

Residential Tenancies Tribunal

Applications 2023 No. 0056 NL

Decision 23-0056-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 16 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant” participated in the hearing on behalf of herself and fellow respondent, [REDACTED] who did not attend.
3. Two affidavits of service were provided by the landlord confirming that both tenants were served notice of the claim by email on 23 January 2023 (L#1). Proof of service was also provided related to emails sent (L#2). The original hearing was then convened on 16 February 2023 and postponed with notice of postponement sent by the Residential Tenancies Office (A#1). Both parties confirmed that they were ready to participate in the landlord’s claim.
4. The details of the claim were presented as a fixed term rental agreement that started 01 May 2022 and is set to expire on 01 May 2023 (L#3). Monthly rent is \$1,300.00 all inclusive, due on the first of the month, and a security deposit in the amount of \$650.00 was collected.
5. 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

6. The landlord is seeking Compensation for Damages in the amount of \$677.35.

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

Preliminary Matters

9. The rental premises is a condo located at [REDACTED]. The tenants reside in unit [REDACTED] which is owed by the landlord. When the hearing was originally convened on 16 February 2023, this was to also hear the tenants' counter claim (Application # 2023-0081-NL) which has since been further postponed to a later date.

Issue 1: Compensation for Damages (\$677.35)

General Submissions

10. 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:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
11. 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. The landlord submitted a written summary of her claim for compensation related to two items (L#4).

Damage #1 – Bedroom Door (\$586.50)

Landlord's Position

12. The landlord testified that she is seeking costs for replacing the damaged bedroom door and door frame in the rental premises. She referred to her damage ledger and stated that she received a quote in the amount of \$510.00 +HST for replacing the damaged door and door frame. However, no standalone verifiable document was provided related to expected costs for replacement. The landlord also stated that no photos are available of the door prior to occupancy by the tenants. She referred to photos submitted depicting damage to the door and door box (L#5).

13. The landlord testified the door was damaged in summer 2022. She stated that she attended to the rental premises after the other tenant reported that he was locked out of the bedroom and he needed to get to work. The landlord testified the door was damaged after the other tenant kicked it in. She also stated that she did not know the age of the door and that she issued a written landlord's request for repairs to the tenants in January 2023 (L#6) and February 2023 (L#7) requesting the tenants repair the door. The landlord testified that she issued this formal request for repairs once the tenants started coming back at her for not fixing the dishwasher after she refused to renew their lease.

Tenant's Position

14. The tenant testified that they require bedroom doors that lock due to an employment related requirement that work spaces be locked. She rejected the landlord's claim for compensation and stated that the "quote" provided by the landlord is not actually a legal quote. The tenant also testified that any damage to the door occurred as a result of the landlord's associates who attended with her to the premises. The tenant denied that the other tenant was the source of the documented damage to the door and testified that he gained entry by using his tools and that he did not kick in the door.

Analysis – Bedroom Door

15. I find that the landlord failed to establish on the balance of probabilities that she is entitled to compensation for damage to the bedroom door because she failed to satisfy the test for damages identified in paragraph 10:
- 1) No photos were presented of the condition of the door prior to occupancy;
 - 2) The tenant disputed the landlord's claim that the other tenant caused the damage, and
 - 3) The landlord failed to provide verifiable documentation related to expected costs for replacing the door.
16. Consequently, I find that the landlord's claim for compensation related to the door does not succeed in any amount.

Decision – Bedroom Door

17. The landlord's claim for compensation related to the door does not succeed in any amount.

Damage 2 Dishwasher **Landlord's Position**

18. The landlord referred to a receipt provided in the amount of \$90.85 for a service call related to the dishwasher (L#8). This receipt is dated 03 March 2023. The landlord stated that she had the repairman return to the premises to assess the

dishwasher after it was initially inspected. She referred to photos submitted of the interior of the dishwasher and stated that she was appalled to find it full of baking soda and Epson salts (L#9). The landlord testified that the dishwasher was said to be new when she bought the premises 10 years ago. She also stated that it remains in the premises and that it does not work.

Tenants' Position

19. The tenant stated that dishwashers are depreciable assets and so the tenants should not be required to pay for repairs to a machine that no longer has replacement parts available. She also stated that the issues with the dishwasher started in November 2022 and that the tenants are not the cause of the issue, because as noted on the receipt, the repairman declares the problem to be with the "pump" not the drain. The tenant stated that it is inconvenient to be without a dishwasher.

Analysis - Dishwasher

20. I reviewed the written rental agreement and note that a dishwasher is listed as an asset included in the rent. I accept that both parties agree that the dishwasher in the premises is not functional. Where the landlord submitted a receipt from a repairman indicating that a new pump is needed, and a new pump cannot be sourced, I agree with the tenant that this is not a cost to be borne by them. Consequently, I find that the landlord failed to establish on the balance of probabilities that the tenants caused the dishwasher to cease functioning through either neglect or an intentional act. Rather, it appears as though this machine has exceeded its serviceable life, which according to Residential Tenancies Policy 09-05, is 10 years.

Decision - Dishwasher

21. The landlord's claim for compensation for damages for the dishwasher does not succeed in any amount.

Summary Decision

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

21 March 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal