

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0462-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:09 AM on 24 February 2022 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “the tenants”, participated in the hearing.
3. The respondents, [REDACTED] hereinafter referred to as “the landlords”, were also in attendance.

Issues before the Tribunal

4. The tenants are seeking an order for a refund of the remaining \$600.00 security deposit.
5. The landlords are seeking the following:
 - An order for a payment of \$1875.00 in compensation for damages; and
 - Authorization to retain the remaining \$600.00 security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Issue 1: Compensation for Damages - \$1875.00

Relevant Submissions

The Landlords' Position

8. The landlords entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 July 2020, and a copy of the executed lease was submitted with the tenants' application. The agreed rent was set at \$1200.00 per month, and it is acknowledged in the lease that the tenants had paid a \$900.00 security deposit.
9. The tenants vacated the unit on 01 September 2021. On 15 September 2021 the landlords refunded to the tenants \$300.00 of the security deposit, retaining the other \$600.00 in compensation for damages. They acknowledged that they had not entered into a written agreement with the tenants on the disposition of that remaining \$600.00.
10. Despite the fact that they had returned \$300.00 of the deposit to the tenants, the landlords have since discovered \$1875.00 in damages, and the following in the breakdown to carry out repairs:
 - Toilet and bathroom \$200.00
 - Kitchen tap and sink..... \$350.00
 - Fridge \$150.00
 - Stolen stove tray, cleaning \$100.00
 - Missing utensils..... \$75.00
 - Missing bed clothes, duvet, carpet \$100.00
 - Painting \$500.00
 - Missing TV, clocks, extension cords, etc..... \$250.00
 - 2 window frames, lever \$150.00

Total..... \$1875.00

Toilet and bathroom

11. The landlords stated that after the tenants moved out, they discovered that the toilet seat and the tap in the bathroom were broken. They also complained that the bathroom had not been cleaned. They are seeking \$200.00 in compensation. The landlords stated that a friend of theirs carried out the repairs, but no receipts were submitted with their application.

Kitchen tap and sink

12. The landlords complained that a fitting for the tap for the kitchen sink was broken. They claimed that they paid their plumber \$350.00 to have it repaired. No receipt was submitted with their application, and the landlords did not provide any photographs to the tenants showing this damage.

Fridge

13. The landlords stated that 2 of the racks in the refrigerator were cracked, and they are seeking \$150.00 for the costs of replacing them. Those racks have not been replaced and the landlords submitted no receipts or estimates with their application.

Stove tray, cleaning

14. The landlords claimed that the stove the tenants were supplied with was “used and abused” and it had “carbonized”. They are seeking \$100.00 in compensation for their time cleaning that stove. The landlords also complained that one of the elements was no longer working.

Missing utensils

Missing bed clothes, duvet, carpet

15. The landlords stated that the tenants were supplied with kitchen utensils when the tenancy began but they claimed that when they moved, the tenants had taken a toaster, a spoon, a plate, “or whatever”. The landlords replaced these items and they are seeking \$75.00 in compensation. They also claimed that the bed sheets, duvet covers, and pillows were taken when the tenants moved out, as well as a table. They are seeking \$100.00 for the costs of replacing those items. No receipts were submitted with their application.

Painting

16. The landlords claimed that the tenants had stored bicycles in the hallway of the rental unit, resulting in holes in the walls. They also complained that the tenants were storing items at the unit for people who did not live there. The landlords stated that it took 4 days to repair and repaint the walls. They are seeking \$500.00 in compensation. No receipts were submitted with their application and no photographs were submitted showing the condition of the walls. The landlords claimed that these walls were painted just before the tenants moved in.

Missing TV, clocks, extension cords, etc.

17. The landlords claimed that the TV the tenants were provided with, along with some clocks and extension cords, were missing from the unit after they regained possession of the property. They testified that all of these items have been replaced and they are seeking \$250.00 in compensation. No receipts were submitted with their application.

2 window frames, lever

18. The landlords also claimed that 2 window frames, and the levers for opening and closing those windows, are broken and these windows now need to be replaced. That work has not yet been carried out, but the landlords are seeking \$150.00 in compensation. No photographs were submitted showing these windows and no written estimates were submitted to establish the costs the landlords are seeking here.

The Tenants' Position

Toilet and bathroom

19. The tenants stated that there was nothing wrong with the toilet or the taps in that bathroom. They claimed that they had conducted 2 walkthroughs with the landlords when the tenancy ended, and they were not informed on those occasions that there was anything wrong with the bathroom. They pointed out that the landlords had submitted no receipts for the costs they are claiming here and they claimed that the landlords had not provided them with any photographic evidence prior to the hearing.

Kitchen tap and sink

20. The tenants claimed that, as far as they knew, there was nothing wrong with the tap in the kitchen. They acknowledged that a small piece of rubber had come off of the tap, but they claimed that it was fully functioning when the tenancy ended.

Fridge

21. The tenants testified that when they moved in, the landlords informed them that these 2 racks in the refrigerator were cracked, and they attributed that damage to their previous tenants. They again pointed out that during their outgoing walkthrough, the landlords had the opportunity to inspect the refrigerator, but they did not complain about any damage at that point.

Stove tray, cleaning

22. The tenants stated that 2 of the burners stopped working on the stove that the landlords had originally supplied them with. When the landlords became aware of this problem, they replaced that stove with a second one, but the tenants stated that this second stove did not work. As such, they brought the original stove back into the apartment and used it for the remainder of their tenancy, even though 2 burners didn't work. The tenants claimed that they had taken good care of the stove during their tenancy, and they cleaned it before they vacated.

Missing utensils

Missing bed clothes, duvet, carpet

23. The tenants claimed that nothing was missing and the same utensils were at the unit when they moved out as when they moved in. They also claimed that they had left the duvets and bedding on the beds when they moved out.

Painting

24. The tenants claimed that none of the walls were damaged when they moved out and no walls needed to be repainted.

Missing TV, clocks, extension cords, etc.

25. The tenants claimed that there never was TV at the rental unit, and they claimed that all the clocks and extension cords were left at the unit when they moved out.

Window frames, lever

26. The tenants stated that the windows were not damaged and they were in the same condition when they moved out as they were when they moved in.

Analysis

27. 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.

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.

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 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) *After hearing an application the director may make an order*

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

28. The burden of proof falls to the landlords to establish, on the balance of probabilities, that their version of events is more likely to be the case than that provided by the tenants.
29. The tenants denied that they had caused any damage to the property during their tenancy, and they also denied that they had taken any of the possessions supplied to them when they moved in. Besides the landlords' contradictory testimony, they presented no other evidence which would lead me to conclude that their version of events is more likely than the tenants'—there was no report of any incoming or outgoing inspection, no photographic evidence was provided to the tenants showing this damage, and no receipts or estimates were submitted showing the costs the landlords had incurred to carry out repairs.
30. Based on the paucity of evidence submitted by the landlords, I conclude that they have failed to meet their burden of proof. As such, their claim does not succeed.

Decision

31. The landlords' claim for compensation for damages does not succeed.

Issue 2: Security Deposit

32. The tenants paid a security deposit of \$900.00 on 18 June 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. There is no dispute that the landlords had returned \$300.00 of that deposit to the tenants, on 15 September 2021, and that they had retained the remaining \$600.000. As the landlords' claim for compensation for damages has not succeed, the landlords shall return the remaining \$600.00 of that deposit to the tenants.

Decision

33. The landlords shall return the remaining \$600.00 of the security deposit to the tenants.

17 November 2022

Date

