for the cost of meals and gas (LL#32 and LL#33). She is seeking reimbursement, they live in another community and had to drive to and from the rental numerous times.
- 51. The landlord is seeking late fees for overdue rent totaling \$75.00.
- 52. She is also seeking 3 hours that they required to completed snow clearing to access the property once they regained possession and started completing repairs.

Analysis

- 53. The landlord's claim for gas and meals fails, it is not the burden or the responsibility of the tenant to reimburse the landlord for their travel from their home to their rental property.
- 54. The claim for snow clearing succeeds at the approved rate of 3 hours x \$21.70 = \$65.10. In the tenants rental agreement (LL#02) Part 11 clearly determines that the tenant is responsible for snow clearing during the term of their tenancy, which would include the notice period.
- 55. The claim for late fees will also succeed as Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

- (a) *\$5.00 for the first day the rent is in arrears, and*
- (b) *\$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

It has been established that the tenant has been arrears since the January rental period, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

- 56. The tenant shall pay to the landlord \$65.10 for snow clearing and \$75.00 for late fees.

Decision

- 57. The landlord's claim for snow clearing and for late fees succeeds in the amount of \$140.10.

Issue 5: Security deposit applied against monies owed \$1,482.00**Relevant Submissions**

58. Both parties agree to the application of the security deposit against monies owed.

Analysis

59. There is no dispute. The security deposit will be applied in accordance with Section 14 of the *Residential Tenancies Act, 2018*.

Decision

60. The landlord shall retain the security deposit of \$1,482.00 against monies owed.

Summary of Decision

61. The tenant shall pay \$3,599.04 to the landlord, as follows:

• Rent	\$1,976.00
• Utilities	1,055.48
• Damages	1,909.46
• Snow clearing	65.10
• Late fees	75.00
• Security deposit applied	<u>(1,482.00)</u>
• Total	<u>\$3,599.04</u>

The landlord may retain the security deposit of \$1,482.00 against monies owed.

July 25, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office