

Residential Tenancies Tribunal

Application 2024-0605-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:17 a.m. on 8-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as they have been properly served. The landlord submitted 2 affidavits with his application stating that he had served the tenants with the notice of hearing electronically by email to: [REDACTED] and [REDACTED] on 23-September-2024 (LL#1). The landlord submitted proof of sent emails and proof of email addresses as provided in the rental agreement (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. There was a written fixed term rental agreement which commenced on 6-September-2023. The tenants vacated the unit on or about 3-July-2024. Rent was \$1500.00 per month, due on the 6th day of each month. A security deposit of \$1125.00 was paid on 17-August-2023 and is in the landlord’s possession.

6. The landlord amended the application to omit *validity of termination notice* and *premises vacated* as the tenants are no longer residing at the premises. The landlord also decreased the amount sought for *rent paid* from \$5000.00 to \$4925.00 as the tenants made an extra \$75.00 payment with their security deposit of \$1125.00 which went towards rent paid.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent paid \$4925.00
 - b. Late fees paid \$450.00
 - c. Utilities paid \$1021.00
 - d. Possessions returned \$2030.00
 - e. Other \$3521.00
 - f. Compensation paid for damages \$5150.00
 - g. Hearing expenses \$76.50
 - h. Security deposit to be applied against monies owed \$1125.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 2-4: Deposits, payments and fees, Section 9-3: Claims for damages to rented premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of Costs.

Issue # 1: Rent Paid \$4925.00

Relevant Submission

10. The landlord testified that rent is outstanding in the amount of \$4925.00 and he submitted a copy of the rental ledger to support the claim (LL#3). See breakdown of rental ledger below:

| | Rental Ledger 2024-0605-NL | | |
|-------------------|--|-------------|------------|
| Date | Action | Amount | Total |
| August 21, 2023 | (security deposit overpayment) Balance | | -\$75.00 |
| Septembr 6, 2023 | Rent due | \$1,500.00 | \$1,425.00 |
| September 6, 2023 | Payment | -\$1,500.00 | -\$75.00 |
| October 6, 2023 | Rent due | \$1,500.00 | \$1,425.00 |
| October 11, 2023 | Payment | -\$1,000.00 | \$425.00 |
| October 20, 2023 | Payment | -\$500.00 | -\$75.00 |
| November 6, 2023 | Rent due | \$1,500.00 | \$1,425.00 |
| November 20, 2023 | Payment | -\$1,500.00 | -\$75.00 |
| December 6, 2023 | Rent due | \$1,500.00 | \$1,425.00 |
| January 6, 2024 | Rent due | \$1,500.00 | \$2,925.00 |
| January 16, 2024 | Payment | -\$500.00 | \$2,425.00 |
| January 19, 2024 | Payment | -\$1,000.00 | \$1,425.00 |
| February 6, 2024 | Rent due | \$1,500.00 | \$2,925.00 |
| March 6, 2024 | Rent due | \$1,500.00 | \$4,425.00 |
| March 12, 2024 | Payment | -\$700.00 | \$3,725.00 |
| April 6, 2024 | Rent due | \$1,500.00 | \$5,225.00 |
| April 9, 2024 | Payment | -\$800.00 | \$4,425.00 |
| April 23, 2024 | Payment | -\$500.00 | \$3,925.00 |
| May 6, 2024 | Rent due | \$1,500.00 | \$5,425.00 |
| May 8, 2024 | Payment | -\$1,000.00 | \$4,425.00 |
| May 22, 2024 | Payment | -\$1,000.00 | \$3,425.00 |
| June 6, 2024 | Rent due | \$1,500.00 | \$4,925.00 |

Landlord's Position

11. The landlord testified that rent was paid in full for the months of September and October and then rent was in arrears up to the end of the tenancy in July 2024. The landlord is seeking the outstanding balance of \$4925.00 to be paid in full.

Analysis

12. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant(s) during the use or occupancy of a residential premises. I accept the landlord's testimony that the tenants vacated the unit on 3-July and based on the breakdown of the rental ledger as presented above, I find that rent is outstanding from 6-December to 3-July. The rental ledger is amended to show a daily rate. See a partial amended rental ledger below.

| | Amended Ledger 2024-605-NL | | |
|-----------------------|----------------------------|-------------|------------|
| Date | Action | Amount | Total |
| March 5, 2024 | Balance | | \$2,925.00 |
| March 6, 2024 | Rent due | \$1,500.00 | \$4,425.00 |
| March 12, 2024 | Payment | -\$700.00 | \$3,725.00 |
| April 6, 2024 | Rent due | \$1,500.00 | \$5,225.00 |
| April 9, 2024 | Payment | -\$800.00 | \$4,425.00 |
| April 23, 2024 | Payment | -\$500.00 | \$3,925.00 |
| May 6, 2024 | Rent due | \$1,500.00 | \$5,425.00 |
| May 8, 2024 | Payment | -\$1,000.00 | \$4,425.00 |
| May 22, 20024 | Payment | -\$1,000.00 | \$3,425.00 |
| June 6 - July 3, 2024 | Rent due | \$1,377.04 | \$4,802.04 |

Daily rate: \$1500 x 12 mths = \$15000
\$15000 / 366 days = \$49.18 per day

13. I find that the tenants are responsible for outstanding rent up to 3-July-2024 when they were asked to vacate the unit in the amount of \$4802.04.

Decision

14. The landlord's claim for *rent paid* succeeds in the amount of \$4802.04.

Issue # 2: Late Fees \$450.00

Landlord's Position

15. The landlord testified that rent has been late every month except the first month of the tenancy and he is seeking late fees to be paid in the amount of \$450.00.

Analysis

16. 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

17. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

18. Based on the breakdown of the rental ledger as seen above, I accept that rent has been late every month except for the month of September 2023. In accordance with Section 15 of the *Act* and Section 12-1 of the *Policy* as stated above, the landlord can seek late fees for the period of October 7- 19 (13 days) in the amount of \$29.00 and for the period of November 7-19 (13 days) in the amount of \$29.00. With regards to the remaining months, there was always a running balance on the rental ledger, which is a consecutive number of rental periods, and as such the landlord can only seek the maximum allowable fee of \$75.00 for the period of December 7 -July 3. I find that the tenants are responsible for late fees in the amount of \$133.00.

Decision

19. The landlord's claim for *late fees paid* succeeds in the amount of \$133.00.

Issue # 3: Utilities Paid \$1021.00

Relevant Submission

20. The landlord testified that the tenants neglected to fulfill their obligation at the end of the tenancy to top up the oil tank and the propane tank as per part 11 of the rental agreement (LL#4). The landlord submitted photographs of the fuel gauges to support the claim (LL#5).

Landlord's Position

21. The landlord testified that both the oil tank and the propane tank were full when the tenants took possession of the unit, and he submitted a copy of an email to the tenants dated 20-May-2024 at 8:22pm to support the claim (LL#6). The landlord stated that the tenants agreed to fill the tanks prior to the end of the tenancy as per the rental agreement. The landlord testified that the fuel gauge on the oil tank read 650 liters used and the landlord estimated the cost to fill the oil tank to be \$819.00 at a cost of \$1.26 per liter as per oil prices in July. The landlord testified that the gauge on the propane tank read 200 liters used and the landlord estimated the cost to fill the propane tank to be \$202.00 at a cost of \$1.01 per liter as per propane prices in July. The landlord is seeking the cost to fill both tanks in the amount of \$1021.00.

Analysis

22. In accordance with part 11 of the rental agreement, the tenants were responsible for furnace oil and propane during the tenancy and the landlord could show that he provided the tenants with a full tank of oil and propane at the commencement of the tenancy. I accept that the tenants had an obligation to ensure that the tanks were left full when they vacated the unit in July. Based on the landlord's testimony and the photographs entered into evidence, the landlord was able to show that the tanks were not full when the tenants vacated the unit. The landlord used the price of oil and propane per litre as per prices publicly listed in July to estimate the amount it would have cost to fill the tanks at that time. Research shows that the costs of \$1.26 per litre and \$1.01 per litre for oil and propane respectively is a fair and equitable price (research taken from www.pub.nf.ca). I find that the tenants did not fulfill their obligation to fill the oil and propane tanks when they vacated the premises, and as such I find that the tenants are responsible for the cost to fill the oil and propane tanks in the amount to \$1021.00.

Decision

23. The landlord's claim for *utilities paid* succeeds in the amount of \$1021.00.

Issue # 4: Possessions Returned \$2030.00

Relevant Submission

24. The landlord testified that the unit was rented as a fully furnished unit and several items of value were missing when he did the final walk through in July. The landlord is seeking \$2030.00 for the value of the missing items. The landlord submitted a list of the possessions missing to support the claim (LL#7) and photographs prior to the tenancy to

show that the unit was fully furnished with some of the missing contents visible in the photos (LL#8). See landlord's list of possessions missing below:

List of Possessions to be Returned to the Landlord

| Item | Value |
|-------------------------------|-------|
| Sony DVD player | \$250 |
| Singer sewing machine | 500 |
| Futon mattress (double) | 350 |
| Wicker back dining room chair | 450 |
| Dell computer monitor | 250 |
| Powerfist impact drill | 175 |
| Poulan 20" chain saw | 550 |

Landlord's Position

25. The landlord testified that the unit was rented as a fully furnished unit as per part 10 of the rental agreement (LL# 4), and the exterior shed had tools in it that he allowed the tenants to use if needed. The landlord testified that the above list of items was missing from the unit when he conducted the final walk through, and he estimated the cost to replace the items based on current advertised prices. The landlord's position on each item is as follows:

Item # 1: Sony DVD player (\$250.00) – The landlord stated that a Sony DVD player was purchased approximately 3 years prior to the tenancy, and he is seeking \$250.00 for the loss of the DVD player.

Item # 2: Singer sewing machine (\$500.00) - The landlord stated that a Singer sewing machine was purchased approximately 5 years prior to the tenancy, and he is seeking \$500.00 for the loss of the sewing machine.

Item # 3: Futon mattress - double (\$350.00) - The landlord stated that a double mattress futon was purchased approximately 10 years prior to the tenancy, and he is seeking \$350.00 for the loss of the futon mattress.

Item # 4: Wicker back dining room chair (\$450.00) - The landlord stated that a wooden chair belonging to a set of 4 with a dining room table was purchased approximately 12 years prior to the tenancy, and he is seeking \$450.00 for the loss of the chair.

Item # 5: Dell computer monitor (\$250.00) - The landlord stated that a Dell computer monitor was purchased approximately 2 years prior to the tenancy, and he is seeking \$250.00 for the loss of the monitor.

Item # 6: Powerfist impact drill (\$175.00) - The landlord stated that a Powerfist impact drill was purchased approximately 1 year prior to the tenancy, and he is seeking \$175.00 for the loss of the drill.

Item # 7: Poulan 20" chain saw (\$550.00) - The landlord stated that a Poulan 20" chain saw was not missing but destroyed and it had been purchased approximately 5 years prior to the tenancy. The landlord is seeking \$550.00 to replace the damaged chain saw, and he submitted a photograph of the damaged chain saw (LL#9).

Analysis

26. Based on the rental agreement and the photographs entered into evidence, I accept that the house was fully furnished at the commencement of the tenancy, and I also accept the landlord's testimony that the above list of items was missing when the tenancy ended in July 2024. The value of each item is analyzed as follows:

Item # 1: Sony DVD player (\$250.00) – The landlord stated that a Sony DVD player was purchased approximately 3 years prior to the tenancy, and he is seeking \$250.00 for the loss of the DVD player. I accept the landlord's testimony that the DVD player is missing, however the landlord failed to show how much he paid for the DVD player when he purchased it and he also failed to show the cost to replace the DVD player. The landlord testified that he took estimates from current ads showing the price to purchase a Sony DVD player, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the missing DVD player, thus an award of some value is warranted. Research shows that the lower end of a Sony DVD player cost \$66.70 (research taken from www.walmart.ca). Based on this information, I find that the tenants are responsible for the cost to replace the Sony DVD player in the amount of \$66.70.

Item # 2: Singer sewing machine (\$500.00) - The landlord stated that a Singer sewing machine was purchased approximately 5 years prior to the tenancy, and he is seeking \$500.00 for the loss of the sewing machine. I accept the landlord's testimony that the sewing machine is missing, however the landlord failed to show how much he paid for the sewing machine when he purchased it and he also failed to show the cost to replace the sewing machine. The landlord testified that he took estimates from current ads showing the price to purchase a Singer sewing machine, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the missing sewing machine, thus an award of some value is warranted. Research shows that the lower end of a Singer sewing machine cost \$195.48 (research taken from www.singer.com). Based on this information, I find that the tenants are responsible for the cost to replace the Singer sewing machine in the amount of \$195.49.

Item # 3: Futon mattress - double (\$350.00) - The landlord stated that a futon with a double mattress was purchased approximately 10 years prior to the tenancy, and he is seeking \$350.00 for the loss of the mattress. I accept the landlord's testimony that the futon mattress is missing, however depreciation comes into play when dealing with mattresses and research shows that the lifespan of a futon mattress is typically 5-10 years (research taken from www.thefutonshop.com). As the mattress was 10 years old, I find that the mattress is at the end of its life cycle, and as such, I find that the tenants are not responsible to replace the futon mattress.

Item # 4: Wicker back dining room chair (\$450.00) - The landlord stated that one of the dining room chairs belonging to a set of 4 was missing. The landlord testified that the chairs were purchased approximately 12 years prior to the tenancy, and he is seeking \$450.00 for the loss of the chair. I accept the landlord's testimony that the dining room chair is missing, however depreciation comes into play when dealing with wooden chairs and research shows that the lifespan of a wooden dining chair is typically 10-15 years (research taken from www.hatil.com). As the chair has 80% of its life cycle over, I find that the tenants are responsible for 20% of the cost to replace the chair. The landlord failed to show how much he paid for the dining room set when he purchased it and he

also failed to show the cost to replace one of the chairs. The landlord testified that he took estimates from current ads showing the price to purchase one wooden chair, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the chair, thus an award of some value is warranted. Research shows that the lower end of wooden chairs with a wicker back cost \$206.99 (research taken from www.amazon.ca). Based on this information, I find that the tenants are responsible for 20% of the cost to replace the wicker back dining room chair in the amount of \$41.40.

Item # 5: Dell computer monitor (\$250.00) - The landlord stated that a Dell computer monitor was purchased approximately 2 years prior to the tenancy, and he is seeking \$250.00 for the loss of the monitor. I accept the landlord's testimony that the computer monitor is missing, however the landlord failed to show how much he paid for the computer monitor when he purchased it and he also failed to show the cost to replace the monitor. The landlord testified that he took estimates from current ads showing the price to purchase a Dell computer monitor, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the computer monitor, thus an award of some value is warranted. Research shows that the lower end of a Dell computer monitor cost \$126.49 (research taken from www.dell.ca). Based on this information, I find that the tenants are responsible for the cost to replace the Dell computer monitor in the amount of \$126.49

Item # 6: Powerfist impact drill (\$175.00) - The landlord stated that a Powerfist impact drill was purchased approximately 1 year prior to the tenancy, and he is seeking \$175.00 for the loss of the drill. I accept the landlord's testimony that the drill is missing, however the landlord failed to show how much he paid for the drill when he purchased it and he also failed to show the value to replace the drill. The landlord testified that he took estimates from current ads showing the price to purchase a Powerfist impact drill, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the drill, thus an award of some value is warranted. Research shows that the lower end of a Powerfist impact drill cost \$80.49 (research taken from www.princessauto.com). Based on this information, I find that the tenants are responsible for the cost to replace the Powerfist impact drill in the amount of \$80.49.

Item # 7: Poulan 20" chain saw (\$550.00) - The landlord stated that a Poulan 20" chain saw was purchased approximately 5 years prior to the tenancy, and he is seeking \$550.00 for the damaged chain saw. Based on the photograph entered into evidence, I accept that the chain saw is damaged beyond repair, however the landlord failed to show how much he paid for the chain saw when he purchased it and he also failed to show the cost to replace the chain saw. The landlord testified that he took estimates from current ads showing the price to purchase a Poulan 20' chain saw, however he failed to submit photographs of those ads. As stated above, I accept that the tenants are responsible to replace the chain saw, thus an award of some value is warranted. Research shows that the lower end of a Poulan 20' chain saw cost \$436.99 (research taken from www.canadiantire.ca). Based on this information, I find that the tenants are responsible for the cost to replace the Poulan 20" Chain saw in the amount of \$436.99.

Decision

27. The landlord's claim for the *value of missing possessions* succeeds in the amount of \$947.56.

Issue # 5: Compensation for damages \$5150.00

Relevant Submission

28. The landlord testified that there were damages / losses to the rental unit in the amount of \$5150.00 and he submitted a damages ledger to support the claim (LL#10). See copy of damages ledger below:

Compensation for damages

- 1- Cost to repair interior/exterior damage (Art Baker Contracting). 4500
- 2- Cost to replace broken glass on woodstove door 650

Landlord's Position

29. The landlord testified that the repairs to the unit are not completed to date, and he has a contractor hired to complete the work. The landlord's position on each item is as follows:

Item #1: Repair cost (\$4500.00) – The landlord testified that there were numerous repairs needed to both the interior and the exterior of the premises and he is seeking \$3930.00 for materials and \$570.00 for 19 hours of labor at \$30.00 per hour. The landlord submitted an estimate from [REDACTED] to show the cost of labor to repair the damages (LL# 11) and a receipt from *Home Hardware* showing a running balance on the account in relation to the cost of materials (LL#12).

Item # 2: Replace woodstove door (\$650.00) - The landlord testified that the woodstove door was damaged and needed to be replaced. The landlord is seeking \$650.00 for materials to replace the woodstove door and to cover the import charges. The landlord submitted copies of receipts to support the claim (LL#13). The landlord also submitted a before and after photograph of the woodstove to support the claim (LL#14).

Analysis

30. In accordance with *Residential Tenancies Policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

31. The respondents were not present to dispute any claims. The items are analyzed based on the exhibits entered into evidence and the testimony of the applicant. Each item is analyzed as follows:

Item #1: Repair cost (\$4500.00) – The landlord failed to provide a proper damages ledger or breakdown of the damages to the premises, and I allowed him to submit supporting documentation from the *Contractor* after the hearing. The supporting information shows that the contractor's labor costs are \$570.00 for 19 hours of work and the cost of materials to date are \$1587.32. The contractor's list shows that he has replaced the wood trim on door casings and painted the trim, plastered and painted the walls, replaced electrical outlets in the dining room and hall, replaced the bathroom and kitchen light fixtures, repaired and painted the post at the top of the stairs, and replaced the glass door to the woodstove.

Based on the photographs entered into evidence during the hearing, the landlord was able to show that the wood trim on two of the door casings were damaged and needed

to be replaced and painted (LL#15). The landlord was able to show a few small holes in a wall and I asked when was the last time the unit was painted and the landlord responded that the unit was last painted approximately 10 years ago. The landlord was able to show that both the bathroom light and the kitchen light fixtures were damaged and needed to be replaced (LL#16). The landlord was able to show the damage to the stair post located at the top of the stairs (LL#17). The landlord was also able to show that the door to the woodstove was damaged and needed to be replaced (LL#18).

The landlord presented additional photographs during the hearing showing damages to the stairs, the front door, and the exterior to the premises in the way of a broken board to the wooden walkway, a broken wooden chair and a dented chimney (LL#19).

In accordance with Section 9-3 as stated above, I accept that the landlord was able to show that the damages exists, and he was able to show that the tenants were negligent in causing the damages as the *before* photographs do not show the damages. The landlord failed to show the costs to repair or replace the individual items, however he could show what he paid the contractor for labor costs to complete the work to date and he could show a running invoice from *Home Hardware Building Centre* in the amount of \$1587.32.

With regards to plaster and painting the walls, I find that the landlord was unable to show any damage to the walls except for a few small holes that fall under *normal wear and tear* and as the walls have not been painted for almost 10 years, the life span of the interior paint has ended. With regards to the damages that are not listed on the contractors document, I find that the landlord was unable to show what the cost will be to repair those damages.

The question is not whether or not the tenants caused some of the damages as listed above, but the question is how much should this tribunal award for the damages. I accept that the contractor has worked 19 hours to make repairs to the unit to date, but those hours include the time to plaster and paint. I accept that it would take approximately 10 hours to plaster and paint a house which leaves 9 hours to complete the remainder of the repairs on the contractors list. I find that 9 hours of labor to complete the remainder of the repairs to the unit as per the list from the Contractor to be fair and equitable.

With regards to the invoice from *Home Hardware*, I do not know what items have been purchased to date, however I accept that the invoice is for the cost of materials charged to the landlord to date for the damages to the rental unit. I find that \$1587.32 is a reasonable amount to pay for materials to plaster and paint, fix door casings, replace electrical outlets to replace light fixtures, and to repair and paint new stair post. Again, given that the tenants are not responsible for plaster and painting of the unit, the question is how much does this tribunal award for materials. I accept that it would cost approximately \$600.00 to purchase paint supplies, leaving approximately \$987.32 to cover the cost of the remainder of the materials such as door casings, paint for the door casings, 2 light fixtures, and a stair post and paint. I find that the tenants are responsible for the cost of materials in the amount of \$987.32.

Item # 2: Replace woodstove door (\$650.00) – In accordance with Section 9-3 of the *Act* as stated above, I find that the landlord was able to show that the damage exists to the wood stove door and that the damage was caused by negligence on the part of the tenants. The landlord was also able to show the cost to replace the damage and for those reasons, I find that the tenants are responsible for the cost to replace the woodstove door in the amount of \$625.85.

Decision

32. The landlord's claim for *compensation for damages* succeeds in the amount of \$1613.17.

Issue # 5: Other \$3521.00

Relevant Submission

33. The landlord testified that there are 3 other items that he is seeking compensation for that don't fall under possessions or damages. The landlord submitted a list of the "Other" items to support the claim (LL#20). See list of "Other" below:

Other

- 1- Unauthorized use of Applicant's firewood. Four cords at \$500/cord. = \$2,000
- 2- Failure to provide lawn mowing/maintenance. Cost to hire contractor. = \$650
- 3- Failure to clean the house ([REDACTED] Cleaning Service) = \$871

Landlord's Position

34. The respondents were not present to dispute any claims. The items are analyzed based on the exhibits entered into evidence and the testimony of the applicant. Each item is analyzed as follows:

Item # 1: 4 cords of firewood (\$2000.00) – The landlord testified that he left 4 cords of wood on the premises at the commencement of the tenancy, and he granted the tenants permission to use the wood under the agreement that they would replace the wood when they vacated the unit. The landlord is seeking \$2000.00 to cover the cost to replace the wood. The landlord submitted a copy of an email to support the claim (LL#6) and a photograph of an advertisement showing the cost to purchase 4 cords of wood (LL#21).

Item # 2: Lawn mowing / maintenance costs (\$650.00) – The landlord testified that the tenants were responsible for lawn care as per part 11 of the rental agreement (LL#4) and he stated that when he took back possession of the unit, the grounds needed both lawn mowing and lawn care services to restore it to the way it was prior to the tenancy. The landlord submitted a before and after photograph of the grounds (LL#22) and a copy of a cashed cheque written to the [REDACTED] for lawn care services (LL#23).

Item # 3: Cleaning (\$871.00) - The landlord testified that the tenants left the unit dirty, and he had to retain the services of 2 cleaners to restore the unit to the way it was prior to the tenancy. The landlord submitted photographs of the unit to support the claim (LL#24) and a copy of an invoice from the cleaner to support the claim (LL#25).

Analysis

35. The respondents were not present to dispute any claims. The items are analyzed based on the exhibits entered into evidence and the testimony of the applicant. Each item is analyzed as follows:

Item # 1: 4 cords of wood (\$2000.00) – The landlord testified that there were 4 cords of wood on the premises at the commencement of the tenancy, and he granted the tenants permission to use the wood under the agreement that they would replace the wood when they vacated the unit. Based on the landlord's testimony, I accept that the tenants used the wood and failed to replace it and based on the advertisement from *Hayward's*

Firewood entered into evidence, I find that the tenants are responsible for the cost of 4 cords of wood in the amount of \$1920.00.

Item # 2: Lawnmowing and maintenance costs (\$650.00) – The landlord testified that the tenants were responsible for lawn care as per part 11 of the rental agreement and he stated that when he took possession of the unit, the grounds needed both lawn mowing and lawn care services to restore it to the way it was prior to the tenancy. Based on the *before* and *after* photographs as entered into evidence, I find that the *before* photograph does not show the area where the purple flowers have grown as shown in the *after* photograph and as such, I am unable to see the difference in that area of the grounds. Also, apart from the area where the purple flowers are present, I do not see any difference in the growth of the grass. In accordance with Section 9-3 as stated above, I find that landlord was unable to show that damage to the grass existed and for that reason, I find that the tenants are not responsible for the cost of lawn services.

Item # 3: Cleaning (871.00) - The landlord testified that the tenants left the unit dirty, and he had to retain the services of 2 cleaners to restore the unit to the way it was prior to the tenancy. Based on the photographs entered into evidence, I accept that the unit needed some cleaning, however the landlord failed to show the extent of the cleanliness of the unit. The photographs show that the stove top needed a deep clean and a desk or tabletop needed cleaning. I accept that the cleaning invoice was for \$871.00 which includes the services of 2 cleaners, cleaning supplies and a travel fee. When it comes to cleaning, one person's perception of cleanliness may differ from another person's perception and for those reasons, photographs are essential to show the condition of the unit. Based on the photographs entered into evidence, I find that a nominal amount of \$150.00 will be awarded to cover cleaning, cleaning supplies and the travel fee. I find that the tenants are responsible for the cost of cleaning in the amount of \$150.00.

Decision

36. The landlord's claim for *compensation for "Other"* succeeds in the amount of \$2070.00.

Issue # 6: Hearing expenses \$76.50

37. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and he also incurred notary fees in the amount to \$56.50. The landlord submitted a copy of the receipts to support the claim (LL#26). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and other expenses, such as notary fees. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

38. The landlord's claim for *hearing expenses* succeeds in the amount of \$76.50.

Issue # 7: Security deposit applied against monies owed \$1125.00

Analysis

39. 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).*

40. As the landlord's claim for losses has been successful as per paragraphs 14, 19, 23, 27, 32, 36 and 38, I find that the landlord's claim to have the security deposit applied against monies owed succeeds. 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 for 2023 was 0% and is currently 1% for 2024.

Decision

41. The landlord's claim to have the *security deposit applied against monies owed* succeeds.

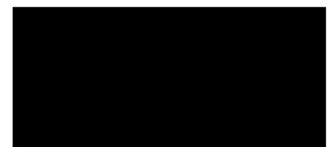
Summary of Decision

42. The tenants shall pay the landlord \$9529.57 as follows:

| | |
|--|-----------|
| Rent paid | \$4802.04 |
| Late fees | 133.00 |
| Utilities paid | 1021.00 |
| Possessions | 947.56 |
| Compensation for damages | 1613.17 |
| Other..... | 2070.00 |
| Hearing expenses | 76.50 |
| Less: security deposit & interest..... | 1133.70 |
| Total | \$9529.57 |

October 29, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office