

Residential Tenancies Tribunal

Application 2023-1184-NL

Decision 23-1184-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 11-March-2024.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing, electronically, on 20-February-2024. The appropriate supporting documents were also provided (LL#2). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlord's claim for unpaid rent be granted?
6. Should the landlord's claim for damages be granted?

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: Rent

8. The landlord claims for one months rent in the amount of \$1400 for the month of November. The landlord testified that the tenant moved out on 21-November-2023. Normally, this tribunal would not grant rent for days on which the tenant had not been residing at the premises. However, in this case I am satisfied that the tenants failure to meet her obligation to leave the property both clean and in a good state of repair (see below) resulted in it being impossible for the landlord to take on a new tenant in a timely manner. Accordingly, I find that the tenant owes the landlord the full amount of \$1400 for the month of November.

Issue 2: Damages

9. The landlord made a claim for \$14944.00 in damages. To succeed, the landlord must prove on a balance of probabilities that there was damage to the property, that the damage was the result of the willful act or negligence of the tenant, the cost of repair or replacement, and as per this tribunal's policies, must provide enough documentary evidence to reflect the actual costs incurred or expected.
10. The landlord provided text messages between him and the tenant (LL#10-13). He says that in these messages the tenant agreed to pay whatever damages are present when they move out. It was suggested that this removed the need to demonstrate the necessity of the repairs and go through the subsequent invoice point by point. This is incorrect. A tenant's acknowledgement of some liability is not and cannot be a blank cheque. The onus is always on the claimant to establish the basis of their claim on a balance of probabilities.
11. In LL#12 the landlord does give the tenant an invoice for \$4400. Had the tenant replied in a way that unambiguously acknowledged they owed the \$4400, that could be sufficient to demonstrate the amount was owed. However, this does not happen. The tenant's reply is "hey my brother is in Labrador working until October 20th. He won't agree to just handing over a cheque. He wants you to meet him at the house in November this week before I leave and go through the house and he said he will give you one cheque for whatever I owe." This is not an acknowledgement of liability.
12. The landlord acknowledged he did not personally complete the work which cost \$4400. He also provided no invoice or quote from the person he hired to complete it. This portion of the claim therefore fails on the basis of there being insufficient evidence.
13. An invoice (LL#3) was provided from a damage restoration company the landlord hired. The first item on the invoice is \$1624.28 for cleaning, as the premises were left in an unclean state. The landlord provided photo evidence of the amount of cleaning that needed to be done (LL#4-6). The apartment does not seem to contain a sufficient amount of dirt to merit such a large cleaning cost. However, LL#4 page 1 shows that the exterior of the property had garbage scattered about it. On that basis I find the amount to be reasonable and the necessity of the cost justified.

14. The second item on the invoice is \$404.96 for “general demolition,” meaning garbage disposal. The landlord highlighted that the location of the property is such that this requires a not insignificant amount of driving. Based on the invoice, the pictures provided, and the landlord’s testimony I find that this portion of the claim is justified on a balance of probabilities.
15. The third item on the invoice is \$2535.25 for the repair of damaged doors. The landlord provided photos of three damaged doors (LL#4 photos 4 and 10, LL#7 page 1, and LL#8 pages 3-4). The damage shown is significant and justifies the expenditure.
16. The fourth item on the invoice is \$743.20 for carpentry and trimwork. The photo evidence shows the need for this. In particular, LL#9 shows that a sizable portion of the patio was torn to pieces. There were also numerous pictures throughout showing minor damage to moulding. This justifies the expenditure.
17. The fifth and sixth items are \$87.86 for “finish hardware” and \$56.32 for “framing & rough carpentry.” I accept that these costs emerged from the same circumstances as those listed in the previous paragraph.
18. The seventh, eighth, and ninth items listed on the invoice are \$23.76 for “glass, grazing, & storefronts,” \$31.80 for insulation, and \$53.80 for moisture protection. It is unclear based on the evidence provided what damaged caused the need for these items. There was no photographic or other evidence provided that suggested that glasswork needed to be done, nor any damage in exterior walls that would extend to the insulation and weather protection. This portion of the claim therefore fails on evidentiary grounds.
19. The tenth item on the invoice is \$2411.43 for painting. Given the photographic evidence provided, particularly LL#7, this cost is justified.
20. LL#3 is unusual in one respect. After listing all ten items under the heading O&P, it combines them into a subtotal labeled O&P items subtotal. After this, it lists two additional costs for Overhead and Profit separately and adds them to the “O&P items Subtotal” and the HST to calculate the total charged. O&P is a commonly used industry term meaning Overhead and Profit. It is unclear why there should be additional overhead and profit charges in addition to the specific overhead and profit for each individual item. When I questioned the landlord on the details of the invoice, he remarked that he was not a contractor. It was clear he accepted the total charge at face value. Nevertheless, the applicant is responsible for the presentation of their own evidence. If he could not personally speak to the invoice, it may have been appropriate to subpoena a person from the service provider to speak briefly to it.
21. I will not order that the tenant is financially responsible for a charge I do not understand. Therefore, in order to calculate the final amount of damages owed I will calculate the appropriate HST charge to the portions of the claim I have found were made out. In the present case the subtotal adds to \$7863.30. Multiplying this number by 1.15 to account for 15% HST results in a total of \$9042.80.

Decision

22. The tenant shall pay to the landlord \$1400.00 in unpaid rent.

23. The tenant shall pay to the landlord \$9042.80 in damages.

Summary of Decision

24. The tenant shall pay to the landlord \$10,442.80 as follows:

Rent..... \$1400.00

Damages..... \$9042.80

Total..... \$10442.80

4-April-2024

Date


Seren Cahill
Residential Tenancies Office