

Residential Tenancies Tribunal

Application 2024-1194-NL & 2025-0029-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 4-February-2025 at 9:01 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 they were served notice of the other party's application more than ten days in advance of the hearing.

Issues before the Tribunal

5. Should the landlords' claim for damages succeed?
6. Should the tenant's claim for a refund of rent 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: Damages

9. The landlord claims for damages in the amount of \$630.58, which he says represents the cost of replacing a damaged countertop. In accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-003, to succeed in a claim for damages, a landlord must provide sufficient evidence to establish: on a balance of probabilities that the damages were caused by the wilful or negligent act of the tenant or

a person they allowed on the premises; the extent of the damages; and to demonstrate the cost of repair. This should include documentary evidence where possible.

10. The landlord testified that the tenant admitted responsibility for the damaged countertop during the final walkthrough. At the hearing, the tenant denied this. He testified that he did not recall the damage the landlord described.
11. No documentary evidence was presented, leaving me unable to assess the extent of the damages. The landlord has failed to provide sufficient evidence to support his claim, which therefore fails.

Issue 2: Refund of Rent

12. The tenant seeks a refund of rent in the amount of \$1375.00. He testified that the previous landlord raised his rent from \$800.00 to \$975.00 in September of 2023. He supported this contention by providing a statement from his bank account (T#1). The landlord purchased the property the following month. He testified that the landlord issued a notice to increase rent (T#2) on 20-October-2023 from \$975/month to \$1100/month effective 1-January-2024. The tenant submits that this was an illegal rent increase and therefore seeks the \$125.00 difference from January 2024 to when he moved out in November 2024.

13. The landlord testified that the tenant agreed to the rental increase. The tenant denies this. Parties agree that this was a month-to-month rental agreement.
14. S. 16(1) of the Act reads as follows:

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

- (a) where the residential premises is rented from week to week or month to month, more than once in a 12 month period;
- (b) where the residential premises is rented for a fixed term, during the term of the rental agreement; or
- (c) where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.

15. When a person purchases a property which is being used partially or completely as a rental premises, that person becomes the new landlord as an assignee of the previous landlord. As such, they are subject to the same limitations and restrictions as the previous landlord. This is in keeping with the general legal principle that a person cannot convey to another a property right that they themselves do not have. In the present case, the previous landlord could not increase the rent until September 2024, so the new landlord is bound by the same restriction.
16. The landlord suggested that the tenant consented to the increase of rent. However, by explicitly excluding agreements, waivers, and statements to the contrary, the wording of

s. 16(1) is clear that a tenant cannot effectively waive their rights under this section of the *Act*. In other words, whether or not the tenant agreed to the increase does not affect its legality.

17. S. 16(7) of the *Act* reads as follows:

16. (7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, facility, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.

18. The landlord testified that the increase in rent was in compensation for a new service which the landlord provided. Specifically, he said that he took on responsibility for the lawn care and provided the use of a storage shed. The tenant denies this. Regardless, s. 16(7) specifically requires that such an agreement be in writing. No written agreement was provided. In the absence of a written agreement, s. 16(7) of the *Act* does not apply.
19. The tenant's claim for unpaid rent succeeds in the amount of \$125.00/month for the months from January 2024 to November 2024 inclusive, which is ten months, for a total of \$1250.00.

Issue 3: Security Deposit

20. The landlord's claim has failed, and the security deposit must therefore be returned to the tenant. In this case, the security deposit was \$400.00 and was paid in 2014.
21. 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% from 2014-2023 inclusive and a simple cumulative interest rate of 1% annual for 2024 and 2025. Calculated to the date of the hearing, this results in a total interest of \$4.39.

Decision

22. The landlord's claim for damages fails.
23. The tenant's claim for a refund of rent succeeds in the amount of \$1250.00.
24. The security deposit and interest, valued at \$404.39, must be returned to the tenant.

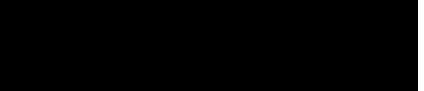
Summary of Decision

25. The landlord shall pay to the tenant \$1654.39 as follows:

Refund of Rent.....	\$1250.00
Security Deposit.....	\$404.39
Total.....	\$1654.39

10-April-2025

Date


Seren Cahill
Residential Tenancies Office