

Residential Tenancies Tribunal

Application 2023-0735-NL
2023-0799-NL

Decision 23-0735-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 17-October-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. Both parties confirm that they were sent notification of today’s hearing, electronically on 15-September-2023 by our office.
5. The landlord and tenants confirm that the landlord has already reimbursed \$780.00 of the tenants’ security deposit (LL#02). Both parties are seeking the remaining balance of \$345.00. The applications have been amended to reflect this change.

Issues before the Tribunal

6. The tenants are seeking reimbursement of the security deposit \$345.00

The landlords are seeking

- Compensation for damages \$1,595.00
- Security deposit applied against monies owed \$345.00

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.

Issue 1: Compensation for damages \$1,595.00

Landlord's Position

9. The landlord reviewed the rental agreement held with the tenants (LL#01). They had a term agreement from 01-November-2022 until 31-October-2023. The rental period is from the first day of the month until the last with \$1,500.00 rent due on the 1st day of each month. The landlord said that the tenants paid a security deposit of \$1,125.00 and that they reimbursed \$780.00 of this deposit at the end of the tenancy (LL#02).
10. The landlord explained that the tenants requested to end the rental agreement early. The tenants found new renters to take over the agreement and the landlord accepted the termination of the agreement. The tenants moved out 31-July-2023.
11. The landlord said that they did fill out a condition report when the tenants moved in, however the tenants never followed up with their comments, so they didn't use the report afterwards. He explained that he completed the walk through with the tenants when they moved. He said that the tenants sent him an email stating that they had cleaned and he responded with "thank you for cleaning," however at that point they had not done the walk through.
12. The landlord stated that during the walk through there were issues pointed out to the tenants. He explained that it was later in the day when they did the walk through and they had new tenants waiting to move their stuff in, there was no time to wait for them to start cleaning during the walk through.
13. The landlord submitted a compensation for damages ledger (LL#03) as follows:

| Description | Compensation |
|-------------------|--------------|
| Queen bed frame | 599.00 |
| LG 50" TV | 489.00 |
| HST 15% | 163.05 |
| Interior cleaning | 345.00 |
| Total | \$1,596.05 |
| | |

14. The landlord explained that the house was rented furnished and that the tenant's had stored the bed frame in the house and used their own furniture in that bedroom, he said after they packed and put the frame back in place the frame was moldy.
15. The landlord declared that he had tried to explain how to use the HRV but the tenants still didn't use it therefore the house was humid and there was mold. He said when they regained possession of the house the HRV was turned off.

16. The landlord supported his claim for the bed frame by providing a video showing the mold (LL#05) he said that the frame is about 10 years old. He provided an advertisement (LL#04) showing that a new frame would cost \$499.95 and another advertisement showing another frame costing \$979.95.
17. The landlord is also seeking the replacement of the TV, he said it still works, however, it has been burnt; possibly by a candle. He provided pictures of the damages (LL#06 & 07) as well as an advertisement showing the replacement cost \$488.00 (LL#04). He said that the TV is approximately 3 or 4 years old.
18. Lastly the landlord submitted a number of videos showing that the house required further cleaning (LL#09 – LL#15). He said that there was cleaning needed in the kitchen, laundry room, the couch, the vents and there was mildew on the windows.
19. The landlord provided an email (LL#08) from the new tenant, who was concerned about the additional cleaning required for the house. The landlord said that because there was a quick turnaround between these tenants and the new tenants, there was no time to do this cleaning. He negotiated with the new tenants to complete the remaining cleaning and they deducted \$345.00 from the new tenants rent in compensation for the work that they had to do before they could settle into their home. He does not agree with tenant1 that this work would only take 1 ½ hours.

Tenants' Position

20. Tenant1 confirmed the details of the rental agreement as stated by the landlord. Tenant2 said that she had family moving in with them and they required a larger space so they needed to move early. Tenant1 believes that because they ended their agreement early the landlord filed this claim against them.
21. Tenant1 submitted an email (TT#02) with the landlord where they told him that they had cleaned and the landlord thanked them for doing the cleaning.
22. Tenant2 said that the bed frame was stored under their bed in the house. She said that she has an item that measures humidity and that the house never exceeded 65%. Tenant1 submitted a video showing that the bed frame doesn't look damaged (TT#01).
23. Tenant2 doesn't dispute that they did damage the TV, she said that they were willing to pay for this, but they were told that this was not a problem. Tenant1 said that they were told that the TV still works so this was not an issue.
24. The tenants provided a number of videos (TT#03 – TT#06) showing the house on the final day, showing that everything was cleaned. Tenant2 said that when they pulled out the stove during the final inspection, it needed to be cleaned and she started cleaning it right away.

25. Tenant2 said that he was told that cleaning would cost about \$35.00 an hour and he believes that there was only about 1 ½ hours work to do, he disputes the cost he was charged for the work done.

Analysis

26. 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)
27. I accept the pictures provided by the landlord that the bedframe had signs of mold. The tenants' video is a quick sweep of the entire room and it would be difficult to determine from the tenants' video the damages sought. The tenants stated that the humidity in the house did not exceed 65%. A quick internet search shows that the ideal humidity in a home is 40 – 60%, it cautions that "At 60% RH, you have already begun to enter into an area of relative humidity that can provide enough moisture in the air for mold to take root." ([60 Percent Humidity in the House? 70? 80? - \(breathebetterair.org\)](http://breathebetterair.org)) In light of the high humidity in the home, it is reasonable to believe that the bed frame, stored under the bed, without circulation, would show signs of mold.
28. Mold on finished furniture does not render it unusable, another internet search shows that with common household cleaning products this mold can be cleaned away. ([How to Kill Mold on Wood - This Old House](http://thisoldhouse.com)) As this issue is easily corrected by cleaning, it is not necessary for the landlord to purchase a new bedframe, and therefore not necessary for the tenants to incur this cost. The landlord's claim for compensation for damages to the bed frame fails.
29. The landlord is seeking the cost to replace the TV, it has been determined by both parties that although the TV is damaged, it still works and the damages appear to be cosmetic. 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. The life expectancy of a TV is 11 years. This TV being 3 – 4 years old has approximately 68% of its life remaining. The cost presented by the landlord is \$488.00 + 15% hst = \$561.12 for the replacement and 68% of this is \$381.62. As this TV doesn't require replacement,

but instead has been impacted cosmetically, I will award a nominal assessment of loss at \$100.00. I find that the tenants shall pay to the landlord the nominal fee of \$100.00 for the damages to the TV.

30. I accept that the tenants tried to clean the house. It is clear from the submitted videos that they took care to remove their belongings and that the house appeared tidy and empty after they moved. The landlord's pictures however show that the house was not cleaned from behind appliances, the vents, inside cupboards, etc. This cleaning is necessary and it is the responsibility of the tenant to ensure this cleaning has occurred prior to the landlord regaining possession of the property.
31. Tenants are required to return the property to the landlord in the same condition as when they moved into the property. The deep cleaning that was required to be done prior to the new renters moving in was not completed. The start of the tenancy of the new renters and the landlord is impacted by this unfinished work. Although I agree with the tenants that at a rate of \$35.00 an hour, the property would not require 10 hours work, I also acknowledge that there is far more than 1 ½ hours work to be done. The landlord was at a disadvantage due to the impending arrival of new renters and had limited options in correcting this issue; I accept that they negotiated the cost for compensation in good faith. I find that the tenants are responsible for the cost charged to the landlord by the new renters to complete this work and find that the tenants shall pay \$345.00 to the landlord.
32. I find that the tenants shall pay to the landlord \$445.00 for the cost of the damages to the TV and the cost of cleaning.

Decision

33. The landlord's claim for damages succeeds in the amount of \$445.00.

Issue 2: Security deposit applied \$345.00

Issue 3: Security deposit retained \$345.00

Relevant Submissions

34. The landlord stated that they retained \$345.00 of the security deposit against the cost of having the house cleaned after the tenant's moved.

Analysis

35. The landlord's claim for loss has been successful, paragraph 33; he shall retain the \$345.00 balance against monies owed as per Section 14 of the *Residential Tenancies Act, 2018*. Also in accordance with 14 (8) of the Act he shall return the \$100.00 balance to the tenants, 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

36. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$345.00.

Summary of Decision

37. The tenants shall pay to the landlord \$100.00 as follows:

| | |
|-------------------------------|-------------------|
| • Damages | \$100.00 |
| • Cleaning | 345.00 |
| • Less security deposit | <u>(\$345.00)</u> |
| • Total | <u>\$100.00</u> |

The landlord shall retain the \$345.00 security deposit against monies owed.

October 26, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office