

## Residential Tenancies Tribunal

Application 2024-0677-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:55 p.m. on 9-September-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the landlords" 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 landlords submitted 2 separate affidavits with their application stating that they had served the tenants with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 26-August- 2024 (LL#1). The tenants confirmed receipt of the documents on that date. 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 10-December-2022. The tenants vacated the unit on 11-September-2023. Rent was \$1950.00 per month, due on the 1st of each month. A security deposit of \$1462.50 was paid on 9-December-2022 and \$962.50 is in the landlord's possession.
6. The landlords amended the application to decrease *compensation paid for damages* from \$2589.10 to \$2089.10 as the tenants agreed that they could retain \$500.00 of the security deposit towards damages, and as a result also amended the amount of *security deposit to be applied against monies owed* from \$1462.50 to \$962.50.

### Issues before the Tribunal

7. The landlords are seeking:
  - a. Compensation paid for damages \$2089.10
  - b. Security deposit applied against monies owed \$962.50

## 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 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 and Section 9-5: Life expectancy of property.

### Issue # 1: Compensation paid for Damages \$2089.10

#### Relevant Submission

10. The landlords testified that there were damages / losses to the rental unit and submitted a copy of the damages ledger to support the claim (LL#2). See breakdown of damages ledger below:

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	1. Stains on garage floor due to leakage from ATV that	
2	you stored and said you would clean before leaving	
3	2. Posters hung all over ceiling in top back bdrm which	
4	resulted in numerous spots where the paint has been	
5	removed	
6	3. The crank on the window in the upstairs back bdrm	
7	was broken off	
8	For the above 3 items you agreed (see email attch)	
9	that we could deduct \$500 from your security deposit	\$ 500.00
10	4. Cleaning of all bathrooms (sink, toilet, floor -	
11	especially upstairs one stank of urine) cleaning of the	
12	kitchen sink and counter tops, and picking up dog poop	
13	at min wage as at Sept 2023 we charge \$15/hr for 3 hrs	\$ 45.00
14	5. Replacement of backsplash due to a burn that would	
15	not come out of the marble backsplash - cost of tile	\$ 750.35
16	plus cost for tile installation	\$ 1,293.75

#### Landlord's and Tenant's Positions

11. The landlords testified that there were damages / losses to the rental unit as a result of negligence on the part of the tenants and they are seeking compensation in the amount of \$2089.10. Items 1-3 have been previously dealt with and the tenants agreed that the landlords shall retain \$500.00 of the security deposit to cover the costs associated with those items as stated in paragraph 6 above. The landlord's and tenant's positions on the remainder of the items listed above are as follows:

**Item # 1: Cleaning (\$45.00)** - The landlords testified that the bathroom sink, toilet and floor needed to be cleaned and they also testified that the grass in the yard was extremely high with dog feces everywhere. Applicant 1 stated that lawn care was the responsibility of the tenants as per the rental agreement (LL#3) and she stated that they had to pick up dog feces in the tall grass prior to mowing. The landlords stated that it took 3 hours to complete the work at \$15.00 per hour. The landlord submitted photographs of the bathroom toilet and sink and a photograph of the yard (LL#4). The tenant's disputed that any cleaning within the bathroom area was required and stated that they cleaned the unit thoroughly prior to vacating. Respondent 2 stated that the discoloration in the toilet is due to well water and is difficult to remove. Also, the tenants disputed that there was dog feces in the yard and stated that the grass was high as it was difficult for them to mow around all the bricks and other stuff in the yard that was there when they took possession.

**Item # 2: Replace backsplash (\$2044.10)** – The landlords testified that the marble backsplash in the kitchen was destroyed due to a large burn mark, and they are seeking \$750.35 for materials to replace the backsplash and \$1293.75 for the cost of labor to remove the damaged backsplash and install the new tile. Applicant 1 testified that they tried everything to remove the stain, and nothing worked. She stated that they consulted with professionals at *DSF Granite & Tile* who advised them that it was impossible to just cut out a piece of the marble and replace it as it would not match up. The landlords stated that they had to replace their backsplash with a product of lower value due to the high cost of marble. The landlords submitted a photograph of the damaged backsplash (LL#5) and copies of invoices to support the claim (LL#6). The tenants did not dispute that they caused the damage to the backsplash, however they disputed that they should be responsible for the cost to replace the backsplash as they stated that the burn was caused by a kitchen appliance and such damage falls under “*normal wear and tear*”.

## Analysis

12. 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;*
- *The value to repair or replace the damaged item(s)*

13. Based on the testimony of the applicants and the respondents and the exhibits entered into evidence, the items were analyzed as follows:

**Item # 1: Cleaning (\$45.00)** - The landlords testified that the bathroom sink, toilet and floor needed to be cleaned and they also testified that the grass in the yard was extremely high with dog feces everywhere and it was difficult to mow the grass. The tenant's disputed that any cleaning within the bathroom area was required and stated that they cleaned the unit thoroughly prior to vacating. Respondent 2 stated that the discoloration in the toilet is due to well water and is difficult to remove, and once removed comes back again. Also, the tenants disputed that there was dog feces in the yard and stated that the grass was high as it was difficult for them to mow around all the bricks and other stuff in the yard that was there when they took possession. The tenants stated that they always kept the front yard well mowed and had difficulty mowing the back yard due to all the stuff left around. In accordance with Section 9-3 of the *Policy* as stated above, applicants are required to show that the damage exists. I accept that the landlords could show that the sink was not shining and ultimately was not cleaned to their satisfaction. I also accept that the landlords could show that the toilet had a stain in the bowl but otherwise looked clean. There were no photographs of the floor in the bathroom, and the photograph of the yard basically just shows a lawn mower and fails to

show dog feces or the height of the grass or the bricks. I accept the tenant's testimony that the stain in the toilet was due to well water and was difficult to remove and I accept that the sink was clean, just not sparkling. Based on testimony and the photographs entered into evidence, I find that the landlord failed to prove their case and for that reason, I find that the tenants are not responsible for any cleaning costs.

**Item # 2: Replace backsplash (\$2044.10)** – The landlords testified that the marble backsplash in the kitchen was destroyed due to a large burn mark, and they are seeking \$750.35 for materials to replace the backsplash and \$1293.75 for the cost of labor to remove the damaged backsplash and install new tile. Applicant 1 testified that they tried everything to remove the stain, and nothing worked. She stated that they consulted with professionals at *DSF Granite & Tile* who advised them that it was impossible to just cut out a piece of the marble and replace it as it would not match up. The landlords stated that they had to replace their backsplash with a product of lower value due to the high cost of marble. The tenants did not dispute that they caused the damage to the backsplash, however they disputed that they should be responsible for the cost to replace the backsplash as they stated that the burn was caused by a kitchen appliance and such damage falls under “*normal wear and tear*”. In accordance with Section 9-3 of the *Policy* as stated above, I accept that the landlords were able to show that the damage exists, and the tenants did not dispute that they caused the damage. The landlords were also able to show the cost to replace the damaged item. I do not accept the tenant's testimony that the damage should fall under normal wear and tear. Section 9-5 of the *Residential Tenancies Policy*: Depreciation and life expectancy of property states that marble tile should last a lifetime and for that reason, I find that the tenants are responsible for the cost to replace the backsplash in the amount of \$2044.10.

## Decision

14. The landlord's claim for *compensation for damages* succeeds in the amount of \$2044.10.

## Issue # 2: Security deposit applied against monies owed \$962.50.

### Analysis

15. 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).*

16. The landlord's claim for losses has been successful as per paragraph 14 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* landlords must pay interest on a security deposit to tenants for the entire period that the landlords have had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2019 -2023 was 0% and is currently 1% for 2024.

### **Decision**

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

### **Summary of Decision**

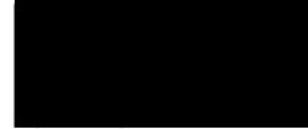
18. The tenants shall pay the landlords \$1071.45 as follows:

Compensation for damages ..... \$2044.10  
Less security deposit & interest..... 972.65

Total ..... \$1071.45

September 23, 2024

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office