

Residential Tenancies Tribunal

Application 2024-0524-NL and 2024-0543-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:22 a.m. on 17-July-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the landlords" did not attend. [REDACTED] agent from [REDACTED] [REDACTED], and authorized representative of the landlords attended by teleconference (LL#1).
3. The respondent and counter applicant, [REDACTED] (respondent 1), hereinafter referred to as "the tenant" attended by teleconference. The respondent and counter applicant, [REDACTED], hereinafter referred to as "the tenant" did not attend and was represented by respondent 1.

Preliminary Matters

4. The landlord's representative testified that they did not serve the respondent documents upon the tenants but did send an email letting them know what they were seeking in compensation. Respondent 1 confirmed that both she and the other tenant received that email and wished to waive service. Respondent 1 testified that they countered the claim and served the landlords with the notice of hearing electronically on 8-July-2024. The landlord's representative confirmed receipt of the document on that date and stated that the landlords also wish to waive service. In accordance with the *Residential Tenancies Act. 2018*, this is allowable, and the hearing proceeded.
5. There is a written fixed rental agreement which commenced on 1-September-2023. Rent was \$2800.00 per month, due on the first of each month. A security deposit of \$2100.00 was paid on 7-August-2023 and is in the landlord's possession.
6. The landlord's representative amended the application to have the amount sought for *damages for compensation* not to exceed the amount of the security deposit plus interest.

Issues before the Tribunal

7. The landlords are seeking:
 - Compensation for damages in the amount of the security deposit plus interest
 - Security deposit plus interest to be applied against monies owed.

8. The tenants are seeking:
 - Refund of Security deposit \$2100.00

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 6-3: Mitigation on abandonment of residential premises, Section 9-3: Claims for damage to rental premises.

Item # 1: Compensation for damages in the amount of the security deposit plus interest.

Relevant Submission

11. The landlord's representative testified that there were damages / losses to the rental unit and submitted a copy of the damages ledger to support the claim (LL#2). **Note**, the amount on the ledger has been amended to not exceed the amount of the security deposit plus interest (\$2100.00 plus interest) as stated above. See copy of damages ledger below:

Property: [REDACTED]		
Damage Deposit Held: \$2,100		
Damage	\$ (Pretax)	Total
Leasing	\$1,400	\$1,610.00
Holes from TV Mount	\$300	\$345.00
Damage to door	\$255	\$293.25
Lawn Mow	\$65	\$74.75
		\$2,323.00

Landlord's & Tenant's Position

12. The landlord's representative testified that the above noted items have been identified as damages / losses to the unit caused by negligence on the part of the tenants. The landlord's and the tenant's positions are as follows:

Item # 1: Leasing fee (\$1610.00) – The landlord's representative testified that the landlords had to retain the services of a property management company to try to mitigate their losses after they received an illegal termination notice from the tenants. The landlord's representative stated that the landlords reside outside the province and were unable to deal with the situation with regards to the final walk through, getting the property ready for new tenants and showing the unit to prospective tenants. The

landlord's representative stated that the landlords asked the tenants to attempt subletting the unit to help alleviate any financial loss and stated that the tenants refused to do so. The landlord's representative testified that the property management company was efficient in obtaining new tenants so there was no loss of rental income to the landlords and stated that without their prompt services the landlords would have most likely had to incur at least 1 month of rental income loss. The landlord's representative stated that the leasing fee of \$1610.00 is less than what it would have cost the tenants in rent for the month of June as they gave an improper termination notice. The landlords submitted a copy of an invoice from [REDACTED] to support the claim (LL#3). Respondent 1 did not dispute that they terminated the tenancy before the end of the term however, she did dispute that they should be responsible for the leasing fee as she stated that the landlords were not obligated to hire a property management company.

Item # 2: Holes from TV mount (\$345.00) – The landlord's representative testified that there were numerous holes in the wall where the TV was mounted, and the landlords submitted photographs to support the claim (LL#4) and a copy of a quote to show the cost to compete the work (LL#5). Respondent 1 did not dispute that there were some holes in the wall where the TV was mounted but disputed that there were a lot of holes and stated that the holes fall under normal wear and tear.

Item # 3: Damage to door (\$293.25) - The landlord's representative testified that an interior pine door in the basement was damaged due to animal scratches and they submitted photographs to support the claim (LL#6) and a quote from *Home Depot* to show the cost to replace the door (LL#7). Respondent 1 disputed that they caused the damage and stated that the scratches were present on the door when they moved into the unit and she also stated that their animals could not have caused the damage to the door as they only have small animals that would not be capable of doing that type of damage.

Item # 4: Lawn Mow (\$74.75) - The landlord's representative testified that the lawn was overgrown and needed to be mowed and he also stated that lawn care was the responsibility of the tenants as per part 11 of the rental agreement. The landlords submitted photographs of the lawn to support the claim (LL#9). Respondent 1 disputed that the lawn was overgrown and stated that it could be mowed but it wasn't really necessary at the time when they vacated the unit.

Analysis

13. 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)*

14. Each item is analyzed as follows:

Item # 1: Leasing fee (\$1610.00) – The landlord's representative testified that they had to retain the services of a property management company to try to mitigate their losses when they received an illegal termination notice from the tenants. Section 6-3 of the *Residential Tenancies Policy* states that a tenant is considered to have abandoned the residential

premises when the rental agreement had not been terminated in accordance with the *Residential Tenancies Act, 2018*. As the fixed term was due to end on August 31, 2024, ending the tenancy in May constitutes abandonment on the part of the tenants. The landlord's representative stated that the landlords reside outside the province and were unable to deal with the situation with regards to the final walk through, getting the property ready for new tenants and showing the unit to prospective tenants. In accordance with Section 6-3 of the *Policy*, all reasonable costs incurred by a landlord in mitigating any loss of the rental income are recoverable from the tenants and these costs may include the costs of hiring a property management company. I accept that the tenants abandoned the property and refused to sublet the unit. I also accept that the landlords did the only thing they could to try to mitigate their losses given that they do not reside in the province. For those reasons, I find that the tenants are responsible for the landlords cost to mitigate their rental income loss at \$1610.00.

Item # 2: Holes from TV mount (\$345.00) – The landlord's representative testified that there were numerous holes in the wall where the TV was mounted. Respondent 1 did not dispute that there were some holes in the wall where the TV was mounted but disputed that there were a lot of holes and stated that the holes fall under normal wear and tear. Based on the photographs entered into evidence, I accept that there were numerous holes in the wall that needed to be repaired and based on the quote submitted into evidence, I accept that the landlords are only seeking compensation to repair the section of the wall that was damaged. In accordance with Section 9-5 of the *Residential Tenancies Policy*, Depreciation is usually taken into consideration, however in this situation the landlords are only seeking compensation for the damaged area of the wall and for that reason, I find that the tenants are responsible for the cost to plaster and paint the wall in the amount of \$345.00.

Item # 3: Damage to door (\$293.25) - The landlord's representative testified that an interior pine door in the basement was damaged due to animal scratches. Respondent 1 disputed that they caused the damage to the door and stated that the scratches were present on the door when they moved in, and she also stated that their animals could not have had caused that type of damage as they are small animals. I asked respondent 1 if she could show that the damages existed on the door when she moved in, and she responded that she could not. I asked the landlord's representative if he can show that the damage was not present at the commencement of the tenancy, and he responded that a move-in inspection report was completed on 31-August-2023 which did not show any damage to the pine door (LL#8). Based on the photographs entered into evidence and the move-in inspection report, I accept that there was severe damage to the door at the end of the tenancy and I accept that the damage occurred during the tenancy. In accordance with Section 9-5 of the *Residential Tenancies Policy*, Depreciation and life expectancy of property, pine doors should last a lifetime. For those reasons, I find that the tenants are responsible for the cost to replace the door in the amount of \$293.25.

Item # 4: Lawn Mow (\$74.75) - The landlord's representative testified that the lawn was overgrown and needed to be mowed and he also stated that lawn care was the responsibility of the tenants as per part 11 of the rental agreement. Respondent 1 disputed that the lawn was overgrown and stated that it could be mowed but it wasn't really necessary at the time when they vacated the unit. I asked both the landlord's representative and respondent 1 if the lawn had been perfectly mowed by the landlords at the commencement of the tenancy and both parties responded that they were unsure. I accept that the tenants were responsible for lawn care during the tenancy and there is no dispute that they fulfilled their obligation to keep the grass cut. Based on the photographs entered into evidence, I accept that the grass was not perfectly mowed on the move-out

day, however the grass was not overgrown excessively either and for those reasons, I find that the tenants are not responsible for the cost to mow the lawn.

Decision

15. The landlord's claim for compensation for damages succeeds in the amount of the security deposit of \$2100.00 plus interest.

Issue # 3: Refund of security deposit \$2100.00

Security Deposit applied against monies owed \$2100.00 plus interest.

Analysis

16. 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.

17. The landlord's claim for losses has been successful as per paragraph 15, 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 2023 was 0% and is currently 1% for 2024.

Decision

18. The tenant's claim for refund of security deposit does not succeed.

19. The security deposit plus interest shall be applied against monies owed.

Summary of Decision

20. The tenants claim for refund of security deposit does not succeed.

21. The tenants shall pay the landlords \$0.00 as follows:

Compensation for damages \$2111.48
Less security deposit & interest 2111.48

Total \$0.00

August 9,2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office