

Residential Tenancies Tribunal

Application 2024-0492-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 10-July-2024 at 1:47 pm.
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. The respondents acknowledged they received notice of this hearing more than ten days before the hearing date.
5. There was a security deposit at some point in this tenancy. The disposition of the security deposit was already determined in 2024-0440-NL, where it was adjudged that the deposit was to be returned to the tenant in full.

Issues before the Tribunal

6. Should the landlord's claim for unpaid rent succeed?
7. Should the landlord's claim for damages succeed?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*.

Issue 1: Unpaid Rent

Landlord's Position

9. The landlord testified that the tenant owes \$312.50 in unpaid rent for the month of April, representing half the month's rent. She says the lease agreement was a fixed term set to end 15-April-2024, and the tenant asked her about moving out early. She and the tenant then signed an agreement (LL#1) wherein the tenant agreed "to vacate the premises by April 1st, 2024, and in consideration of the early termination, [REDACTED] authorizes the landlord to withhold \$312.50 (Three Hundred Twelve Dollars and Fifty Cents) from the security deposit of \$450 (Four Hundred Fifty Dollars) paid at the commencement of the lease. This amount represents the prorated rent for the remaining period of the lease."

Tenant's Position

10. The tenants agrees that she signed the agreement.

Analysis

11. In Canadian law, a simple contract not under seal requires consideration to support it in order to be legally binding. In this context, "consideration" means something of value. It could be money, property, a service, or even a promise not to do something, but it must have some kind of actual value. In LL#1, the tenant agreed to waive her right to occupy the premises for the dates between 1-April-2024 and the scheduled termination date, 15-April-2024. That waiver is consideration. What consideration did the landlord offer in exchange?
12. I asked the landlord what the tenant gained by signing this agreement. She responded, "I don't think there was really anything to gain, just evidence that this was an agreement and we both signed it." Without consideration or a seal, this is not a contract, but a one-sided agreement to pay, and is therefore not enforceable in law.
13. The parties nevertheless agreed in reality that the tenant would move out on 1-April-2024, and indeed she did so. LL#1 notwithstanding, I see no reason why the tenant would be liable for rent during a period for which she did not have occupancy.
14. To enforce the agreement would result in a scenario where the tenant is liable for the full cost of the rental agreement with none of the benefits. The landlord, in exchange, would "have their cake and eat it too." They would even be able to house a new tenant during the same period, effectively becoming able to "double dip" on rent. This is contrary to existing policy regarding a landlord's duty to mitigate loss.
15. The landlord's claim for unpaid rent fails.

Issue 2: Damages

Landlord's Position

16. The landlord claims for \$145 in damages, divided amongst two items. She testified that this was an estimate of what she expects the repairs to cost. \$90 was for the repair of a hole in a wall (plastering and painting) and \$55 was for the replacement of a damaged doorknob. Pictures were provided of the hole and the doorknob (LL#2).

Tenant's Position

17. The tenant questions the accuracy of the landlord's submissions on the damages. She says the landlord previously told her that the repairs had already been done but had refused to provide receipts. She said she has no memory or knowledge of any hole in the bedroom. She said the doorknob was working fine when she vacated.

Analysis

18. The Residential Tenancies Program Policy and Procedure Guide policy 09-003 states that during a hearing in which the applicant is seeking an award in compensation for 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.
19. This policy serves an important purpose. A landlord is in a much better position to provide evidence of what repairs might cost than the tenant, who no longer has access to the property, would. If this tribunal awarded damages based on the sworn or affirmed testimony of landlords alone, it would be easy for bad actors to inflate their claimed costs, and tenants would have a difficult time refuting these claims. In order to assure fairness for everyone, the landlord is therefore required to submit some documentary evidence of the cost of repairs where possible.
20. No such evidence was submitted by the landlord in this case. Even if this tribunal was prepared to make an award for damages based on testimony alone, the landlord in this case gave no explanation for how she arrived at the numbers claimed.
21. As the landlord has not met their evidentiary burden, the landlord's claim for damages fails.

Decision


22. The landlord's claim for unpaid rent fails.
23. The landlord's claim for damages fails.

Summary of Decision

24. The application is dismissed.

2-August-2024

Date


Seren Cahill
Residential Tenancies Office