

Residential Tenancies Tribunal

Application 2023-0924-NL &
2023-1164-NL

Decision 2023-0924-NL &
2023-1164-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 9:07 AM on 15 January 2024 via teleconference. The hearing was to adjudicate two separate applications: 2023-0924-NL and 2023-1164-NL.
2. The applicant, [REDACTED] did not attend the hearing. [REDACTED], authorized representative (Exhibit T # 1) for the tenant, attended the hearing, and is hereinafter referred to as “the tenant’s representative”.
3. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.

Preliminary Matters

4. The landlord was originally personally served a Notice of Re-scheduled Hearing on 2 November 2023 at 12:40 PM (Exhibit T # 2) followed by a Notice of Rescheduled Hearing on 7 December 2023 (Exhibit T # 3). The landlord confirmed receipt of the initial notification, advised that he did not receive an email for the second, but as he was present at the hearing, was satisfied with respect to service.
5. The landlord submitted an affidavit (Exhibit L #1) indicating the tenant was served electronically with notification of the hearing on 4 December 2023 at approximately 4:35 PM ([REDACTED]). The tenant confirmed receipt of notification as stated.
6. The tenant’s authorized representative amended the tenant’s application for dispute resolution to include reimbursement of hearing expenses. The landlord did not seek any amendments to his application.

Issues before the Tribunal

7. The tenant is seeking the following:
 1. Return of security deposit in the amount of \$1,200.00
 2. Refund of rent in the amount of \$5,200.00

3. Hearing expenses in the amount of \$202.34
8. The landlord is seeking the following:
 1. Compensation for damages in the amount of \$1,900.00
 2. Payment of utilities in the amount of \$282.11

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of "*the Act*".
10. Also relevant and considered in this case are sections 10, 14, 16, 31, 34, 35 and 47 of the *Residential Tenancies Act*, 2018.

Relevant Submissions

11. The landlord testified there was a written monthly rental agreement which started on 1 December 2022. The tenant's representative testified that the tenants moved in on 16 December 2022. The monthly rent amount was set at \$1,600.00 due on the first of each month and there was a security deposit collected on this tenancy of \$1,200.00 which remains in the landlord's possession. Testimony from both parties confirmed that three individuals resided on the property; however, the rental agreement was between the landlord and tenant subject to this application.

Issue 1: Return of Security Deposit- \$1,200.00/ Damages- \$1,900.00

12. The tenant's representative provided a receipt of the payment of the security deposit (Exhibit T # 4) and confirmed the tenant was seeking a return of the security deposit in the amount of \$1,200.00. She noted during the hearing the tenant had requested to receive a copy of the rental agreement on several occasions which included 18 December 2022, 22 December 2022 and 9 January 2023 (Exhibit T # 10). Following this, she stated the landlord did provide a copy of the rental agreement which was not legible (Exhibit T # 11).
13. To support the tenant's application for the return of the security deposit, the tenant's representative provided several pictures of the rental unit prior to the tenant vacating the property on 31 August 2023 (Exhibit T # 6) to demonstrate the state of cleanliness. She acknowledged there had been some cleaning supplies in the bathroom of the rental unit but noted that, "there is no reason why the security deposit should not be returned".
14. The landlord stated that along with the tenant, there was also two other tenants in the top floor 3-bedroom apartment and all three tenants had vacated the rental by 31 August 2023. The landlord also testified during the hearing there were damages of the rental unit from the previous tenants that he agreed with the tenant to repair after occupancy.

15. The landlord was seeking compensation for damages in the amount of \$1,900.00 and along with his application, he provided a breakdown of those damages (Exhibit L # 1) as follows:

- Leather couch - \$1,000.00
- Window blinds - \$ 300.00
- Flooring - \$260.00
- Cleaning - \$300.00
- Painting/Plastering - \$40.00

Leather Couch

16. The landlord stated this piece of furniture was stored in the shed on the rental property and alleged that the tenant was responsible for taking the coach out of the shed, placing it in the backyard of the rental which resulted in it becoming damaged. He estimated this item as costing \$1,000.00. The landlord did not provide any evidence as to original valuation of the item, the extent of the damage to the item, the age of this piece of furniture, or receipts for repair or replacement. Additionally, the landlord testified that the leather couch was never in the rental unit of the tenant during her occupancy.

17. The tenant's authorized representative disputed that the tenant was responsible for this piece of furniture being removed from the shed or being responsible for the damage to this item. She testified this was the responsibility of the tenants in the basement apartment.

Window Blinds

18. The landlord testified the tenant's cat was responsible for damaging the strings on 4 different window blinds and identified each blind as costing \$75.00 each. The landlord stated the previous tenants of the rental also had cats which caused damage to the rental unit. The landlord provided one picture (L # 4) showing damage to the strings of one set of blinds. There were no receipts provided demonstrating the costs for repair or replacement. The age of the blinds was estimated at approximately 10 years old.

19. The tenant's representative stated that the tenant had a cat, which she had gotten about a month before she vacated the rental. She disputed that the tenant's cat caused the damage to the blinds and expressed concerns about the lack of receipts demonstrating the cost of window blinds.

Flooring

20. The landlord testified he was seeking \$260.00 for having to clean and replace the flooring in the rental unit as a result of cat urine. This cost included \$150.00 for the flooring itself, as well as \$30.00 for cleaning/elimination spray and 4 hours labor at \$20.00 per hour. He provided one picture of an area of the flooring showing animal feces, dust and some scratch marks on the floor and baseboard. The landlord testified that the rental agreement did not include a "no pets" condition and also noted that the previous tenants had cats and stated he was aware the flooring had some damage by pets prior to the tenant's occupancy. The age of the flooring was not provided, nor were there any receipts provided demonstrating the costs of repair or replacement.

21. Again, it is noted that the tenant's representative confirmed that the tenant had a cat, which she had gotten about a month before she vacated the rental. She further

questioned this claim for damage to the flooring and the lack of evidence provided demonstrating the cost of cleaning and repairs.

Cleaning

22. The landlord testified there was a lot of cleaning required after the tenant vacated the premises: the floors were dirty; there was cat feces on the bathroom and basement floors; the refrigerator and freezer contained food; the bathroom was messy; and there was garbage left in the kitchen as well as kitty litter and garbage bags in the backyard. He was seeking compensation for 15 hours of cleaning at \$20.00 per hour of labor for a total of \$300.00. The landlord provided pictures of the fridge, kitchen, bathroom, floors of the rental unit, and the property after the tenant vacated (Exhibit L # 4).
23. The tenant's representative disputed that the rental unit had to be cleaned after the tenant vacated as she supplied, along with her application pictures of the apartment (Exhibit T # 4). She did acknowledge there had been some items left in the bathroom such as cleaning supplies, a mop and a broom. She also stated the tenant had vacated the unit by 31 August 2023, and another tenant who was not identified on the rental agreement remained in the rental up to 1 September 2023.

Painting/Plastering

24. The landlord was seeking compensation of \$40.00 for 2 hours of work required to plaster and paint the rental after the tenant vacated. There was no indication of when the rental was last painted and the landlord stated, the plastering and painting was due to "all the holes they had in the walls". He did provide pictures of the plastering and main bedroom (Exhibit L # 4).
25. The tenant's representative disputed this claim and noted that the main bedroom, as depicted in the landlord's picture, was not the tenant's bedroom in the rental. She also stated that plastering and re-painting an apartment is a regular requirement due to "normal wear and tear".

Analysis

26. 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.

27. The landlord is seeking damages and has submitted application to have the security deposit applied against the damages being claimed. In accordance with Residential Tenancies Policy 9-003, the applicant in a damage claim is required to demonstrate:
 - That the damage exists;
 - That the respondent is responsible for the damage, through willful or negligent act(s); and
 - The value to repair or replace the damaged item(s).
28. Based on the testimony of the landlord and the exhibits entered into evidence, the items were analyzed as follows:

Leather Couch – The landlord provided no pictures or other evidence to demonstrate that the leather couch in question had been damaged. There was no evidence that the tenant was, in any way, responsible for any reported damage as the couch was not actually situated in the rental unit itself. Further, there was no evidence provided to determine the value of the item, or the cost of repair or replacement. This portion of the landlords claim fails on evidentiary grounds.

Window Blinds – The landlord provided one picture of one blind with damaged strings. While this may indicate the existence of some damage, it was also noted during the hearing that the previous tenants had pets and the blinds were approximately 10-years old. Given these factors, this tribunal cannot determine on the balance of probabilities that the tenant is responsible for the damage. This portion of the landlords claim fails on evidentiary grounds.

Flooring – The landlord provided one picture of an area of the flooring showing animal feces, dust and some scratch marks on the floor and baseboard, and claimed \$150.00 to tear up and replace flooring, \$30.00 for cleaning/elimination spray and \$80.00 for labour. Evidence pertaining to the age and state of the flooring prior to the tenancy were not provided, and as noted previously, testimony during the hearing indicated that the previous tenants had pets. Further, the one picture provided was insufficient to determine damages beyond normal wear-and-tear, depreciation in accordance with Residential Tenancies Policy 9-05 could not be determined, and there were no receipts provided demonstrating the cost of repair and replacement. This portion of the landlords claim fails on evidentiary grounds.

Cleaning – The landlord provided testimony and some pictures in support of his claim that cleaning was required following the tenant's departure. While the tenant's representative countered this with testimony and pictures taken at departure; based on the evidence in totality, this tribunal has determined that some cleaning was required following the tenant vacating. However, evidence does not support the requirement for 15-hours of cleaning. Based on the information provided, it is reasonable to determine that the minimal amount of cleaning required could have been completed in three hours. In accordance with Policy 9-03, self-labour is calculated at minimum wage (\$15.60 per hour), plus \$8.00. The landlords claim for cleaning will be awarded in the amount of \$70.80 (\$23.60 per hour * 3 hours).

Painting/Plastering – While the landlord provided some evidence that some plastering/painting was completed, there was no evidence provided demonstrating the age and state of the wall(s) prior to the tenancy, and there was testimony during the hearing indicating that not all repairs promised at the beginning of the tenancy were

completed. Based on the evidence provided, the tribunal is unable to determine if the painting/plastering required was the result of willful and/or negligent acts of the tenant. This portion of the landlords claim fails on evidentiary grounds.

Decision

29. The landlord's claim for damages in the amount of **\$70.80** succeeds.
30. The landlord shall return the security deposit plus interest as per section 14(7), minus the award for damages. The interest is calculated as simple interest and is not compounded. The annual interest for 2022-2023 was 0% and is currently 1% for 2024. in the amount of **\$1,129.72** to the tenant as follows:
 - Security Deposit.....\$ 1,200.00
 - Interest at 1%\$ 0.52
 - **Minus damages.....\$ 70.80**
 - Total.....**\$1,129.72**

Issue # 2- Refund of Rent- \$5,200.00

Tenant Position

31. The tenant's representative testified that the tenant was seeking a rental rebate of one-half month's rent (\$800.00) for the months of December 2022, January 2023, February 2023, July 2023, and August 2023 due to the landlord's lack of response to the tenant's requests for repairs, resulting in the discontinuation of services.
32. The tenant's representative testified that the tenants had not moved in until mid-December 2022, and that there were repairs promised but not completed prior to and after the tenant took occupancy. These included windows being damaged (reportedly falling out), the smell of cat urine on the baseboards within the residence, fire detectors missing, railing missing, no showerhead in the bathroom, exposed wiring, the dishwasher never working during her tenancy, and the washer/dryer not working properly. In addition, the representative stated there were concerns with the cleanliness of the rental when the tenant took occupancy, problems with access to hot water, damage to the bathroom door, and a leaking door (Exhibit T # 7).
33. A statement from the tenant, and her representative's testimony alleged that all repairs requested in writing to the landlord on 23 December 2022 had not been fixed by January 2023. Also pictures were provided of bugs found behind the dishwasher (Exhibit T # 8A & 8B), as well as copies of text messages between the landlord and tenant in December 2022, January and February 2023 about concerns with the hot water (Exhibit T # 9).
34. Further to the above, the tenant seeks a rental refund for the month of February 2023, as it is alleged that only some of the repairs had been requested on 23 December 2022

had been completed; and they continued to be without a dishwasher, one window had not been repaired, the bathroom door had not been replaced and the residence continued to smell of cat urine.

35. On behalf of the tenant, the representative explained that the tenant was also seeking a rental refund for the months of July 2023 and August 2023 as the washer and dryer were no longer working, and the refrigerator failed and was replaced with one that was purchase second-hand and leaking.

Landlord Position

36. The landlord testified during the hearing that he had been attempting to complete renovations prior to and after the tenant took occupancy. He noted that the tenant was out of town until mid-December which allowed for more time to complete renovations. He acknowledged that the back window was broken, and that the floor had been torn up and there was cat urine damage from the previous tenants. He noted that the premises had been cleaned before the tenants moved in, but the refrigerator and dishwasher had not been pulled out for cleaning behind and beneath. He also acknowledged that he had his keys stolen from his wife's vehicle, but had replacements provided to the tenants on 19 December 2022.
37. The landlord did not dispute receiving notification from the tenant of requesting repairs of damages and testified, "I went over and fixed pretty much everything on the list". He noted there were on-going concerns with the hot water and stated after he was informed, he contacted the plumber. He noted that the plumber was in on multiple occasions, drained the hot water tank and confirmed the elements were working. He attributed the issues to the hot water tank being too small to handle heating water for three tenants showering one after another. It was only after a friend of the tenant advised that the hot and cold water was connected backwards that he was able to have the issue repaired.
38. The landlord did not recall any issue with the back door leaking, any exposed electrical wiring and maintained that he had addressed "pretty much everything on the list". Things like the hole in the bathroom door; he noted the hole was plastered in and functioning and felt nothing further was required. He noted that the dishwasher had been fixed, and he had heard nothing further about the matter or anything else, until the refrigerator broke in July 2023 and he had it replaced two days later.

Analysis

39. The Residential Tenancies Act, 2018 section 10, statutory conditions, includes the following:
 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:*

1. *Obligation of the Landlord - (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

40. A tenant may be entitled to a rental rebate where a rental increase has occurred other than in a manner permitted under the *Residential Tenancies Act*. Section 16 (5) and (6) of the *Act*, states:

(5) *Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.*

(6) *The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unable for a time under subsection (5).*

41. It is the responsibility of the landlord to maintain the premises. Evidence provided would indicate that there were various issues and repairs agreed upon by the parties at the beginning of the tenancy in December 2022. While a number of repairs were supposed to have been completed prior to move in mid-December, they were not all completed in a timely manner. This is demonstrated in the tenant's formal request for repairs dated 23 December 2023 with a list of 9 items for repair, including a lack of washer/dryer hookup and issues with hot water. Copies of text messages exchanged between the tenant and landlord dated late January 2023 and early February 2023 demonstrating repeated discussions regarding general repairs, the lack of services of a dishwasher, washer and dryer and limited availability of hot water.

42. This tribunal accepts the testimony that this lack of timely resolution to repairs resulted in inconvenience and impacted the tenants use and enjoyment of the residential premises for the period of time between late December 2022 and early February 2023. As the reduction in the tenant's enjoyment and use of the premises is considered a rent increase, in accordance with section 16 (6) the Director can value that improper rental increase and order an appropriate refund. Accordingly, this tribunal values the totality of these inconveniences at one-quarter of the monthly rent for one and one-half months ($\$400.00 * 1.5 = \600.00).

43. Further to the above, the tenant has also requested a rental refund for July 2023 and August 2023 for a broken refrigerator, a non-working washer and dryer and incomplete miscellaneous repairs. Evidence suggests that the refrigerator was replaced in a timely manner, and the landlord testified that he was unaware of other issues at that time. There was no evidence provided to demonstrate that the tenant had made the landlord aware of the issue with the washer and dryer or provided the landlord with a request for repairs for this period of time. This portion of the tenants claim fails on evidentiary grounds.

Decision

44. The tenant's claim for a rebate of rent succeeds in the amount of **\$600.00**.

Issue # 3- Payment of Utilities- \$282.11

Landlord Position

45. The landlord stated he requested for the tenant to transfer the NL Power utilities to her name and was seeking compensation in the amount of \$282.11 for the January 2023 power bill. Along with his application, the landlord provided a NL Power bill for the premises (Exhibit L #6).

Tenant Position

46. The tenant's representative testified that the tenant had requested the meter number from the landlord in December 2022, and twice again in January 2023, to have NL Power transfer the account (Exhibits T # 9 and T # 10). She confirmed that the account was transferred to the tenant's name by February 2023.

Analysis

47. The delay in transferring the NL Power account to the tenant's name can be attributed to the failure of the landlord to provide the tenant with the required information in a timely manner. However, this does not negate the fact that the tenant was responsible for the payment of utilities during the tenancy.

Decision

48. The landlord's claim for payment of utilities succeeds in the amount of **\$282.11**. This amount will be deducted from the remaining security deposit to be refunded to the tenant as outlined in paragraph 30.

Issue # 4- Hearing Expenses

49. The tenant's authorized representative was seeking \$202.34 for hearing expenses including \$20.00 hearing application fee, \$20.49 for registered mail, \$140.00 process server fees and \$21.85 evidence fees (Exhibit T # 11).

Analysis

50. Along with her application, the tenant's authorized representative provided receipts for the registered mail, hearing receipt and process service fees. There was no receipt provided for the evidence fees of \$21.85.

51. The *Residential Tenancies Policy 12-01: Costs*, speaks directly to seeking compensation associated with an application. When making a claim for costs the applicant must establish, on the balance of probabilities, that they had incurred the costs which are claimed, and that they are entitled to be compensated.
52. The tenant's representative served the landlord by registered mail, which is one of the means of Service of Documents under section 35 of the *Residential Tenancies Act*, 2018. There was no testimony offered during the hearing by the authorized representative of the need for a process service fee or any information related to evidence fees.
53. I find the tenant is entitled to \$20.00 hearing expenses and \$20.49 for registered mail.

Decision

54. The landlord shall pay **\$40.49** to the tenant for hearing expenses.

Summary of Decision

55. The landlord shall pay to the tenant:

• Security Deposit plus interest	1,200.52
Minus Damages	70.80
Minus Utilities	282.11
	847.61
• Refund of Rent	600.00
• Hearing Expense	40.49
• Total	\$1,488.10

7 June 2024

Date

Michael J. Reddy
Residential Tenancies Office