

Residential Tenancies Tribunal

Application 2023-0025-NL

Decision 23-0025-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:03 a.m. on 05-April-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. Both parties confirmed receipt of notification of today’s hearing from the Residential Tenancies office on 23-March-2023.
5. The landlord amended his application to decrease compensation for damages from \$6,000.00 to \$3,910.00, to reflect the current cost owing.

Issues before the Tribunal

6. The landlord is seeking
 - Compensation for damages \$3,910.00
 - Hearing expenses \$20.00

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*.
8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, as well as, Residential Tenancy Policy 9.

Issue 1: Compensation for damages \$3,910.00

Landlord's Position

9. The landlord stated he had a verbal monthly rental agreement with the tenant. The tenant moved in just before 01-July-2021 and she subsequently moved out on 17-December-2021. He said that the tenant paid \$1,100.00 for rent each month which includes cable and internet. The rental period is from the first day of each month until the last; the tenant's rent was due on the 1st day of the month. The tenant had paid a security deposit of \$500.00 on 24-June-2021.
10. The landlord said that he had given the tenant a 3 month notice on 31-October-2022 with a termination date of 31-January-2023. The tenant informed him just before December that she had found a place and would be moving the middle of December. She requested he retain the security deposit for the cost of rent. He told her as long as there were no damages he would keep the deposit for rent. She did not pay rent on 01-December-2022 and moved on 17-December-2022; the landlord retained the security deposit in lieu of rent.
11. The landlord explained that the people who lived in the house prior to the tenant, left a lot of damages and when he finished the repairs the tenant moved into a completely refinished house. She had previously lived across the street, and he said that they didn't complete a written inspection report but the tenant and her boyfriend frequented the house while the repairs were ongoing.
12. The landlord stated when he regained possession of the house after the tenant moved out, there were two issues with damages. He provided a damages ledger (LL#03) he gave the new amounts for the tub surround and \$460.00 and the flooring \$3,450.00.
13. The landlord explained that a while after being in the house he removed a scrub glove from the wall of the tub surround and discovered a hole underneath. He provided pictures (LL#04). He said that he had gone to the tenant's house twice and had a plumber attend because the people in the basement apartment had a leak on 19-August-2022. He checked the tenant's bathroom and placed silicone around the taps. The leak continued and he didn't notice anything obviously wrong. He then had a plumber check for a leak. The plumber also didn't find anything. He assumed that maybe it could be leaky pipes.
14. After he had possession of the house and removed the glove to find the hole under the suction cup, he couldn't believe that the tenant covered this up. He said he felt like an idiot and that she lied to him. He had the tub surround replaced at a cost of \$460.00; he provided the quote (LL#04). The landlord said that the tub surround is 20 years old.
15. The landlord also submitted pictures of two separate dark spots on the hardwood floor. (LL#04) He said that the tenant had plants on the floor and that the water from the plants marked the floor. He provided two quotes for the cost of repair (LL#04) one for \$3,450.00 and the other for \$3,312.00. He explained that he hasn't refinished the flooring yet due to the cost. He also went on to say that the cost quoted is just to refinish that area and when that is done he would have to also have the stairs and railing completed at his own expense. Further to this, he points out that one of the quotes states that they may not be able to repair the stains and could have to replace part of the

floor. The landlord estimates that the flooring is 20 years old and that it has not been refinished.

16. The landlord disputes that depreciation should be a factor in determining his loss. He states that the tub surround and flooring were not damaged and were in good shape when the tenant took occupancy.
17. The landlord is seeking \$3,910.00 in damages.

Tenant's Position

18. The tenant confirms the details of the rental agreement and that she was in agreement with the landlord retaining the security deposit in lieu of rent.
19. The tenant confirms that she had occasionally come to the house while the repairs were ongoing and that the house was in good shape when she took occupancy. She states that she didn't notice any damages to the tub surround or the flooring when she moved in.
20. The tenant said that after she was in a week or two she noticed a small crack in the tub surround. She said she never told the landlord about it, she had just moved in and didn't want to complain. She said initially she was putting tape over the crack and occasionally she would remove and replace the tape. She said that the small crack started crumbling over time and became a hole. She said that she didn't cover it with the scrub glove to be deceitful, she did it because it looked "hillbilly." She said that the glove wasn't there when he was checking on the leak.
21. The tenant said that she had dollar store plastic protectors under her plants, however, she acknowledges that water must have seeped through and she doesn't dispute that the flooring is damaged.

Analysis

22. Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*
- (b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

2. Obligation of the Tenant - *The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

23. The landlord has shown through testimony and evidence the damages sought. The tenant did not dispute that the damage to the tub surround and floor did occur during her tenancy. In determining the value awarded in a damages claim, in accordance with Policy 9 of the Residential Tenancies Section, depreciation must be considered. Both the tub surround and flooring are 20 years old.
24. In accordance with Residential Tenancies Policy 9-005 the life expectancy of a tub surround is 15 years. Additionally, the life span of hardwood is for the lifetime of the home, however, the lifespan of the finish is 5 years. The landlord is applying for refinishing and the flooring has not been refinished in the last 5 years.
25. Although I acknowledge that there has been damages, the tub surround and finish on the hardwood flooring however, have both exceed their life expectancy and no longer have monetary value. The cost of upkeep of the property is the burden of the landlord and not that of the tenant.
26. I find that the landlord's claim for damages fails.

Decision

27. The landlord's claim for damages fails.

Issue 4: Hearing expenses reimbursed \$20.00


28. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, as his claim has not been successful, he is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

29. Determines the landlord's claim for damage fails.

April 14, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office