

Residential Tenancies Tribunal

Application 2023-0962-NL

Decision 23-0962-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 5-December-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] (respondent 1), hereinafter referred to as "the tenant" attended by teleconference. The respondent, [REDACTED] (respondent 2), hereinafter referred to as the "tenant" did not attend. Respondent 2 authorized respondent 1 to speak on her behalf (TT#1).

Preliminary Matters

4. The landlord submitted 2 affidavits with her application stating that she served the tenants with the notice of the hearing electronically by email to; [REDACTED] and [REDACTED] on 19-October-2023 (LL#1 & LL#2). Respondent 1 confirmed that both he and respondent 2 received the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written month to month rental agreement which commenced on 1-November-2021. The tenants vacated the unit on 31-August-2023. Rent was \$1500.00 per month, due on the first day of each month. A security deposit of \$1012.50 was paid on 1-November-2021 and is no longer in the landlord's possession.

Issues before the Tribunal

6. The landlord is seeking:
 - Compensation for damages \$194.32
 - Hearing expenses \$20.00

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 is the following section of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises.

Issue # 1: Compensation for Damages \$194.32

Relevant submissions

9. The landlord testified that when the tenants vacated the unit, the dead bolt on the back door was broken, paint was needed for the front porch and the premises needed to be cleaned. The landlord submitted a damage ledger to support her claim (LL#3). See below:

Compensation for Damages		
Submitted by:		Date: <u>September 27/2023</u>
Applicant:		
Respondent:		
Item #	Description of Damages	Compensation Claimed
1	Dead Bolt for Back door	\$ 49.44
2	Paint for Front Porch (damaged)	\$ 58.63
3	Window Cleaning	\$ 86.25
4		

Landlord's Position

10. The landlord testified that the 3 items listed above cost \$194.32 and she is seeking compensation for that amount. The landlord's position on each item is as follows:

Items 1: Dead bolt for back door (\$49.44) – The landlord testified that the dead bolt on the back door was 3 years old and upon inspecting the house after the tenant vacated, the property management company found that the dead bolt was not working properly. The landlord states that she had to purchase a new dead bolt and submitted a copy of the receipt to support her claim (Exhibit 6).

Item 2: Paint for front porch (\$58.63) – The landlord testified that there was damage to the wall in the front porch which required repair and paint. The landlord stated that it most likely occurred when moving furniture out of the house. The landlord submitted a copy of the receipt for paint to support her claim (Exhibit 6).

Item # 3: Cleaning (\$86.25) – The landlord testified that the windows were dirty, the fridge and microwave were dirty and there was garbage left at the unit. The landlord submitted photographs to show the condition of the unit (Exhibits 7-9) and a copy of the receipt for the cleaning (Exhibit 5).

Tenant's Position

11. Respondent 1 disputed items 1 and 3 above but did not dispute item 2. He responded to the landlord's claims as follows:

Items 1: Dead bolt for back door (\$49.44) – Respondent 1 did not dispute that the deadbolt was not working properly however, he did dispute that the damage was caused by him or respondent 2. Respondent 1 stated that the dead bolt was difficult to use since the beginning of the tenancy and he stated that the dead bolt would work for them if they kept flipping and turning it. Respondent 1 stated that the dead bolt would eventually work but it would take a few attempts.

Item 2: Paint for front porch (\$58.63) – Respondent 1 did not dispute that he caused the damage to the wall in the front porch while moving furniture.

Item # 3: Cleaning (\$86.25) – Respondent 1 disputed that the unit needed to be cleaned after they vacated. Respondent 1 stated that they left the unit in the same condition it was in when they took possession and he stated that they spent 10 hours cleaning and ensured it was a very thorough job.

Analysis

12. In accordance with *Residential Tenancies policy 9-3*, the applicants are required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

13. The landlord did not submit a *rental premises condition report* to show the condition of the unit prior to the tenancy, however she entered exhibits into evidence to support her claims. Based on the testimony of both the applicant and respondent 1, the items were analyzed as follows:

Items 1: Dead bolt for back door (\$49.44) – The landlord testified that the dead bolt on the back door was 3 years old and upon inspecting the house after the tenants vacated, the dead bolt was not working properly. Respondent 1 testified that the dead bolt was never working correctly but after several attempts it would eventually work. The landlord had a *property management company* inspect the house prior to the tenants moving in and they stated in a text message to the landlord that the property was in immaculate condition (LL#4). Based on a copy of the *property condition report* submitted by the tenant (TT#2), there weren't any problems with the dead bolt prior to the tenancy and based on the fact that the *property management company* did not identify any problems with the dead bolt, I accept that the damage to the dead bolt occurred after the tenancy. With that said, I am unsure if the damage to the dead bolt was caused due to a willful or negligent act caused by the tenants. The dead bolt could have failed to work properly for reasons out of the tenant's control. In accordance with Section 9-3 as stated above, I find that the landlord showed that the damage exists, but failed to show that the damage was caused by a willful or negligent act on the part of the tenants. For that reason, I find that the tenants are not responsible for the cost to replace the dead bolt.

Item 2: Paint for front porch (\$58.63) – The landlord testified that there was damage to the wall in the front porch which required repair and paint. Respondent 1 did not dispute that he accidentally hit the wall while moving furniture. I find that the tenants are responsible for cost of paint in the amount of \$58.63.

Item # 3: Cleaning (\$86.25) – The landlord testified that the windows were dirty, the fridge and microwave were dirty and there was garbage left in the back porch of the house and the garbage bin outside was overflowing. Respondent 1 disputed that there was any cleaning required, he testified that the house was left in the same shape as it was when they moved in. Based on the photographs entered into evidence, the windows were shown with some blackness on the windowsills and the landlord did not submit any photographs of the microwave or the fridge. There were photographs showing the garbage that was left behind which is understandable if move out day is not on garbage day. Based on the photographs, I find that the evidence does not support the requirement of a cleaning company and I find that bringing a garbage bin to the roadside on garbage day does not warrant a fee to the tenants. For those reasons, I find that the tenants are not responsible for any cleaning fees.

Decision

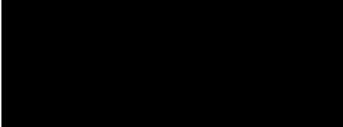
14. The landlords claim for damages succeeds in the amount of \$58.63.

Summary of Decision

15. The tenants shall pay the landlord \$58.63 for damages.

January 8, 2024

Date


Pamela Pennell
Residential Tenancies Office