

Residential Tenancies Tribunal

Application 2024-1084-NL & 2024-1196-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 14-January-2025 at 9:02 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent, [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 in advance of the hearing date.

Issues before the Tribunal

5. Should the tenant's claim for a refund of rent succeed?
6. Should the landlord's claim for damages 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: Rent Refund

Tenant's Position

9. The tenant claims for a refund of rent in the amount of \$2250. She testified that this represents the difference between what she paid and what she would have paid had the landlord not raised the rent illegally. She testified that she had a rental agreement with a

monthly rent of \$750.00. A copy of this agreement was provided as part of T#1. She testified that the landlord advised her in May 2023 that the rent would be increased in by \$250/month effective 1-September-2023, providing her with only three months notice. She moved out on 31-October-2024.

Landlord's Position

10. The landlord testified that the tenant had agreed to the rental increase in writing and had agreed that 3 months notice was appropriate. This text message conversation can be seen in LL#1-LL#5. She made it clear she had been open and honest at all times and had taken the advice of her realty corporation in an effort to make sure everything was above board.

Analysis

11. In LL#5, the landlord says that "I just don't know the fine print as I'm taking over the property (from the previous owner) and the old agreement is no longer in affect [sic]." It may be useful to review the relevant sections of the *Act*. S. 9(4) of the *Act* states that "where a relationship of landlord and tenant exists, a covenant concerning a thing related to the residential premises is considered to run with the land ..." In other words, a person who purchases a property that is subject to a rental agreement acquires the property subject to the previously existing rental agreement and has the same rights and responsibilities that the previous owner did under the agreement. This is in keeping with the principle that a property owner can only convey rights they themselves possess.
12. Therefore, from the period from when the landlord purchased the property to 31-May-2023, the residential tenancy relationship between them was governed by the lease the tenant had signed with the previous owner. On 31-May-2024, a new lease was signed between the parties which specified a monthly rent of \$750. S. 16(2) of the *Act* states that a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.
13. I accept the landlord's testimony and the documentary evidence provided that the tenant agreed to the three-month notice. The tenant testified to the effect that she felt under duress. However, this section of the *Act* uses clear language and does not allow parties to contract away their rights to proper notice except in very limited circumstances. These circumstances are provided by s. 16(7). S.16(7) allows for a rental increase without notice where there is agreement in writing and that this increase pertains to a newly provided additional service. Further, it only excuses what would otherwise be violations of s. 16(3) and says nothing about s.16(2). It therefore does not apply in this case. This means that the tenant's consent, whether freely given or not, is irrelevant. The rental increase was contrary to the *Act* notwithstanding the parties' apparent agreement.
14. I appreciate that the landlord was attempting to act in accordance with the law and secure her rights appropriately. Nevertheless, she erred. To legally raise the rent as quickly as possible and secure a new agreement, the appropriate course is to issue the six-month rental notice and sign the new rental agreement when that notice is set to become effective. This method avoids violating s. 16(2) and 16(3) of the *Act*.

15. The landlord could not have legally increased the rent until June 2024. I therefore award the tenant a refund of rent equal to \$250 for each month from September 2023 to May 2024, inclusive, for a total of \$2250.

Issue 2: Damages

16. The landlord claims \$2089.27 in damages, divided amongst fourteen items. I will deal with each item below. I have grouped related items for clarity. As per the Residential Tenancies Program Policy and Procedure Guide 09-003, it is the responsibility of the landlord in a claim for damages 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. A tenant is only liable for damages caused by a wilful or negligent act of themself or a person they allow onto the premises.
17. I note that at several points during the hearing, the tenant specifically offered as a defence that certain damages were present when the landlord bought the property. With respect to the tenant, this is not strictly relevant. As specified in paragraph 11 above, the purchaser of a rental property acquires the rights and responsibilities of the previous owner. This includes the right to recover damages caused by a tenant, whether that damage was caused before or after the property was purchased. Nevertheless, purchasers may have difficulty proving that damage did not exist prior to a tenancy in cases where they had no access to the property before the tenancy began.
18. The first six items all pertain to alleged holes in the walls. The landlord claims for materials required to repair these holes with plaster and repaint, totaling \$343.65. The landlord provided photos of some of these holes (LL#8-10, LL#13, LL#14, and LL#16). A receipt was provided showing how much each of these item's cost (LL#25), totaling \$343.65.
19. The tenant suggests that some or all of the holes in the walls existed prior to her tenancy. Some of the holes were caused by a pair of wall-mounted televisions. She included an email exchange between the previous tenant and the previous landlord from prior to when she moved in in 2017 (T#3). She asserted that this email was evidence that the premises had not been improved since this time and that the wall-mounted televisions had been put up by the previous tenant, although I see no reference to the televisions in the email. She explained that she had an agreement with the previous tenant to purchase the televisions from him, and provided pictures of the televisions which she says were taken during the previous tenancy.
20. The tenant asserts that the damage to the walls was caused by a previous tenant and has provided some documentary evidence to support this. The landlord offered no evidence to rebut this. Based on the totality of the evidence, I am not convinced on a balance of probabilities that the damage to the walls was caused by the tenant. This portion of the landlord's claim therefore fails.
21. Seven items concerned the replacement of allegedly damaged laminate flooring. These items included the replacement laminate panels, underlay, delivery fees, and the rental of certain tools, totaling \$1715.23. The landlord says on 2-November-2024 she did a walkthrough prior to purchase; she heard the tenant admit that the flooring had suffered

water damage as the tenant had left the window open during poor weather. LL#30 is a duly sworn affidavit from a friend of the landlord who testifies that they also heard the tenant admit this. LL#6, LL#12, and LL#21 show water stains in the subfloor. LL#15 and LL#18-20 shows buckling laminate flooring. Receipts for the costs were provided as LL#24, LL#26, LL#28, and LL#29, totaling \$1644.64 (the landlord appears to have accidentally applied HST twice to some items, accounting for the difference).

22. The tenant says the damage to the flooring occurred in 2018, during a hurricane. She said she didn't realize it was raining but closed the window as soon as she realized. She says she tried to mitigate the damage. She said that aside from this, any flooring damage was from prior to her tenancy. She also noted that the previous tenant had fish tanks which might have led to water spillage, but this is pure speculation and I discount it. Considering the totality of the evidence, I find on a balance of probabilities that the water damage to the floor was caused by a negligent act of the tenant, that the replacement of the laminate and underlay was necessary, and that the cost of this replacement was \$1644.64.
23. In accordance with Policy 09-004, depreciation must be considered. The purpose of this tribunal is compensatory. That is, our damages awards are meant to restore the injured party to the state they would be in had the other party not violated the *Act* and/or the rental agreement. In this case, had the tenant not damaged the floor, the landlord would have laminate flooring of a certain age. To award the landlord the full cost of replacing the flooring would put them in a position where they had the full value of brand-new laminate flooring, which is a better position than they would have been in but for the tenant's negligent act. Depreciation remedies this. The landlord's award of damages is multiplied by the number of expected years remaining in the flooring's lifespan and divided by the total expected lifespan of laminate flooring. In the present case, the landlord testified that she believed the apartment was constructed in 2014 and was unaware of any updates since then. This makes the flooring approximately 10 years old. Laminate flooring has an expected lifespan of 15-25 years. Averaging to 20, this yields $\$1644.64 * (10/20) = \822.32 .
24. This portion of the landlord's claim succeeds in the amount of \$822.32.
25. Finally, the last item is for the repair of a vinyl door that the landlord alleges was damaged by a chain the tenant used to tether her dog while it was outside. Evidence of this can be seen in LL#11. The damage looks like what one would expect from something hard rubbing against the side of the frame of the door, with pieces being chipped off in a couple of places. However, the \$19.88 claim is for the cost of a u-shaped vinyl door bottom, which would be used to cover damage to the bottom of the door. From the picture provided, I cannot make out any damage to the bottom. This portion of the landlord's claim therefore fails on evidentiary grounds.

Issue 3: Security Deposit

26. As the amount owed by the landlord to the tenant exceeds the amount owed by the tenant to the landlord, the tenant is entitled to the return of the security deposit.

27. In this case, the security deposit was \$575.00 and was paid when the tenancy began in 2017. .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 set an interest rate of 0% for the relevant years prior to 2024 and a simple cumulative interest rate of 1% annual for 2024 and 2025. Calculated to the date of the hearing, the total interest is \$5.99.

Decision

28. The landlord shall pay to the tenant \$2008.67 as follows:

Rent Refund.....	\$2250.00
Security Deposit.....	\$580.99
Less Damages.....	-(\$822.32)
 Total.....	 \$2008.67

17-February-2025

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office