

Residential Tenancies Tribunal

Application 2024-1150-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 23-January-2025 at 9:15 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, did not attend.

Preliminary Matters

4. The tenants were 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 a pair of affidavits (LL#1 and LL#2) with their application stating that they had served the tenants with notice of the hearing electronically on 10-January-2025 at 4:00 pm. Proof of service was also provided (LL#3 and LL#4). As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlords' claim for return of possessions succeed?
6. Should the landlord's claim for unpaid rent 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: Return of Possessions

10. The landlord claims for the return of personal possessions which he estimates to value \$4837.07. This estimate includes depreciation. These possessions consist of 11 separate items. The landlord testifies that he believes the tenants took these items from the home. He discovered the items were missing on 22-January-2024, which was his first entry into the premises after a fire which occurred on or about 18-December-2023. He found that all the items were missing and they found obvious signs of forced entry through the back door (which had not been damaged by the fire). He said that persons who wished to remain anonymous had told him that they had seen the tenant and two others enter about a week beforehand and leave with several large items.
11. The landlord's testimony was that the back door had been broken at some point and it appeared that the tenant had secured it by tying it shut with a rope. He says that at no point had the tenant alerted him to this issue. To break in, all the perpetrator had to do was cut the rope.
12. The evidence, including the landlord's testimony, seems to suggest that some of the items were removed prior to the fire. These are the snowblower, the rec room television, and the television wall mount. This is evident because the restoration company which first attended on the day of the fire took pictures and an inventory of what they found throughout the premises, and these items were missing at that time. Some of these pictures were provided in LL#5 pages 32-34. The other 8 items were all confirmed to be present at that time.
13. The landlord testified that none of the items for which he claimed would have been damaged by the fire. He says that the fire damaged only the front entrance, porch, and front attic. This reflects the photos provided.
14. After considering the evidence in its totality, I accept on a balance of probabilities that the tenants deprived the landlord of these 11 items by either a wilful or negligent act.
15. The first item was a washer, which the landlord estimated at a value of \$1000.00. A photo of the washer prior to the tenancy was provided (LL#5 page 9). A receipt (LL#5 page 1) was provided showing that it was purchased new in 2023 for \$1121.18. The formula this tribunal uses to measure depreciation is multiplying the cost of the item new by the expected remaining lifespan of the item and dividing by the expected total lifespan. A washer has a life expectancy of about 10 years. By our formula, the washer was therefore worth \$896.94.
16. The second item was a dryer. A photo of the washer prior to the tenancy was provided (LL#5 page 9). A receipt (LL#5 page 2) shows that it was purchased in 2012 for \$538.20. An electric dryer has an expected life expectancy of about 13 years. As the Dryer would

be about 13 years old at this time, the expected lifespan has elapsed, and the landlord is unable to claim compensation for this item.

17. The third item was a bar fridge that the landlord estimates to be valued at \$150.00. A receipt (LL#6 page 3) shows that it was purchased for \$239.16 in 2012. The life expectancy of a compact refrigerator is only 9 years, so the landlord cannot claim compensation for this item.
18. The fourth and seventh items are a pair of Sony televisions which the landlord estimates to be valued at \$1000.00. They can be seen in LL#5 pages 10-11. Receipts (LL#5 pages 4 and 6 show one was purchased for \$1694.99 in 2011 and the other was purchased for \$1457.69 in 2012. LED televisions have a life expectancy of no more than ten years, so the landlord cannot claim compensation for these items. Items six and eight are the tv mounts, which were purchased at around the same time according to the receipts. They, too, are past their expected lifespan.
19. Item five is a receiver for a smart tv system, part of a set which the landlord says cost \$1034.99. The landlord estimates its value at \$300.00. It can be seen in LL#5 page 12. No documentary evidence was provided of the cost of the item. I therefore cannot award compensation for this item in accordance with Policy 09-003.
20. Item nine is a lawnmower which the landlord values at \$300.00. It can be seen on LL#5 page 10. A receipt (LL#5 page 7) shows it was purchased in 2012 for \$451.99. A lawnmower can be expected to last about 10-15 years. As the item is past its expected lifespan, the landlord is unable to claim compensation for this item.
21. Item ten is a used snowblower, which the landlord values at \$250.00. The landlord testified it was purchased used for \$400.00. No documentary evidence showing the cost of purchase or replacement was provided. I therefore cannot award compensation for this item in accordance with Policy 09-003.
22. The final item is for propane. The rental agreement states that the propane tank was filled at the time the tenancy began and the tenant was responsible to ensure it was filled when they vacated (LL#7 page 3). A photo of the tank's gauge at the time the landlord reclaimed possession was provided (LL#5 page 20). A receipt (LL#6 page 8) was provided showing it cost \$287.07 to top off.
23. The landlord's claim for compensation for missing personal possessions succeeds in the amount of \$1184.01.

Issue 2: Unpaid Rent

24. The landlord claims for \$13500.00 in unpaid rent. A rental ledger was provided in support of this (LL#6). This represents the full monthly rent of \$2500.00 for each month from August 2023 to December 2023 as well as \$1000.00 from July 2023. He says the last rent payment he received from the tenants was a partial payment in July 2023.
25. I accept the landlord's uncontradicted testimony. However, as a termination notice for uninhabitability with an issue and move out date of 19-December-2023, the landlord can

only claim for rent up until this date. A daily rate must be calculated. The correct formula for determining a daily rate is found by multiplying the monthly rate by the 12 months of the year and dividing by the 365 days of the year. In this case, the daily rate is $\$2500/\text{month} \times (12 \text{ months}/365 \text{ days}) = \sim \$82.19/\text{day}$. Total rent owed for December is therefore \$1561.64.

26. The landlord's claim for unpaid rent succeeds in the amount of \$12561.64.

Issue 3: Damages

27. The landlord claims compensation for damages in the amount of \$3578.86, representing the cost of replacing the damaged back door noted above. An invoice was provided (LL#5, page 19). The door can be seen in LL#5 page 17. The damage is immediately obvious on visual inspection. The landlord testified that the door was undamaged before the tenancy, and I accept his uncontradicted testimony.
28. The landlord's claim for compensation for damages succeeds in the amount of \$3578.86.

Issue 4: Security Deposit

29. The landlord is owed moneys and may therefore apply the security deposit against the sum owed.
30. In this case, the security deposit was \$1950.00 and was received on or about 1-December-2021. 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 a 0% interest rate for 2021-2023 and a simple cumulative interest rate of 1% annual for 2024 and 2025. Calculated to the date of the hearing, the total interest owing is \$20.78.

Decision

31. The landlord's claim for compensation for missing personal possessions succeeds in the amount of \$1184.01.
32. The landlord's claim for unpaid rent succeeds in the amount of \$12561.64.
33. The landlord's claim for compensation for damages succeeds in the amount of \$3578.86.
34. The landlord may apply the security deposit and interest, valued at \$1970.78, against moneys owed.

Summary of Decision

35. The tenant shall pay to the landlord \$15353.73 as follows:

Personal Possessions.....\$1184.01

Unpaid Rent.....\$12561.64
Damages.....\$3578.86
Less Security Deposit.....-(\$1970.78)

Total.....\$15353.73

03-March-2025
Date



Seren Cahill
Residential Tenancies Office