

Residential Tenancies Tribunal

Application 2024-0140-NL

Decision 24-0140-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 20-March-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
4. The landlord called a witness into the hearing, [REDACTED] (witness 1); and the tenant called 2 witnesses into the hearing, [REDACTED] (witness 2) and [REDACTED] (witness 3).

Preliminary Matters

5. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 29-February-2024 (LL#1). The respondent confirmed receipt of the document on 4-March-2024. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There was a verbal rental agreement which commenced on 1-September-2023. The tenant vacated the premises on 30-November-2023. Rent was \$1400.00 per month due on the first of each month. A security deposit of \$400.00 was paid on 10-August-2023. The tenant submitted application for dispute resolution to determine disposition of security deposit; a hearing was heard through this tribunal dated 15-February-2024 (2024-0027-NL), and a decision shall be rendered with regards to the disposition of the security deposit. This application will be decided independently of the previous hearing, and the previous hearing shall have not impact on this decision.

Issues before the Tribunal

7. The landlord is seeking:
 - Compensation for damages \$1000.00
 - Hearing expenses \$33.44

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46

and 47 of the *Residential Tenancies Act, 2018*.

9. 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 \$1000.00

Relevant Submission

10. The landlord testified that there were damages to the refrigerator in the rental unit, which he noticed after the tenant vacated the unit. The landlord submitted a damages ledger to support his claim. See below as follows (LL#2):

Compensation for Damages		
Submitted by:		Date: <u>Feb 6, 2023</u>
Applicant:		
Respondent:		
Item #	Description of Damages	Compensation Claimed
1	Refrigerator	\$1000.00
2		

Landlord's Position

11. The landlord testified that the refrigerator had damages to the doors which he stated appeared to have been caused as a result of cleaning or scrubbing the area with an adhesive cleaner. The landlord stated that the paint on the doors was missing in spots and the metal was visible. The landlord submitted photographs of the refrigerator from the beginning of the tenancy and again at the end of the tenancy to support his claim (LL#3). The landlord also called a witness into the hearing to collaborate his claim. Witness 1 testified that she cleaned the unit prior to the tenancy in September 2023 and testified that the refrigerator was brand new at that time. Witness 1 also testified that the refrigerator had rust spots on it at the end of the tenancy in November 2023.

Tenant's Position

12. The tenant did not dispute that there was damage to the refrigerator doors when she vacated; however, the tenant did dispute that she caused the damage. The tenant testified that the unit was damp to the point where you could feel it on your skin and in your clothes. The tenant testified that there were rust spots on the refrigerator doors and the rust continued to build up due to the dampness in the unit which ate through the paint causing the metal spots as claimed by the landlord. The tenant called 2 witnesses into the hearing. Witness 2 testified that the rust spots were visible on the refrigerator when the tenant moved into the unit. Witness 3 also testified that there were rust spots on the refrigerator when the tenant moved into the unit, and he stated that the tenant used spray nine to try to remove the rust.

Analysis

13. 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)*
14. Based on the photographs submitted by the landlord, it is evident that the damage to the refrigerator doors exists. The question is whether or not the tenant is responsible for the damage and if so, was the damage caused by a willful or negligent act. The landlord submitted a *before* photograph of the refrigerator stamp dated for 30-August-2023 which is 2 days prior to the tenancy and the damages do not appear to exist at that time, however the photograph is not up close, and the door is not open like it is in the *after* photographs. The tenant testified that there were rust spots on the doors when she moved in, and she called 2 witnesses into the hearing who testified that they saw the rust spots on the doors at the commencement of the tenancy. The tenant also testified that the unit was very damp which would possibly cause rust to build up on metal doors. The landlord called a witness into the hearing who stated that the refrigerator was brand new in September 2023, when the landlord had already testified that the refrigerator was at least 5 years old. This witness also testified that she saw rust spots on the refrigerator doors at the end of tenancy which supports the tenants claim that there was an existence of rust on the doors.
15. I accept that the refrigerator doors had damage to them when the tenant vacated but the landlord failed to show that the tenant was responsible for the damage. If the unit was as damp as the tenant claimed it was, then it is possible that a buildup of rust would occur on the doors. The testimony of all witnesses indicates the presence of rust on the doors both at the beginning of the tenancy and at the end. The burden of proof lies with the landlord to show that the tenant was negligent, and I find that the landlord failed to prove that the tenant was negligent in causing the doors to rust and ultimately causing the paint to disappear.
16. In review of the testimony of both parties and 3 witnesses and the exhibits entered into evidence, I find that in accordance with Section 9-3 of the *Residential Tenancies Policy* as stated above, the landlord failed to show that the tenant was responsible for the damage through a willful or negligent act and as such, I find that the tenant is not responsible for the cost to replace the refrigerator.

Decision

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

Item # 3: Hearing Expenses \$33.44

18. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord also incurred postal fees in the amount of \$13.44 to serve the document. The landlord provided a copy of the receipts (LL#4).

19. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Fees*, if there is any award in the order, hearing expenses will be awarded. As the landlord's claim is not successful, and no amount will be awarded, the hearing expenses will not be awarded.

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

Decision

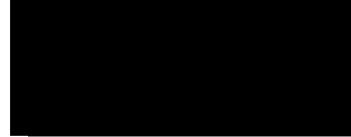
21. The landlord's claim for hearing expenses does not succeed.

Summary of Decision

22. The landlord's claim for damages, and hearing expenses does not succeed.

March 28, 2024

Date


Pamela Pennell
Residential Tenancies Office