

Residential Tenancies Tribunal

Application 2024-0820-NL
Application 2024-0943-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 14-November-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant testified that she had served the landlord with the notice of hearing electronically by email on 19-September-2024. The landlord confirmed receipt of the document on that date and submitted a counter claim against the tenant. The landlord submitted an affidavit with her application stating that she had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 30-October-2024 (LL#1). The tenant confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act 2018*, this is good service.
5. There was a written term rental agreement that commenced on 25-October-2023. The tenant vacated the unit on 28-April-2024. Rent was \$850.00 per month, due on the first day of each month. A security deposit of \$425.00 was paid on 25-October-2023 and is in the landlord’s possession.

Issues before the Tribunal

6. The tenant is seeking:
 - Refund of security deposit of \$425.00 plus interest
7. The landlord is seeking:
 - Compensation for damages in the amount of the security deposit of \$425.00 plus interest.

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*.

9. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*, Section 9-3: Claims for damage to rental premises.

Item # 1: Compensation for damages in the amount of the security deposit of \$425.00 plus interest.

Relevant submission

10. The landlord testified that the exterior door leading into the unit was broken off hinges and she is seeking to retain the security deposit plus interest to go towards the total cost of \$702.21 to replace the door. The landlord submitted a copy of the *list of damages* to support the claim (LL#2). See copy of *list of damages* below:

List of Damages

1. Outside door leading into apartment broken off hinges, needed replacement. \$152.21 materials + \$550 door & labour = \$702.21 total cost to fix. Seeking to keep \$425 security deposit towards the repair.

Landlord's Position

11. The landlord testified that in mid-March 2024 the door and door frame were destroyed due to an incident involving the tenant and both needed to be replaced. The landlord stated that she communicated with the tenant both in person and over messenger about replacing the door at which time the tenant indicated that she had every intention of fixing or replacing the door. The landlord stated that she did not enforce it right away as she knew the tenant was struggling at the time, however once the tenant moved out of the unit, the landlord testified that she asked the tenant if she could retain the security deposit to go towards the cost to replace the door. The landlord testified that the tenant agreed in writing that she could retain the security deposit in lieu of damages to the door and the landlord submitted a copy of that message to support the claim (LL#3). The landlord also submitted a copy of the receipts to show the cost to replace the door (LL#4).

Tenant's Position

12. The tenant did not dispute that the door was broken and needed to be replaced, however she disputed that she was negligent in causing the damage to the door as she was experiencing a medical emergency when the *Police* came to her assistance and had to force the door open to gain access to the unit. The tenant testified that when she returned to the unit after hospitalization, the door was still off hinges but could close securely however she stated that she did not feel safe in the unit. The tenant stated that she could not afford to fix the door and she stated that she felt that the landlord should have replaced the door at that time for safety reasons even if she used the security deposit to do so.

Analysis

13. In accordance with *Residential Tenancies policy* 9-3, the applicant is required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage;*
- *The value to repair or replace the damaged item(s)*

14. I asked the tenant if she wrote the message to the landlord on 10-May at 12:03pm whereby she agreed to forfeit the security deposit in lieu of damages to the door and she responded that she did not write the message as she was in a coma for 2 weeks from mid to late April and she testified that her mother wrote that message. I asked her if she knew her mother sent the message through her messenger account, and she responded that she was unsure as she has trouble remembering things that happened during that period due to her medical condition.

15. In accordance with Section 9-3 of the *Policy* as stated above, I accept the landlord's testimony that the damage exists, and I accept the receipts entered into evidence to show the cost to replace the door. The only question is if the tenant is responsible for the physical damage to the door and if so, at what cost. I accept that the tenant was having a medical emergency, and the *Police* were forced to enter through the exterior door, however I find that the tenant is still responsible for the residential premises during the tenancy and in accordance with the *Policy*, it was established that the damage occurred during the course of the tenancy. I find that landlords should not incur any financial loss for damages due to tenant incidents that happen during the tenancy. For this reason, I find that the tenant is responsible for the damage to the door and should pay to replace the door.

16. I asked the landlord the age of the door and she responded that the door was approximately 11 years old. In accordance with Section 9-5 of the *Policy*: Depreciation and life expectancy of property, an exterior fibreglass door will last a lifetime. Research shows that a similar exterior door with a window cost \$849.85 (research taken from www.kent.ca). Based on this information, I find that it is reasonable for the landlord to retain the security deposit of \$425.00 plus interest to cover the cost to replace the door.

Decision

17. The landlord's claim for *compensation for damages* succeeds in the amount of \$428.70.

Issue # 2: Refund of Security Deposit \$425.00 plus interest Security Deposit plus interest applied against monies owed

Analysis

18. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

19. The landlord's claim for losses has been successful as per paragraph 17 above, 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 for 2023 was 0% and is currently 1% for 2024.

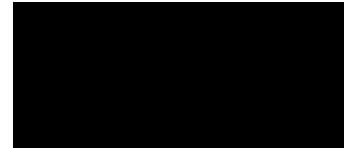
Decision

20. The tenant's claim for a *refund of security deposit plus interest* does not succeed.

21. The landlord's claim for *compensation for damages* succeeds in the amount of \$428.70.

December 2, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office