

Residential Tenancies Tribunal

Application 2023-0892-NL

Decision 23-0892-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 02-November-2023.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED]. He is hereinafter referred to as "the landlord" he attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" they attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenant with notification of today's hearing by email on 25-September-2023; tenant1 confirms receipt of notification as stated.
5. The landlord's application has been amended to included security deposit retained \$1,650.00.

Issues before the Tribunal

6. The landlord is seeking:
 - Possessions returned \$1,450.00
 - Compensation for inconvenience \$1,279.17
 - Damages \$14,921.63
 - Security deposit retained \$1,650.00

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: Return of Possessions \$1,450.00

Landlord's Position

9. The landlord submitted a 99 page document into evidence (LL#02) containing his evidence for the hearing.
10. The landlord reviewed the rental agreement held with the tenant (LL#02 pages 3 – 8). They had a term agreement with the tenant beginning 01-September-2022 and ending 30-June-2023. The tenant paid \$2,250.00 per month for rent. They also paid a security deposit of \$1,650.00 on 01-September-2023. The landlord is still in possession of the deposit.
11. The landlord informed the tenant that the rental agreement would not continue after 30-June-2023 on 08-March-2023 in email correspondence (LL#02 page 19). The tenant, provides housing for youth, the staff required additional time to move and the landlord regained possession on 01-July-2023 around 12:30 pm.
12. The landlord said that the tenants had indicated at the start of their tenancy that they would potentially purchase some of the furniture. The landlord submitted a list (LL#03) of the furniture left behind and the estimated current value of the furniture with depreciation considered, as follows:

Item	Value
10 month old bed frame	\$200.00
Grey living room couch	800.00
Kitchen table and chairs	150.00
Beige recliner	150.00
Double mattress and box spring	250.00
Total	\$1,450.00

13. The landlord is seeking compensation of \$1,450.00 for the furniture.

Tenant's Position

14. Tenant1 confirms the details of the rental agreement as stated. He also confirms that they had an agreement to purchase the furniture listed and does not dispute the valuation of the furniture.

Analysis

15. There is no dispute; the tenant agrees to the cost of the furniture.

Decision

16. I find that the tenant shall pay the landlord \$1,450.00 for furniture.

Issue 2: Compensation for inconvenience \$1,279.17

Landlord's Position

17. The landlord is seeking compensation for inconveniences he experienced after receiving the house back. He provided the following list (LL#04) of inconveniences:

Description	Compensation
Cleaning after respondent left	354.20
Hotel accommodations	360.36
Lawncare	330.00
Rekeying locks 1 key not returned	234.61
Total	\$1,279.17

18. The landlord stated that the entire inside required cleaning including the appliances. He provided a copy of the email (LL#02 page 33-34) with pictures included that was sent to the tenant, the email stated:

“The house was left in unhygienic conditions, to such an extent that the toilet in our main bedroom was not even flushed. Additionally, there was feces all over the toilet, layers of dirt and dead bugs over both the bathtub and stand up shower, layers of dirt and residue in all kitchen appliances and blood an boogers wiped over multiple walls in the house.”

19. The landlord said, the tenant had indicated to him, they had a cleaning crew that would normally do clean up and that they were not available. He said that tenant1 told them in a message, on 01-July-2023, (LL#02 page 44) if they hired a cleaner then they would pay that cost.
20. The landlord explained that they could not get a cleaner until the next day, receipt provided (LL#02 page 45).
21. The landlord said due to the condition of the house, that they stayed at a hotel that night. Receipt provided (LL#02 page 43). He is seeking reimbursement from the tenant for this cost of \$360.36.

22. The landlord is also seeking the cost of lawncare, he states that the rental agreement part 11, confirms that the tenant is responsible for lawncare (LL#02 page 6). He provided a picture (LL#02 page 46) showing that the lawn around the back and the sides was overgrown. He confirms that the front lawn appears to have been maintained. He paid a company to come in and mow the lawn, receipt provided (LL#02 page 49). He is seeking reimbursement of \$330.00 for this cost from the tenant.
23. The landlord is requesting the cost of rekeying the house, he said that they provided the tenant with two keys to the property. The same key fits all the doors. Upon return of the property the tenant only gave back one of the keys. The landlord stated that he informed the tenant of this issue on 25-July-2023 (LL#02 page 36). He submitted a quote to have all the locks rekeyed (LL#02 page 50) totaling \$234.61. He is seeking reimbursement from the tenant.

Tenant's Position

24. Tenant1 said that there was a walk through with the staff at the end of the tenancy and that these issues were not raised. He said that he also walked through later and did not observe the conditions described by the landlord, he said the house looked good.
25. Tenant2 confirms that he was part of the cleaning of the house and that they cleaned as they were leaving.
26. Tenant1 states that they had a company hired to mow the lawn during their tenancy and that they paid for that service.
27. Tenant1 explains that they were not made aware of the issue of one key not being returned until the 25-July-2023.

Analysis

28. I accept the evidence that the landlord paid for the cleaning of the house after they regained possession. It is evident that tenant1's communication stated that they have a professional cleaning completed at the end of a tenancy, and that this service was not available at that time. Tenant1 made the offer of payment for this service, should the landlord pay a company to complete this work. I therefore find that the tenant is responsible for reimbursement of this cost totaling \$354.20.
29. I do not accept the claim for hotel accommodations for the night of 01-July-2023. It is clear that the landlord felt that the house required cleaning, however no evidence was presented to support the claim that the house was uninhabitable. In accordance with Residential Tenancies Policy 07-006, if a rental is deemed uninhabitable then emergency accommodations should be provided, the rental premises may be considered uninhabitable when any of the following occurs:
 - The landlord has not complied with laws respecting health, safety or housing applicable to the rental premises;
 - An authoritative body (municipal government) orders that the premises be shut down for safety purposes;

- The landlord or the tenant causes utilities such as electrical power or water to be disconnected;
- Premises become flooded or a sewage system backs-up causing the premises to become uninhabitable

The landlord did not prove the house was uninhabitable, therefore I find, the tenant is not responsible for the landlord's accommodations.

30. The landlord has shown that the lawn in the backyard of the house required mowing. The photographic evidence supports his claim that this area was not mowed. I acknowledge that tenant1 has paid for this service, however, it appears that the company employed by the tenant only cared for the lawn in the front yard. The rental agreement clearly shows in part 11, that the responsibility for lawn care is the tenant's, therefore I find that the tenant shall reimburse the landlord \$330.00 for the cost of the back yard being mowed.
31. The landlord's claim for rekeying the house fails. The tenant did return a key, however the landlord states that they were given two keys, this loss is minimal at best. Should the landlord wish to change out his locks for the protection of his home's security, this cost would be considered upkeep and the responsibility of the costs of upkeep are the landlord's burden not the tenant's. I find that this claim fails.
32. The landlord's claims for cleaning \$354.20 and lawn care \$330.00 are successful and I find that the tenant shall pay to the landlord \$684.20 for the cost of those inconveniences.

Decision

33. The landlord's claim for inconveniences is successful in the amount of \$684.20.

Issue 3: Damages \$14,921.63

Landlord's Position

34. The landlord submitted a list of damages (LL#05), as follows:

Description	Compensation
Damages to wall, floors and refinishing	\$4,823.10
Cellar mold problem from neglect	5,361.45
Replacement of kitchen cabinets	2,141.01
Plumbing issues in both main bathrooms	196.08
Replacement of damaged fridge	2,399.99
Total	\$14,921.63

35. The landlord provided pictures of the walls as well as, a scratch on the downstairs flooring (LL#02 pages 65 – 75). There are a number of scratches, dents holes in the walls throughout the house. His pictures show damages to the kitchen, living room,

hallways, front porch, stairwell, and finished basement. There appears to be 14 marks on the walls that require repair as well as damage to the basement flooring.

36. The landlord neglected to submit this quote, he did recite the break down of costs from Home Matters Inc. as follows:

- General repair \$2,120.00
- Socket..... 90.00
- Oven light 90.00
- Deck & mold \$1,460.00
- Weed lawn 120.00
- Basement floor replace vinyl 780.00

37. The landlord declares that when they moved into the house in July 2021 everything was refinished and done new. He said that the general repair would take care of the holes in the walls. He said that there was an electric socket that had blown and requires replacement. The oven light has blown. The deck was in terrible shape, picture provided (LL#02 page 87) he explains that this was from recycling being left on the deck for a long period. He confirms that this deck was last painted in 2021. The lawn was uncared for and required weeding. He is also seeking to repair the scratch proof flooring that has a long scratch.

38. The landlord said that he didn't provide a picture of the cellar, he said it is covered in black mold and he is seeking compensation for this damage. He didn't take pictures because they wouldn't show the damages because it is dark in the cellar. He provided a quote to have this repaired (LL#02 pages 97-98) for \$5,361.45. He explains that the issue with the cellar is that it was padlocked, and the staff didn't have the code to the lock. He said that the HVAC is in that area and requires the bucket to be dumped periodically otherwise the water goes over the floor and creates dampness. He said his father had gone there in the fall but the onus is on the tenant to care for the room.

39. The landlord provided pictures to show that the kitchen cabinets are scratched (LL#02 pages 66-67). He states that the cabinets were new in 2021 and that initially they were only seeking the cost of having them repainted, however, now they are seeking full replacement. He provided a quote for this work to be completed (LL#02 page 52) for \$2,141.01.

40. The landlord submitted a receipt for plumbing work to have the drains in the two upstairs bathrooms unclogged (LL#02 page 51). He said that the tub and the sink were clogged. This totaled \$196.08 and was completed on 20-July-2023.

41. The landlord is also seeking the replacement of his fridge. He provided pictures showing that both fridge doors have been dented. The replacement of the doors can be expensive, so he made the offer to tenant1 that if he wanted to replace their fridge they could come take the dented one. He provided a link showing that a new fridge would cost \$2,399.99 (LL#02 page 62). He states that this fridge is currently on sale for \$1,699.99 so he is changing the amount submitted to reflect the sale price. His fridge was one year old when the tenant took occupancy of the house. He said that since the

tenant moved out, this fridge no longer works. He clarifies this issue is not tied to the tenant.

Tenant's Position

42. Tenant1 points out that there is no precondition report. He takes issues with many of the items sought. He accepts that his clientele can sometimes display violent behaviors and that there can be damages as a result of their behavior. He said that he always works with the landlord to ensure that any damages, that they are responsible for, are corrected. He believes that the landlord has been excessive in his claim, potentially, because they are a business.
43. Tenant1 said that the bulk of the damages to the walls of the house and the cupboards are cosmetic.
44. Tenant1 questions the landlord's evidence for the deck. He states that the picture provided clearly shows that the deck was not painted recently (LL#02 page 87).
45. Tenant1 disputes that they were responsible for the cellar. He said that the tenant's father came to check on the cellar in the fall. He did not subsequently come back and continue to look after this area. Tenant1 said it was locked and they never used this area. Tenant2 said that when they removed the locks there was no signs of dampness the area was dry.
46. Tenant1 states that the landlord put forward a claim stating that the house is virtually uninhabitable, yet the claims are supported by quotes and that none of this work has been completed. He said that at the end of the tenancy he did a walkthrough and that in his opinion the house was in good condition.

Analysis

47. In accordance with 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)
48. 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. Throughout my reasoning, although the landlord often provided receipts or quotes, it will become apparent that often a nominal amount has been awarded. The landlord frequently sought replacement where only repair is required. In those instances, I determined that the appropriate valuation is for repair and awarded a nominal amount.
 49. The landlord's claim for general damages includes general repair, this covers the cost of plastering and painting the holes in the walls, as well as repairing the scratch in the downstairs flooring. It is clear from the evidence provided that there are damages to the walls and floor of the home. He is also seeking the cost of a damaged socket and a blown light in the kitchen, these damages are undisputed. The landlord did not provide the quote supporting the assessment of these costs and instead provided testimony of his quote. The evidence supports that these damages exist, I will therefore award a nominal amount of \$1,500.00 to have this work completed.
 50. The landlord's claim for having the back deck cleared of mold and repainted fails. Tenant1 questioned the claim that this deck was painted one year prior. I agree with tenant1 that the condition of the deck, as shown in evidence, indicates that this area was not painted recently, and it would be improbable that this much peeling would occur in less than a year. I do not accept that the tenant is responsible for this damage.
 51. The landlord's claim for weeding the garden also fails. I acknowledge that the backyard was not mowed, however the landlord received the property back 01-July-2023 which is early in the summer, weeding of the lawn is general maintenance, not damage, and therefore the cost of this is now the burden of the landlord not the tenant.
 52. The landlord is seeking in excess of \$5,000.00 for the cost of repairing the cellar. Tenant1 pointed out that they were in the house for less than one year and that they did not use the cellar. Further to this, there seems to be some confusion on who is responsible for this area; initially the landlord's father was caring for this part of the house. I acknowledge that the landlord struggled to gain access to the area due to the lock on the door, however I do not accept that the damages from the room being sealed for less than a year should result in the requirement to tear down and completely rebuild a cellar as applied for by the landlord. The landlord's claim fails.
 53. The landlord stated that initially the claim for the kitchen cupboards was supposed to be just to paint them. The evidence provided supports his claim that the cupboards have scratches and would require cosmetic repair. I do not agree that these cupboards require replacement, I do agree that they should be refinished. I will award a nominal fee of \$500.00 for the cupboards to be professionally painted.
 54. The landlord's claim for plumbing succeeds, I accept that the drains were clogged and required repair. I find that the tenant shall pay to the landlord \$196.08 for this cost.

55. Lastly the landlord is seeking replacement of the fridge due to the dents in the door. I accept that the dents occurred during the tenancy, however the fridge was still operational at the end of the tenancy and the damage is cosmetic. I will award a nominal fee of \$500.00 for the replacement or repair of the doors on the fridge.
56. The tenant shall pay \$2,696.08 to the landlord for damages as follows:
- General damages \$1,500.00
 - Kitchen cupboards 500.00
 - Plumbing 196.08
 - Fridge 500.00
 - Total..... \$2,696.08

Decision

57. The landlord's claim for damages succeeds in the amount of \$2,696.08

Issue 4: Security deposit retained \$1,650.00

58. The landlord is seeking to apply the security deposit against monies owed. Tenant1 confirms that he consents to the security deposit being applied to the landlord's losses.

Analysis

59. In accordance with Section 14 of the Residential Tenancies Act, 2018, as the tenant agrees to the retention of the security deposit by the landlord against monies owed; I find that the landlord shall retain the security deposit.

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.

...

(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.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

Decision

60. The security deposit shall be retained against monies owed.

Summary of Decision

61. The tenant shall pay to the landlord \$3,180.28, as follows:

Possessions	\$1,450.00
Inconvenience	684.20
Damages	2,696.08
Security deposit retained	(1,650.00)
Total	<u>\$3,180.28</u>

The landlord shall retain the security deposit of \$1,650.00

November 6, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office