

Residential Tenancies Tribunal

Application 2023-0075-NL

Decision 23-0075-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 20-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. The landlord submitted an affidavit stating that she served the tenant with notification for an earlier hearing date on 26-January-2023. That hearing was rescheduled to today's date and both parties were notified of the hearing on 08-February-2023. Both parties confirmed receipt of notification.

Issues before the Tribunal

5. The landlord is seeking
 - Damages \$1,092.50

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual, Section 9: Claims for Damage to Rental Premises*.

Issue 1: Damages \$1,092.50

Landlord's Position

8. The landlord said that she has a verbal rental agreement with the tenant. She was unsure of the exact day that the tenant moved in, however she said it was late 2020 and that the tenant moved out on 31-October-2022. The tenant paid \$700.00 a month rent, due on the first day of every month. She also paid a security deposit of \$350.00 on 25-November-2020. The landlord explained that there was a previous hearing for this residence, she said she had increased the tenant's rent to \$750.00 and was ordered to reimburse the tenant's rent increase, as well as the security deposit.
9. The landlord is seeking damages in the amount of \$1,092.50. She said that after the tenant moved out, she had someone do a walk through and it was discovered that there was dirt in the kitchen sink; picture provided (LL#03). She explained, the sink was blocked and they had a plumber come in to clear the blockage.
10. The landlord was unable to determine what the exact issue was with the sink. She clarified that she is not a plumber and she relied on his expertise. She provided a receipt for the amount sought (LL#02). The receipt provided describes the work as: clear out plumbing and clear blockage, replace faucets kitchen sink, replace existing pipes, rental of sewer rod/snake, labour & materials, total cost \$1,092.50. The receipt shows the date as 31-October-2022 invoice # 428.
11. The landlord said that she did not do a condition report when the tenant moved in or when she moved out. She did have a woman go and check out the house and she was the one who reported the dirt in the sink. Text provided (LL#03).
12. The landlord said that she renovated the apartment fully a few years ago. She was unsure if she replaced the pipes, sinks or faucets at that time. She was also unable to identify the age of the pipes, sinks or faucets. The landlord was unable to identify why the plumber replaced the pipes, sinks or faucets for a blockage or why the plumber didn't just clear the blockage.
13. The landlord acknowledged that she submitted another invoice with a different one of her properties listed for this work. She said it was an error of the plumber and that she asked them to correct their mistake and submitted the revised invoice (LL#02). She also said that the tenant is causing trouble, speaking to people about this issue.

Tenant's Position

14. The tenant said she took possession on 01-December-2020, she said her rent was initially \$700.00 and it was increased to \$750.00. The tenant confirms that she received an order for the landlord to refund the rent increase and the security deposit.
15. The tenant states that she believes that the landlord falsified documents submitted into evidence. She said that on the day she moved, her son fell and got his hands dirty, she

washed his hands in the sink and that is the dirt left behind. She said that there was nothing wrong with the sink.

16. The tenant points out that in her initial respondents package the invoice was for a different address owned by the landlord (TT#01). She said she questioned this and now the invoice has changed to her old address.
17. The tenant said she moved out on 31-October-2022 and that afternoon she took her son trick or treating in the neighborhood and they passed the other address, she remembers that the plumber's truck was parked in the driveway. She said that she has since spoke with them and that they confirmed they were having issues with their plumbing.
18. The tenant goes on to say she has spoken with the new people in the apartment and looked into the kitchen window. She said that the sink and faucets have not been changed.
19. The tenant also relayed that she checked in with the plumber and asked about the invoice. She said they told her that the landlord requested that the address be changed on the invoice, so they made that change.

Analysis

20. In accordance with Residential Tenancies policy 9-3, 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)
21. In a proceeding under the Residential Tenancies Act, 2018, 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 applicant has to establish that his/her account of events are more likely than not to have happened.
22. The landlord has not met the burden of proof. The tenant has raised issues with the landlord's claim that the landlord was not able to refute. The landlord stated that the tenant is causing trouble by speaking to people about the claim, which adds validity that the tenant is truthful in her claim that she has spoken to the tenants in the other apartment, the new tenants in her old apartment and the plumber.
23. The tenant's version that she took her child trick or treating, as she moved on Halloween also seems probable, thereby adding credibility to her potentially seeing the worker's truck at the other unit.
24. Additionally, when questioned, the landlord couldn't explain why the pipes had to be replaced for a blockage, or why the blockage would require that the sink and taps would require replacement. In my experience this work seems excessive for a simple blockage.
25. Finally, the issue raised by the tenant, of the two identical receipts with two different addresses, this could in fact be a clerical error. However, in light of the fact that this is the primary evidence used in the landlord's claim, the landlord should have provided

supplemental proof to show that the error was just administrative. The landlord could have requested documentation or testimony from the business explaining why there was an issue with the address on her invoice. The evidence that the billing and damages were for the tenant's apartment has come under scrutiny; the landlord has not shown that the damages that exist are in this apartment or that the tenant was responsible.

26. I find that the landlord has failed to prove her claim for damage.

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#04) and pursuant to policy 12.01, as the landlord's claim was not successful, she is not entitled to reimbursement of that cost from the tenant.

Summary of Decision

29. The landlord's claim for damages and hearing expenses fails.

April 25, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office