

Residential Tenancies Tribunal

Application 2024-0425-NL & 2024-0496-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 13-June-2024 at 1:54 pm.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, also attended via teleconference.
4. [REDACTED] attended via teleconference as a witness for the landlord.

Preliminary Matters

5. Both parties acknowledged on the record that they received service of the other party's claim more than 10 days in advance of the hearing date.
6. The landlords made a claim for compensation for inconvenience in the amount of \$213.00. They testified that this amount approximates the low range of what one of the landlords would have earned if he had been free to work on the day of the hearing. Generally, expenses of this nature are considered hearing expenses, since they are suffered not by actions or omissions during the normal course of the tenancy, but rather as part of the dispute resolution process. Hearing expenses will be dealt with under the Decision header, below.
7. The tenant objected to some of the landlords' photographic evidence (LL#19-36) on the basis that she was not served a copy and thus did not have the opportunity to examine the evidence. The landlords testified that they attempted to serve the tenant this evidence by email, the same email which was sent to our office, on 10-June-2024 at 12:14 pm. All of the photographic evidence from the landlord was sent about the same time, divided into multiple emails so that no single email was bounced off the server for being too large. I verified that our office received these emails. I note that the emails containing the evidence the tenant acknowledged receiving included notes on the total amount of evidence being provided (e.g., "Evidence Attached 5-7 of 36"). I conclude that it was open to the tenant to raise the issue prior to the hearing that some of the evidence

was not received, as she must have understood that the landlord tried to or at least had intended to send more. I accepted this evidence on the basis that its probative value outweighed any prejudicial effect.

Issues before the Tribunal

8. Should the landlords' claim for unpaid rent and late fees be granted?
9. Should the landlords' claim for damages be granted?
10. Should the tenant's claim for a refund of rent be granted?
11. Should the tenant's claim for compensation for inconvenience be granted?
12. What is the proper disposition of the security deposit?

Legislation and Policy

13. 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: Unpaid Rent

Landlords' Position

14. The landlords seek unpaid rent for the month of May. They state that the tenant gave a one-month notice that she would be moving out on 19-April-2024. They therefore submit that the tenant ought to pay rent until 19-May-2024. They said they received only \$103.00 for the month of May. They calculate the amount owing as \$464.52. The monthly rent was \$800.00. A rental ledger was provided.

Tenant's Position

15. The tenant testified that the rental agreement ran from the 16th of each month to the 16th of each month. She provided a copy of the agreement stating the same (T#51). She submitted that the \$103.00 payment in May was an overpayment by the governmental agency subsidizing her rent. As far as she understood, she was fully paid up. Parties agree she moved out 14-May-2024.

Analysis

16. Having reviewed the totality of the evidence presented by both parties in detail, I find there is insufficient evidence to conclude on a balance of probabilities that the tenant owes unpaid rent. With no unpaid rent established, late fees are not appropriate. This part of the landlord's claim fails.

Issue 2: Damages

17. The landlords claim \$908.49 in damages, divided into 6 items. Each item will be dealt with individually below.
18. First, the landlords claim for \$34.99 for the replacement of a damaged shower head. One of the landlords testified that when they retook possession the shower head was detached and lying on the floor. He tried reattaching it, but it did not function.
19. The tenant testified that she never used the shower head. She says it looked dirty and is not the type she prefers, so when she moved in and she replaced it. She said she took the replacement when she left. She says she left the old shower head on a toilet paper dispenser.
20. As per Policy 09-003 of the Residential Tenancies Program Policy and Procedure Guide, during a hearing in which the applicant seeks damages, the applicant must establish the costs of repairing or replacing the damaged items. If the damaged item has already been repaired or replaced, a receipt or invoice should be submitted into evidence. Where the item has not yet been replaced or repaired, an estimate from a reputable contractor/technician/etc. should be submitted. In the absence of such supplementary evidence, awards of damages are not generally granted. Requiring evidence of the cost of repair/replacement where possible serves an important purpose. If this requirement was not in place, bad actor applicants could easily inflate their costs, and respondents would struggle to find evidence to refute such claims. This portion of the landlords' claims therefore fails on evidentiary grounds.
21. Second, the landlords claim for \$140.00 for materials to repair damaged vinyl flooring in the porch. The damage is visible in LL#18. He said the damage was caused by the tenant's animals.
22. The tenant says the floor overlapped in a way that caused it to protrude into the way of the nearby door. She says this caused it to start to peel. She says it was after this that her dog began to damage it.
23. No receipt, invoice, estimate, or similar document was provided. This portion of the landlords' claim therefore fails on evidentiary grounds.
24. Third, the landlords claim for \$350.00 for materials to repair damaged flooring in the laundry room. They testified that the tenant had a litter box placed in the laundry room and it leaked somehow, causing damage to the flooring. They provided a photo of the damage (LL#22).
25. The tenant said she had no knowledge of this. She said the type of litterbox she used would prevent the animal from spilling litter or waste onto the floor.
26. No receipt, invoice, estimate, or similar document was provided. This portion of the landlords' claim therefore fails on evidentiary grounds.

27. Fourth, the landlords claim for \$236.00 in cleaning. They testified the tenant left the apartment in an unclean state and provided photos in support of this (LL#1-17, LL#22-24). The witness for the landlord also testified that the premises were left in an unclean state. Specifically, he described it as “filthy.” The total represents ten person hours spent cleaning at the self-labour rate of minimum wage + \$8.00/hour, which currently results in a rate of \$23.60/hour.
28. The tenant said she attempted to clean the premises before she left. She said the mover rushed her out and she did not get to do all the cleaning she wished to.
29. The mover’s schedule is irrelevant. The tenant had a responsibility to leave the premises in a clean state. The tenant knew when she would be moving. It was not a surprise or a last-minute decision. The evidence clearly demonstrates that the premises were left in an unclean state. The evidence justifies ten hours cleaning. The landlord is entitled to claim at the self-labour rate. This portion of the landlords’ claim succeeds.
30. Fifth, the landlords claim for \$118.00 for the labour it took to repair the damaged floors. This represents five person hours at the self-labour rate of \$23.60/hour.
31. Considering the evidence in its totality, I find on a balance of probabilities that the floors were damaged by the tenant’s wilful or negligent acts. The laundry room floor was damaged by the tenant’s cat’s urine, notwithstanding the tenant’s testimony that she believed her litterbox would prevent this. As for the porch flooring, the tenant appears to accept responsibility for this in text messages that were submitted as part of the tenant’s own evidence (T#19-T#20). This portion of the landlords’ claim succeeds in the amount of \$118.00.
32. Sixth, the landlords claim for \$30.00 for the replacement of a damaged bathroom door handle.
33. The tenant testified that the handle always functioned poorly.
34. No receipt, invoice, estimate, or similar document was provided. This portion of the landlords’ claim therefore fails on evidentiary grounds.
35. To summarize the above, the landlords’ claim for damages succeeds in part in the amount of \$354.00.

Issue 3: Refund of Rent

Tenant’s Position

36. The tenant seeks a refund of rent in the amount of \$6800.00. This represents half the rent for the duration of the tenancy. The tenant submits that this is appropriate due to the landlord’s failure to meet their obligations under the rental agreement. She alleges that the landlord failed to ensure the upstairs tenants respected her rights under the agreement. She said when she made complaints they would brush her off with responses like “I can’t deal with this right now” or “I am having a medical emergency.” She testified that the landlord had told her that half of the lawn and a certain amount of

the driveway would be for the exclusive use of her and her family. She says the small children of the other tenants habitually would park their bicycles in her area. They would also loiter by her door and in her area of the lawn. She testified that they would allow their dog and their chickens to roam. She says she felt unable to put her own dog out, even on a lead, because she was concerned the animal would harm one of the children and she would be blamed. She says also that they were habitually loud, and that the premises had mold and rat problems.

Landlord's Position

37. The landlords testify that they attempted to resolve the issues between the tenants to the best of their ability. They agree that they had responded at one point to the tenant's complaints that they could not deal with the issue immediately because they were having a medical emergency. They testified that the tenant had never told them about any rat or mold problems.

Analysis

38. After examining the evidence in its totality, I find no basis for the tenant's claim on a balance of probabilities. The tenant's evidence shows only minor inconveniences, such as small children playing in unoccupied space in her parking area. I find nothing that justifies a refund of rent.
39. The tenant's claim for a refund of rent fails.

Issue 4: Compensation for Inconvenience

Tenant's Position

40. The tenant claims \$370.00 for the cost of hiring a mover. She says she was forced to move because the landlord failed to ensure the upstairs tenants abided by the terms of the rental agreement.

Landlords' Position

41. As summarized in the previous issue, the landlords dispute that they failed to ensure the upstairs tenants abided by the terms of the rental agreement.

Analysis

42. No receipt, invoice, estimate, or similar document was provided. This portion of the tenants' claim therefore fails on evidentiary grounds.

Issue 5: Security deposit

43. The landlord is owed moneys. They are therefore entitled to apply the security deposit against the sum owed. Any remainder must be returned to the tenant. The security deposit in this case is \$372.

Decision

44. The landlords' claim for unpaid rent and late fees fails.
45. The landlords' claim for damages succeeds in the amount of \$354.00.
46. The tenant's claim for a refund of rent fails.
47. The tenant's claim for compensation for inconvenience fails.
48. The landlords may apply the security deposit against the sum owed. Any remainder must be returned to the tenant.
49. The landlords were successful in their application and are therefore entitled to have their reasonable hearing expenses covered. In this case they seek the \$20 application fee as well as the \$213 one of the landlords would have earned had he not needed to take a day off work for this hearing. What expenses are considered reasonable is left to the discretion of the adjudicator, as per policy 12-001. In using my discretion, I am mindful that the dispute resolution process is intended to be a quick and inexpensive way for landlords and tenants to resolve disputes without having to enter into expensive and lengthy court proceedings. Concerns about large costs awards should not deter an applicant, acting in good faith, from bringing an Application for Dispute Resolution.
50. In the past, the work time a landlord takes off to attend the hearing has generally been considered "part of the cost of doing business," and thus not compensable. In this case, I find the issue merits a more in-depth consideration.
51. I consider the factors highlighted in Policy 12-001. The landlord claim significantly more than the amount ultimately awarded. The landlord was successful in only some of the issues they sought to have adjudicated. The cost was necessary. The proceeding was moderately complex. It took roughly 2.5 hours for the hearing. It could not have been shorter unless parts of claims were abandoned. The initial applicants claims were unsuccessful. The costs claimed are a significant portion of the total amount awarded.
52. Considering all the above factors, I elect not to award these additional costs.

Summary of Decision

53. The tenant shall pay to the landlord \$2.00 as follows:

Damages.....	\$354.00
Hearing Expenses.....	\$20.00
Less Security Deposit.....	-(\$372.00)
Total.....	\$2.00

23-July-2024

Date


Seren Cahill
Residential Tenancies Office