

Residential Tenancies Tribunal

Application 2024-0959-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 20-November-2024 at 9:12 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, also attended via teleconference.
4. The landlord called the witness, [REDACTED], who also attended via teleconference.

Preliminary Matters

5. The tenants acknowledged they had received notice of the hearing at least ten days in advance of the hearing date.

Issues before the Tribunal

6. Should the landlords' claim for unpaid rent and late fees succeed?
7. Should the landlord's claim for damages succeed?
8. What is the proper disposition of the security deposit?

Legislation and Policy

9. 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: Unpaid Rent and Late Fees

Landlord's Position

10. The landlord claims for \$4000 in unpaid rent and \$75.00 in late payment fees. The landlord submitted a rental ledger (LL#4) in support of this claim.

Tenants Position

11. The tenants acknowledged that they fell behind in rent payments and have rent owing.

Analysis

12. Given the landlord's uncontested testimony, I accept on a balance of probabilities that the tenants owe \$4000.00 in unpaid rent and \$75.00 in late fees.

Issue 2: Damages

13. The landlord claims \$4300.00 in damages, consisting of \$2201.95 in materials and 149.25 hours of labour. Hours of self-labour are compensable at a rate of minimum wage +\$8.00/hr, currently a total of \$23.60/hour. In accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-003, a landlord who seeks to claim compensation for damages to the rental premises must provide sufficient evidence to establish on a balance of probabilities that each item for which compensation is sought was damaged, that the damage was caused by the wilful or negligent act of a tenant or a person they allowed on the premises, the extent of the damage, and the cost of repair or replacement. This evidence ought to include documentary evidence (photos, videos, etc.) wherever possible.
14. It should be noted that the policy requires that the landlord provide a list of damaged items and "a precise indication of the remuneration they are seeking for that item." In this case, the landlord failed to do so. I may still be able to infer the appropriate remedy, if any, for each item based on the landlord's testimony and their exhibits. LL#1 contains a list of the items which the landlord alleges were damaged by the tenant as well as a series of photographs of the rental premises showing some of these items. LL#2 contains a breakdown of materials costs and a series of receipts and invoices. LL#3 shows a breakdown of the landlord's work hours spent repairing the premises but unfortunately it is broken down by time and date and does not show how much time each item took.
15. I will deal with each portion of the landlord's claim individually below, including the tenants' positions and any defenses raised.
16. First, the landlord and the witness testified that the house was left by the tenants in an unclean state. They said that every wall had to be washed, as did the floors, and the deep freeze and the refrigerator had to be cleaned out. They also stated that the house had a lingering cigarette smoke smell and there were nicotine stains on some walls, and that some rooms had a strong smell of cat urine. They claim as compensation \$64.25 in cleaning supplies, for which receipts were provided (LL#2 page 10, receipt 7), as well as compensation for ~40-50 person hours cleaning.
17. The tenants testified that they had offered to return to the premises to do further cleaning but the landlord had refused. They admitted they had smoked in the premises. They

admitted that they had a male cat who sometimes sprayed and they had difficulty cleaning up after him.

18. Tenants are responsible to maintain rental premises in a clean condition and to ensure the premises are clean when they return possession to the landlord. While they have possession, they are entitled to hire cleaners or clean the place themselves as they see fit. Once they have given up possession, the landlord has the same entitlement. A landlord is not required to give tenants one last chance to clean. Once the tenant has vacated, they are able to do the required cleaning themselves and charge the tenants for the cost.
19. I accept on a balance of probabilities that the tenants left the premises in an unclean condition and the landlord spent ~40-50 hours cleaning as a result. Given the conditions described, this seems like a reasonable amount of time. Averaging to 45 hours results in a total compensation for labour of $\$23.60/\text{hour} \times 45 \text{ hours} = \1062.00 in labour. I accept the receipts for cleaning supplies but note that only \$35.76 represents cleaning supplies, the remainder being painting tools, light bulbs, etc.
20. This portion of the landlord's claim succeeds in the amount of \$1097.76.
21. Next, the landlord claims for compensation for changing the locks, as the tenants did not return the keys. According to policy 02-004, replacing locks is a cost of doing business for a landlord and is therefore not compensable.
22. The landlord claims for damage done to the carpet in the master bedroom. He testified that the carpet had been there when he purchased the house in 2006. Carpet has a life expectancy of only 8-10 years. As the carpet was due to be replaced regardless of the tenants' actions, the landlord cannot claim compensation for its loss.
23. The landlord also claims for several damaged window screens, which also date back to 2006 or earlier. Window screens have a life expectancy of 10-15 years. Therefore, the landlord cannot claim compensation for these screens which were already due to be replaced.
24. The landlord claims for compensation for several ceiling fans/light fixtures throughout the premises which he said were damaged. The tenants claimed that the fans were in poor shape before the tenancy began. Regardless, no documentary evidence of the fans was provided and I am unable to assess the extent of the damage, if any. This portion of the landlord's claim fails on evidentiary grounds.
25. The landlord claims for compensation for damage done to a dryer. No documentary evidence was provided of this dryer and I am unable to assess the extent of the damage, if any. This portion of the landlord's claim fails on evidentiary grounds.
26. The landlord claims for compensation for damage done to several items in the kitchen including a broken cabinet handle, a broken deep freeze and a broken faucet. No documentary evidence was provided of any of these items and I am unable to assess the extent of the damage, if any. This portion of the landlord's claim fails on evidentiary grounds.

27. The landlord claims for compensation for a damaged floor and subfloor in the kitchen, next to a patio door (see LL#1 page 9). The tenants testified that the patio door was not weatherproof and would blow open or leak water in heavy rain even when it was closed. They said they had spoken to the landlord verbally about issues with this door. The landlord agreed they had such conversations and he had checked the door but had found nothing wrong. He admitted the weather seal was probably damaged. He disagrees that the patio door will sometimes blow open and says this has not occurred since he retook possession. Tenants are only responsible for damages to the premises if they or a person they allowed on the premises caused them through a wilful or negligent act. Given the evidence in its totality, I do not find on a balance of probabilities that the tenants wilfully or negligently caused this damage. Therefore, this portion of the landlord's claim fails.
28. The landlord claims for compensation for damage done to a sliding closet door (see LL#1 page 11). He says the door had been removed and was missing some hardware so it would no longer fit properly in the slot. The tenants said that the closet door had not been sliding properly when their tenancy began. He said the hardware was damaged and repeated use was causing further damage, which is why he uninstalled it. The landlord admitted he did not remember if both doors had been working properly. I am not satisfied on a balance of probabilities that the tenant's wilful or negligent act caused any damage to the closet door, and therefore this portion of the landlord's claim fails.
29. The landlord claims for a missing bathroom vanity cabinet. The place where the cabinet clearly once was is visible in LL#1 on page 7. The tenants testified that the water line leading to the toilet had leaked causing the cabinet to deteriorate, and he removed it as it became unstable and therefore unsafe. He said the base was damaged irreparably. He admitted he ought to have taken better records and informed the landlord of this. The landlord agreed that there had been a water leak related to the toilet he had attended to at the tenant's notification, but he had not been aware of any damage to the cabinet. From the tenant's testimony the nature of the water damage was such that the cabinet would not have been salvageable had the tenant reported the damage at the first available opportunity. Therefore, any negligence by the tenant in failing to report an issue did not directly lead to the landlord suffering a loss. This portion of the landlord's claim therefore fails.
30. The landlord claims for compensation for damage done to flooring in two bedrooms (see LL#1 pages 4 and 5). The landlord testified that this flooring was vinyl, but the pictures appear to show laminate flooring and the receipts (LL#2 page 11, receipt 9) also specify laminate flooring, so I infer that the flooring is laminate. I am satisfied on a balance of probabilities that this damage was caused by a wilful or negligent act of the tenants. I conservatively estimate replacing these damaged laminate panels ought to have taken about 3 hours. The receipts shows the replacement panels cost the landlord \$72.84, tax included. The total cost of replacement was therefore $\$72.84 + (3 \text{ hours} \times \$23.60) = \$143.64$. This portion of the landlord's claim succeeds in the amount of \$143.64.
31. The landlord claims for compensation for several other items, including repair work done on the walls resulting from holes in the walls (see LL#1 pages 3, 9, and 12), missing or

damaged interior doors and doorknobs (see LL#1 pages 3, 5, 10) and damaged wall plates and switches (see LL#1 pages 6 and 9). Based on the totality of the evidence, I am satisfied on a balance of probabilities that these damages were caused by negligent or wilful acts of the tenants. I conservatively estimate that these repairs ought to have taken about 15 hours. I can see from the receipts provided that the materials for these repairs cost the landlord \$1857.61 (LL#2 pages 2-9, 11-14, 16-18, receipts 1-6, 10-13, 15, 17-19). The total cost of repair was therefore $\$1857.61 + (15 \text{ hours} \times \$23.60) = \$2211.61$. This portion of the landlord's claim succeeds in the amount of \$2211.61.

32. The landlord's claim for damages succeeds in the amount of \$3453.01.

Issue 3: Security Deposit

33. As the landlord is owed moneys, he is entitled to apply the security deposit against the sum owed. In this case, the security deposit was \$800 paid in December 2022.
34. 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.
35. For the relevant years prior to 2024, the interest rate prescribed by the regulations was 0%. For 2024, the regulations set a simple cumulative interest rate of 1% annual. Applied to the date of the hearing, this results in a total interest of \$7.10.

Decision

36. The landlord's claim for unpaid rent succeeds in the amount of \$4000.00.
37. The landlord's claim for late fees succeeds in the amount of \$75.00.
38. The landlord's claim for damages succeeds in the amount of \$3453.01.
39. The landlord may apply the security deposit and interest of \$807.10 against the total owed.

Summary of Decision

40. The tenants shall pay to the landlord \$6720.91 as follows:

Rent.....	\$4000.00
Late Fees.....	\$75.00
Damages.....	\$3453.01
Less Security Deposit....	-(\$807.10)
Total.....	\$6720.91

January 7, 2025
Date


Seren Cahill
Residential Tenancies Office