

Residential Tenancies Tribunal

Application 2024-0531-NL
Counterapplication 2024-0700-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:50 p.m. on 28-August-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” attended by teleconference.
3. The respondents and counter applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended by teleconference.

Preliminary Matters

4. The tenants submitted two affidavits with their application stating that they had served the landlords with the notice of the hearing electronically via text messages to [REDACTED] and [REDACTED] on 17-July-2024 (TT#1,2) and submitted proofs of sent messages (TT#3,4). The landlords agreed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlords stated that they had served the tenants with the notice of the hearing. The tenants agreed that the landlords served applicant 1 with the notice of the hearing on 19-August-2024, however they never served the applicant 2. The tenants waived the 10-day rule and we proceeded with the hearing.
6. There was a written fixed term rental agreement which commenced on 1-October-2022 that converted into a month-to-month rental agreement. The tenants moved out on 31-May-2024. Rent was \$900.00 per month due on the first of each month. A security deposit of \$675.00 was collected on 4-September-2022 and is in landlord’s possession.
7. The landlords amended their application to include hearing expenses of \$20.00.

Issues before the Tribunal

8. The tenants are seeking:
 - Refund of Security Deposit of \$675.00.

9. The landlords are seeking:

- Damages \$820.00;
- Hearing expenses \$20.00;
- Security Deposit of \$675.00 to be applied against any monies owed;

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*.

11. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 9-3 Compensation for Damages to Rental Premises, Section 12-1 Recovery of Costs and Section 14 of the *Residential Tenancies Act, 2018*: Security Deposit.

Issue # 1: Damages \$820.00.

Landlord's Position:

12. The landlords testified that after the tenants vacated the rental unit, they discovered that there was notable damage to the doors of both the refrigerator and the freezer, approximately 10-15 dents on the steel surface of the doors. The landlords stated that the doors need to be replaced. The landlords stated that the house was a brand-new home, just completed prior to the tenants moving in, making the tenants first occupants. The kitchen was fully equipped with brand new appliances and fixtures. The landlords are seeking \$254.27 for refrigerator door and \$286.54 for freezer door before taxes and \$200.00 for labor, totaling \$820.00.

Tenant's Position:

13. The tenants agreed that the damage to the doors exists, however they remembered only 2 dents. The tenants testifies that they are uncertain about the alleged damage to the fridge and are unsure whether they are responsible for it. The tenants stated that the landlords did not conduct a walkthrough inspection before the tenancy began, and as a result, they cannot confirm whether the damage was caused during the tenancy or if it may have existed prior to the move-in date.

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)*

15. After considering the landlord's testimony and the evidence provided, I accept that according to the photographs of the kitchen in September-2022 (LL#1), the damage to the refrigerator and freezer doors did not exist prior to the tenant's move in. Based on the photographs taken after the tenants moved out (LL#2), I find that the damage to the refrigerator and freezer doors does indeed exist. According to the Section 9-3 of *The Residential Tenancies Policies* as stated above, the landlords have met their obligation to

demonstrate that the damage occurred during the tenancy. I accept landlord's testimony, that the house was a brand-new home in October-2022, just completed prior to the tenants moving in, making the tenants first occupants and that the kitchen was fully equipped with brand new appliances and fixtures. I accept the estimate that was obtained from a specialized store provided by the landlords (LL#3), that the cost of the refrigerator door is \$254.27, and the cost of freezer door is \$286.54.

16. I also acknowledge that both parties agreed to a labor cost of \$150.00 for the replacement of the doors. Based on the credible evidence, I find that the tenants are responsible for the cost of replacement of the fridge and freezer doors in the amount \$621.93 (HST included) and \$150.00 for labor, totaling \$771.93.

Decision

17. The landlord's claim for damages succeeds in the amount of \$771.93.

Issue # 2: Hearing expenses \$20.00

Analysis

18. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

19. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 3: Refund of Security deposit \$675.00

Security deposit to be applied against any monies owed \$675.00

Analysis

20. 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).

21. The landlord's claim for losses has been successful as per paragraphs 16 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 in 2024 is 1%.

Decision

22. The landlord's claim for security deposit plus interest in the amount of \$679.46 to be applied against monies owed succeeds.

Summary of Decision

23. The tenants shall pay the landlords \$112.47 as follows:

Damages	\$771.93
Hearing expenses	\$20.00
Less Security Deposit & interest ...	\$ 679.46
 Total	 \$112.47

September 4, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office