

Residential Tenancies Tribunal

Application 2023-1065-NL &
2023-1089-NL

Decision 2023-1065-00 &
2023-1089-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 11 December 2023 via teleconference. The hearing was to adjudicate two separate applications: 2023-1065-NL and 2023-1089-NL.
2. [REDACTED] hereinafter referred to as "the landlord", attended the hearing. The landlord did not call any witnesses.
3. [REDACTED] hereinafter referred to as "tenant1", attended the hearing. [REDACTED] hereinafter referred to as "tenant2", did not attend the hearing. The tenants did not call any witnesses.

Preliminary Matters

4. The landlord submitted an affidavit (**Exhibit L # 1**) indicating tenant1 was served electronically with notification of the hearing on 16 November 2023 at approximately 5:59 PM [REDACTED] Tenant2 was served electronically with notification of the hearing on 21 November 2023 at approximately 5:15 PM [REDACTED] Tenant1 confirmed receipt of notification as stated.
5. The landlord did not seek any amendments to her application.
6. The tenants submitted an affidavit (**Exhibit T #1**) indicating landlord was served electronically with notification of the hearing on 24 November 2023 at approximately 1:52 PM [REDACTED]
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 landlord is seeking the following:

1. Compensation for Damages in the amount of \$1,791.03
2. Rental arrears in the amount of \$1,800.00
3. The Security Deposit of \$1,350.00 to be used against monies owing
4. Hearing expenses in the amount of \$20.00

9. The tenants are seeking the following:

1. Return of security deposit in the amount of \$1,350.00

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- \$1,350.00

Landlord Position

12. The landlord testified there was a 12-month written fixed term rental agreement which started on 26 August 2023 at [REDACTED] (Exhibit L # 2). The monthly rent amount was set at \$1,800.00 due on the first of each month and there was a security deposit collected on this tenancy of \$1,350.00 collected on 28 August 2023 which the landlord remains in possession of.
13. The landlord stated she started as the property manager in September 2023 and both tenants had been occupants at that time. She testified on 30 October 2023, both tenants had vacated the property after which she observed damages to the bathroom of the rental property.
14. The landlord testified after the tenants had vacated the rental property, there were damages observed in the bathroom which included damages to the bathroom sink and vanity. In addition, the landlord stated there was cleaning required for mold and mildew in the rental property and to hire a plumber to repair damaged plumbing.
15. The landlord offered pictures of the bathroom after occupancy (Exhibit L # 3A-3F) 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 plumbing, sink and vanity and for cleaning of mold and mildew. The landlord described the rental unit as being “maybe 60 years old” and she did not offer evidence of the bathroom prior to the tenants gaining occupancy to the rental in August 2023.

Tenants Position

16. Tenant1 did not dispute any of the information offered by the landlord in relation to the rental agreement. Tenant1 stated he, [REDACTED] in August 2023 as he was a graduate student at a local post-secondary institution in St. John's, NL. He testified that they had observed damages in the rental unit immediately following their occupancy. Tenant1 stated following plumbing concerns in the unit, he requested the landlord to complete repairs (**Exhibit T # 2**). He also expressed concerns and safety concerns for his family and the rodents which were observed at the rental property which he informed the landlord about (**Exhibit T # 3**). Tenant1 did dispute that the damages to the bathroom resulted from actions of he and his family and stated due to sanitary concerns, they vacated the property on 30 October 2023 after issuing the landlord notification of their intentions of leaving on 21 October 2023.
17. Tenant1 was of the opinion the landlord failed to respond to his requests for repair of damages which resulted in the rental not being sanitary for himself and his family.

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 bathroom was the responsibility of the tenants as there were no pictures of the rental property prior to the tenants taking occupancy.

20. What has to be considered in the landlord's application is Policy 9-003 which states, "*Claims exceeding the amount of the security deposit shall be accompanied by a least one independent written estimate or receipts*". On review of all of the evidence with the landlord's application, I do not observe any estimates or receipts. The application of damages is in excess of the \$1,350.00 security deposit. *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 and repaired the sink and vanity of the bathroom. There was no information offered about the costs of this contractor aside from the claim that the plumber worked for 1 hour on the repair. There was no evidence offered on the age of the sink and vanity which was replaced, when those items were last updated, or if there was a need for a complete replacement of those items.

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 a vanity is 20 years. The life expectancy of piping is 20 years. Life expectancy of a high-quality faucet set is 12 years. Low quality is 8 years. The landlord did not offer any insight into the material of the vanity (i.e. MDF versus wood), did not offer insight into the bathroom sink, and did not offer any insight as to when those items were last repaired/updated.

22. The landlord did offer a picture of a shower curtain rod which reveals damage. That said, policy 9-005 indicates life expectancy of this item is 20 years. The landlord in both her evidence and testimony did not offer any insight into the age of this item or insight as when this item was last replaced/repaired.

23. The landlord did provide with her application a picture of the bathtub as well as a picture of the vanity of the rental unit. Upon review of this piece of evidence, I do observe mold and mildew. What I do not observe with the landlord's application is a breakdown of the cleaning of the rental unit, aside from a claim the cleaning had taken 6 hours. There is no evidence indicating the breakdown of the cleaning, including materials purchased for the cleaning or a receipt presenting the actual amount.

24. Based on the evidence and testimony presented the landlord's application for damages and for the security deposit to be applied against damages, fails.

Decision

25. The landlord's claim for damages in the amount of \$1,791.03 does not succeed.

Issue # 2- Renal Arrears- \$1,800.00

Landlord Position

26. The landlord provided with her application a written rental agreement (**Exhibit L # 2**). The landlord testified on 30 October 2023, she received notification that the tenants would be vacating the rental premises which she described as not an appropriate notification (**Exhibit L # 4**) and she was seeking rental arrears for November 2023 in the amount of \$1,800.00. Along, with her application, the landlord also provided a rental ledger (**Exhibit L # 5**).

Tenant Position

27. Tenant1 offered testimony that due to concerns with hygiene and rodents within the rental unit (**Exhibit T # 3**), he and his wife were concerned with the safety of themselves and their two children. He stated that after repeated requests for the landlord to repair the leaking water pipe of the rental unit, he and his wife informed the landlord they would be vacating the premises by the end of October 2023 (**Exhibit T # 4**).

Analysis

28. Upon review of the written rental agreement signed by the landlord and tenants, I observe a fixed term rental agreement which started on 26 August 2023. Section 18 (1)(C) of the *Residential Tenancies Act, 2018* is applicable to this situation. As stated in this section:

Notice of Termination of Rental Agreement

18 (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term

29. Upon review of the tenant's correspondence to the landlord indicating the vacate of the property (**Exhibit T # 4**), consideration must be taken into the direction offered by Section 34 of the *Residential Tenancies Act, 2018* in relation to requirements of notices between landlords and tenants. As defined in Section 34:

Requirements for notices

34. A notice under this Act shall

(a) be in writing in the form prescribed by the minister;

(b) contain the name and address of the recipient;

(c) identify the residential premises for which the notice is given; and,

(d) state the section of this Act under which the notice is given.

30. In review of the termination notice, I do not observe the address of the recipient, the identified residential premises for which the notice is given, or do I see the section of the *Act, 2018* for which the notice is given. In addition, the tenants requests for repairs, does not identify the residential premises, state the section of the *Act* and is not in writing in the form as prescribed.

Decision

31. The landlord's claim for a payment of the rent succeeds in the amount of **\$1,800.00**.

Issue # 3- Security Deposit applied against Monies Owed

32. The landlord's claim for damages has not been successful as per paragraph 25. The landlord's claim for rental arrears did succeed.

33. Section 14 of the *Residential Tenancies Act, 2018* states:

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.

Analysis

34. Upon review of the landlord's Application for Dispute Resolution (**Exhibit L # 2**), the landlord had filed a claim identifying both rental arrears and for the security deposit to be applied against monies owed.

Decision

35. The security deposit (\$1,350.00) shall be retained against monies owed.

Issue # 3- Hearing Expenses- \$20.00

36. The landlord paid an application fee of \$20.00 (**Exhibit # 4**).
37. As the landlord's claim has been partially successful, the tenants shall pay the \$20.00.

Decision

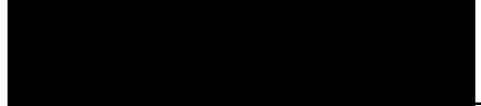
38. The landlord's claim for hearing expense succeeds in the amount of \$20.00.

Summary of Decision

39. The landlord's claim for damages does not succeed.
40. The tenants' claim for return of the security deposit does not succeed.
41. The tenants' shall pay the landlord **\$470.00** as follows:

- Rental arrears.....\$1,800.00
- Hearing Expenses.....\$20.00
- Less Security Deposit retained... **\$1,350.00**
- Total.....**\$470.00**

14 March 2024
Date


Michael J. Reddy
Residential Tenancies Office