

Residential Tenancies Tribunal

Application 2023-1064-NL
2023-1153-NL

Decision 23-1064-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 09-January-2024.
2. The applicants, [REDACTED] and [REDACTED] are represented by [REDACTED], hereinafter referred to as "the tenant," she attended by teleconference. [REDACTED] did not attend.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
4. The landlord submitted an authorized representative form (LL#01), naming [REDACTED] [REDACTED] she attended by teleconference.

Preliminary Matters

5. Both parties confirm receipt of notification of today's hearing on 05-December-2023, electronically from our office.

Issues before the Tribunal

6. The tenants are seeking:
 - Refund of security deposit \$825.00

The landlord is seeking:

 - Damages \$1,561.07
 - Security deposit retained against monies owed \$825.00

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: Damages \$1,561.07

Landlord's Position

9. The landlord stated that she had a written monthly agreement with the tenants. They moved in 01-January-2020 and they moved out on 29-October-2023. The tenants pay \$1,100.00 on the first day of each month for rent. They paid a security deposit 02-December-2019. She is still in possession of this deposit.
10. The landlord confirmed that her son gave the tenants notice of termination and that they agreed to them vacating early when they found new accommodations.
11. The landlord provided a damages ledger (LL#02) as follows:

Security deposit and deductions (LL#02)

Description	Amount	Total (w/tax)
Move out cleaning of property – 8 hours @ \$40.00	320.00	320.00
Garbage Removal from basement and dump delivery	300.00	300.00
Bannister post – main stairwell	157.00	180.55
Bannister post installation	120.00	120.00
Window screens damaged – master and living rooms	99.98	114.97
New dryer – door dented and damaged (50%)	250.00	250.00
Floor – burn on second bedroom floor	150.00	150.00
Baseboard water damage in kitchen	57.00	65.55
Removal and replacement of baseboard	60.00	60.00
Total		\$1,561.07

12. The authorized representative said that she did the final walkthrough with the tenants when they were moving. When they went through the house the tenant told her that they still had some cleaning left to complete. They returned the keys the next day.
13. She said that when they went in the next day the house was still dirty. She confirmed that the floors were cleaned but the remainder of the house was not. The kitchen was really dirty, there was food and debris left behind, the cupboards were not cleaned. Behind and inside the appliances were dirty. Even the washer and dryer were not cleaned. The toilet was dirty with urine stains and the shower was unclean. The windowsills were also unclean. She provided pictures (LL#04). They hired a cleaning company and provided a receipt (LL#06) for \$320.00.
14. The authorized representative responded to the accusation of the tenant, that the cleaning receipt is not a “true receipt,” she questions what makes a receipt true? She said that the landlord hired someone through Kijiji, they cleaned, and this is the receipt they were provided (LL#06). They requested the receipt after the work was done because the tenant wanted proof of cost. She doesn't dispute that the receipt was

requested from the cleaner for the evidence for the hearing. She doesn't know if this is a company, or just a lady who cleans for cash. She said that they hired a company from Kijiji and required two people because in addition to the cleaning, they had to move the garbage out of the basement.

15. In addition to the cleaning, they are seeking the removal of garbage and junk in the basement. She provided pictures (LL#03). She said that there was junk and garbage left in the basement. When she was doing the walkthrough, the tenants told her that there was mold in the basement and that she shouldn't go down there. The next day, she and the landlord's son entered the basement, the lights did not work so they replaced the bulbs. They did not find mold. She said that there were belongings left down there that had been rifled through. There was even a wok with old food still in it. She said that there were bags of recycling down there. She explained that there was no mold, but the smell of rotting garbage and recycling. She claimed that the tenants were told that this area was not to be used for storage because it is a dirt floor basement and there could be moisture. She states everything in the basement was garbage with no value and it had to be removed. She disputes that the tires were new, she said that they were old.
16. The landlord said that the tenants had been told in the past to remove the garbage bags from the basement.
17. The authorized representative said that after the cleaners brought everything up out of the basement, the landlord's son and two friends took the garbage to the dump. He rented a U-Haul. They are seeking \$300.00 for the cost of the truck rental and personal time.
18. The authorized representative explained that she did not know that the wardrobe was the property of the landlord. She said that the doors were unable to be reattached, so they got rid of it. This was disposed of with the garbage that was left behind.
19. The authorized representative questioned where the tenant got her pictures, and inquired if they were from the listing of the house. She said that the pictures looked quite similar to the pictures used to advertise the house. Regardless, her pictures were close ups and show the dirt left behind unlike the general room pictures submitted by the tenant.
20. The authorized representative said that when they did the walk through the male tenant stated that the only damages were to the banister and a large dent in the one-year-old dryer. The next day she also noticed that there was damage to one of the bedroom floors (LL#09), and she said that during the walkthrough the previous day she recalled that they were cleaning the flooring in that room and the bucket was covering the damages. She said that the tenants tried to replaster the wooden banister and had a coat hung over it. She also declared that the baseboard in the kitchen was bowed and damaged. She said in the email they agreed that this damage occurred. She provided the email (LL#07). She said that they have not repaired the damages and therefore estimated the cost of the repair based on checking the prices online and speaking with a contractor. She explained the cost requested for the dryer was based on a portion of the purchase price, receipt provided (LL#05). There is a large dent in the door of the dryer, and she doesn't know if that will impact whether or not it will work.

21. The authorized representative said that there were 5 or 6 screens that were damaged or missing. They realized that there were two that were damaged however there were some already missing prior to the tenants moving in. They were not sure which were missing before the start of the tenancy they are therefore only seeking the cost of the damaged screens in the bedroom and living room. She said that at Home Depot a small screen costs \$49.99 x 2. She provided pictures of the damaged screens (LL#08). She did not provide receipts or quotes.
22. The authorized representative states that they tried to be fair in their estimates and that if you check the cost of replacement on any hardware store website it will show that they underestimated the costs. She said that the damages exist and require repair. She doesn't understand the tenant's dispute that although they acknowledge doing the damage, they don't accept her assessment of the amount owed. She declared that clearly if these things are damaged, it will cost money for the repairs to be completed. She didn't provide receipts because she thought that the tenants had accepted responsibility for these damages based on their previous email communication (LL#07).

Tenants' Position

23. The tenant confirms the details of the rental agreement and security deposit. She explained that initially they had an agreement for a one-year term. Currently they are in a monthly term.
24. The tenant said that the landlord's son gave them a three month notice on 02-October-2023, and that both parties agreed when they found a new rental that they could end the agreement early. She said that they moved out on 29-October-2023.
25. The tenant explained that the authorized representative came to do the walkthrough instead of the landlord's son. This was the first time that they had met her and that they were expecting the landlord's son.
26. The day before the walkthrough, 27-October-2023, they contacted the landlord's son to say that they believed that the basement had mold. She explained that her partner works as a health, safety and environment advisor and has experience with this. They believed it would be dangerous to disturb the belongings in the basement as this could disturb the mold spores. She disputes that they were told not to store things in the basement, and she disputes that the belongings were garbage, or that there was a lot of recycling and that there was a wok left down there. She states that the landlord's pictures show a variety of angles of the same bags. She also said that what was left in the basement was not garbage but actual belongings with value, like a new set of tires.
27. She determined that there was a wardrobe left behind, this belonged to the landlord and doesn't belong to them. She said if the landlord chose to dispose of the wardrobe that is up to her, but the disposal is not their responsibility.
28. The tenant points to her evidence she has provided pictures showing that the floors were cleaned and are still damp in the pictures (TT#01 & 02). She also provided pictures showing that doors to two of the cupboards are open and are clean inside (TT#03). She said that the stove is shown in her picture (TT#04) and that there is some discoloration

around the left burner but it is clear that the stove is clean. It doesn't make sense that they would clean the stove except one burner and that this is just a discoloration caused by rust. She concedes that they did miss the shelf inside the freezer door but the fridge itself was cleaned out and she provided pictures (TT#05). The tenant also concedes that there is some lint inside the washer, but this is just from regular use. She also doesn't see that there is urine around the toilet, there is a hardwater stain, but they don't leave urine on or around the toilet (TT#06). She said that they didn't pull the appliances out, they weren't on wheels, and they didn't want to risk tearing the flooring. She said behind the fridge, stove, washer, and dryer there may have been some debris that would take a few minutes to sweep up, but this wouldn't require much time.

29. They take issue with the professional cleaning; she states that the receipt (TT#11) provided by the landlord is not a true receipt. She explains that they reached out to [REDACTED] and has provided their messages (TT#07) where she says she didn't do this work and a copy of the invoice used by [REDACTED] (TT#08) to show that the receipt is not from her company. She said that the receipt provided by the landlord contains a phone number from [REDACTED] she provided a contact information from her phone (TT#09) as well as a video of her calling the line (TT#10). She also stated that in properties, the receipt document was created about 5 hours before it was sent to them in evidence.
30. She said that her photos (TT#12 – TT#38) show that the floors were cleaned and that the house is cleaned. She said that photo (TT#03) shows that the cupboards are cleaned out and that photo (TT#04) shows that the stove was cleaned and that there is a rust ring around one of the burners but clarifies that this is an older stove and said it doesn't make sense that someone would clean all the top of the stove and not clean one burner. There may have been some small jobs remaining, but she doesn't understand what would require 8 hours of cleaning.
31. The tenant said that the only picture from the listing of the house is the photo of the wardrobe (TT#38) that she used to show that it was the property of the owner.
32. The tenant explained that they do accept responsibility for the damages to the banister the dryer, the flooring and the window screens. However, she doesn't accept the authorized representative's estimates for the value of the repairs. The repairs are not complete, and they have not provided estimates or receipts to show the value of the work.
33. The tenant doesn't know which baseboard is being sought. She said that there was dampness in the house and that they accepted responsibility, however that acceptance was tied to the proof of cost. She doesn't agree that they should have to pay for repairs when there is no proof of cost.

Analysis

34. The *Residential Tenancies Act, 2018*, Section 10 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.

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)

35. The landlord and tenant evidence submitted by both parties tell a different story. The landlord's evidence clearly shows that the rental was not left clean and that there were damages. The tenant's evidence disputes that claim and shows sweeping pictures of the rooms, clearly demonstrating that the main part of the house had all the belongings removed and the rental was empty and cleaned. The difference in the evidence is explained by the authorized representative in paragraph 19 when she states "Regardless, her pictures were close ups and show the dirt left behind unlike the general room pictures submitted by the tenant." After close viewing I agree with the authorized representative that the wide angel view doesn't tell the whole story and that the detail of the condition is clearly shown in the landlord's photos (LL#03 & 04). For example, the tenant's picture of the fridge (TT#05) only displays the bottom two shelves, the landlord's picture (LL#04) shows all three shelves and is taken so that you can not only see the dirt inside the fridge, but also clearly shows the dirt in the vent on the outside bottom of the fridge, this is also noticeable on the tenant's picture but it is next to where the picture cuts off and would not be immediately noticeable. The tenant's pictures of the bathroom (TT#37) show the whole room; however, the landlord's pictures (LL#04) show the inside of the toilet and shower where the surfaces are unclean. The landlord's pictures also display (LL#04) the dirt on the outside and behind appliances as they are pulled away from the wall.
36. The tenant is correct in stating that the landlord must not only show proof of the damages but also provide proof of the cost. The landlord did supply a receipt (LL#06) for \$320.00 for cleaning. During the hearing the tenant questions whether this receipt is a true receipt. The tenants submitted evidence of a Kijiji ad (TT#07) for a cleaner with the same name, that cleaning company's information and she questioned the credibility of the cleaning company used by the landlord.
37. In the evidence submitted by the tenants a video was submitted (TT#10) that shows a person calling the cleaner's number listed on the landlord's receipt (LL#06). When the answering service picks up the message states "Hi there you have reached [REDACTED] please leave a message at the beep." It is reasonable to assume that potentially two people with common names have two separate cleaning services advertised on Kijiji. Just because the cleaner contacted by the tenant isn't the cleaner hired by the landlord, doesn't mean that the receipt is fraudulent. The tenant's video evidence of calling the number on the landlord's receipt and the answering service stating that you have reached the business listed on the receipt shows that the service and receipt are true. I accept this receipt. I accept the cleaning required by the landlord and find that the tenants will pay \$320.00 to the landlords for cleaning.
38. I agree that the landlord's evidence (LL#03) shows that the tenants left garbage behind in the basement. The parties gave conflicting testimony on the presence of mold, however just because mold is present on belongings, does not automatically make this

the burden of the landlord. The landlord stated that the tenants were told not to store belongings on the dirt floor in the basement. The storage of belongings in a damp area, without ventilation, could cause the growth of mold. The tenants are responsible to remove their items and return the rental in the same condition as it was received. The tenants should have arranged for the removal of their belongings, they did not and then this burden became that of the landlord. I accept that the landlord's son had to rent a vehicle and required help from friends to dispose of the belongings. However, I do acknowledge that the tenant has a point in that no receipts have been provided to show the value of this work. I will award an amount of \$150.00 for this service that the tenant will pay to the landlord.

39. The landlord and tenant both agree that the tenants damaged the banister, screens, flooring and baseboard. The tenant determined that their agreement of responsibility is contingent upon the proof of cost. The landlord has the burden of proof of cost, and the tenant has a point in that no receipts have been provided to show the value of the supplies and installation. As the tenant has agreed that the damages occurred, and the landlord has been burdened with the cost of repairs I will make an award based on the landlord's estimate of \$691.07, for the cost of supplies and installation. I will award \$300.00 to the landlord for the cost of these repairs.
40. Finally, the landlord is seeking \$250.00 of the cost of the one-year-old dryer. She did provide a receipt for \$599.00 (\$688.85 after tax) (LL#05) and the tenant did accept responsibility for the damages. The authorized representative had concerns that as well as the esthetic damage of the large dent in the door could impact the function of the dryer. I accept this concern and consider the estimate of \$250.00 in compensation reasonable.
41. The tenant shall therefore pay to the landlord \$1,020.00 for damages and cleaning, as follows:
- Cleaning\$320.00
 - Garbage removal150.00
 - Damages300.00
 - Dryer250.00
 - Total\$1,020.00

Decision

42. The tenant shall pay to the landlord \$1,020.00 for damages and cleaning.

Issue 2: Security deposit retained against monies owed \$825.00

Issue 3: Security deposit returned \$825.00

Relevant Submissions

43. Both parties agree that the tenants paid an \$825.00 security deposit (paragraphs 9 & 23). They are both requesting that the money be retained or refunded in accordance with the *Act*.

Analysis

44. The landlord's claim for losses has been successful (paragraph 42); she shall retain the deposit 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

Decision

45. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$825.00.

Summary of Decision

46. The tenants shall pay to the landlord \$195.00 as follows:

- Damages and cleaning \$1,020.00
- Less security deposit (825.00)
- Total \$195.00

The landlord shall retain the security deposit against monies owed.

January 12, 2024

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office