

Residential Tenancies Tribunal

Application 2023-0560-NL

Decision 23-0560-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 14-August-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing via pre paid registered mail ([REDACTED]) on 29-June-2023 (TT#1). The landlord confirmed receiving the document and countering the claim on 11-July-2023 which is within the 10 day timeframe to counter a claim for security deposit as per Section 14(11) of the *Residential Tenancies Act, 2018*. The landlord served the tenant with the notice of hearing on 24-July-2023 by sending it via pre paid registered mail (LL#1). The tenant confirmed receiving the document. In accordance with the *Residential Tenancies Act, 2018* this is good service from both parties.
5. There was a written term agreement that commenced on 26-May-2022. Rent was \$875.00 per month due on the 26^h of the month. A security deposit of \$656.00 was paid on 26-May-2022 (TT#2).

Issues before the Tribunal

6. The tenant is seeking:
 - a. Refund of security deposit \$656.00
 - b. Hearing expenses \$26.88
7. The landlord is seeking:
 - a. Damages \$874.00
 - b. Rent Paid \$57.54
 - c. Security deposit applied against monies owed \$656.00
 - d. Hearing expenses \$38.52

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*.
9. Also relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit and Section 19; failure to pay rent. 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 \$874.00

Relevant Submission

10. The landlord submitted a list of items / actions required to restore the unit to the way it was prior to the tenant taking possession (LL#2) as follows:

| | |
|------------------------|----------|
| Smoke Alarm | \$34.49 |
| Smoke Eliminator Spray | \$41.08 |
| Paint | \$448.43 |
| Labor | \$350.00 |

Landlord's Position

11. The landlord stated that the unit needed restoration work as a result of cigarette smoke in the unit. He stated that the walls and kitchen cabinets needed to be painted. The landlord is claiming \$448.43 for paint and \$350.00 for labor. The landlord stated that the tenant was smoking in the unit and around the outer porch, which he considers to be within the unit due to the structure of the area and lack of air circulation. The landlord stated that he believes that smoke in the outer porch area will flow into the interior of the premises once the door to the outside is open. The landlord stated that the walls and kitchen cabinets had to be painted to remove the smoke odor from the premises.
12. The landlord stated that the cigarette smoke also damaged the smoke alarm causing it to malfunction. The landlord testified that the tenant notified him of the malfunctioning smoke alarm, stating that it was repeatedly sounding off at night. The landlord provided hyperlinks (LL#3) to support his claim that smoking interferes with the normal functioning of smoke alarms and reduces their longevity. The landlord stated that he believes that repeatedly opening windows during winter months has a similar effect on smoke detectors from increased exposure to humidity. The landlord is claiming \$34.49 to replace the smoke alarm and \$41.08 for a smoke eliminator spray to assist with the overpowering odor of smoke within the unit.

Tenant's Position

13. The tenant disputes any claims from the landlord that she smokes within the unit. She testified that she only smokes outdoors, sometimes in the outside porch which in her opinion is considered outside. The tenant also disputes that she contributed in any way to the malfunctioning of the smoke alarm.

Analysis

14. In accordance with Residential Tenancies policy 9-3, the applicants are required to show:

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

15. I accept the landlord's claim that he believes the tenant smokes inside the unit and that smoke flows into the unit from the outside porch, however the landlord did not provide any concrete evidence to support his claim. The landlord submitted a picture of a cigarette ashtray that was situated on the concrete wall in the outside porch area (LL#4). This is certainly proof that smoking cigarettes is happening in the outside porch next to the door but there is no proof that the tenant is smoking inside the unit. As the tenant was permitted to smoke outside, I find that the tenant did not do anything to cause damage to the interior of the unit. I do not accept the landlord's argument that smoking in the outside porch is the same as smoking inside the unit. The outside porch is clearly outside the unit.
16. The landlord provided before and after pictures (LL#5) of the kitchen area. There was no indication of any discoloration on the walls due to smoke use. I asked the landlord if the walls and cabinets had to be painted due to smoke stains and he testified that the walls and cabinets in the kitchen area had to be painted in an attempt to remove the smoke odor from the room. I asked when was the last time the walls were painted and the landlord testified that he did not know when the walls were last painted. He stated that there was no cosmetic change in the walls due to smoke and that he painted in an effort to remove smoke odors only. I find that if the tenant was smoking in the unit, there would have been smoke stains on the walls and the cabinets. The landlord submitted a photograph of the wall just inside the outside porch area (LL#6) which did have some stains / dirt on it. The landlord believes that the tenant smokes inside during the winter time with the door open but again could not prove that the stains were from cigarette smoke. The tenant states that she believes those stains were from regular wear and tear mostly associated with cooking in the unit.
17. With regards to the smoke detector, there is no proof that the tenant smoked in the unit and as a result the malfunctioning of the smoke alarm cannot be linked to the tenant smoking in the unit.
18. I find that the landlord did not prove that the tenant was smoking in the unit.
19. I find that the tenant is not responsible for any damages /expenditures in relation to the restoration of the unit.

Decision

20. The landlord's claim for damages in the amount of \$874.00 does not succeed.

Issue # 2: Rent Paid \$57.54

Landlord's Position

21. The landlord is seeking rent for 2 days in the amount of \$57.54. The landlord stated that he gave a termination notice to vacate the premises on 26-June-2023 but entered into a verbal agreement with the tenant on 9-May-2023 to end the tenancy early on 26-May-2023. The landlord testified that he did not receive the keys of the unit until 27-May-2023. The landlord wants rent paid for the 26-May and the 27-May.

Tenant's Position

22. The tenant testified that she vacated the unit on 26-May-2023 as per the verbal agreement. She stated that the landlord was aware that she left on that date and she returned the keys the next day. The tenant stated that she do not owe the landlord any monies for outstanding rent.

Analysis

23. I accept the tenant's testimony that she vacated the premises on the date agreed upon and that the landlord was aware of her departure on 26-May-2023.
24. I find that the tenant do not owe any monies for rent for the period of 26-May to 27-May-2023.

Decision

25. The landlord's claim for rent paid in the amount of \$57.54 does not succeed.

Issue # 3: Security deposit applied against monies owed \$656.00

Relevant Submission

26. The landlord submitted a copy of the rental agreement showing that a security deposit was paid in the amount of \$656.00 on 26-May-2022.

Analysis

27. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

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

28. I find that the landlord has not been successful in his claim for damages and rent (see paragraphs 20 & 25) and as a result the security deposit shall be returned to the tenant.

Decision

29. The landlord's claim for security deposit of \$656.00 applied against monies owed does not succeed.

Issue # 4: Hearing Expenses

30. The applicant and tenant is claiming hearing expenses in the amount of \$26.88 to cover postage fees associated with sending 2 sets of documents to the landlord.

31. The counter applicant and landlord is claiming hearing expenses in the amount of \$38.52 to cover the application fee and postage fees.

32. I find as the landlord's claim has not been successful, the tenant is not responsible for the landlord's hearing expenses.

33. I find that as the tenant's claim for refund of security deposit has been successful, the landlord is responsible for a portion of her hearing expenses.

34. I find the landlord shall reimburse the tenant for the postal cost to send the first document which cost \$13.44. The second document was the *Notice of Rescheduled Hearing* document which was not required to be served by the tenant, thus the tenant cannot seek compensation for the postal costs associated with sending it.

Decision

35. The landlord's claim for hearing expenses does not succeed.

36. The tenant's claim for hearing expenses in the amount of \$13.44 succeeds.

Summary of Decision

37. The landlord shall:

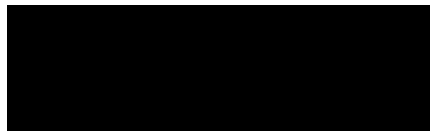
Pay the tenant \$669.44 as follows:

| | |
|---------------------------------|----------|
| Refund of security deposit..... | \$656.00 |
| Hearing expenses | 13.44 |

Total..... \$669.44

August 22, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office