

Residential Tenancies Tribunal

Application 2024-0347-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 1:45 PM on 28 May 2024 and at 8:58 AM on 5 July 2024 via teleconference.
2. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. [REDACTED], did not attend the hearing.
3. [REDACTED], hereinafter referred to as “tenant1”, attended the first hearing date. [REDACTED], hereinafter referred to as “tenant2”, attended the hearing.

Preliminary Matters

4. The landlord submitted an affidavit of service indicating landlord2 was served an Application for Dispute Resolution via registered mail ([REDACTED]) at 3:36 PM on 13 May 2024 (LL # 1). Tenant2 did not dispute she received notice of this hearing more than ten days before the hearing dates.
5. Tenant2 testified she was not an occupant of the rental premises but was the person who provided rent. Tenant2 meets the definition of a tenant as defined in Section 2 (m) of the *Residential Tenancies Act, 2018* (the *Act*).
6. There was a written monthly rental agreement (LL # 4) which commenced on 3 October 2020 until February 2024 when tenant1 vacated the rental premises. Rent was set at \$1,200.00 due on the 1st of each month and the tenants were responsible for the payment of utilities. There was a security deposit collected on the tenancy of \$900.00 collected on 3 October 2020 which is still in possession of the landlords.
7. The landlord amended the application to include compensation for late fees of \$75.00, compensation for utilities of \$296.00 and were seeking \$20.00 hearing expenses and registered mail fees.

8. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicant has the responsibility to prove 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 applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

9. The landlords are seeking the following:
- Rent paid in the amount of \$2,400.00
 - An Order for compensation for late fees in the amount of \$75.00
 - An Order for compensation for damages in the amount of \$1,475.00
 - An Order for compensation for utilities payment in the amount of \$296.00
 - An Order for the security deposit to be used against monies owing
 - An Order for compensation of hearing expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in Section 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this case 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: Rent and Late Fees Paid

Landlord Position

12. The landlord testified the rental term ran from the 1st of each month to the 1st of the next month. He stated the tenants had failed to pay rent for January and February 2024. The landlord was seeking rental arrears in the amount of \$2,400.00. Along with his application, the landlord supplied a rental ledger (LL # 5) as well as text messages from tenant2 indicating she was aware there were rental arrears (LL # 6).

Tenant Position

13. Tenant1 testified she had vacated the rental premises by the end of February 2024 and did not dispute rent was not paid for January or February 2024. Tenant2 ceded the late fees were appropriate.

Analysis

14. 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.
15. The landlord was able to show that rent has not been paid for January and February 2024. This was not disputed by the tenants.
16. Section 15 of the *Residential Tenancies Act, 2018* states:

5. (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.*

Decision

17. The landlord's claim for rental arrears succeeds in the amount of **\$2,400.00**.
18. The landlord's claim for late fees succeeds in the amount of **\$75.00**.

Issue 2: Compensation for Damaged of \$1,475.00

Landlord Position

19. The landlord testified they had taken ownership of the rental premises in 2004. He observed damages after tenant1 had vacated the premises in March 2024 and he was seeking compensation in the amount of \$1,475.00. Those damages the landlord broke down over 13 items. Along with his application, the landlord provided a Damages List (LL # 7). Those items will be grouped under headers in this decision.

Front Door and Side Light

20. The landlord is seeking \$500.00 for the costs associated with having to replace the front door and side light with a used wooden door which he obtained on Kijiji. The landlord described the door as a steel frame with wooden interior and testified the door and light were in place when he took ownership of the rental premise in 2004.

21. Tenant1 disputed she was liable for the damages to the front door and side light.

Bedroom Window

23. The landlord is seeking \$300.00 with the costs associated with having to replace the interior windowpane of a vinyl 20-year-old window. The landlord did not provide any receipts for the cost associated with a new windowpane, rather, "I just came up with \$300.00 because the price to replace it would be much more than \$300.00".
24. Tenant1 disputed she was liable for the damages to the windowpane.

Bathroom Door

25. The landlord is seeking \$120.00 with the costs associated with having to replace the bathroom door. He stated he purchased the door at a local building supply store. There was no receipt supplied in relation to this item.
26. Tenant1 did not dispute she was liable for the costs associated with the bathroom door.

Bifold Closet Door Repair

27. The landlord is seeking \$20.00 with costs associated with having to repair six panel doors with gluing the door runners. He testified all the items were in place when he took ownership of the rental premises in 2004.
28. Tenant1 testified she was not liable for the costs associated with having to repair the closet doors and stated when she had taken occupancy, the doors did not have door runners.

Pantry Door Repair

29. The landlord is seeking \$20.00 with costs associated with having to repair a pantry door. This included his taking the door off, glueing and painting the item which had taken him under one hour labour. This item was in place when he took ownership of the rental premises in 2004.
30. Tenant2 testified the pantry door needed repair during the tenancy as the item was, "catching" when it was opened and closed.

Bedroom Wall Repair

- 31. The landlord is seeking \$20.00 with costs associated with having to repair two feet by three feet hole in the bedroom wall. He testified this repair included plastering and painting this hole in the wall.
- 32. Tenant2 did not dispute being liable for the damages to the bedroom wall.

Hallway to Basement Wall Repair

- 33. The landlord is seeking \$20.00 with costs associated with having to repair a hole in the hallway to the basement of the rental premises.
- 34. Tenant2 did not dispute that they were liable for the damages to this area of the rental premises.

Living Room Wall Repair

- 35. The landlord is seeking \$10.00 with costs associated with having to repair a hole in the wall of the living room.
- 36. Tenant2 did not offer any testimony to this portion of the claim.

Painting

- 37. The landlord is seeking \$50.00 with costs associated with having to repaint of the rental premises. He testified it had last been painted prior to the tenancy. There was no indication how long it had taken the landlord to repaint, nor were there any receipts of costs of paint and materials.
- 38. Tenant2 did not dispute the rental premises had to be repainted after the tenancy and that they were liable for the damages.

Replacement of Window Blind

- 39. The landlord is seeking \$50.00 with costs associated with having to replace a window blind.
- 40. Tenant2 did not dispute they were liable for the damages to the window blind.

Cleaning

41. The landlord is seeking \$230.00 with costs associated with having to clean inside the rental premises (\$100.00), outside the rental premises (\$30.00) and removal and disposal of items left by tenant1 (\$100.00). The landlord testified himself, his wife and their daughter worked four hours.
42. The landlord testified there were items left by tenant1 which they disposed of at the local landlord which required four hours work.
43. Tenant2 did not dispute the rental premises required cleaning and disposal of items left behind by tenant.

Mailbox Key

44. The landlord was no longer seeking \$35.00 related to this item.

Door Locks

45. The landlord is seeking \$50.00 with costs associated with replacement of the locks on the front and back doors. He testified the keys were not returned by tenant1 and the locks had been changed on 1 March 2024. There were no receipts supplied in relation to these items.
46. Tenant2 testified the landlord requested for the keys to be returned and did not feel they were liable for these items.

Analysis

47. With all damage claims, three primary things have to be considered: 1. Damages exist; 2. The respondents are responsible 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 landlord's claim for \$1,475.00 is divided over 13 items. The claims will be dealt with individually below.

Front Door and Light

48. The landlord claims \$500.00 for replacement of a new door and light. The landlord did not provide pictorial evidence or a receipt for each item, and tenant1 disputes being liable for both items. The landlord testified the door and light were installed prior to his purchase of the rental premises in 2004.

Policy 09-005: Life Expectancy of Property of the Residential Tenancies Program indicates life expectancy of a Wooden door is 10 years, whereas a steel door is 15 years. Furthermore, life expectancy of exterior light fixtures is 10 years.

49. Viewing the evidence in its totality, I am unable to assess the extent of the damages to the door and side light, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlord has failed to meet the evidentiary onus, and this portion of his claim fails.

Bedroom Window

50. The landlord claims \$300.00 for the replacement of a windowpane for a twenty-year old interior vinyl window. There was no receipt for the cost associated with this item and the landlord testified, "I just came up with \$300.00". The tenants dispute being financially liable for this item.

Viewing the evidence in its totality, I am unable to access the extent of the damages to the windowpane, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlord has failed to meet the evidentiary onus, and this portion of his claim fails.

Bathroom Door

51. The landlord claims **\$120.00** for replacement of the bathroom door. While there was no receipt provided for the cost of purchase of this item, the tenants ceded this was appropriate. This portion of the landlord's claim succeeds.

Bifold Closet Door Repair

52. The landlord claims \$20.00 for repair of six closet doors. The landlord attributed this cost to glue. There was no receipt supplied for glue. The tenants disputed being financially liable for this item.

Viewing the evidence in its totality, I am unable to access the extent of the damages to the closet doors, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlord has failed to meet the evidentiary onus, and this portion of his claim fails.

Pantry Door Repair

53. The landlord claims \$20.00 for repair of a pantry door. The landlord testified he repaired this item with glue and fresh paint. As indicated herein, there were no receipts for wood glue, nor was there any receipts for paint and supplies. The landlord stated the item was in place before he had taken ownership of the rental premises in 2004.

Policy 09-005: Life Expectancy of Property of the Residential Tenancies Program indicates life expectancy of a cabinet door (kitchen and vanity) is 20 years.

Viewing the evidence in its totality, I am unable to access the extent of damages to the pantry door, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlord has failed to meet the evidentiary onus, and this portion of his claim fails.

Bedroom Wall Repair

54. The landlord claims **\$20.00** for repair of the bedroom wall. While there was no receipt or pictorial evidence supplied, the tenants ceded this was appropriate. This portion of the landlord's claim succeeds.

Hallway to Basement Wall Repair

55. The landlord claims **\$20.00** for repair of the hallway wall. While there was no receipt or pictorial evidence supplied, the tenants ceded this was appropriate. This portion of the landlord's claim succeeds.

Living Room Wall Repair

56. The landlord claims **\$10.00** for repair of the living room wall. While there was no receipt or pictorial evidence supplied, the tenants did not offer any insight into this portion of the claim. As the bedroom walls and hallway walls succeed herein, this portion of the landlord's claim succeeds.

Painting

57. The landlord claims **\$100.00** for painting of the walls, doors and baseboards. As the claims for repair of walls within the rental premises have succeeded herein, this portion of the landlord's claim succeeds.

Replacement of Window Blind

58. The landlord claims **\$50.00** for replacement of the window blind. While there was no receipt or pictorial evidence supplied, the tenants ceded this was appropriate. This portion of the landlord's claim succeeds.

Cleaning

59. The landlord claims \$230.00 for cleaning, inside and outside of the rental premises, along with removal of belonging left by tenant1. He testified eight hours were required for himself, his wife and their daughter to clean the rental

premises. While there were no receipts or pictorial evidence supplied, the tenants ceded that removal and cleaning was required.

Policy 09-005: Life Expectancy of Property of the Residential Tenancies Program equates self-labour as minimum wage (\$15.60) + \$8.00 per hour. That equates to \$23.00 per hour X eight hours of work = \$.188.80 X 3 individuals = \$566.40. However, this tribunal cannot award monies in excess of that which has been claimed therefore this portion of the landlords claim succeeds in the amount of **\$230.00**.

Door Locks

60. In relation to the claim for compensation of \$50.00 for two new door locks, locks should be changed between tenancies to protect the landlord from liability and the well-being and safety of new tenants. This would be considered a “cost of doing business”. This portion of the landlord’s claim fails.

Decision

61. The landlord’s claim for compensation for damages succeeds in the amount of **\$550.00** as follows:

- Bathroom Door.....\$120.00
- Wall Repairs.....\$50.00
- Painting.....\$100.00
- Window Blind.....\$50.00
- Cleaning of Rental Premises.....\$230.00
- Total.....**\$550.00**

Issue 3: Utilities Paid

Landlord Position

62. The landlord is seeking \$296.00 of utilities paid. The landlord testified the tenants were responsible for purchase of furnace oil during the tenancy from a specified furnace oil company, who would clean the furnace as required. The tenants were clearly informed of this both verbally and on the written rental agreement. Along with his application, the landlord supplied a copy of the written rental agreement (LL # 4). As a result of the tenants not purchasing from Harvey’s, the landlord had to have the furnace cleaned after tenant1 vacated the rental premises.

Tenant Position

63. Tenant2 testified they had purchased furnace oil from another service provider than indicated on the rental agreement and did not dispute the landlord's claim.

Analysis

64. The rental agreement in place between the landlord and tenants was one where the tenants were responsible to purchase furnace oil from a specific company. Upon review of the written rental agreement (LL # 4), along with one of the identified landlords', both tenants signed this agreement. Part 10 of that piece of evidence identifies the tenants were responsible for the utilities. In addition, part 11 of that signed agreement identifies the tenants were responsible to purchase furnace oil from "[REDACTED]".
65. During the hearing, the landlord offered testimony that this furnace oil company would complete furnace cleaning as required. Tenant2 did not dispute they purchased furnace oil from another provider.
66. Considering the evidence in its totality, I conclude on a balance of probabilities that the tenants are responsible for the costs associated with a furnace cleaning.

Decision

67. The landlord's claim for compensation for utilities paid in the amount of **\$296.00** succeeds.

Issue 4: Security Deposit

68. The landlord is seeking to retain the security deposit of \$900.00. The landlord testified the tenants paid the security deposit on 3 October 2020 which was not disputed by the tenants. As the landlord's claim for compensation has succeeded, the security deposit, plus applicable interest at the rate prescribed by the *Security Deposit Interest Calculator* shall be applied against monies owed (\$900.00 + \$4.62) and reveals the landlord shall retain \$904.62.

Decision

69. The landlord shall retain the security deposit of **\$904.62** to be applied to monies owed.

Issue 5: Hearing Expenses

70. The landlord claims \$20.00 hearing expenses and expenses in relation to registered mail. Along with his application, the landlord supplied a hearing receipt (LL # 8). There was no receipt supplied in relation to registered mail. During the testimony, the landlord did not offer the costs associated with registered mail.

Analysis

71. As the landlord's claim succeeds, the tenants shall be responsible for the **\$20.00** hearing expenses.


Summary of Decision

72. The landlord is entitled to a payment of **\$2,436.38** as determined as follows:

- Rental Arrears..... \$2,400.00
- Late Fees..... \$75.00
- Damages..... \$550.00
- Utilities..... \$296.00
- **Less Security Deposit.....\$904.62**
- Hearing Expenses.....\$20.00

- Total..... **\$2,436.38**

15 October 2024
Date



Michael J. Reddy
Residential Tenancies Office