

Residential Tenancies Tribunal

Application 2024-0208-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 3-April-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. A previous hearing of this tribunal heard an application, 2023-0914-NL, between the parties. It was ordered at that hearing that the landlord pay to the tenant \$415.00. The landlord paid to the tenant \$335 of this claim and withheld \$80. He now makes an application to retain this \$80 as compensation for inconvenience allegedly caused by the tenant, as well as another \$20 for damages. A claim for an additional \$3400 for compensation for inconvenience was included on the application but abandoned at the beginning of the hearing.

Issues before the Tribunal

5. Should the landlord's claim for compensation for inconvenience be granted?
6. Should the landlord's claim for damages be granted?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *RTA 2018*.

Issue 1: Compensation for Inconvenience

Landlord's Position

8. The landlord claims that the tenant's failure to comply with the terms of the rental agreement caused him \$80 in inconvenience. This was based on a failure to clean both the room she had rented as well as the common area.

Tenant's Position

9. The tenant is opposed to the claim.

Analysis

10. The landlord testified that the tenant failed to clean her room. A tenant is obligated to ensure they leave the rental premises in a clean state upon the termination of the lease. Page 19 of LL#1 shows that on 12-September-2023 the landlord told the tenant that he expected her to leave the apartment on or before 30-September-2023. This is the termination date of the tenancy. The landlord also gave the tenant 24-hours' notice that he would be entering the room the next day to show it to prospective new tenants. He included a list of step-by-step instructions for how he wished the cleaning to be completed. Pictures were also provided of some dirt in the tenant's room on 17-September-2023 (LL#1 pages 24-26).
11. The landlord seems to be operating under a misunderstanding. He is entitled to view the premises with 24-hours' notice. He is entitled to have the premises returned to him in a clean state. He is not entitled to demand a tenant clean the apartment before he conducts a viewing. He may ask a tenant to do this, and they will agree or not as they choose, but if they do not, he has no legal recourse. There is no photographic or documentary evidence before me that the tenant's room was left in an unclean state after the tenancy ended.
12. The landlord also claimed that the tenant failed to comply with the terms of the rental agreement requiring her to participate in cleaning the common area. The landlord presented a picture of single a bag of groceries he says the tenant left unattended in the common area (LL#1 page 27). He showed photos of the common area in a clean state, testified that he had cleaned it, and said he wouldn't have cleaned it if it didn't need to be cleaned. The landlord said that the common area needs to be cleaned whether or not it was already clean. When asked how he knew that the tenant did not clean the common area, he testified that she did not affirmatively tell him that she had cleaned it. To accept this would reverse the onus of proof.
13. The onus is always on the applicant to prove their claim on a balance of probabilities. As a matter of policy, this tribunal also requires that applicants provide some amount of documentary or photographic evidence to support claims for financial compensation. In this case, the landlord has done neither. As the basic requirements for a *prima facie* claim are not met, I do not need to consider the tenant's evidence. The landlord's claim for compensation for inconvenience is dismissed.

Issue 2: Damages

Landlord's Position

14. The landlord claims for \$20 in compensation for a damaged chest of drawers in the tenant's room which he says no longer opens and closes correctly. He says he would not have provided furniture which does not work.

Tenant's Position

15. The tenant testified that the chest of drawers was damaged when she moved in. She said she had just moved to Canada and had only a single suitcase. As there were two pieces of furniture and one was more than sufficient for her needs, she saw no reason to mention that the chest of drawers wasn't working.

Analysis

16. I accept the tenant's testimony that the chest of drawers was broken before she arrived at the apartment. The landlord suggested that most people would check the furniture and mention if something did not work. Whether or not this is true, the tenant explained why she did not. Her explanation is sensible and gives me no reason to doubt her testimony. Further, no other evidence contradicted her. The landlord may have been unaware the furniture was damaged when he rented the premises.

Decision

17. The landlord's claim for compensation for inconvenience fails.
18. The landlord's claim for damages fails.

23-May-2024

Date



Seren Cahill
Residential Tenancies Office