

Residential Tenancies Tribunal

Application 2024-0942-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 18-December-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 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 he has been properly served. The landlord submitted two affidavits with his application stating that he had served the tenants with the notice of the hearing personally by giving them to the tenant #1 on 2-December-2024 (LL#1,2). 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, the hearing proceeded in their absence.
5. There was a verbal month-to-month rental agreement which commenced on 23-August-2024. The tenants moved out on 16-October-2024. Rent was \$1400.00 per month paid on the fifteenth and the last day of each month. A security deposit of \$700.00 was collected in the beginning of the tenancy and is in landlord's possession.
6. The landlord amended his application to include hearing expenses of \$20.00.
7. The disposition of the security deposit will be dealt in this decision.

Issues before the Tribunal

8. The landlord is seeking:

- Rent paid \$3950.00;
- Late fees \$75.00;
- Utilities \$304.43
- Compensation for Damages \$450.00;
- Hearing expenses \$20.00;
- Security Deposit of \$700.00 to be applied against any monies owed.

Legislation and Policy

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

10. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy*: Section 2-4 Deposits, Payments and Fees, Section 9-3 Compensation for Damages to Rental Premises, Section 12-1 Recovery of Costs, and following sections the *Residential Tenancies Act, 2018*: Section 14: Security Deposit, Section 15: Fee for failure to pay rent.

Issue # 1: Rent paid \$3950.00

Late fees \$75.00

Landlord's Position

11. The landlord testified that rent is outstanding in the amount of \$3950.00 and stated that he is seeking late fees in the amount of \$75.00. The landlord stated that during the tenancy he received rent payment of \$200.00 in September and is seeking rent to be paid in full.

12. 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

13. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late payment fee:

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

14. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises.

15. I accept the landlord's testimony that the only rent payment received by the landlord during the tenancy was \$200.00, as the tenants were not present or represented during the hearing to provide their own testimony. Therefore, with regards to the late fees and in accordance with Section 2-4 of the Policy as stated above, I find that that the maximum late fee of \$75.00 as prescribed by the Minister is allowed. Payment for the entire tenancy is calculated on a prorated basis. The daily rate of \$45.90 is applied and charged for each day of tenancy in August and October. See amended ledger below:

Amended Rental Ledger 2024-0942-NL			
Date	Action	Amount	Total
August 23-31, 2024	Rent due	\$413.10	\$413.10
September, 2024	Rent due	\$1,400.00	\$1,813.10
September 16, 2024	Payment	-\$200.00	\$1,613.10
October 1-16, 2024	Rent due	\$734.40	\$2,347.50
Late fees		\$75.00	\$2,422.50
			\$2,422.50

Daily rate: \$1400.00 x 12 mths = \$16800.00
\$16800.00/ 366 days = \$45.90 per day

Decision

16. The landlord's claim for rent and late fees succeeds in the amount of \$2422.50.

Issue # 2: Utilities \$304.43

Landlord's Position:

17. The landlord stated that original rental agreement was based on the understanding that only two adults would reside in the two-bedroom, one-bathroom basement apartment. However, from the first day of the tenancy till the last day, the landlord testified that two additional adults and a baby were also living in the unit. While the rental agreement included utilities as part of the rent payment, the landlord claims that the presence of additional occupants resulted in a significant increase in utility usage, doubling the expected consumption. The landlord submitted a copy of the NL Power bill to support his claim (LL#3). The landlord stated that due to this breach of the agreement, he is seeking reimbursement for the electricity bill for the month of October, arguing that the increased utility usage was directly attributable to the additional occupants, which was not part of the original agreement.

Analysis

18. I accept the landlord's testimony as the tenants were not present or represented during the hearing. I accept the landlord's testimony regarding the original rental agreement, that two adults would be residing in the unit. I accept the landlord's testimony that from the beginning of the tenancy four adults and a baby were living in the unit. I find that this additional occupancy undoubtedly influenced the amount of utilities consumed in the rental property. I asked the landlord if he had made tenants aware that it was against their agreement to have more occupants living in the unit. The landlord responded that, from the first day, he informed the tenants multiple times that the agreement did not permit more occupants. Based on this testimony, I find that this constitutes a material breach of a fundamental term of the rental agreement between landlord and tenants. I asked the landlord when the property was re-rented, and he confirmed that new tenants moved in during the middle of December. Considering these circumstances, as the tenancy lasted almost two months,

and the additional usage of the utilities exceeded, I find it fair and reasonable for the landlord to be reimbursements for the utility bill for one month.

Decision

19. The landlord's claim for the utilities succeeds in the amount of \$304.43.

Issue # 3: Damages \$450.00.

20. The landlord is seeking compensation for damages as follows:

#1 Cleaning \$200.00

Landlord's Position:

21. The landlord stated that the tenants did not clean the unit after vacating, leaving it in unsanitary condition. The landlord mentioned that the floors were not swept and needed to be scrubbed, and that the apartment required extensive cleaning. The landlord submitted photographs to demonstrate the state of the unit, to show dirty floors, cat feces, dirty cupboards, and doors (LL#4). The landlord stated that himself and his friend spend two days, approximately six hours each day cleaning the unit. The landlord is seeking \$200.00 as reimbursement for cleaning.

#2 Wainscot and molding replacement \$50.00

Landlord's Position:

22. The landlord stated that the wainscot and moldings were damaged by the tenants, specifically, the damage occurred when the tenants attached a TV bracket to the wall, which caused the wainscot to split. The landlord explained that while the wainscot had been in place for several years, it was in perfect condition prior to the tenancy and due to the damage, the wainscot needed to be replaced. The landlord submitted photographs to show the damage to the wainscot (LL#5). The landlord is seeking \$50.00 to cover the cost of materials.

#3 Paint and plaster \$200.00

Landlord's Position:

23. The landlord stated that the tenants damaged walls by using screws and nails to hang pictures, leaving large holes in the walls. The landlord testified that some of the walls were freshly painted prior to the tenancy in August and other were in good condition, but after the tenants vacated, the walls needed to be repainted and approximately four walls in bedrooms needed to be plastered. The landlord submitted photographs to illustrate the condition of the walls (LL#6). The landlord is seeking \$200.00 for the cost of materials, which included two gallons of paint and a plaster.

Analysis

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

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*

- *The value to repair or replace the damaged item(s)*

25. As the tenants were not present or represented during the hearing to provide their own testimony regarding these issues, the damages will be analyzed as follows:

#1 Cleaning \$200.00

26. I accept landlord's testimony that the tenants did not clean the unit after vacating. I find that the landlord provided sufficient evidence to show the condition of the unit after tenants vacated. I accept that the cleaning was necessary, and that the landlord and his friend spent significant time addressing the condition of the unit. In accordance with the Section 9-3 of the *Policy*, if the landlord carried out any of the repair work themselves, they may claim for costs of personal labor the current provincial minimum wage rate plus \$8.00. After reviewing the costs claimed by the landlord, that would equate to 12 hours at 23.60 equaling \$283.20. However, the tribunal cannot award costs in excess of what is claimed, therefore the landlord is awarded \$200.00 for cleaning.

#2 Wainscot and molding replacement \$50.00

27. I accept the landlord's testimony that the wainscot and moldings were damaged by the tenants. Based on the evidence provided, the damage likely occurred when the tenants attached TV bracket to the wall, causing the wainscot to split. After conducting research on the cost of wainscot materials (www.amazon.com) I find that the landlord's request amount of \$50.00 is reasonable and reflective of a replacement cost. The landlord will be awarded \$50.00 for the replacement of wainscot.

#3 Paint and plaster \$200.00

28. After reviewing the evidence submitted by the landlord, I find that the walls were damaged by the use of screws, leaving visible holes and marks and that plastering and painting was required. I accept landlord's testimony, that damage to the walls occurred during the tenancy and that four walls needed to be plastered and repainted. According to the landlord, he is seeking \$200.00 for the materials – for two gallons of paint and plaster. After conducting research (www.homedepot.com), I found that the regular price for two gallons of interior paint is approximately \$50.00 per gallon, and the average cost for plaster is around \$15.00. Based on this information, I find it appropriate to award the landlord \$115.00 for the cost of paint and plaster.

Decision

29. The landlord's claim for damages succeeds in the amount of \$365.00.

Issue # 4: Hearing expenses \$20.00

Analysis

30. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and are seeking reimbursement. As the landlord's claim has been successful, the tenants shall pay the hearing expenses.

Decision

31. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 5: Security deposit to be applied against any monies owed \$700.00
Analysis

32. 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).

33. The landlord's claim for losses has been successful as per paragraphs 16, 19, 29 and 31 and as such, the security deposit shall be applied against monies owed. 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 in 2024 is 1%.

Decision

34. Security deposit plus interest to be applied against monies owed succeeds.

Summary of Decision

35. The tenants shall pay the landlord \$2409.90 as follows:

Rent and late fees	\$2422.50
Utilities	\$304.43
Damages	\$365.00
Hearing expenses	\$20.00
Less Security Deposit & interest	\$702.03

Total \$2409.90

December 23, 2024

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office