

## Residential Tenancies Tribunal

Application [REDACTED]  
[REDACTED]

Decision 21-0430-05

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:11 a.m. on 21-April-2022.
2. The applicants, [REDACTED] hereinafter referred to as “tenant1 and tenant2.” Tenant1 attended by teleconference as representative for herself and tenant2.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.

### Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenant notice of the hearing, by prepaid registered mail on 06-April-2022, the tracking number indicates it was delivered on 07-April-2022. The tenant served the landlord notice of the hearing, by email on 28-March-2022, the landlord confirms this notice.
5. The landlord amended his application to show compensation for damages increased from \$250.00 to \$350.00.

### Issues before the Tribunal

6. The tenant is seeking:
  - Rent refunded for inconvenience \$770.00
  - Security deposit returned \$350.00
  - Hearing expenses reimbursed \$20.00
7. The landlord is seeking:
  - Compensation for damages \$350.00

## 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, and Section 14: Security deposit, as well as, Residential Tenancies Policy 9: Claims for damages.

## Issue 1: Rent refunded for inconvenience \$770.00

### Tenant's Position

10. The landlord and tenant have a verbal rental agreement for a monthly term. The tenant provided an email with written confirmation of the terms (TT#01). The rental period is from the 1<sup>st</sup> day of the month until the last, rent is due in full on the 1<sup>st</sup> day of each month. The tenants pay \$700.00 per month and on 02-July-2020 they paid a security deposit of \$350.00. She said that they moved out 30-June-2021.
11. Tenant1 said that they contacted the landlord on 17-July-2020 and said that there was a leak. She said that the landlord came and cut a hole and put up plywood. She said he was going out of town, and said he would deal with it when he got back.
12. She said over the next 11 months she contacted him about the leak, they lost the use of the porch, a bathroom and a storage area because of the leak. Tenant1 said that when they moved 30-June-2021 the roof still wasn't repaired.
13. Tenant1 said that she is requesting 10% of her rent, \$70.00, for each of the 11 months the repair was not completed. She said that due to the leak, more than 10% of the rental area was unusable.

### Landlord's Position

14. The landlord confirms the terms of the rental agreement and he verified he is still in possession of the \$350.00 security deposit.
15. The landlord said he put up plywood and a membrane to fix the leak until he had the roof repaired.
16. The landlord said he met with a roofer; unfortunately the gentleman passed away.
17. The landlord said that the membrane blew off the roof and the tenants didn't even inform him.
18. The landlord had the roof repaired before his current tenant's moved in the summer of 2021.

## Analysis

19. Both the landlord and the tenant acknowledge that the roof in the house was damaged and leaking. The tenant informed the landlord of the damage and he initially took quick action to repair the leak, meet with a roofer and started arrangements to have the roof repaired. The tenant did not complete a "request for repairs" form and give the landlord a time limit for repairs required, however, the interaction with the landlord indicated that he was willing to have the repairs made. However, I find that after the initial response the landlord failed to act in a timely fashion and permitted 11 months to lapse without having the roof repaired; this time period is unreasonable.
20. Section 09-004: Claims for damage to tenant personal belongings: cites 3 scenarios as a guide to assess compensation. Case #3 states "Landlord fails to repair a leaky roof and tenant loses the use of a room because of the leak. Policy: Landlord may be held responsible to compensate the tenant for lost portion of the rental unit." This scenario translates exactly to the tenants' claim. The tenant stated that the loss of rental space was in excess of 10% of the area and they are requesting 10% of the rent for the 11 months with the leak not being repaired. I find in favor of the tenants and determine the landlord shall reimburse \$770.00 for this inconvenience.

## Decision

21. The tenant's claim for inconvenience succeeds in the amount of \$770.00.

### **Issue 2: Compensation for damages \$350.00**

### **Issue 3: Security deposit returned \$350.00**

#### Landlord's Position

22. The landlord is seeking \$250.00 for damages and \$100.00 for labor. The landlord said that there was garbage left around the property and he had to clean it up and paid to have it taken to the dump. He did not provide pictures. He said he has a receipt for \$150.00, however, he did not submit it to this board prior to the cut off for evidence to be submitted.
23. The landlord said that he built a shed in the back yard 4 years ago and the tenants were permitted to use the shed for their firewood. He provided a picture of the broken window (LL#03). He said he believes that the tenants may have accidentally broken the window when storing firewood. He said it will cost \$50.00 to replace.
24. The landlord also submitted a picture of the hearth split beneath the woodstove. He said that this may have broken while the tenants were splitting wood for the stove. He said the hearth was 4 years old and it would cost \$50.00 to replace.
25. The landlord said it would take a full day to complete all the repairs and garbage pickup. He is requesting \$100.00 for his labor,

## Tenant's Position

26. Tenant1 said that they left the house in good condition and is requesting return of her damage deposit.
27. Tenant1 said that the garbage around the property belonged to the landlord, she said that they had 2 bags of garbage when they moved that should have gone with regular garbage collection (TT#02).
28. Tenant1 said she doesn't know how the window broke in the shed. She said that they didn't break it and it may have cracked with the cold. She said that the shed may have been built 4 years ago, but the landlord built the shed with salvaged materials and the window itself would be much older than 4 years.
29. Tenant1 said that the hearth was made of patio stones and that they didn't break the hearth; she believes it may have cracked from the heat. She said that they tried to repair the hearth but couldn't match the stone.
30. Tenant1 said that they didn't cause any of the damages and that the materials were damaged through normal wear and tear. She is requesting the damage deposit be returned in full.

## **Analysis**

31. 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.*

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.

32. Tenant1 stated that they did not leave garbage around the property and that they did not damage the hearth or the window, she believes that the damage occurred due to normal wear and tear. It is the landlord's burden to show that the tenants are responsible for the damages and the value to have the repairs complete. The landlord did not prove that the tenants are responsible for the damages and he also didn't provide receipts for the work.

33. The security deposit is the property of the tenant and is held in trust by the landlord, Section 14.8 & 14.9 of the *Residential Tenancies Act, 2018*, states:

*Security deposit*

*14. (1) (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.*

34. The landlord did not prove his claim and he shall return the full security deposit to the tenants as per their claim.

**Decision**

35. The landlord's claim for damages fails. The tenants' claim for refund of their security deposit succeeds in the amount of \$350.00.

**Issue 4: Hearing expenses reimbursed \$20.00**

36. The tenants (TT#02) and landlord (LL#04) submitted their receipts for \$20.00 for the cost of the hearing. The tenants were successful in their claim and pursuant to policy 12.01, are entitled to reimbursement of that cost from the landlord.

**Summary of Decision**

37. The landlord shall pay the tenants \$1,140.00 as follows:

Rent refunded for compensation .....	\$770.00
Security deposit .....	350.00
Hearing expenses .....	<u>20.00</u>
Total .....	<u>\$1,140.00</u>

April 26, 2022 \_\_\_\_\_  
Date

