

Residential Tenancies Tribunal

Application 2023-1073-NL &
2023-1158-NL

Decision 2023-1073-00 &
2023-1158-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 1:45 PM on 18 December 2023 via teleconference. The hearing was to adjudicate two separate applications: 2023-1073-NL and 2023-1158-NL.
2. [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.
3. [REDACTED] representative for [REDACTED] hereinafter referred to as "the landlord", attended the hearing. The landlord did not call any witnesses.

Preliminary Matters

4. Tenant1 indicating the landlord was served electronically with notification of the hearing on 27 November 2023 [REDACTED] The landlord did not dispute receipt of the notification.
5. The tenants did not seek any amendments to their application.
6. The landlord submitted an affidavit (**Exhibit L #1**) indicating the tenants were served electronically with notification of the hearing on 8 December 2023 at approximately 11:42 AM [REDACTED] and [REDACTED] This was insufficient notice of service. Tenant1 wished to waive the 10-day rule.
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 \$1,387.50
 2. Return of Rent for November 2023 in the amount of \$1,850.00

9. The landlord is seeking the following:
 1. Compensation for damages in the amount of \$280.00
 2. Rental Arrears in the amount of \$75.00
 3. Payment for utilities in the amount of \$ 454.91
 4. Security Deposit in the amount of \$1,387.50 to be used against monies owing
 5. Hearing Expenses in the amount of \$20.00

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 these cases are sections 10, 14, 18, 31 and 34 of the *Residential Tenancies Act*, 2018. As well, *Residential Tenancies Policies* # 9-003, *Claims for Damages to Rental Premises* and # 9-005, *Life Expectancy of Property*.

Issue 1: Compensation for Damages/Cleaning of the rental

Landlord Position

12. The landlord testified there was a written fixed term rental agreement (**Exhibit L # 2**) which started on 1 September 2023 in relation to the tenants and the rental property at [REDACTED] The monthly rent amount was set at \$1,850.00 due on the first of each month and there was a security deposit collected on this tenancy of \$1,387.50 collected on 18 July 2023 which remains in the landlords possession.

13. The landlord testified she was not seeking damages to the rental property, but rather is seeking costs associated with having to clean the rental unit after the tenants vacated the property on 30 October 2023 in the amount of \$280.00. Along with her application, the landlord provided inspection reports with pictures prior to the tenants occupying the rental (**Exhibit L # 3**), as well as pictures inside [REDACTED] after the tenants vacated (**Exhibit L # 4**).

Tenants Position

14. Tenant1 disputed the testimony of the landlord that the rental unit had to be cleaned after they had vacated on 30 October 2023. Tenant1 stated prior to their leaving [REDACTED] they ensured it was clean and summarized, “we only lived there for two months”.

Analysis

15. 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 observe an inspection report with pictures of the rental prior to the tenants obtaining occupancy which the landlord supplied with her application (**Exhibit L # 3**), as well as pictures taken inside the rental unit after the tenants vacated (**Exhibit L # 4**). What I observe in review of these two separate pieces of evidence is that the rental did require cleaning, however there are similarities as well. For example, both inspection reports indicate dirty doors and windows of the rental, yet I do observe materials on the floors of the rental and dust, dirt and what appears to be mildew on the floors and in the bathroom. Cleaning was required.
20. The landlord during the hearing described her damage claim as being related to cleaning which was required after the tenants had vacated [REDACTED] I do accept the testimony offered and evidence in relation to this claim. Questions remain with this claim however.
21. Section 09-003 of the *Residential Tenancies Program: Claims for Damages to Rental Premises* is applicable to this 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 damages with each item valued*".
22. The landlord specified an amount of \$280.00 for cleaning. There was no evidence provided by the landlord with her application such as a receipt for cleaning with a breakdown of the cost with the cleaning, nor was there any testimony offered about how

long the cleaning took or who completed the cleaning. As I do not have information about the cleaning, I will rely on policies of the *Residential Policies Program* and make the assumption an employee of the landlord completed the cleaning of the rental unit.

23. Section 09-005 of the *Residential Tenancies Program, Life Expectancy of Property* offers clear guidelines related to this issue. This policy breaks down labour as follows, “*Self-Labour= Minimum Wage (\$15.00) + \$8.00 per hour = \$23.00*”. Based on the amount offered with the landlord’s application, this amount equates to 12 hours of work ($280 \div 23 = 12.17$ hours of work).
24. In full review of the pictures of the rental unit after exit by the tenants (**Exhibit L # 4**), I observe windows that need to be cleaned, floors which have to be cleaned, an oven which needs cleaning, along with dusting. For a three-bedroom house, this is significant cleaning, however I do not find that it would have required 12 hours of work. I estimate that a reasonably industrious and able-bodies person could complete the job in 6 hours at most. Following the labour equation as presented in policy, this amounts to \$138.00. That equation is as follows, Minimum wage (\$15.00) + \$8.00 = \$23.00 x 6 hours = \$138.00.

Decision

25. The landlord’s claim for damages in the amount of \$138.00 succeeds.

Analysis

26. The tenants shall compensate the landlord in the amount of **\$138.00** for cleaning of [REDACTED]

Issue # 2- Rental Arrears= \$75.00

Landlord Position

27. The landlord offered testimony that she was seeking rental arrears for November 2023 in the amount of \$75.00. The landlord stated the tenants had provided insufficient notice they would be vacating their fixed term rental agreement which started on 1 September 2023 and scheduled to end on 31 August 2024 (**Exhibit L # 2**). She testified the tenants vacated the rental on 30 October 2023. Along with her application, the landlord offered a rental ledger (**Exhibit L # 5**) which suggested that on 1 November 2023, \$1,775.00 a direct withdrawal payment from the tenants’ bank account and \$75.00 rental arrears remained on the November 2023 rent amount.
28. The landlord testified that she was only seeking rental arrears for November 2023 as she was able to secure new tenants by 1 December 2023.

Tenant Position

29. Tenant1 stated he was seeking reimbursement for \$1,775.00 for rent paid for November 2023. He testified he did not feel he was responsible for November's rent as they vacated the rental property on 30 October 2023.

Analysis

30. Tenant1 did not offer any evidence or testimony of issuing the landlord a termination notice. He did state he was out of the rental property by 30 October 2023. The landlord did not dispute this.

31. Upon review of the Rental Agreement submitted by landlord along with her application (**Exhibit L # 2**), I observe that the tenants were in a fixed term rental agreement. Section 18 (1) of the Residential Tenancies Act, 2018 outlines the requirements of tenants terminating their rental agreement. As stated in that 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 a rental period where the residential premises is rented for a fixed term

32. In addition to the requirements of section 18 of the Act, Section 34 also is applicable to this situation. Section 34 sets out the requirements of any notice. As stated within Section 34:

34. Any notice under this Act shall:

- Be in writing in the form prescribed by the Minister;**
- Contain the name and address of the recipient;**
- Identify the residential property for which the notice is given; and,**
- State the section under the Act under which the notice is given.**

33. As the tenants did not issue the landlord a notice to terminate the fixed rental agreement, I find the landlord's claim for rental arrears of \$75.00 succeeds.

Decision

34. The tenants shall pay the landlord **\$75.00** in rental arrears and the tenant's request for reimbursement for rent for November 2023 fails.

Issue # 3- Payment for utilities- \$454.91

Landlord Position

35. The landlord was seeking \$454.91 for utilities outstanding and offered testimony that of this amount, \$430.40 was for furnace oil and \$24.50 was for utilities. Along with her application, the landlord provided a copy of the fixed term rental agreement (**Exhibit # 2**) and testified that as indicated within the agreement, it is the tenants' responsibility to pay utilities.
36. Along with her application, the landlord provided a receipt for furnace oil equaling \$430.41 which was delivered to [REDACTED] on 4 November 2023 (**Exhibit L # 6**). The landlord testified during the hearing that this amount was not to fill the oil tank in full, "only 1/2 fill".
37. The landlord offered testimony that, as defined within the rental agreement the tenants were responsible for payment of utilities. Along with a receipt for furnace oil, the landlord also provided a Newfoundland and Labrador Power bill equaling a payment up to 1 December 2023 for [REDACTED] (**Exhibit L # 7**).

Tenant Position

38. Tenant1 disputed that he was responsible for the furnace oil and expressed his willingness to pay the power bill of \$24.50, but stated he was not responsible for the furnace oil as he, "left by 30 October 2023".

Analysis

39. As tenant1 expressed his willingness to pay the outstanding power bill of \$24.50, the landlord's claim succeeds for payment of the power bill.
40. Upon review of the written rental agreement offered by the landlord, along with her application (**Exhibit L # 2**), I review section and observe part 11 of that Standard Rental Agreement which indicates the following, "Tenant responsible for utilities". As indicated in paragraph 33, the tenants did not provide the landlord a valid notice to terminate the rental agreement. I also review the receipt from Ultramar dated for 4 November 2023 (**Exhibit L # 6**) addressed for [REDACTED] where 249.9 liters of oil was added to a 900 liter furnace oil tank equaling \$430.41, which is consistent with the landlord's claim that up to half a tank of furnace oil was delivered.
41. Tenant1 was of the opinion he was not responsible for heating oil due to the fact that he left the rental by 30 October 2023. The furnace oil was replaced by 4 November 2023 and as furnace oil is replaced after use, I find the tenants are responsible for the furnace oil bill as described in the rental agreement.

Decision

42. The landlord's claim payment of utilities of both **\$24.50** and **\$430.41** succeeds.

Issue # 4- Hearing Expenses

43. The landlord paid an application fee of \$20.00 (**Exhibit L # 8**) and is seeking the cost.

Decision

44. Both the landlord and the tenants are responsible for the costs associated with the hearing expenses for their applications.

Issue # 5- Return of Security Deposit/To be used against monies owing

Landlord Position

45. The landlord offered testimony a security deposit in the amount of \$1,387.50 was collected on this tenancy on 18 July 2023 and she was seeking this to be applied against monies owed by the tenants.

Tenant Position

46. Tenant1 was requesting for the return of the security deposit paid on this tenancy in the amount of \$1,387.50 and submitted along with their application a receipt of payment of the security deposit (**Exhibit T # 1**).

Analysis

47. Section 14 of the *Residential Tenancies Act, 2018*, clearly defines guidelines and criteria around security deposits. As defined in Section 14:

Security Deposit

...
(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.*

...
(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

...
10(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

48. As both the landlord and tenant1 have made application in relation to the security deposit on the tenancy and prior issues in this decision have been adjudicated, I find that the landlord is entitled to a portion of the security deposit and the tenants are entitled to a portion of the security deposit paid on this tenancy. This is broken down as follows:

- The landlord is entitled to **\$667.91** of the security deposit as determined by the following:

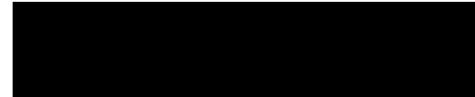
a./ Cleaning.....	\$138.00
b./ Rental Arrears.....	\$75.00
c./ Power Bill.....	\$24.50
d./ Heating Oil.....	\$430.41
e./ Total.....	<u>\$667.91</u>
f./ Less Security Deposit.....-\$1,387.50	
g./ Total owing to tenant..... <u>\$719.89</u>	

Summary of Decision

49. The landlord shall retain the amount of **\$667.91** of the security deposit.
50. The landlord shall pay the tenants the remainder of the security deposit in the amount of **\$719.89**.
51. The landlord and the tenants shall cover the costs of the hearing expenses for their own applications.

06 March 2024

Date



Michael J. Reilly
Residential Tenancies Office