

Residential Tenancies Tribunal

Application 2024-0557-NL & 2024-0728-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:13 AM on 23 September 2024. The hearing was to adjudicate two separate applications: 2024-0557-NL and 2024-0728-NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", attended the hearing. The applicant, [REDACTED], hereinafter referred to as "the second tenant", did not attend the hearing. [REDACTED] advised that she was not representing the second tenant as she is no longer in contact with him and is unsure of his whereabouts.
3. The respondents and counter-applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the landlords", attended the hearing.

Preliminary Matters

4. The tenant, along with her application, submitted an affidavit of service (T#1) stating that the landlords were personally served by her father on 26 July 2024 at 5:20 PM. The landlords did not dispute service. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
5. The landlords, along with their application, submitted an affidavit of service stating (L#1) the tenants were served on 27 August 2024 at approximately 4:36 PM electronically ([REDACTED] and [REDACTED]). The tenant did not dispute service. In accordance with the *Residential Tenancies Act, 2018*, this is good service.
6. Both the landlords and the tenant amended their applications to include hearing expenses.
7. The details of the claims were presented as a written fixed term rental agreement which commenced on 31 March 2024 with rent set at \$1,050.00 due on the 1st of each month. There was a security deposit of \$785.00 collected on the tenancy and still in the possession of the landlords. The tenant testified the second tenant vacated the rental premises on 25 May 2024 and she vacated on 28 May 2024.

8. In a proceeding under the *Residential Tenancies Act*, 2018, 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 applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

9. The tenants are seeking the following:
 - A refund of the Security Deposit - \$785.00
 - Hearing expenses - \$20.00
10. The landlords are seeking the following:
 - Compensation for damages - \$691.51
 - Compensation for inconveniences - \$70.00
 - The security deposit to be used against monies owing - \$785.00
 - Hearing expenses - \$20.00

Legislation and Policy

12. The jurisdiction of the Director of the Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act*, 2018.
13. Also, relevant and considered in this case is Section 14, 15 and 18 of the *Act*, along with *Residential Tenancies Policy 09-003: Compensation for Damages to Rental Premises*, *Policy 09-005: Depreciation and Life Expectancy of Property* and *12-001: Costs*.

Issue 1: Damages

14. The landlords claim \$691.51 in damages, divided amongst 3 items (L#2). Each item will be dealt with individually below.

Steel Exterior Door

15. The landlords claim \$542.01 for an exterior steel door. During the hearing, the landlords testified that the door was newly installed 3-weeks prior to the tenancy, and that during the tenancy, an incident involving the police resulted in the door being kicked in which warped the door making it difficult to fully close. They stated this door had to be replaced. Along with their application, the landlords supplied pictorial evidence of the exterior door after the tenants had vacated (L#3). There were no pictures of the door prior to the occupancy, or any receipts provided related to replacement of the exterior door.
16. The tenant disputed that they were responsible for the damages to the exterior steel door. The tenant testified that the door was hard to open but that was because it was a steel door, and that there were dents in the door when they moved into the premises. She testified that she was unaware of any damage to the door, and the landlords had

not discussed this with her prior to her moving out, nor did they meet her for a final inspection of the premises.

Plastering of Walls

17. The landlords claim \$115.00 for plastering of walls of the rental premises. During the hearing, the landlords testified that the tenants were responsible for holes in the walls of the rental. They offered that the tenant had agreed to repair these holes; and while she arranged to have this work completed, the plastering was uneven, necessitating the requirement to hire a professional to resurface the walls that had been plaster. The landlords testified that the \$115.00 being claimed were actual costs charged to them from a professional plaster for two visits to resurface the walls. The landlords supplied pictorial evidence, along with their application of the walls of the rental premises (L#4 &L#5). There were no receipts supplied for the contractor.
18. The tenant testified that on the night of 24 May 2024, the second tenant came back to the apartment and proceeded to break many of their personal possessions, punched a hole in the wall and ripped the bathroom sink off the wall. Following this incident, she spoke with the landlords who had given her the impression that they would return her security deposit if she had the damages repaired. She testified that she then made arrangements to have the repairs and plastering completed prior to her vacating the rental premises. She disputed additional plastering was required, and noted they did not meet her for a final inspection to review everything. She also noted that they had told her father in person that they were 'okay' with the plastering job.

Bathroom Sink

19. The landlords claim \$34.50 for repair to the bathroom sink. During the hearing, the landlords testified that the bathroom sink was ripped from the wall by the second tenant. The first tenant arranged for repairs and had the sink reattached to the wall. Since then, the sink again began to detach from the wall. They contend that the repairs were 'shoddy' and not completed properly, and the sink had to be reattached entirely. The landlords supplied pictorial evidence of the sink being detached from the wall along with their application (L#6).
20. The tenant did not dispute the damage and testified that the second tenant had damaged ripped the bathroom sink from the wall. The tenant testified that she and the landlords agreed that she would arrange to have this item repaired prior to vacating the rental premises. She stated when she left the rental on 28 May 2024, the sink was repaired and functioning, and disputed that additional repairs to this item were required. Again, she noted that the landlords failed to meet her for a final inspection to confirm that everything was okay.

Analysis

21. In accordance with Residential Tenancies policy 9-3, the applicant is required to show:
 - That the damage exists;
 - That the respondents are responsible for the damage, through a willful or negligent act(s); and

- The value to repair or replace the damaged item(s)

Additionally, when making an award for damages, normal wear-and-tear, as well as straight-line depreciation is a consideration where warranted.

Steel Exterior Door

22. The landlords claim \$542.01 to replace a steel exterior door which they testify was newly installed 3-weeks prior to the beginning of the tenancy, and that damage during the tenancy caused it to become warped and difficult to fully close. The landlords' provided a picture of the door (LL#3) and dents on the lower half of the door are clearly visible; however, the door appears to be fully closed. The tenant disputes the landlords claim, and testified that there were dents in the door when they had moved in. There was no evidence provided to demonstrate the state of the door prior to the tenancy. Given the circumstances which reportedly occurred on 24 May 2024 it is not unreasonable to surmise that some damage may have resulted; however, whether it impacted the functionality of the door is indeterminable. There is insufficient evidence to determine the extent of the damage caused by the tenants through a "willful or negligent act". Further, there were no receipts, invoices or estimates provided to establish the cost of replacing the exterior door. In claims for damages, the onus rests on the landlord, as the applicant, to demonstrate that the door was indeed damaged, necessitating replacement or repair. I find that the landlord failed to provide sufficient evidence to establish the extent of the damage, the requirement to replace the door, and as well as the cost of replacing the door. This portion of the landlords claim does not succeed on evidentiary grounds.

Plastering of Walls

23. As per the *Act*, section 10(1) 2, tenants have an obligation to "*repair damage caused by a wilful or negligent act of the tenant or of a person the tenant permits on the residential premises*". Excepting normal wear and tear, a tenant should return a premises in the same condition as it was prior to the tenancy. In this instance, it was undisputed that the tenant did affect repairs; however, the landlords argue that these were insufficient and required additional work in the amount of \$115.00 to restore the premises to its original condition. Pictorial evidence was provided to demonstrate damage to the wall(s), and evidence of plastering. However, while I accept the landlord's testimony that they arranged for additional work, in reviewing this evidence I am unable to determine whether the repairs completed by the tenant were so insufficient that additional repairs were required. Further, there were no receipts, invoices or estimates provided to establish the cost. Overall, I find the landlords failed to provide sufficient evidence to make a decision, and the landlords claim does not succeed.

Bathroom Sink

24. The parties did not dispute that an incident on 24 May 2024 resulted in a bathroom sink being ripped from the wall, and pictorial evidence was provided demonstrating the damage. Nor was it disputed that the tenant arranged for the repair and reattachment of the sink prior to vacating. The landlords claim \$34.50 for repair to the bathroom sink, as they contend that the work was 'shoddy' and not completed properly resulting in the sink again detaching from the wall. While I accept the landlord's testimony that they arranged

for additional work and a reattachment of the sink, in reviewing this evidence I am unable to determine whether these additional repairs were required as a result of improper repairs or for some other reason directly related to the tenant(s) actions. Further, there was no receipt / invoice provided to accompany this claim for damages. Considering the evidence in its totality, I find on the landlords have failed to meet the evidentiary onus required to award compensation.

Decision

25. The landlords claim for compensation for damages does not succeed.

Issue 2: Inconveniences

26. The landlords are seeking \$70.00 for inconveniences. They testified this amount was due to rent lost between 28 May 2024 until 3 June 2024 and this amount was, "pro-rated". On 3 June 2024, they testified that after the damages that had been caused by the tenants had been repaired, new tenants took occupancy of the rental premises.
27. As indicated herein, the landlords claim for compensation for damages fails, this portion of their claim does not succeed.

Decision

28. The landlords claim for compensation for inconveniences fails.

Issue 3: Disposition of the Security Deposit

29. The tenant is seeking the return of the security deposit. Along with the application, she supplied evidence of the payment of the security deposit of \$785.00 paid to the landlords on 31 March 2024 (T#4). This was not disputed by the landlords.
30. As the landlords claims for compensation have failed, the security deposit, plus applicable interest at the rate prescribed by the *Security Deposit Interest Calculator* shall be applied to the security deposit. This calculation identifies that the landlords shall return to the tenants (\$785.00 + \$3.80) \$788.80.

Decision

31. The landlords shall return the security deposit + interest in the amount of **\$788.80** to the tenants.

Issue 3: Hearing Expenses

32. Both the landlords and the tenant are seeking hearing expenses. In accordance with Residential Tenancies policy 12-01, the \$20.00 filing fee, is generally awarded to the successful party. As the landlords were unsuccessful in their claim, I decline to award hearing expenses.
33. The tenant made application for a return of security deposit only. As applications for the return of security deposit are exempt from payment of the \$20.00 filing fee, no reimbursement is required.

Decision

35. Hearing expenses are not awarded to either party.

Summary of Decision

36. The tenant is entitled to a return of security deposit plus interest in the amount of **\$788.80**.

21-January-2025

Date



Michael Reddy, Adjudicator
Residential Tenancies Office