

Residential Tenancies Tribunal

Application 2023-0768-NL
2023-0945-NL

Decision 23-0768-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:04 a.m. on 11-October-2023 and reconvened at 10:32 a.m. on 13-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as “landlord1, landlord2 and landlord3” attended by teleconference.

Preliminary Matters

4. The tenant served the landlords with notification of the hearing electronically at 5:25 p.m. on 25-September-2023. Landlord1 confirmed receipt of notification as stated by the tenant. Landlord1 confirms that they filed their counter claim on 05-October-2023 and that they served the tenant on 06-October-2023. This is not 10 days’ notice, however, the tenant waived her right to service.
5. As the landlords presented their evidence the tenant raised a concern that she was not sent the evidence package, the hearing was then postponed until 13-October-2023, to allow the tenant to receive and review her package.

Issues before the Tribunal

6. The tenant is seeking
 - Refund of security deposit \$1,312.50

The landlords are seeking

- Compensation for damages \$10,555.24
- Compensation for inconvenience \$1,350.00
- Security deposit applied to monies owed \$1,312.56

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 Residential Tenancies Policy.

Issue 1: Damages \$10,555.24

Landlords' Position

9. Landlord1 stated that they have a monthly agreement with the tenant. Landlord2 explained that the tenant moved in 11-July-2019 and they signed a new agreement 15-June-2020. She said that the tenant moved out on 14-June-2023. At the end of the tenancy the rent was \$2,000.00 due on the 15th day of each month. The tenant's rental period is from the 15th day of each month until the 14th day of the following month. The tenant paid a security deposit of \$1,312.50 on 11-July-2019 and the landlords are still in possession of that deposit. The rental agreement ended on 14-June-2023 and the tenant moved out on that date.
10. The landlords submitted a compensation for damages ledger (LL#02) as follows:

Description of damages	Compensation
Cleaning fee	262.50
Painting/plastering entire home	3,593.75
Floor damage upstairs repair/replace	3,000.00
Carpet damage downstairs replace	3,698.99
Total	\$10,555.24

11. Landlord3 confirms he did the walkthrough with the tenant just before she moved. He said that the tenant was in a rush on the day of the walk through, there were some damages addressed at that time. Then once the tenant had moved and taken her belongings the landlords went through the house again and the damage was more evident.
12. Landlord2 indicated that they knew that there was a lot of damages and they initially were planning to just retain the security deposit and take a loss for the damages over that amount.
13. Landlord1 submitted pictures (LL#03, LL#04 & LL#05) to show that the house wasn't fully cleaned after the tenant moved out. He said that they paid a cleaner to clean the house and provided the receipt for \$262.50 (LL#06).
14. Landlord1 said that the entire home required painting and plastering. He agrees that the painting could be wear and tear, however because the tenant is seeking her security deposit back and wasting his time, he is seeking full compensation for both paint and

plaster. They provided pictures showing the damages to the walls (LL#07 – LL#10). The pictures show that the corners have been rubbed and the paint is chipped. Landlord1 also said that there was something hung from a ceiling and there were holes there that required paint and plaster. Landlord2 said that the pictures are all different areas of the stairwell and the rec room. Landlord1 submitted the receipt for this work \$3,593.75 (LL#11). Landlord2 said that the entire unit was last painted just before the tenant took occupancy in 2018.

15. Landlord1 said that the flooring was damaged, there are two options for this repair they can either refinish the floor at \$2.50 a square foot or replace the flooring at \$4.00 a square foot. The landlords provided pictures to show this damage (LL#12 – LL#15). Landlord1 said that the damages are in 4 or 5 places and that this is not like laminate where you could replace sections, this work would require the entire floor be completed. He confirms that this work has not been completed at this time. He said that the flooring was new in 2014 and has not been refinished since that time.
16. The landlords submitted pictures showing that the carpet was damaged (LL#16 – LL#20). Landlord1 said that the carpet was installed in 2014. He explained that the carpet is ruined and it is not wear and tear. The damage is in the bedroom and rec room. He also said that the transition strip is missing from the entry of the laundry room. Landlord3 said that there was a small flood in the laundry room and he doesn't remember exactly why the transition strip was removed. Landlord1 said that this strip is the least of their worries. They included a quote to have this flooring replaced for \$3,698.99 (LL#21).

Tenant's Position

17. The tenant provided her copy of the lease agreement (TT#02) and she confirmed the details of the rental agreement as stated by the landlords.
18. The tenant stated that she believed that she was a good tenant and had a good relationship with the landlords prior to this hearing. She said that she was in a rush when they did the walk through; she was moving out of province and was pressed for time. After the walkthrough, she was still in the province for two days and she said that no one reached out with any issues and that the landlords' action of later filing this claim was not the correct way for them to have handled this issue.
19. The tenant declared that she also paid a cleaner to clean the house and questions why they would require a second cleaner.
20. The tenant said that the damages to the paint and plaster are just normal wear and tear. The walls were all washed and that these damages were not addressed with her during the final walk through.
21. The tenant explained that she doesn't dispute that there are marks on the hardwood flooring, but believes the damages are normal wear and tear and that to say the entire flooring was damaged is a gross exaggeration.

22. The tenant said that the one large stain on the carpet was pointed out to her by landlord3 at the time of the walkthrough. She said that she used a carpet cleaner to try to clean it. She said that the stain did improve but was still there. She said that the transition strip was missing because of a flood in the laundry room and it was removed at that time.

Analysis

23. 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.

24. I accept the landlords' evidence and testimony that the tenant did not adequately clean the premises after she vacated. The pictures do show that the house required cleaning and the landlords have shown the value of this cost with the receipt provided for \$262.50.
25. The landlords applied for painting and plastering of the entire house. The landlords indicated that the last time the house was painted was in 2018 just prior to the tenant moving in. In accordance with Residential Tenancies Policy 9-6 the life expectancy for interior paint is 3 – 5 years. The landlord is also seeking the cost of plastering, however, the damages to the ceiling were not supported by photographic evidence and the damages to the walls appear to be to the corners, considering that the tenant did live at the house for 5 years, I agree with the tenant that this is wear and tear. Additionally, the landlord's receipt (LL#11) indicates that the work completed includes not only painting the interior, but also a number of other maintenance items that are the responsibility of the homeowner not the tenant, the additional items covered under the total cost of the receipt are as follows:
- Scraping and painting the garage floor
 - Paint the exterior foundation
 - Paint the driveway walls

- Paint the exterior steps
- Paint exterior trim
- Fix siding
- Remove two trees and
- Dump run

26. As the house was last painted 5 years ago and the plastering repair is for apparent wear and tear, the landlords' claim for plastering and painting fails.
27. The landlords have shown that there are scratches to the hardwood and they are seeking compensation for this area to be either refinished or replaced. Landlord1 stated that this flooring was new in 2014, however he also confirmed that the flooring has not been refinished since that time. In accordance with Residential Tenancies Policy 9-6 the life expectancy for hardwood flooring is a lifetime, however the finish is only good for 5 years. This flooring was new 9 years ago, but the finish has not been maintained, the regular maintenance of the floor would buff out the scratches and return the flooring to its perfect condition. As regular maintenance is the obligation of the landlords their claim for this compensation fails.
28. Lastly, the landlords are seeking compensation for the replacement of the carpet totaling \$3,698.99. They have provided evidence to support that the carpet was badly stained in one area and had a number of smaller stains. The tenant doesn't dispute that there was some staining and she agreed that she had tried to remove the stains with a carpet cleaner. The landlords confirmed that the carpet is 9 years old. In accordance with Residential Tenancies Policy 9-6 the life expectancy for carpet is 6 -10 years. This carpet is at the end of its life expectancy and the landlords included the cost to repair all of the carpet, not just the carpet in the one area where there is an agreement that the tenant did leave a large stain. I agree with the landlords that this stain is not just wear and tear, however as the carpet is at the end of its life expectancy it has no value, however, as the tenant did not correct this issue with cleaning, I am awarding a nominal fee of \$200.00 in compensation for the cost of cleaning the carpet.
29. I find that the landlords' claim for damages succeeds in the amount of \$462.50, as follows:

- Cleaning \$262.50
- Cleaning carpet 200.00
- Total \$462.50

Decision

30. The landlords claim for damages succeeds in the amount of \$462.50.

Issue 2: Compensation for inconvenience \$1,350.00

Landlords' Position

31. The landlords provided a compensation for inconvenience form (LL#22). The inconvenience sought is for income loss for the rental while the repairs were completed including plastering, painting, carpet, and deep cleaning. Landlord2 said that the house was rented again on 01-July-2023. Any repairs that were done were completed in the two week time period. The repairs that were completed during this time were the painting, plastering and cleaning. They are waiting to complete the flooring.

Tenant's Position

32. The tenant states that she gave notice appropriately and that she has no other comment about that issue.

Analysis

33. The landlords claim for damages succeeded only in the cost of cleaning the house and cleaning of the carpets; this work would have required a minimal amount of time. The other repairs completed during the two weeks while the house sat empty are the responsibilities of the landlords. The tenant claims to have given appropriate notice, no one disputed this, and she also states that she participated in the walkthrough, paid a cleaner and was available to the landlords should there have been any issues. The tenant did not cause the house to be unrented for the time period requested.

34. I find that the landlords' claim for inconvenience fails.

Decision

35. The landlords' claim for inconvenience fails.

Issue 3: Security deposit applied against monies owed \$1,312.50

Issue 4: Security deposit returned \$1,312.50

Landlords' Position

36. The landlords are seeking to retain the security deposit against monies owed.

Tenant's Position

37. The tenant is seeking the return of her security deposit.

Analysis

38. The landlords' claim for loss has been successful, paragraph 29; they shall retain \$462.50 of the \$1,312.50 deposit as per Section 14 of the *Residential Tenancies Act, 2018*. Also in accordance with 14 (8) of the Act they shall return the \$850.00 balance to the tenant, 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 \$462.50. They shall return the \$850.00 balance to the tenant immediately.

Issue 5: Hearing expenses reimbursed \$20.00

40. Both parties submitted their hearing expenses: the tenant is seeking the cost of having her affidavit sworn \$68.93 (TT#03) and the landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#23) and pursuant to policy 12.01, as the award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. However the tenant's claim for having the affidavit sworn will be applied and the landlord shall reimburse the tenant for this expense.

Summary of Decision


41. The landlords shall retain \$462.50 of the security deposit in compensation for damages.

The landlords shall reimburse the tenant the remainder of the security deposit as well as the cost of her hearing expenses totaling \$918.93, as follows:

- Security deposit\$850.00
- Hearing expenses..... \$68.93
- Total\$918.93

October 20, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office