

Residential Tenancies Tribunal

Applications [REDACTED]

Decision 23-0104-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:04AM on 14 April 2023 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “tenant1” and “tenant2” participated. As did the respondents, [REDACTED] hereinafter referred to as “landlord1” and “landlord2”.
3. The applicant’s initial hearing date was scheduled for 23 February 2023 for which the tenants served notice by registered mail on 06 February 2023 (T#1). A review of the tracking number provided confirms this item was delivered on 07 February 2023 (T#2). The landlords then submitted their counterclaim on 13 February 2023 and both claims were then scheduled to be heard on 14 March 2023. I note that the landlords served notice of their claim to the tenants by registered mail on 16 February 2023 (L#1). The tenants then requested that this hearing be postponed and it was rescheduled to 14 April 2023 with notice provided by this office to all parties. All parties confirmed they received relevant documentary evidence from the other.
4. The parties had a verbal rental agreement that started in 2017 and ended on 31 October 2022. Monthly rent was originally \$1,000.00 all inclusive and a security deposit in the amount of \$500.00 was collected. Rent was then reduced to \$800.00 POU until it was increased to \$1000.00 POU effective September 2022.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The tenants are seeking the following:
 - Validity of Termination Notice;
 - An order for compensation paid for inconvenience in the amount of \$24,790.00; and
 - An order for the full return of a \$500.00 security deposit
7. The landlords are seeking the following:
 - An order for compensation paid for inconvenience in the amount of \$9,120.00;
 - An order for compensation paid for damages in the amount of \$1,145.00;
 - An order for payment of utilities in the amount of \$27.60; and
 - An order to retain the full value of the \$750.00 security deposit.

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* (the *Act*).
9. Also relevant and considered in this case are sections 10, 14 and 18 of the *Act*.

Preliminary Matters

10. The rental premises is a basement apartment of a two unit building [REDACTED] owned and occupied by the landlords. The landlords reside on the main floor. Tenant1 took occupancy in 2017 with a friend. This friend then vacated and a different friend moved in who was later joined by her husband. Tenant2 then took up occupancy with tenant1 (and the other two individuals) in June of 2018. These other two individuals then vacated in December 2018. The tenants and their two young children were then joined by the mother and sister of tenant2 in May 2022. These two individuals (the mother and sister) continued to reside with tenant1 and tenant2 until the tenancy ended.

Issue 1: Validity of Termination Notice

Tenants' Position

11. Tenant2 referred to Facebook Messenger conversations with the landlords where she wrote on 27 April 2022 that her mom and sister will “....stay here for a couple months and might extend their stay...” (see page 2 in T#5). She used this as proof that she sought open ended permission for the additional residents in the unit to assist with her young children. Then on 2 October 2022 there was additional conversation through Messenger where the landlords requested that the mom and sister vacate otherwise the tenancy would be terminated. Tenant2

testified that she responded by indicating that they have plans to move, but that more time is needed to “sort things out” (see page 5 in T#5). She also put in writing that her sister wished to remain in the premises once the tenants, their children and tenant2’s mother vacated in November 2022.

12. Tenant2 testified that no response was received from the landlords until they wrote at 1:30am on 08 October 2022 that they needed the premises vacated by 01 November 2022 (see page 8 in T#5).

Landlords’ Position

13. Landlord1 testified that they wanted the mom and sister to vacate the premises but they were fine with the tenants and their children remaining. Then once tenant2 indicated that her sister wanted to remain in the premises and that the tenants were vacating, the landlords put in writing that they just wanted the premises vacated. Both landlords asserted that they never issued a formal termination notice. Landlord1 testified that they are experienced landlords and would have issued a formal termination notice if need be. Landlord2 indicated that he messaged at the time he did because that is when the tenants and their family were awake.

Analysis

14. I accept that both parties agree that the tenancy ended on 31 October 2022. I further accept the landlords’ argument that they never issued a formal termination notice. Rather, I find that the landlords merely responded with a specific date after the tenant indicated in writing that they would be vacating. Furthermore, I note how tenant2 wrote on 11 October 2022 that they are “*actively looking for a house...kindly bear with us for a couple more weeks...*” to which the landlords responded: “*no problem..*”. This is to say, that I did not find any evidence that the landlords were actively attempting in any way to force the removal of the tenants and their family from the premises.

Decision

15. I find no evidence that the landlords terminated the tenancy at [REDACTED]

Issue 2: Tenants’ Request for Compensation for Inconvenience (\$24,790.14) General Submissions

16. The tenants submitted a written summary of their itemized claims for compensation (T#3) along with supporting receipts (T#4). Because these claims related to the act of the tenants moving to a new rental premises, they were

reviewed as a whole with both parties given opportunity to submit relevant testimony and documentary evidence.

Tenants' Position

17. Tenant2 testified that they vacated a week early because they are both busy professionals and needed extra time to make the move. Because of this, they claimed they incurred an additional weeks' expense at their new rental premises. Tenant1 and tenant2 also claimed the expense of lost wages for time spent moving because [REDACTED] they need to save their vacation time for visit home. Tenant1 explained that they are claiming the difference in rental between the landlords premises and this new premises (\$900.00) for the three months of November 2022, December 2022, and January 2023 because this was more money that they otherwise would have had to pay if they remained in the landlords' premises. Tenant2 also spoke at length about how there used to be a positive relationship between them and the landlords.
18. Likewise, tenant1 explained that they are claiming the cost of inconvenience for the full value of the final 9 months of rent for this new rental agreement since they were pressed for time and had to sign the first new lease available. Tenant2 indicated that this new premises is a three bedroom unit and that they continue to reside with her mom and sister. Tenant2 also testified at length about how the sudden requirement to find a new premises meant that she lost out on a job opportunity in Ontario and that it also caused them to lose \$500.00 to a "scam" rental agreement. The tenants also provided proof of their costs for renting a Uhaul to move their possessions (T#4).

Landlords Position

19. The landlords disputed the tenants' claim for compensation. Landlord1 testified that any costs incurred were the tenants' choice. She also reiterated how, at no point did she formally request that the tenants and their children vacate, and how the landlords only wanted the mom and sister to vacate. Regarding the expenses of moving, landlord1 testified that the tenants did not move far away and that they only had the Uhaul for a short while.

Analysis

20. According to 47(1)(h) of the *Act*, the director of Residential Tenancies has the ability to award compensation for inconvenience " as a result of a contravention of this *Act* or the rental agreement". Where the tenants claimed compensation of nearly \$25,000 for vacating as a group of six persons from a two bedroom basement apartment, they failed to provide evidence that their doing so was caused by the landlords. Consequently, I find that their claim for compensation does not succeed in any amount.

Decision

21. The tenants claim for compensation for inconvenience does not succeed in any amount.

Issue 3: Landlords' Request for Compensation for Inconvenience (\$24,790.14) General Submissions

22. The landlords submitted a written summary of their itemized claims for compensation (L#2). Each specific claim was reviewed against any relevant evidence and testimony provided:

INCONVENIENCE 1 – 5 MONTHS OF TWO UNWANTED GUESTS \$4500.00

Landlords' Position

23. Landlord1 testified that they should be entitled to compensation for the lengthy stay of tenant2's mother and sister within the rental premises. She stated that she came to a monthly charge of \$450.00 because landlords originally rented the premises for \$1,000.00 all inclusive for two persons. She also testified that she specified five months because this is the period of time she considered to exceed an otherwise reasonable visit. Landlord2 denied the tenants' argument that in person conversations could have occurred because the tenants worked irregular hours and would not answer the door when attempts were made. Landlord1 testified that the noise of too many people downstairs and their irregular hours resulted in the landlords' loss of peaceful enjoyment of their rental premises.

Tenants' Position

24. Tenant2 referred to the previously referenced Facebook Messenger conversation where she put in writing that her mom and sister will be staying. She testified that they stayed with the landlords' permission and that they landlords could have come down to talk at anytime they had any issue.

Analysis - 5 Months of Two Unwanted Guests

25. I considered the testimony and evidence provided by both sides. Ultimately, even though I find the tenants acted inappropriately in permitting two additional residents for an extended duration without providing compensation to the landlords, I also find that the landlords only raised issue with these new residents on 02 October 2022. For five months they did not appear to do anything to protect their own peaceful enjoyment even though multiple tools were available to them under the *Act*. Consequently, I find that their claim for compensation does not succeed.

Decision - 5 Months of Two Unwanted Guests

26. The landlords' claim for compensation for additional rent as inconvenience does not succeed.

INCONVENIENCE 2 – 5 MONTHS WEAR AND TEAR ON APPLIANCES \$500.00

Landlords' Position

27. Landlord1 testified that they are entitled to compensation for additional wear and tear on their washer and dryer and their hot water heater. Landlord2 indicated that the washer and dryer are 8 years old and the hot water heater is 3 years old. He testified that he discovered rust on the heater which would have caused water to be discoloured. Not specific photographic or other evidence was provided.

Tenants' Position

28. Tenant2 testified that landlord2 stated everything was fine after their move out condition inspection and so they are not liable for anything that happened to the landlords appliances after they vacated. She reiterated how everything was in fine working condition when they left and stated that she never noticed any discolouration in the water.

Analysis - 5 Months Wear and Tear

29. I considered the testimony and evidence provided by both sides. Ultimately, even though I find the tenants acted inappropriately in permitting two additional residents for an extended duration without providing compensation to the landlords, I also find that the landlords only raised issue with these new residents on 02 October 2022. For five months they did not appear to do anything to protect the integrity of their rental premises. Consequently, I find that their claim for compensation does not succeed.

Decision - Months Wear and Tear

30. The landlords' claim for compensation for appliance related compensation as inconvenience does not succeed.

INCONVENIENCE 3 – MISSING ENTERTAINMENT CABINET \$100.00

Landlords' Position

31. Landlord1 testified they had been an entertainment centre in the rental premises that could not be located after the tenants vacated. She referred to the photos she submitted, and testified that a corner of the cabinet could be seen in the

corner of page 2 in L#3. She also testified that she would have been happy to give the tenants the cabinet if they asked.

Tenants' Position

32. Tenant2 testified that the cabinet was in the premises when she first took occupancy but that she requested it be removed. She stated it was then removed and did not think anything more of it.

Analysis - Missing Entertainment Cabinet

33. The parties disagreed and the landlords as applicants diminished the value of the missing item when they stated they would have given it away for free if asked. Consequently, in absence of any verifiable proof (e.g., an annual inspection report or photos noting the cabinet) I find that the landlords failed to establish on the balance of probabilities that the tenants were responsible for its disappearance.

Decision - Missing Entertainment Cabinet

34. The landlords' claim for compensation for an entertainment cabinet does not succeed in any amount.

INCONVENIENCE 4 – 4 MONTHS LOST RENT DUE TO DAMAGE REPAIR \$4000.00 Landlords' Position

35. Landlord1 testified that they are entitled to 4 months of rent as compensation since the damages caused by the tenants have meant that they cannot rent. She stated that all repairs are not yet completed at the premises because she works full time and landlord2 has been busy with his aging parents. Landlord1 testified that they have made no efforts to rent the premises and they have also refused persons who have knocked on their door asking if they would rent.

Tenants' Position

36. The tenants rejected this claim for compensation.

Analysis - 4 Months Lost Rent

37. According to 10(1)(4) of the *Act*, landlords are responsible for mitigating losses. Specific to this dispute and the landlords' claim for four months lost rent, I have this claim because the landlords have not mitigated their losses. Furthermore, I find that the evidence of damage caused by the tenants, appears to be cosmetic and could have been quickly and easily resolved if so motivated.

Decision - 4 Months Lost Rent

38. The landlords' claim for compensation for lost rent does not succeed in any amount.

INCONVENIENCE 5 – COFFEE TABLE REMOVAL \$20.00

Landlords' Position

39. Landlord1 testified that three rickety coffee tables were left behind by the tenants and had to be removed to the garbage.

Tenants' Position

40. Tenant2 testified that the coffee tables were left by a previous tenant and so she also left them behind since they were not hers.

Analysis - Coffee Table Removal

41. The parties agreed that coffee tables were left behind by the tenants. Consequently, I accept that \$20.00 is a reasonable charge for their removal.

Decision - Coffee Table Removal

42. The landlord's claim for compensation for coffee table removal succeeds in the amount of \$20.00.

Summary Decision – Compensation for Inconvenience

43. The landlord's claim for compensation inconvenience succeeds in the amount of \$20.00.

Issue 4: Compensation for Damages (\$2,000.00)

General Submission

44. The landlords submitted a written damage summary where she outlined her claims for compensation (L#4). Landlord1 testified that work has not yet been completed and that the premises remains empty. She referred to photos taken of the premises prior to occupancy by the tenants (see pages 1 – 9 in L#3) and testified that landlord2 conducted a move out condition inspection with the tenants on 31 October 2022. The tenants agreed.

45. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
- That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
46. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

DAMAGE # 1 DAMAGED ENTRANCE WAY FLOORING \$500.00

Landlords' Position

47. Landlord2 testified that new vinyl flooring was installed in the entrance way just prior to tenant2 taking occupancy. He testified that he discovered a large tear that was improperly fixed after he returned to the premises in November 2022. He testified that he did not notice this issue during the inspection because that section of the floor was covered by a mat. Landlord1 testified that she does not have any quotes or receipts related to the floor because they were pressed for time when they made their application for dispute resolution.

Tenants' Position

48. Tenant2 testified that the mats on the floor were her friends and that she never lifted them up during her tenancy. Both tenants denied knowledge of the torn flooring.

Analysis - Damaged Entrance Way Flooring

49. Based on my review of the landlords' evidence, I find it hard to believe that the tenants were not aware of the damage. That said, I also accept that the landlords failed to provide any evidence related to their expected costs to repair the damaged flooring. According to Residential Tenancies Policy 09-05, the average expected serviceable life of vinyl flooring is 8 years for medium grade flooring. Because the original flooring was installed in 2017 was installed six years prior to when the damage was discovered, I find that it had mostly exceeded its expected serviceable life. Nevertheless, I will still arbitrarily award compensation to the landlords in the amount of \$100.00 for the purposes of repairing the flooring.

Analysis - Damaged Entrance Way Flooring

50. The landlords claim for compensation for damaged entrance way flooring succeeds in the amount of \$100.00.

DAMAGE # 2 MISSING GLASS DOMES BATHROOM LIGHT (\$50.00)

Landlord's Position

51. Landlord referred to photos submitted showing a bathroom light fixture with glass tulip domes prior to occupancy and photos of that same fixture post occupancy without the glass domes. She did not provide any documentation related to the expected costs of a replacement fixture but stated that she expects it will cost at least \$50.

Tenants' Position

52. Tenant2 testified that she does not know where the glass domes would have gone.

Analysis - Missing glass domes bathroom light

53. I accept that the light fixture was damaged by the removal of the decorative glass domes and that replacement of this fixture will cost at least \$50.00. Consequently, I find that the landlords' claim for compensation succeeds in the amount claimed.

Decision - Missing glass domes bathroom light

54. The landlords' claim for compensation for the bathroom light succeeds in the amount of \$50.00.

DAMAGE # 3 PLASTER REPAIR AND PAINTING \$250.00

Landlord's Position

55. Landlord2 testified that he has spent at least 40 hours repairing plaster around the rental premises and premise. He estimates that 100 hours will be required to complete the work. Landlord1 referred to multiple photos submitted (L#3) to show various areas in the walls whereby chunks were removed due to the tenants' use of "command strips". Landlord2 testified that the premises was last painted prior to the tenants' occupancy and that no receipts were provided related to their purchase of paint or plaster materials.

Tenant's Position

56. The tenants disputed this claim for compensation. Tenant2 testified that she was always very careful and did not hang items from the walls. She also testified that the photos provided by the landlords of plaster damage are heavily magnified.

Analysis - Plaster Repair and Painting

57. I reviewed the evidence and testimony provided and I accept that the premises were last painted at least 7 years prior to the tenants vacating. Consequently, I find that the premises were due to be painted in accordance with Residential Tenancies Policy 09-05 which identifies the expected serviceable life of an interior paint job to be 3 0 5 years. Where the landlords provided some evidence of notable holes in the plaster due to command hooks, I do not find this damage to be unreasonable after 7 years of occupancy. Consequently, the landlords' claim for compensation for painting and plaster repair does not succeed in any amount.

Decision - Plaster Repair and Painting

58. The landlord's claim for compensation for paint and plaster repair does not succeed in any amount.

DAMAGE # 4 – BROKEN BLIND \$30.00

Landlord's Position

59. Landlord referred to photos submitted and testified that the bedroom blind is broken and that she later discovered the living room blind is also broken. She testified that she expects it will cost at least \$30 to replace the bedroom blind. Landlord2 testified that all blinds were new were the tenants moved in.

Tenants' Position

60. Tenant2 acknowledged the damaged to the bedroom blind and indicated that she is willing to pay for the damage. She however denied damage to the living room blind.

Analysis - Broken Blind

61. Because the tenants did not dispute this claim, I find it succeeds as presented.

Decision - Broken Blind

62. The landlords' claim for compensation for the broken blind succeeds in the amount of \$30.00.

DAMAGE # 5 APARTMENT NOT CLEANED (\$200.00)

Landlord's Position

63. The landlord referred to photos (L#3) submitted comparing the premises before and after and testified that she and her husband spent two days cleaning together and that more cleaning is expected. She emphasized what she described as visible grime in the photos. Landlord1 also referred to a cleaning receipt for work completed 13 November 2022 at the premises after she had to stop once she became ill (L#5).

Tenant's Position

64. The tenants disputed this claim and tenant2 highlighted how the date on the cleaning receipt actually reads 13 November 2023. Tenant2 testified that they cleaned prior to vacating.

Analysis - Cleaning

65. I reviewed all evidence and testimony provided. Upon doing so, I find it highly likely that the landlords were forced to clean the premises after the tenants vacated. I say this because the tenants provided lots of evidence to indicate that they moved out of a long term premises in a matter of weeks. Both sides also agreed that there were multiple adults and two babies living in the premises. Consequently, I award the full \$200.00 requested as well as an additional \$71.28 that was arbitrarily calculated in recognition of the additional time spent cleaning by the landlords. This amount was arrived at so as to award the landlords the full value of the security deposit collected.

Decision - Cleaning

66. The landlords' claim for compensation for cleaning succeeds in the amount of \$271.28.

DAMAGE # 6 BROKEN TOILET PAPER HOLDER \$15.00

Landlord's Position

67. Landlord referred to a photo submitted (L#3) of a partially connected toilet paper holder and claimed it was broken. No receipts were provided.

Tenant's Position

68. Tenant2 disputed the landlord's claim for compensation and denied that it was broken.

Analysis - Toilet Paper Holder

69. Because the tenants disputed the claim and the landlords also failed to provide verifiable receipts for a replacement holder, I find that their claim does not succeed in any amount. Additionally, I agree that the photo submitted does not convincingly suggest that the holder is indeed broken.

Decision – Toilet Paper Holder

70. The landlords' claim for compensation for the toilet paper holder does not succeed in any amount.

DAMAGE # 7 CARPET CLEANING \$100.00

Landlord's Position

71. Landlord2 indicated that he has his own machine and that he spent at least 12 hours cleaning the carpets in the rental premises. He stated that the \$100.00 is for labour only. Landlord1 acknowledged that no photos were submitted of the condition of the carpets before or after the tenancy and Landlord2 testified that the carpets were approximately 10 years old.

Tenant's Position

72. The tenants disputed the landlord's claim for compensation. Tenant2 testified that she cleaned the carpets prior to vacating.

Analysis – Carpet Cleaning

73. Because the landlords failed to provide any verifiable visual evidence related to the condition of the carpets prior to and or post occupancy, I find that they failed to establish on the balance of probabilities that they are entitled to compensation.

Decision – Carpet Cleaning

74. The landlords' claim for compensation for carpet cleaning does not succeed in any amount.

Summary Decision - Damages

75. The landlord's claim for compensation for damages succeeds in the amount of \$451.28 (e.g., \$100.00. + \$50.00 + \$30.00 + \$271.28)

Issue 5: Payment of Utilities (\$27.60)

Landlords Position

76. Landlord1 testified that she received notice (L#6) on 25 October 2022 that the electric account for the rental premises was moved back to her name even though the tenants actually vacated on 31 October 2022. She stated that she was told by NL Power that the amount owing is the amount claimed, however, no evidence to support this claim was provided.

Tenant's Position

77. Tenant1 acknowledged closing the account at the rental premises and testified that this was because they had to move their account to their new rental premises. Tenant2 agreed that money is owed to the landlords and that they had been on an equal payment plan of \$185 a month during their tenancy. Tenant2 also stated that they would annually be required to pay an additional \$4-500.00 each year as part of this plan. She indicated her willingness to pay a pro-rated portion of what is typically owed.

Analysis

78. Both parties agreed that the tenants owed money for utilities. I reviewed the landlords' evidence and find that the power was in fact moved out of the tenant's name on 27 October 2022 and not 25 October 2022. Where the tenants disputed the landlords' claim even though the amount I calculate is higher than the landlords' original claim, I find that the landlords' claim for compensation succeeds as calculated.

$\$450.00 / 12 = \37.50 – average of monthly payment top up required
 $\$185.00 + \$37.50 = \$222.50$ effective average monthly charge for tenants
 $\$222.50 / 31 = \7.18 per day
 $\$7.18 \times 4 = \28.72 for average expected cost for 4 days charge

Decision

79. The landlords' claim for payment of utilities succeed in the amount of \$28.72.

Issue 6: Security Deposit (\$500.00)
Relevant Submissions

80. The landlords have requested to retain the full value of the deposit against monies owed and the tenants have requested it be returned.

Analysis

81. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

82. Through this report, I have found that landlords are entitled to compensation for various items. I also found that they tenants are not entitled to any compensation.

LANDLORDS ENTITLEMENT TO COMPENSATION	
Inconvenience	\$20.00
Damages	\$451.28
Utilities	\$28.72
Total	\$500.00

83. Consequently, I find that the landlords are entitled to retain the full value of the \$500.00 security deposit collected.

Decision

84. The tenants' claim against the security deposit does not succeed in any amount.

85. The landlords' claim against the security deposit succeeds in the full amount.

Issue 7: Hearing Expenses

86. The landlords and tenants both claimed hearing expenses. Because however, neither party was successful in excess of the value of the security deposit collected, I find that both parties are responsible for their own hearing expenses in accordance with Residential Tenancies Policy 12-01.

Summary Decision

87. I find no evidence that the landlords terminated the tenancy at [REDACTED]
[REDACTED]

88. The tenants' claim for compensation for inconvenience does not succeed in any amount.

89. The tenants' claim against the security deposit does not succeed in any amount.

90. The landlords' claim against the security deposit succeeds in the full amount of \$500.00.

27 April 2023

Date

[REDACTED]

Jaclyn Casler
Residential Tenancies Tribunal