

Residential Tenancies Tribunal

Application 2024-0167-NL
2024-0239-NL

Decision 24-0167-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 27-March-2024 at 1:48 pm.
2. The applicants, [REDACTED] hereinafter referred to as the tenants, attended via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also attended via teleconference.

Preliminary Matters

4. The tenants had initially applied for the return of personal possessions. However, the items had already been returned. Rather, the tenants sought compensation for alleged damages. The landlord acknowledged that she had understood this to be what the tenants was looking for and she was prepared to speak to it at the date of hearing. The tenants' application is therefore amended to change the return of personal possessions to damages.

Issues before the Tribunal

5. Should the tenant's claim for damages be granted?
6. Should the landlord's claim for damages be granted?
7. Should the landlord's claim for unpaid rent and utilities be granted?
8. What is the proper disposition of the security deposit?

Legislation and Policy

9. 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: Tenants' Claim for Damages

Tenants' Position

10. The tenants' claim for \$4300 in damages based on damaged personal possessions. When then tenants vacated the premises on or about November 2023, they were unable to remove three pieces of furniture, two dressers and a highboy. They say the landlord allowed them to store the items at the premises until they could pick them up. When one of the tenants went to pick up the items, he found that the landlord's agents had the items at the foot of their driveway in a snowstorm and were only then attempting to cover the items with plastic. The tenants also suggested some of the items had been damaged when the landlord tried to move them down the stairs.

Landlord's Position

11. The landlord submitted that when the tenant had called her in relation to storing the furniture, he had mentioned that he had already done some damage to it while trying to get it down the stairs. The landlord also submitted that if the tenants objected to moving the items in a snowstorm, they could have retrieved them on a different date.

Analysis

12. The onus is always on the side making the claim to establish the basis of it on a balance of probabilities, and to provide a sufficient evidentiary basis on which to make a ruling. In this case, the only evidence of the alleged damage to the furniture is the tenants' oral testimony, which I find vague and unclear. No photos or other evidence was provided demonstrating the damage. The claim therefore fails on evidentiary grounds.

Issue 2: Damages

Landlord's Position

13. The landlord seeks \$2821.78 in damages, divided into 7 items. The first two items are priced as a unit and relate to damage to two separate porches. The landlord testified that she was charged \$2500 for the repair of both of these porches. She testified that she did not have a quote or invoice from the contractor who did the work, and had requested one, but he had yet to respond to that request, as he was dealing with an illness in his family and was not currently working. She claims \$82.79 in relation to a damaged kitchen faucet. She claims \$68.99 in relation to a damaged bathroom faucet. She claims \$60 for a damaged kitchen light. She claims \$60 for a damaged living room light. Finally, she claims for \$50 for the repair of a damaged living room wall.

Tenants' Position

14. The tenants oppose the landlord's claim for damages. They submit that many of the things the landlord claims for happened through normal use and would therefore be considered wear and tear.

Analysis

15. The first of two porches in issue can be seen in LL#12. The tile flooring directly in front of the door to the outside is cracked and the cracked tiles are no longer aligned with the surrounding tile. The testimony at trial was that the original tile flooring was installed in 2014 or 2015. Approximately two years ago there had been damage to these same tiles after some flooding, and the landlord had hired one of the tenants to do the repairs.
16. The tenant submitted that the damage was from regular use. Normally, regular use would not cause this kind of damage, particularly in only two years. However, the tenant offered an explanation. He testified that he was able to observe that the hot water boiler had been installed directly below these tiles. This had involved cutting into three floor joists to accommodate the pipes. This, the tenant said, weakened the joists considerably and caused them to sag when weight was put on them. Tile is an inflexible material not meant to bend, and this was the cause of the cracking.
17. I accept the tenant's explanation. It is consistent with all the evidence before me, including LL#12. I therefore accept that the cracks in the tiles occurred through normal, everyday use. Tenants are not responsible for this type of damage. Tenants are responsible only for damage they cause wilfully or through negligence. Regular use is not negligent.
18. The damage in the second porch is shown in LL#8. The testimony at the hearing was the result of a leak from a toilet in a bathroom above the porch. Water leaking down had penetrated gyprock and wood at the top of the porch, requiring repair. The tenant testified that he had identified the source of the leak and repaired it as soon as he could.
19. Again, I accept the tenant's uncontradicted testimony. There was no evidence that suggests the leak was the tenant's fault. Devices fail and leaks sometimes occur. A tenant is not necessarily responsible for leaks that occur while they have possession of the property. If a leak occurs and a tenant does nothing to address it and does not make the landlord aware of it, that may constitute negligence, which could lead to them being financially responsible for any subsequent water damage. That was not the case here. The tenants did not wilfully or negligently damage either porch and, therefore, this portion of the landlord's claim fails.
20. The landlord claimed for \$82.79 for a damaged kitchen faucet, visible in LL#9, page 14. The kitchen faucet has an exposed button that is meant to be covered by plastic. The faucet was installed originally in 2015. The tenants testified that the damage was caused by normal use and that it did not affect the function of the faucet. The kitchen faucet was originally installed in 2015. I do not find it difficult to believe that regular use could cause this type of cosmetic damage in a kitchen faucet after nine years. This portion of the landlord's claim fails.
21. The landlord claims \$60 for the repair of a light in the kitchen which lost its shade during the tenancy, visible on page 12 of LL#9. The tenants testified that as the range hood above the stove was not working, they had to open the windows while cooking. At one point a gust of wind pushed the window blinds back and they hit the kitchen light, damaging the shade. I find that the tenant was negligent in this instance. This is a foreseeable issue, particularly on a windy day, and the tenant could have prevented it.

However, the landlord did not provide a receipt or other evidence establishing the cost of replacing the light fixture. The onus is on the applicant to prove on a balance of probabilities every element of the claim, including the cost of fixing or replacement. This portion of the landlord's claim therefore fails on evidentiary grounds.

22. The landlord claimed for \$68.99 for the replacement of a damaged bathroom faucet. The tenants testified as to the nature of the damage and challenged the landlord's assertion that the faucet was nonfunctional. As no evidence was provided of the cost of replacement, nor any evidence of the damage aside from the landlord's testimony, this portion of the landlord's claim fails on evidentiary grounds.
23. The landlord claimed for \$60 for the replacement of a damaged living room light. Again, no documentary evidence was provided to support the damage alleged or the cost of replacement. No satisfactory explanation was offered as to why such evidence was unavailable. The landlord's claim therefore fails on evidentiary grounds.
24. Lastly, the landlord claimed for \$50 for the repair of several holes in the wall caused by the tenants mounting a brace for a wall-mounted television. The tenants acknowledged this but argued that the installation had been sanctioned by the landlord's father. Regardless of whether or not the landlord's father had the right to speak for her on this, I do not find that simple permission to install the brace is a waiver of the landlord's right to have property returned to its original condition. This was a willful act by the tenant and the landlord is entitled to be compensated for the cost of repairing it. As the repair work was done by family, it is understandable that a formal receipt or invoice was not available as evidence. The amount claimed is reasonable for the work done. This portion of the landlord's claim is made out.

Issue 3: Unpaid Rent and Utilities

Landlord's Position

25. The landlord claims for \$1200 in unpaid rent and \$219.68 in utilities for the month of November. She was provided notice that the tenants would be suspending their month-to-month lease in the middle of October. An email from NL Power was provided showing the amount owed for utilities (LL#7). The landlord acknowledged in one text message (seen in LL#1) she asked for only half the rent for the month of November. She stated that she believed that this was all she was entitled to and now that she knows she is legally entitled to more notice she seeks the rent for the full month.

Tenants' Position

26. The tenants are opposed to the application for rent and utilities. They believed they were doing the landlord a favor by moving out early. They referenced a conversation they had with the landlord's mother, who lived in the area and whom they sometimes used as a point of contact, where she said that they wouldn't need notice. They also asked for compassion and understanding in reference to a major personal tragedy they experienced while living in the property in January, which made their continued residence emotionally difficult. They also suggested that the landlord had failed to attempt to mitigate her loss by re-renting her property. For her part the landlord says that

she was unable to re-rent because of work that needed to be done on the property, at least some of which was the fault of the tenant.

Analysis

27. I accept the tenants' testimony regarding the words of the landlord's mother and that they took her as speaking for her daughter. I also accept the landlord's submission that her mother did not speak for her and did not communicate this conversation to her. Her mother simply did not have the ability to waive her right to notice.
28. After considering the evidence in its totality, I find that the landlord and tenant reached an agreement to an altered period of notice as shown in LL#1. While I appreciate the landlord's testimony that this was intended as an acknowledgement of the legal obligations, it nevertheless has every element required for an agreement at law. It established expectations for both parties going forward. It was accepted by the other party. The tenants' response, a thumbs up emoji, was accepted as agreement by the landlord. This is evidenced by her response, where she thanks him for the response and clarifies her intentions going forward on that basis. The tenants had a right to rely on this agreement.
29. The agreement was that the termination date of the tenancy would be 15-November-2023, and the tenants would owe a half-month's charge of rent in the amount of \$600. Accordingly, I also find that the tenants are responsible for one half of the month's utility bill, in the amount of \$109.84.

Decision

30. The tenants' claim for damages fails.
31. The landlord's claim for damages succeeds in the partial amount of \$50.00.
32. The landlord's claim for unpaid rent and utilities succeeds in the partial amounts of \$600.00 and \$109.84, respectively.
33. As the landlord is owed moneys, they may be applied against the security deposit. The security deposit in this case was \$600.
34. As the landlord's application was successful and the amount awarded exceeds the security deposit, she is entitled to have her costs awarded. In this case, her costs were limited to the \$20 application fee.

Summary of Decision

35. The tenants shall pay to the landlord \$179.84 as follows:

Damages.....	\$50.00
Rent.....	\$600.00
Utilities.....	\$109.84
Hearing costs.....	\$20.00
Less Security Deposit....	-\$600.00
 Total.....	 \$179.84

10-April-2024
Date



Seren Cahill
Residential Tenancies Office