

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0504-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:19 a.m. on 23-February-2022.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as “tenant1 and tenant2” respectively, did not attend.

Preliminary Matters

4. 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 (LL#01) with her application stating that she had served both the tenants with notice of the hearing, by emails on 28-December-2022; she explained that this was a slip of the pen and that the true date is 28-December-2021, I accept her explanation. 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.
5. The landlord submitted the rental agreement (LL#02). She said that the tenants had an agreement for a one year term from 01-March-2021 until 28-February-2022. They took occupancy in February-2021 and paid a prorated amount of rent, their agreement began on 01-March-2021. The tenants paid \$1,400.00 rent, utilities not included. The rental period is from the first day of the month to the last, with rent due on the 1st. The tenants paid a security deposit of \$1,050.00 on 15-February-2021 and the landlord is still in possession of that deposit.

6. The landlord stated that on the morning of 01-June-2021 she received an email (LL#04) from the tenants1 saying that due to “certain circumstance” they had moved the night before. Tenant1 went on to say that tenant2’s mother wasn’t well and that she was sorry to leave such a beautiful house. She said that the landlord could keep the security deposit for causing the inconvenience.

Issues before the Tribunal

7. The landlord is seeking:
 - Compensation for damages \$8,928.53
 - Cleaning expenses \$293.25
 - Rent \$4,900.00
 - Late fees \$75.00
 - Utilities 282.14
 - Security deposit for inconvenience \$1,050.00
 - Hearing expenses \$20.00

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, Section 14: Security Deposit, Section 15: Fee for failure to pay rent, and Section 18: Notice of termination of rental agreement and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for damages \$8,928.53

Relevant Submissions

10. As shown in paragraph 6, the landlord stated that on 01-June-2021 she received an email (LL#04) from her tenant1 saying that they had moved throughout the night.
11. The landlord said that she lives out of province, so she had her daughter and her daughter’s partner do an emergency walk through, because the tenants had abandoned the house. She said that they reported back that the house was in really bad condition, there was urine and feces on the floors throughout the home, it had been left that way and the floors had lifted and warped. The front door frame was busted and it appeared that someone had kicked it in. The landlord provided pictures of the damages (LL#08 &LL#09).
12. The landlord said that she didn’t know what happened to the flooring, two weeks prior there were repairs done in the house and everything was fine. She said that the tenants had a dog and possibly he was left alone. She feels that something happened in the

house, the front door appeared to be kicked in and the tenants left in the middle of the night, prior to that there was no indication that they were planning to leave.

13. The landlord provided pictures (LL#08 and LL#09) that displayed the lift and warping of the flooring. She said that her daughter and her daughter's partner said that the pictures did not show the extent of the damage. There was urine soaked through all the flooring and feces smeared throughout. They told her that the smell of urine was so overpowering that they could only tolerate being in the house for about 10 minutes at a time.
14. The landlord said it felt intentional. She contacted the police. She was directed by them to file a claim with us.
15. The landlord said that she had bought the house a year prior and that she doesn't know the exact date that the flooring was laid, because it was laid by the previous owner. She said that she believes the flooring was relatively new and estimated it to be about 5 years old. She said that it was a high end flooring, when she purchased new flooring she had to purchase a lower grade.
16. The landlord said that with the exception of 2 bathrooms and a bedroom, the flooring throughout the house all had to be replaced as well as the baseboards. The flooring on the staircase was hardwood so that was sanded and refinished. For the work to be done they had to leave the windows open all summer and the smell of urine still prevailed.
17. The landlord did not do a condition report with the tenants when they moved in during February. She did provide a letter (LL#10) from the tenant who moved out in February just before these tenants took occupancy. The letter isn't sworn testimony, however it does address the condition of the floors and describes the flooring as new throughout. Further to this the landlord has included emails from tenant1 and tenant2 (LL#10) that describe the home as beautiful and the landlord as quick to respond to issues.
18. The landlord said that the tenants stopped responding to her when she addressed the condition that the house was left in.
19. The landlord said that work began on the house immediately with the floors being taken out and steps sanded. Due to Covid there were supply chain issues with receiving the flooring and some of the flooring had a defect in the click and this caused further delays. The work was completed on 21-August-2021.
20. The work progressed throughout the summer, the landlord also submitted receipts for the lawn maintenance as she indicated that this was the responsibility of the tenants according to part 11 of the rental agreement (LL#02) and the work was completed by the same company.
21. The landlord provided receipts for the work that was completed as follows:

	tear out and disposal of flooring (LL#07)	\$575.00
	lawn care (LL#07)	\$431.25
	install flooring and refinish staircase (LL#07)	\$3,687.50

Kent flooring supplies (LL#07)	\$283.20
Kent flooring supplies (LL#07)	\$182.37
Kent baseboard (LL#07)	\$467.54
Home Depot flooring (LL#14)	\$244.67
Home Depot flooring (LL#14)	\$1,865.19
total	\$7,736.72

- The landlord did some additional work and suggested to remove a \$50.00 amount from the 3rd bill because that work wasn't tied to the tenants. This is done.

22. During the viewing of evidence it became apparent that a flooring receipt was missing. The landlord said she must have forgotten to submit one of the receipts.

Analysis

23. 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.

...

24. 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.

25. The landlord testified, in paragraph 12, that the flooring was in good condition just two weeks prior when there was work completed in the house. She also testified that she thought this damage was intentional and she contacted the police, I accept this testimony and conclude that the tenants are responsible for the damages to the flooring.

26. As indicated in paragraph 22, above, depreciation must be factored in when awarding compensation for damages. In this particular case, the landlord believes that the flooring is approximately 5 years old and that it was of a high quality. The National Association of Home Builders/Bank of America Home Equity Study of Life Expectancy of Housing Components estimate the life span of laminate flooring to be 15-25 years.
27. The landlord estimated the flooring to be approximately 5 years old and she said that the flooring was a high end quality. I accept her testimony and the supplemental documentation of emails and letters of the previous tenant, and tenant1 and tenant2, that the flooring was in good condition. I will go further and accept the longer life expectancy of the flooring of 25 years, based on the testimony of the landlord in paragraph 5, that this flooring is a higher quality of the flooring.
28. The landlord is obligated to keep the premises in good condition and therefore would eventually had to replace this flooring at her own expense. The flooring is 5 years old and has only lasted for 20% of its life, the landlord therefore is entitled to 80% reimbursement for the cost of replacing this floor.
29. The table in paragraph 21 has the cost of damages at \$7,736.72, the cost of lawn maintenance, \$431.25, is included in this balance and will be determined in the paragraph following. Therefore the cost to replace the flooring to the landlord is $\$7,736.72 - 431.25 = \$7,305.47$. Based on life expectancy of the flooring, the tenants will be responsible for 80% of this cost $\$7,305.47 \times 80\% = \$5,844.38$.
30. Receipts were provided for the cost of lawn maintenance \$431.25 (LL#07). The landlord indicated in paragraph 20 that the tenants are responsible for lawn care in the rental agreement (LL#02) part 11. The work continued until the later part of August. It would have been necessary to maintain the lawn during these summer months and this work is the responsibility of the tenants. I therefore find that the tenants owe the landlord \$431.25 for lawn maintenance.
31. The tenant's owe the landlord \$5,844.38 for flooring and \$431.25 for lawn maintenance for a total of \$6,275.63 in damages.

Decision

32. The landlord's claim for damages succeeds in the amount of \$6,275.63.

Issue 2: Cleaning Expenses \$293.25

Relevant Submissions

33. The landlord testified that she used the services of a real estate agent who gave her the name of a cleaner, [REDACTED] who she hired once the work in the house was completed.
34. The landlord said that the cleaner also struggled with the smell of urine, which was still lingering in August when the work replacing the flooring was completed.

35. The landlord submitted the receipt for the cleaner's work (LL#11); for \$293.25.

Analysis

36. As decided in paragraph 25, I accept that the tenants are responsible for the damages and subsequently, based on Section 10 of the Residential Tenancies Act, 2018, they are responsible for the cleaning. The tenants will reimburse the landlord for the cost of the cleaning.

Decision

37. The landlord's claim for cleaning expenses succeeds in the amount of \$293.25.

Issue 3: Rent \$4,900.00

Relevant Submissions

38. As indicated in paragraph 6 the tenants gave the landlord notice that they had moved throughout the night and were not continuing with their lease.
39. In the email thread (LL#04) the landlord addressed the issue that they were breaking the lease and not giving notice and that rent was due that day.
40. The landlord confirmed that she did not receive rent from the tenant since that time.
41. The landlord submitted a rent ledger (LL#03) and she has charged the tenant rent for June, July, August and half of September, for a total of \$4,900.00.
42. The landlord is requesting rent for the 3 ½ months because: it took that long for the repairs, she wasn't given notice and she had a renter in mid-September, so she stopped applying rent charges at that time.

Analysis

43. The tenants signed a one year lease, as per paragraph 8 and the submitted rental agreement (LL#02). As per Section 18 of the *Residential Tenancies Act, 2018*,

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

.....

(8) Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:

.... *(c) the tenant is required to reside with a family member because of the ill health of the family member and the notice to the landlord is accompanied by evidence of the ill health of the family member;*

....

44. The landlord is entitled to two months' notice from the tenants because they entered into a term agreement with the landlord. They could, according to Section 18 (8)(c) give one months' notice to care for a family member with ill health, however the landlord wasn't provided evidence of that ill health and she testified that the move was very sudden. I therefore find that the tenants are obligated to give a minimum of two months' notice to the landlord.
45. The landlord is requesting that not only the notice period be reimbursed but also the time it took for the repairs to be completed and the time it took for house be rented to a new renter.
46. The landlord said that the work began immediately and as soon as the work was completed and the cleaning was done, it was ready to be rented and she found a renter who moved in mid-September-2021; she then stopped charging for rent.
47. The landlord is required to mitigate her loss, which it appears she did, she did start work immediately and she faced delays with supply chain issues that she had no control over, however she does say that the cleaner finished on 21-August-2021 and that the house was ready at that time for new renters.
48. I therefore find that the tenants' responsibility is only to 21-August-2021 as the damage they caused is no longer an issue as of that date.
49. The tenants are responsible for June, July and a daily rate in August, as follows:
\$1,400.00 x 12 months = \$16,800.00 divided by 365 days = \$46.03 a day x 21 days = \$966.63. Therefore the tenants owe:

June	1,400.00
July	1,400.00
August	966.63
total	\$3,766.63

Decision

50. The landlord's claim for rent succeeds in the amount of \$3,766.63.

Issue 4: Late Fees \$75.00

Relevant Submissions

51. The landlord confirmed in paragraph 40 that she has not received rent since the tenants left the apartment on 01-June-2021. The landlord submitted a rent ledger (LL#03) showing that the last payment of rent was made in May 2021. She is requesting \$75.00 late fees be applied.

Analysis

52. 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.

53. It has been determined that the tenants do owe rent to the landlord in paragraph 50. As the tenants are in arrears since 02-June-2021 the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

54. The landlord's request for late fees applied succeeds in the amount of \$75.00.

Issue 5: Utilities \$282.14

Relevant Submissions

55. The landlord stated that the tenant removed her name from the NL Power bill on 01-June-2021. The landlord submitted the invoices for the billing as follows:

17-June-2021	\$65.77
20-July-2021	91.84
18-August-2021	64.22
11-September-2021	60.31
Total	\$282.14

Analysis

56. The landlord's submitted rental agreement (LL#02) stipulates that the tenants are responsible for utilities. Also, as it has been determined that the end of the tenants' obligation is 21-August-2021, paragraph 48, the responsibility for the utilities are also concluded at that time. The tenant's will therefore pay up to and including the August billing period. $65.77 + 91.84 + 64.22 = \221.83 .

Decision

57. The landlord's claim for utilities succeeds in the amount of \$221.83.

Issue 6: Security deposit for inconvenience \$1,050.00

Relevant Submissions

58. The landlord included the initial conversations with the tenant concerning the breaking of the lease. (LL#04) In this conversation thread the landlord points out that they are breaking the lease and that they are responsible to pay the rent and give notice.
59. Tenant1's response to this is that the landlord can keep the security deposit for the inconvenience. When the landlord asks about the rent the tenant1 said that she doesn't know and will have to talk to tenant2 about this because she has already given the security deposit. The landlord said that the conversations stopped once she questioned about the damages.
60. The landlord is requesting to retain the security deposit for inconvenience as promised by the tenants.

Analysis

61. 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.*

.....

62. According to Section 14.(10)(a) the landlord and tenant may enter into a written agreement for the disposition of the deposit. The landlord has requested to the director to retain the deposit for her inconvenience.

63. The question at hand is, what inconvenience is the tenant speaking to? Is this an offer to cover some of the rent because they have moved, could it instead be for damage, or is it in fact just payment for the inconvenience? After reading the submitted text thread (LL#04) I find that tenant1, most likely believed that this offer to retain the security deposit was in place of the rent that the landlord would not receive. It is clear that the landlord has been greatly inconvenienced by the tenants, however, my decision is that this will be applied to the loss incurred by the landlord for rent, damages, etc.

64. The landlord will retain the security deposit, and it will be applied to the actual loss incurred; it will not be applied for hardship or inconvenience.

Decision

65. The landlord's claim for the security deposit succeeds in the amount of \$1,050.00.

Issue 7: Hearing expenses reimbursed \$20.00

66. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#13) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

67. The tenants shall pay the landlord \$9,527.34 as follows:

- Damages..... 6,275.63
- Cleaning expenses..... 293.25
- Rent 3,766.63
- Utilities..... 221.83
- Hearing expenses..... 20.00
- Less security deposit..... 1,050.00
- i. Total..... \$9,527.34

The landlord shall retain the security deposit of \$1,050.00.

February 28, 2022

Date

