

Residential Tenancies Tribunal

Application 2023-0927-NL &
2023-1077-NL

Decision 2023-0927-00 &
2023-1077-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 9:00 AM on 18 December 2023 via teleconference. The hearing was to adjudicate two separate applications: 2023-0927-NL and 2023-1077-NL.
2. [REDACTED] hereinafter referred to as "tenant1", attended the hearing. [REDACTED] hereinafter referred to as "tenant2", attended the hearing. The tenants did not call any witnesses.
3. [REDACTED] hereinafter referred to as "the landlord", attended the hearing. The landlord did not call any witnesses.

Preliminary Matters

4. The tenants submitted an affidavit (**Exhibit T # 1**) indicating the landlord was served electronically with notification of the hearing on 5 November 2023 at approximately 3:46 PM [REDACTED] The landlord confirmed receipt of notification as stated.
5. The tenants did not seek any amendments to their application.
6. The landlord submitted an affidavit (**Exhibit L #1**) indicating tenant1 was served electronically with notification of the hearing on 6 December 2023 at approximately 6:14 PM [REDACTED] Tenant1 confirmed receipt of notification as stated.
7. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The tenants are seeking the following:
 1. Return of security deposit in the amount of \$650.00
 2. Hearing expenses in the amount of \$20.00

9. The landlord is seeking the following:
 1. Compensation for damages in the amount of \$650.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of *"the Act"*.

11. Also relevant and considered in this case are sections 10, 14, 18, 31 and 34 of the *Residential Tenancies Act, 2018*. Also, Residential Tenancies Policies 9-003, and 9-005.

Issue 1: Security Deposit applied against Damages / Return of Security Deposit- \$650.00

Landlord Position

12. The landlord testified there was a six-month written fixed term rental agreement which started on 1 March 2022 that had evolved into a monthly rental agreement in September 2022 in relation to the tenants and the rental property at [REDACTED] NL, [REDACTED] The monthly rent amount was set at \$1,300.00 due on the first of each month and there was a security deposit collected on this tenancy of \$650.00 collected on 25 February 2022 which the landlord remains in possession of.

13. The landlord stated she sold the rental property in October 2023 and both tenants had been occupants while she owned the property. She testified in September 2023, both tenants had vacated the property after which she observed damages to the living floor of the rental property.

14. The landlord testified she had contacted a contractor who suggested to her that the flooring had to be replaced, as it could not be repaired by sanding. In September 2023, the landlord stated laminate flooring was installed in the living room.

15. The landlord offered pictures of the flooring (**Exhibit L # 2**) which she stated were taken after the tenants vacated the premises and she was seeking to use the security deposit applied against the costs associated with repairing the flooring. The landlord described the flooring which was replaced as being between "8 to 9 years old" and she did not offer evidence of the flooring prior to the tenants gaining occupancy to the rental in March 2022.

Tenants Position

16. Tenant1 did not dispute any of the information offered by the landlord in relation to the rental agreement. With their application, the tenants provided confirmation of the security deposit being sent to the landlord (**Exhibit T # 2**). Tenant1 did dispute that the damages to the flooring in the living room resulted from their occupancy as she claimed the markings on the floors in the living room and hallway were observed when she and the landlord had a walk through of the rental unit in February 2022. Tenant1 expressed concerns that with the landlord's application for Dispute Resolution, there was no evidence of the cost of the flooring (i.e. receipts) and there was no indication of how much flooring was replaced in the living room. Tenant1 stated the landlord, "needed to sell the house and she needed to update" and she vacated the rental on 2 September 2023.
17. Tenant2 stated he was a tenant at [REDACTED] until 16 December 2022 and he observed markings on the flooring in the living room and hallway of the rental first when he moved into the apartment and upon his exit, the flooring "was in the same condition".

Analysis

18. Under sections 10.1(1) and 10.2 of the *Residential Tenancies Act, 2018* the landlord/tenant are responsible to keep the premises clean and to repair any damages cause 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:

1. Obligation of the Landlord- 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.

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damaged caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential property.

Accordingly, in any damage claim, the applicant is required to show:
That the damage exists;

That the respondent is responsible for the damage, through willful or negligent act; and

The value to repair or replace the damaged item(s).

19. In review of the evidence and testimony offered by the landlord, I do not observe any evidence to indicate the damage to the flooring was the responsibility of the tenants as there were no pictures of the rental property prior to the tenants taking occupancy.

20. *Policy 9-003, Claims for Damages to Rental Premises of the Residential Tenancies Program* is applicable to the landlord's application. As stated within that policy, "When making a claim for damages, the applicant shall indicate the total amount of the claim and a detailed breakdown of the damages, with each item valued. In most circumstances, the Adjudicator must consider depreciation when determining the value of damaged property. The responsibility to prove the claim and to value each item of the claim lies with the applicant". The landlord did not supply with her application any evidence or testimony a breakdown of the damages. The landlord had claimed a contractor replaced the flooring. There was no information offered about the costs of this contractor, nor was there any evidence offered on the costs of the flooring or how much flooring was required.
21. *Policy 9-005, Life Expectancy of Property of the Residential Tenancies Program* also applies to the landlord's request for compensation for damages. As indicated within that policy, the life expectancy of hardwood finished flooring is 5 years. The landlord did not indicate the flooring was oak or pine which has an identified life expectancy of "lifetime" in Policy 9-005. The landlord testified during the hearing that the contractor had informed her that the flooring had previously been sanded which only applies to hardwood flooring and not laminate. When asked about the age of the flooring in the living room, the landlord described it as 8 or 9 years old.
22. The landlord's application for damages and for the security deposit applied against damages, based on the evidence and testimony presented fails.

Decision

23. The landlord's claim for damages in the amount of \$650.00 does not succeed. The landlord shall return the security deposit in the amount of \$650.00 to the tenants.

Issue # 2- Hearing Expenses - \$20.00

24. The tenants paid an application fee of \$20.00 (**Exhibit T # 2**). The tenants are seeking the cost.

Decision

25. As the tenants' claim is successful, the landlord shall pay for the hearing expenses.

Summary of Decision

26. The landlord shall return to the tenants the security deposit in the amount of \$650.00 and \$20.00 for the hearing expense.

13 February 2024

Date

Michael J. Reddy
Residential Tenancies Office