

Residential Tenancies Tribunal

Application 2023-0673-NL
Application 2023-0754-NL

Decision 23-0673-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 19-October-2023.
2. The applicant, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as “the tenants”, participated in the hearing via teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing via teleconference.
4. The applicant, [REDACTED] advised during the start of the hearing that her legal name is now [REDACTED].

Preliminary Matters

5. There was a written term rental agreement that commenced on 5-June-2019, which became a month-to-month agreement. The tenants vacated the unit on 1-August-2023. Rent was \$850.00 per month and was due on the first day of each month. A security deposit of \$600.00 was paid on 21-June-2019 and is in the possession of the landlord.
6. The tenants submitted an affidavit stating that they served the landlord the notice of hearing electronically by email to; [REDACTED] on 25-September-2023 (TT#1). The landlord confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
7. The landlord countered the application and submitted 2 affidavits stating that he served applicant 1 and applicant 2 with the notice of hearing via prepaid registered mail ([REDACTED] [REDACTED]) and ([REDACTED] [REDACTED]) respectively on 8-September-2023 (LL#1). The tenants confirmed receiving the documents. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Issues before the Tribunal

8. The tenants are seeking:
 - Rent refunded \$1700.00
 - Hearing expenses \$20.00

9. The landlord is seeking:
- Rent paid \$425.00
 - Possessions returned \$400.00
 - Compensation for damages \$1703.14
 - Security deposit applied against payment owed \$600.00
 - Hearing expenses \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 2; Definitions and Section 14; Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual, Section 9: Claims for Damage to Rental Premises*.

Issue # 1: Refund of Rent \$1700.00

Tenant's Position

12. The tenant's testified that they were given a *termination notice with cause* on 25-July-2023 to vacate the premises on 1-August-2023 (TT#2). The tenant's stated that they did vacate the premises on that date but are seeking a refund of rent for the 2 previous months of June and July. The tenant's testified that they gave the landlord a *request for repairs* form on 16-July-2023 to have the house shingled and a window replaced by 1-August-2023 (TT#3). The tenant's stated that the work was not completed, and they feel that they should not have had to pay rent for the months of June and July when water and wind were entering the house and the bedroom window was practically falling out.

Landlord's Position

13. The landlord testified that he dealt with all issues at the premises as they arose and back in June when he was asked to deal with the shingles and the window, he took every step necessary to make the repairs as he always had in the past. The landlord testified that he had a difficult time getting a contractor to do the work and as soon as he could secure a contractor, he did, and the work was completed in August.

Analysis

14. I accept that repairs needed to be completed to the premises while the tenants were still residing there, and I accept that the landlord made every attempt to have the work completed. The landlord stated that he responded to the needs of the tenants every time they requested him to do so. The tenant's disputed that the landlord responded to their needs and stated that they could never get anything fixed. The landlord stated that he was struggling with finding a contractor to complete the repairs to the roof and replace the window, but apart from those issues, the landlord stated that he was always attentive to the needs of his tenants.
15. Rent is required to be paid by the tenants for the use and occupation of the rented premises. The *tenant's request for repairs* form was not given to the landlord until 16-July-2023 asking to have the roof shingled and the window replaced by 1-August-2023.

16. I find that the tenants are responsible to pay rent for the time that they resided at the premises and as such, the landlord is not responsible to reimburse the tenants for rent paid for the months of June and July 2023.

Decision

17. The tenant's claim for a refund of rent does not succeed.

Issue # 2: Rent Paid \$450.00

Landlord's Position

18. The landlord testified that the tenants did not pay rent in full back in April 2023. The landlord is seeking \$450.00 to be paid in outstanding rent.

Tenant's Position

19. The tenants did not dispute that they only paid \$400.00 in April 2023 for rent and testified that they asked the landlord to take the remaining amount of \$450.00 from their security deposit to cover the outstanding rent.

Analysis

20. I accept that the tenants thought that rent was covered in full in April 2023 when they suggested to the landlord that he could use their security deposit to cover the outstanding rental amount, however a security deposit is to be held by the landlord for its intended purposes.

21. Section 2 of the *Residential Tenancies Act, 2018* states:

2(l) "Security Deposit" means money or other value paid, or required to be paid under a rental agreement, by the tenant to a landlord to be held as security for

- i. the performance of an obligation
- ii. a liability of the tenant

22. In accordance with Section 2 as stated above, the tenants could not use the security deposit to cover outstanding rent during the tenancy and as such the tenants are responsible for outstanding rent for April 2023 in the amount of \$450.00.

Decision

23. The landlord's claim for rent paid succeeds in the amount of \$450.00.

Issue # 3: Return of Possessions \$400.00

Landlord's Position

24. The landlord testified that he provided the tenants with furniture /possessions at the beginning of the tenancy to help them out. The landlord testified that the possessions were missing when the tenants vacated the unit. The missing possessions are listed below with the cost when purchased and the age when given to the tenants:

Possessions missing - 2023-0673-NL & 2023-0754-NL			
item	Cost	age	amount seeking
stereo stand	\$400.00	3 years	\$50.00
day-bed	\$349.00	4 years	\$200.00
coffe table & end tables	unsure	15 years	\$150.00

25. The landlord stated that the stereo stand and the daybed were relatively new when he gave them to the tenants however the coffee table and end tables were roughly 15 years old. The landlord is seeking \$400.00 in total for compensation for the missing possessions.

Tenant's Position

26. The tenants disputed that there was ever a stereo stand given to them. Applicant 1 testified that she never saw it. The tenants did not dispute that they were given a daybed and coffee table and end tables. Applicant 1 testified that she threw those items out because screws were loose, and the items were falling apart.

Analysis

27. I accept the landlord's testimony that there was a stereo stand left in the unit as he stated the items that are to remain in the unit in a text message to applicant 1 dated 21-July-2023. The tenants responded to that text message, but they never made reference to not having a stereo stand (LL#2).

28. The stereo stand would be roughly 7 years old now and it is not unreasonable to assume that it would have a value of \$50.00. *NL Classifieds* show 7-year stereo stands selling for \$50-\$60. With regards to the daybed, it would be 7 years old now and most likely at the end of its life cycle. Research shows that a daybed last on average 7-10 years (www.designlife-cycle.com). I find that a daybed that cost \$349.00 7 years ago is most likely at the end of its life cycle and has no value today. With regards to the coffee table and end tables, they would be 19-20 years old now and the landlord did not know how much they cost when they were purchased, however the landlord submitted a picture to show the condition of them when he left them in the unit, and they looked to be in good condition in 2019. It is not unreasonable to assume that the coffee table and end tables would have a value of \$150.00 today.

29. I find that it is reasonable to compensate the landlord \$200.00 for the missing stereo stand and the coffee table and end tables, however I am unable to award anything for the daybed.

Decision

30. The landlords claim for compensation for possessions succeeds in the amount of \$200.00.

Item # 4: Damages

Relevant submission

31. The landlord is seeking \$1703.14 in compensation for damages to the property and submitted a list of damages to support his claim (LL#3). See breakdown below:

Lattice board missing	\$455.63
Paint and supplies.....	\$215.67
Grass seed	\$161.84
Labor to fix lawn & other	\$720.00
Cleaning expenses	\$150.00

Landlord's Position

32. The landlord testified that the tenants left the property with damages to the interior and the exterior and he is claiming \$1703.14 to restore the property to the way it was prior to the tenancy 4 years ago. See below breakdown of 5 items as listed above:

Item #1: lattice missing \$455.63 – The landlord testified that the lattice is missing from underneath the back deck and states that it was destroyed by the tenant's dog. The landlord submitted pictures of the deck to show where the lattice was initially located and to show how much of the lattice is remaining (LL#4). The landlord submitted a receipt from Notre Dame Castle to support the cost to replace the lattice (LL#5).

Item # 2: paint and supplies \$215.67 - The landlord testified that he had to paint 2 bedrooms because the tenants changed the original color. The landlord testified that he gave the tenants permission to paint under the condition that they restore the walls to the original color before they vacate the premises as stated in *Schedule A* of the rental agreement (LL#6). The landlord is seeking the cost of the paint and supplies to restore the bedrooms to the original paint color. The landlord submitted pictures to show the color of the walls (LL#7) and receipts to support the cost of paint and supplies (LL#8).

Item #3: Grass seed \$161.84 - The landlord testified that he had to repair the lawn after the tenants vacated due to damages caused by a swimming pool, a rabbit cage and damages caused by the dog. The landlord testified that it took a lot of grass seed to attempt to repair the lawn to try to bring it back to where it was prior to the tenancy. The landlord submitted pictures of the lawn to support this claim (LL#9). The landlord submitted receipts from Canadian Tire to support the cost he is seeking for lawn seed (LL#10).

Item # 4: labor \$720.00 – The landlord testified that it took him 40 hours of self-labor to repair the lawn, paint and install the lattice, rake up rabbit shavings, feces, and urine before reseeding the lawn and painting the 2 bedrooms. The landlord stated that he had to fix the wooden banisters in the house due to severe scratching by the cats. The landlord stated that he spent time trying to fix the damaged pavement due to cracks and breaks caused by heavy equipment in the yard. The landlord is seeking compensation for 40 hours of work at a self-labor rate of \$18.00.

Item # 5: cleaning expenses \$150.00 – The landlord testified that the house needed to be professionally cleaned and he stated that he hired a local lady who did the work. The landlord testified that the tenants had 3 cats, a big dog and a small dog. The landlord submitted a picture of the interior of the refrigerator (LL#11) and a copy of a receipt to support his claim (LL#12).

Tenant's Position

33. The tenant's agreed with some of the landlord's claims but disputed most. See all 5 items below:

Item #1: lattice missing \$455.63 – the tenant's disputed that their dog caused the damage to the lattice and stated that it rotted away due to rain and wind over time. The tenant's stated that they do not believe that they are responsible to replace the lattice.

Item # 2: paint and supplies \$215.67 - The tenants dispute that they were told that they had to repaint the walls to the original colors. The tenant's testified that the landlord gave them permission to paint the walls and they stated that the walls were in good shape when they left. The tenants stated that they feel that there is no reason to repaint the walls.

Item #3: Grass seed \$161.84 - The tenants do not dispute having a swimming pool or a rabbit cage which ultimately affected the growth of the grass, however they do dispute that the grass was destroyed. The tenant stated that they had a pool in 2019 and when removed, the grass grew back. The tenants stated that they installed another pool in the summer of 2023 which caused the grass to stop growing but feels confident that as the pool is removed now, the grass will grow back like it had previously.

Item # 4: labor \$720.00 – The tenants testified that they removed the rabbit cage and raked up the lawn. The tenant's stated that they fixed the hole under the fence and as for the pavement, the damages were caused due to wear and tear over time. The tenant's stated that the bedrooms did not need to be repainted and they should not be responsible for the labor to do so. The tenants did not dispute that the cats destroyed the banisters in the house.

Item # 5: cleaning expenses \$150.00 – The tenants disputed that the house needed to be professionally cleaned. Applicant 1 stated that the house was completely cleaned when they vacated and submitted pictures to support their claim (TT#4).

Analysis

34. In accordance with *Residential Tenancies policy 9-3*, the applicants are required to show:

That the damage exists;

That the respondents are responsible for the damage, through a willful or negligent act;

The value to repair or replace the damaged item(s)

35. I will review all 5 items as listed above and comment accordingly.

Item #1: lattice missing \$455.63 – I accept the landlord's testimony that roughly 80% of the lattice is missing from the back deck. The photograph submitted into evidence supports that claim. I do not accept the tenant's claim that the lattice fell off the back deck due to wind over time. I find that the tenant's are responsible to replace the lattice at the full cost of \$455.63.

Item # 2: paint and supplies \$215.67 – I accept the landlord's testimony that the tenants changed the color on the bedroom walls. I also accept the tenant's testimony that the walls were in good shape and don't need to be repainted, however *Schedule A* of the rental agreement stated that painting was permitted if the tenant's repainted the walls to their original color prior to vacating the premises and as such, I find that the tenants are responsible for the cost to paint the 2 bedrooms at \$215.67.

Item #3: Grass seed \$161.84 - I accept the landlord's testimony that the grass was destroyed by the pool and the rabbit cage and the dog. The landlord submitted several pictures to show the condition of the lawn. The tenants did not dispute damaging the lawn and as such, I find that the tenants are responsible for the cost of the grass seed at \$161.84.

Item # 4: labor \$720.00 – I accept the landlord's testimony that it took him 80 hours of self-labor to restore the property to its original state. Based on the photographs submitted showing the conditions of the yard and taking into consideration the time involved to seed the care for the lawn, cut, paint and install the lattice, paint the 2 bedrooms and replace the banisters inside the house, it is reasonable to accept that it took 80 hours to do all the work needed to restore the property to its original state. I find that the tenants are responsible to compensate the landlord for his labor at \$720.00.

Item # 5: cleaning expenses \$150.00 – I do not accept the landlord's testimony that the house needed professional cleaning. The landlord submitted 1 photograph of the fridge which had a small amount of dirt left in it. I accept the tenant's testimony that they left the interior of the house cleaned. The tenant's submitted several photographs of the house showing that it was clean. I find that the tenant's are not responsible for the cost of the cleaning.

Decision

36. The landlord's claim for damages succeeds in the amount of \$1553.14

Item # 5: Security deposit applied against monies owed \$600.00

Relevant Submissions

37. The landlord submitted a copy of the rental agreement showing payment of security deposit in the amount of \$600.00 on 21-June-2019 (LL#13).

Analysis

38. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

39. I find that the landlord has been successful in his claim for rent paid, possessions and damages, and as such the security deposit shall be applied against monies owed.

Decision

40. The landlord's claim to have the security deposit of \$600.00 applied against monies owed succeeds.

Issue # 6: Hearing Expenses \$20.00

41. The tenants paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt. The landlord's countered the claim and also paid an application fee of \$20.00 to *Residential Tenancies*. In addition, the landlord stated that he paid postal fees to serve the tenants. The landlord did not submit a copy of the postage receipts thus I am unable to award for same.

42. As the tenant's claim for refund of rent has not been successful, the landlord is not responsible for the tenant's hearing expenses. As the landlord's claims have been partially successful, the tenants are responsible for the landlord's hearing expenses.

Decision

43. The tenant's claim for hearing expenses does not succeed.

44. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

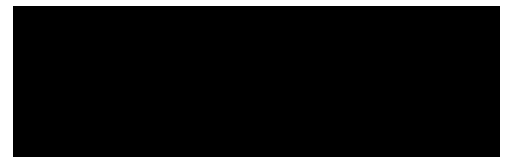
Summary of Decision:

45. The tenants shall pay the landlord \$1623.14 as follows:

Rent paid.....	\$450.00
Possessions	200.00
Damages	1553.14
Hearing expenses	20.00
Less: Security deposit	600.00
Total	<u>\$1623.14</u>

October 26, 2023

Date



Pamela Pennell
Residential Tenancies Office