

Residential Tenancies Tribunal

Applications 2022 No. 0822 NL
2022 No. 0919 NL

Decision 22-0822-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 29 November 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. An affidavit of service (T#1) was provided by the tenant confirming that she served the landlord electronically on 15 October 2022 and proof of service was provided (T#2). The landlord confirmed service and provided an affidavit confirming that she served the tenant of the counter claim on 18 October 2022 (L#1). The landlord provided proof of service in the same document referenced above and the tenant also confirmed service received.
5. The details of the claims were presented as a rental agreement that started in September 2020 and ended when the tenant vacated on 03 September 2022. Monthly rent was set at \$850.00 and a security deposit in the amount of \$600.00 was collected.
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings, the standard of proof is referred to as the balance of probabilities, which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The tenant is seeking the return of the full security deposit in the amount of \$600.00.
8. The landlord is seeking the following:
 - Compensation for damages in the amount of \$1,000.00; and
 - Payment of utilities in the amount of \$109.56.

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*).
10. Also relevant and considered in this case is section 10 of the *Act*.

Preliminary Matters

11. The rental premises is two apartment building located at [REDACTED] [REDACTED]. The tenant resided in the bottom unit and the landlord resides in the main floor unit. The premises were recently built, newly constructed 4 years prior.

Issue 1: Compensation for Damages (\$1,000.00)

Landlord's Position

12. The landlord submitted a series of photos taken after the rental premises was vacated (See pages 21 – 31 in L#2) but did not submit any photos or other documentation (such as a move in condition inspection report) of the rental premises prior to it being occupied by the tenant. The landlord testified that the premises were only two years old at the time, and there were no issues. The landlord reviewed the photos submitted and described how she discovered the bottom cabinet panel under the sink was cracked, which led her to pull up the whole cabinet section as well as pull out the dishwasher. Upon doing so, she discovered disintegrating OSB board and mold underneath which led to her replacing the impacted sections of flooring, sub floor and cabinetry.
13. The landlord testified that she did not discover any leaks in the plumbing when completing this work and so she concluded that the water damage was caused by the tenant over flowing the sink.

14. The landlord submitted a damage ledger (L# 3) that included four damage components totalling \$1,000.00. These included:
 - Replacing sink cabinet
 - Replace sub floor
 - Replace drywall behind cabinets
 - Replace flooring
15. The landlord also submitted a series of receipts for materials purchased during the repair process (totalling \$1,249.44). She testified that she is seeking compensation for materials only, and not her six weeks of labour for time spent investigating and repairing water damage. The landlord referred to the following receipts and explained how they were for materials used:
 - Kent \$131.66 (see page 16 in L# 2)
 - Kent \$873.04 (see page 17 in L#2)
 - Emco \$11.31 (see page 18 in L#2)
 - Kent \$66.61 (see page 19 in L#2)
 - Kent \$166.82 (see page 20 in L#2)
16. While reviewing these receipts, the landlord testified that she purchased a new dishwasher hose and a new faucet. When asked why she is charging the tenant for a new faucet, the landlord testified that the previous faucet had a separate spray nozzle in addition to the faucet and she did not want this in the new kitchen.
17. The landlord summarized her testimony by stating that she knows the tenant is a student and she had originally been happy to just keep the security deposit. Because however, the tenant submitted a claim for the return of the security deposit, this caused the landlord to submit her own claim. The landlord referred to a written summary (L#4) that she had prepared in response to the tenant's own written summary that was submitted.

Tenant's Position

18. The tenant testified that she did not look in every corner of the rental premises when she first agreed to rent. The tenant referred to a short video (T#3) she captured on the day that she vacated the rental premises and clarified that this video was taken prior to the premises being inspected by the landlord. The tenant testified, that as shown in the video, everything in the kitchen area "looked fine" at the end of her tenancy. She also testified, to how it was only after she removed items from under the kitchen sink during the landlord's inspection, that the damage to the bottom panel of the cabinet was discovered. The tenant testified, that at no point during her tenancy, did she notice any water coming from the sink area, and at no point, did she or anyone else in the rental premises overflow the kitchen sink as the landlord suggested.
19. The tenant referred to the photos submitted by the landlord and stated, that there is clearly damage to the floor but strongly denied causing the damage herself

either intentionally or through neglect. The tenant testified that had there been a leak or other water obvious water damage, she would have cleaned it up and reported it to the landlord. The tenant also testified that the materials being claimed by the landlord, were for repair work completed by the landlord only, and asked, how could the landlord, a non-professional accurately conclude there was no system leak and that it was user error?

Analysis

20. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - 1) That the damage they are claiming compensation, exists;
 - 2) That the respondent is responsible for the reported damage through a willful or negligent act; and
 - 3) The value to repair or replace the damaged item(s).
21. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.
22. The landlord is seeking compensation for materials required for repair work that started after she was discovered that the bottom panel of the sink cabinet was cracked. It was then through removing the cabinet, that the landlord discovered significant water damage to the floor and subfloor. The water damage was well documented and receipts were provided for required materials. Regarding the source of the water damage, the landlord testified that the tenant was responsible and the tenant denied responsibility. The tenant also questioned why a qualified professional was not used to diagnose the source of the water damage?
23. I reviewed the landlord's written summary of the repair process, and how she wrote: “....*I checked very carefully but there's no any (sic) leak. All pipes work very well, no leak at all!*....” The landlord goes on to write about how the unit plumbing was professionally installed and inspected. Regardless, I accept the tenant's counterargument and I find that the landlord failed to establish on the balance of probabilities that the actions of the tenant, either willful or neglectful, were the source of the documented water damage. Had for instance, the landlord retained the services of an appropriately qualified professional who ran appropriate diagnostic tests prior to tearing apart the kitchen and also replacing the kitchen faucet and dishwasher hose, then perhaps the landlord would have been successful in attributing blame. As however, she did not, I find that the landlord's claim for compensation for damages does not succeed in any amount.

Decision

24. The landlord's claim for compensation for damages does not succeed in any amount.

Issue 2: Payment of Utilities (\$109.56)

Relevant Submissions

25. The tenant testified that she acknowledges owning the landlord for payment of utilities in the amount claimed (L#5).

Decision

26. The landlord's claim for compensation for utilities succeeds in the amount of \$109.56.

Issue 3: Security Deposit (\$600.00)

Relevant Submissions

27. The tenant testified that she is only seeking the return of the remaining security deposit (outside of utilities). The landlord requested to retain the full value of security deposit against materials costs for water damage repair work.

Analysis

28. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section

42 other than an application with respect to a claim against the security deposit.

29. Where the landlord's claim for compensation for damages had not succeeded, but her claim for payment of utilities has succeeded in the amount of \$109.56, the landlord shall retain that portion of the security deposit and return the remainder to the tenant.

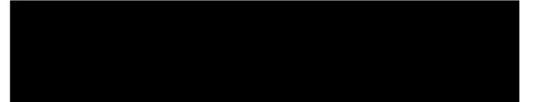
Decision

30. The landlord shall retain \$109.56 of the security deposit.
31. The landlord shall pay to the tenant, \$490.44 representing the return of the remaining security deposit.

Summary of Decision

32. The landlord's claim for compensation for damages does not succeed in any amount.
33. The landlord's claim for compensation for utilities succeeds in the amount of \$109.56 and so she shall retain \$109.56 of the security deposit.
34. The landlord shall pay to the tenant, \$490.44 representing the return of the remaining security deposit.

07 December 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal