

Residential Tenancies Tribunal

Application 2024-0279-NL & 2024-0358-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 27 May 2024 via teleconference. The hearing was to adjudicate two separate applications: 2024-0279-NL and 2024-0358-NL.
2. [REDACTED], hereinafter referred to as “the tenant”, attended the hearing.
3. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. [REDACTED] did not attend the hearing.

Preliminary Matters

4. The tenant submitted an affidavit of service indicating the landlord was served with an Application for Dispute Resolution electronically ([REDACTED]) at 3:00 PM on 12 April 2024 (TT # 1). In addition, the landlord was also serviced a Notice of Rescheduled Hearing (T # 2). The landlord did not dispute receipt of these notifications.
5. The landlord submitted an affidavit of service indicating the tenant was served with an Application for Dispute Resolution electronically ([REDACTED]) at 3:24 PM on 9 May 2024 (LL # 1). In addition, the tenant was also service with a Notice of Rescheduled Hearing (LL # 2). The tenant did not dispute receipt of these notifications.
6. There was a written rental agreement which commenced on 1 July 2020 until 1 March 2024 (LL # 3). Rent was set at \$630.00. Initially, there was a security deposit collected on 27 June 2020 in the amount of \$350.00. Both parties testified there was an additional \$122.00 (equaling \$472.00) paid for a security deposit on 1 August 2023 (T # 3) and is still in possession of the landlord.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The tenant is seeking the following:

- A refund of the security deposit of \$472.00
- The security deposit to be used against monies owing of \$94.51

9. The landlord is seeking the following:

- Compensation for damages in the amount of \$285.59
- Compensation for utilities in the amount of \$44.51
- Security deposit to be used against monies owing
- Hearing expenses in the amount of \$20.00

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.

11. Also, relevant and considered in these cases are Sections 14 of the *Act*, along with *Policy Number 09-003: Claims for Damages to Rental Premises*, *09-005: Depreciation and Life Expectancy of Property*, *10-001: Application for Security Deposit of the Residential Tenancies Program*, and *12-001 Costs*.

Issue 1: Compensation for Damages = \$285.59

Landlord Position

12. The landlord testified the tenant rented a bedroom in a four-bedroom home which was converted during the tenancy to a five-bedroom home. The home was 12 years old and common areas of the rental included a kitchen area, a living room and hallway. The tenant's bedroom included an ensuite. The landlord stated during the tenancy of the respondent, there were four other tenants. The landlord is seeking \$285.59 for damages caused by the tenant. Along with his application, the landlord supplied a breakdown of 6 separate items (LL # 4) related to alleged damages. Each item will be dealt with individually below.

13. Along with his application, the landlord provided pictures of the rental premises which will be reviewed individually below.

Tenant Position

14. The tenant disputed he was the cause of all the damages identified by the landlord.

Cleaning of Tenant's bedroom

15. The landlords claim \$43.75 for costs associated with cleaning of the tenant's bedroom. This claim was broken into 1.5 hours of cleaning required at \$25.00 per hour, along with materials used. The landlord testified there was mold in the bedroom of the tenant.

Along with his application, the landlord provided pictures of the tenant's bedroom after he vacated (LL # 5). He did not provide receipts for the cost of materials.

16. The tenant disputed his bedroom required cleaning and disputed that he left any items after he vacated the rental premises.

Crack of Washbowl

17. The landlords claim \$50.00 of cost associate for a cracked washbowl in the ensuite of the tenant. Along with his application, the landlord provided pictures of this item.
18. The tenant did not dispute he caused the damage to the ensuite sink.

Microwave

19. The landlords claim \$25 of cost associated with a broken microwave handle. The landlord testified the microwave was purchased new in 2012. As specified on the landlord's break down of compensation for damages (LL # 4), the landlords identify the total cost of this item was \$100.00 and the amount sought was split between 4 tenants.
20. The tenant disputes he caused the damage to the microwave and testified this appliance was in the common area of the rental and also used by the other tenants.

Kitchen Cabinets, deicing of freezer and entrance

21. The landlords claim \$31.25 for cleaning of the kitchen cabinets and entry way along with de-icing of the freezer. As specified on the landlord's breakdown of compensation for damages (LL # 4), the landlords identify the total cost of this item as \$125.00 with the amount sought is split between 4 tenants. There was no amount of time offered about how long was required to clean the areas and de-ice the appliance.
22. The tenant disputes he contributed to the uncleanliness of the kitchen, entry way and was the cause of the ice. He testified there were four other tenants who also used the common area of the rental premises.

Garbage removal

23. The landlords claim \$15.00 from the tenant due to having to remove and transport garbage to the landfill. As specified on the landlord's break down of compensation for damages (LL # 4), the landlords identify the total cost of this item as \$60.00 with the amount sought split between 4 tenants. The landlord stated, "it took us hours loading and transporting and disposal". The landlord supplied pictorial evidence (LL # 5) related to garbage removal. The landlord There were no receipts of disposal of items at the local landfill provided.
24. The tenant disputes he left items behind which had to be disposed on when he vacated the rental premises. He testified there were other tenants in the rental premises during his tenancy.

Professional Cleaner

25. The landlords claim \$45.00 for costs associated with cleaning of the kitchen and bathrooms of the rental premises. As specified on the landlord's break down of compensation for damages (LL # 4), the landlords identify the total cost of this item as \$180.00, and the amount sought is split between four tenants. There were no receipts supplied related to this item, and no indication of the amount of time required to complete.
26. The tenant disputed he was responsible for leaving materials to be cleaned and the identified areas to be cleaned under this item was in common areas of the rental premises which the other tenants used.

Analysis

27. With all damage claims, three primary things have to be considered: 1. Damages exist; 2. The respondent is liable for the damages; and 3. The value to repair or replace the items.
28. The tenant disputed the bedroom he was renting was left in an unclean state. Upon review of the pictorial evidence offered of the bedroom, the need for cleaning is identified. That said, the landlords did not provide receipts of cleaning materials. The landlords testified 1.5 hours of cleaning of this area of the rental premises. Self-labour under the *Residential Tenancies Program* has been calculated as follows: minimum wage (\$15.60) + \$8.00 = \$23.60 X 1.5 hours = \$35.40. This portion of the landlords claim succeeds in the amount of **\$35.40**.
29. Of the six items listed herein, the tenant did not dispute he was responsible for the damages of the washbowl in the amount of \$50.00. This portion the landlords claim succeeds in the amount of **\$50.00**.
30. The landlords claim \$25.00 for costs associated with having to replace a microwave. The landlord testified this appliance was purchased in 2012. According to the *National Association of Home Builders/Bank of America Home Equity Study of life Expectancy of Home Components, February 2007*, the life expectancy of a microwave oven is 9 years therefore this item exceeds its life expectancy. The landlords claim for \$25.00 fails.
31. Of the remaining four items to be considered (kitchen cabinets, freezer and entry; garbage removal; and professional cleaner), in review of the pictorial evidence supplied by the landlords, these are common areas of the rental premises. Furthermore, there are questions that the respondent was liable for each of the items. As these are common areas of the overall rental unit shared by multiple parties, I am unable to determine what, if any of the damages and/or uncleanliness can be directly attributed to the tenant. In viewing the evidence in its totality, I am unable to assess whether the tenant is responsible. The landlords have failed to meet the evidentiary onus, and this portion of their claim therefore fails.

Decision

32. The landlords claim for compensation succeeds in the amount of **\$85.40**.

Issue 2: Compensation for Utilities = \$44.51

Landlord Position

33. The landlords claim \$44.51 for utilities. The landlord testified the tenant was permitted to vacate the rental premises with one month notice and they were seeking utilities owed between 15 February 2024 and 29 February 2024.

Tenant Position

34. The tenant did not dispute (T # 4) he was responsible to pay his portion of the utilities in the identified amount.

Decision

35. The landlords claim succeeds in the amount of **\$44.51**.

Issue 3: Disposition of Security Deposit

36. Both the landlords and the tenant were seeking to use the security deposit against monies owing.

Landlord Position

37. The landlord testified the tenant had initially paid a security deposit of \$350.00 prior to occupancy on 27 June 2020. He also stated the security deposit increased to \$122.00 (equaling \$472.00) which the tenant paid on 1 August 2023. The landlord testified on 24 March 2024, a portion of the security deposit was returned to the tenant of \$217.49 (LL # 6), he was seeking the remainder in the amount of \$254.51.

Tenant Position

38. The tenant did not dispute he had paid the security deposit as described by the landlord and did not dispute he was returned \$217.49 as suggested. He was seeking the remainder of the security deposit plus interest.

Analysis

39. The landlords are seeking a portion of the security deposit. The tenant is also seeking for the security deposit to be used against monies owing. The security deposit, plus applicable interest at the rate prescribed by the Security Deposit Interest Calculator shall be applied against the monies owed. The tenant's claim for security deposit succeeds in the amount of **\$254.96**.

Issue 4: Hearing Expenses - \$20.00

40. As both the landlord's and tenant's claims partially succeed, the hearing expenses will not be considered in this decision.

Summary of Decision

41. The tenant's claim for refund of security deposit succeeds in the amount of **\$125.05** as follows:

- Refund of Security Deposit.....\$254.96
- Less damages.....\$85.40
- Less Utilities.....\$ 44.51
- Total.....**\$125.05**

19 September 2024
Date

[Redacted]
Michael Reddy, Adjudicator
Residential Tenancies Office