

Residential Tenancies Tribunal

Application 2024-0606-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was initially held on 26-August-2024 and then continued on 17-October-2024 at 9:04 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondents, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.

Preliminary Matters

4. The respondent was not present or represented at the initial hearing. I contacted them by telephone and was informed they had been served notice but were currently unable to attend. 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 tenant submitted an affidavit (T#1) with their application stating that they had served the landlord with notice of the hearing electronically on 12-August-2024 at 5:08 pm. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in their absence.
5. It then became apparent that the tenant needed a postponement. I adjourned the hearing to a new date and this tribunal sent a notice of rescheduled hearing to both parties. Thankfully, both parties were able to attend at this second hearing date.

Issues before the Tribunal

6. Should the tenant's claim for return of possessions succeed?
7. Should the tenant's claim for compensation for inconvenience succeed?

8. What is the proper disposition of the security deposit?

Legislation and Policy

9. 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: Return of Possessions

Tenant's Position

10. The tenant claims for the return of a pair of sunglasses valued at \$314.98. He says the landlord took the item from him while he resided at the premises.

Landlord's Position

11. The landlord acknowledges he took the tenant's sunglasses, albeit by mistake, and ought to return them. Unfortunately, he has lost them.

Analysis

12. The landlord has acknowledged the validity of this claim. As he is unable to return the item, the appropriate remedy is for this is an award of money in the equivalent value. The tenant provided evidence of the cost of the sunglasses (T#2) and the landlord did not dispute this.
13. The tenant will be awarded \$314.98 in lieu of the return of possessions.

Issue 2: Compensation for Inconvenience

14. The tenant claims \$12000 for compensation for inconvenience, divided amongst 6 items valued at \$2000 each. I will deal with each item, including the parties' positions, separately below.
15. The first item was cleaning. The tenant testified that the premises were in an unclean state when he moved in, contrary to the rental agreement he had with the landlord. He says cleaning the premises took him about 12 hours.
16. The landlord testified that he left the premises in a clean state. He stated that he rented a room and the rest was shared space with other tenants, and so if there was a mess it may have been caused by other tenants. He acknowledged that he did not regularly use the fridge, so it may have been messy when he left.
17. The tenant says the premises were unclean, and the landlord says otherwise. Neither party provided any additional evidence. This is often called a "he said, she said" situation, where the testimony of one party is weighed against another. Considering the totality of the evidence on a balance of probabilities, I do not find the tenant's claim for cleaning has been made out.

18. The first portion of the tenant's claim for damages fails.
19. The second item the tenant claims for is harassment. He says the landlord used abusive language with him over Snapchat. T#3 and T#4 show screenshots. He says he chose the number \$2000 as it represented \$1000 for each month he was at the premises.
20. The landlord says he was professional in his communication. He denies using foul language, though he alleges the tenant used such language with him.
21. While I agree that the language used (by both parties) in T#3 and T#4 is below the acceptable standard, the tenant has failed to provide evidence to show that he suffered any actual financial loss warranting compensation.
22. The second portion of the tenant's claim fails.
23. The third portion of the tenant's claim is in relation to a damaged vehicle the tenant says the landlord left in front of their neighbour's house. He testified that he felt responsible for the vehicle and the neighbour seemed to hold him responsible, confronting him multiple times.
24. The landlord testified that he had left the vehicle in the driveway. He also says that the tenant agreed to be responsible for the car, though the tenant denies this.
25. A tenant cannot claim compensation for a self-imposed obligation. In addition, no actual evidence of loss was provided. This tribunal is compensatory and awards money only to compensate for actual losses suffered. Uncomfortable conversations with neighbours may simply be a fact of life and do not by themselves warrant financial compensation.
26. The fourth portion of the tenant's claim for inconvenience regards the sunglasses mentioned in Issue 1, above. The tenant says the glasses were medically necessary as his eyes are light sensitive and requests compensation for vision impairment.
27. The landlord denies that the sunglasses were medically necessary.
28. The tenant did not provide any evidence that his eyesight was actually impaired. In the absence of actual evidence of loss suffered, this portion of the tenant's claim fails.
29. The fifth portion of the tenant's claim for compensation for inconvenience is based on the fact that the landlord took on another tenant one month into the tenancy who had a cat. The tenant has an allergy to cats that impairs his breathing. He says this was in violation of the rental agreement (T#5). He also refers to another lease agreement between the landlord and the property owner which he says excludes all animals.
30. The landlord denies this was a violation of the rental agreement. He also says that he was unaware that the tenant was allergic as the tenant never notified him.
31. Line 10 of T#5, the lease agreement, says "sublessee agrees to no smoking and no pets in the premises." The sublessee is the tenant. This term specifically binds only the tenant, not the landlord. The landlord is therefore not in breach of the rental agreement.

The tenant cannot rely on a contract he is not a party to. Only a party to a contract can make an action based on alleged breach of the contract. This is known in law as the doctrine of privity of contract.

32. The final portion of the tenant's claim for compensation for inconvenience is for the disruption of his schooling and work. The tenant says the occurrences and issues with the premises took time and energy he needed for these activities.
33. The landlord denies causing any undue disruption and alleges that the tenant was the one who disrupted his life.
34. Again, no evidence was presented of actual loss. In the absence of such evidence, the tenant's claim must fail.
35. In summation, the tenant's claim for compensation for inconvenience fails.

Security Deposit

36. The tenant seeks the return of a security deposit in the amount of \$219.00. S. 14(10-12) of the *Act* states that where a tenant completes an application for the return of a security deposit, a landlord has ten days from when they are served with notice of the claim to file a counterclaim against the deposit and, if they do not do so, the deposit must be returned to the tenant. No counterclaim was received in this case, so the security deposit must be returned.
37. 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 prescribe an interest rate of 0% for the relevant years prior to 2024 and a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, that results in a total interest of \$3.28
38. The tenant's claim for a security deposit succeeds in the amount of \$222.28.

Decision

39. The tenant's claim for return of possessions succeeds. As the item cannot be returned, the landlord shall pay the tenant \$314.98 in compensation.
40. The tenant's claim for compensation for inconvenience fails.
41. The tenant's claim for the return of the security deposit and interest succeeds in the amount of \$222.28.
42. The tenant was partially successful in their claim and is therefore entitled to recover their reasonable hearing expenses. In this case they claim the \$20.00 application fee and \$50.00 for the services of a Commissioner of Oaths. As no receipt was provided for the services of the Commissioner, I decline to grant this cost.

Summary of Decision

43. The landlord shall pay to the tenant \$557.26 as follows:

Return of Possessions.....	\$314.98
Security Deposit.....	\$222.28
Hearing Expenses.....	\$20.00

30-October-2024

Date



Seren Cahill
Residential Tenancies Office