

Residential Tenancies Tribunal

Application 2023-1182-NL
2023-1195-NL

Decision 23-1182-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:02 p.m. on 18-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents [REDACTED] and [REDACTED] are represented by [REDACTED] [REDACTED] she is hereinafter referred to as “the landlord” she attended by teleconference. Mr. Crann did not attend.
4. The tenant called two witnesses, [REDACTED] her previous partner, hereinafter referred to as “the tenant’s witness1,” and her mother, [REDACTED] hereinafter referred to as “the tenant’s witness2.”
5. The landlord called one witness, [REDACTED] who is the current renter at the property, hereinafter referred to as “the landlord’s witness.”

Preliminary Matters

6. The parties both confirmed that they served each other with notification of today’s hearing by email. The tenant served the landlords on 14-December-2023 and the landlords served the tenant on 29-December-2023.

Issues before the Tribunal

7. The tenant is seeking:
 - Refund of Security deposit

The landlords are seeking:

- Compensation for repairs \$80.00
- Damages \$142.00

- Compensation for inconvenience \$200.00
- Security deposit applied to monies owed (\$975.00)
- Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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: Compensation for general repairs and cleaning \$80.00

Landlord's Position

10. The landlord reviewed the written term agreement (LL#02) that she has with the tenant. The tenant moved in 01-April-2022, they signed a new term agreement on 01-April-2023 – 31-March-2024. The tenant pays \$1,300.00 each month for rent. When she moved in, she paid \$975.00 security deposit on 27-March-2022.
11. The landlord said that the tenant gave notice and moved out on 30-November-2023. She confirmed that they found a new renter on 01-December-2023 and that they did agree to the early notice if they found a new renter.
12. The landlord explained at the time of the notice (LL#03) the tenant offered to forfeit her security deposit for the inconvenience caused. The landlord explains that they are not seeking the full deposit, but contest that the tenant is opposed to the inconveniences that she is seeking in light of the initial offer.
13. The landlord is seeking \$80.00 for the cost of cleaning and repairs completed by herself and the other landlord. During the initial viewings for potential new tenants, while they were inside the apartment they identified some issues, and she provided an email correspondence (LL#04) identifying those issues. At that time, she gave the tenant a cleaning checklist (LL#05) for when she moves out. After the tenant moved the only outstanding issue from this list was a damaged blind. The landlord explained that the other landlord used one of the extra slates and replaced the broken one.
14. The landlord disputes the tenant's evidence that the blind was broken when she moved in. She provided an email exchange (LL#06) after the tenant and tenant's witness¹ moved in where they stated that everything was good and that the issue with the blinds were not raised at that time.
15. The landlord said that there was damage to the arm of the sofa, they accept that this may have been an issue before the tenant took occupancy. She did say that the sofa required cleaning. She said that she cleaned the sofa but subsequently decided to replace it (picture provided LL#06). She also provided before and after pictures of the stove (LL#06). As well as a picture of damage to the countertop (LL#06). She explains that she and the other landlord required 4 hours of cleaning at \$20.00 an hour to finish these repairs.

Tenant's Position

16. The tenant confirmed the details of the rental agreement (TT#02). She states that she moved in on 15-April-2022 but confirms that the agreement began on 01-April-2022.
17. The tenant explains that initially when she was seeking release from her term agreement, she did make offers to alleviate the inconveniences caused to the landlord. She furthers that she is not seeking full reimbursement of her security deposit, there are losses that she doesn't dispute. However, she is not in agreement with all the loss sought by the landlord.
18. The tenant stated that the blind was always damaged and was held together with tape. She provided pictures to show that one of the slats tipped upwards (TT#04 & TT#05). The tenant's witness1 said he doesn't remember the email exchange presented by the landlord, but states that he suspects that the reason he didn't complain about any issues after they moved in was because if there were minor issues, they just dealt with them.
19. The tenant disputes that the apartment required cleaning. She said that the sofa did not require cleaning. They cleaned the stove. She doesn't dispute that the blind required repairs but said that the damages were there before. She also doesn't dispute the mark on the counter. She explained that herself and her mother completely cleaned the apartment. The tenant's witness2 stated that they spent the week cleaning, and she even was washing the floors as they walked out the door. The tenant provided pictures showing the cleanliness of the apartment (TT#04 – TT#12).

Analysis

20. 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.

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)
21. Although the tenant's pictures display that the apartment was thoroughly cleaned before the landlord regained possession, the landlord's evidence does support that additional cleaning of the stove, the repair of the blind and the damage to the counter all were present and required additional cleaning or repair. I therefore will award the landlord \$40.00 for the time required to complete this work.

22. The landlord's claim for the couch, does not adequately prove that the tenant was responsible, or that the act was willful or negligent. It appears that potentially the couch was older, and the soft surface was unclean due to normal wear and tear. The tenant is not responsible for this expense.

Decision

23. The landlord's claim for damages succeeds in the amount of \$40.00.

Issue 2: Damages for rugs \$142.02

Landlord's Position

24. The landlord explained that after the tenant moved out the decision was made to replace the living room and bedroom rugs. The living room rug was 1.5 years old, and she provided pictures of the back showing that there were stains (LL#06) and the receipt for \$135.70 (LL#07). The landlord stated that she factored in depreciation and is seeking \$82.02.
25. The landlord also provided the cost of the bedroom rug (LL#08). The rug cost \$150.00 and with depreciation she is seeking \$60.00. She said that this rug was initially in the living room and when the tenant moved in, they put this rug in the bedroom and purchase another one for the living room. She said that this rug is 2.5 years old; picture provided (LL#06).
26. The landlord also included an email from the tenant (LL#09) saying that she doesn't dispute the replacement of the living room rug.

Tenant's Position

27. The tenant said that the living room rug received more frequently use because it was in the main living room area. She provided pictures to show that both rugs were in good condition (TT#10, #11, and #12).

Analysis

28. The evidence provided by both parties show that neither of these rugs were damaged. The landlord's evidence does show that the bedroom rug needed to be vacuumed, and the living room rug had some water stains that were only evident from the underside of the rug.
29. As previously shown in paragraph 20, under Section 10 of the *Act*, the tenant is responsible for any damages caused by a willful or negligent act. When a unit is rented with furnishings, the landlord must accept that those furnishings will be subject to regular wear and tear. Based on the testimony of the landlord, in all probability they choose to replace the rugs (and previously the couch) to keep the rental looking clean and new. The tenant is not responsible to ensure that rugs that are a few years old look like new, she is only responsible to keep them in the condition they would appear in with regular use.

30. The landlord's claim for damages fails.

Decision

31. The landlord's claim for damages fails.

Issue 3: Compensation for inconvenience \$200.00

Landlord's Position

32. The landlord stated that their new renter moved in on 01-December-2023. One week later the landlord received an email (LL#10) with concerns about the condition of the apartment and the new renter said that she had to clean for 10 hours.
33. The landlord's witness testified that she spent 8 hours the first day cleaning and then about 4 hours each day cleaning for a week after she moved in.
34. The landlord credited the new renter with \$200.00 towards the cost of her rent due to this inconvenience. She is seeking reimbursement from the tenant for this cost.

Tenant's Position

35. The tenant said that this apartment was always dusty. She questions if the new renter was moving in and complained a week later, how do they determine if it is the dirt from the move in, or dirt from her time as the renter, that is being cleaned.
36. The tenant's witness2 said that she cleans professionally and manages rentals, she said that her and her daughter left this apartment fully cleaned.

Analysis

37. I accept the testimony of the tenant and tenant's witness2 that this unit was completely cleaned. The tenant's photo evidence supports this claim. Additionally, the landlord cited the items in Issues 1 & 2 and claimed that she and the other landlord cleaned or replaced the items not to her standard. The photos and testimony of both parties do not support that this apartment required 10 hours cleaning. Both the landlord and the tenant cleaned prior to the unit being rented and I accept that the tenant meet her obligation of returning the property in the same condition she received it.
38. I find that the landlord's claim for inconvenience fails.

Decision

39. The landlord's claim for inconvenience fails.

Issue 4: Security deposit retained against monies owed \$975.00.

Issue 5: Security deposit returned

Landlord's Position

40. The landlord is seeking to retain from the security deposit monies owed.

Tenant's Position

41. The tenant is seeking the security deposit returned.

Analysis

42. The landlord's claim for loss has been successful, paragraph 24; she shall retain \$40.00 the deposit and return the balance of \$935.00 to the tenant, as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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

43. The landlord shall retain \$40.00 the security deposit and return the balance of \$935.00 to the tenant.

Issue 6: Hearing expenses reimbursed \$20.00

44. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#11) however as the award is less than the security deposit, pursuant to policy 12.01, hearing expenses related to the filing fee will not be awarded.

Summary of Decision

45. The landlord shall retain \$40.00 of the security deposit for damages and return the balance of \$935.00 to the tenant.

January 30, 2024

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office