

Residential Tenancies Tribunal

Application 2023-1133-NL
2024-0011-NL

Decision 23-1133-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 9-January-2024.

Preliminary Matters

2. The applicant, [REDACTED] hereinafter referred to as the tenant, attended by teleconference.
3. [REDACTED] attended by teleconference on behalf of the respondent, [REDACTED] hereinafter referred to as the landlord.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issues

5. Should the landlord's request for damages be granted?
6. What is the disposition of the security deposit?

Issue 1: Damages

Landlord's Position

7. The landlord claims for \$692.75 in damages resulting from two fixtures which needed replacing, a kitchen ceiling fan/light fixture and a hallway light fixture. The landlord claims that the tenant was negligent in not reporting the damage to the landlord.

Tenant's Position

8. The tenant submits that the ceiling fan broke on its own, and the hallway light fixture was broken on move in. She says she did not report the damage as the hallway light was functional and the ceiling fan was not a priority for her. She was under stress during the tenancy and so did not bother to report the damage through the app the landlord uses for that purpose, partially because several of her reports had gone unaddressed.

Analysis

9. The hallway light fixture has a metal black circle at the bottom in the center of a dome of frosted glass. The landlord provided a picture (LL#2) showing that a small ring of the glass surrounding the black tip is damaged. The tenant testified that the light fixture had this damage when she moved in, and provided a picture she took at that time (T#1). T#1 shows the same damage as LL#2. The landlord also provided a picture of the light fixture at move in (LL#3), but the angle and resolution of the photo prevent me from determining whether or not the crack is present.
10. The landlord questioned the tenant as to why she did not report the damaged hallway fixture. With respect, this is irrelevant. A tenant cannot be held responsible for damage that existed before the tenancy began.
11. The tenant testified that the damage to the fan was occurred while the kitchen was unoccupied. The fan had been running at its highest speed setting when she heard a crash from elsewhere in the apartment. When she returned, she found that one of the blades had cracked off. She turned off the fan, placed the fallen blade somewhere safe, and took no further action. The landlord submits that the tenant is responsible to pay for the damage because she did not report it when it first occurred.
12. A tenant is responsible for any damage which is a result of their willful action or negligence. The tenant's uncontradicted testimony stated the damage was not directly caused by any action she took, and so was not willful. For the damage to be the result of negligence, there must be causation. In other words, but for the tenant's wrongful action, the landlord would not be faced with this cost. This is sometimes called the "but for" test.
13. The landlord submits that the tenant's wrongful action was a failure to report. I asked the landlord if, had the tenant reported the damage immediately, would the cost to the landlord be any different. The answer was no. This tells us that the tenant's wrongful action was not the proximate cause of the injury to the landlord. In other words, but for the tenant's wrongful act, the results would have been the same. Without causation, the landlord's claim cannot succeed.

Decision

14. The security deposit in this case was \$1275.00. \$582.25 of the deposit has already been returned to the tenant. The remaining balance is therefore \$692.75.

15. As the landlord's claim was unsuccessful, no moneys are owed to them by the tenant. The remainder of the security deposit must be returned to the tenant.
16. As the tenant's claim for the return of the security deposit was successful, they are entitled to costs in the amount of the \$20.00 application fee.

Summary of Decision

17. The landlord shall pay to the tenant \$712.75 as follows:

Security Deposit.....	\$692.75
Application Fee.....	\$20.00
Total.....	\$712.75

23-January-2024

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office