

Residential Tenancies Tribunal

Application 2023 No. 1145NL

Decision 23-1145-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 23 April 2024 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, was not in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$1161.50 in compensation for damages,
 - An order for a payment of rent in the amount of \$1150.00,
 - An order for a payment of “other” expenses in the amount of \$2127.50, and
 - Authorization to retain the \$862.00 security deposit.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision are policies 09-003: Claims for Damage to Rental Premises and 09-005: Depreciation and Life Expectancy of Property, as well as rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. This hearing was originally scheduled to be heard on 11 January 2024. It was rescheduled and reheard on 23 April 2024.

7. The tenant was not present or represented at the rescheduled hearing on 23 April 2024, and I was unable to reach her by telephone. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlords testified that they had served the tenant with the notice of the first hearing by registered mail, and the associated tracking history shows that it was delivered on 01 December 2023. The tenant was served with the notice of the rescheduled hearing by this Section on 04 April 2024. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

Issue 1: Compensation for Damages - \$1161.50

Relevant Submissions

8. The landlords stated that the tenant, along with another person, moved into and jointly rented the premises in August 2020. On 01 May 2023, the tenant took over as sole leaseholder, and a copy of the fixed-term lease she entered into at that time was submitted with the application. That lease was to expire on 30 April 2024 and the monthly rent was set at \$1150.00 per month. It is also acknowledged in the lease that the tenant had paid a security deposit of \$862.50.
9. In July 2023, the tenant informed the landlords that she had purchased her own home, and that she would be moving out at the end of September 2023. She vacated on 30 September 2023.
10. The landlords stated that when they regained possession of the property, they discovered that the tenant had caused some damages to the unit which had to be repaired, and with their application they submitted an invoice showing that they were charged \$1161.50 for the following work:
- Remove main bath door and supply/install new
 - Remove damaged main bath light, supply/install new
 - Re-work damaged kitchen cabinet door
 - Supply/install new patio door screen
 - Replace header hardware at foyer closet door
 - Replace light bulbs throughout home

The submitted invoice did not indicate the charges for each line item.

Bathroom door

11. With their application, the landlords submitted 11 photographs showing the condition of the property after the tenant moved out, and one of those photographs shows that the bathroom door had a large crack in it. That door had to be replaced and a new one was installed. The landlords stated that in 2020, when the tenant moved in, that door was approximately 16 years old.

Bathroom light

12. The landlords stated that the light fixtures in the bathroom had been removed by the tenant during her tenancy. They claimed that one of these fixtures was broken, and another could not be reinstalled because the screws were missing. New fixtures were purchased and installed by their contractor. No photographs were submitted with the application showing this damage, and the landlords did not know how much the replacement fixtures cost. They testified that these light fixtures were approximately 10 years old.

Cabinet door

13. The landlords stated that the tenant had been using a deep-fryer under one of the cabinet doors and that door was burnt up when the tenant vacated. They claimed that the door was either repaired or replaced by their contractor. No photographs were submitted showing this damage and the landlords did not know what they were charged for that particular repair. The landlords stated that these cabinets were already in the home when they purchased it 20 years ago.

Patio screen

14. The landlord also complained that the screen for the patio door had holes in it and had to be replaced. No photographs were submitted showing this damage. The landlords stated that this screen was about 10 years old.

Closet door

15. The landlords also claimed that a bi-fold closet door was found to be hanging off its tracks after the tenant moved out and the hardware for that door had to be replaced. That door was between 20 and 24 years old. No photographs were submitted showing that damage.

Light bulbs

16. The landlords also stated that their contractor replaced some lightbulbs throughout the unit after the tenant vacated, though they did not know how many required replacing.

Analysis

17. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a willful 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)

In accordance with Residential Tenancies policy 09-003, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 09-005.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

18. Based on the evidence presented at the hearing, I have reached the conclusion that the landlords are not entitled to an award in compensation for damages. Except for the photograph of the bathroom door, no other evidence was presented to establish that the other items listed on the contractor's invoice were damaged. No photographs were submitted showing the condition of these items

after the tenant moved out, and there was no report of an incoming or outgoing inspection. And with respect to that door, although I agree with the landlords that it is damaged, based on the submitted photograph, the submitted invoice does not help me reach a determination on what costs the landlords had incurred to replace the door as the invoice only provides a lumpsum total. For those reasons, the landlords' claim does not succeed.

Decision

19. The landlord's claim for compensation for damages does not succeed.

Issue 2: "Other" Expenses - \$2127.50

Relevant Submissions

The Landlords' Position

20. The landlords submitted a second invoice with their application, from a cleaning company, and the costs they are seeking to be reimbursed for, with taxes, are as follows:

• Garbage removal and dumpster.....	\$238.05
• Clean mold around windows	\$230.00
• Full house cleaning	\$1659.45
Total	<u>\$2127.50</u>

Garbage removal and dumpster

21. The landlords stated that there were several bags of garbage as well as bags of old clothes left in the house after the tenant moved out. They also claimed that there was old food left behind in the cupboards and the refrigerator which had to be removed. Additionally, garbage and kitty litter were found on the lawn and there were boxes and garbage left behind in the shed. In support of this claim, the landlords submitted photographs showing the condition of the lawn and showing the contents of the shed. Another photograph shows that the tenant had left a recliner on the front patio, which they claimed also had to be disposed of. The landlords' cleaners rented a dumpster to collect these items and they were charged \$238.05 to have the garbage removed.

Clean mold around windows

22. The landlords stated that it was expected that the tenant would clean the windows at the property every year, but they surmised that they had not been cleaned during the 4 years that that tenant resided at the unit. The landlords stated that they never had issues with mold at this property in the 20 years that they had owned it, and they were charged \$230.00 by their cleaners to have

mold removed from those windows after the tenant vacated. No photographs were submitted showing these windows.

Full house cleaning

23. The cleaner's invoice also shows that the landlords were charged \$1659.45 to have the whole house cleaned, at a rate of \$37.00 per hour for 39 hours of cleaning.
24. The landlords stated that after the tenant had moved out, they found dirt everywhere, requiring that the whole house be cleaned. They stated that there was food in the refrigerator and the cupboards, and all the appliances—the refrigerator, stove and microwave—had to be cleaned. The landlords testified that they had the whole unit repainted after the tenant moved out as well, and although they are not claiming for the costs of painting, they stated that all the walls first had to be cleaned.
25. In support of their claim, the landlords submitted 2 photographs—one showing that the inside of a microwave was dirty, and another showing that the inside of a bathroom vanity needed cleaning.

Analysis

26. With respect to the landlord's claim for garbage removal, the submitted evidence shows that garbage was left on the lawn and in the shed, and that the tenant had left behind a recliner. Based on that evidence and the submitted invoice, I find that the landlords are entitled to the \$238.05 they were charged to rent a dumpster and to have those items removed.
27. Regarding the cleaning of the windows, however, no photographic evidence was presented showing that there was any mold on these windows. Hence, that claim does not succeed.
28. Regarding the charge of \$1659.45 to have the full house cleaned, I conclude that the landlords are only entitled to a partial award. The only evidence presented by the landlords showing that the unit needed cleaning were the 2 photographs showing the microwave and the bathroom vanity. There was no other evidence showing that the appliances needed cleaning, that the walls needed cleaning, or that "there was dirt everywhere". But even so, that would still not persuade me that the cleaners need to be compensated for 39 hours. Based on the paucity of evidence, I find that the landlords are entitled compensation for 4 hours of cleaning: \$170.20 (4 hours x \$37.00 per hour + tax).

Decision

29. The landlords' claim for "other" expenses succeeds in the amount of \$408.25, determined as follows:

- Garbage removal and dumpster..... \$238.05
- Full house cleaning \$170.20
- Total \$408.25

Issue 3: Rent - \$1150.00

Relevant Submissions

30. The landlords submitted a rent ledger with their application showing the payments they had received from the tenant since April 2023. According to these records, rent was paid for every month, except the last, September 2023. The landlords are seeking an order for payment of \$1150.00 for that month.

Analysis

31. I accept the landlord's claim that the tenant had not paid her rent for the month of September 2023. As such, the landlords' claim succeeds in the amount of \$1150.00.

Decision

32. The landlords' claim for a payment of rent succeeds in the amount of \$1150.00.

Issue 4: Security Deposit

33. The landlords stated that the tenant had paid a security deposit of \$862.50 and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

34. The landlords are entitled to a payment of \$695.75, determined as follows:

a) "Other" Expenses..... \$408.25
b) Rent \$1150.00
c) LESS: Security Deposit..... (\$862.50)
d) Total Owing to Landlords \$695.75

30 April 2024

Date


John R. Cook
Residential Tenancies Tribunal