

Residential Tenancies Tribunal

Application 2023-1127-NL

Decision 23-1227-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-February-2024 at 9:01 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The landlord originally included in her application a claim for \$1850 in unpaid rent. However, she has successfully recovered this amount and therefore the application is hereby amended to omit this claim.

Issues before the Tribunal

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: Damages

Landlord's Position

8. The landlord claims for \$2799.93 of damages, consisting of \$2749.93 for damage as a result of water damage allegedly caused by the tenant's negligence in failing to report a leak under the kitchen sink. This is not the total cost of repairing the damage but rather the amount the landlord had to pay to her insurance company, a \$2000 deductible, and

a \$749.93 overage (HST included) needed to replace the kitchen cabinet and countertop. The remaining \$50 is for blinds which she alleges the tenant damaged.

Tenant's Position

9. The tenant denies that she was negligent and says the landlord knew about the leaking tap the day after the leak was discovered. She also submitted that the damage to the flooring was simple wear and tear combined with high humidity in the apartment, that the damage to the sink was at least partially due to its inferior construction material, and that the leak was a result of the tap being an inappropriate model for the sink configuration or else was improperly installed.

Analysis

10. The bulk of the landlord's claim turns on the tenant being liable for a water leak below the kitchen sink. A tenant can only be held liable if the damage was the result of a willful or negligent act. In this case, the landlord submits that the tenant acted negligently by failing to report the leak when it first began. Had it been reported, the landlord says, she would have fixed the leak before it caused the damage. LL#12 is a letter from the contractor engaged by the landlord's insurance company, who confirm on page 2 that their investigation resulted in the conclusion that the damage was caused by water leaking from the kitchen sink.
11. Sometime in October, the tenant had advised the landlord that she would be looking to end her tenancy. The landlord testified that she thought it would be time to repaint the apartment before taking a new tenant. On or about 27-October-2023 the landlord entered the apartment with a painter to assess the nature of the painting work required, having advised the tenant of her intent to do so the day before. At this point, she noticed what she believed to be water damage on the flooring. This led her to check under the kitchen sink, where she found further evidence of water damage, and surmised this was the source of the leak. It was at this point she decided to contact her insurance company.
12. In May of 2021 the landlord had scheduled an inspection of the apartment. She discovered that the tenant had covered the kitchen tap in duct tape. She testified that the tenant told her that the kitchen taps had been leaking for about a month, and the taps were wrapped in duct tape to prevent the leak. The tenant denies this, and says the leak began the very night before. Regardless, the landlord testified that there was no water damage she could see at this time. She had the taps fixed shortly thereafter.
13. The tenant says she was "constantly checking" underneath the kitchen sink. The tenant has a duty to report damage they observe that needs to be addressed. The tenant said she reported anything she saw. LL#8(3) is a photo the landlord provided of the cabinet beneath the sink. Significant damage is visible. There is discoloration and/or mold in patterns typical of water damage along the back of the cabinet. The tenant says she never noticed this. She testified, in reference to it, "that looks new to me, to be honest."
14. The tenant suggested the water damage might have been caused "by the previous leak, the one I reported." The only other leak of the kitchen tap mentioned at the hearing was

the May 2021 duct tape incident, as covered in paragraph 12 above. At one point during her testimony, the tenant admitted she had not reported that leak, but that the landlord had found out about it immediately.

15. Another notable result of the water damage is that the baseboard of the cabinet had become bowed in the center, creating a noticeable gap between it and the bottom of the backboard. The tenant said she did not recall it being like this at any point. Two black lines are clearly visible along the base of the cabinet. I asked the tenant if she remembered them being there. She did not recall. The landlord testified that these lines were mold. The tenant said she did not recall any mold issues. There is a crack in the baseboard. The tenant said she thought this, too, was from the previous leak.
16. I find the tenant's testimony suspect. She contradicts herself. Her memory seems selective. She made spurious arguments, such as using the landlord leaving a hose on at one point as evidence that the apartment had a history of plumbing issues, but quickly walked them back when challenged. She submitted T#1, an annotated version of pictures provided by the landlord. On page 14, over a picture of the cabinet beneath the sink, she says

"This was a supposed fix leak by a family friend, I am unsure of weather [sic] or not the family friend was a plumber or not. I reported the leak, same family friend came over to fix it, and I was it was fixed. I still checked for it to be dry underneath after that just to make sure there were no leaks and there was no obvious leaks."

She made no mention of the family friend during her testimony, and instead said she reported all damage to the landlord. At another point in her testimony, she admitted that she had not reported the leak to the landlord because they were aware of it the day after it happened.

17. Visual examination of the exhibits provided by then landlord, particularly LL#8, makes it clear that the water damage must have occurred over an extended period of time. The accumulation of enough water to crack the baseboard, the growth of mold, and the layered patterns of discoloration all support this conclusion.
18. The landlord provided a document (LL#9) which is a rental premises condition report signed by the landlord and the tenant. It lists the kitchen cabinets and sink as in good condition.
19. Considering the evidence in its totality, I am satisfied on a balance of probabilities that the tenant knew about the leak and failed to report it in a timely manner, and that this was the cause of the damage to the cabinet beneath the kitchen sink.
20. The tenant questioned the necessity of replacing the cabinet with a new custom order rather than repairing it. The landlord made the point that her insurance would not have covered a replacement if repair was a feasible option. Visual examination of LL#8 makes it clear that the damage was too extensive for repair to be a reasonable option. A custom order was necessary in order to match the replacement cabinet to the existing cabinets that made up the rest of the kitchen. LL#13 page 2, correspondence from the cabinet salesperson, shows that the landlord selected the cheapest available option.

21. In addition to the damage to the cabinets, there was damage to the counter above. LL#3 shows that underneath the top countertop layer, the wood had rotted considerably in the area around the tap, making replacement necessary. The tenant suggested that LL#3 could have been staged by the landlord. I have no reason to suspect the landlord has been less than truthful. Her testimony was cogent and consistent, with no missing pieces. She did not contradict herself or documentary evidence. She answered all questions in a forthright manner.
22. The tenant argued that LL#3 shows that this part of the countertop was made out of an inferior building material, particle board, which is weak and vulnerable to moisture. Particle board is not a strong material but is suitable for this type of indoor covered use. I note that the rotting is clearly centered on the tap. I am satisfied on a balance of probabilities that the damage to the sink is a direct result of the tenant's negligence.
23. LL#13 page 3, correspondence from the contractor, as well as the landlord's testimony, give the final cost of restoring the cabinets and countertop as \$7304.12. Had the landlord not been able to mitigate this cost through her insurance, the tenant would have been liable for the full amount. As it is, her insurance covered all but \$2749.93. I find the tenant responsible for this cost.
24. Given that the tenant's liability for the amount claimed for the landlord's deductible and overage have already been established, it is not necessary or useful for me to determine whether or not she would have also been liable for the alleged water damage to the laminate flooring. I decline to do so.
25. The landlord claims for \$50 for the replacement of blinds which she says were damaged by the tenant. LL#5(2) shows this damage. The tenant testified that the blinds were damaged when she moved in, and submitted a photo in support of this, T#3 page 39. The landlord testified that this photo was taken a month after the tenant moved in, and thus it is not useful as evidence that the damage was not done by the tenant. I note that the usefulness of the photo as evidence is undermined by the fact that the tenant's cat is clearly visible directly behind the blinds at the spot where they are damaged. With that said, the onus is on the landlord to establish the tenant's liability on a balance of probabilities. No photo was provided of the state of the blinds before the tenant moved in.
26. The landlord has failed to establish on a balance of probabilities that the damage to the blinds was caused by the tenant's willful act or negligence. The kitchen blinds were not specifically addressed in LL#9, and the damage shown is small and might have been overlooked. This is distinguishable from the extensive and obvious water damage.

Decision

27. The landlord's claim for damages succeeds in part for the amount of \$2749.93.
28. As the landlord's claim succeeded in part, she is entitled to have her hearing costs covered. In this case, those costs are limited to the \$20 application fee.

29. As the tenant owes the landlord moneys, and the proper application has been made, the landlord may apply the security deposit against the amount owed.

Summary of Decision

30. The tenant shall pay to the landlord \$2169.93 as follows:

Damages.....	\$2749.93
Hearing costs.....	\$20.00
Less Security Deposit..-(\$600.00)	
Total.....	\$2169.93

16-February-2024

Date


Seren Cahill
Residential Tenancies Office