

Residential Tenancies Tribunal

Application 2024-0875-NL & 2024-0969-NL

[REDACTED]
Adjudicator

Introduction

1. The hearing was held on 17 October 2024 at 9:05 AM.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], associate with [REDACTED], hereinafter referred to as the landlord's representative, attended via teleconference.
4. The landlord's representative called three witnesses, employees of the [REDACTED] [REDACTED], hereinafter called the witnesses.

Preliminary Matters

5. The tenant supplied an affidavit of service (T#1) with application 2024-0875-NL indicating [REDACTED] were both electronically served on 18 September 2024 at 2:32 PM [REDACTED]). The landlord's representative did not dispute this service. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. The landlord's representative supplied an affidavit of service (L#1) with application 2024-0969-NL indicating the tenant was served electronically on 11 October 2024 at 12:22 PM [REDACTED]. The tenant did not dispute receipt. In accordance with the *Residential Tenancies Act, 2018* this is not good service; however, the tenant waived her 10 days clear service requirements.
7. The details of the claim were presented as a written monthly rental agreement between 30 May 2022 and 30 April 2024 with rent set at \$1750.00 per month, all inclusive, paid in bi-weekly installments of \$807.70, through payroll deductions. The tenant disputed there was a written rental agreement as she testified upon arrival to the rental premises, she declined to sign the agreement until after repairs were completed on the rental premises.

After those repairs were completed, the tenant stated she requested to sign the rental agreement but was never supplied this from the landlord.

8. At the hearing, the tenant amended her claim from \$1077.00 rent refund to \$296.60 and requested hearing expenses.
9. The landlord's representative amended the application at the hearing and did not wish to seek compensation, rather to only withhold the security deposit \$1313.00
9. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicant has the responsibility to prove that the outcomes they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that they account of events are more likely than not to have happened.

Issues before the Tribunal

10. The tenant is seeking the following:
 - Refund of Security deposit of \$1313.00
 - Rental arrears of \$269.60
 - Hearing Expenses of \$20.00
11. The landlord is seeking to withhold the security deposit of \$1313.00 in compensation for damages.

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (the Act).
13. Also considered and referred to in this decision are Sections 14, 34 and 35 of the Act, along with *Policy 09-005: Depreciation and Life Expectancy of Property of the Residential Tenancies Program*.

Issue 1: Compensation for Damages/ Security Deposit- \$1,313.00

Relevant Position

14. The landlord's representative testified the rental agreement included furnished accommodations and after the tenant vacated the rental premises on 30 April 2024, [REDACTED] employees observed damages to the furniture. The landlord submitted a damage ledger (L#5) listing four items of furniture (a Wade Chest, Wade Nightstand, Jax 3 Table Occasional Set, and Sofa – Brown) for a total value of \$3,336.00.

Landlord and Tenant's Positions:

15. The landlord claims that the tenant damaged several pieces of furniture during the tenancy and, while the total cost of replacing the furniture in question was \$3,360.00, they are only requesting to retain the \$1,313.00 security deposit against the damages.
16. The tenant testified this security deposit of \$1,313.00 was paid in full by 4 August 2022 through payroll deductions from her employer. She is seeking a return of this security deposit, and stated there were no reasons why she should not be refunded these monies. She supplied evidence of the conditions of the rental upon her arrival on 30 May 2022 (T#7).
17. Both the landlord's and tenant's positions on each of the items listed on the damages' ledger are as follows:

#1. El Wade Chest

18. The landlord's witness #3 (L#4) stated that on or about 30 April 2024, she visited the premises to conduct a 'march-out', was "surprised by the state of the unit" and that some furniture was broken and damaged, including "a broken dresser with drawers pulled out". The witness testified the chest of drawers was medium density fiber board (MDF) and could not offer any insight into the age of this piece of furniture. [REDACTED] stated she had spoken with a repair man who viewed the chest and informed it could not be repaired. A replacement was purchased, and the landlord provided a receipt (L#2) demonstrating a cost of \$599.00
19. The tenant did not dispute the chest of drawers was damaged and noted that she did not bring this to the landlord's attention as she attributed it to "normal wear and tear" of piece of furniture made of MDF material. She claimed that from the onset of the tenancy there was issues with the chest; the drawers would not stay in place on their tracks and kept dropping down, and the sides of the chest were bowed outwards, and notes that by the end of the tenancy it was completely falling apart. Along with her application, the tenant supplied pictures (T#6) of the master bedroom prior to vacating which shows two chests of drawers, one of which was missing a drawer.

#2. El Wade Nightstand

20. During the hearing, neither the landlord's representative, the witnesses called, nor the tenant contributed any information with respect to the nightstand or how/what the damage was to this item. A receipt (L#2) was provided by the landlord demonstrating a replacement cost of \$199.00.

#3. Jax 3 Table Occasional Set

21. The landlords witness, [REDACTED], stated that during her "march out", she noted the coffee and end tables were scratched and could not be repaired. She believed they were between 6 to 7 years old when they were purchased prior to the tenant's occupancy. A receipt (L#2) was provided by the landlord demonstrating a replacement cost of \$589.00.

22. The tenant disputes being liable for the damages to the coffee and end tables. Along with her application, the tenant supplied e-mails to the [REDACTED] (T#3) indicating concerns with the coffee and ends tables. The tenant also supplied pictorial evidence (T#7) which she identified as Conditions of Rental Unit Upon Arrival (May 30, 2022), showing a coffee table with a crack in section of the table and a segment of a veneer strip missing. She also provided a picture (T#8) of the new coffee table she purchased for use on April 8, 2023, commenting, *"the coffee table provided with the rental unit had already been damaged in multiple places. To avoid damaging it further, we purchased our own coffee table and had it set up April 8, 2023. We stored the provided coffee table in the spare room with the purple carpet which we had used as an office, and did not use the coffee table any further"*.

#4. Sofa – Brown

23. The witness, [REDACTED] testified when she completed a "march out" of the rental premise after the tenant had vacated, she observed what appeared to be claw marks and scratches on the brown leather couch which she had taken pictures of and supplied to those pictures to her supervisor, [REDACTED]. [REDACTED] stated the couch was "probably five years old" at the start of the tenancy. It is the landlord's position that the tenant's evidence, in itself, indicates that the tenants' cats could have caused damages to the couch. A receipt (L#2) was provided by the landlord demonstrating a replacement cost for a sofa in the amount of \$1,949.00.
24. The tenant testified that the sofa was in a poor state and had been damaged when she moved into the rental premises. She testified that the leather was peeling in many areas and very uncomfortable to sit in as there was a board underneath that was pushing up into the seat. She provided pictures (T#7) of the premises on her arrival, four of which were of a sofa. In reviewing those pictures, while they showed a cat sitting on the couch, it is also noted that they demonstrated existing damage as the leather had peeled off in areas. The tenant testified that the rental arrangement allowed pets and disputed that her cat was responsible for any damage beyond normal wear and tear. She testified that she purchased her own couch in June 2022, and that she and her partner moved the sofa into a room in basement which the cats could not access, until she left.

Analysis

25. In accordance with Residential Tenancies Policy 9-003, with all damage claims, 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).
26. I accept the landlords claim that damage exists to the furniture items as previously reviewed, and I accept the receipt entered into evidence to show the cost of replacing these items. The question remains is whether the tenant is responsible for the damage, through willful or negligent acts, and the extent of the damage.

27. Evidence provided by both the landlord and tenant demonstrates that the furniture in question was not new at the beginning of the tenancy. The age of some of the items were unknown, while others were estimated to be between 5 and 7 years old. The tenant provided testimony, which I also accept, that the furniture was not in good condition at the beginning of the tenancy. She also provided some pictures in support of her claims which demonstrated that damage did exist at the time she moved in. No incoming or outgoing inspection / condition report was provided by the landlord which makes it difficult to determine what, if any, of the damage existed prior to the tenancy and/or what damage actually occurred during the tenancy, and whether any damage was the result of normal wear-and-tear or through negligence.
28. In examining the evidence in totality, I am unable to assess the amount of the damages which the tenant is liable for. The landlord has failed to meet the evidentiary onus, and this portion of the landlord's claim fails.
29. Section 14 of the *Act*, states:
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).
30. As noted above, there was insufficient evidence provided by the landlord to determine what, if any, damages were attributable to the actions of the tenant. As such, I find that the landlord shall return the security deposit plus interest to the tenant.
31. Pursuant to the *Act*, the landlord must pay interest on a security deposit to the 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 rate for 2022 and 2023 is 0%, and 1% for 2024.

Decision

32. The tenant's claim for return of the security deposit plus interest succeeds.

Issue 2: Refund of Rent

Tenant Position

33. The tenant testified she was seeking a refund of rent paid of \$269.60 and this was the result of rent being paid on a bi-weekly basis during the tenancy which resulted in situations when she paid three times over some months. She stated she was a tenant in the rental premises between 30 May 2022 and 30 April 2024.
34. The tenant testified after moving into the rental premises, she contacted the landlord about repairs which were required which required in the [REDACTED] ([REDACTED]) informing her she would not have to pay rent for July 2022. The tenant stated the monthly rent was set at \$1750 per month, paid in bi-weekly payments which was automatically withdrew from her pay in the amount of \$807.70. Along with her application, the tenant supplied an amended rent ledger (T#9) and her payment stubs between her vacancy of the rental premises (T#10).

Landlord Position

35. The landlord did not dispute during the tenancy, the tenant was not required to pay rent for one month. Along with the landlord's application, the landlord's representative supplied a rent payment ledger (L#5). The landlord's representative disputed the tenants claim that she was owed rent monies due to overpayment.

Analysis

36. The tenant resided in the premises from 30 May 2022 to 30 April 2024, a 23-month period. During this time, her rent, based on \$1750.00 per month, which would equate to a total amount of rent due for the period as \$40,250.00. Subtracting one-month's rent for July 2022, this would equal \$38,500.00 in rent owing for the period in total.
37. Based on the evidence provided, rent was paid via bi-weekly payroll deductions of \$807.70 (T#4). This equates to the following:

2022: 12 bi-weekly payroll deductions of \$807.70 (14 bi-weekly periods - 2 pay periods for July 2022) = \$9692.40
2023: 26 bi-weekly payroll deductions of \$807.70 = \$21,000.20
2024: 10 bi-weekly payroll deductions of \$807.70 = \$8,077.00

Based on the above, the total rent paid via payroll deductions during the tenancy = \$38,769.60

38. The tenant's claim for a refund of rent succeeds in the amount of \$269.60.

Decision

39. The tenant's claim for refund of rent succeeds.

Issue 3: Hearing Expense

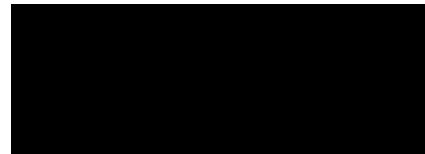
40. The tenant supplied a copy of the hearing receipt (T#11) along with her application. As the tenant's claim for return of security deposit succeeds, the landlord shall pay \$20.00 to the tenant.

Summary of Decision

41. The landlord shall pay the tenant \$1617.56 determined as follows:

Security deposit + interest.....	\$1327.96
Refund of rent.....	\$269.60
Hearing expense.....	\$20.00
Total.....	<u>\$1617.56</u>

10 April 2025
Date



Michael Reddy, Adjudicator
Residential Tenancies Office