

Residential Tenancies Tribunal

Application 2024-0113-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 16-July-2024 at 9:16 am and continued on 26-August-2024 at about 9:20 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 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 24-May-2024 at 11:21 pm. The appropriate supporting documents were provided (LL#2-4). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the initial hearing in their absence. As a courtesy, our office provided the respondent with a notice by registered mail that the hearing would be continued on 26-August-2024, but there was no response.

Issues before the Tribunal

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

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: Unpaid Rent

8. The landlord testified that the tenant owes \$1625 in unpaid rent. This represents the full \$1400 monthly rent for the month of November and a pro-rated amount of rent for the first five days December (rounded down), during which time the tenant continued to reside at the residence. A record of rent payments received from the tenant to date was provided (LL#5).
9. I accept the landlord's uncontradicted testimony. The landlord's claim for unpaid rent succeeds in the amount of \$1625.00.

Issue 2: Damages

10. The landlord claims \$7750.00 in damages, divided amongst 13 items. Each item will be discussed individually below. In accordance with the Residential Tenancies Program Policy and Procedure Guide 09-003, a landlord seeking to claim damages must provide sufficient evidence to establish on a balance of probabilities that their property was damaged, that the damage was caused by a wilful or negligent act of the tenant or a person they allowed on the premises, the extent of the damage, and the cost of repair or replacement.
11. The landlord claims \$2100.00 in material and \$950.00 in labour for the replacement of carpet on the stairs and hallway of the premises. The landlord testified that the carpet was damaged during the tenancy, likely by the tenant's pet cat and rabbits. LL#6 page 1 shows the fibres of the carpet were torn free, particularly next to the door. It is clear that the carpet could not have been repaired. The landlord also provided receipts (LL#6 page 2) from a flooring company showing that the replacement of the carpet cost \$2100 in materials and \$950 in labour.
12. I find on a balance of probabilities that the landlord has shown that the carpet was damaged by the tenant's negligent act in a manner warranting replacement, and that the replacement cost \$3050 in total. Depreciation must be considered. The landlord testified that the carpet was about two years old. The expected life span of carpet is 8-10 years. Averaging to 9, this means that but for the tenant's negligent act, the landlord would have had carpet with a remaining lifespan of 7 years. To determine the value lost, the cost of replacement must be divided by the total expected lifespan and then multiplied by remaining expected lifespan. $\$3050 \times (7 \text{ years} / 9 \text{ years}) = \2372.22 .
13. This portion of the landlord's claim succeeds in the amount of \$2372.22.
14. The landlord claims \$400 towards the replacement of a door he testified was damaged during the tenant's residency. LL#6 page 3 shows the doorframe has been cracked and the door has split substantially. Repair is obviously not an option; the door must be replaced. LL#6 page 3 shows that the material cost of the replacement is \$229.48. The

landlord suggests \$200 for the cost of labour. No quote was provided for a professional contractor. The landlord is entitled to claim compensation for his own labour if he intends to install the replacement himself, at the policy prescribed rate of minimum wage + \$8/hour, or \$23.60/hour. I estimate that hanging an interior door like this one would take a non-professional about 6 hours. This results in a total estimated labour cost of \$141.60. As an interior wooden door without inset windows has an expected lifespan of a lifetime, depreciation is not in issue.

15. This portion of the landlord's claim succeeds in the amount of \$341.60.
16. The landlord claims \$400 for the replacement of damaged moulding in a bedroom where, he believes, the tenant kept pet rabbits. The landlord testified that the top of the moulding appears to have been chewed through in the entire perimeter of the room, exposing untreated wood. The evidence before me suggests this is about 48 feet of baseboard. A photo of this damage was provided in LL#6 page 5 and the exposed wood is visible along the entire top of the baseboard. Evidence was provided on the same page that the replacement moulding materials costs \$165.41. The landlord suggests \$250 would be an appropriate value for the cost of labour. I estimate this job would take a non-professional about 8 hours. This results in a labour cost of \$188.80.
17. Baseboard has a life expectancy of 20-30 years. The landlord testified that the baseboard is approximately 9 years old. The formula is therefore $\$354.21 \times (16 \text{ years} / 25 \text{ years}) = \226.69 .
18. This portion of the landlord's claim succeeds in the amount of \$226.69.
19. The landlord claims \$600.00 for the replacement of damaged electrical heaters. He testified that the units were damaged by, among other things, becoming contaminated by animal feces. Several photos were provided (LL#6 page 6) and I can see that the interior of the heater has been damaged in a way that would inhibit airflow and affect the heater's performance. Evidence was provided that the replacement heaters will cost \$489.94. I estimate that the heaters would take about six hours to install. This would result in a labour cost of \$141.60.
20. Electric baseboard heaters have an average lifespan of about ten years. The landlord testified that these heaters were installed about nine years ago. The formula is therefore $\$631.54 \times (1 \text{ year} / 10 \text{ years}) = \63.15 .
21. This portion of the landlord's claim succeeds in the amount of \$63.15.
22. The landlord claims \$500 for the replacement of two damaged outdoor water spigots and siding. Photos were provided (LL#6 page 7) showing the damaged siding and the location where the spigot was allegedly knocked off the house. LL#6 page 7 also shows that the replacement spigots cost \$41.94 each and the damaged siding costs \$173.49. I estimate it would take about 20 hours of labour to replace the damaged siding, which results in a labour cost of \$472.00.
23. The landlord testified that the outdoor siding and spigots were original to the house, making them approximately 20 years old. Outdoor spigots have a life span of 10-20

years, so the damage to those is not compensable. Vinyl outdoor siding has a life expectancy of a lifetime, so depreciation is not in issue.

24. This portion of the landlord's claim succeeds in the amount of \$500.00, the amount sought.
25. The landlord claims \$600 for the replacement of a damaged toilet. He testified that the toilet would not function despite repeated attempts to fix it. He says he was not able to deduce the problem until he attempted to replace the unit, at which point he found a toothbrush had become lodged in the piping. No documentary evidence was provided showing the damage (i.e., the toilet's inability to flush). Accordingly, this portion of the landlord's claim fails.
26. The landlord claims \$600.00 for cleaning. He testified that the tenants left the premises in an unclean state such that it took 80 or more person hours to clean the premises. Given the evidence provided (see LL#6), I estimate that cleaning the premises would take about 25 person hours. Multiplying this by the self-labour rate results in a total of \$590.00.
27. This portion of the landlord's claim succeeds in the amount of \$590.00.
28. The landlord claims \$100.00 for a damaged light fixture. Photos of the damaged item were provided (LL#6 page 10). Evidence was provided that the replacement would cost \$112.25.
29. This portion of the landlord's claim succeeds in the amount of \$100.00, the amount sought.
30. The landlord claims \$100.00 for the replacement of a damaged storm door closure. The landlord testified that the closure was removed. Evidence was provided showing that the replacement materials cost \$59.79. I estimate that it would take one hour to install a new closure, or 23.60 at the self-labour rate.
31. This portion of the landlord's claim succeeds in the amount of \$83.39.
32. The landlord claims \$500.00 for the replacement of a damaged cupboard door. Photos of the damage were provided (LL#6, page 12). Evidence was provided on the same page showing that the replacement materials cost \$665.00. I estimate it would take about one hour to install a new cabinet door, or \$23.60 at the self-labour rate.
33. The cabinets were originally installed ~20 years prior. The life expectancy of kitchen cabinets is 50 years. $\$665.00 \times (30 \text{ years} / 50 \text{ years}) = \413.16 .
34. This portion of the landlord's claim succeeds in the amount of \$413.16.
35. Finally, the landlord claims \$500 for a damaged French door. Photos were provided showing the damage (LL#6 page 13). Evidence was shown that the cost of replacement is \$274.00. I estimate replacing the door would take about eight hours, or \$188.80 at the self-labour rate.

36. An interior French door has a life-expectancy of 30-50 years. Averaging to 40 years, the formula is $\$462.80 \times (20 \text{ years} / 40 \text{ years}) = \231.40 .
37. This portion of the landlord's claim succeeds in the amount of \$231.40.
38. The landlord's claim for damages succeeds in the amount of \$4921.61.

Decision

39. The landlord's claim for unpaid rent succeeds in the amount of \$1625.00.
40. The landlord's claim for damages succeeds in the amount of \$4921.61.
41. The tenancy has ended and thus the security deposit must be dealt with. As the landlord is owed moneys, he may apply the security deposit against the sum owed. In this case, the security deposit was \$700. According to s. 14(7) of the *Act*, the landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. Prior to 2024, the interest rate was 0% during the time the landlord held the security deposit. In 2024, the regulations prescribed a simple cumulative interest rate of 1%. This results in a total interest of \$3.81.

Summary of Decision

42. The tenant shall pay to the landlord \$5842.00 as follows:

Rent.....	\$1625.00
Damages.....	\$4921.61
Less Security Deposit.....	-\$703.81
Total.....	\$5842.80

5-September-2024

Date


Seren Cahill
Residential Tenancies Office