

Residential Tenancies Tribunal

Application 2024-0668-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 22 August 2024 via teleconference.
2. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. [REDACTED], hereinafter referred to as “the tenant”, did not attend the hearing and I was unsuccessful in establishing contact with her prior to the start of the hearing.

Preliminary Matters

4. The landlord submitted an affidavit of service indicating the tenant was served electronically ([REDACTED]) on 30 July 2024 at 4:00 PM Eastern Standard Time (LL#1). This is good service as defined by the *Residential Tenancies Act, 2018*.
5. 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 the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states the hearing may proceed in the respondent’s absence so long as they have been properly served. As the tenant was properly serviced, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
6. There was a verbal monthly rental agreement that commenced in November 2022 until end of March 2024. Rent was \$700.00, which the tenant paid in two monthly payments on the 1st and 16th of each month. A security deposit of \$300.00 was paid in November 2022 and still in the landlord’s possession.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that 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 applicant must establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking the following:

- An Order for compensation for damages in the amount of \$4,068.51
- An Order for rental arrears in the amount of \$700.00
- An Order for late fees in the amount of \$75.00
- An Order for the security deposit to be used against monies owing
- An Order for hearing expenses in the amount of \$20.00

Legislation and Policy

9. The jurisdiction of the Director of the Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.

10. Also, relevant and considered in this case is Section 14, 15 and 18 of the *Act*, along with Residential Tenancies Policy 09-003: Compensation for Damages to Rental Premises, *Policy 09-005: Depreciation and Life Expectancy of Property* and 12-001: Costs.

Issue 1: Damages

11. The landlord claims \$4,068.51 in damages, divided amongst 4 items (LL#2). Each item will be dealt with individually below. As stated in the Residential Tenancies Program *Policy 09-003*, applicants must establish that the damages exist, the extent of the damage, and that the damage arose from deliberate or negligent actions of the tenant. Further, the applicant must establish the costs of repairing or replacing the damaged items. When making an award for damages, normal wear-and-tear, as well as straight-line depreciation is a consideration where warranted.

Appliances

12. The landlord claims \$1000.00 for a refrigerator, kitchen stove, clothes washer and dryer. In support of claim, he provided a text message receipt (LL#3) detailing his costs for purchasing four second-hand appliances: \$600 washer and dryer, \$200 refrigerator, and \$200 kitchen stove. During the hearing, the landlord advised that he was no longer seeking compensation for the replacement of the dryer.

13. There were no photographs, incoming or outgoing conditions reports, or receipts for the original appliances provided. However, the landlords testified that all of the appliances in question were approximately five years old.

14. Regarding the refrigerator, the landlord stated that to his knowledge, the tenant vacated the unit somewhere between 26 March and 28 March, 2024 without provided appropriate notice of termination and had the power disconnected. The tenant had left food in the refrigerator, which subsequently rotted leaving the appliance malodorous and unhygienic requiring replacement. The landlord also provided a signed statement from the property manager of the rental premises who entered the rental after the tenant vacated (LL#4) detailing the same.

15. Regarding the kitchen stove, the landlord testified that the oven and three burners were not working, and while it may have been repairable it was just as economical to buy a used replacement.
16. Regarding the clothes washer, the landlord testified that it was not spinning properly and attributed the damage to the tenant leaving clothing in the appliance. The signed statement from the property manager (LL#4) also stated that “there were clothes stuffed around the inside of the drum of washer and the tub could not be turned to remove the clothes”.

Analysis

17. As per Residential Policies 9-003 and 9-005, applicants seeking damages must establish the existence and extent of damages, that the damage arose from deliberate or negligent actions of the tenant, and the costs of repairing or replacing the damaged items. Additionally, when making an award for damages, normal wear-and-tear, as well as straight-line depreciation is a consideration where warranted.
18. As noted above, there were no photographs, or other such physical evidence clearly demonstrating that damage existed; however, I accept the landlord’s testimony that there was damage to the appliances and that opted to replace them. Nonetheless, there is insufficient evidence provided to determine the extent of the damages to each appliance (i.e.: whether cleaning or minor repairs could have been affected or if replacement was necessary); and in the case of the kitchen stove, what if any of those damages could be directly attributable to willful or negligent actions of the tenant. Reviewing the evidence in totality, I find that the landlord has failed to meet the evidentiary onus required to award compensation for this portion of the claim.

Repair, Plaster, Priming and Painting

19. The landlord claims \$2,268.51 for supplies for materials for painting and plastering (\$673.51), as well as labour costs (\$1595.00) to complete the plastering and painting of the walls and doors of the rental premises. He noted that normally, he would not have to completely paint an entire apartment when a tenant vacates, but the sheer number of holes in the walls that required plastering made it necessary to repaint the entire apartment.
20. During the hearing, the landlord testified the rental premises had been painted prior to the beginning of the tenancy in November 2022. He provided pictures taken after the tenant vacated (LL#5), and receipts totally \$673.51 for plastering and painting materials, and associated supplies (LL#6). He further noted that he did not claim costs for all materials required to affect repairs, as the property managers used a couple of buckets of plaster left over from previous work completed which he did not include in the claim.
21. The landlord claims 79.75 hours of labour performed by the property manager and her spouse at \$20.00 per hour for a total of \$1595.00. In support of his claim, the landlord provided the statement from the property manager (LL#4) confirming the amount they charged the landlord for overall labour, as well as a copy of his e-transfers of monies to the property manager (LL#7). This statement also noted “there were in excess of 100

holes throughout the apartment. Because there were holes on literally every wall the entire place had to be primed and painted twice”.

Analysis

22. As per Residential Policies 9-003 and 9-005, applicants seeking damages must establish the existence and extent of damages, that the damage arose from deliberate or negligent actions of the tenant, and the costs of repairing or replacing the damaged items. Additionally, when making an award for damages, normal wear-and-tear, as well as straight-line depreciation is a consideration where warranted.
23. I find on the balance of probabilities that the landlord has demonstrated that the walls and doors of the rental premises was damaged by the tenants negligent and/or willful actions in a manner requiring significant plastering and the repainting of the entire apartment, and that the cost of materials and labour to affect repairs totaled \$2,268.51. Depreciation must be considered. The landlord testified that the premises had been painted prior to the beginning of the tenancy in 2022. In accordance with the *National Association of Home Builders Study of Life Expectancy of Home Components*, the expected life span of interior paint is approximately 15 years. This means that but for the actions of the tenant, the remaining lifespan of the paint would have been about 13 years. To determine the value lost, the cost of replacement must be divided by the total expected lifespan and then multiplied by the remaining expected life span. $\$2,268.51 \times (13/15 \text{ years}) = \$1,966.04$.

Clean Up and Removal

24. The landlord claims \$800.00 in labour for the cleanup and removal of items left behind by the tenant at the rental premises. The landlord testified the rental premises was 900 square feet and required around 10 to 12 truckloads of items to be dropped off to the local landfill. These items included items on the property such as a swing set, mini pools, etc., as well as multiple pieces of furniture, bags of personal belongings, garbage, food items, etc. The landlord stated that he had attempted to contact the tenant to have the items collected, and the response was to get rid of it.
25. The landlord provided multiple pictures (LL#5), both internal and external to the premises, demonstrating a significant amount of belongings and debris. Additionally, the landlord's supplied statement from the property manager supported his testimony (LL#4)
26. In support of his claim, the landlord provided the statement from the property manager (LL#4) confirming the amount they charged the landlord for overall labour, as well as a copy of his e-transfers of monies to the property manager (LL#7).

Analysis

27. Considering the evidence in its totality, I find on the balance of probabilities that the tenant left the premises in an unclean state requiring a significant amount of collection, removal and transportation of abandoned items and debris. In totality, the evidence justifies the landlord's claim of 40 hours of labour performed by the property manager and her spouse at \$20.00 per hour for a total of \$800.00.

Decision

28. The landlord's claim for compensation for damages succeeds in the amount of **\$2,766.04** as follows:

- Repair, Plastering and Painting.....\$1,966.04
- Clean Up.....\$800.00
- Total.....**\$2,766.04**

Issue 2: Rent/ Late Fees

29. The landlord claims \$700.00 in rental arrears for the month of April 2024. He testified the tenant vacated the rental premises at the end of March 2024 and did not provide sufficient notice to terminate the rental agreement. The landlord stated the rental agreement was a verbal monthly agreement and the tenant and landlord agreed to have monthly rent paid in two installments per month: on the 1st and 16th of each month. Along with his application, the landlord supplied a rental ledger (LL#9) which identifies the last time rent was paid in full was on 16 March 2024.

Analysis

30. Under Section 18(b) of the *Residential Tenancies Act, 2018*, a tenant is required to advised the landlord that they are terminating the rental agreement not less than one month before the end of the rental period where the residential premises is rented from month to month.

31. Considering the evidence in its totality, I find on a balance of probabilities that no valid notice of termination was provided. In the absence of a valid notice of termination, the landlord is entitled to recover unpaid rent subject to his duty to mitigate his losses by attempting to find a new tenant. As repairs had to be completed prior to securing a new tenant as indicated herein, and the tenant did not supply a valid notice, the landlord is entitled to one-month rent. The landlord's claim for unpaid rent succeeds in the amount of \$700.00.

32. Section 15 of the *Act* states that 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 the amount set by the Minister. The Minister has set the rate for late fees at \$5.00 for the first day and \$2.00 for each day thereafter to a maximum of \$75.00. As the landlord testified rent for the month of April was to be paid on the 1st and 16th of April, nether of which was paid, the rent was overdue by a total of 29 days, which would equate to \$5 for the 1st day and \$2 for each remaining for a total of \$61.00.

Decision

33. The landlord's claim for rental arrears and late fees succeeds in the following amount:

- Rent for April 2024..... \$700.00
- Late Fees..... \$61.00

- Total..... **\$761.00**

Issue 3: Security Deposit

34. As the landlord is owed moneys, he is entitled to apply the security deposit against the sum owed. The security deposit in this case is \$300.00. Section 14(7) of the Act states that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. Prior to 2024, the interest rate prescribed by the regulations was 0% for the relevant years. In 2024, the rate was set to 1% cumulative simple annual interest. That results in total interest at the time of the hearing being \$1.93 for a total of **\$301.93**.

Issue 4: Hearing Expenses

35. The landlord claims \$46.00 hearing expense. Along with his application, the landlord supplied a hearing expense receipt (LL#9). In addition, the landlord supplied the costs of notary public fee in the amount of \$26.00 and provided a receipt in support of the claim (LL#10).

Decision

36. As the landlord's claim succeeds, the tenant shall be responsible for the **\$46.00** hearing expenses.

Summary of Decision

35. The tenant shall pay to the landlord \$3,271.11 as follows:

• Damages	\$2,766.04
• Rental Arrears/Late Fees	\$761.00
• Less Security Deposit	-\$301.93
• Hearing Expenses	\$46.00
• Total	<u>\$3,271.11</u>

05 November 2024

Date

Michael Reddy, Adjudicator
Residential Tenancies Office