

Residential Tenancies Tribunal

Application 2024-0926-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-January-2024 at 9:15 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. 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 landlords submitted an affidavit (LL#1) with their application stating that they had served the tenants with notice of the hearing electronically on 12-December-2024 at 2:16 pm. Proof of service was also provided (LL#2). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord's claim for damages succeed?
6. Should the landlord's claim for unpaid rent succeed?
7. What is the proper disposition of the security deposit?

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 (the *Act*).

Issue 1: Damages

9. The landlord claims \$6203.52 in damages, divided amongst 36 items. For the sake of brevity, I have combined some of these items where appropriate, resulting in 24 items total. These items will be dealt with separately below. As per the Residential Tenancies Program Policy and Procedure Guide 09-003, it is the responsibility of the landlord to provide sufficient evidence to demonstrate the extent of any alleged damages and the cost of repair, and this should include documentary evidence wherever reasonably possible. Depreciation must also be considered, reducing the value of any compensation by the percentage of the lifespan which has elapsed.
10. First, the landlord claims \$333.50 for the cost of carpet cleaning. The landlord testified that the carpet was originally installed in 2003. As the expected life expectancy of carpet is 8 to 10 years, depreciation has reached 100%, and the landlord therefore cannot recover the cost of the carpet.
11. Second, the landlord claims \$45.97 for the replacement of damaged window blinds. No documentary evidence was provided showing these blinds. This portion of the landlord's claim therefore fails on evidentiary grounds.
12. Third, the landlord claims \$28.70 for the repair of holes in the dining room. These holes can be seen in LL#4 page 1. The receipt for the wall repair kits used to fix these holes was provided as LL#5 page 46. This portion of the landlord's claim succeeds in the amount of \$28.70.
13. Fourth, the landlord claims \$36.35 for the testing of a damaged thermostat. The thermostat can be seen in LL#4 page 1. The receipt was provided as LL#5 page 7. This portion of the landlord's claim succeeds in the amount of \$36.35.
14. Fifth, the landlord claims \$60.00 for the replacement of the damaged thermostat. The landlord claimed that the replacement was purchased through Kajiji but no evidence of the cost of replacement was provided. This portion of the landlord's claim therefore fails on evidentiary grounds.
15. Sixth, the landlord claims \$458.59 for the cost of removing and replacing three damaged electric baseboard heaters. One of these heaters can be seen in LL#4 page 21. Others can be seen in LL#6 pages 15 to 17. The receipt that shows the cost of replacing these heaters was provided as LL#5 page 18. This portion of the landlord's claim succeeds in the amount of \$458.59.
16. Seventh, the landlord claims \$262.94 in relation to damaged solid wood kitchen cabinets. The only photo provided showing the kitchen cabinets after the tenancy and before repairs is LL#4 page 2 and LL#6 pages 1 and 31, which show no visible damage. I am therefore unable to assess the extent of the damage, if any. This portion of the landlord's claim fails on evidentiary grounds.

17. Eighth, the landlord claims \$117.54 for the repair of a damaged toilet. She testified that the toilet was no longer flush to the floor, had to be re-seated, and was no longer flushing. \$31.17 was specifically for the replacement toilets seat and \$86.37 was for the other repairs. The damaged toilet can be seen clearly in LL#6 page 28 with the seat removed. As it is a still photo taken from directly above, it is not clear from the photo that the toilet is no longer flush to the floor nor that it no longer flushes. A toilet has a lifetime life expectancy so depreciation is not in issue. A receipt was provided for \$31.17 for the replacement toilet seat (LL#5 page 39). It was indicated that a receipt was provided for the \$86.37 costs but I could not locate it. The only receipt from the indicated retailer totaled \$72.66 and was for paint and caulking only. This portion of the landlord's claim succeeds in the amount of \$31.17.
18. Ninth, the landlord claims \$380.20 in relation to the removal of stick tile in the bathroom. As will be discussed in Issue 2, below, the failure of the tenant to replace this tile forms part of the basis for the claim of unpaid rent. To award compensation for damages covering the cost of the replacement of the tile would therefore constitute double recovery and would be inappropriate.
19. Tenth, the landlord claims \$34.37 for the replacement of missing light fixtures in the bathroom which she testifies were removed by the tenant. A receipt was provided for the replacement of these fixtures (LL#5 page 30). This portion of the landlord's claim succeeds in the amount of \$34.37.
20. Eleventh, the landlord claims \$88.03 for the replacement of missing bathtub and sink stoppers which she testifies the tenant removed from the premises. A receipt was provided (LL#5 page 20). This portion of the landlord's claim succeeds in the amount of \$88.03.
21. Twelfth, the landlord claims \$54.04 for the replacement of a damaged curtain rod. No documentary evidence was provided of this item. This portion of the landlord's claim therefore fails.
22. Thirteenth, the landlord claims \$16.09 for the replacement of missing water traps. Typical water traps have a life expectancy of about 3-4 years, the duration of the tenancy, so this portion of the landlord's claim fails.
23. Fourteenth, the landlord claims \$99.04 for the replacement of damaged light fixtures in the hallways and common areas. These can be seen on LL#4 page 2. A receipt was provided for these light fixtures as LL#5 page 26. This portion of the landlord's claim succeeds in the amount of \$99.04.
24. Fifteenth, the landlord claims \$143.57 for the replacement of damaged carpet. The landlord testified that the carpet was originally installed in 2003. As the life expectancy for carpet is 8-10 years, this portion of the landlord's claim fails.
25. Sixteenth, the landlord claims \$60.08 for the replacement of smoke detectors which she testifies the tenant removed from the premises. A receipt was provided as LL#5 page 38. This portion of the landlord's claim succeeds in the amount of \$60.08.

26. Seventeenth, the landlord claims \$45.93 for the replacement of damaged light fixtures. This can be seen in LL#6 page 5. A receipt was provided as LL#5 page 34. This portion of the landlord's claim succeeds in the amount of \$45.93.
27. Eighteenth, the landlord claims \$76.83 for the repair of a damaged bedroom door. The damaged door is visible in LL#6 page 5. Receipts were provided for repair materials as LL#5 page 16, LL#5 page 32, and LL#5 page 14. This portion of the landlord's claim succeeds in the amount of \$76.83.
28. Nineteenth, the landlord claims \$21.87 for the replacement of damaged siding. The damaged siding can be seen in LL#6 page 30. A receipt was provided as LL#5 page 41. This portion of the landlord's claim succeeds in the amount of \$21.87.
29. Twentieth, the landlord claims \$172.49 for the replacement of an exterior door handle. The landlord testified that the tenant had replaced it with an interior door handle. No documentary evidence was provided. This portion of the landlord's claim fails.
30. Twenty-first, the landlord claims \$57.87 for materials required to remedy flower beds which the landlord testified required maintenance. These beds can be seen in LL#4 and LL6 page 8. No rental agreement was provided. I find that I do not have sufficient evidence to establish that the maintenance of the flower beds was the tenant's responsibility. This portion of the landlord's claim fails.
31. Twenty-second, the landlord claims \$229.00 for the replacement of a missing dehumidifier which she says the tenant removed from the premises. A receipt was provided as LL#5 page 9. This portion of the landlord's claim succeeds in the amount of \$229.99.
32. Twenty-third, the landlord claims \$3293.88 for the cleaning of the premises, which she testifies the tenant left unclean. LL#4 shows photos taken when the landlord first retook possession of the premises. These photos show that a substantial clean was required. A receipt was required on LL#5 page 1. This portion of the landlord's claim succeeds in the amount of \$3293.88.
33. Twenty-fourth and finally, the landlord claims \$317.34 for supplies used to remedy a foul odour that she testified had been detectable throughout the house. She testified that to fully remove the odour she had to repaint the interior. Receipts are included as LL#5 pages 8, 12, 43, 44, 47, and 52. This portion of the landlord's claim succeeds in the amount of \$317.34.
34. The landlord's claim for damages succeeds in the amount of \$4822.17.

Issue 2: Unpaid Rent

35. The landlords claim for \$4000.00 in unpaid rent. A rent ledger was provided in support of this (LL#3). The landlord testified that part of this sum represents discounted rent she offered to the tenant in exchange for repairs to be done on the premises. Specifically, she testified that the tenant was to replace the small tile in the bathroom and repair

damaged gyprock in the pantry. She says that when she retook possession of the premises, she found that this work was never done.

36. I accept the landlord's uncontradicted testimony. The landlord's claim for unpaid rent succeeds in the amount of \$4000.00.

Issue 3: Security Deposit

37. The landlord testified that the tenant paid a security deposit of \$600.00 in or about early July 2021. As the landlord is owed moneys, they may apply the security deposit against moneys owed.
38. 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 prescribed a rate of 0% for 2021-2023 and a simple cumulative interest rate of 1% annual for 2024-2025. Calculated to the date of the hearing, the total interest is \$6.16.

Decision

39. The landlord's claim for damages succeeds in the amount of \$4822.17.
40. The landlord's claim for unpaid rent succeeds in the amount of \$4000.00.
41. The landlord may apply the security deposit and interest, valued at \$606.16, against the moneys owed.

Summary of Decision

42. The tenant shall pay to the landlord \$8216.01 as follows:

Damages.....	\$4822.17
Unpaid Rent.....	\$4000.00
Less Security Deposit.....	-\$606.16)
Total.....	\$8216.01

13-February-2025
Date


Seren Cahill
Residential Tenancies Office