

Residential Tenancies Tribunal

Application 2024-0856-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:20 a.m. on 23-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 the 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 11-October-2024 (LL#1). The landlord submitted proof of email addresses as per the rental agreement and proof of sent emails (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 fixed term rental agreement which commenced on 1-September-2022. The tenants vacated the unit on or about 31-August-2023 and the locks were changed on 9-September-2023. Rent was \$550.00 per month, due on the first day of each month. A security deposit was never paid.
6. The landlord made application to *Residential Tenancies* and paid the application fee within the one-year timeframe as set out by the Act.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$750.00.
 - Possessions returned \$2500.00.
 - Compensation paid for damages \$2875.00.
 - Other (lost rental income) \$2000.00
 - Hearing expenses \$52.00

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 is the following section of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises and Section 12-1: Recovery of Costs.

Issue # 1: Rent Paid \$750.00

Relevant Submission

10. The landlord testified that rent is outstanding for the months of June and July 2023 in the amount of \$750.00 and he submitted a copy of the rental ledger to support the claim (LL#3). See copy of rental ledger below:

Date	Description of Charges	Amount Due	Amount Paid	Balance
30-Aug-22	September 2022 Rent	\$550.00	\$550.00	\$0.00
13-Sep-22	August 2023 Rent	\$550.00	\$550.00	\$0.00
01-Oct-22	October 2022 Rent	\$550.00	\$550.00	\$0.00
27-Oct-22	November 2022 Rent	\$550.00	\$550.00	\$0.00
10-Nov-22	December 2022 Rent	\$550.00	\$550.00	\$0.00
24-Nov-22	January 2023 Rent	\$550.00	\$550.00	\$0.00
02-Feb-23	February 2023 Rent	\$550.00	\$550.00	\$0.00
02-Mar-23	March 2023 Rent	\$550.00	\$550.00	\$0.00
13-Apr-23	April 2023 Rent	\$550.00	\$550.00	\$0.00
27-Apr-23	May 2023 Rent	\$550.00	\$550.00	\$0.00
08-Jun-23	June 2023 Rent	\$550.00	\$350.00	\$200.00
01-Jul-23	July 2023 Rent	\$550.00	\$0.00	\$550.00
			Total	\$750.00

Landlord's Position

11. The landlord testified that the tenant did not pay rent in full for the months of June and July but paid in full for August leaving an outstanding balance of \$750.00. The landlord is seeking rent 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 or about

the 31-August and based on the rental ledger as presented above, I find that rent is outstanding in the amount of \$750.00.

Decision

13. The landlord's claim for *rent paid* succeeds in the amount of \$750.00.

Issue # 2: Possessions Returned \$2500.00

Relevant Submission

14. The landlord testified that the tenants took many household items with them when they vacated the unit, and he is seeking \$2500.00 to cover the cost to replace the items. The landlord submitted a list of the possessions missing (LL#4). See breakdown of the missing possessions below:

Possessions Ledger 2024-0856-NL		
List of Possessions	Value	Total
Microwave	\$250.00	\$250.00
Wheelbarrow	\$300.00	\$550.00
lawnmower	\$500.00	\$1,050.00
Patio swing set	\$800.00	\$1,850.00
dining room chair	\$200.00	\$2,050.00
bedframe / headboard	\$250.00	\$2,300.00
blinds and rods	\$200.00	\$2,500.00

Landlord's Position

15. The landlord testified that the above list of items was missing when he conducted the final walk through of the unit and he submitted a copy of a thread of messages via *Facebook Messenger* to support the claim (LL#8).

Item # 1: Microwave (\$250.00) – The landlord testified that the tenants took the microwave from the kitchen when they vacated the unit, and he is seeking \$250.00 to replace the microwave. The landlord submitted a photograph of the microwave at the commencement of the tenancy to support the claim (LL#5).

Item # 2: Wheelbarrow (\$300.00) - The landlord testified that the tenants took a wheelbarrow that was stored in the basement area of the unit when they vacated, and he is seeking \$300.00 to replace the wheelbarrow.

Item # 3: Lawn mower (\$500.00) - The landlord testified that the tenants took a lawn mower that was stored in the basement area of the unit when they vacated, and he is seeking \$500.00 to replace the lawn mower.

Item # 4: Patio swing set (\$800.00) - The landlord testified that the tenants took a patio swing set from the premises when they vacated the unit, and he is seeking \$800.00 to replace the swing set.

Item # 5: Dining room chair (\$200.00) - The landlord testified that the tenants took 1 or 2 of the dining room chairs from the kitchen area when they vacated the unit, and he is seeking \$200.00 to replace the chairs. The landlord submitted a photograph of the chairs at the commencement of the tenancy to support the claim (LL#6).

Item # 6: Bedframe / headboard (\$250.00) - The landlord testified that the tenants took a metal bed frame and a wooden headboard / footboard from the premises when they vacated the unit, and he is seeking \$250.00 to replace the bedframe and headboard / footboard. The landlord submitted a photograph of the bed to support the claim (LL#7).

Item # 7: Blinds and rods (\$200.00) - The landlord testified that the tenants took 3 blinds and 3 rods from the windows when they vacated the unit, and he is seeking \$200.00 to replace the blinds and rods.

Analysis

16. Based on the testimony of the landlord and photographs and written *Facebook Messenger* messages entered into evidence, each item is analyzed as follows:

Item # 1: Microwave (\$250.00) – The landlord testified that the tenants took the microwave from the kitchen when they vacated the unit, and he is seeking \$250.00 to replace the microwave. I asked the landlord the age of the microwave, the brand of the microwave and the cost to purchase the microwave and he responded that he did not know any of the details surrounding the microwave, however he did submit a photograph of the microwave to show that it was located in the kitchen area at the commencement of the tenancy and to show that it was average in size. I asked the landlord how he arrived at the amount of \$250.00 to replace the microwave and he responded that he reviewed ads for similar microwaves. Based on the photograph, I accept that the microwave was of average size however I do not know the age of the microwave and whether or not it has exceeded its life cycle and for that reason, I will award a nominal amount of \$50.00 for the loss of the microwave.

Item # 2: Wheelbarrow (\$300.00) - The landlord testified that the tenants took a wheelbarrow that was stored in the basement area when they vacated the unit, and he is seeking \$300.00 to replace the wheelbarrow. I asked the landlord the age of the wheelbarrow and he responded that it was 3 years old. I asked the landlord how he arrived at the amount of \$300.00 to replace the wheelbarrow and he responded that he reviewed ads for the same wheelbarrow and found them to cost \$300.00. Based on the landlord's testimony and the messages entered into evidence, I accept that the tenants are responsible for the missing wheelbarrow, and as such an award of some value is warranted. Research shows that a homeowner steel tray wheelbarrow costs \$160.99 (research taken from www.kent.ca). I find that the tenants are responsible for the cost to replace the wheelbarrow in the amount of \$160.99.

Item # 3: Lawn mower (\$500.00) - The landlord testified that the tenants took a lawn mower that was stored in the basement area when they vacated the unit, and he is seeking \$500.00 to replace the lawn mower. I asked the landlord the age of the lawn mower and he responded that he didn't really know. He said that it was not really new but not really old either. I asked the landlord how he arrived at the amount of \$500.00 to replace the lawn mower and he responded that he reviewed ads for the cost of lawn mowers and found them to cost approximately \$500.00. Based on the landlord's testimony and the messages entered into evidence, I accept that the tenants are responsible for the missing lawn mower, and as such an award of some value is warranted. As the landlord do not know the age of the lawn mower and whether or not it has exceeded its life cycle, I will award a nominal amount of \$50.00 for the loss of the lawn mower.

Item # 4: Patio swing set (\$800.00) - The landlord testified that the tenants took a patio swing set from the premises when they vacated the unit, and he is seeking \$800.00 to replace the swing set. I asked the landlord the age and type of swing set and he

responded that the swing set was 6 years old, made of metal with a canopy on top. Based on the landlord's testimony and the messages entered into evidence, I accept that the tenants are responsible for the missing patio swing set and as such an award of some value is warranted. Research shows that a patio 3 seats canopy swing glider cost \$206.99 (research taken from www.walmart.ca). I find that the tenants are responsible for the cost to replace the patio swing set at \$206.99.

Item # 5: Dining room chair (\$200.00) - The landlord testified that the tenants took 1 or 2 of the dining room chairs from the kitchen area when they vacated the unit, and he is seeking \$200.00 to replace the chairs. As the landlord is unsure as to whether 1 chair or 2 chairs are missing, I will consider the loss of 1 chair for the purpose of this decision. I asked the landlord the age and type of chair, and he responded that it was a wooden chair approximately 10 years old. Based on the landlord's testimony and the photograph entered into evidence, I accept that the tenants are responsible for the missing chair, and as such an award of some value is warranted. Research shows that a wooden dining room chair costs \$159.85 (research taken from www.thebrick.com). Wooden chairs have a life span of approximately 25 years and as the chair was 10 years old, I find that the chair has approximately 60% of its life cycle remaining and for that reason, I find that the tenants are responsible for the cost to replace the chair at \$95.91.

Item # 6: Bedframe / headboard (\$250.00) - The landlord testified that the tenants took a metal bed frame and a wooden headboard / footboard from the premises when they vacated the unit. I asked the landlord the age of the bedframe and the headboard / footboard and he responded that it was old but was not harmed. Based on the photograph entered into evidence, I accept that the items were in good condition and based on the landlord's testimony, I accept that the tenants are responsible for the missing bedframe and headboard / footboard. Research shows that a metal twin bedframe cost \$57.47 (research taken from www.thebrick.com) and I was unable to find the cost of a similar twin size headboard / footboard, however I find that it is not unreasonable to expect that it would cost \$200.00 for a used twin size wooden headboard / footboard and for those reasons, I find that the tenants are responsible for the cost to replace the metal bedframe and the headboard / footboard in the amount of \$250.00.

Item # 7: Blinds and rods (\$200.00) - The landlord testified that the tenants took 3 blinds and 3 rods from the windows when they vacated the unit. I asked the landlord the age of the blinds and rods and he responded that they were 6 years old. Based on the landlord's testimony and the photographs entered into evidence, I accept that the tenants are responsible for the missing blinds and rods, and as such an award of some value is warranted. As the landlord do not know the type of blinds or the sizes, I will award a nominal amount of \$100.00 for the loss of the blinds and the rods. I find that the tenants are responsible or the cost to replace the blinds and rods in the amount of \$100.00.

Decision

17. The landlord's claim for the *value of missing possessions* succeeds in the amount of \$913.89.

Issue # 3: Compensation for damages \$2875.00

Relevant Submission

18. The landlord testified that there were damages / losses to the rental unit in the amount of \$2875.00 and he submitted a damages ledger to support the claim (LL#9). See copy of damages ledger below:

Damages Ledger 2024-0856-NL		
List of Possessions	Value	Total
Plaster and paint all rooms and ceilings		\$2,875.00
Deep clean of walls prior to paint		

Landlord's Position

19. The landlord testified that the entire unit needed to be painted with some plaster work and he stated that a deep clean of the walls and the heaters was required prior to painting. The landlord submitted photographs showing damages to the walls and he also submitted photographs of the walls prior to the tenancy (LL#10). The landlord is seeking \$2875.00 to complete the work. The landlord submitted a copy of an invoice from *Collier's Cabinetry* to support the claim (LL#11).

Analysis

20. 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)*

21. I asked the landlord when was the last time the unit was painted and he responded that it was last painted approximately 4 years ago. Based on the photographs entered into evidence, I accept that the walls were damaged during the tenancy and would require repair work. Based on Section 9-3 of the *Act* as stated above, I find that the landlord was able to show that the damage exists, and he was able to show that the tenants were negligent in causing the damage and the landlord was also able to show the cost to complete the work. In accordance with Section 9-5 of the *Residential Tenancies Policy*: Depreciation and life expectancy of property, interior paint has a life span of 15 years leaving approximately 11 years of the paints lifespan remaining. For this reason, I find that the tenants are responsible for 73% of the cost to repair and paint the walls in the amount of \$2098.75.

Decision

22. The landlord's claim for *compensation for damages* succeeds in the amount of \$2098.75.

Issue # 4: Other (loss of rental income) \$2000.00

Landlord's position

23. The landlord testified that he incurred a loss of rental income for 3.5 months from 1-September to 15-December and he is seeking \$2000.00 to cover his loss. The landlord stated that he could not advertise the unit for rent until the middle of November when the work was completed, and he stated that he was successful in securing a new tenant effective the middle of December. The landlord stated that it was difficult to find someone to do the plaster and paint work which delayed the process of getting the unit ready to re-rent.

Analysis

24. Based on the *damages ledger* as presented above, the only work that was required within the unit when the tenants vacated was the wall repair work, cleaning of the walls and painting the walls. I accept that the rental unit is located in a slow rental market, however the tenants stayed until the end of their lease and should not be responsible for loss of rental income due to the inability to find new tenants. With regards to the damages that needed to be completed, I find that based on the damages claimed by the landlord, it would take approximately 2 weeks to complete the work and for that reason, I find that the tenants are responsible for the loss of rental income due to damages to the unit for 2 weeks in the amount of \$275.00.

Decision

25. The landlord's claim for Other (loss of rent) succeeds in the amount of \$275.00.

Issue # 5: Hearing Expenses \$52.00

26. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and also incurred a cost of \$30.00 to have the affidavits witnessed and a parking fee of \$2.00. The landlord submitted a copy of the receipts to support the claim (LL#12). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees and other costs associated with the hearing preparation can be claimable costs. As the landlord's claim for losses has been successful, I find that the tenants are responsible for the hearing expenses.

Decision

27. The landlord's claim for hearing expenses success in the amount of \$52.00.

Summary of Decision

28. The tenants shall pay the landlord \$4089.64 as follows:

Rent paid	\$750.00
Possessions	913.89
Compensation for damages	2098.75
Other (loss of rent)	275.00
Hearing expenses	52.00
 Total	 \$4089.64

November 15, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office