

Residential Tenancies Tribunal

Application 2024-0304-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:53 PM on 21 May 2024 via teleconference.

2. [REDACTED], hereinafter referred to as "landlord1", attended the hearing. [REDACTED], hereinafter referred to as "landlord2", did not attend the hearing. [REDACTED], hereinafter referred to as "the landlord witness", attended the hearing.

3. [REDACTED], hereinafter referred to as "the tenant", attended the hearing.

Preliminary Matters

4. The landlords submitted an affidavit of service indicating the tenant was served with an Application for Dispute Resolution electronically ([REDACTED]) at 11:17 AM on 22 April 2024 (LL # 1). The tenant did not dispute service.

5. There was a verbal monthly rental agreement which commenced between 18 July 2023 and 31 December 2023 when the tenant vacated the rental premises. Rent was set at \$750.00 due on the 1st of each month which included heat and lights. There was a security deposit collected on 18 July 2023 for the tenancy of \$500.00 which is still in possession of the landlords.

6. 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 is more likely than not to have happened.

7. The disposition of the security deposit will also be determined in this decision.

Issues before the Tribunal

8. The landlords are seeking the following:

- An Order for compensation in the amount of \$732.10.

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*.
10. 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 *Life Expectancy of Property*, and 12-001: *Costs of the Residential Tenancies Program*.

Issue 1: Compensation for Damages of \$732.10

11. The landlords witness stated prior to the tenancy, the rental premise was a “brand new home” and the tenant rented a bedroom in the upstairs home with common areas which included the bathroom, living room, kitchen and laundry room. Landlord1 testified their daughter had stored personal belongings in the rental premises which both tenants were aware of prior to occupancy and there was one other tenant in the premises during the respondent’s tenancy.
12. The landlords are seeking compensation for damages caused by the tenant in the amount of \$732.10. The landlord testified the damages were observed in December 2023. Those damages the landlords broke down into 6 items (LL # 2). Those items will be grouped under headers in this decision.
13. Along with their application, the landlords provided pictures of the rental taken in December 2023 (LL # 3)

White Leather Chair

14. The Landlords are seeking \$109.58 for the cost associated with having to replace one white leather chair. The landlord witness testified this item was new prior to the tenancy and stated it was damaged due to black hair dye which could not be cleaned/repaired. Along with their application, the landlords provided a picture of the chair (LL # 3), correspondence from the other tenant indicating damages from hair dye (LL # 4), as well as correspondence from the tenant (LL # 5) suggesting hair dye which she used had damaged the chair. The landlords submitted the cost of the chair (LL # 6).
15. The tenant testified the hair dye which she used had caused the damage on the chair and did not dispute the evidence she had informed the landlord to use the security deposit in relation to damages she was liable for.

Bathroom Vanity

16. The landlords are seeking \$210.45 for the costs associated with having to replace the bathroom vanity. The landlord witness testified this porcelain countertop was installed in August 2023 and this item could not be repaired had to be replaced due to black hair dye stains. Along with their application, the landlords provided pictures of the item (LL # 3), correspondence from the tenant indicating damages from hair dye (LL # 4) and a receipt for the cost of vanity (LL # 7).

17. The tenant testified she had cleaned the vanity prior to vacating and landlord2 informed no concerns in relation to the bathroom vanity.

Shower Curtain and Liner

18. The landlords are seeking \$54.47 for the cost associated with having to replace the shower curtain and shower liner. The landlord witness testified both items were newly installed in the rental premises prior to occupancy and could not be repaired due to black hair dye stains. Landlord1 stated there was damage to both items from hair dye and shampoo. Along with their application, the landlords provided pictures of the item (LL # 3), along with receipts for the items (LL # 8).
19. The tenant did not dispute black hair dye on both items.

Two Mugs

20. The landlords are seeking \$103.60 for the cost associated with having to replace two mugs which were described as "water bottles". Landlord1 testified the rental included access to dishes however the identified items were the personal belongings of landlord2 and stored in the pantry of the rental premise. Landlord1 stated the tenant had not returned the "light pink one" and that the "dark pink one was thrown out after it was used" by the tenant. Along with their application, the landlords provided a receipt for the mugs (LL # 9), along with correspondence of in relation to this item (LL # 10).
21. The tenant did not dispute she had used the light pink water bottle and testified after she was made aware of landlord2's request to have the item returned, the item was returned. She stated she was not responsible for this item.

Hole in Wall

22. The landlords are seeking \$100.00 for the cost associated with having to repair a hold in the wall at the top of the stairs between the bathroom and top of stairs. The landlord witness testified landlord2 had stored a large table, still packaged, in the rental premises which was to be opened and used when landlord2 moved in. He stated this piece of furniture had been moved by the tenant and damaged the wall. Along with their application, the landlords provided pictures of the wall (LL # 3).
23. The tenant did not dispute that herself and the other tenant had moved the packaged item and testified this was due to safety concerns with the item being on the floor in the common area of the rental premises. She stated the item was not lifted as it was "too heavy", rather slid into another location with the assistance of the other tenant. She denied observing the hole in the wall while it had been moved and testified, she was not responsible for the hole in the wall.

Painting of Bathroom

24. The landlords are seeking \$154.00 for the costs associated with having to repaint the bathroom. This cost is broken down into \$66.00 for the purchase of the paint, along with

\$88.00 for four hours of labour. The landlord witness testified he had painted the bathroom and stated the bathroom had been painted prior to the occupancy of the tenant. He attributed the need for new priming and painting being due black hair dye being on the wall, as well as purple shampoo on the light green wall. Along with their application, the landlords provided pictures of the bathroom (LL # 3) after the tenant vacated, along with receipts for cost of paint (LL # 11).

25. The tenant did not dispute she was the cause of black hair dye being on the bathroom walls.

Analysis

26. 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 item. When considering the value to repair and replace each item, depreciation should also be a factor. The landlords claim for \$732.10 in damages, broken down in 6 items. The claims will be dealt with individually below. As stated in the *Residential Tenancies Program Policy Guide, Policy 09-003*, applicants must provide sufficient evidence to establish the cost of repairing or replacing the damaged items to establish the extent of the damage.

Decision

27. The landlords claim **\$109.58** for cost of a new white leather chair. The landlord witness testified this item was new prior to the occupancy and could not be repaired and had to be replaced due to black hair dye on the white leather which could not be removed. The landlords provided a receipt for the chair and provided pictures of the item. While the pictorial evidence is questionable as black hair dye cannot be clearly observed on the evidence available to me, the tenant did testify she was responsible for the damages associated with this item. This portion of the landlords claim succeeds.
28. The landlords claim **\$210.45** for a bathroom vanity. Landlord2 testified this item was newly installed prior to occupancy and had to be replaced due to black hair dye on the porcelain countertop which could not be removed. The landlords provided pictures after the tenant vacated as well as a receipt for the cost of the item. Upon review of the pictorial evidence, it is difficult to observe black spots as the evidence offered by the applicants does not clearly reveal this damage. As indicated herein paragraph 6, applicants are required to reflect those damages occurred. Furthermore, viewing the evidence in its totality, I am unable to assess the extent of the damages to the vanity. That said, as indicated herein the tenant had testified she was responsible for damages of items both inside and outside the bathroom of the rental. In totality of both evidence offered and testimony provided by the applicants and respondents, I conclude on a balance of probabilities that the tenant is responsible for the cost of damages. This portion of the landlords claim succeeds.
29. The landlords claim **\$54.47** for the cost for having to replace a shower curtain and shower liner. A picture was provided (LL # 3), along with receipt for both items (LL # 8).

Furthermore, the tenant testified she was responsible for the damages to both items. This portion of the landlords claim succeeds.

30. The landlords claim \$103.60 for the costs associated with replacement of two mugs. The tenant did not dispute she had used one of the items however after being requested, returned the item. Landlord1 testified both items were "personal" belongings of landlord2 which should not have been used by the tenant. In addition, she also identified the verbal rental agreement in place included use of dishes of the rental premises. Furthermore, she stated one of the items had been discarded after being used by the tenant due to what was claimed to be hygiene concerns. As such, there is no evidence to suggest one of items had to be replaced but rather it was landlord2's personal choice to discard the item. In addition, there is no evidence the tenant is responsible for keeping the "light pink" water bottle. In totality, the landlords have failed to meet the evidentiary onus, and this portion of their claim fails.
31. The landlords claim \$100.00 for the costs associated with repair of a hole in the wall in a common area of the rental premises. A picture was provided (LL # 3). There was no receipt for the costs of materials for repairing the hole. Upon review of the pictorial evidence, the evidence reflects a hole in the wall. The tenant testified she was not responsible for this damage. The question is if the tenant is liable for the damages? It was not disputed the rental had a common area where the hole was and another tenant was an occupant of the rental premises during the tenancy. Both the applicant and responsible dispute the tenant was responsible for the damage. As such, in its totality, I am unable to determine the tenant is liable for the damage. The landlords have failed to meet the evidentiary onus, and this portion of their claim fails.
32. The landlords claim **\$154.00** for the costs associated with having to repaint the bathroom. This claim was broken down into \$66.00 for paint and \$88.00 for labour. A picture was provided (LL # 3), along with a receipt for cost of paint (LL # 10). Landlord2 testified the rental premises was painted prior to the occupancy in July 2023 and following the tenant vacating the rental premise, he completed the painting in 4 hours. As noted in Policy 09-005 of the *Residential Tenancies Program: Life Expectancy of Property*, interior paint has an expectancy for between 3 to 5 years. Policy 09-005 also breaks down self labour as minimum wage (\$15.60 per hour + \$8.00 = \$23.60). Following that calculation, the landlords request for 4 hours of labour costs appears relevant to this portion of the claim. In addition, the tenant testified she was responsible for black hair dye being on the walls of the bathroom of the rental premises. This portion of the landlords claim succeeds.

Decision

33. The landlords claim for compensation for damages succeeds in the amount of **\$528.50** as follows:
 - Chair.....\$109.58
 - Bathroom Vanity.....\$210.45
 - Shower Curtain/Liner.....\$54.47
 - Painting.....\$154.00
 - Total.....**\$528.50**

Issue 2: Security Deposit

34. The landlords are owed moneys and are therefore entitled to apply the security deposit against the sum owed. In this case, the initial security deposit was \$500.00.
35. Section 14(7) of the *Residential Tenancies Act, 2018* says that landlords 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 landlords. The regulation prescribed a cumulative simple interest rate of 1% annual for the year of 2024. The results in interest of \$1.94, for a total of \$501.94.

Decision

36. The security deposit and interest of **\$501.94** will be applied against monies owed.

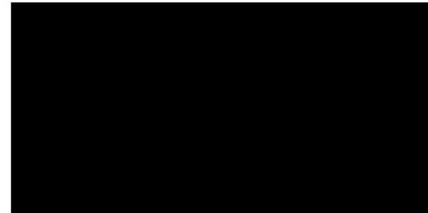
Summary of Decision

37. The tenant shall pay to the landlords **\$26.56** as follows:

- Compensation for damages.....\$528.50
- **Less Security plus interest.....\$501.94**
- Total.....**\$26.56**

September 3, 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office