

Residential Tenancies Tribunal

Application 2023-0831-NL

Decision 23-0831-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 4-October-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], herein referred to as “the tenants” attended by teleconference.

Preliminary Matters

4. The landlord’s submitted 2 separate affidavits with their application stating that they had served the tenants with the notice of hearing personally on 17-September-2023 at the residential premises (LL#1). The tenant’s both confirmed that they received the documents on that day. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written month to month rental agreement which commenced on 1-February-2018. Rent is \$1150.00 per month due on the first of each month. A security deposit of \$865.00 was paid on 19-January-2018 and is still in the possession of the landlord (LL#2).

Issues before the Tribunal

6. The landlords are seeking:
 - a. An order for Vacant possession of rented premises
 - b. Security deposit applied against monies owed \$865.00
 - c. Other \$500.00
 - d. Hearing expense \$39.99

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, Section 22: Notice where tenant's obligation is not met, and Section 33; Seizure of property.

Issue # 1: An Order for Vacant Possession of Rented Premises

Relevant Submission

9. The landlord's testified that the tenants are not meeting their obligation to keep the premises clean and when given a *Landlord's Request for Repairs* form, the tenant's failed to clean up and they failed to repair the damages that had been caused deliberately through negligent acts. The landlord's submitted a copy of the "*Landlord's Request for Repairs*" form to support their claim (LL#3).

Landlord's Position

10. The landlord's stated that they gave the tenant's a *landlord's request for repairs* form dated 6-September-2023 to clean the premises and make repairs in several areas of the house. The landlord's requested that the items listed on the form be completed by 10-September-2023.
11. The landlord's testified that the premises were not clean when they returned on 10-September-2023 and most repairs had not been completed.
12. The landlord's stated that once they visited the premises on 10-September-2023 and found that the premises were in the same state as it was on 6-September-2023, they issued a termination notice under Section 22 of the *Residential Tenancies Act, 2018*.
13. The landlord's want the tenant's to vacate the unit so they can clean the unit and get the necessary repairs completed.

Tenant's Position

14. The tenant's did not dispute that they are responsible for the garbage nor did they dispute that they caused the damages to the unit.
15. The tenant's stated that they did complete some of the repairs prior to the 10-September-2023 and they testified that they finished some other repairs after that date.

Analysis

16. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* states:

Notice where tenant's obligation not met

22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.

- 1. (2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is**

required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

17. Statutory condition 2, set out in Section 10.(1) 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.

18. A tenant is responsible to keep the residential premises clean and to repair damage caused deliberately by or through negligence of the tenant. The landlord's testified that they visited the premises on 6-September-2023, took pictures and gave the tenant's a list of items that they wanted cleaned and repaired with a completion date of 10-September-2023. The tenant's then testified that they returned on 10-September to find that most of the repairs had not been completed. The landlord's gave the tenants a termination notice on 10-September-2023 under Section 22; tenant's obligation not met with a termination date of 17-September-2023.

19. I will briefly go through the items on the *Landlord's Request for Repairs* form and summarize the testimony of both parties as it relates to each item:

Item # 1: Clean all garbage from the front porch patio and back yard - The landlord's testified that when they returned on 10-September, the yard was clean but the patio was still full of garbage and there was garbage underneath the back patio. The landlord's submitted 4 photographs to support their claim (exhibits 1-4). The tenant's disputed the claim that the garbage was not cleaned up and stated that they were waiting for someone to come and take it all away.

Item # 2: Replace heater in porch – The landlord's testified that the front of the heater was missing and that the internal heating fins were all damaged and twisted. The landlord's stated that when they revisited on 10-September the heater had not been replaced. The landlord's submitted a photograph to support their claim (exhibit 5). The tenant's testified that the heater was not damaged and that the cover just needed to be popped back on the heater and stated that it had been done.

Item # 3: Replace closet door in the porch – The landlord's testified that the closet door in the porch was missing and when they revisited on the 10-September it was still missing. The tenant's did not dispute the claim that the door was missing and agreed that they did not replace it.

Item # 4: Replace floor in porch - The landlord's testified that the floor in the porch was full of paint and they requested to have the flooring replaced. The landlord's submitted a photograph taken on 10-September to support their claim (exhibit 6). The tenant's testified they did not need to replace the flooring, just remove the paint which the tenant's testified that they have completed.

Item # 5: Replace cupboard door with matching cupboard - The landlord's testified that one of the cupboard doors was missing and they requested to have the door put back on or replaced if needed. The landlord's submitted a photograph taken on 10-September to support their claim (exhibit 7). The tenant's did not dispute the claim that the door has not been put back on or replaced.

Item # 6: Replace the door knob to the basement door - The landlord's testified that the door knob on the basement door was damaged and was not replaced on 10-September when they revisited the premises. The landlord's submitted a photograph to support their claim (exhibit 8). The tenant's did not dispute the claim that the door knob has not been replaced.

Item # 7: Clean baseboards / walls to ensure successful painting - The landlord's testified that the baseboards and walls needed to be cleaned before painting and stated that they had not been cleaned on 10-September when they revisited. The tenant's testified that the baseboards and walls were cleaned by the 10-September. The landlord's stated that they do not have photographs to support this claim.

Item # 8: Steam clean or replace carpet on stairs to basement - The landlord's testified that the carpet to the basement was dirty and they requested that it be steam cleaned or replaced, which they stated was not completed. The landlords submitted a photograph to support their claim (exhibit 9). The tenant's testified that they did clean it best they could and that they were unable to pay for professional cleaning due to the high cost.

Item # 8A: Doors to laundry room need to be reinstalled or replaced - The landlord's testified that the doors to laundry room were missing and they requested to have the doors put back on or replaced if needed. The landlord's submitted a photograph when they returned on 10-September to support their claim (exhibit 10). The tenant's stated that the doors are in the basement and they just need to be clipped in. I asked if they reinstalled the doors by the 10-September and the tenant's responded that they did not.

Item # 9: Replace rotted floor and vinyl floor in bathroom - The landlord's testified that the floor was rotted in the bathroom and was not replaced on 10-September when they revisited the premises. The landlord's submitted a photograph to support their claim (exhibit 11). The tenants did not dispute the claim that the floor was not replaced.

Item # 10: Clean paint off floor throughout the house - The landlord's testified that the floor throughout the house had paint on it and it was not removed on the 10-September when they revisited the premises. The tenant's did not dispute the claim but stated that it was hard to get it done with all the other work that was requested of them.

Item # 11: Repair wall in master bedroom - The landlord's testified that the wall in the master bedroom needed to be repaired. The landlord's submitted a photograph taken on 10-September to support their claim (exhibit 12). The tenant's did not dispute the claim that the wall had not been repaired by the 10-September but stated that it is completed now.

Item # 12: Replace bedroom door - The landlord's testified that the bedroom door needed to be replaced. The landlord's submitted a photograph taken on 10-September to support their claim (exhibit 13). The tenant's did not dispute the claim that the door had not been replaced by the 10-Sepember but that the door has been ordered but has not arrived yet.

Item # 13: Replace all missing trim throughout the house - The landlord's testified that there was missing trim throughout the house and was not replaced on 10-September when they revisited the premises. The tenant's did not dispute the claim that the trim has not been replaced.

Item # 14: Replace 3 missing light shades – The landlord's testified that there were 3 missing light shades and when they revisited the premises on 10-September, 2 light shades had been replaced and 1 was not. The landlord's submitted a photograph to support their claim (exhibit 14). The tenant's disputed the claim and stated that all 3 light shades have been replaced.

Item # 15: Replace glass in kitchen door or replace door - The landlord's testified that the glass in the kitchen door needed to be replaced and if it could not be replaced, they requested to have the door replaced. The landlord's submitted a photograph when they returned on 10-September to support their claim (exhibit 15). The tenant's did not dispute the claim that the glass nor the door had been replaced.

Item # 16: Replace inside porch door and repair frame - The landlord's testified that the inside porch door needed to be replaced and the frame needed to be repaired. The landlord's testified that the door had not been replaced nor was the frame repaired on 10-September when they revisited. The tenant's did not dispute the claim but stated that there is a door there now.

Item #17: Door frame trim to master bedroom needs to be replaced - The landlord's testified that the door frame to the master bedroom needed to be replaced and the landlord's testified that the trim had not been replaced on the 10-September when they revisited. The tenant's did not dispute the claim.

Item # 18: Replace missing light shade in Master - The landlord's testified that there was a missing light shade in the master bedroom and when they revisited the premises on 10-September, it had been replaced. The tenant's agreed that they replaced the shade by the 10-September.

Item #19: Provide key to the entry door – The landlord's testified that the tenants changed the locks and did not provide them with a key. The landlord's testified that they had to replace the lock on 18-September-2023 and stated that they provided the tenants with a copy of the key. The tenants stated that they did not receive a key immediately but have one now.

Item # 20: Door box to the main front door repaired or replaced - The landlord's testified that the door box to the main front door was damaged and needed to be replaced and the landlord's testified that the door box had not been replaced on the 10-September when they revisited. The landlord's submitted a photograph of the door box to support their claim (exhibit 16). The tenant's did dispute this claim stating that they did repair it.

20. I find that the *Landlord's Request for Repairs* form contained 20 items, which is a lot of repairs to expect anyone to have completed within a 4 day period. The landlord's gave the request on 6-September-2023 to be completed on or before 10-September-2023. With that said, although the tenant's did complete some of the tasks, I find that they could have completed more than what they did in the timeframe allowed. Reviewing both parties testimony, and the evidence submitted in the form of photographs, I have

concluded that there was only 1 item above that both parties agreed that was completed by 10-September and that was item # 18; replace missing light shade in Master.

21. The tenant's disputed 8 of the 20 items above, stating that they either partially completed the tasks or could not complete the tasks for reasons out of their control, for example waiting for a door to arrive or waiting for someone to pick up the garbage to transport to the landfill. In each case, the landlord's had photographs to support their claims. The tenant's agreed with the landlord's on 9 out of 20 items above and stated point blank that they did not complete the tasks as requested by the landlords. The tenant's stated that 2 of the items listed above (item #11 & #16) were not completed by the 10-September but are completed now.
22. According to Section 10(2) as stated above, a tenant has an obligation to keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant. If the tenant's had to keep the premises clean then the amount of garbage as shown in the photographs (exhibits 1-4) would never have gotten to the point it was on 6-September-2023. Also, when damages initially occurred, if the tenant's had to fix or repair items as they were damaged, then they would not have found themselves in the situation where they could not get the work completed.
23. I find that although the timeframe given to complete the repairs could have been longer, there was only 1 task completed in full by 10-September-2023 and for that reason, I find that the termination notice given on 10-September-2023 under Section 22 of the *Residential Tenancies Act, 2018* is a valid notice.
24. I find that the tenant's did not meet their obligation to keep the residential premises clean and they failed to repair damages which were caused by negligent acts of the tenants.
25. I find the tenant's should have vacated the premises by 17-September-2023.

Decision

26. The landlord's claim for an order for vacant possession of the rented premises succeeds.
27. The tenant's shall vacate the premises immediately
28. The tenant's shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached
29. The landlords are granted an Order of Possession.

Item # 2: Security Deposit applied against monies owed \$865.00

Landlord's Position

30. The landlord's stated that because most of the repairs had not been carried out as requested, they wish to retain the security deposit to go towards the damages within the premises.

Analysis

31. The landlord's did not make a claim for damages, and as such they shall not retain the security deposit to be applied against any losses due to damage as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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.

32. I find that unless the landlord's make a claim for losses, I am unable to award them the security deposit to be applied against the losses as I do not know what the landlords are actually seeking for compensation for damages or the value to repair the damages.

33. I find that the landlord's did not make a claim for damages, only hearing expenses thus the security deposit cannot be applied against losses due to damages only hearing expenses.

Decision

34. The landlords' claim to apply the security deposit against monies owed for damages does not succeed.

35. The landlord's claim to apply the security deposit against monies owed for the hearing expenses partially succeeds. See item #4 below.

Item # 3: Other (keep washer and dryer to compensate for damages) \$500.00

Landlord's Position

36. The landlord's stated that they wish to keep the washer and dryer which were purchased by the tenant's to compensate for damages to the unit. The landlord's stated that the tenant's did not make the requested repairs and once they vacate the unit, they wish to have the washer and dryer stay behind and the value of the appliances will be applied against monies owed for damages.

Analysis

37. Section 33 of the *Residential Tenancies Act, 2018* states;

Seizure of property

A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant ...

38. In accordance with Section 33 as stated above, a landlord cannot seize a tenant's property and as such, the landlord's cannot hold the washer and dryer which is property of the tenant's to compensate for any damages or losses.

Decision

39. The landlord's claim for "Other" does not succeed.

Item # 4: Hearing expenses \$39.99

40. The landlord's paid an application fee of \$20.00 to *Residential Tenancies* and also paid \$19.99 for 2 junk drives to submit evidence. The landlord's provided a copy of the application receipt (LL#4). The landlord's did not submit a copy of a receipt to support their claim that they paid \$19.99 for the junk drives.

41. As the landlord's claim has been successful, the tenant's shall pay the \$20.00 application fee. I find that the tenant's are not responsible for the cost of the junk drives.

Decision

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

Summary of Decision

43. The tenant's shall pay the landlord \$0.00 as follows:

Hearing expenses.....	\$20.00
Less partial security deposit	<u>(\$20.00)</u>
Total	<u>\$0.00</u>

44. The tenant's shall vacate the property immediately

45. The tenant's shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlord's be required to have the Sheriff enforce the attached Order of Possession.

46. The landlords will be awarded an Order of Possession.

October 11, 2023

Date

Pamela Pennell
Residential Tenancies Office