

Residential Tenancies Tribunal

Application 2023-1187-NL &
2023-1189-NL

Decision 23-1187-00 &
23-1189-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 1:46 PM on 17 January 2024 via teleconference. The hearing was to adjudicate application 2023-1187-NL and counterclaim 2023-1189-NL.
2. [REDACTED], hereinafter referred to as "landlord1", attended the hearing. [REDACTED] [REDACTED], hereinafter referred to as "landlord2", did not attend the hearing. Landlord1 did not call any witnesses.
3. [REDACTED], hereinafter referred to as "tenant1", attended the hearing. [REDACTED] [REDACTED], hereinafter referred to as "tenant2", attended the hearing. The tenants did not call any witnesses.

Preliminary Matters

4. The landlords submitted an affidavit of service indicating on 22 December 2023, tenant1 was sent an Application for Dispute Resolution via text message at [REDACTED] and tenant2 was sent an Application for Dispute Resolution via text message on the same date at [REDACTED] (**Exhibit L # 1**). This is identified as appropriate service.
5. The tenants submitted an affidavit (**Exhibit T # 1**) indicating landlord1 was served on 13 January 2024 with an Application for Dispute Resolution via text message at [REDACTED]. Landlord1 also stated that tenant1 initially served the landlords with the paperwork for this dispute personally on December 22, 2023. While the affidavit does demonstrate appropriate service; landlord1 was willing to waive the service requirements.
6. Landlord1 testified there was a written fixed term rental agreement which started on 1 April 2023 at the rental property at [REDACTED]. A monthly rent amount was set at \$950.00, and due on the first of each month. There was a security deposit on this tenancy of \$712.50 which was collected on 3 March 2022, and remains in the landlord's possession (**Exhibit L # 2**). The tenants were not occupants of the bungalow as of the day of the hearing (17 January 2024).

7. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlords are seeking the following:
 1. Compensation for damages in the amount of \$2,304.42
 2. Reimbursement of utilities to the tenants in the amount of \$48.80
 3. Application of security deposit to be used against damages (\$712.50)
 4. Application fee of \$20.00
9. The tenants are seeking the following:
 1. Return of the Security Deposit (\$712.50)
 2. Compensation for utilities in the amount of \$48.00
 3. Compensation for inconveniences in the amount of \$800.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of "*the Act*".
11. Also relevant and considered in this case are sections 10, 14, 18, 31 and 34 of the *Residential Tenancies Act*, 2018. Also, Residential Tenancies Policies 9-003, and 9-005.

Issue 1: Compensation for Damages- \$2,304.42/ Return of Security Deposit- \$712.50

12. Landlord1 stated they were seeking damages in the amount of \$2,304.42 for two kitchen windows, the front door window, and the framing around the back door which were damaged by the tenants during their occupancy. With respect to damages, items are grouped under the following:
 - Kitchen Windows
 - Front Door Window
 - Back Door Window Moulding

Kitchen Windows:

Landlord Position

13. Landlord1 testified that there were two kitchen windows (one large and one small) damaged by the tenants. She claims that this damage was due to the tenants putting up window blinds and securing the brackets for the blinds by screwing them into the vinyl casing, as demonstrated in photos provided in **Exhibit L#3**. She testified that this has resulted in damage such that the windows cannot be effectively repaired; rather they must be replaced entirely.

14. Landlord1 noted that, prior to and during tenancy, the kitchen windows in question (along with an additional window in a spare room) had been foggy and showed condensation, which would indicate that the window seals were damaged. She noted that the intent was to have those windows repaired during the tenancy. To that end, she had engaged a company, 'Seal N Save' to affect the window seal repairs. In consultation with the company it was thought that the repairs (inserts) would likely be covered under manufacturer's warranty, which would be less costly than full replacements. Due to seemingly repeated delays by 'Seal N Save', these repairs did not take effect during the tenancy. The landlord provided copies of text messages engaging the tenant's assistance with finding serial numbers (**Exhibit L # 7**) to support her assertions.
15. In support of her position, landlord1, advised that the kitchen windows in question were determined to have been installed in 2007. This determination was made by matching the serial number(s) of other windows in the residence with the records on file with 'Seal N Save" to determine the date of purchase. The landlord was unable to advise on when the front door was installed, as it did not have a serial number to reference and the landlords had not purchased the property until 2023.
16. To support her position, landlord 1 provided a receipt, dated November 4, 2023, from Jordan's Autoglass for repairs to the front kitchen window in the amount of \$253.00 noting that holes in the window's vinyl casing from blind brackets has punctured the air tight seal and would continue to steam up. The landlord advised that the window installer stated that due to the vinyl casings being damaged by the window blinds, costs for repairs or replacements would not be covered under warranty. Additionally provided was a quote dated December 11, 2023 from 'Seal N Save' to replace the two kitchen windows in the amount of \$2,108.92. Landlord1 stated her understanding was that the life expectancy of vinyl windows was between 20 to 50 years.

Tenants Position

17. Tenant1 testified that prior to taking occupancy, he and tenant2 had been informed by the landlords that the windows would be replaced by summer 2023. He stated that on 15 June 2023, landlord2 attended the rental unit, when he removed the moldings of the windows to take measurements for the installation of new windows.
18. Tenant1 stated during their tenancy, the windows in question were so bad that they were fogged up the entire time they resided in the premises, that they were never replaced and "the only reason we put up blinds was because they said the windows were being replaced". They were of the understanding that the landlords were planning on replacing the windows entirely and felt putting up blinds would be of no consequence.
19. Tenant1 disputed that their installation of window blind holders had damaged the seals of the windows. He testified that for the window blind holders, which they installed in the kitchen windows, he used ¾ inch screws in the insulated frame. He was of the opinion the fogging up of the kitchen windows was due caulking not being used on the outside edges of the windows.

Front Door Window:

Landlord Position

20. Landlord1 testified the front door window of the rental unit was damaged by the tenant's installation of window blinds which broke the seal of the window, and the landlords were

seeking compensation for this. Pictures of the front door window identifying brackets for blinds were provided in Exhibit L # 3.

Tenants Position

21. Tenant1 disputed that the placement of window blinds on the front door caused damages to the window which resulted in the window having to be replaced and could not recall having any issues with the front door window.

Back Door Window Molding

Landlord Position

22. Landlord1 stated they were seeking compensation for “purely cosmetic” damages by the tenants of the moldings of the back door of the rental property. She stated she was unable to provide a quote for the trim as there was no exact replacement, likely due to age. She was unable to find an exact match for a replacement of the item, but the closest she could find was \$167.00 plus tax. No quotes or receipts were provided.

Tenants Position

23. Tenant1 stated there were blinds on the back door of the rental unit when they had taken occupancy. He disputed they had made any holes in the moldings and stated he did not observe any fogging up of that window.
24. Tenant2 testified she did not observe fogging up of the backdoor window.

Analysis

25. Under section 10.(1) 2 of the *Residential Tenancies Act*, 2018 the tenant is responsible to keep the premises clean and to repair any damages cause by a willful or negligent act.
 2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.
26. Accordingly, in any damage claim, the applicant is required to show:
 - That the damage exists;
 - That the respondent is responsible for the damage, through willful or negligent act; and
 - The value to repair or replace the damaged item(s).
27. In accordance with Residential Tenancies policy 9-003, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-005.
28. Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) *After hearing an application the director may make an order*

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

29. In regards to the kitchen windows, tenant1 acknowledged that they had placed blinds up at the windows in question. However, they also provided testimony indicating that the windows were damaged prior to taking occupancy of the residence and fogging up the entire time they lived there, and they were of the understanding that the landlord would be replacing the windows entirely. I accept their testimony and determine that there is no evidence to demonstrate that their actions were willful or negligent in nature. The landlord also noted the windows had been foggy and showed condensation, which would indicate that the window seals were damaged. Further, while the landlord was clear in her plans to affect repairs using a less costly measure, there was no evidence presented to demonstrate that the less costly repairs would have repaired the issue. While the landlord provided quotes and commentary from contractors advising that the windows could no longer be resealed and required replacing, I have to conclude that the landlord has not established that the full extent of the damage to the windows occurred as a direct result of putting up blinds.

30. With respect to the front door window, again the tenant does not dispute putting blinds up, but does dispute the allegation that it resulted in damages. While the landlord provided pictures showing blind brackets attached to the front door window casing, there was no evidence presented to establish the age of the door, nor the extent of damage. Further, there was no information provided allowing for the determination of the cost of repair or replacement.

31. In regards to the back door moulding, the landlord was seeking compensation for “purely cosmetic” damages. While pictures were provided showing that blind brackets had been installed, no evidence was submitted to establish the age of the door, the extent of damage or cost of repair/replacement.

Decision

32. The landlords claim for damages fails.

33. The landlords shall return the security deposit in the amount of **\$712.50** to the tenants.

Issue # 2- Payment of Utilities-\$48.80/ Compensation for Utilities- \$48.00

Landlord Position

34. Landlord1 testified during the hearing both landlord's wished to re-imburse tenant1 \$48.80 for an electric bill. No additional testimony or evidence was offered related to this issue.

Tenant Position

35. Tenant1 testified he was seeking compensation for utilities in the about of \$48.00 as he testified the electric bill was in his name and due to having to continuously use a dehumidifier in the rental unit. No additional testimony or evidence was offered related to this issue.

Decision

36. As both parties were in agreement regarding this matter, the tenant's claim for compensation succeeds in the amount of \$48.80.

Issue # 3- Compensation for inconvenience- \$800.00

Tenant Position

37. Tenant1 was seeking compensation in the amount of \$800.00 for inconveniences during their time at the rental unit. Along with their application, they provided a break down of those inconveniences (**Exhibit T # 2**). The identified inconveniences experienced were related to:

- Not being able to look through windows.....\$400.00
- No moldings in Kitchen.....\$250.00
- Dampness of Rental.....\$150.00

38. Tenant1 testified both were unable to view out of the windows during their tenancy due to fog and expressed safety concerns with this.

39. Tenant1 stated after landlord2 had removed the molding in the kitchen on 15 June 2023, this was never replaced and testified they were embarrassed to have to explain to visitors of their rental that it had not been replaced.

40. Tenant1 testified on 20 October 2023, there was a flood in the crawl space area of the rental unit due to a broken pipe which resulted in excessive dampness that he and his wife were negatively impacted by due to their ages.

41. Tenant1 stated he issued the landlords a Tenant's Request for Repairs in September 2023 requesting insulation to be placed under the floor of the crawl space as well as repair window glass or window in the kitchen by 15 November 2023 (**Exhibit T # 3**).

42. Tenant1 testified the insulation in the crawl space was completed by landlord2 and described landlord2 as being, "very quick to respond to repairs".

Landlord Position

43. Landlord1 disputed that the tenants should be compensated for inconveniences as after the tenants issued a Tenant's Request for Repairs, the identified repairs had been completed.
44. Landlord1 testified they attempted to replace the window in the kitchen however, the company which the window was ordered, could not meet the 15 November 2023 timeline as requested by the tenant (**Exhibit L # 7**).

Analysis

45. Policy Number 04-002 of the *Residential Tenancies Program, Tenant's Request for Repairs*, applies to this issue. As stated within, "A tenant who requires a landlord to make repairs to the rental unit, may give the landlord written request to make the necessary repairs within a reasonable time".
46. During the hearing, tenant1 acknowledged the landlords had provided a dehumidifier to them on two separate occasions. It was also stated by tenant1 that landlord2 was "quick" to respond to request for repairs including putting insulation in the crawl space.
47. Landlord1, along with her application, provided an attempt by the landlord's to have the kitchen windows installed but due to shipping timelines, this request was not met (**Exhibit L # 7**).
48. The issue presented by the tenants as inconvenience experienced due to lack of molding in the kitchen cannot be addressed as there was never a formal request by the tenants for this issue to be repaired (**Exhibit T # 3**).

Decision

49. The tenants request to be compensated for inconveniences fails.

Issue # 4- Hearing Expenses

50. The landlords provided a receipt for hearing expense (**Exhibit L # 8**).
51. The tenants provided a receipt for hearing expense (**Exhibit T # 4**).

Analysis

52. The *Residential Tenancies Program, Policy and Procedure Guide, Policy Number 12.001, Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, speaks directly to seeking costs associated with an application.
53. As the landlords were unsuccessful in their application, the landlords shall pay the tenants the hearing expense.

Decision

55. The landlords shall pay **\$20.00** to the tenants for hearing expenses.

Summary of Decision

56. The landlords shall pay the tenants **\$781.30** broken down as follows:

- Return of Security Deposit.....\$712.50
- Return of Utilities Payment.....\$48.80
- Hearing Expense.....\$20.00
- Total.....**\$781.30**

23 April 2024

Date



Michael J. Reddy
Residential Tenancies Office