

Residential Tenancies Tribunal

Application 2024-0070-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-February-2024 at 2:01 pm and continued 18-June-2024 at 9:15 am.
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 27-February-2024 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#51) with their application stating that they had served the tenant with notice of the hearing, electronically, on 12-February-2024. The appropriate supporting documents were also provided. 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.
5. After the hearing was conducted it was discovered that the original notice of hearings sent to the tenant listed an amount sought significantly lower than what was claimed at trial. This created an issue of procedural fairness; the respondent had not known what was at stake in the hearing, denying them the opportunity to make an informed choice as to whether to proceed. It was determined that the remedy to this potential prejudice would be to serve the tenant a new notice with the updated amount. If he attended, it would be dealt with as a *de novo* hearing. The testimony from the previous hearing would be struck and the tenant would have full opportunity to present their evidence and challenge the landlord's evidence. In the event the tenant did not attend this second hearing (or seek a postponement, file a counterclaim, etc.), the prejudice would be negated as the tenant would have waived their right to respond.

6. The tenant was not present or represented at the 17-June-2024 hearing and I was unable to reach them by telephone at the start of the hearing. The landlord said they had encountered the tenant by happenstance and he had expressed an awareness of the claim and the belief that if he refused to engage with the legal system, it would not have any power over him. The landlord submitted a sworn affidavit showing she had provided notice of the hearing, including the updated claim, upon the tenant by registered mail (██████████) on 23-May-2024. Under the *Act*, registered mail is deemed to be considered served five days after it has been mailed. The appropriate supporting documents were also provided. Therefore, after the policy-mandated grace period the tenant was accepted to have waived his right to respond.

Issues before the Tribunal

7. Should the landlord's claim for damages be granted?
8. Should the landlord's claim for unpaid utilities be granted?
9. What is the proper disposition of the security deposit?

Legislation and Policy

10. 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

11. The landlord claims for \$8530.35 in damages, which is divided between 12 items. To succeed in her claim, the landlord must demonstrate on a balance of probabilities that there was damage to her property and that the damage was caused by the willful or negligent act of the tenant. She must also provide a sufficient evidentiary basis to justify the specific amounts claimed.
12. The landlord testified and I accept that the rental premises were completely renovated immediately prior to the tenancy, which began 17-July-2023. The damaged items listed below are therefore only seven months old. As the elapsed lifespan of the damaged property is legible, depreciation is not in issue. Pictures were provided showing the premises in pristine condition immediately prior to the rental period (landlord's exhibit 49).
13. The landlord claims for \$1565.47 for the replacement of damaged carpeting. She testified that when she recovered vacant possession of the apartment, she discovered that the carpet had periodic burn holes, presumably from cigarette butts, which were also strewn about the carpet. The carpet was also stained with urine, milk, oil, and an unidentified bright red liquid with a strong sour odour, possibly some kind of fermented fruit juice. Pictures were provided showing the damage (landlord's exhibits 3, 5, 6, 8, 10, 11, 12, 13, 23, and 24). A quote was provided showing the cost of replacement to be \$1565.46 (landlord's Exhibit 35). I take the one cent difference from the amount claimed to be a minor transcription error. Given the extent and nature of the damage, replacement was the only reasonable option, and I accept on a balance of probabilities

that the damage was the wilful act of the tenant. The thoroughness of the destruction and the large variety of methods strongly suggests intent. This portion of the landlord's claim is made out in the all-but-complete amount of \$1565.46.

14. The landlord claims for \$2469.87 for the replacement of damaged subfloor. As mentioned above, the destruction of the top layer of flooring was so complete that it evidently extended to the layer below. The landlord's testimony to this was corroborated by photos (landlord's exhibits 23 and 24). Given that the subfloor was apparently soaked with foul-smelling and potentially biohazardous materials, I accept that it had to be replaced. The landlord provided Exhibit 52 as evidence of the cost of replacement. LL#51 shows that comparable subfloor panels cost 189.99 for a box which covers 80 square feet. She testifies that 1000 square feet must be redone and the photos support this, requiring 13 boxes. This amounts to precisely \$2469.87. This is presumably before tax and does not include the cost of installation, which the landlord would also be entitled to, but I cannot award any amount more than her claim. This portion of the landlord's claim succeeds in the full amount of \$2469.87.
15. The landlord claims for \$359.99 for the replacement of a microwave oven that was provided for the use of the tenant. The landlord's exhibit 49 shows the brand-new microwave oven before the tenancy began. The landlord testified that the microwave oven was destroyed when the tenant activated it with a metal spoon inside, causing a fire. Microwave ovens are in popular use in this area and it is common knowledge that the use non-microwavable products in such ovens is dangerous, and particularly that the use of thin metal products such as eating utensils is a major fire hazard. I accept that the fire was therefore a negligent act in the tenant's part by failing to adhere to basic safe use precautions. The landlord provided a receipt (Exhibit 54) for a microwave of similar make and quality, which cost her \$365.00 before taxes. I cannot award more than was claimed and the tenant was given notice of. This portion of the landlord's claim succeeds in the full amount of \$359.99.
16. The landlord claims for \$300 for the replacement of a Bell Aliant "tv box." Internet and cable were provided as part of the rental agreement and the box is a piece of equipment which serves as an essential part of that service. The landlord testified and I accept that the tenant disconnected the box and threw it into a snowbank. Landlord's exhibit 18 shows the box embedded in a large snow drift, mostly covered. The landlord testified that she attempted to salvage the box by following the usual procedure for limiting water damage to electronics, i.e., placing it in a dry enclosed space with a desiccant for an extended period, but that the box was nevertheless nonfunctional after being thrown into the snow. I accept that this damage was the result of a wilful act of the tenant. The box was not the property of the landlord but the property of Bell Aliant which she was licensed to use as part of the service provided. The landlord shared the section of the agreement between her and Bell which specified that the company charges \$300 for the replacement of a damaged box (landlord's Exhibit 34). This portion of the landlord's claim succeeds in full in the amount of \$300.
17. The landlord claims \$319.99 for the replacement of a Noma brand dehumidifier. She testified that the dehumidifier had not initially been part of the rental agreement. However, when the tenant complained about excess moisture, she purchased the unit for the use of the tenant and to maintain an acceptable level of humidity in the premises.

After the tenant vacated the premises, however, the humidifier was no longer there. No photographic evidence was provided of the dehumidifier, which would normally merit the dismissal of this part of the claim. However, notwithstanding the fact that the onus is on the applicant to provide sufficient evidence to ground their claim, I recognize that it would be impossible and unreasonable to require the landlord to produce a photograph or other form of media evidence showing that the appliance is not present. Further, the landlord's Exhibits 28 and 31 show a text messaging conversation between the landlord and tenant in which they discuss the dehumidifier and the tenant acknowledges its presence and usefulness. I accept that the landlord provided such a unit and I accept her testimony that it was gone when she reclaimed possession of the unit. For clarity, I stress that I am not in any way concluding that the tenant stole the dehumidifier. Theft is a criminal matter and is outside the jurisdiction of this tribunal. However, I do accept on a balance of probabilities that the tenant wilfully or negligently removed or damaged the dehumidifier, depriving the landlord of its future use. I accept \$319.99 as an appropriate price for the replacement of such a unit. This portion of the landlord's claim succeeds in the full amount of \$319.99.

18. The landlord claims for damaged countertop in the amount of \$543.38. Exhibit 2 shows that an unknown red liquid was spilled over a large part of the countertop. The landlord testified that this red liquid resisted attempts to clean it and had a noxious odour. Visible in Exhibit 2 are paper towels the landlord tried to use to clean the liquid. She testified that they became stuck to the surface and she was unable to remove them. I am satisfied on a balance of probabilities that the countertop was damaged by the wilful act or negligence of the tenant, and that its replacement was warranted. Exhibit 53 shows that the cost of a single piece of the countertop costs 163.01. Two pieces are required to affect the repairs. This works out to \$374.92 for both including HST. I accept the remaining \$168.36 as a reasonable estimate of the cost of shipping and installation. This portion of the landlord's claim succeeds in the full amount of \$543.28.
19. The landlord claims for \$217.49 for the replacement of a damaged kitchen sink faucet. Unfortunately, no photographic or documentary evidence was provided in relation the damaged faucet. As a matter of policy, this tribunal requires some form of documentary or photographic evidence be presented in relation to any claim for damages. This part of the claim therefore fails on evidentiary grounds.
20. The landlord claimed \$29.98 for material to repair large screw holes left in the walls. I can see these holes in Exhibits 21 and 22. I am satisfied on a balance of probabilities that this damage warranted repair and was caused by the wilful or negligent act of the tenant. As this is a small item which is commonly dealt with by this tribunal, a receipt is not required. I am satisfied that this is a reasonable cost. This portion of the landlord's claim succeeds in the full amount of \$29.98.
21. The landlord claims for \$32.99 for the cost of a screen for a bedroom window. The damaged screen is visible clearly in Exhibit 1. The screen mesh has been ripped halfway or more out of the frame. The landlord testified she found it this was when she retook possession of the apartment. Exhibit 56 shows the cost of replacement as being \$32.99.
22. The landlord claims for the replacement of the front entrance door in the amount of \$1601.94. Exhibits 15, 16, and 17 show damage to the door. The landlord testified that

the tenant had broken the window out of the door. I am satisfied on a balance of probabilities that the tenant's wilful act caused this damage and that it warranted the replacement of the door. The invoice (Exhibit 37) was provided showing the cost of replacement. This portion of the landlord's claim succeeds in the full amount of \$1601.94.

23. The landlord claims for \$60.00 for the cost of 6 curtain rods. Damaged curtain rods were visible in Exhibits 1, 2, and 7. Exhibit 2 in particular shows that two of the rods have been bent in several places. I am satisfied on a balance of probabilities that this damage was caused by the tenant's wilful act. Curtain rods are a small item which is commonly dealt with by this tribunal and so a receipt is not required. I am satisfied that this is a reasonable price for these items. This portion of the landlord's claim succeeds in the full amount of \$60.
24. Lastly, the landlord claimed for the replacement of a Kenmore Oven 30" in the amount of \$845.00. The landlord testified that the burners of the stovetop were partially coated in an unknown residue. This residue is visible in Exhibit 14. It is a metallic orange. The landlord testified that a police officer had suggested to her that it was likely the result of cooking illegal drugs. Regardless of whether this is the case, the residue is an unknown chemical substance. It is impossible to predict how it reacts when exposed to heat or electricity, rendering the oven unfit for use. I am satisfied on a balance of probabilities that the tenant caused this damage through a wilful or negligent act and that it warrants the replacement of the oven. The landlord provided evidence (Exhibit 55) that a similar replacement costs \$845.00 before tax and shipping. This portion of the landlord's claim succeeds in the full amount of \$845.00.

Issue 2: Unpaid Utilities

25. The landlord claims for utilities for the month of 16-January-2024 to 15-February-2024 in the amount of \$206.89. She testified that the tenant vacated the unit on 27-January-2024. Given the above damages, there is no question that the unit would not be fit for a new tenant within this time as a result of the tenant's actions. A bill was provided in the form of Exhibit 48. The landlord's claim for unpaid utilities succeeds in the full amount of \$206.89.

Issue 3: Security Deposit

26. As the landlord is owed moneys, she is entitled to apply the security deposit against the sums owed. In this case, the landlord testified that the security deposit was in the amount of \$500.

Decision

27. The landlord's claim for damages succeeds in the amount of \$8345.99.
28. The landlord's claim for unpaid utilities succeeds in the amount of \$206.89.
29. The security deposit may be applied against moneys owed.

Summary of Decision

30. The tenant shall pay to the landlord \$8052.88 as follows:

Damages.....	\$8378.98
Unpaid Utilities.....	\$206.89
Less Security Deposit....	(\$500.00)
Total.....	\$8085.87

27-June-2024

Date



Seren Cahill
Residential Tenancies Office