

Residential Tenancies Tribunal

Application 2023-0855-NL
Application 2023-0930-NL

Decision 23-0855-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:45 p.m. on 28-November-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.
4. The tenant testified that she served the landlord with the notice of hearing electronically by sending it to [REDACTED] on 30-October (TT#1). The landlord confirmed receiving the document on that date. The landlord countered the claim and testified that she served the tenant electronically on 4-October-2023. The tenant confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.

Preliminary Matters

5. There was a written term agreement that commenced on 1-August-2022. The tenant vacated the premises on 31-August-2023. Rent was \$1100.00 per month due on the first of each month. A security deposit of \$500.00 was paid and \$100.00 returned to the tenant leaving \$400.00 in the landlord’s possession.
6. The tenant’s application is amended to decrease the amount of security deposit refunded from \$500.00 as per application to \$400.00 as the landlord returned \$100.00.

Issues before the Tribunal

7. The tenant is seeking:
 - Refund of security deposit \$400.00
8. The landlord is seeking:
 - Compensation for damages \$725.00
 - Compensation for inconveniences \$240.00 & hearing expenses \$20.00
 - Security deposit applied against monies owed \$400.00

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*.
10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*, Section 9-3: Claims for Damage to Rental Premises and Section 12-1: Fees.

Item # 1: Compensation for damages \$725.00

Relevant Submission

11. The landlord testified that there were damages to the rental unit which was mostly noticed after the tenant vacated on 31-August-2023. The landlord stated that she did a walk through with the tenant, but it was rushed, and items got missed. The landlord submitted a list of damages / losses to support her claim. See below as follows (LL# 1 & 2):

| Compensation for Damages | | |
|---|--|-------------------------|
| Submitted by: | | Date: <u>Sept 26/23</u> |
| Applicant: | | |
| Respondent: | | |
| Item # Description of Damages Compensation Claimed | | |
| 1 | E.g. 3cm x 3cm hole in bathroom wall | \$ 75.00 |
| 2 | Red ink spilled on desk floor, wall, flooring, baseboard | \$150. |
| 3 | Scuff marks on walls + Grey paint missing on walls in office | \$50 |
| 4 | Missing paint from removal of answer on wall (replastered + repainted) | \$50 |
| 5 | Marks on bathroom walls | \$50 |
| 6 | repainted two walls yellow dots | |
| 7 | Broken sink stopper in Kitchen Sink | \$15 |
| 8 | bought new one cdn fire | |
| 9 | Heatpump fan button was broken. Purchase new remote | \$30 |
| 10 | amazon | |
| 11 | Iron has dropped and broken plastic on outside | \$10 |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | Cleaning Fees - Invoice provided | \$350 |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |
| | Total | \$705 |

| | | | |
|------------|---------|---------------------------|-----------------------------|
| Exhibit 01 | pic/jpg | Grey bath mat. \$10 | MISSING ITEMS \$20 total |
| Exhibit 02 | jpg | Paper towel holder \$5 | |
| Exhibit 03 | jpg | Silver fruit basket \$5 | |
| Exhibit 04 | N/A | Metal baking oven pan | |
| Exhibit 05 | N/A | Kitchen items, pots, pans | |

Landlord's Position

12. The landlord testified that the above listed items have been identified as damages / losses to the unit caused by negligence on the part of the tenant. The landlord stated that the unit was completely remodeled prior to the tenancy, and everything was brand new. The following items were mostly identified after the tenant vacated. The landlord's position on each item is as follows:

Item # 1: Red ink spilled on desk, floor, wall, flooring and baseboard (\$150.00) - The landlord testified that she noticed red calligraphy ink on the wall, down one side of the desk, on the floor and the baseboard. The landlord stated that she had to purchase paint to cover the wall and a new side baseboard as the ink would not come off the baseboard.

Item # 2: Scuff marks on the walls and grey paint missing on the walls in the Office (\$50.00) - The landlord testified that there were scuff marks on the walls in the Office and were most likely caused by the moving of furniture within the room. The landlord stated that the unit was completely remodeled prior to the tenancy and the marks were visible after the tenant vacated. The landlord testified that it took her 1.5 hours of self-labor and 2 coats of paint to remove the scuff marks.

Item # 3: Missing paint from removal of artwork on wall (\$50.00) - The landlord testified that when the tenant removed artwork from the wall, the paint got chipped down to the gyproc and the area needed to be plastered and painted. The landlord stated that she had to plaster, sand, replaster, resand and paint the wall which was labor intensive.

Item # 4: Marks on the bathroom walls, repainted 2 walls with yellow dots (\$50.00) - The landlord testified that there were yellow dots all over the bathroom wall and on 1 of the storage units. The landlord stated that the yellow dots may have been caused by some type of spray. The landlord stated that the dots were removed from the storage unit but would not be removed from the walls, and she had to paint 2 walls in the bathroom.

Item # 5: Broken sink stopper in kitchen sink (\$15.00) - The landlord testified that the sink stopper in the kitchen was broken and needed to be replaced. The landlord stated that she purchased a new one at Canadian Tire for \$15.00.

Item # 6: Heat pump fan button was broken (\$30.00) – The landlord testified that the heat pump fan had a button that was not working and as a result the remote needed

to be replaced. The landlord stated that a new remote was ordered from Amazon.

Item # 7: Iron was dropped and broken on outside (\$10.00) – The landlord is not seeking compensation for this item.

Item # 8: Cleaning fees (\$350.00) – The landlord stated that she hired a cleaning company to do a deep clean of the unit. The landlord stated that the living area is roughly 900 square feet and cleaning ranged from washing of walls and tub to cleaning the inside of cupboards to underneath the microwave and the sides of the stove.

Item # 9: Grey bathmat, paper towel holder & silver fruit basket missing (\$20.00) – The landlord testified that a grey bathmat was missing, a paper towel holder and a fruit basket which were all new items placed in the unit at the beginning of the tenancy.

Tenant's Position

13. The tenant testified that she left the unit in good condition and during a walk through with the landlord, she was told that everything was satisfactory, and the security deposit would be returned. The tenant stated that she only received \$100.00 of the security deposit and was confused as to why the landlord retained \$400.00. The tenant's position on each item is as follows:

Item # 1: Red ink spilled on desk, floor, wall, and baseboard (\$150.00) - The tenant did not dispute that she had an incident with a red calligraphy ink pen resulting with ink on the wall, down one side of the desk, on the floor and the baseboard. The tenant testified that she removed the ink prior to vacating, and it was not visible when she had the walk through with the landlord. The tenant submitted a photograph to support her claim that the ink was removed (TT#2).

Item # 2: Scuff marks on the walls and grey paint missing on the walls in the Office (\$50.00) - The tenant disputed that there were any scuff marks on the walls in the Office and stated that if there were marks on the wall, it would have been identified during the walk through.

Item # 3: Missing paint from removal of artwork on wall (\$50.00) - The tenant did not dispute that when she removed a piece of artwork a small portion of paint came off the wall. The tenant stated that during the walk through the landlord noticed the paint missing from the wall and made a comment that it was a small mark and not worth charging for. The tenant submitted a photograph showing the amount of paint stuck onto the artwork (TT#3).

Item # 4: Marks on the bathroom walls, repainted 2 walls with yellow dots (\$50.00) - The tenant did not dispute that there were yellow stains on the walls in the bathroom however, she did dispute that she caused the stains. The tenant testified that the stains were on the wall when she took possession of the unit and she stated that she made several attempts to remove the stains herself but was unsuccessful.

Item # 5: Broken sink stopper in kitchen sink (\$15.00) - The tenant disputed that the sink stopper was broken and stated that it was working fine when she vacated the unit.

Item # 6: Heat pump fan button was broken (\$30.00) – The tenant disputed that there

was anything wrong with the fan button on the remote. The tenant stated that during the walk through she showed the landlord the remote and there wasn't any physical damage to the remote or the buttons. The tenant stated that the remote worked for her and she is unsure as to what could have happened to the remote.

Item # 8: Cleaning fees (\$350.00) – The tenant disputed that the unit needed to be cleaned. The tenant stated that everything was satisfactory during the walk through, and she was told that her entire deposit would be returned. The tenant stated that the cleaning invoice shows that the landlord was charged for the disposal of items and the tenant stated that she did not leave any items behind as the unit was fully furnished.

Item # 9: Grey bathmat, paper towel holder & silver fruit basket missing (\$20.00) – The tenant did not dispute that she threw out the bathmat and the paper towel holder. The tenant stated that the mat needed to be replaced for hygiene purposes, so she threw it out and the paper towel holder had to be thrown out due to a rust build up on it. The tenant stated that she did not take the fruit basket.

Analysis

14. In accordance with *Residential Tenancies policy 9-3*, the applicant is 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. The landlord did not present an incoming and outgoing premises condition report with her list of damages, nor did she have any pictures or receipts to support her claims. The tenant was available and submitted photographs while disputing most of the claims. Each item is analyzed separately based on the landlord's and the tenant's testimony and exhibits submitted into evidence. See below:

Item # 1: Red ink spilled on desk, floor, wall, flooring and baseboard (\$150.00) - The landlord testified that she noticed red calligraphy ink on the wall, down one side of the desk, on the floor and the baseboard. The landlord did not submit any pictures into evidence to show the ink in the spaces as listed above however the tenant did submit a photograph to show the area and there is no evidence of red ink. Furthermore, red ink on the wall should have been visible during the final walk through. In accordance with Section 9.3 as stated above, the landlord did not show that the damage exists. For this reason, the landlord is not successful in her claim for \$150.00.

Item # 2: Scuff marks on the walls and grey paint missing on the walls in the Office (\$50.00) - The landlord testified that there were scuff marks on the walls in the Office and were most likely caused by the moving of furniture within the room. The landlord did not submit any photographs into evidence to show the marks on the wall. Furthermore, scuff marks on the wall should have been visible during the final walk through. In accordance with Section 9.3 as stated above, the landlord did not show that the damage exists. For this reason, the landlord is not successful in her claim for \$50.00.

Item # 3: Missing paint from removal of artwork on wall (\$50.00) - The landlord testified that when the tenant removed artwork from the wall, the paint got chipped down to the gyproc and the area needed to be plastered and painted. The landlord stated that she had to plaster, sand, replaster, resand and paint the wall which was labor intensive. The tenant did not dispute that some paint came off the wall and submitted a photograph to show the paint on the back of the artwork. I accept that the walls were newly painted prior to the tenancy and although the landlord did not provide receipts to show the cost of products needed to mend the wall, I find it is reasonable to expect that a small amount of plaster and paint and self-labor to do the work would equate to at least \$50.00. For this reason, I find that the tenant is responsible to pay the landlord \$50.00 to fix the paint on the wall.

Item # 4: Marks on the bathroom walls, repainted 2 walls with yellow dots (\$50.00) - The landlord testified that there were yellow dots all over the bathroom wall and on 1 of the storage units. The landlord stated that the yellow dots may have been caused by some type of spray. The tenant disputed that she caused the dots and testified that they were there when she moved in. In accordance with Section 9-3 as stated above, I find that the landlord did not show that the tenant was negligent in causing the damage. For this reason, I find that the landlord is not successful in her claim for \$50.00.

Item # 5: Broken sink stopper in kitchen sink (\$15.00) - The landlord testified that the sink stopper in the kitchen was broken and needed to be replaced. The tenant disputed that there was anything wrong with the stopper and stated that the sink stopper was working fine when she vacated the unit. In accordance with Section 9-3 as stated above, I find that the landlord did not show that the damage existed and as such, I find that the landlord is not successful in her claim for \$15.00.

Item # 6: Heat pump fan button was broken (\$30.00) – The landlord testified that the heat pump fan had a button that was not working and as a result the remote needed to be replaced. The tenant disputed that there was anything wrong with the remote when she vacated the unit. In accordance with Section 9-3 as stated above, I find that the landlord did not show that the damage was caused by a willful or negligent act on the part of the tenant. I find that the landlord is not successful in her claim for \$30.00.

Item # 8: Cleaning fees (\$350.00) – The landlord stated that she hired a cleaning company to do a deep clean of the unit. The tenant disputed that any cleaning was required in the unit and referred back to the final walk through when the landlord assured her that everything was satisfactory, and the security deposit would be refunded in full. The landlord did not submit any photographs to show the cleanliness of the unit however the tenant did submit a copy of the invoice from the cleaning company showing that the fee for a deep clean and disposal of items in the unit was \$350.00. The tenant submitted photographs that she had received from the landlord showing the areas that needed cleaning and the photographs show the top freezer part of the fridge which is clean, and the bottom part of the fridge with a small amount of dirt that could be wiped up in seconds. The pictures showed a few crumbs down the side of the stove and some dirt on the side of the stove which again could be wiped in seconds. In accordance with Section 9-3 as stated above, I find that the landlord did not show that the property needed to be cleaned and the photographs from the tenant do not justify a \$350.00 bill for cleaning. Deep cleaning a unit after a tenant vacates falls under the cost of doing business. For those reasons, I find that the tenant is not responsible for the \$350.00 cleaning bill to deep clean the unit and dispose of items.

Item # 9: Grey bath matt, paper towel holder & silver fruit basket missing (\$20.00) – The landlord testified that a grey bathmat was missing, a paper towel holder and a fruit basket which were all new items placed in the unit at the beginning of the tenancy. The tenant did not dispute that she threw out the bathmat and the paper towel holder but disputed throwing out the fruit basket. As those items were new and provided by the landlord when the tenant moved in, it is only reasonable to expect that the tenant would replace them when she vacated. I find that is it is not unreasonable to expect to pay \$20.00 for a bathmat and a paper towel holder. For that reason, I find that the tenant is responsible to pay the landlord \$20.00 for the missing items.

16. In review of all the items analyzed above, I find that the tenant is responsible to pay the landlord \$70.00 in damages / losses.

Decision

17. The landlord's claim for compensation for damages succeeds in the amount of \$70.00.

Item # 2: Compensation for Inconvenience \$240.00

18. The landlord is claiming \$240.00 for her inconveniences at the end of the tenancy and \$20.00 for hearing expenses (see item # 3 below). The landlord submitted an inconvenience ledger to support her claim (LL#3). See below:

| | | |
|----|--|---------------------|
| 1 | Texting prior tenant about deposit | |
| 2 | | Sept 8 |
| 3 | Texting prior tenant again once | |
| 4 | Application for dispute received | |
| 5 | | Sept 18 |
| 6 | | \$10 |
| 7 | Compiled list of items, damages | |
| 8 | Cleaning etc required for | |
| 9 | tenant to know reasoning | |
| 10 | of damage deposit not be | |
| 11 | refunded, only gave \$100 | took a lot |
| 12 | to be kind. More items | of time |
| 13 | uncovered once apartment | |
| 14 | was being cleaned. | |
| 15 | | Sept 25 |
| 16 | | \$100 |
| 17 | Smailed | |
| 18 | tenant tenant with pictures, Word | |
| 19 | document, etc with | |
| 20 | reasoning for held \$400 of | \$10 |
| 21 | damage deposit Sept 25/26 | |
| 22 | (7 emails sent) | |
| 23 | Tenant denied to complete | \$10 |
| 24 | Part 14 to discontinue application | |
| 25 | via email Sept 26 | |
| 26 | | |
| 27 | Write up Counter Claim info, | \$100 |
| 28 | pay the \$20 fee to file | |
| | Total | |
| | \$20. fee to file, seeking | \$20 |
| | reimbursement. | |
| | | <u><u>\$260</u></u> |

Landlord's Position

19. The landlord testified that during the month of September she was inconvenienced with contacting the tenant regarding such issues as return of security deposit and emailing pictures and documents to the tenant. The landlord stated that preparing for the hearing and writing up the counter claim took many hours of her personal time, and she wishes to be reimbursed for her inconveniences. The landlord is also seeking reimbursement for the hearing fee of \$20.00.

Analysis

20. The landlord is seeking \$240.00 for her time to communicate with the tenant after the tenancy ended and to complete an application for dispute resolution. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*; Recovery of Fees, communication between the landlord and tenant is not an allowable expense and the hourly wage for time spent to prepare for, or attend a hearing is considered to be incurred under the normal course of doing business. For this reason, the landlord's claim for time spent to deal with the issues surrounding the tenancy will not be awarded. As for the hearing expenses see item #3 below.

Decision

21. The landlord's claim for inconvenience in the amount of \$240.00 does not succeed.

Item # 3: Hearing Expenses \$20.00

22. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord provided a copy of the application receipt (LL#4).
23. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*: Fees, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been partially successful, and the amount awarded does not exceed the amount of the security deposit, the filing fee will not be awarded.
24. I find that the tenant is not responsible for the hearing expenses claimed.

Decision

25. The landlord's claim for hearing expenses in the amount of \$20.00 does not succeed.

Issue # 4: Security Deposit applied against monies owed \$400.00

Analysis

26. The landlord testified that a security deposit of \$500.00 was paid in August 2022 and \$100.00 has been refunded. The landlord is seeking to have the remaining \$400.00 applied against monies owed.
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 been partially successful in his claim for damages and fees (see paragraph 17) and as such, the security deposit shall be partially applied against monies owed.

Decision

29. The landlord's claim to have the security deposit applied against monies owed succeeds.

Summary of Decision

30. The tenant shall pay the landlord \$0.00 as follows:

| | |
|---|--------------------------|
| Damages / losses..... | \$70.00 |
| Hearing expenses | 0.00 |
| Inconveniences | 0.00 |
| Less: Partial Security deposit | 70.00 |
| Total | <u>\$0.00</u> |

31. The landlord shall refund the security deposit to the tenant in the amount of \$330.00.

January 4, 2024

Date


Pamela Pennell
Residential Tenancies Office