

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0372-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 23-March-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.
4. The landlord presented a witness, [REDACTED] the landlord’s daughter who manages the property, hereinafter referred to as the “witness” attended the teleconference.

Preliminary Matters

5. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlord submitted an affidavit with her application stating that she had served the tenants with notice of the hearing, electronically to the emails provided to the landlord, by the tenants, in their rental agreement. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent paid \$968.33
 - Late Fees \$75.00

- Compensation for damages \$3,002.50
- Cleaning \$75.00
- Reimbursement for doorbell camera monitor \$402.50
- Security deposit applied \$425.00
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, and Section 15: Fee for failure to pay rent, Section 32: Abandoned personal property, as well as, Residential Tenancies, Policy 9: Claims for compensation.

Issue 1: Rent \$968.33

Relevant Submissions

9. The landlord submitted the rental agreement (LL#02) between herself and the tenants. She said that they moved in just before 01-March-2021. The agreement is for a year term from 01-March-2021 until 28-February-2022. The tenants pay \$850.00 a month for rent. The rental period is from the 1st day of the month to the last; rent is due on the 1st day of each month. The rent doesn't include utilities. The tenants paid a security deposit of \$425.00 (LL#04) on 16-February-2021; the landlord is still in possession of the deposit.
10. The landlord said she served the tenants with notice of termination of the rental agreement, for failure to pay rent, in July 2021; the tenants moved out on 04-September-2021. The landlord said she was notified on 04-September-2021 by tenant1 that they had moved.
11. The landlord submitted the rent ledger (LL#03) and she explained that the rent was frequently late and paid in installments, instead of in full on the 1st day of each month, as per the rental agreement (LL#02). On 27-July-2021 the tenants make a payment which pays for the late fees applied, they are then out of rental arrears. They didn't pay rent for August or the 4 days in September. See below:

Rent ledger

Date	Action	Amount	total
16-Feb-21	security deposit	425.00	425.00
16-Feb-21	payment	-400.00	25.00
16-Feb-21	payment	-25.00	0.00
1-Mar-21	rent due	850.00	850.00

2-Mar-21		payment	-600.00	250.00
2-Mar-21		payment	-250.00	0.00
1-Apr-21	rent due		850.00	850.00
1-Apr-21		payment	-600.00	250.00
7-Apr-21		payment	-250.00	0.00
1-May-21	rent due		850.00	850.00
5-May-21		payment	-850.00	0.00
1-Jun-21	rent due		850.00	850.00
8-Jun-21		payment	-600.00	250.00
8-Jun-21		payment	-285.00	-35.00
15-Jun-21		late fee	29.00	-6.00
1-Jul-21	rent due		850.00	844.00
13-Jul-21		payment	-200.00	644.00
14-Jul-21		payment	-100.00	544.00
15-Jul-21		payment	-150.00	394.00
22-Jul-21		payment	-150.00	244.00
26-Jul-21		payment	-250.00	-6.00
27-Jul-21		late fee	55.00	49.00
27-Jul-21		payment	-50.00	-1.00
1-Aug-21	rent due		850.00	849.00
1-Sep-21	rent due daily rate 1-4 Sep		111.80	960.80

Daily rate: $\$850 \times 12 \text{ months} = \$10,200$
 $\$10,200$ divided by 365 days = $\$27.95$ a day
 $\$27.95 \times 4 \text{ days} = \111.80

12. The landlord is seeking payment of overdue rent.

Analysis

13. Non-payment of rent is a violation of the rental agreement signed by both parties. The tenants are responsible to pay rent up to the end of their tenancy. The tenants owe the landlord \$960.80 for rent as per the ledger in paragraph 11.

Decision

14. The landlord's claim for rent arrears succeeds in the amount of \$960.80.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord is requesting the full amount of late fees for non-payment of rent. The last payment received from the tenants was on 27-July-2021; the rent is in arrears starting 02-August-2021.

Analysis

16. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

17. As the tenants paid all their rent plus the applied late fees on 27-July-2021, at the beginning of August they fall into arrears once again. As they are in arrears beginning 02-August-2021, the landlord is entitled to begin the assessment of late fees again. The landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

18. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for damages \$3,002.50

Relevant Submissions

19. The landlord resides out of province and her daughter manages her property. The landlord called her as a witness. The witness said that when she showed the apartment to the tenants, the apartment was recently painted and in good condition, prior to their occupancy.
20. The landlord said in addition to the haphazard rent payments there was suspicion that the apartment was being damaged. She had served them with a termination notice for their late rent, they eventually moved on 04-September, as per paragraph 10. When the tenants left, they left a lot of their belongings behind. The landlord applied to Residential Tenancies (application 2021-072) and received permission to discard the belongings as they had no value and tenant1 had agreed to the disposal.
21. The landlord said that they were shocked by the level of damages over such a short time; the tenants only lived there 6 months. She hired a contractor, [REDACTED] to complete the work necessary in the apartment. She submitted into evidence her bill (LL#05), as follows:

ITEM	COST
Removal of belongings (3 dump loads)	350.00
Drywall repair/plastering	300.00
Paint (prime and colour)	300.00
Paint and trim baseboards	150.00
Replace 2 interior doors and paint	300.00
Repair and paint window wells	50.00
Replace bathtub trim/silicone tub surround	50.00
Replace bottom of bathroom vanity	150.00
Replace/repair broken kitchen drawer	100.00
Materials	600.00
Subtotal	2350.00
HST	352.50
Total	2,702.50

22. The landlord spoke to each of the above items.
23. The landlord indicated on the bill, that the contractor took 3 dump loads of garbage and destroyed personal belongings to the dump. She was charged \$350.00 for this service. She said that the tenants left behind furniture and personal items, there was drug paraphernalia, personal hygiene items, as well as, body fluids (blood) on the items. She included pictures (LL#15, 16, 19 & 20).
24. The landlord said that she had purchased the house in September 2020, she had painted and prepared the home for renters. She had a renter prior to these tenants and when that renter left there was damage to the walls, she had the entire unit repainted, when these tenants moved in 6 months ago.
25. The landlord sent in pictures of the damage to the walls (LL#06, 07, 08 & 09). The pictures show holes that appeared to be from punches, however, there were also holes cut into the walls. The landlord believes, based on the paraphernalia left behind that the tenants were involved in some significant drug use. She said that perhaps the holes were cut into the walls due to either paranoia or possibly to hide things inside the walls.
26. The landlord said that the contractor charged her \$300 to plaster and \$450 to paint the walls and baseboard. As shown on the bill (LL#05).
27. The landlord submitted two pictures of interior doors that were damaged (LL#10 & 11). Both appear to have been punched and there is a hole in both doors. The contractor charged \$300.00 to replace, paint and hang the doors. The landlord said that the doors are about 10 – 15 years old.
28. The landlord submitted pictures of the window wells (LL#22) the wells have blue paint on them (the window wells are white), and the tin of blue paint is on the ledge. The window wells had to be painted to cover the dark blue paint. The contractor charged \$50.00 for this work.

29. The contractor also sealed the bathtub with silicone, he charged \$50.00. The landlord said that this was done one year before. She did not submit a picture.
30. The landlord submitted a picture of the bathroom vanity (LL#12), in the picture the bottom of the cupboard under the sink has a large (approximately 25% of the total bottom) broken off. She doesn't know how this happened, she says it might be tied to the holes in the walls and potentially used to hide stuff. She said that the cupboard/vanity is about 10-15 years old. The contractor charged \$150.00 for the repair (LL#05).
31. The landlord also provided a picture of the kitchen cabinets. (LL#13) The top cabinet drawer has the front facing missing. She said that the contractor had to have this specially made by a cupboard company to match the rest of the cupboards. She believes that the cupboards are 10-15 years old. The contractor charged her \$100.00.
32. The landlord said she had the contractor purchase all the supplies necessary to do the repairs and he billed her \$600.00. There was also a charge for HST of \$352.50. (LL#05)
33. The landlord submitted a picture of a window in the apartment, (LL#14) the outside pane is broken. She said that she has had to wait a long time for the billing and she has been charged \$247.45 to replace the glass. She did not have this receipt in time to submit to this board.
34. The landlord is requesting payment for the above damages for the total of the billing \$2,702.50 + the glass \$247.45 totaling \$2,949.95.

Analysis

35. As per paragraph 22 and 23, the landlord was charged for the disposal of the personal items left behind by the tenants. According to Section 32 of the *Residential Tenancies Act, 2018*:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

.....

*(4) The **director may**, on application by the landlord under section 42, **authorize the landlord to dispose of personal property** referred to in subsection (1) where the director believes on reasonable grounds that*

(a) the personal property has no monetary value;

(b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or

(c) the storage of the personal property would be unsanitary or unsafe.

36. The landlord incurred the cost of \$350.00 for the disposal of the tenants' items, this is the responsibility of the tenants and the landlord shall be reimbursed this cost.
37. In paragraphs 24 – 26 the landlord states that she had purchased the house one year prior, the apartment was painted throughout at that time. She had a previous renter and the apartment once again required painting. When the tenants moved in, the apartment was freshly repainted.
38. The landlord was charged \$300 to plaster and \$450 to paint. 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 willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

39. 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)

In accordance with Residential Tenancies policy 9-003, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-005.

40. In consideration of the damages to the walls, the landlord did provide pictures of the damages (LL#06, 07, 08 & 09), as well as, testimony to the condition of the walls prior to the tenants taking occupancy. There is clearly a lot of damage to the walls.
41. According to the National Association of Home Builders, walls should last the lifetime of the home, and as per Section 10 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. The cost of the repair of damage to the walls is the responsibility of the tenants, therefore they are solely responsible for the cost of the \$300.00 to plaster the walls.
42. Residential Tenancies policy 9-005 says that interior paint should last 5 years. This unit was only painted 6 months ago and should not require paint for approximately 4.5 years. In consideration of the minimal depreciation of the paint the tenants are responsible for 4.5 divided by 5 years for a total of 90% of the cost of painting. The painting cost \$450.00 x 90% = \$405.00. The tenants shall reimburse the landlord for \$405.00 for the cost of painting.

43. The landlord testified that there were two doors that were damaged, by what appeared to be punch holes in the doors. She also submitted pictures (LL#10 &11). She said that the contractor charged \$300.00 to do this repair, as per his bill (LL#05). Residential Tenancies policy 9-005 says that interior doors should last 20 years. The landlord believes these doors to be 10-15 years old. In consideration of the uncertainty of the age I will consider the doors the median age of 12.5 years. The landlord should have expected to replace these doors in about 7.5 years and the tenants are responsible for that loss to the landlord: $7.5 \text{ years} \div 20 = 37.5\%$ of the cost of this replacement. The tenants shall pay the landlord $\$300.00 \times 37.5\% = \112.50 for the cost of replacing the two interior doors.
44. Paragraph 28 the landlord is submitting for the cost of painting the window wells that were splattered with a blue paint (LL#22), she was charged \$50.00 for this work by the contractor (LL#05). The window wells were painted 1 year prior and as previously stated in paragraph 41, interior paint should last up to 5 years. Therefore $4 \text{ years} \div 5 = 80\%$; the tenants are responsible for 80% of the \$50.00 charge totaling \$40.00.
45. The landlord submitted a charge of \$50.00 for replacement of the silicone around the bathtub. The landlord didn't submit a picture and was unable to describe the issue with the silicone. The periodic replacement of silicone around bathtubs is considered general maintenance, this cost is not the responsibility of the tenants.
46. The landlord submitted a picture of inside the cupboard of the bathroom vanity (LL#12), she was charged \$150.00 for the repair of the inside of the cupboard under the sink. She also submitted a picture of the kitchen cupboards (LL#13). The facing is removed and missing, she said that they had to have the facing specially ordered to match the other cupboards at a cost of \$100.00. Residential Tenancies policy 9-005 says that cabinets should last 20 years and the landlord believes these cupboards to be 10-15 years old. In consideration of the uncertainty of the age I will consider the doors the median age of 12.5 years. The landlord should reasonably expect to replace these cupboards in approximately 7.5 years and the tenants are responsible for that loss to the landlord: $7.5 \text{ years} \div 20 = 37.5\%$ of the cost of this replacement. The tenants shall pay the landlord $\$150.00 + 100.00 = \$250.00 \times 37.5\% = \$93.75$.
47. The landlord submitted a picture of a window in the apartment, (LL#14) the outside pane is broken. She said that she has had to wait a long time for the billing and she has been charged \$247.45 to replace the glass. She did not have this receipt in time to submit to this board. As she didn't have a receipt, she doesn't meet the requirement of showing the value to repair/replace, therefore this cost will not be considered.
48. Finally on the billing (LL#05), the contractor charged a cost of \$600.00 + the HST of \$352.50 totaling \$952.50. This is a blanket cost to all of the repairs, there is no breakdown of what supplies are for which repair. The only equitable way to discern this cost is to do a percentage of the value reimbursed for each repair and apply that percentage to the cost of supplies, see table below:

ITEM	paragraph	percent
Removal of belongings (3 dump loads)	36	100
Drywall repair/plastering	40	100
Paint (prime and colour)	41	90
Replace 2 interior doors and paint	42	37.5
Repair and paint window wells	43	80
Repair cupboards	45	37.5
Percentage 445 divided by 6 items		74.2

49. The tenants will incur the cost of 74.2% of the supplies and taxes applied totaling 74.2% x 952.50 = \$706.76.

Decision

50. The tenants shall reimburse the landlord for damages totaling \$2,008.01, as follows:
- Removal of items \$350.00
 - Plaster300.00
 - Painting..... 405.00
 - Replace doors112.50
 - Paint window wells40.00
 - Repair cupboards93.75
 - Supplies and tax706.76
 - Total\$2,008.01

Issue 4: Cleaning \$75.00

Relevant Submissions

51. The landlord said her daughter and her daughter's husband did the cleaning of the apartment. She said that the apartment was very dirty and she included pictures of blood splattered walls, dirty sink and cupboards (LL#15 &16). Her daughter is the property manager and she told the landlord it took 7 hours at \$25.00 an hour for a total of \$175.00

Analysis

52. The responsibility for the cleaning of the apartment is that of the tenants. It is clear in the pictures that the time frame of 7 hours to complete the cleaning is reasonable. This board will accept a personal per hour rate of \$8.00 + minimum wage \$12.75 = \$20.75. The landlord shall be reimbursed 7 x \$20.75 = \$145.25 for the cost of cleaning the apartment.

Decision

53. The landlord's claim for cleaning costs succeeds in the amount of \$145.25.

Issue 5: Reimbursement for doorbell camera monitor \$402.50

Relevant Submissions

54. The landlord submitted pictures of the place where the camera was removed from the wall (LL#07), as well as, pictures that were texted to her by tenant1 showing activity outside the door (LL#17). The landlord said she submitted the picture to show that there was a camera there initially.
55. The landlord said that tenant1's texts were becoming unusual (LL#23), in her texts she was saying that the police were looking for tenant2 and that tenant2 was being held in his parents' basement. The landlord suspects that because of the apparent paranoia that the tenants probably got rid of the camera.
56. The landlord didn't submit a receipt, she hasn't purchased a camera because of the costs she has already incurred. She searched the price and found one for \$402.50.

Analysis

57. This board will not consider the cost of items that have not been purchased and for which there is no receipt.

Decision

58. The landlords claim for the missing doorbell camera fails.

Issue 6: Security deposit applied \$425.00

Relevant Submissions

59. As shown in paragraph 9 the landlord said that the tenants paid a security deposit of \$425.00 and she is still in possession of the deposit. She is requesting to retain the deposit against monies owed.

Analysis

60. The landlord's claim for losses has been successful, paragraphs 14, 18, 49 & 52, and she shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

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

61. The landlord’s claim to retain the security deposit succeeds in the amount of \$425.00.

Issue 7: Hearing expenses reimbursed \$20.00

62. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#18) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

63. The tenants shall pay the landlord \$2,784.06 as follows:

- Rent\$960.80
- Late fees75.00
- Damages2,008.01
- Cleaning145.25
- Hearing expenses20.00
- Less security deposit (425.00)
 - Total..... \$2,784.06

The landlord shall retain the security deposit \$425.00.

March 29, 2022
Date

