

## Residential Tenancies Tribunal

Application 2023-1120-NL  
2024-0068-NL

Decision 23-1120-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 31-January-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also attended via teleconference.

### Issues before the Tribunal

4. Should the tenants' claim for compensation for inconvenience be granted?
5. Should the landlord's claim for damages be granted?
6. What is the proper disposition of the security deposit?

### 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*).

### Issue 1: Tenant's Inconvenience

#### Tenant's Position

8. The tenants claimed for \$5671.93 in compensation for inconvenience and/or refund of rent paid. This was separated into four separate amounts: \$1083.84 for the impact of construction on their ability to peacefully enjoy the use of the premises and provide patient care without interruption, \$1354.80 for the impact of the installation of a sprinkler system on same, \$2552.03 for emotional distress and sequelae of same as a result of the landlord withholding the damage deposit and promised compensation for renovations, and \$681.26 financial damages suffered as a result of same.

### Landlord's Position

9. The landlord challenged the jurisdiction of this tribunal to award damages for emotional distress. He further submitted that the claims were unfounded.

### **Analysis**

10. The heart of the tenants' complaint was that despite asking the landlord for a schedule of when contractors would be working on the house, they never received same. While the tenants said some of the disruption this caused them was the result of noise, it became clear that the main issue was that one or both of the tenants were, for personal and medical reasons, susceptible to significant anxiety triggered by the presence of men whom they did not know. I accept that these circumstances caused the tenants hardship.
11. A landlord does not have a duty to disclose the schedule of maintenance work under the *Act*. This tribunal only has the authority to compensate for damages caused by violations of the *Act*. In this instance, the tenants testified that their claim for inconvenience was on the basis of medical disability, which falls outside the scope of this tribunal's jurisdiction.
12. The remainder of the tenants' claim is \$681.26 for financial damages as a result of the security deposit being withheld. The tenants could not recall the exact calculation used to determine this figure but testified that it was the amount of interest suffered on monthly credit card payments as a direct result of the security deposit and allegedly promised compensation not being paid to them.
13. Part of the tenants' claim involves what they say is a promise via email by the landlord to refund a portion of October's rent (see T#1, page 1) as a result of the inconvenience of construction being done on the front door of the house. The landlord testified that he intended for this to be conditional on the need to interfere with the doorway itself, compromising the house's security. As this was not necessary, he felt the compensation was also not necessary. The landlord did not specify this in the email.
14. A promise is not a contract. It lacks the essential element of consideration, i.e., something of value exchanged for the good or service promised. It is therefore not enforceable at law.
15. The tenants did not produce documentary evidence of the interest accrued, and their *viva voce* evidence was incomplete. The onus is always on the applicant to provide sufficient evidence to ground their claim. This claim is therefore dismissed on evidentiary grounds.

### **Issue 2: Landlord's Damages**

#### Landlord's Position

16. The landlord claims for \$2330.25 in damages, consisting of \$1086.75 in cleaning costs due to the premises being left in an unclean state at move out, \$693.50 in damages caused by a leak which went unaddressed in the furnace room, \$150.00 in garbage

removal, and \$400 for repairs to the holes in the wall left by curtain rods installed in the living room.

### Tenant's Position

17. The tenants acknowledge they left the house in an unclean state and some cleaning costs are appropriate, but they submit that the landlord's number is in excess of what is reasonable. They further add that they had offered to have their cleaners revisit the premises after the landlord had retaken possession, but he had refused. They say they had no knowledge of the water leak until move out. They agree that \$150.00 is a reasonable sum for garbage removal and that they owe this to the landlord. The tenants suggest that \$400 for the repair of the holes caused by the curtain rod is excessive and suggest \$100 as an alternative.

### **Analysis**

18. The landlord claims for \$1086.75 in cleaning costs. This total is calculated from 27 hours at a rate of \$35/hour plus the 15% HST charge. A receipt was provided (LL#4 page 11, Exhibit E). Pictures were provided of the state of the home at the time of move out (LL#4 pages 12-16, Exhibit F). These pictures show some mold growth about the base of a shower, some dust on hardwood floors, some dust accumulated on a pair of cabinet doors, food particles on the side of a refrigerator, dust on some tiles, some streaking on the outside of a stainless steel refrigerator, some dirt above the water line in a toilet bowl, a second toilet bowl with some staining below the water line, and a dryer lint trap partially covered in lint.
19. The tenants submit that 27 hours is well in excess of what these pictures justify. The landlord submits that these pictures are merely some examples of the state of the home, which is over 500ft<sup>2</sup>. The landlord correctly made the point that after he had regained possession, he was under no obligation to allow the tenants one more chance to clean and that to do so would be an unnecessary complication.
20. I agree with the tenants that the landlord has not met the onus of proving on a balance of probabilities the need for 27 person hours of cleaning. I estimate that the work could have been done in three hours at most.
21. The landlord claims for \$693.50 in regard to a water leak that went unaddressed for some time and lead to further damage. A receipt was submitted (LL#4 page 17, Exhibit G). One of the tenants testified that she did not use that room of the house at all, whereas the other testified that she used it for storage only. Both testified that they were unaware of the leak.
22. In order for tenants to be liable for damages of this nature it must have been caused by a willful or negligent act. There is no suggestion here the damage was willful. For it to be negligent, it must have been the result of a breach of duty. Tenants have a duty to report these types of issues as soon as they are discovered. They do not, however, have a duty to seek out such issues. The tenants testify, and I accept, that they were not aware of the leak until move out. To the extent to which there was any delay in reporting at this point, there was no suggestion that said delay caused any portion of the damage.

23. The landlord provided a receipt for the cost of restoring the damage from the curtain rods (LL#4 page 9, Exhibit C). However, this receipt omits the charge levied. In the absence of a complete receipt, I agree with the tenant that a charge of \$100 is appropriate.

### Decision

24. The tenant's claim for inconvenience fails.
25. The landlord's claim for damages succeeds in part for a total of \$355.
26. As the landlord is owed moneys and the proper application has been made, they are entitled to apply the security deposit against the amount owed. The remainder must be returned to the tenant. The security deposit in this case was \$3150.
27. As the landlord's claim succeeded in part, he is entitled to have his hearing costs covered. In this case the only cost was- the \$20 application fee.

### Summary of Decision

28. The landlord shall pay to the tenant \$2775 as follows:

Security deposit.....	\$3150
Less damages.....	-\$355
Less application fee.....	-\$20
Total.....	\$2775

19-March-2024

Date

  
Seren Cahill  
Residential Tenancies Office