

Residential Tenancies Tribunal

Application 2024-0964-NL & 2024-1090-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-January-2024 at 9:15 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.

Preliminary Matters

4. Each party acknowledged that they were served the other party's application more than ten days before the hearing date.
5. In the tenant's initial application, the landlord's husband was named as a respondent. He was not signatory to the rental agreement. On the day of the hearing, the application was amended with the consent of the parties to remove him as a party.
6. The landlord originally applied for an order of vacant possession. However, by the time of the hearing, the tenant had vacated the premises. The landlord's application was therefore amended to omit this claim.

Issues before the Tribunal

7. Should the landlord's claim for unpaid rent and utilities succeed?
8. Should the landlord's claim for compensation for inconvenience succeed?
9. Should the landlord's claim for the return of personal possessions succeed?
10. Should the landlord's claim for damages succeed?
11. Should the tenant's claim for compensation for inconvenience succeed?
12. What is the proper disposition of the security deposit?

Legislation and Policy

13. 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 Utilities

Landlord's Position

14. The landlords claim for \$975 in unpaid rent, which represents the entire monthly rent for the month of December 2024, and \$200.00 in utilities. The \$200.00 represents an estimate of the normal power usage as her NL power bill was not prepared by the time she made the claim. Subsequently, the bill was submitted (LL#17) and totals \$60.61. She says the tenant was served a termination notice (LL#4(c), page 107 of the pdf) on 19-November-2024 with a move out date of 25-November-2024. The parties agree that the tenant remained in the premises until 30-November-2024. The landlord seeks rent in lieu of notice. She says on 15-November-2024 the tenant told her by email (LL#4(d), page 109 of the pdf) that he was specifically not giving notice that he was leaving. She testified that she was unable to find a new tenant in time and the premises were vacant for the month of December.

Tenant's Position

15. The tenant says that when he had been told he could expect a termination notice, he sought advice from Legal Aid. He understood their advice to be that he should find a new place but maintain his apartment until a decision was made confirming or denying the validity of the termination notice. He says he found new premises on 15-November-2024 but did not move out until 30-November-2024. He says he only left at that time because he received a notification on 26-November-2024 that the water would be shut off in the apartment. He testified that this notification was provided via email. A copy of the email was provided. It is from the landlord and says "I'm not sure if you have left the property yet but in the event that you haven't, we will be entering the apartment tomorrow at 1pm to shut water off for maintenance and the inspect the property. I don't have access to the form but this will serve as official notice."

Analysis

16. This is a request for unpaid rent and utilities in lieu of notice of termination. Under s. 18(1)(b) of the *Act*, a tenant shall give not less than one month notice before the end of a rental period when the premises is rented from month to month. The tenancy in question was for a fixed term ending 31-August-2024. When that term ended, no new agreement was signed, so it became a month-to-month under s. 8(3)(b). The tenant did not provide a termination notice with one month's notice, nor did he issue a termination notice for cause. He may or may not have had grounds for such a notice, but as he did not issue one, the point is irrelevant. He did not seek to rely upon the landlord's notice of termination for 25-November-2024. He therefore was in violation of s. 18(1)(b).

17. The landlord's application for unpaid rent succeeds in the amount of \$975.00. The landlord's application for unpaid utilities succeeds in the amount of \$60.61

Issue 2: Landlord's Claim for Inconvenience

Landlord's Position

18. The landlord claims for \$5236.50 in compensation for inconvenience suffered. \$1111.50 of this claim concerns hearing expenses, which will be dealt with in the Decision section below. \$975.00 concerns lost rent for the month of December 2024, which was dealt with above. Of the remaining \$3150, \$650.00 regards alleged fraud by the tenant, \$1500.00 regards alleged abandonment by the tenant, and \$1000.00 regards alleged mental distress caused by the tenant. She testifies that there was an agreement between the parties on or about 2-October-2023 that the tenant would clean and paint the premises for \$650.00. Text messages concerning this can be seen on LL#5(a), page 9. The landlord provided a sworn affidavit from her husband (LL#14(b)) stating that, among other things, the tenant had agreed to paint the entire premises and failed to do so.

Tenant's Position

19. The tenant says he provided a receipt from Home Depot and a receipt he made personally concerning his labour. He testified that there was another receipt for about ~20.00 of materials from Dollarama which he was never able to locate. He understood the agreement to be that he would clean the entire premises and paint the two rooms. He specified that he wished to paint those areas in particular as they smelled of smoke. He stressed that the premises were very unclean when he moved in and thus required a significant amount of time to clean.

Analysis

20. At the time of the hearing, I advised the parties I was unsure I had the jurisdiction to hear the claim characterized as fraud and would reserve judgment on that issue. Generally, disputes over agreements concerning work in lieu of rent are within the authority granted to this tribunal by the *Act*. The texts provided shows that the tenant subtracted the \$650.00 from his rent payment, however, the landlord stated she would prefer to keep the agreement separate – she wished to receive the full monthly rent and then pay the tenant for his materials and labour when she received the receipts. She testified that she never received the receipt for labour. My understanding of the evidence is that the tenant nevertheless proceeded by subtracting the \$650.00 from his monthly rent payment.
21. After some consideration, I accept that I have jurisdiction to hear this issue. To clarify, I will not make a ruling on whether a party has committed some kind of fraud. Rather, I accept that I can hear the issue of whether there was an agreement between the parties, whether that agreement was complied with, and whether any failure to comply should lead to an order of repayment in accordance with s. 47(1)(b) of the *Act*.
22. The landlord testified that it was her understanding that the agreement between the parties was that the tenant would clean and paint the entire apartment. She testified that

when she retook possession of the premises, she could see that only the bathroom and living room were painted. She acknowledged that the text messages mentioned above show that the tenant recapped the work by saying that "I have everything clean ... and freshly painted (ceilings white and walls a basic light grey in 2 rooms, living room and bathroom ...)" and that she did not raise the issue of the other rooms at that time. She indicated she had missed that part of the message. Nevertheless, she says she believed they both understood the payment was to include the painting of the entire premises and submits that this is evidenced by the amount of money paid.

23. Considering the evidence in its totality, I am unable to find on a balance of probabilities that the tenant failed to uphold his part of the agreement. It appears to be at least as likely that the parties were never of one mind. I accept that the tenant made a good faith effort to uphold what he understood the agreement to be, communicated what he had done, and that was the end of the matter.
24. This part of the landlord's claim fails.
25. The next part of the landlord's claim concerns the alleged abandonment of the premises. She says she became aware sometime in October-November that the tenant was away from the premises for half the year (see exhibit 5(a), page 7). She links this to an alleged failure to report maintenance issues and claims \$1500.00. She says this reflects the cost of the repair of a window.
26. As the claimant, the landlord must be able to demonstrate that the tenant's alleged failure to comply with the *Act* or the rental agreement caused the cost being claimed. The landlord here claims that the tenant negligently failed to report a damaged window, and therefore claims for the cost of the repair. However, she did not provide any evidence that the tenant's actions caused the damage. In other words, but for the tenant's failure to report the damage, the landlord would still have to pay the same amount of money to affect the repair.
27. As the landlord has not provided sufficient evidence to establish that the tenant's alleged failure to report lead to an increased cost of repair, this part of the landlord's claims fails for lack of causation.
28. The landlord claims \$1000.00 for mental distress allegedly caused by the tenant's actions following the breakdown of the landlord-tenant relationship and the manner and nature of his conduct regarding how this action was pursued. This is, in essence, a personal injury claim. It is only peripherally related to residential tenancies. This tribunal has neither the jurisdiction nor the expertise required to adjudicate such matters. I therefore have no power to make a decision on the merits of this claim.
29. The landlord's claim for compensation for inconvenience fails.

Issue 3: Return of Possessions

Landlord's Position

30. The landlord claims \$455.33 for the return of items which she says the tenant removed from the premises. These items are a 50-pint NOMA dehumidifier and window treatment curtains and sheers. A receipt was provided showing the cost of the curtains and sheers (LL#7, pdf page 59-60), valued at \$52.83. A website printout was provided showing the cost of an equivalent dehumidifier, valued at \$402.49 and, at the time the screenshot was taken, discounted to \$287.49. She said she mistakenly omitted the dehumidifier in the lease. She provided an email she sent the tenant on 28-November-2022 where she says "...Also, I should have added the TV and humidifier [sic] to the lease agreement that have been included." She said there was no response to this comment. She testified that these items were in the unit when the tenant took possession but missing when she retook possession of the premises. An affidavit was provided by the landlord's husband (LL#14(b)) stating that, among other things, the "humidifier [sic]" was removed from the premises as well as the curtains and sheers. The landlord testified that the dehumidifier and window coverings were both purchased shortly before the tenancy began.

Tenant's Position

31. The tenant denies taking anything from the apartment. He says there were never any window coverings nor was there a dehumidifier. He provided an email in which he denies the existence of such an item but I find this to be of little evidentiary weight considering that it was sent after the relationship had broken down and claims were being filed.

Analysis

32. The landlord and her husband testified under oath that a humidifier as well as window coverings were removed from the premises from the apartment. The tenant testified under oath that these items never existed. No documentary evidence was provided showing the items, but there was an email from the landlord from around the time of the beginning of the lease referring to the dehumidifier. Aside from that, this is a "he said, she said" situation where I am forced to weigh the testimony of one party against another. I cannot find any significant internal inconsistencies in the testimony of either party. I see no significant inconsistencies with any external evidence, aside from the email. I am mindful of the fact that the landlord can theoretically prove that such an item existed, but it is impossible for anyone to prove that something did not exist. As always, the appropriate standard of proof is the balance of probabilities. In other words, after considering all the evidence, do I find it more likely than not that the landlord's claim is true? It is sufficient in law if I believe it 50.1% likely that the landlord is correct.
33. Considering all the above factors, I find in favor of the landlord with regards to the dehumidifier but not the window coverings. I award the landlord the sale price of the unit as the landlord is expected to mitigate their costs as much as is reasonably possible. The tenant must return the dehumidifier or pay to the landlord \$287.49.

Issue 4: Damages

Landlord's Position

34. The landlord claims for \$900.00 in damages divided amongst two items. These are a \$250.00 cleaning fee and \$650.00 for the cost of painting and plastering. She said the premises were left in an unclean state. Pictures were provided (LL#16). These pictures appear to show some small paint splatters on the floor, a few small items of garbage, an oven that seems to have been recently but incompletely cleaned, the tenant's signature on the inside of a doorway, and one notably dirty section of floor, and several holes in walls. The holes in the walls serve as the basis for the landlord's claim for painting and plastering. The landlord said the cleaning took about 7 person hours. She provided a receipt (LL#12(b), pdf page 39) she issued to the tenant for the cleaning and painting which estimates both cleaning and painting took about 15 hours total. The receipt notes that the \$650.00 includes both labour and supplies but does not break down the cost any further.

Tenant's Position

35. The tenant says that he cleaned the premises before he vacated and that it was in a clean state. He provided several video exhibits in the form of a link to an unlisted youtube video, Exhibit 74, found on page 29 of the pdf of his compiled exhibits. It shows the premises largely in a clean state, except for one room, which he said he left unclean to demonstrate a rodent issue. Apparent rodent droppings are visible throughout. Another link, on page 51, shows a scroll through the messaging history between the parties, dated November 2022. The conversation matches the landlord's exhibit 5a. In the conversation the tenant sends screenshots of existing damage.

Analysis

36. In accordance with policy 09-003, to succeed in a claim for damages the landlord must provide sufficient evidence to establish that damages occurred and show the extent of said damage, that they were the result of a wilful or negligent act of a tenant or a person allowed on the premises by a tenant, and to establish the cost of replacement or repair, and this evidence should include documentary evidence in the forms of receipts, invoices, quotes, etc. wherever reasonably possible.
37. On close inspection, the pictures provided by the tenant of pre-existing damage resemble the pictures provided by the landlord but can be distinguished from them. Further, the surrounding conversation seems to imply that this is the room the tenant subsequently repainted.
38. Considering the evidence in its totality, I find on a balance of probabilities that the tenant did leave the premises in a somewhat unclean state and did cause some minor damage, justifying seven person hours of cleaning and eight person hours of painting. In accordance with policy 09-003, for personal labour a landlord may claim the current provincial wage rate + \$8.00/hour.
39. I award the landlord compensation for 15 hours of labour at the rate of \$23.60/hour, for a total of \$354.00. No receipts were provided for supplies and therefore I decline to award any compensation for materials.

Issue 5: Tenant's Claim for Inconvenience

40. The tenant claims for \$21,411 in compensation for inconvenience, divided amongst 12 items. He amended his claim to remove the 12th item on the day of the hearing, as it represented a cost he was unexpectedly able to avoid. Given the number of items, each will be dealt with separately below.
41. First, the tenant claims \$1200 for increased electricity use from heat loss due to a broken bedroom window which he says was never repaired. He testified that the window was broken when he moved in and did not properly close. He says he first notified the landlord this by text message on 2-November-2022 (T#2). He says he reminded her in September, and provided her response where she says it is a priority (T#3). He provided a formal tenant's request for repairs on 30-September-2024 which included the replacement of the bedroom window. This request asks that the repairs be completed on or before 14-November-2024. He estimates \$1200 as the amount as it represents half the increase in heating for the winter months compared to the summer months.
42. While framed as compensation for inconvenience, this is in essence a request for compensation for utilities. In accordance with policy 04-002, a tenant may make a request for a rebate of rent or utilities after a landlord has failed to comply with a formal request for repairs within a reasonable amount of time. In the present case, the formal notice was not issued until the final month of the tenancy, at which point the evidence suggests that the landlord hired a contractor to effect repairs. This portion of the tenant's claim for compensation for inconvenience fails.
43. Second, the tenant claims \$240 in compensation for pest control costs he took upon himself. He testifies that he first noticed a pest problem in Spring 2023. He says he notified the landlord by text or email though I can find no record of this in the tenant's 100 exhibits. T#101 includes a request for a rodent inspection from a pest control services company. He says the \$240.00 represent approximately \$10/month for two years, spent on various rodent traps.
44. The same reasoning as applies in paragraph 42 above applies equally here. This portion of the tenant's claim for compensation for inconvenience fails for the same reason.
45. Third, the tenant claims \$4000.00 for compromised enjoyment of the property. He says this represents the effect of the uncompleted repairs on his ability to enjoy the property. He says they made him feel unable to have guests. At the time of the hearing, he was unable to articulate how he came to a \$4000.00 total.
46. This portion of the claim is not meaningfully distinct from the two above. It fundamentally regards an alleged failure to effect repairs. This portion of the tenant's claim for compensation for inconvenience fails for the same reason.
47. Fourth, the tenant claims \$500.00 for landscaping/environmental upkeep. Lawn care is not the tenant's obligation under the lease. However, the tenant cannot take the responsibility upon himself and then claim for compensation. The correct course is to issue a request for repairs. If the landlord does not comply, then compensation may be sought. This portion of the tenant's claim for compensation for inconvenience fails.

48. Fifth, the tenant claims \$1000.00 for snow removal for oil tank access. He testified that he performed snow removal on his own through the winter months. In September, he says, he had issues with people moving through the backyard and suggested to the landlord that they secure the gate. He testified that she told him at this point that the gate is used for oil tank delivery. He says he had no idea this was the case. He seeks \$100.00/month for five months for each of two years in which he performed snow removal services. The lease specifies that snow removal is a tenant responsibility. The tenant says he understood this to apply to the driveway only.
49. Regardless of whether clearing the backyard was part of the lease agreement, the tenant is not owed moneys simply because another benefitted from work he did voluntarily. This portion of the tenant's claim for compensation for inconvenience fails.
50. Sixth and seventh, the tenant claims \$1000 for moving costs (including hiring a U-Haul vehicle) and \$1000 for work missed concerning what he alleges to be a wrongful eviction. No receipts were included. No timesheet was submitted. The tenant suggested he could provide documentation including his rate of pay.
51. The tenant provided no evidence showing the costs suffered. It is the responsibility for the applicant to submit all necessary evidence prior to the hearing. This portion of the tenant's claim therefore fails on evidentiary grounds.
52. Eighth and ninth, the tenant claims \$1500.00 for the emotional distress caused by the threat of termination and \$2000.00 for the emotional distress caused by alleged name calling and threats. As discussed in paragraph 28 above, these claims are outside the jurisdiction of this tribunal.
53. Tenth, the tenant claims \$450.00 for the alleged neglect of the landlord to accommodate him while repairs were scheduled. He says he received emails from the landlord that 20-November-2024 and 21-November-2024 a contractor would be attending. He said that due to the scope of the repairs (the replacement of the bedroom window and door) he would not be staying at the premises for those days and asked if there would be any form of compensation, to which he received no response. These emails were not included in his evidence.
54. The last item sought by the tenant is more properly characterized as hearing expenses and will be dealt with in the Decision section below.

Issue 6: Security Deposit

55. As the landlord is owed moneys, she may apply the security deposit against the sum owed. In this case, a security deposit of \$675.00 was paid in October 2022.
56. S. 16(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 prescribe a rate of 0% for 2022 and 2023 and a simple cumulative interest rate of 1% annual for 2024 and 2025. Calculated to the date of the hearing, this results in interest totaling \$7.05.

Decision

57. The landlord's claim for unpaid rent succeeds in the amount of \$975.00.
58. The landlord's claim for unpaid utilities succeeds in the amount of \$60.61.
59. The landlord's claim for compensation for inconvenience fails.
60. The tenant must return the dehumidifier or pay to the landlord \$287.49.
61. The landlord's claim for damages succeeds in the amount of \$354.00.
62. The tenant's claim for compensation for inconvenience fails.
63. The landlord may apply the security deposit and interest, valued at \$682.05, against the moneys owed.
64. Both parties claimed for hearing expenses including the \$20.00 hearing fee and for compensation for time from work as well as sums claimed to penalize the other party for alleged misconduct. S. 47(1)(q) of the *Act* gives the director the power to issue an order "requiring an unsuccessful party to an application to pay costs to a successful party to an application." As the tenant was unsuccessful in their claim, I cannot award them any costs.
65. Policy 12-001 explains how this tribunal awards costs. Missed time from work is generally regarded as "the cost of doing business," particularly for a landlord, and is therefore not usually compensable. However, policy 12-001 does allow adjudicators to award costs to penalize a party for engaging in unreasonable conduct. I did not find either party's behaviour unreasonable during the hearing itself. Alleged misconduct was specified to have occurred earlier in the process and I reviewed the evidence of this (LL#12-13). I note that the tenant alleged similar misconduct, which is relevant only in accordance with the "clean hands" principle, which dictates that a party seeking a remedy for misconduct must themselves have not engaged in same.
66. In considering the decision to award costs, I am mindful of the following factors, among others:
 - The landlord claimed for \$9441.83 and was successful for only \$1015.05,
 - The tenant claimed for \$22086.00 and was entirely unsuccessful,
 - The landlord was entirely unsuccessful in one part of her claim, and
 - The hearing was relatively complex and lengthy, more so than what was necessary.
67. After considering the totality of the evidence and the factors listed above, overall I feel this is not an appropriate case to award costs beyond the \$20.00 application fee.

Summary of Decision

68. The tenant shall pay to the landlord \$727.56 as follows:

Unpaid Rent.....\$975.00

Unpaid Utilities.....\$60.61
Damages.....\$354.00
Hearing Expenses.....\$20.00
Less Security Deposit.....-(\$682.05)

Total.....\$727.56

69. The tenant shall deliver to the landlord a 50-pint Noma dehumidifier OR pay to the landlord an additional \$287.49.

18-February-2025

Date


Seren Cahill
Residential Tenancies Office