

Residential Tenancies Tribunal

Application 2024-0390-NL
Counterapplication 2024-0698-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 10-September-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord”, attended by teleconference.

Preliminary Matters

4. The tenant submitted affidavit with her application stating that she had served the landlord with the notice of the hearing electronically via email: [REDACTED] on 24-August-2024 (TT#1). The landlord agreed receiving the notice of the hearing on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The landlord stated that she had served the tenant with the notice of the hearing on 13-August-2024 electronically. The tenant agreed that the landlord served her with the notice of the hearing on 13-August-2024 and the hearing proceeded.
6. There was a verbal month-to-month rental agreement which commenced on 1-December-2023 where the landlord sublet a room to the tenant within the unit she was renting herself. Rent was \$500.00 per month due on the first of each month and additional payment of \$150.00 per month was agreed for a fully furnished room. A security deposit of \$250.00 was collected in December-2023 and is in landlord’s possession. The landlord moved out on 1-June-2024. The tenant continued to reside in the rental room and has direct landlord-tenant relationship with the owner of the unit.
7. The tenant amended her application to decrease amount of damages claimed from \$2598.00 as per application to \$2348.00.

Issues before the Tribunal

8. The tenant is seeking:

- Compensation paid for damages of \$2348.00;
- Refund of Security Deposit of \$250.00.

9. The landlord is seeking:

- Rent \$1000;
- Compensation paid for damages of \$950.00;
- Utilities \$210.00;
- Late fees \$350.00;
- Security Deposit of \$250.00 to be applied against any monies owed.

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 this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4; Deposits, Payments and Fees, Section 9-3 Compensation for Damages to Rental Premises, Section 9-4 Compensation for Damage to Tenant's personal property, Section 12-1 Recovery of Costs, and following sections of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, Section 15: Fee for failure to pay rent.

Issue # 1: Damages \$2348.00.

Relevant submission:

12. The tenant reported that on 30-May-2024 the landlord removed all of her possessions from the rental room as she wanted her to move out. The tenant submitted a damages ledger where she has outlined several damages and losses for which she is seeking compensation:

Item #	Description of Damages	Compensation Claimed
1	1 Samsung 65 inch	\$ 798.00
2	One thousand and two hundred cash	\$ 1,200.00
3	perishable food stuff	\$ 350.00
4	Deposit refund	\$ 250.00

Tenant's Position:

- **Television damage \$798.00** – the tenant stated that the landlord broke her 65-inch Samsung television during the incident and the screen is not working. The tenant is seeking \$798.00 to cover the cost of a replacement.
- **Cash loss \$1200.00** – the tenant claimed that \$1200.00 in cash, which has been left in the room, was missing after the landlord removed her belongings. The tenant is seeking compensation for this amount.
- **Perishable food \$350.00** – the tenant stated that she purchased groceries prior to the incident and reported that all perishable food items in refrigerator were either spoiled or thrown away by the landlord. The tenant is seeking \$350.00 in reimbursement for the lost food.

Landlord's Position:

13. The landlord disputed the tenant's claims regarding damages and losses:

- **Television damage \$798.00** - the landlord denied that the television screen was damaged during the incident. The landlord asserted that the TV was not broken prior to the removal of tenant's belongings and remain undamaged.
- **Cash loss \$1200.00** - the landlord disputed that she is responsible for tenant's missing cash. The landlord firmly stated that she never touched the tenant's money and suggested that the tenant may have misplaced it.
- **Perishable food \$350.00** - the landlord disputed any loss of food, stating that she did not interfere with any tenant's food in the refrigerator or kitchen. She also argued that since the tenant had not moved out on that date, there could not have been any loss to food as claimed.

Analysis

14. In accordance with *Residential Tenancies policy 9-4*, the tenant is required to show:

- *the costs they had incurred to repair or replace any damaged items,*
- *the condition and age of the damaged item, and*
- *that the damage was caused by the landlord negligence in failing to comply with statutory condition 1.*

15. After considering testimony provided by the tenant and the landlord, and in accordance with Section 9-4 of the Policy as stated above, I find the following:

- **Television damage \$798.00** - the tenant was unable to show that the damage exists as claimed and to provide the evidence that the television was damaged by the landlord during the incident. For those reasons I find that the landlord is not responsible for the compensation to replace the television.
- **Cash loss \$1200.00** - the tenant did not present any proof that \$1200.00 in cash was present in her rental room, not that the landlord was responsible for the alleged loss. For this reason, I find that the landlord is not responsible to reimburse the tenant for the loss of cash.
- **Perishable food \$350.00** - the tenant failed to provide evidence that perishable food items were in the refrigerator or kitchen, that they were wasted by the landlord, or the specific amount of food lost. For this reason, I find that the landlord is not responsible to reimburse the tenant for the loss of food.

Decision

16. The tenant's claim for damages does not succeed.

Issue # 2: Rent Paid and late fees \$1350.00.

Relevant submission:

17. The landlord testified that the rent is outstanding in the amount of \$1000.00 for the period of April and May-2024. The landlord is also seeking the late fees in the amount of \$350.00. The landlord submitted a copy of the rental ledger to support the claim. See copy of the rental ledger below:

21-Nov-20	December Rent	\$ 500.00	\$ 500.00	\$ 0.00
27-Dec-20	January Rent	\$ 500.00	\$ 500.00	\$ 0.00
26-Jan-20	February Rent	\$ 500.00	\$ 500.00	\$ 0.00
	March Rent	\$ 500.00	\$ 500.00	\$ 0.00
23-Jul-24	April	\$ 0.00	\$ 500.00	\$ 500.00
23-Jul-24	Late fee charge	\$ 5.00	\$ 0.00	\$ 505.00
1-May-20	May Rent	\$ 500.00	\$ 0.00	\$ 500.00
2-May-20	Late fee charge	\$ 5.00	\$ 0.00	\$ 505.00

Landlord's Position

18. The landlord testified that the tenant sent rent payments for April and May electronically, however that payment was cancelled. The landlord is seeking rent to be paid in full.

Tenant's Position

19. The tenant disputed the landlord's claim for rent, arguing that she paid the rent in April and May.

Analysis

20. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00

21. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

22. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises. The landlord was able to show that she did not receive rent payment for April and May as the

payment from the tenant was cancelled (LL#1). Based on the evidence, I find that the tenant is responsible to pay rent for the months of April and May in the amount of \$1000.00.

23. With regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that the maximum late fee of \$75.00 as prescribed by the Minister is allowed.

Decision

24. The landlord's claim for rent paid and late fees succeeds in the amount of \$1075.00.

Issue # 3: Utilities paid \$210.41

Landlord's position

25. The landlord stated that the tenant did not pay her portion of electricity bill of \$68.23 for the period of 19-April-2024 to 8-May-2024. The landlord stated that the tenant never paid her portion of 50% for the internet service for the months of April, May, and June, total owing \$142.18. The landlord submitted a copy of internet bill for this period to support her claim (LL#2). The landlord is seeking total of \$210.41 to be paid by the tenant for the utilities.

Tenant's position

26. The tenant did not dispute that she owes money for the electricity bill of \$68.23, however she disputed that she is responsible for the payment for the internet. The tenant stated that she never used the internet during months of April, May and June as the landlord changed the password and refused to give a new password to the tenant.

Analysis

27. I accept the tenant's testimony that she is responsible for the payment for electricity bill of \$68.23. I accept the landlord's testimony that she is certain the tenant was using the internet during the months of April, May and June, as the landlord observed that the tenant had access to the modem and could view or change the password by herself, which led the landlord to conclude that the tenant was using the internet service during this period. Based on the testimony of both parties, I find that the tenant is responsible for the electricity payment of \$68.23 and internet payment of \$142.18.

Decision

28. The landlord's claim for utilities succeeds in the amount of \$210.41.

Issue # 4: Damages \$950.00

Landlord's position

29. The landlord testified that she incurred losses for several items and has submitted a ledger for compensation for damages as follows:

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	broken leg of coffee table	\$ 50.00
2	Defaced laptop	\$ 500.00
3	damaged laptop	\$ 300.00
4	damaged back cover of LG phone	\$ 100.00

- **Broken leg of coffee table \$50.00** – the landlord stated that when she left for vacation, the table in the living room was in good condition. As nobody lived in the unit, besides the tenant, the landlord claims that upon her return in May, she found that the table was broken. The landlord submitted a photograph of the table with a broken leg to support her claim (LL#3). The landlord is seeking compensation of \$50.00 for the repair of the table leg.
- **Defaced laptop \$500.00** – the landlord testified that she left her brand new laptop in her room while on vacation. The landlord stated that her room had no lock. Upon her return, she discovered that the laptop has been scratched with a sharp object, with what she claims are tenant's initials carved into it. The landlord is seeking \$500.00 for the reimbursement to repair laptop's metal cover.
- **Damaged laptop \$300.00** – the landlord stated that on 30-May-2024 an incident occurred with the tenant, during which the tenant throws landlord's laptop bag and struck it against the wall. As a result, the laptop's screen was damaged. The landlord submitted a photograph of the damaged laptop to support her claim (LL#4). The landlord is seeking \$300.00 for the repairs.
- **Damaged back cover of LG phone \$100.00** - the landlord claimed that her phone was inside the same laptop bag, when the tenant threw the bag against the wall, the phone was damaged. Specifically, the back cover of phone was broken and can no longer be attached to the device. The landlord submitted photograph of the broken phone to support her claim (LL#5). The landlord is seeking compensation of \$100.00 for the repairs.

Tenant's position

30. The tenant disputed that she is responsible for any damages as follows:

- **Broken leg of coffee table \$50.00** – the tenant denies causing any damage to the table in the living room.
- **Defaced laptop \$500.00** – the tenant disputes entering the landlord's room, either before or during the landlord's vacation. The tenant further denies causing any damage the laptop and claims that she never seen the laptop before.
- **Damaged laptop \$300.00 and damaged back cover of LG phone \$100.00** – the tenant denies that any altercation or fight occurred between her and the landlord. The tenant denies throwing the landlord's laptop bag.

Analysis

31. 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)*

32. I reviewed the testimony of both the landlord and the tenant as follows:

- **Broken leg of coffee table \$50.00** – I accept the landlord's testimony that the coffee table was in good condition when she left for vacation and that upon her return, it was broken. In accordance with Section 9-3 as stated above, the landlord was able to show that the damage to the leg of the coffee table existed and as the tenant was the only person residing at the unit, the landlord was able to show that the tenant caused the damage. The landlord failed to show the cost to repair the coffee table, however I accept that \$50.00 is reasonable amount to repair the broken leg of the coffee table. For those reasons, I find that the tenant is responsible for the damage to the leg of coffee table and is responsible to pay \$50.00 for the repairs.
- **Defaced laptop \$500.00** – in accordance with Section 9-3 of *The Policy* as stated above, the landlord did not fulfill her obligation to provide sufficient evidence showing that the damage to the metal cover of the laptop exists and that it was caused by the tenant. Specifically, the landlord was not able to demonstrate that the tenant carved her initials with the sharp object on the metal cover of the laptop. Therefore, I find that the tenant is not responsible for the \$500.00 reimbursement for repairing the laptop's metal cover.
- **Damaged laptop \$300.00 and damaged back cover of LG phone \$100.00** – I accept the landlord's testimony that she witnessed the tenant take her laptop bag and throw it against the wall during an altercation, resulting in damage to both the laptop and the phone inside the bag. In accordance with Section 9-3 of *The Policy* as stated above, the landlord was able to show that the damage existed and that the damage was caused by willful act on the part of the tenant. Based on research, I find that \$300.00 is a reasonable amount for repairing the laptop screen, and \$100.00 is appropriate for replacing the back cover of the phone. (The research was taken from www.downtowncomputers.com and www.ifixit.com) For those reasons, I find that the tenant is responsible for the cost to repair the laptop and phone in the amount of \$400.00.

Decision

33. The landlord's claim for damages succeeds in the amount of \$450.00.

Issue # 6: Refund of Security deposit \$250.00

Security deposit to be applied against any monies owed \$250.00

Analysis

34. Section 14 of the *Residential Tenancies Act, 2018* states:

Security deposit

- 14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,
 - (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

- (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

35. The landlord's claim for losses has been successful as per paragraphs 24, 28 and 33 and as such, the security deposit shall be applied against monies owed. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest in 2024 is 1%.

Decision

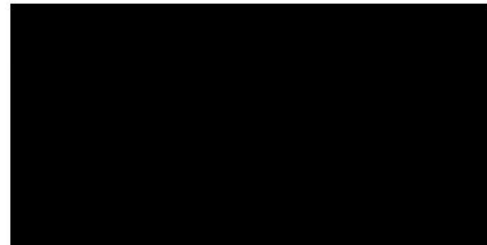
36. The tenants claim for refund of security deposit does not succeed.
37. The landlord's claim for security deposit applied against monies owed succeeds.

Summary of Decision

38. The tenant shall pay the landlord \$1483.67 as follows:

Rent and late fees paid	\$1075.00
Damages	\$450.00
Utilities paid	\$210.41
Less Security Deposit & interest	\$251.74
Total	\$1483.67

September 17, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office