

Residential Tenancies Tribunal

Application 2024-0364-NL
Application 2024-0505-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 29-July-2024.
2. The applicant, [REDACTED] (applicant 1), hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent and counter applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
4. [REDACTED] and [REDACTED] are added as applicants. The applicants hereinafter referred to as "tenants" did not attend the teleconference.

Preliminary Matters

5. The tenants submitted an affidavit with their application stating that they had served the landlord with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 13-May-2024 (TT#1). The landlord's representative confirmed receipt of the document on that date. The landlord countered the claim and submitted an affidavit stating that they served the tenants with the notice of hearing electronically by email to; [REDACTED], [REDACTED] and [REDACTED] on 9-July-2024 (LL#1). Applicant 1 confirmed receipt of the documents on that date. In accordance with the *Residential Tenancies Act. 2018*, this is good service.
6. There was a written month-to-month rental agreement that commenced on 28-December-2020. The tenants vacated the premises on 31-March-2024. Rent was \$1700.00 per month, due on the first of each month. A security deposit of \$825.00 was paid on 4-December-2020 and is in the landlord's possession.
7. The tenant's application was amended to include *hearing expenses* and the counter claim by the landlord was amended to add *security deposit to be applied against monies owed and hearing expenses*.

Issues before the Tribunal

8. The tenants are seeking:
 - Refund of security deposit \$825.00
 - Hearing expenses \$30.00

9. The landlord is seeking:
 - Compensation for damages \$1579.14
 - Security deposit applied against monies owed \$825.00.
 - Hearing expenses \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision are the following sections 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 damage to rental premises and 12-1: Recovery of costs.

Item # 1: Compensation for damages \$1579.14

Relevant Submission

11. The landlord's representative testified that there were damages / losses to the rental unit, and they are seeking \$1579.14 to cover the cost to restore the unit to the way it was prior to the tenancy. The landlord submitted a damages ledger (LL#2) as follows:

Item #	Description of Damages	Compensation Claimed
1.	Cleaning outstanding at move out	\$805.00
2.	Sticker removal and repair in numerous rooms; replacement of blind on back door	\$517.50
3.	Materials for repairs	\$84.14
4.	Carpet Cleaning completed in three bedrooms	\$172.50
Total		\$1,579.14

Landlord's Position

12. The landlord's representative's position on each item above is as follows:

Item # 1: Cleaning (\$805.00) – The landlord's representative testified that there was no attempt made by the tenants to clean the unit prior to the end of the tenancy. The landlord's representative stated that it took their in-house cleaner 20 hours to complete the work. The landlord submitted a copy of an invoice (LL#3) and copies of the incoming / outgoing inspection reports (LL#4) to support the claim.

Item # 2: Repair work - labor (\$517.50) – The landlord's representative testified that the unit needed repair work ranging from wall and ceiling repairs to replacing the

blind on the back door. The landlord's representative stated that their in-house maintenance person completed all the repair work, and it took 10 hours. The landlord submitted photographs (LL#5) and a copy of an invoice to support the claim (LL#6).

Item # 3: Materials for repairs (\$84.14) – The landlord's representative testified that materials were required to complete the necessary repairs and she stated that they are seeking \$84.14 to cover the cost. The landlord submitted a copy of receipts to support the claim (LL#7).

Item # 4: Carpet cleaning (\$172.50) - The landlord's representative testified that the carpet in the 3 bedrooms was very dirty and needed to be professionally cleaned. The landlord's representative stated that there was a lot of debris underneath the carpet and difficult stains to remove. The landlord submitted photographs of the carpet (LL#8) and a copy of an invoice from *The Carpet Clinic* to support the claim (LL#9).

Tenant's Position

13. Applicant 1's position on each item above is as follows:

Item # 1: Cleaning (\$805.00) – The landlord's representative testified that there was no attempt made by the tenants to clean the unit prior to the end of the tenancy. Applicant 1 did not dispute that the unit needed cleaning, however he disputed that it would take 20 hours to compete the work. Applicant 1 testified that he and his siblings spent an entire day cleaning, and all the major work was completed, and he suggested that it should have only taken approximately an additional 2 hours to complete the work.

Item # 2: Repair work - labor (\$517.50) – The landlord's representative testified that the unit needed repair work ranging from wall and ceiling repairs to replacing the blind on the back door. Applicant 1 did not dispute that repairs were required to the unit, however he disputed that it would take 10 hours of labor to complete the work. Applicant 1 suggested that the work should have only taken approximately 5 hours to compete.

Item # 3: Materials for repairs (\$84.14) – The landlord's representative testified that materials were required to complete the necessary repairs and stated that they are seeking \$84.14 to cover the cost. Applicant 1 did not dispute the cost associated with purchasing materials to complete the necessary repairs to the unit.

Item # 4: Carpet cleaning (\$172.50) - The landlord's representative testified that the carpet in the 3 bedrooms needed to be professionally cleaned. The landlord's representative stated that the carpet was very dirty and there was a lot of debris underneath the carpet and difficult stains to remove. Applicant 1 did not dispute that the carpet was dirty at the end of the tenancy, and I asked him if the carpet was clean at the commencement of the tenancy and he responded that it was. Applicant 1 disputed that they should be responsible for the cleaning of the carpets and stated that the damage to the carpet falls under normal wear and tear.

Analysis

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

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

Item # 1: Cleaning (\$805.00) – The landlord's representative testified that there was no attempt made by the tenants to clean the unit prior to the end of the tenancy. Applicant 1 did not dispute that the unit needed cleaning, however he disputed that it would take 20 hours to complete the work. Applicant 1 testified that he and his siblings spent an entire day cleaning, and all the major work was completed, and he suggested that it should have only taken approximately an additional 2 hours to complete the work. Based on the inspection reports and the photographs entered into evidence, I accept that the unit was not cleaned properly, and as the landlord was able to show the cost to complete the work, I accept that it took 20 hours to restore the unit to the way it was prior to the tenancy. For those reasons, I find that the tenants are responsible for the cost to clean the unit in the amount of \$805.00.

Item # 2: Repair work - labor (\$517.50) – The landlord's representative testified that the unit needed repair work ranging from wall and ceiling repairs to replacing the blind on the back door. Applicant 1 did not dispute that repairs were required to the unit, however he disputed that it would take 10 hours of labor to complete the work. Applicant 1 suggested that the work should have only taken approximately 5 hours to complete. Based on the photographs entered into evidence, I accept that the repair work was necessary, and as the landlord was able to show the cost to complete the work, I accept that it took 10 hours to remove the adhesives of the walls and the ceilings and plaster and paint the areas affected. For those reasons, I find that the tenants are responsible for the cost of labor to make the necessary repairs to the unit in the amount of \$517.50.

Item # 3: Materials for repairs (\$84.14) – The landlord's representative testified that materials were required to complete the necessary repairs and she stated that they are seeking \$84.14 to cover the cost. Applicant 1 did not dispute the cost associated with purchasing materials to complete the necessary repairs to the unit. For this reason, I find that the tenants are responsible for the cost of materials in the amount of \$84.14.

Item # 4: Carpet cleaning (\$172.50) - The landlord's representative testified that the carpet in the 3 bedrooms was very dirty and needed to be professionally cleaned. The landlord's representative stated that there was a lot of debris underneath the carpet and difficult stains to remove. Applicant 1 disputed that they should be responsible for the cleaning of the carpets and stated that the damage to the carpet falls under normal wear and tear. Based on the out-going inspection report and the photographs entered into evidence, I accept that the carpets were extremely dirty, and I find that the condition of the carpets do not fall under normal wear and tear. For those reasons, I find that the tenants are responsible for the cost to clean the carpets in the amount of \$172.50.

Decision

15. The landlord's claim for compensation for damages succeeds in the amount of \$1579.14.

Issue # 2: Hearing expenses

16. The tenants are seeking \$30.00 for reimbursement for the cost of a *Commissioner of Oaths* and the landlord is seeking \$20.00 for the filing fee. In accordance with Section 12-1 of the *Residential Tenancies Policy*, a party can claim their hearing expenses if they are successful in their claim. The tenants are not successful in their claim for refund of the security deposit and as such, their claim for hearing expenses does not succeed. As the landlord is successful in their claim for damages, their claim for hearing expenses in the amount of \$20.00 succeeds.

Decision

17. The tenants claim for hearing expenses does not succeed.
18. The landlords claim for hearing expenses in the amount of \$20.00 succeeds.

Issue # 3: Refund of Security Deposit \$825.00 Security Deposit applied against monies owed \$825.00

Analysis

19. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

20. The landlord's claim for losses has been successful as per paragraphs 15 and 18, and as such the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is

calculated as simple interest and is not compounded. The annual interest for 2020 - 2023 was 0% and is currently 1% for 2024.

Decision

21. The tenant's claim for a refund of security deposit does not succeed.
22. The landlord's claim to have the security deposit applied against monies owed succeeds.

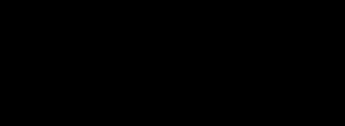
Summary of Decision

23. The tenants claim for refund of security deposit and hearing expenses does not succeed.
24. The tenants shall pay the landlord \$769.36 as follows:

Compensation for damages.....	\$1579.14
Hearing expenses	20.00
Less: security deposit & interest	829.78
Total	<u>\$769.36</u>

August 30, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office