

Residential Tenancies Tribunal

Application 2024-0040-NL

Decision 24-0040-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:06 a.m. on 6-March-2024.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED] [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants" attended by teleconference.

Preliminary Matters

4. The landlord submitted 2 affidavits with their application stating that they served the tenants with the notice of hearing via prepaid registered mail [REDACTED] and [REDACTED] on 23-January-2024 (LL#1). The respondents confirmed receipt of the documents on 27-January-2024. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written month-to-month rental agreement which commenced on 1-July-2019. The tenants vacated the unit on 31-December-2023. Rent was \$1135.00 per month, due on the first day of each month. A security deposit of \$567.50 was paid in June 2019.
6. The landlord requested to amend the application to increase the amount sought for damages from \$5146.25 as per the application to \$8009.27. This request was denied as the application would have had to be amended and reserved to the respondents which the landlord failed to do.
7. This tribunal is responsible to ensure that all parties are heard, and during the hearing further clarification of the evidence was required and requested from the landlord. The requested information was received via email on 6-March-2024 at 3:48pm and forwarded to the respondents for their review on 26-March-2024 at 9:50am providing the respondents with an opportunity to respond to the supporting documentation. The respondents were given 24 hours to respond in writing and advised that their written submission would be considered.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Compensation for damages \$5146.25
 - b. Hearing expenses \$54.86
 - c. Security deposit applied against monies owing \$567.50

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises, Section 9-5; Life expectancy and Section 12-1: Recovery of Fees.

Issue # 1: Compensation for Damages \$5146.25

Relevant Submission

11. The landlord's representative testified that there were damages to the rental unit and cleaning / garbage removal that was required after the tenants vacated. The landlord's representative testified that they had to hire a contracting company and a cleaning company to restore the unit to the way it was prior to the tenancy. The landlord submitted a copy of a quote from *Route 10 Contracting* in the amount of \$4485.00 to cover the cost of labor only to have all the work completed (LL#2, page 2) and a list of the items that needed to be repaired or replaced as per inspection dated 4-January-2024 (LL#3, page 3). The landlord submitted a breakdown of the hours of labor allocated for each item on the inspection form as requested during the hearing (LL#4). The landlord also submitted a quote and receipt from *T & H Cleaning and Maintenance Services Inc.* for the cost of pre-cleaning and garbage removal (LL#5). The landlord is seeking labor only for the repairs / replacements required and the cost for cleaning and garbage removal. See breakdown of damages ledger below:

Damages Ledger (Labor Cost Only)2024-0040-NL		
Damages / losses	Amount	Total
Remove barrel bolt lock (1 hr labor)	\$74.75	\$74.75
Replace bifold doors (2 hrs labor)	\$149.50	\$224.25
Paint & Plaster throughout (49 hrs labor)	\$3,662.75	\$3,887.00
Replace blinds (1 hr labor)	\$74.75	\$3,961.75
Replace stove light (0.25 hr labor)	\$0.00	\$3,961.75
Repair closet doors (1.5 hrs labor)	\$112.13	\$4,073.88
Replace bathroom door (1.5 hrs labor)	\$112.13	\$4,186.01
Replace bedroom door slab, jamb and casing (4 hrs labor)	\$299.00	\$4,485.00
Garbage removal	\$373.75	\$4,858.75
Pre-cleaning	\$287.50	\$5,146.25

Landlord's Position

12. The landlord's representative testified that the above list of items has been identified as damages / losses to the unit caused by negligence on the part of the tenants and at this time they are seeking the cost of labor. The landlord's representative stated that the following items were identified after the tenants vacated the unit. The landlord's position on each item is as follows:

Item # 1: Remove barrel bolt lock (\$74.75) – The landlord's representative testified that the tenants had installed a barrel bolt to the door which was against tenancy policy. The landlord is seeking the cost of 1 hour of labor at \$65.00 per hour plus tax to have the bolt removed. The landlord submitted a photograph showing the lock on the door (LL#6, page 3) and a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 2: Replace bifold doors (\$149.50) - The landlord's representative testified that the bifold doors in the unit were damaged and would not open and close properly. The landlord is seeking the cost of 2 hours of labor at \$65.00 per hour plus tax to replace the bifold doors. The landlord submitted 2 photographs of the bifold doors (LL#7) and a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 3: Paint and plaster (\$3662.75) - The landlord's representative testified that the entire unit had to be plastered and painted due to (1) damages to the walls and (2) excessive amount of dirt on the walls which the landlord stated could not be cleaned. The landlord submitted photographs to show the damage and the dirt on the walls (LL#8). The landlord is seeking the cost of 49 hours of labor at \$65.00 per hour plus tax to complete the work and submitted a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 4: Replace blinds (\$74.75) - The landlord's representative testified that the blinds in the unit were damaged and too dirty to even attempt to fix. The landlord is seeking the cost of 1 hour of labor at \$65.00 per hour plus tax to remove and replace the blinds. The landlord submitted 2 photographs of damaged blinds (LL#9) and a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 5: Repair closet doors (\$112.13) - The landlord's representative testified that the closet doors were off track and needed to be put back on track. The landlord is seeking the cost of 1.5 hours of labor at \$65.00 per hour to complete the work and submitted a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 6: Replace bathroom door (\$112.13) - The landlord's representative testified that the bathroom door was damaged and needed to be replaced. The landlord is seeking the cost of 1.5 hours of labor at \$65.00 per hour to compete the work and submitted a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 7: Replace bedroom door slab, jamb and casing (\$299.00) - The landlord's representative testified that the bedroom door slab, jamb and casing had to be replaced as the door was pulled off the casing. The landlord submitted a photograph of the door to support their claim (LL#10, pages 1-3). The landlord is seeking the cost of 4 hours of labor at \$65.00 per hour to compete the work and submitted a copy of an invoice from *Route 10 Contracting* to support their claim (LL#4).

Item # 8: Garbage removal (\$373.75) – The landlord's representative testified that there was garbage in the unit that needed to be removed. The landlord submitted photographs of garbage bags, cases of used bottles, tubs of empty kitty litter containers and food left in the refrigerator (LL#11). The landlord is seeking the cost to have the garbage

removed and submitted a copy of a quote and receipt from *T & H Cleaning and Maintenance Services Inc.* to support their claim (LL#5).

Item # 9: Pre-cleaning (\$287.50) - The landlord's representative testified that the unit had to be pre cleaned before any work could be completed. The landlord submitted photographs to show the condition of the unit after the tenants vacated (LL#12). The landlord is seeking the cost to have the unit cleaned and submitted a copy of a quote and receipt from *T & H Cleaning and Maintenance Services Inc.* to support their claim (LL#5).

Tenant's Position

13. The tenants were present and disputed most of the claims made by the landlord. The tenants were given an opportunity to respond in writing to the further clarification of the landlords evidence, and the tenant's written submission was taken into consideration. The tenant's position on the above listed items are as follows:

Item # 1: Remove barrel bolt lock (\$74.75) – The landlord's representative testified that the tenants had installed a barrel bolt to the door which was against tenancy policy. The tenants disputed the landlord's claim and testified that the barrel bolt was on the door when they moved in. The tenants submitted a photograph to show that there was paint on the lock from the last time the unit was painted which was prior to their tenancy (TT#1, page 2). The tenants also questioned the validity of the landlord's testimony and stated that the landlord's representative was not around at the commencement of the tenancy and cannot swear under oath that the lock was not on the door at that time.

Item # 2: Replace bifold doors (\$149.50) - The landlord's representative testified that the bifold doors in the unit were damaged and would not open and close properly. The tenants disputed the landlord's claim that the doors were damaged and testified that the bifold doors worked perfectly. The tenants submitted a photograph showing a bifold door hanging without any visible damage (TT#2, page 3).

Item # 3: Paint and plaster (\$3662.75) - The landlord's representative testified that the entire unit had to be plastered and painted. The tenants disputed that the entire unit needed plastering and paint and testified that one wall was damaged as a result of storing their bicycles up against the wall which caused some scrapping. The tenants also stated that the move out inspection form did not reference any of the damages claimed to the walls and they are willing to cover the cost to fix the single wall where they stored their bikes.

Item # 4: Replace blinds (\$74.75) - The landlord's representative testified that the blinds were damaged and too dirty to fix and as a result needed to be replaced. The tenants did not dispute that there were damages to the blinds but did dispute that they were dirty. The tenants stated that they lived on the 5th floor with no obstruction to sunlight which meant that the blinds received a full blast of ultraviolet rays causing them to become brittle over time. Respondent 1 stated that 4 or 5 slates needed to be replaced in one blind due to their cat playing with the blinds. Respondent 1 also stated that he feels that the damage should fall under normal wear and tear, and they should not be responsible for the replacement of any blinds.

Item # 5: Repair closet doors (\$112.13) - The landlord's representative testified that the closet doors were off track and needed to be put back on track. The tenants did not dispute that one of the closet doors came off track but disputed that it would take 1.5 hours to fix it.

Item # 6: Replace bathroom door (\$112.13) - The landlord's representative testified that the bathroom door was damaged and needed to be replaced. The tenants disputed any damage to the bathroom door. Respondent 1 testified that he accidentally hit one of the bedroom doors when moving furniture putting a hole in the door and he stated that he reported that incident and maintenance came by to investigate the door. Respondent 1 stated that the bathroom door was not damaged.

Item # 7: Replace bedroom door slab, jamb and casing (\$299.00) - The landlord's representative testified that the bedroom door slab, jamb and casing had to be replaced. The tenants did not dispute that the door and casing needed to be replaced, however they did dispute that they caused the damage. The tenants stated that the jambs in all 3 interior door frames became detached from the walls at one time or another as the result of deficient construction. The tenants stated that the door was not installed properly, and the use of small nails contributed to the door falling off. The tenant's submitted a photograph of the door showing the size of the nails to support their claim that the door was not installed properly (TT#3, page 7).

Item # 8: Garbage removal (\$373.75) – The landlord's representative testified that there was garbage in the unit that needed to be removed. The tenants did not dispute that there was garbage left at the unit and considers the fee of \$373.75 to be excessive given that *Schedule B* in their rental agreement states that a flat rate of \$75.00 for garbage removal shall be applied.

Item # 9: Pre-cleaning (\$287.50) - The landlord's representative testified that the unit had to be pre cleaned prior to any work being completed. The tenants did not dispute that they left the unit somewhat dirty and stated that they were unable to clean to the point where the unit was *show clean* due to medical reasons.

Analysis

14. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage, through a willful or negligent act; and*
- *The value to repair or replace the damaged item(s)*

15. The landlord submitted an *Inspection report* (Schedule C) with both *In Remarks* and *Out Remarks* and provided an itemized final *inspection report* dated 4-January-2024 (LL#3). The landlord provided photographs to show the extent of some of the damages and the tenants also submitted photographs and testified that they were provided to them by the landlord at the end of the tenancy. All photographs were accepted into evidence. The landlord initially submitted a quote from the contractor with a total estimate of the cost of the labor to complete all the work. I asked for further clarification of the evidence and allowed the landlord to submit a breakdown of the labor hours after the hearing. I accepted the updated invoice into evidence and used it in my analysis to determine the breakdown of compensation to be awarded. Based on the testimony of both the applicant and the respondents and the exhibits entered into evidence, the items were analyzed as follows:

Item # 1: Remove barrel bolt lock (\$74.75) – The landlord's representative testified that the tenants had installed a barrel bolt to the door which was against tenancy policy. The tenants disputed the claim and testified that the bolt was on the door when they moved in. Respondent 1 stated that the landlord's representative was not around at the commencement of the tenancy and would not be able to testify that the bolt was not on the door at that time. I accept that the landlord was unable to prove that the bolt was not

on the door when the tenants moved in and for that reason, I find that the tenants are not responsible for the labor costs to have the barrel bolt removed from the door.

Item # 2: Replace bifold doors (\$149.50) - The landlord's representative testified that the bifold doors in the unit were damaged and would not open and close properly. The tenants disputed the claim and submitted a photograph showing one of the bifold doors hanging properly. I asked the landlord's representative how many bifold doors needed to be replaced and she was unsure and responded at least 3. The landlord submitted a photograph of 2 of the bifold doors which did not show any damage. I find that the landlord was unable to show that the damage exists and for that reason, I find that the tenants are not responsible for the labor costs to replace the bifold doors.

Item # 3: Paint and plaster (\$3662.75) - The landlord's representative testified that the entire unit needed to be plastered and painted. The tenants disputed that the entire unit needed plastering and paint and testified that one wall was damaged as a result of storing their bicycles up against the wall. The landlords submitted photographs of the walls which showed severe damage to one wall and a lot of dirt on the other walls. I asked the landlord's representative when was the last time that the walls were painted and she responded in May 2019 which was 2 months prior to the tenancy. Section 9-5 of the *Residential Tenancies Policy* states that the life expectancy of paint on a wall is 3-5 years. I accept that painting the unit after 4.5 years falls under normal wear and tear, however plastering the walls due to damage does not. Based on the photographs submitted into evidence, I accept that there was a fair amount of plastering that was required, and extra painting time needed to paint over the dirt on the walls. For that reason, I find that the tenants are responsible for 50% of the hours claimed by the landlord for labor to plaster and paint the unit in the amount of \$1831.38 (49 hours / 2 = \$24.5 hrs x \$65.00 plus taxes).

Item # 4: Replace blinds (\$74.75) - The landlord's representative testified that the blinds were damaged and too dirty to attempt repairs and as a result needed to be replaced. The tenants did not dispute that some of the blinds were damaged but did dispute that they were dirty. I asked respondent 1 when was the last time they cleaned the blinds, and he responded about a year ago. Respondent 1 stated that he feels that the damages to the blinds should fall under normal wear and tear as they became brittle due to ultraviolet rays. I asked the landlord's representative the age of the blinds and the type of blind and she responded that they were new at the commencement of the tenancy in 2019 and that they were a vinyl composition. I find that blinds should last longer than 4.5 years and missing slates do not fall under normal wear and tear and the blinds should have been as clean at the end of the tenancy as they were at the commencement of the tenancy. For those reasons, I find that the tenants are responsible for the 1 hour claimed by the landlord for labor to replace the blinds in the amount of \$74.75.

Item # 5: Repair closet doors (\$112.13) - The landlord's representative testified that the closet doors were off track and needed to be put back on track. The tenants did not dispute that one of the closet doors came off track but disputed that it would take 1.5 hours to fix it. One of the photographs submitted by the landlord shows a bedroom closet door off track. I find that it is reasonable to charge the tenants for $\frac{1}{2}$ hour labor to fix the closet door and put it back on its track. I find that the tenants are responsible for $\frac{1}{2}$ hour labor to fix the closet door at a cost of \$32.50.

Item # 6: Replace bathroom door (\$112.13) - The landlord's representative testified that the bathroom door was damaged and needed to be replaced. The tenants disputed damage to the bathroom door. The landlord did not submit any photographs of the bathroom door to show that the damage exists and for this reason, I find that the tenants are not responsible for the cost of labor to replace the bathroom door.

Item # 7: Replace bedroom door slab, jamb and casing (\$299.00) - The landlord's representative testified that the bedroom door slab, jamb and casing had to be replaced. The tenants did not dispute that it all had to be replaced, however they did dispute that they caused the damage. Respondent 1 stated that the jambs in all 3 interior doorframes became detached from the walls at one time or another during the tenancy as a result of deficient construction. The tenants stated that the door was not installed properly, and the use of small nails contributed to the door and casing damage. The tenant's submitted a photograph of the door showing the size of the nails to support their claim that the door was not installed properly (TT#3). Based on the photographs of the door and casing, I accept the landlord's testimony that the damage to the door and door frame was intentional. The moldings on top of the door were clearly ripped from the wall causing a huge hole in the wall. The door is clearly hanging off the door casing with damage to the surrounding area including the moldings on the top of the casing and for that reason, I find that the tenants are responsible for the cost of labor to replace the door at \$299.00.

Item # 8: Garbage removal (\$373.75) – The landlord's representative testified that there was garbage in the unit that needed to be removed. The tenants did not dispute that there was garbage left at the unit and considers the fee of \$373.75 to be excessive given that *Schedule B* in their rental agreement states a flat rate of \$75.00 for garbage removal. Respondent 1 testified that he had abdominal surgery the previous month and was unable to lift the garbage out of the unit and he testified that respondent 2 came down with covid and had to self-isolate. I accept the tenant's testimony that they were not in a position to remove the garbage themselves and I accept their written submission regarding their interpretation of the fee for garbage removal. I reviewed *Schedule B* which states that there shall be a fee of \$75.00 plus tax for garbage left in the apartment, however *Schedule B* also states the following;

"Not to be considered liquidated damages in the event that the Landlord has incurred and can prove any losses and expenses greater than the foregoing, which are suffered and incurred by the Landlord as a result of any act for which the Tenant is directly or indirectly responsible by contract, statute or at common law".

Tenants who are unable to remove garbage from their units due to physical constraints or for other reasons are still required to ensure that the unit is left the way it was at the commencement of the tenancy. Based on the exhibits entered into evidence, I find that the amount of garbage left at the unit was excessive and the landlord incurred expenses greater than what it would cost to get rid of a few bags of garbage which would normally be covered under *Schedule B* of the rental agreement. For those reasons, I find that the tenants are responsible for the cost of garbage removal in the amount of \$373.75.

Item # 9: Pre-cleaning (\$287.50) - The landlord's representative testified that the unit had to be pre cleaned before any work could be completed. The tenants did not dispute that the unit was left *show clean* but they did dispute that the unit was filthy. Respondent 1 stated that the unit was subject to frequent inspections and there were never any concerns regarding the cleanliness of the unit. Respondent 1 also testified that they could not clean properly due to the medical reasons as stated above in item # 8. Based on the photographs submitted into evidence, I find that the unit was excessively dirty and even if the tenants were unable to physically clean the unit themselves, they had a responsibility to ensure that the unit was left the way they received it at the beginning of the tenancy. For those reasons, I find that the tenants are responsible for the cost of having the unit cleaned in the amount of \$287.50.

Decision

16. The landlord's claim for damages (labor only) succeeds in the amount of \$2898.88.

Issue # 2: Hearing expenses \$54.86

17. Section 12-1 of the *Residential Tenancies Policy Manual* states:

Recovery of Fees

12-1 Application fees for adjudication of a dispute in excess of the security deposit is allowable and other allowable hearing expenses include the cost of hiring a process server to personally serve a claim.

18. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt. The landlord also incurred postal fees to serve the tenant in the amount of \$34.86. The landlord submitted a copy of all receipts to support their claim (LL#13).

19. As the landlord's claim has been partially successful, the tenant shall pay the \$54.86.

Decision

20. The landlord's claim for hearing expenses succeeds in the amount of \$54.86.

Issue # 3: Security deposit applied against monies owed \$567.50.

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

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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

22. The landlord's claim for losses has been successful as per paragraphs 16 and 20 and as such, the security deposit shall be applied against monies owed.

Decision

23. The landlord's claim for security deposit to be applied against monies owed succeeds.

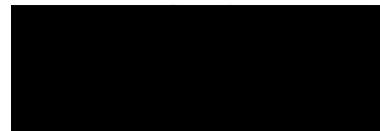
Summary of Decision

24. The tenants shall pay the landlord \$2386.24 as follows:

Damages (labor only)	\$2898.88
Hearing expenses	54.86
Less security deposit	567.50
Total	\$2386.24

April 3, 2024

Date



Pamela Pennell
Residential Tenancies Office