

Residential Tenancies Tribunal

Application 2024-0607-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 17-September-2024 at 9:07 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, was represented by [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenants, also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.

Issues before the Tribunal

5. Should the landlord's claim for damages be granted?

Legislation and Policy

6. 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: Damages

7. The landlord claims \$1845.00 in damages, representing 4 separate items. For clarity, each item will be dealt with below separately, including the landlord's and tenant's positions, a brief summation of the evidence they offer in support, and my analysis. At the outset, it should be noted that in accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-003, in order to succeed in a claim for damages, a landlord must provide sufficient evidence to establish on a balance of probabilities that their property was damaged, that the damage was caused by a wilful or negligent act of the tenants, and the cost of repair or replacement. This should include documentary evidence where possible.

8. The first item is \$200.00 the landlord claims for the disposal of household items and garbage the landlord says were left at the property. Photos of these were provided (exhibit 03-05, 07-08, 10-12, 15-17). An invoice for cleaning in the amount of \$400.00 for the premises was also included (exhibit 21). The invoice specifies \$200 for garbage removal. The landlord testified that it took the cleaner 10 hours to finish the work.
9. The tenant acknowledged that the premises were not as clean as they might have been, that some garbage was left behind, and suggested that \$200.00 was not an unreasonable estimate.
10. I accept the conclusion of the parties and find that this portion of the landlord's claim succeeds in the amount of \$200.00.
11. The second item is \$1050.00 for the restoration of the lawn, which the landlord says was damaged by the tenant's use of an above ground pool. Pictures were provided of the damage (exhibits 01-02). A quote was provided from a landscaping company showing potential options for remedying the damage (exhibit 18). Option 1 is estimated at \$575.00 and Option 2 is estimated at \$1050.00.
12. The tenant testified that the damaged lawn was not grass but weeds, and suggested the full cost of restoring the area to grass would therefore be inappropriate. They also testified that two years ago there was another above ground pool in a location shown in Exhibit 02 as now being covered by greenery. They submitted that the landlord has not actually restored the lawn and that it will repair itself naturally over time.
13. I note that the rental agreement (which I have marked as LL#24) states under part 11 that lawn care is a responsibility of the tenant.
14. Considering the evidence on a balance of probabilities, I find that the lawn was damaged as a result of the tenant's actions and that the landlord has demonstrated that fixing it in a timely manner will cost a minimum of \$575.00. The composition of the lawn is not strictly relevant.
15. This portion of the landlord's claim succeeds in the amount of \$575.00.
16. The third item is \$427.00 for the replacement of a damaged microwave range hood, representing 327.00 in materials and \$100.00 in labour. Exhibit 20 shows the cost breakdown. It should be noted that there is a minor math error here where $277.00 + 50.00 + 100.00$ is given as equalling \$432.00 rather than \$427.00. The vent hood can be seen in exhibit 09 and 13. The landlord testified that they purchased the house in 2012 and the microwave and oven were part of the furnishings at that time. An inspection report was provided (exhibit 19) which suggests the unit was damaged by misuse.
17. The tenant testified that the microwave and range hood were damaged when they moved in and stopped functioning 2-3 months before the end of the tenancy. They advised that they did not tell the landlord about this because they had their own microwave in storage which they switched to using without issue until the end of the tenancy. They say the landlord would have had to replace the microwave regardless of

their actions and they are not therefore liable to reimburse them. They submit that the microwave and stove are about 15 years old and note correctly that depreciation must be considered.

18. Microwave ovens are one of the shortest-lived home appliances, with a life expectancy of only about 9 years. The age of the device in this case is unknown, but it is at least 12 years old. It was, in other words, due to be replaced. As the landlord could not have reasonably expected the appliance to last longer, they are unable to claim compensation for damaged allegedly done to the device.
19. Finally, the landlord claims \$80.00 for the inspection of the microwave vent hood, which he says was done by a trained electrician at the request of the tenant. A receipt/inspection report was provided (exhibit 19).
20. As I have found that the replacement of the microwave oven/range hood is not the responsibility of the tenant, it would be inappropriate to charge the tenant for a fee for examining the device. This portion of the landlord's claim fails.
21. The landlord's claim for damages succeeds in the amount of \$775.00.

Decision


22. The landlord's claim for damages succeeds in the amount of \$775.00.
23. The landlord was partially successful in their claim and is therefore entitled to have their reasonable hearing expenses reimbursed. In this case, their hearing expenses consisted of the \$20.00 application fee and \$35.90 for the services of a public notary, for which a receipt was provided (LL#25).

Summary of Decision

24. The tenant shall pay to the landlord \$830.90 as follows:

Damages.....	\$775.00
Hearing expenses.....	\$55.90
Total.....	\$830.90

24-October-2024
Date


Seren Cahill
Residential Tenancies Office