

Residential Tenancies Tribunal

Application 2024-0626-NL
Counterapplication 2024-0927-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 31-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The counter applicant and respondent 1 [REDACTED] was representing respondent 2 [REDACTED], hereinafter referred to as “the landlords”, attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application stating that she had served the landlords with the notice of the hearing electronically via email on 17-September-2024 (TT#1). The respondent 1 agreed that both respondents received the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlords submitted affidavit with their application stating that they had served the tenant with the notice of the hearing electronically via email on 9-October-2024 (LL#1). The tenant confirmed receiving notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service, and we proceeded with the hearing.
6. There was written a fixed term rental agreement which commenced on 6-June-2021 that converted into a month-to-month rental agreement. The tenant moved out on 4-May-2024. Rent was \$600.00 per month due on the first of each month. A security deposit of \$500.00 was collected on 26-March-2021 and is in landlord’s possession, however \$50.00 from this amount will be considered as *rent paid* as the security deposit exceeded the 75% amount allowable under the *Act*.
7. The landlords amended their application to decrease amount for compensations for damager from \$975.86 as per application to \$972.86 and to include hearing expenses of \$20.00.

Issues before the Tribunal

8. The tenant is seeking:

- Refund of Security Deposit of \$500.00.

9. The landlords are seeking:

- Damages \$972.86;
- Hearing expenses \$20.00;
- Security Deposit of \$500.00 to be applied against any monies owed;

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 9-3: Compensation for Damages to Rental Premises, Section 9-5: Depreciation and Life Expectancy of Property, Section 12-1: Recovery of Costs and Section 14 of the *Residential Tenancies Act, 2018*: Security Deposit.

Issue # 1: Damages \$972.86.

Relevant submission:

11. The landlord submitted a damage ledger seeking a total \$972.86 for various damages (LL#2). The items were grouped for ease of review:

- #1 Kitchen floor burn - \$193.87
- #2 Washing machine - \$178.11
- #3 Pot replacement - \$30.00
- #4 Kitchen sealing - \$200.00
- #5 Bathroom sink - \$320.78
- #6 Utilities - \$50.00

Landlord's and Tenant's Position:

#1 Kitchen floor burn (\$193.87) - The landlord stated that the flooring was damaged during a fire caused by the tenant on 26-July-2023, and that she is seeking to cover replacement costs. The landlord emphasized that the kitchen flooring was recently installed prior the incident and submitted a copy of the receipt (LL#3). The landlord submitted a photograph of the damage to support her claim (LL#4).

The tenant confirmed that the kitchen flooring was installed during the tenancy and did not dispute that she caused an incident on 26-July-2023, however she disputed that she caused any damage to the flooring.

#2 Washing machine (\$178.11) - The landlord is seeking \$178.11 to cover partial costs due to plumbing expenses attributed to the tenant's negligence. She explained that the pipes from the kitchen sink are connected to the washing machine located directly below the sink downstairs. According to the landlord, dirt from the kitchen sink caused repeated issues with the washing machine, leading her to replace two machines within two years

and call plumbers on multiple occasions to address the problem. The landlord submitted receipts to support her claim (LL#5,6).

The tenant acknowledged responsibility for the issues with the washing machine. The tenant agreed to pay \$113.28, as she stated that she previously paid \$64.83 in July-2023, as requested by the landlord for plumbing costs.

#3 Pot replacement (\$30.00) - The tenant did not dispute that she is responsible to pay \$30.00 for the pot replacement.

#4 Kitchen ceiling (\$200.00) - The landlord is seeking \$200.00 to repaint the kitchen ceiling following an incident on 26-July-2023, in which smoke filled the whole unit after the tenant burned the pot. The landlord submitted an invoice from the painter (LL#7) and photographs of the ceiling (LL#8,9) to support her claim, stating that the entire apartment needs repainting due to smoke residue.

The tenant disputed responsibility for the ceiling repainting, arguing that only smoke – not a visible flame or discoloration – was present during the incident on 26-July-2023 and that no visible damage occurred to the ceiling.

#5 Bathroom sink (\$320.78) - The landlord stated that tenant's guest caused damage to the sink, and it needed to be replaced and she is seeking \$320.78 for the replacement. The landlord submitted a copy of the receipt to support her claim (LL#10).

The tenant agreed that there was an accident, where her guest laid on the sink and it separated from the wall, however she disputed that she is responsible for the replacement of the sink.

#6 Utilities (\$50.00) - The tenant did not dispute that she is responsible to pay \$50.00 for the outstanding amount for the utilities.

Analysis

12. 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;*
- *The value to repair or replace the damaged item(s)*

#1 Kitchen floor burn (\$193.87) - The landlord stated that the flooring was damaged during a fire caused by the tenant on 26-July-2023, and that she is seeking to cover replacement costs. I accept both the landlord's and tenant's testimony that the flooring was installed new during the tenancy. Based on the photograph submitted by the landlord, I accept that the damage to the floor was caused as a result of the smoke-fire incident; and as the flooring was relatively new, depreciation shall not be taken into consideration. As the tenant acknowledged responsibility for the smoke-fire incident, I find that she is responsible for the burn marks to the flooring. Based on the receipt entered into evidence, I find that the tenant is responsible for the cost to replace the kitchen flooring in the amount of \$193.87.

#2 Washing machine (\$178.110) - The landlord is seeking \$178.11 to cover partial costs due to plumbing expenses attributed to the tenant's negligence. Given that the landlord did not dispute receiving the tenant's prior payment of \$64.83 for plumbing costs, I accept the

tenant's testimony regarding her intention to pay an additional \$113.28. I find that the tenant is responsible for the payment of \$113.28 to cover the plumbing expenses associated with the washing machine.

#3 Pot replacement (\$30.00) - I accept the tenant's testimony that she is responsible for the damage to the pot and as such, I find that she is responsible for the payment of \$30.00 for the replacement of the pot.

#4 Kitchen ceiling (\$200.00) - The landlord is seeking \$200.00 to repaint the kitchen ceiling following an incident on 26-July-2023. I accept the landlord's testimony that painting is necessary after a smoke-fire accident, as visible on the photograph, where the ceiling appears greyish. I accept that the cost to repaint it is \$200.00 according to the invoice from the painter.

According to the Section 9-5 of the *Residential Tenancies Policy*: Depreciation and Life Expectancy of Property, lifespan of interior paint is 15 years. The landlord stated that the unit was freshly painted in 2020, making the paint 4 years old, meaning it has reached 27% of its life expectancy. The tenant did not dispute that she caused a smoke-fire incident on 26-July-2023. Therefore, I find that the tenant is responsible for the 73% of the ceiling painting costs, totaling \$146.00.

#5 Bathroom sink (\$320.78) - I accept both the landlord's and tenant's testimony that there was an incident to the sink, causing it to separate from the wall, however I find that the landlord failed to show that there was damage to the sink requiring it to be replaced. For this reason, I find that the tenant is not responsible for the cost to replace the bathroom sink.

#6 Utilities (\$50.00) - The tenant did not dispute that she is responsible for the outstanding utilities and as such, I find that the tenant is responsible for the payment of \$50.00 for the utilities.

Decision

13. The landlord's claim for damages succeeds in the amount of \$533.15.

Issue # 2: Hearing expenses \$20.00

Analysis

14. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlords paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

15. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 3: Refund of Security deposit \$500.00

Security deposit to be applied against any monies owed \$500.00

Analysis

16. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (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.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

17. The landlord's claim for losses has been successful as per paragraphs 13 and 15 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2024 is 1%.

Decision

18. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

19. The tenant shall pay the landlords \$49.40 as follows:

Damages	\$533.15
Hearing expenses	\$20.00
Less Security Deposit & interest	\$453.75
Less rent paid	\$50.00
 Total	 \$49.40

November 6, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office