

Residential Tenancies Tribunal

Application 2023-1183-NL
Application 2024-0097-NL

Decision 23-1183-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:10 a.m. on 22-February-2024.
2. The applicant, [REDACTED] also known as [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.

Preliminary Matters

4. There was a written term agreement that commenced on 15-September-2020. The tenant vacated the premises on 1-December-2023. Rent was \$1000.00 per month due on the first of each month. A security deposit of \$600.00 was paid on 15-September-2020 and \$500.00 was refunded to the tenant leaving a balance of \$100.00 in the landlord's possession.
5. The tenant's application is amended to decrease the amount of security deposit refunded from \$600.00 as per application to \$100.00 as the landlord refunded \$500.00 as stated above.

Issues before the Tribunal

6. The tenant is seeking:
 - Refund of security deposit \$100.00

The landlord is seeking:

- Compensation for damages \$149.50
- Security deposit applied against monies owed \$100.00
- Hearing expenses \$20.00

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*.
8. Also, relevant and considered in this decision are the following sections of the

9. *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 \$149.50

Relevant Submission

10. The landlord testified that there were damages to the rental unit which he noticed after the tenant vacated the unit. The landlord submitted a list of the damages to support his claim. See below as follows (LL#1):

Repairs	Invoice	Labour hour rate	
Window	103.50	23.00	had to let the guy in and wait until he was done and locked up
towel rack		23.00	pick up parts and place back on the wall
Application fee	20.00		
Total		169.50	
rent deposit		100.00	
Bal		69.50	

Landlord's Position

11. The landlord testified that the above listed items have been identified as damages 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 identified after the tenant vacated. The landlord's position on each item is as follows:

Item # 1: Window Crank Broken (\$126.50) - The landlord testified that the handle or crank used to open the window was removed from the base and it no longer fit into the base securely. The landlord stated that he hired someone to come in and replace the crank and the landlord testified that he was charged \$103.50 for the work to be completed. The landlord stated that he is also claiming 1 hour of his time at \$23.00 to be present at the premises to let the worker inside and to wait until the work was completed to lock up the unit. The landlord submitted a copy of the receipt from the worker who replaced the crank (LL#2) to support his claim.

Item # 2: Parts and Labor to replace towel rack (\$23.00) - The landlord testified that the screw that held the towel rack on the wall was loose causing the towel rack to hang from the wall. The landlord stated that he had to replace the screw and re-adjust the towel rack. The landlord submitted a copy of a photograph to show the damage to the wall (LL#3). The landlord is seeking the cost of materials and labor to fix the towel rack in the amount of \$23.00.

Tenant's Position

12. The tenant testified that she left the unit in good condition. The tenant's position on each item is as follows:
13. Item # 1: Window Crank Broken (\$126.50) - The tenant testified that the window crank had a missing pin, and it was missing when she moved in. The tenant stated that the window worked perfectly when the crank was placed into the base. The tenant testified that without the pin the crank would not securely stay in the base but that did not prevent her from using the crank. The tenant stated that she would put the crank into the base whenever she wanted to open and close the window and then she would place the crank on the windowsill next to the base when not in use. The tenant stated that she never made the landlord aware of the problem as the missing pin did not compromise the operation of the window. The tenant stated that she was not responsible for any damage to the window crank and submitted a photograph to show the condition of the window crank and base to show that there was no physical damage caused to it (TT#1).

Item # 2: Parts and Labor to replace towel rack (\$23.00) - The tenant disputed that she was responsible for causing any damage to the towel rack and stated that the screw that held the towel rack on the wall was loose causing the towel rack to hang from the wall. The tenant stated that she was in the unit for 3 years and the screw came loose in the wall due to *wear and tear*. The tenant stated that the screw just needed to be tightened as towel racks become loose overtime.

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 his application. Each item is analyzed separately based on the landlord's and the tenant's testimony and exhibits submitted into evidence. See below:
16. Item # 1: Window Crank Broken (\$126.50) - The landlord testified that the window crank was removed from the base and it no longer fit securely into the base. The landlord stated that the house had new windows installed prior to the tenancy and the crank would not of have been broken when the tenant moved in. The tenant on the other hand testified that the crank was missing a pin preventing it from staying in the base and it was like that from the time she moved in. I accept that the tenant did not make the landlord aware of the issue with the crank as it did not compromise the operation of the window. The landlord was unable to show that the tenant willfully removed the pin from the crank or caused any damage to the crank or the base, and as such I find that the tenant did not willfully break the window crank nor was she negligent in any way causing the pin to fall out of the crank. For those reasons, I find that the tenant is not responsible for the cost to replace the window crank or the

landlord's time to be present when the work was completed.

17. Item # 2: Parts and Labor to replace towel rack (\$23.00) - The landlord testified that the screw that held the towel rack on the wall was loose causing the towel rack to hang from the wall. The tenant disputes that she did anything to cause the screw in the wall to become loose and stated that most towel racks will loosen up over time. I find that the tenant was not negligent in causing the towel rack to hang of the wall and I agree with the tenant that most towel racks will loosen up over time. I find that the damage to the towel rack falls under *wear and tear* and as such, I find that the tenant is not responsible for the parts or labor associated with readjusting the towel rack.

18. In review of the items analyzed above, I find that the tenant is not responsible for any damages as sought by the landlord.

Decision

19. The landlord's claim for compensation for damages does not succeed.

Item # 3: Hearing Expenses \$20.00

20. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord provided a copy of the application receipt (LL#4).

21. 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 is not successful, and no amount has been awarded, the filing fee will not be awarded.

22. I find that the tenant is not responsible for the hearing expenses claimed.

Decision

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

Issue # 4: Refund of Security Deposit \$100.00 Security Deposit applied against monies owed \$100.00

Analysis

24. The landlord testified that a security deposit of \$600.00 was paid in September 2020 and \$500.00 has been refunded. The tenant is seeking to have the remaining \$100.00 refunded, and the landlord is seeking to have the \$100.00 applied against monies owing if successful.

25. 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.

26. I find that the landlord has not been successful in his claim for damages and fees (see paragraphs 19 and 23) and as such, the security deposit shall be refunded to the tenant.

Decision

- 27. The landlord's claim to have the security deposit applied against monies owed does not succeed.
- 28. The tenant's claim for a refund of the security deposit succeeds.

Summary of Decision

- 29. The tenant's claim for refund of security deposit succeeds.
- 30. The landlord's claim for damages and hearing fees does not succeed.
- 31. The landlord shall pay the tenant \$100.15 as follows:

Refund of security deposit \$100.00
Interest applied to security deposit 0.15

Total \$100.15

March 6, 2024

Date

Pamela Pennell
Residential Tenancies Office