

Residential Tenancies Tribunal

Application 2024-0699-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 24-October-2024 at 9:15 am and reconvened for a continuation on 5-November-2024.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference alongside his daughter [REDACTED].
3. The respondent, [REDACTED] hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was 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 the hearing 10 clear days prior to the hearing date and, where the respondent fails 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 an affidavit (LL#46) with their application stating that they had served the tenant with notice of the hearing electronically on 07-October-2024 at 12:41 pm. Proof of service was also provided (LL#2). Checking the tracking number showed that the documents were received. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlords' claim for unpaid rent succeed?
6. Should the landlord's claim for damages succeed?
7. What is the proper disposition of the security deposit?

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* (the *Act*).

Issue 1: Unpaid Rent

9. The landlord claims for \$2800 in unpaid rent, which represents the entire monthly rent of \$1400 for both of the months of the July and August. They testified that they had issued a termination notice for 4-August-2024 and that the tenant vacated the premises either 5-August-2024 or 6-August 2024. A rental ledger was provided in support of their claim (LL#43).
10. As the landlord had issued a termination notice, they are unable to claim rent past the date which the tenants vacated the premises. A daily rate must be calculated. The correct formula for determining a daily rate is multiplying the monthly rent by the 12 months of the year and dividing by the 366 days of this year. In the present case, the daily rate is therefore $\$1400.00/\text{month}(12 \text{ months}/366 \text{ days}) = \sim \$45.90/\text{day}$. Calculated to 5-August-2024, this yields a total of \$229.51 owing for the month of August.
11. The landlord's claim for unpaid rent succeeds in the amount of \$1629.51.

Issue 2: Compensation for Damages

12. The landlord seeks \$1025.00 in damages, divided amongst 4 items. Each item will be addressed individually below. Landlords claims for damages are subject to the Residential Tenancies Program Policy and Procedure Guide policy 09-003. In accordance with this policy, landlords who claim for damages must provide sufficient evidence to prove on a balance of probabilities that their property was damaged, that the damage was caused by the tenant, and the cost of replacement or repair. In addition, wherever reasonably possible, this should include documentary evidence in the form of photos, videos, receipts, estimates, quotes, invoices, etc.
13. First, the landlord claims \$90.00 for the replacement of three 2'x3' window screens which he says were damaged or destroyed by the tenant. He testified that these were originally installed about 4 years ago. He testified that the screens were in good condition when the tenant moved in. Photos of these screens are included as exhibits LL#33-38, and I can see visible holes in at least three different screens. A receipt including \$90.00 for the replacement of 3 screens was included as part of LL#47. Based on the testimony, I accept on a balance of probabilities that the screens were damaged, that the damage was caused by the tenant, and that the cost of the replacement was \$90.00. This part of the landlord's claim is made out.
14. Depreciation must be considered. The purpose of this tribunal's damages awards is to compensate a party to put them back in the same position they would be in had the other party not breached the *Act*/the rental agreement. If the tenant had not breached by damaging the screens, the landlord would have 4-year-old screens. The life expectancy of window screens is about 10 years. By straight line depreciation, if new window

screens are worth \$30.00 each, 4 year old screens are worth $\$30.00 * (6 \text{ years} / 10 \text{ years}) = \18.00 each.

15. The first part of the landlord's claim for damages therefore succeeds in the amount of $\$18.00 * 3 = \54.00 .
16. Second, the landlord claims \$250.00 for garbage pickup. He says the tenant left garbage on the premises and they had to dispose of it. Some of this garbage can be seen in LL#2, LL#3, LL#5, and LL#10. He testified that gathering and disposing of the garbage took about 13 hours in all, including the time it took to drive to the nearest waste disposal facility. By policy, a landlord may claim for their own labour at a rate of minimum wage +\$8/hour, which is currently \$23.60/hour. Multiplying this by 13 hours yields a total of \$306.80. As the landlord has only claimed for \$250.00, this is what I will award.
17. This part of the landlord's claim succeeds in the amount of \$250.00.
18. Third, the landlord claims \$610.00 for the replacement of a damaged door box. This number includes both parts and labour. The damaged door box can be seen in LL#39, where physical cracks and holes are visible. The landlord testified that this damage was not there before the tenancy. A receipt was provided for the cost of replacement (LL#47). Depreciation is not in issue as a door box has life expectancy of a lifetime.
19. This part of the landlord's claim succeeds in the amount of \$610.00.
20. Finally, the landlord claims \$75.00 for the repair of damaged carpet. This damage can be seen in LL#19, where carpet fibres have been visibly ripped up near the door. The landlord testified that the carpet was 2 years old at most. As the carpet was not near the end of its life expectancy and it was repaired rather than replaced, depreciation is not in issue. A receipt was provided showing the cost of the repair (LL#19).
21. This part of the landlord's claim succeeds in the amount of \$75.00.
22. The landlord's claim for damages succeeds in the amount of \$989.00.

Issue 3: Security Deposit

23. As the landlord is owed moneys, he may apply the security deposit against the sum owed. In the present case, a security deposit of \$1000.00 was paid on 1-April-2024.
24. S. 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. For 2024, the regulations prescribe a simple cumulative interest rate of 1% annual. Calculated to the date of the hearing, this yields a total interest of \$5.66.

Decision

25. The landlord's claim for unpaid rent succeeds in the amount of \$1629.51.

26. The landlord's claim for damages succeeds in the amount of \$989.00.
27. The landlord may apply the security deposit with interest, totaling 1005.66, against moneys owed.
28. The landlord was successful in his claim and is therefore entitled to have his hearing expenses reimbursed. In this case he seeks the \$20.00 application fee, \$47.50 for the cost of hiring a process server, and the \$6.04 charged by our office in exchange for printing a copy of the *Act* for a client. Receipts were provided. I award \$67.50 in hearing expenses, reserving the \$6.04 cost of the printed copy of the *Act*. Landlords are expected to know the terms of the *Act* regardless of whether or not they have claims before this tribunal, so this fee is part of the cost of doing business.

Summary of Decision

29. The tenant shall pay to the landlord \$1680.35 as follows:

Unpaid Rent.....	\$1629.51
Damages.....	\$989.00
Hearing Expenses.....	\$67.50
Less Security Deposit.....	-(\$1005.66)
 Total.....	 \$1680.35

20-December-2024

Date


Seren Cahill
Residential Tenancies Office