

Residential Tenancies Tribunal

Application 2023-1052-NL
2023-1070-NL

Decision 23-1052-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held 28-November-2023.
2. The applicant [REDACTED] hereinafter referred to as the tenant, attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also attended by teleconference. He called one witness, his wife [REDACTED] who also appeared by teleconference.

Issues before the Tribunal

4. Should the tenant be granted the sum of \$457.05 for inconvenience?
5. Should the tenant be granted the sum of \$498.00 for the doorbell/camera they had installed on the rental premises?
6. Should the landlord be granted the sum of \$2000.00 for damages?
7. Should the landlord be granted the sum of \$322.91 for unpaid rent?
8. Should the tenant's security deposit be returned?

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 (RTA 2018)*.

Issue 1: Fee for inconvenience

Tenant's Position

10. The tenant alleges that he is owed \$457.08 for inconvenience as he was forced to move out with little notice.

Landlord's Position

11. The landlord submits that no money is owed for inconvenience, and that the early move out was the tenant's idea.

Analysis

12. On 12-August-2023 the tenant sent a text (T#1 page 5) to the landlord asking the lease to be assigned to a friend of his effective 01-September-2023. The landlord agreed pending his approval of this friend. The landlord and the friend met and the meeting well, with parties intending to proceed with transferring the lease. The tenant contacted the friend to buy some of his larger furniture. A few days before the end of the rental term, the landlord informed the tenant he would not be renting to the friend and instead had found a different tenant, and that he would do the final walkthrough with the tenant on 31-August-2023.
13. The tenant says that because of the above, he was forced to move out early and asks for \$457.08 in compensation, since he had to take time off work to effect a move in a day and a half. When asked, he was not able to explain how he came to the precise number of \$457.08. He said at that time he made \$300 a day. The landlord put it to the tenant that the number was the money he had paid to temporarily store the furniture before his friend could take it, but the tenant denied this. The tenant had been reimbursed by the friend for this cost prior to the hearing.
14. Regardless of the amount claimed, I cannot agree with the tenant that he was forced to move out early with little notice. The tenant had proposed the move-out date and the landlord agreed. I asked the tenant if he had thought about what would happen if his friend was rejected by the landlord. He responded that he could think of no reason that would happen. I find from his testimony that the tenant had not thought to consider what would happen if his friend was rejected. He did not believe that if his friend was not selected his own tenancy would continue and would have no reason to believe that. Therefore, the tenancy would end on that date regardless and the issue of who the next tenant would be is irrelevant.
15. The tenant proposed the move-out date. He ought to have been ready to move out on that date. He was not. To some extent, this was a result of his understanding that his friend would be receiving the apartment based on a verbal agreement or apparent agreement he witnessed between the landlord and said friend. He had privately agreed with his friend regarding the disposition of a number of items. However, I am not

prepared to award the tenant any money from the landlord arising from an agreement the landlord was not privy to. I address this issue further in damages, below.

Issue 2: The doorbell/camera

Tenant's position

16. The tenant installed a doorbell/camera security system on the front door of the premises. It was valued at \$498.00. The tenant says that due to the short notice he was unable to uninstall it and wishes to be reimbursed.

Landlord's position

17. The landlord says he sees the system as more liability than value, as other tenants care little and, as landlord, he would be responsible for maintenance on the system.

Analysis

18. As discussed under Issue 1, the tenant was the person who proposed the move out date. He knew it was coming and consented to it. He ought to have all his possessions removed by the move out date. His claim fails.

Issue 3: Damages

Background

19. The landlord claims for \$2000 worth of damages. In support of this, a series of pictures were provided. These were labeled collectively as LL#1. Photos 1-2 show some small cracks in the building's siding. 3-7 show a moderate amount of garbage, mostly food and drink in their original containers. Photo 8 shows damage to the J-channel trim underneath an exterior door. Photo 9 shows a thumbnail sized chip in the baseboard of an interior wall, exposing unfinished wood. Photo 10 shows a chip taken out of a corner wall and a black streak on the wall. Photos 11 and 27 show more black streaks, now on ceilings. Photos 12 and 13 show chips taken out of door frames. Photo 14 shows a mildly dirty bathroom. Photos 15, 29, and 30 show a bright pink wall with paint along the top of the white baseboard below and some flecks on pink paint on the floor. Photo 17 shows a stairway banister with some of the finish removed in streaks, as if by a strong adhesive tape. Photos 20, 21, 22, and 25 show the pink walls of the child's bedroom in detail. In many places the wall is discolored. Photo 19 shows a wall where some damage was plastered over but not repainted. Photos 23 and 24 show visible spots of discoloration on two interior walls, which the landlord suggested were the result of damage the tenant attempted to repair with spot painting. Photo 28 shows some dirt or insulation on the floor of a closet.
20. LL#1 photos 16, 18, and 26 show small holes in the ceiling. The landlord said these are different rooms, whereas the tenant said they were all in the pink room, which was where his child resided, as they were used to suspend a teddy bear hammock. I take the tenant to be correct. The bright pink walls are visible in photos 16 and 26, and in photo 18 the white ceiling reveals pink bounce lighting.

21. No pictures were provided by the landlord of the state of the apartment before the tenancy. The tenant did provide some evidence. T#2 shows that the chip from LL#1 Photo 9, above, was already present at the time of move in. The landlord said that the unit had been freshly painted in all rooms. The tenant said that the unit did look good when they moved in, but that it had not been completely repainted, and as they were viewing it the landlord was carrying paint and doing touch-ups.

Analysis

22. The tenant candidly admitted fault regarding several of the damages allegations. His recollection and the recollection of his witness are consistent with each other and all other evidence put before me. The landlord's recollection showed minor inconsistencies with the photographic evidence put before me, though it is well known that minor inconsistencies are common to eyewitness testimony due to the limitations of human memory. The onus of proof in a damages claim is on the landlord, and the landlord did not supply evidence of the unit's state prior to the tenant's move in. For these reasons and based on my observation of the parties at the hearing, I do not accept the landlord's account over the tenant's regarding the state of the unit prior to the tenancy.
23. The tenant submitted that he had negotiated with his friend on a number of matters to accommodate the transfer. For instance, the bare plaster in LL#1 photo 19 was where the tenant had installed a wall-mounted tv stand, with the landlord's permission on the condition that he restore the wall when his tenancy ended. His friend had agreed to keep the tv stand, so he felt there was no requirement to restore the wall to its original condition until he was informed that the landlord would not be renting to his friend. If he had been informed earlier that his friend would not be the next tenant, he would have had time to finish painting it. However, the tenant's obligations at law were owed to the landlord. An agreement with a third party cannot alter those obligations. The fact that the next tenant would be agreeable to the condition of the premises is not relevant to these obligations. Another party cannot waive the landlord's rights. Since the tenant did not notify the landlord of these agreements, let alone receive his permission, this is not a defense.
24. The landlord claimed for damages for cracks in the siding in the amount of \$250.00. I do not find he has established on a balance of probabilities that these cracks are the fault of the tenant, and therefore the claim fails.
25. The landlord claimed for the cost of the garbage to be removed in the amount of \$300.00 dollars. The tenant did have an obligation to clean the premises before leaving. The amount of garbage is modest. I value the work done cleaning the house at \$45.00 and the landlord's claim succeeds in this amount.
26. The landlord claimed for the cost of restoring the baseboards and moulding in the amount of \$175.00. The tenant has admitted he caused some damage to the moulding in the room where his daughter was. Outside of that room I do not find the damage to the baseboard to be the fault of the tenant on a balance of probabilities. The landlord's claim partially succeeds in the amount of \$75.00.

27. The landlord claimed for damage to the ceiling in the amount of \$175.00. The tenant admitted fault to the four holes placed in the ceiling where his daughter resided. The tenant claimed no knowledge of the black streaks on the ceilings. Given the landlord's uncontradicted testimony that the streaks were not present before and the tenant's admission that on move in the general condition of the apartment was good, I find this claim to be made out in full. The landlord's claim succeeds in the amount of \$175.00.
28. The landlord claimed for the cost of cleaning the house at \$276.00. He claims cleaning the premises took twelve hours and asks to be compensated at a rate of \$23.00/hr. The tenant claimed the house was largely clean at the time he left and offered a video (T#3). of a brief walkthrough as additional evidence. Judging from the evidence shown by both parties I do not accept the premises would reasonably take twelve hours to clean. I find the landlord's claim partially succeeds in the amount of \$69.00.
29. The landlord claimed for \$40.00 in cleaning supplies. No receipts were provided. No specific supplies were mentioned at the hearing. In the absence of evidence of particulars the landlord's claim fails.
30. The landlord claimed for \$100.00 in compensation for the damaged J-channel trim. I am not satisfied on a balance of probabilities that this was due to the tenant's actions and the claim therefore fails.
31. The landlord claims for \$170.00 for the finish stripped off of the stairway banister. Based on the evidence presented I find on a balance of probabilities that this damage was the fault of the tenant. The landlord's claim succeeds for the full amount of \$170.00.
32. The landlord claimed for \$100.00 for painting over the plaster where the tv stand had previously been mounted. As noted above, the tenant admitted to the facts. The landlord's claim succeeds for the full amount of \$100.00.
33. The landlord claimed for \$200 to restore the paint in the child's room. The tenant admitted fault. The landlord's claim succeeds for the full amount of \$200.00.
34. The landlord claimed for \$200 to restore the paint in the areas with the discolored spots shown in LL#1 photos 23 and 24 and also visible briefly in T#3. Based on the evidence presented I find on a balance of probabilities that this damage was the fault of the tenant. The landlord's claim succeeds for the full amount of \$200.00.
35. The landlord claimed for \$200 based on water damage to the downstairs tenant's apartment. The landlord had no direct evidence of the tenant being at fault and could only offer speculation. The tenant submitted that the bathroom sink's overflow had not been properly connected and this was the source of the leak. I am not satisfied on a balance of probabilities that the damage was due to the tenant's actions and the claim therefore fails.
36. The landlord's claim for damages therefore succeeds in the amount of \$1,034.00.

Issue 4: Lost rent

Landlord's position

37. The landlord claimed for \$322.21 in rent owed. This is a claim not for rent unpaid by the tenant, but for rent that he could not charge to the next tenant because of the time he spent restoring the property, the first week of September.

Tenant's position

38. The tenant maintained that he had made every effort to fix the issues before moving out, but the short timeline precluded this.

Analysis

39. The landlord repeated multiple times during the hearing that he would never allow any tenant use of the property until he received confirmation that they had the utilities transferred into their name. He also made reference to LL#2, which shows that he received confirmation that the utilities were transferred to the new tenant's name on 07-September-2023. By his own word the landlord would not have allowed the tenant the use of the property before this date. He is not entitled under the *RTA 2018* to charge rent while not allowing the tenant the use of the property. He therefore suffered no loss based on the tenant's actions, and the claim fails.

Issue 5: Security Deposit

40. The landlord is owed a total sum of \$1034.00. He is entitled to deduct the security deposit from this sum rather than return it to the tenant.
41. The landlord and the tenant both asked for the \$20.00 hearing fee as well as compensation for their time at the hearing. Since the landlord's claim succeeded in part, he is entitled to the \$20.00 application fee. This tribunal awards only costs incurred, not opportunity costs, and so no party is entitled to further compensation for hearing expenses.

Decision

42. The tenant owes the landlord \$1,034.00 in damages and the \$20.00 application fee for a total of \$1054.00.
43. As there are monies owed and the appropriate application has been made, the security deposit may be applied against this sum.
44. The tenant's claim is dismissed.

Summary of decision

45. The tenant shall pay the landlord \$54.00 as follows:

Damages	\$1034.00
Hearing expenses	\$20.00
Less Security deposit	-\$1000.00
Total	\$54.00

10-January-2024

Date


Seren Cahill
Residential Tenancies Office