

Residential Tenancies Tribunal

Application 2022-No.273-NL
2022-No.358-NL

Decision 22-0273-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 28-June-2022
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1 and tenant2” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.

Preliminary Matters

4. The tenants submitted an affidavit (TT#01) stating that they had served landlord2 with notification of the hearing on 25-April-2022, in person. Landlord1 stated that she wasn’t named on their application and she didn’t receive service. Landlord1 waived her right to service.
5. The landlords submitted two affidavits (LL#01) stating that they served tenant1 with notification of the hearing in person on 19-May-2022. They served tenant2 with notification of the hearing by prepaid registered mail on 24-May-2022, tenant2 confirmed service.

Issues before the Tribunal

6. The tenants are seeking:
 - Security deposit refunded \$350.00
7. The landlords are seeking
 - Compensation for damages \$1,386.00
 - Security deposit applied against monies owed \$350.00
 - Hearing expenses \$33.44

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 14: Security deposit, as well as, Residential Tenancies Policies 9 and 12.

Issue 1: Compensation for damages \$1,386.00

Landlords' Position

10. Landlord1 said that they had a written agreement with the tenants. The initial agreement was for a term from 01-December-2018 until 30-November-2019. The landlords had wanted the tenants to sign another term agreement, however, this was not done. After that time they were in a monthly agreement. The tenants moved out on 28-February-2022. The tenants' paid \$900.00 rent a month. The rental period is from the first day of each month until the last day of the month. Rent is due in full on the 1st day of each month. In January of 2019 the tenants paid a security deposit of \$350.00; the landlords are still in possession of the deposit.
11. Landlord2 said that they decided to sell the house, they gave the tenants a three month termination notice for them to move out the end of April 2022. The landlords had planned to do some repairs and the tenants moved on 28-February-2022. The landlords did agree to the earlier move out date.
12. The landlords submitted a number of pictures of damages for which they are seeking compensation. Landlord1 said that the tenants moved in early with an agreement that they could move in early, rent free and they would clean the house. She said that she expected that when they moved out that the house would be cleaned.
13. Landlord1 said that there is urine stains behind the toilet in the bathroom (LL#03). This required cleaning.
14. Landlord1 said that behind the refrigerator (LL#04 and LL#05) and behind the stove (LL#06) also required cleaning.
15. Landlord1 said that there was two towel racks, two wall ornaments and a towel ring in the bathroom. She said when they moved they took them and this left damages to the walls (LL#07, LL#08, LL#09, LL#10, LL#11, LL#12, LL#13, LL#14, LL#15, and LL#16).
16. Landlord1 said that the tenants also had a wall mounted t.v. and when it was taken down it left holes in the walls (LL#17, LL#18, LL#19, LL#20, LL#21, LL#22, LL#23, LL#24 and LL#25).
17. Landlord1 also said that there were pictures in the hallway and when they were taken down there are additional screw holes. (LL#26, LL#27, LL#28, LL#29 and LL#30).
18. Landlord1 said that the tenants had string lights along the edge of the bedroom. When these lights were taken down they also caused damages (LL#31, LL#32, LL#33, LL#34 and LL#35).

19. Landlord2 said that the tenants had used screws and anchors to hang pictures, he said that had they used a small nail it wouldn't have left the amount of damages and wouldn't have required spackling.
20. The landlords have submitted for personal labor, labor includes the cost to plaster and paint. They included a compensation for damages ledger to show the breakdown, (LL#39), as follows:

Area	Hours	Cost
Cleaning	6	127.20
Bathroom 1 st wall	3	63.60
Bathroom 2 nd wall	3	63.60
Bathroom 3 rd wall	3	63.60
Living room 1 st wall	5	106.00
Living room 2 nd wall	5	106.00
Hallway 1 st wall	5	106.00
Hallway 2 nd wall	5	106.00
Hallway end	5	106.00
Bedroom 1 st wall	5	106.00
Bedroom 2 nd wall	5	106.00
Bedroom 3 rd wall	5	106.00
Total		1,166.00

21. The landlords also included a Paint Shop receipt (LL#38) for the cost of paint \$305.34.
22. The landlords did not include a condition report from when the tenants moved in and they did not complete an inspection with the tenants when they moved out.
23. Landlord1 said that the tenants who lived at the home before these tenants painted the house. Landlord2 said that they painted just prior to moving out in October 2018. Landlord1 said that when they painted; they changed the colors in the house to a neutral color based on the advice of their real estate agent.

Tenants' Position

24. The tenants agree to the terms of the rental agreement as stated by the landlords in paragraph 10. The tenants provided the termination notice (TT#02) it is dated and signed for 27-January-2022 with a termination date of 30-April-2022. They found a new place and moved out 28-February-2022.
25. Tenant2 said that there were already small holes in the walls and that they believed the place wasn't freshly painted prior to them moving in.
26. Tenant2 said that when they were moving she repeatedly requested a walk through and was uncomfortable with leaving the keys.
27. Tenant2 said that it was always the landlords' intent to paint after they moved and she provided a notice given to them by the landlord dated for 02-February-2022 (TT#03). The notice is informing the tenants that the landlord will be painting and doing repairs beginning 07-February-2022 and that he will be there each day from 9:00 am until 5:00 pm until all repairs are completed.

Analysis

28. In consideration of damages in this decision I refer to section 32 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

29. Accordingly, in any damage claim, 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)

30. In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6. The life expectancy of interior paint is 3 – 5 years. In light of the estimated time since the house was last painted was October of 2018, the interior paint falls within the 3 – 5 year time period.

31. In addition to the age of the paint, the tenants were given a notice for repairs, saying that the landlords were going to paint. The landlords said that they were given a recommendation by their real estate agent to use a neutral color throughout, this indicates that there was an intent to prepare this home for the real estate market. The tenants' belief that the landlords were going to paint because they were selling the house seems logical. The cost of preparing the house for sale is not the burden of the tenants.

32. The decision by the landlords to paint the home appears to be directly linked to the sale of the house and not to the condition of the home due to any act of the tenants. The landlords have not meet the burden of proof for damages.

33. The landlords also included some pictures of cleaning required in the bathroom and kitchen, with a time frame of 6 hours. The cleaning in the pictures submitted appear to be minimal and would have taken approximately 1 hour to clean.

34. The landlords' claim for damages succeeds in the amount of 1 hour personal labor for a total of \$21.20.

Decision

35. The landlords' claim for damages succeeds in the amount of \$21.20.

Issue 2: Security deposit applied \$350.00

Issue 3: Security deposit refunded \$350.00

Landlords' Position

36. The landlord is requesting to retain the security deposit against monies owed.

Tenants' Position

37. The tenants are seeking reimbursement of their security deposit.

Analysis

38. The landlord's claim for losses has been successful, paragraph 33, in the amount of \$21.20, and they shall retain that amount of the security deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (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

Decision

39. The landlord shall retain \$21.20 of the security deposit and refund the remaining \$328.80 to the tenants.

Issue 4: Hearing expenses reimbursed \$33.44

40. The landlord submitted the receipt for \$20.00 for the cost of the hearing and the receipt for the cost of prepaid registered mail \$13.44 (LL#41) and pursuant to policy 12 with this Section, which states that a party may claim the filing fee as a hearing expense where they have received an award, that is in an amount that is greater than the security deposit and as the landlords were awarded \$21.20 and as the security deposit is \$350.00, the landlord's claim for the filing fee does not succeed.

Summary of Decision

41. The landlords shall retain \$21.20 of the security deposit for cleaning and the landlords shall refund the remaining \$328.80 to the tenants.

July 6, 2022

Date

