

Residential Tenancies Tribunal

Application 2023-0684-NL
Application 2023-0782-NL

Decision 23-0684-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:12 a.m. on 22-August-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference. [REDACTED], authorized representative and owner of the premises also attended by teleconference.
3. The respondents and counter applicants, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The landlord submitted 2 separate affidavits with his application stating that he had served respondent 1 and respondent 2 with the notice of hearing electronically by emailing it to; [REDACTED] and [REDACTED] respectively on 7-August-2023 (LL#1). The respondent's confirmed receiving the document on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The tenants countered the claim and stated that they served the landlord electronically by emailing the document on 22-August-2023 (TT#1). In accordance with the *Residential Tenancies Act, 2018* this is not good service.
6. The landlord has waived service and wishes to proceed with the hearing.
7. There was a written term agreement that commenced on 26-June-2021. The tenants vacated on 22-June-2023. Rent was \$1600.00 per month due on the 1st of the month. A security deposit of \$1200.00 was paid on 19-May-2021 (LL#2).
8. The landlord amended his application to increase the amount he is seeking for damages from \$2430.79 as per the application to \$5180.79. Updated damage ledger was submitted and also sent to respondents (LL#3).

Issues before the Tribunal

9. The tenants are seeking:
 - a. Refund of security deposit \$1200.00
10. The landlord is seeking:
 - b. Damages \$5180.79
 - c. Hearing Expenses \$20.00
 - d. Security deposit applied against monies owed \$1200.00

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
12. Also relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit and Section 19; failure to pay rent. 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: Damages \$5180.79

Relevant Submission

13. The landlord submitted a list of items / actions required to restore the unit to the way it was prior to the tenants taking possession (LL#3) as follows:

cleaning	\$360.00
paint.....	\$70.79
cabinet repairs	\$4750.00

Landlord's Position

14. The landlord stated that the unit needed to be cleaned, the walls needed to be touched up with paint in some areas and 4 sets of cabinets needed to be restored. The landlord testified that he had trouble finding a professional to restore the cabinets and submitted a copy of a quote received on 30-July-2023 (LL#4).
15. The landlord's representative testified that the house was built in 2017 and she purchased it in 2019. She was the first occupant to reside at the residence up to the point when the tenancy commenced in 2021. The landlord's representative testified that the unit was in perfect condition when the tenants moved in and the landlord provided photographs showing the condition of the premises prior to the tenants moving in (LL#5). According to metadata, those photographs were taken on 23-June-2021 just 3 days prior to the tenants moving into the unit. The landlord testified that he was advised by a professional that the damage to the cabinets was caused by water over time. The landlord stated that he feels that the damage to the cupboards was negligence on the part of the tenants and he feels that they should pay for the cost to restore the cabinets.
16. The landlord stated that with regards to the damage to the walls, he is only seeking the cost of the paint to touch up the walls. The landlord stated that with regards to cleaning the unit, it took 2 people 6 hours each to do the work and they charged \$30.00 each for a total cost

of \$360.00 (see receipt LL#6). The landlord feels that the unit needed to be cleaned before rented again and he submitted 2 pictures to support his claim (LL#7).

Tenant's Position

17. The tenants did not dispute the marks on the walls, however the tenant's did dispute that the unit needed cleaning. Respondent 1 testified that they spent 3 full days cleaning the unit before they left and stated that there is no way that 12 hours of cleaning was required. Respondent 2 testified that the unit was clean when they vacated the premises, and she stated that they were not provided with any photographs to show that the unit was not cleaned. The tenants do not believe that they should have to pay for any cleaning expenses.
18. As for the cabinets, the tenants stated that they do not know how the damages occurred. The tenants stated that they feel that the *before* photos provided by the landlord were not as detailed and in focus as the *after* photos. The tenant's testified that the place was not perfect when they moved in and provided their own photographs of the cupboards just before leaving (TT#2). Respondent 1 states that the pictures sent to them shows damage to the cabinets and he states that it looks like someone did damage to the cabinets after they left.
19. The tenant's testified that the home owner's brother moved in as soon as they vacated and any pictures taken after he moved in are not accurate with regards to the condition of the premises on 22-June-2023. The tenant's stated that the *after* pictures show personal property in the kitchen which shows that the premises was not vacant when the pictures were taken and as such, they feel that those pictures are not accurate when determining if any damage was done by them.

Analysis

20. 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.

2. Obligation of the Tenant – The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

21. Accordingly, in a 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)*

22. With regards to the cost of paint to touch up the walls, the pictures provided by the landlord show markings that exceed what would normally be classified as wear and tear (LL#8), and as such, I find that it is reasonable to reimburse the landlord \$70.79 for the cost of paint.

23. I find that the landlord's claim for the cost of paint succeeds in the amount of \$70.79.

24. With regards to the cleaning expenses of \$360.00, I accept the landlord's claim that some cleaning was required however there is no proof to support 12 hours of cleaning. The *after* pictures show a clean house (LL#9) and I asked if any photographs of the bath tub, fridge,

stove and flooring had been entered into evidence and the landlord stated that they had not. There is one photo of the front part of the stove which shows some dirt (LL#10) and some other minor areas which would need a little cleaning. Based on the evidence provided by the landlord and the tenant's testimony that they spent 3 days cleaning, I find that the landlord is entitled to 1 hour cleaning at the rate of \$30.00 per hour as per receipt from cleaning person.

25. I find that the landlord's claim for the cost to clean the premises succeeds in the amount of \$30.00.
26. With regards to the cabinets, I accept the landlord's claim that there is damage to the cabinets. There is a difference in the *before* and *after* photographs which clearly show damage to the cabinets, however the main question is if the tenants were negligent in causing the damage. The landlord provided *before* and *after* photographs (LL#5 & LL#9) which show a difference in the cabinets, however there are discrepancies as to when those photographs were actually taken. According to metadata, some of the *before* photographs were taken on 23-June-2021 which is just before the tenants moved in but they are not close up pictures like the *after* pictures which showed the cabinet doors opened. Some other *before* pictures were taken in 2019 which is not an accurate account of what the cabinets looked like when the tenants moved in.
27. As for the *after* pictures, there are only 3 pictures which had a metadata date of 23-June-2023 which showed some damage to some of the cabinets. Most of the kitchen cabinet pictures show a metadata date of 8-August and the 17-August, this is 7-8 weeks after the tenants vacated the unit. The landlord testified that he edited the pictures to add a description which would explain the later metadata dates. Without stamp dated pictures, I am unable to determine when the *after* pictures were actually taken. The tenants testified that the owner's brother moved in immediately and their argument is that the *after* pictures show that someone is residing at the premises at the time the pictures were taken. I agree with the tenants that the unit was not vacant when the pictures were taken as personal belongings were apparent in the photos. Based on this information, I find that the landlord failed to show that the cabinets were damaged at a time when the tenants resided at the residence. Also, based on my experience, it is difficult to accept that the type of damage to the cabinets was caused by water as the landlord believes because all the cabinets appear to have the same type of damage to the same areas and the top cabinets also have damage which most likely could not be caused by water flow. It is possible that the cabinets are defective and as a result I have to take this into consideration when determining the likely cause of the damages.
28. I accept that the cabinets look different in the *before* and *after* pictures however, the landlord failed to prove that the damage was negligence on the part of the tenants and most of the evidence provided was not stamp dated and did not line up with the dates that the tenants moved in and moved out.
29. I find that the landlord has not proven that the tenants are responsible for the damage to the cabinets.
30. I find that the landlord's claim for repair to cabinets in the amount of \$4750.00 does not succeed.

Decision

31. The landlord's claim for damages succeeds in the amount of \$100.79.

Issue # 2: Security deposit applied against monies owed \$1200.00 Refund of Security Deposit to tenants \$1200.00

Relevant Submission

32. The landlord submitted a copy of the rental agreement showing that a security deposit was paid in the amount of \$1200.00 on 19-May-2021 (LL#2).

Analysis

33. 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.

34. I find that as the landlord has been partially successful in his claim for damages (see paragraph 31), a portion of the security deposit shall be applied towards monies owed.

Decision

35. The landlord's claim for security deposit applied against monies owed partially succeeds in the amount of \$120.79.

36. The tenant's claim for refund of security deposit succeeds in the amount of \$1079.21.

Issue # 3: Hearing Expenses \$20.00

37. The landlord paid an application fee of \$20.00 to the Landlord Tenancies Board and provided a copy of the receipt (LL#12).

38. As the landlord's claim has been partially successful, the tenant's shall pay the \$20.00.

Decision

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

Summary of Decision

40. The tenant's shall:

Pay the landlord \$0.00 as follows:

Damages	\$100.79
Hearing expenses	20.00
Less: Security Deposit.....	120.79
Total.....	<u>\$0.00</u>

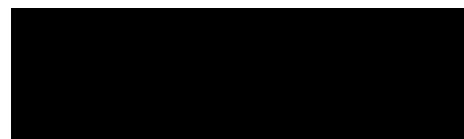
41. The landlord shall:

Pay the tenant's \$1079.21 as follows:

Security Deposit	\$1079.21
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01 September 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office