

Residential Tenancies Tribunal

Application 2024-0789-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 24-September -2024 at 9:16 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
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#1) with their application stating that they had served the tenant with notice of the hearing electronically on 30-August-2024 at 1:00 pm. The appropriate supporting documents were also provided (LL#2). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
5. This application was originally a counterclaim to 2024-0596-NL, which was dismissed when the tenant failed to attend.

Issues before the Tribunal

6. Should the landlord's claim for unpaid rent be granted?
7. Should the landlord's claim for damages be granted?
8. Should the landlord's claim for unpaid utilities be granted?
9. What is the proper disposition of the security deposit?

Legislation and Policy

10. 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

11. The landlord seeks \$1654.77 in unpaid rent. This consists of the full monthly rent of \$800 for both of May and June 2024 in lieu of notice of termination, and \$54.77 outstanding for the month of July 2023. He says the tenant left without any notice.
12. I accept the landlord's uncontradicted testimony regarding the unpaid rent for July 2023.
13. The rental agreement was a fixed term agreement set to end on 30-April-2024. The tenant left by this date. The landlord was still entitled to notice. However, as of May 2024, the rental agreement would have converted to a month-to-month agreement by function of s. 8(3)(a). At this point, the tenant would have been entitled to issue a termination notice only month in advance under s. 18(1)(b). This, then, is the landlord's actual lost rent.
14. The landlord's claim for unpaid rent succeeds in the amount of \$854.77.

Issue 2: Damages

15. The landlord claims \$2100 in damages, divided amongst four items. Each item will be dealt with individually below. It should be noted at the beginning that landlord's claims for damages are covered by the Residential Tenancies Program Policy and Procedure Guide policy 09-003. In accordance with policy, to succeed in a claim of damages, a landlord must provide sufficient evidence to establish that their property was damaged, the extent of the damage, that the damage was caused by the tenant, and the cost of repair. In addition, this should include documentary evidence where possible, including photos, receipts, quotes, estimates, invoices, etc.
16. The landlord claims \$400 for the cost of storing personal property the tenant left on the premises when she vacated the unit. He claims \$100 for the four months the items have been at the premises. These items can be seen in LL#3.
17. S. 32 of the *Act* governs abandoned personal property in residential premises. S. 32(2) states that abandoned personal property shall be stored for not less than 30 days. The rest of the section allows for landlords who follow the procedure as described in s. 32 to apply to the director to dispose of or sell the abandoned personal property, and they are entitled to recover the costs associated with storage when they do so under s. 32(10)(a). In this case, the landlord did not follow the procedure as set out in s. 32. Therefore, I find it would be inappropriate to grant a similar remedy under the heading of damages.

18. The landlord claims \$400.00 for compensation for damaged bedroom furniture he identifies as a dressing table. The landlord testified that this is visible in photos LL#4-6 however, unfortunately, these pictures are difficult to discern and of little useful. The landlord testified that the table was damaged with water. He says he bought it used five years ago.
19. To succeed in a claim for damages, a landlord must provide sufficient evidence to demonstrate they have lost something of value. This includes accounting for depreciation. In other words, a landlord must be able to demonstrate that the item damaged ought to have lasted longer than the tenancy, had the tenant not damaged it. In reference to the dressing table, the evidence provided is insufficient to prove the extent of the damage and the cost of repair/replacement and makes depreciation impossible to calculate. This portion of the landlord's claim therefore fails.
20. The landlord claims \$800.00 for compensation for a damaged office table. A picture (LL#7) was provided showing that the topmost drawer has been stripped of its front face. The landlord testified that the drawer was intact prior to the tenancy. The landlord testified that he acquired the table with the building between 5-10 years ago. It is difficult to estimate the age of the item. No evidence was provided as to how much it would cost to repair or replace the item. This portion of the landlord's claim therefore fails.
21. The landlord claims \$300 for damage done to a dresser. The dresser can be seen in LL#8 and LL#9. The landlord testified that the dresser was acquired the same time as the office table. No evidence was provided as to the cost of repair or replacement. This portion of the landlord's claim therefore fails.
22. Finally, the landlord claims \$200 for cleaning as he testifies that the tenant left the room in an unclean condition. Some photos of the unclean state were provided (LL#11, LL#12). The landlord testified that it took him about 4 hours to clean the room.
23. By policy, self-labour is compensable at the rate of minimum wage plus \$8/hour, which currently totals \$23.60/hour. Calculated for four hours, this results in a total of \$94.40.
24. The landlord's claim for damages succeeds in the amount of \$94.40.

Issue 3: Unpaid Utilities

25. The landlord claims \$800 for unpaid utilities. This represents \$300 for the period of June 2023 to August 2023 and \$500 for the period of November 2024 to March 2024. No evidence of utility bills was provided.
26. The landlord's claim for utility payments fails on the basis of insufficient evidence.

Issue 4: Security Deposit

27. The landlord is owed moneys and is therefore entitled to apply the security deposit against the sum owed. In the present case, the security deposit was \$372.00.

28. 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. The regulations prescribed an interest rate of 0% for the relevant time period before 2024 and a simple cumulative interest rate of 1% for the year of 2024. Calculated to the date of the hearing, this results in a total interest of \$2.73.

Decision

29. The landlord's claim for unpaid rent succeeds in the amount of \$854.77.

30. The landlord's claim for damages succeeds in the amount of \$94.40.

31. The landlord's claim for unpaid utilities fails.

32. The landlord may apply the security deposit and interest valued at \$374.73 against moneys owed.

33. The landlord was successful in their claim and may therefore have their reasonable hearing expenses covered. In this case they claim only the \$20.00 application fee.

Summary of Decision

34. The tenant shall pay to the landlord \$594.44 as follows:

Unpaid Rent.....	\$854.77
Damages.....	\$94.40
Hearing expenses.....	\$20.00
Less Security Deposit.....	-(\$374.73)
 Total.....	 \$594.44

24-October-2024

Date

[Redacted]

Seren Cahill
Residential Tenancies Office