

Residential Tenancies Tribunal

Application 2024-0412-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 7-October-2024 at 2:02 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#120) with their application stating that they had served the tenant with notice of the hearing electronically on 26-September-2024 at 12:30 pm. Proof of service was also provided (LL#2-84). As the tenant was 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

5. Should the landlord's claim for unpaid rent be granted?
6. Should the landlord's claim for damages be granted?
7. What is the proper disposition of the 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*).

Issue 1: Unpaid Rent

9. The landlord seeks \$700.00 in rent. This represents the full monthly rent of \$700 for the month of May 2024. She testified that the tenant left in April 2024 without providing written notice as required under s. 18(1)(b). She acknowledges that he did provide verbal notice but adds that he did this multiple times in the past without actually moving out. She therefore seeks rent in lieu of notice. She testified that she was unable to find a new tenant.
10. I accept the landlord's uncontradicted testimony. The landlord's claim for unpaid rent succeeds in the amount of \$700.00.

Issue 2: Damages

11. The landlord claims \$2570.25 in damages divided amongst 20 items. Each item will be dealt with below. I have grouped related items for clarity and brevity. It should be noted at the outset that a landlord's claims for damages are covered by the Residential Tenancies Program Policy and Procedure Guide policy 09-003. In accordance with policy, to succeed in a claim of damages, a landlord must provide sufficient evidence to establish that their property was damaged, the extent of the damage, that the damage was caused by the tenant, and the cost of repair. In addition, this should include documentary evidence when reasonably possible, including photos, receipts, quotes, estimates, invoices, etc. The landlord disclosed that her present circumstances, which are not directly related to the current case, impeded her ability to gather evidence as she is not currently able to access the building which contained the rental premises. I have taken this into consideration in my analysis.
12. The applicant noted at the start of the hearing that her claim had been based on early estimates of damage which turned out to be underestimates. She decided to proceed with the original amounts rather than amend the total sought, as this would have required further delay. It is for this reason that the numbers will not all add up. Nevertheless, for policy and procedural fairness reasons, any damages will be capped to the number in the application, which was served on the tenant, that being \$2570.25. To award an amount in excess of this number would violate the tenant's right to procedural fairness by denying him an opportunity to decide whether or not to respond to the claim with knowledge of the full potential liability.
13. The landlord testified that the room the tenant rented had been recently redone, including new furnishings, and satisfied me with regard to each item below that they were sufficiently new that depreciation would have no meaningful effect.
14. The landlord claims \$210.00 for compensation for damaged bedding and linens. She testified that when she retook possession of the premises, these items were damaged with burns, urine, and other stains. Photographs of this damage were provided (LL#55-56, 67-68, 71-72, 86). Evidence was provided showing that replacing some of these

items would cost about \$103.50 (LL#105-106). No evidence was provided demonstrating the cost of replacing the rest of the linens.

15. This portion of the landlord's claim succeeds in the amount of \$103.50.
16. The landlord claims \$250.00 for compensation for a damaged rug. She testified that the rug was stained beyond what could be cleaned, though she had attempted to restore it. This rug is clearly visible in LL#29-LL#38, including a tag which identifies the exact make. The photos show that this rug, which was originally cream coloured, has been stained brown, orange, and black. LL#60 shows that the rug would cost about \$259.90 to replace.
17. This portion of the landlord's claim succeeds in the amount of \$259.90.
18. The landlord claims \$200.00 for compensation for a damaged marble-topped night table. This table can be seen in LL#38-41. The landlord testified that the drawer was used as an ashtray and the marble top was indelibly stained. The remnants of the ash and the stains are clearly visible in the photos. Evidence was provided that replacing the night table with a similar unit would cost \$310.49.
19. This portion of the landlord's claim succeeds in the amount of \$310.49.
20. The landlord claims \$120.00 for the replacement of two down feather pillows. No photos were provided as she testified that the items were missing when she retook possession of the premises. Evidence was provided showing that replacing the pillows would cost either \$170.19 (LL#104) or \$206.99 (LL#103).
21. This portion of the landlord's claim succeeds in the amount of \$170.19.
22. The landlord claims \$400.00 for compensation for damage done to a mirrored cabinet dresser. She testified that the tenant stripped the paint from many of the cabinet's wooden parts, leaving exposed untreated wood. It is shown in LL#50, LL#51, and LL#58. I can observe the missing paint. The cabinet also appears to suffer from nicotine staining. LL#100 shows that replacing the cabinet with a similar model would cost \$712.99.
23. This portion of the landlord's claim succeeds in the amount of \$712.99.
24. The landlord claims \$220 for labour in cleaning costs. She says the tenant left the premises in an unclean state. She testified that it took, at a conservative estimate, about 70 hours to clean the premises. While the rental only included one room, she says the tenant smoked in the premises without her permission. It is well known to this tribunal that nicotine staining and cigarette ash are particularly difficult to clean. In addition, I can observe from the photos that the premises are unusually soiled. Considering the evidence in its totality, including all the photographs of the premises I find that the landlord has demonstrated that the 70 hours were necessary. By policy, self-labour is compensable at a rate of minimum wage plus \$8/hour, which is currently \$23.60/hour. Calculated for 70 hours this gives a total amount of \$1652.00.

25. The landlord claimed damage for a number of other items. However, I have already found damages well in excess of the maximum amount I can award as explained in paragraph 12 above. It is unnecessary to consider the remaining items and I decline to do so.
26. The landlord's claim for damages succeeds in the full amount of \$2570.25.

Issue 3: Security Deposit

27. The landlord is owed moneys and is therefore entitled to apply the security deposit against the amount owed. In the present case, the security deposit was \$300.00.
28. S. 14(7) of the *Act* states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. The regulations prescribed an interest rate of 0% for the relevant time period before 2024 and a simple cumulative interest rate of 1% for the year of 2024. Calculated to the date of the hearing, this results in a total interest of \$2.31.

Decision


29. The landlord's claim for unpaid rent succeeds in the amount of \$700.00.
30. The landlord's claim for damages succeeds in the amount of \$2570.25.
31. The landlord may apply the security deposit and interest valued at \$302.31 against moneys owed.
32. The landlord was successful in their claim and may therefore have their reasonable hearing expenses covered. In this case they claim only the \$20.00 application fee.

Summary of Decision

33. The tenant shall pay to the landlord \$594.44 as follows:

Unpaid Rent.....	\$700.00
Damages.....	\$2570.25
Hearing expenses.....	\$20.00
Less Security Deposit.....	-\$302.31)
Total.....	\$2987.94

29-October-2024
Date


Seren Cahill
Residential Tenancies Office