

Residential Tenancies Tribunal

Application 2024-1001-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-January-2025 at 9:14 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, were represented at the hearing by [REDACTED], who attended via teleconference.

Preliminary Matters

4. The respondent acknowledged that they received notice of the hearing more than ten days in advance.

Issues before the Tribunal

5. Should the landlords' claim for damages succeed?
6. What is the proper disposition of the security deposit?

Legislation and Policy

7. 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

8. The landlord claims \$17975 in damages, divided amongst 29 items. Each item will be dealt with separately below. In accordance with Policy 09-003, to succeed in a claim for damages, a landlord must provide sufficient evidence to show that something was damaged 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 replacement or repair. This must include documentary evidence where reasonably possible. Documentary evidence that can demonstrate that damage was caused by tenants includes photos and videos of

undamaged items prior to the tenancy. Documentary evidence that can demonstrate the extent of the damage includes photos of damaged items or videos showing items failing to operate as expected. Documentary evidence that can demonstrate the cost of replacement or repair includes receipts, invoices, quotes, etc. The landlord provided a number of photos of the premises from before the tenancy, collectively labeled LL#27.

9. The tenant does not dispute items 1 (the cost of removing garbage from the driveway), 5 (damage to a screen door), 14 (two days of rent), 23 (a hole left in the ceiling) and 26 (replacement toilets). These items total \$1017. These portions of the landlord's claim succeeds in the amount of \$1017.
10. Item 2 is \$50.00 for lawn care. The rental agreement states under part 7 that "grass cutting & general grounds maintenance" are a responsibility of the tenant. Photos were provided (LL#2) showing the backyard is somewhat unkempt in places and chunks of dead wood and branches are piled against the fence. The landlord testified that there was also dog feces throughout. The landlord testified that she paid a member of a community group \$50.00 by e-transfer to do the maintenance work after the tenant left. No hand-written receipt or record of the e-transfer was provided.
11. The tenant testified that he maintained the lawn. He said that the wood was from a tree damaged by a 2021 windstorm.
12. As the landlord failed to provide sufficient evidence to show the cost of the damage, this portion of the landlord's claim fails.
13. Item 3 is \$3262.00 is for repair and maintenance on a hot tub. The rental agreement specifies that maintenance of the hot tub is the responsibility of the tenant. The landlord testified that when she took possession of the premises, the hot tub was empty and no longer functioning. She testified that the tenants must have failed to properly winterize the hot tub as specified in the manual (included in LL#3). Three invoices were provided as part of LL#3 concerning the maintenance required to restore the hot tub. They total \$3216.70.
14. The tenant testified that they did the maintenance as required. However, they said that the hot tub had been improperly installed and was at an angle. They testified that this contributed to wear and that the tub began to trip the breaker when it was turned on, making it impossible to maintain. They said they told the landlord of this by message, but no copy of the message was provided. The landlord maintained that she never received such a message, and the tenants had been aware of the angle, which caused no maintenance issues.
15. Considering the evidence in its totality, I find on a balance of probabilities that the hot tub was damaged by the tenants' negligent act and the cost of repairs was \$3216.70.
16. Item 4 is \$1034.00 for a replacement hot tub cover. The landlord testified that the cover had been damaged by water (she speculated melting snow) that had been left to pool on top of it, and it had been broken such that the Styrofoam interior started to pour out. Pictures were provided as part of LL#4, as was a receipt totaling 1033.85.

17. The tenants indicated that the damage to the cover was caused by the uneven footing of the hot tub.
18. I find on a balance of probabilities that the hot tub cover was damaged by the tenants' negligent act and the cost of repair was \$1033.85.
19. Item 6 is \$643 for damage to a chest of drawers. A photo was provided as part of LL#6 showing the damage. Exposed wood is clearly visible. She also testified that two doors were broken. She said she spoke verbally to representatives at a furniture store and was told an equivalent unit would cost \$643.00.
20. The tenant suggested that the chest of drawers was damaged by normal use and therefore constitutes normal wear and tear.
21. As the landlord has failed to provide sufficient documentary evidence to show the cost of repair/replacement, this portion of the landlord's claim fails.
22. Item 7 is \$447 for damage to an ottoman. Photos were provided showing the damaged ottoman. The landlord says she found a similar model online priced at \$447.00. No screenshot was provided.
23. As the landlord has failed to provide sufficient documentary evidence to show the cost of repair/replacement, this portion of the landlord's claim fails.
24. Item 8 is \$107.00 to reface the kitchen cabinets. She testified that the kitchen cabinets were last resurfaced in 2018. LL#8 shows photos of the cabinets. One has been cracked severely. Others have had large portions of the paint scratched off, exposing untreated wood. A receipt was included showing that the paint to repaint the cabinets cost \$106.94.
25. The tenants said that the damage to the cabinets was the result of normal wear and tear. I reject this as being inconsistent with the photographic evidence, which shows dramatic changes far beyond what would be expected of a 3-year tenancy.
26. This portion of the landlord's claim succeeds in the amount of \$106.94.
27. Item 9 is \$74.00 for the replacement of the downstairs bathroom sink taps. LL#9 includes a video showing that one tap is nonfunctional and the other tap leaks and a receipt for replacement taps for \$73.59. The landlord testified that the taps were part of the house when she purchased it in 2013.
28. The tenants say they had no knowledge of any issues with the taps, and the issue must have been caused by normal wear and tear.
29. Considering that the parties have no way of knowing how old the taps are, it is perfectly plausible that they simply reached the end of their natural lifespan and are due to be replaced. I am not prepared to find that they were likely damaged by a wilful or negligent act of the tenants. This portion of the landlord's claim therefore fails.

30. Item 10 is \$725 for the replacement of carpet which the landlord says was damaged by pet urine and feces. Photos of the carpet was included as part of LL#10. The landlord testified that the carpet had been installed prior to her purchase of the house in 2013.
31. The tenants say that the carpet suffered from normal wear and tear.
32. Carpet has an expected life span of only 10 years. While the tenants' actions likely go beyond normal wear and tear, the expected lifespan of the carpet has nevertheless passed and it would be due to be replaced regardless of their actions. The landlord is therefore unable to recover the cost of the carpet, and this portion of her claim fails.
33. Item 11 is \$463 for a number of smaller items including paint, drywall, light switches, lightbulbs, caulk, sheetrock, nails, plaster, brushes and plaster supplies, a toilet bowl gasket, and a flush mount. Video was provided as part of LL#11 showing damage to various parts of the house. No receipts were provided.
34. This portion of the landlord's claim fails on the basis of there being insufficient evidence to establish the cost.
35. Item 12 is \$454.00 for the services of an electrician. She testified that when she retook possession the heat on the first floor was no longer working. An electrician she hired determined the thermostats and heaters needed to be replaced. They said the heater had broken, leading to the thermostat to short out. The landlord testified that the heater had been part of the house when she purchased it in 2013. The electrician also needed to replace the light installation in the laundry room. LL#12 shows a short video demonstrating that the laundry room light is not working and includes an invoice from an electrician totaling \$454.25.
36. The tenant said he had no recollection of any electrical issues, and as far as he was aware everything was in working order.
37. I am not prepared to find that heaters and thermostats were likely damaged by a wilful or negligent act of the tenants. This portion of the landlord's claim therefore fails.
38. Item 13 is \$121.00 for the services of a plumber. The landlord testified that both toilets would overflow when flushed when they retook possession of the house. The plumber tried to repair them but failed and recommended replacement. An invoice was included as part of LL#13 showing that the charge was \$120.75.
39. The tenant accepted responsibility for the replacement of the toilets, implicitly accepting responsibility of the damage. Prior to replacing the toilets, the landlord attempted to mitigate the cost by hiring a plumber to fix the toilets. She was entitled to do so, even though the attempt ended up unsuccessful.
40. This portion of the landlord's claim succeeds in the amount of \$120.75.
41. Item 15 is \$113.00 for the replacement of the kitchen sink taps. LL#15 includes a video which shows that the tap leaks and a receipt showing that the replacement taps cost \$112.69. The landlord testified that the taps were installed in 2014.

42. The tenant testified that he had no recollection of any issues with the kitchen taps.
43. Considering the evidence in its totality, I find on a balance of probabilities that the tenant or a person they allowed on the premises damaged the taps by a wilful or negligent act. The expected life expectancy of these taps is 15 years. To account for depreciation, the cost of replacement must be multiplied by the expected remaining lifespan divided by the total expected lifespan. This results in a total of \$37.56.
44. This portion of the landlord's claim succeeds in the amount of \$37.56.
45. Item 16 is \$1800 for the replacement of various pieces of furniture which the landlord testified were missing or destroyed when she retook possession. She testified that these items included a wool rug, cutlery and cooking dishes, 2 chairs, a bed frame and headboard, a highboy, bedsheets, towels, blankets, a barbecue, mirrors, a fan, a toaster, bed pillows, a vacuum, a dust buster, a Wii, a Home Mini, a surround sound system, a laundry hamper, couch pillows, and a fireplace. The landlord says she believes \$1800.00 to be a conservative estimate of these items.
46. No documentary evidence was provided to support the landlord's estimate, nor was a breakdown provided. The landlord has failed to provide sufficient evidence to establish this portion of her claim, which fails accordingly.
47. Item 17 is \$345 for a replacement dehumidifier. She testified that it was left in the basement for the tenant's use. She says it was purchased in 2018. She also says that when she retook possession the dehumidifier was no longer working and mold had begun to grow on the walls.
48. No documentary evidence was provided of the dehumidifier or the cost of replacement. This portion of the landlord's claim therefore fails.
49. Item 18 is \$2000 for a broken recliner/sectional. LL#18 includes a photo of a broken recliner and a receipt showing that the replacement cost \$2099.99. The landlord testified that the original was purchased in either 2018 or 2019. The tenant acknowledged that he may have damaged the item during his move out.
50. I accept on a balance of probabilities that the tenant's wilful or negligent action damaged the item. This type of faux-leather furniture typically lasts about ten years. Accounting for depreciation, this portion of the landlord's claim succeeds in the amount of \$1259.99.
51. Item 19 is \$28 for a kit to fix a broken closet door. LL#19 includes a video of a bifold closet door which no longer slides properly. A receipt was provided showing the kit cost \$27.93. The tenant states that this was caused by normal use. The landlord testified that this door was installed prior to her purchase of the house.
52. I accept the tenant's testimony that the damage was caused by normal use. It is expected that a sliding door may need some minor maintenance over the years. This portion of the landlord's claim fails.
53. Item 20 is \$207 for the replacement of broken window locks. The landlord testified that two windows on the first floor were broken and would no longer close properly. LL#20

includes photos of broken window locks and an invoice/receipt for \$207.00. The tenant testified that the damage to the locks was caused by normal use and is therefore wear and tear.

54. Window locks, like any other mechanism, degrade over time with regular use. The landlord testified that the windows had been installed prior to her purchase of the house. I am not prepared to find that the damage to the locks was caused by a wilful or negligent act by the tenants or a person they allowed on the premises. This portion of the landlord's claim therefore fails.
55. Item 21 is \$17 for materials repairing damaged baseboards. A video was included as part of LL#21 showing that the baseboards were heavily damaged, exposing untreated wood, as was a receipt for \$17.18. The tenant suggested this damage was caused by regular use and was therefore wear and tear.
56. I reject the tenant's suggestion. The damage shown is not consistent with regular use. It has the distinctive appearance that suggests it was gnawed down over time by one or more small animals. This portion of the landlord's claim succeeds in the amount of \$17.18.
57. Item 22 is \$138 for a broken lamp. LL#22 includes a photo of a lamp with a torn shade.
58. No documentary evidence was provided showing the cost of repair or replacement. This portion of the landlord's claim fails.
59. Item 24 is \$100 for water damage to flooring. LL#24 includes photos of water damaged flooring, and an exposed pipe directly above the damaged area with a damp towel wrapped around it. The landlord testified that the tenant never told her of this leak. He says otherwise but could provide no other evidence of this.
60. No documentary evidence was provided showing the cost of repair. This portion of the landlord's claim fails.
61. Item 25 is \$92 for window screens. LL#25 includes photos of damaged window screens as well as an invoice/receipt for \$92.00. The tenant suggested the damage to the screens was from normal use. The landlord testified that the screens were part of the house when she purchased it in 2013.
62. The window screens had likely exceeded their expected lifespan and were due to be replaced regardless of the tenant's actions. This portion of the landlord's claim fails.
63. Item 27 is \$2070 for cleaning. The landlord testified that the tenant left the premises in an unclean state. She says it took 90 hours to clean the premises. The tenant said they attempted to clean the premises before leaving but acknowledged they overlooked the interior of the fridge.
64. The landlord says the premises were left in a very unclean state, requiring 90 hours to clean the premises. The tenant acknowledges there was some mess but otherwise denies the landlord's claim. Neither party provided documentary evidence to support their claim (aside from the garbage dealt with under item 1). In the absence of

supporting evidence I have no reason to prefer the landlord's testimony over the tenant's. I award the landlord two hours of self-labour to represent the cost of cleaning the fridge. Self-labour is compensated at the rate of minimum wage + \$8/hour, or \$23.60.

65. This portion of the landlord's claim succeeds in the amount of \$47.20.
66. Items 28 and 29 are \$2669 for the cost of repairs. The landlord testified that it took 68 hours to effect all the necessary repairs. No breakdown was provided of how much time was spent on each repair. This presents something of a problem as the landlord was not successful in establishing that all the labour, they undertook was necessary due to wilful and/or negligent actions by the tenants or a person they allowed on the premises. Testimony during the hearing helped clarify what labour was spent on what issues. Considering the totality of the evidence, I find that the landlord has established on a balance of probabilities that she undertook 20 hours of labour for which the tenant must compensate her.
67. This portion of the landlord's claim succeeds in the amount of \$472.00.
68. The landlord's claims for damages succeeds in the amount of \$7329.17.

Issue 2: Security Deposit

69. As the landlord is owed moneys, she may apply the security deposit against the sum owed. In this case, the security deposit was 1106.25 and was paid in April 2020.
70. 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 prescribe an interest rate of 0% for the years 2020-2023 and a simple cumulative interest rate of 1% annual for 2024 and 2025. Calculated to the date of the hearing, this yields a total interest of \$11.91.

Decision

71. The landlord's claim for damages succeeds in the amount of \$7329.17.
72. The landlord may apply the security deposit and interest, valued at \$1118.16, against moneys owed.

Summary of Decision

73. The tenants shall pay to the landlord \$6211.01 as follows:

Damages.....	\$7329.17
Less Security Deposit.....	-(\$1118.16)
Total.....	\$6211.01

11-March-2025

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office