

Residential Tenancies Tribunal

Application 2024-1041-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:56 p.m. on 11-December-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" did not attend. [REDACTED] [REDACTED], Power of Attorney, attended by teleconference (LL#1).
3. Authorized representative for the landlord, [REDACTED], attended by teleconference (LL#2).
4. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was able to reach him by telephone at the start of the hearing, at which time he declined to participate. 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 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 an affidavit with his application stating that he had served the tenant with the notice of hearing electronically by text message to; [REDACTED] on 26-November-2024 (LL#3). The landlord submitted proof of the cell phone number as per the rental agreement and a copy of the sent text message (LL#4). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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 his absence.
6. There was a fixed term rental agreement which commenced on 1-November-2023. The tenant vacated the unit on or about 6-January-2024. Rent was \$2000.00 per month, due on the first day of each month. A security deposit of \$500.00 was paid on 27-October-2023 and is in the landlord's possession.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$4000.00
 - Compensation paid for damages \$1488.00
 - Other (real estate listing fee) \$2300.00
 - Hearing expense \$20.00
 - Security deposit to be applied against monies owed \$500.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 6-3: Mitigation on abandonment of residential premises, Section 9-3: Claims for damages to rented premises, Section 9-5: Depreciation and life expectancy of property and Section 12-1: Recovery of costs.

Issue # 1: Rent Paid \$4000.00

Relevant submission

10. The landlord's representative testified that rent is outstanding in the amount of \$4000.00 for the months of January and February 2024. The landlord submitted a copy of a rental ledger to support the claim (LL#5). See copy of rental ledger below:

Date	Transaction Description	Amount Due	Amount Paid	Balance
1-Nov-23	Rent For November	\$ 2000	-\$ 2000	\$ 0
1-Dec-23	December Rent	\$ 2000	-\$ 2000	\$ 0
1-Jan-24	January Rent	\$ 2000	\$ 0	\$ 2000
1-Feb-24	February Rent	\$ 2000	\$ 0	\$ 2000

Landlord's Position

11. The landlord's representative testified that the tenant entered into a fixed term agreement that was due to expire on 31-October-2024 and the landlord's representative stated that the tenant abandoned the unit on or about 6-January-2024 without any notice and he is seeking rent to be paid for the months of January and February.

Analysis

12. Section 6-3 of the *Residential Tenancies Policy* states:

Mitigation on Abandonment of Residential Premises

A landlord has a legal duty to take all steps to mitigate their damages after a tenant abandons residential premises. As the most obvious sort of damage the landlord would suffer would be a loss

of rental income, "mitigation" in these circumstances would entail the landlord taking immediate steps to find new tenants to move into the property so that the landlord could once again collect rent.

13. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid by a tenant(s) during the use or occupancy of a residential premises. I accept the landlord's testimony that the tenant abandoned the unit on or about the 6-January without any notice and I asked the landlord's representative if the landlord made any attempts to mitigate his losses and re-rent the unit. The landlord's representative responded that the landlord was tasked with cleaning the unit and making necessary repairs to the unit before he could rent it. The landlord's representative stated that the property was ready for viewing on 19-January at which time it was put up on the *Multiple Listing Service* (MLS) and he stated that the landlord incurred a loss of rental income for 2 months. In accordance with Section 6-3 of the *Policy* as stated above, landlords should not incur any financial loss due to the actions of tenants and they should take every step necessary to mitigate their losses. I accept that the landlord was prompt in preparing the unit to rent again and for that reason, I find that the tenant is responsible for rent for the months of January and February in the amount of \$4000.00.

Decision

14. The landlord's claim for *rent paid* succeeds in the amount of \$4000.00.

Issue # 2: Compensation of Damages \$1488.00

Relevant Submission

15. The landlord's representative testified that there were damages / losses to the rental unit in the amount of \$1488.00 and the landlord submitted a damages ledger to support the claim (LL#6). See copy of the damage's ledger below:

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	Water Damage To Flooring	\$ 350.00
2	Damaged Bedroom Blind	\$ 100.00
3	Keys Not Returned / Replaced the Locks	\$ 250.00
4	Cleaning Cost	\$ 288.00
5	TV in Primary Primary Bathroom Taken	\$ 500.00

Landlord's Position

16. The landlord's position on each item is as follows:

Item # 1: Water damage to flooring (\$350.00) – The landlord's representative testified that a portion of the flooring and the baseboards in the primary bathroom needed to be replaced due to water damage and he is seeking \$350.00 for the labor portion only to have the work completed. The landlord submitted photographs of the flooring to support the claim (LL#7) and a screen shot of his banking transactions to show monies deposited into his handyman's account on 14-March-2024 (LL#8).

Item # 2: damaged bedroom blind (\$100.00) - The landlord's representative testified that the blind in the bedroom was melted and damaged to the point of no repair and he

is seeking \$100.00 to have the blind replaced. The landlord submitted a photograph of the blind to support the claim (LL#9).

Item # 3: Replace locks (\$250.00) – The landlord's representative testified that when the tenant vacated the unit, he took the keyless entry lock pad with him and left the door with no lock on it. The landlord stated that the original locks were found inside the unit without the keys, and he is seeking the cost to purchase a new keyless entry lock pad at \$250.00.

Item # 4: Cleaning (\$287.50) – The landlord's representative testified that the unit needed cleaning and he stated that he hired a cleaning company to complete the work. The landlord submitted photographs to support the claim (LL#10) and a copy of an invoice from [REDACTED] dated 23-Febrary-2024 to support the claim (LL#11).

Item # 5: Missing T.V. (\$500.00) – The landlord's representative testified that the television located in the primary bedroom was missing and he is seeking \$500.00 to replace it.

Analysis

17. 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)*

18. The respondent was not present to dispute any claims and the items are analyzed based on the testimony of the applicant and the photographs / invoices entered into evidence. Each item is analyzed as follows:

Item #1: Water damage to flooring (\$350.00) – Based on the photographs entered into evidence, I accept that there was water damage to the bathroom flooring. In accordance with Section 9-3 of the *Policy* as stated above, the landlord was able to show that the damage exists, and I accept the landlord's testimony that the damage occurred during the tenancy. I asked the landlord if the tenant ever made him aware of a water leak within the unit and he responded that the tenant did not. The landlord was able to show what he was charged for the cost of labor to repair the bathroom floor and baseboards. I find that the tenant is responsible for the labor costs associated with the water damage to the bathroom flooring in the amount of \$350.00.

Item # 2: damaged bedroom blind (\$100.00) - Based on the photograph entered into evidence, I accept that the blind was damaged and needs to be replaced. In accordance with Section 9-3 of the *Policy* as stated above, the landlord was able to show that the damage exists and I accept the landlord's testimony that the damage occurred during the tenancy, however the landlord failed to show the cost to replace the blind. I asked the landlord the type and age of the blind and he responded that it was a plastic blind, and he did not know the exact age, but he does know that the blind was in the unit 5 years ago when his dad resided there. As the damage to the blind occurred during the tenancy, I find that the tenant is responsible for the damage to the blind and given that the landlord does not know the cost to replace the blind nor does he know the age of the blind, I will award a nominal amount of \$50.00 to go towards the cost to replace the blind. I find that the tenant is responsible for the cost to replace the blind in the amount of \$50.00.

Item # 3: Replace locks (\$250.00) – Based on the photograph entered into evidence, I accept that the tenant took his keyless entry pad with him when he left the unit and failed to replace it with the original locking mechanism. Changing locks in rental units is the responsibility of the landlord as it falls under the “*cost of doing business*”, however, tenants do not have the right to leave holes in doors. I find that the tenant removed the original lock, did not put it back on the door when he left and when found by the landlord the key was missing. The landlord stated that he decided to put a keyless entry pad on the door, and I find that the tenant is not responsible for that cost but should be held responsible for some amount of the cost associated with putting a lock back on the door. I find that it is reasonable to award a nominal amount of \$100.00 to go towards the cost to put a lock back on the door. I find that the tenant is responsible for the cost to replace the lock in the amount of \$100.00.

Item # 4: Cleaning (\$287.50) – Based on the photographs entered into evidence, I accept that some cleaning was required in the unit after the tenant vacated. In accordance with Section 9-3 of the *Policy* as stated above, the landlord could show that cleaning was required and he could show the cost to clean the unit and for those reasons, I find that the tenant is responsible for the cost to clean the unit in the amount of \$287.50.

Item # 5: Missing Television (\$500.00) – I accept the landlord’s testimony that the tenant took the television from the primary bedroom with him when he vacated. I asked the landlord’s representative the size and brand name of the television and the age of the television and he responded that the television was a 42-inch Sony, and it was less than 5 years old. Research shows that the cost of a 42-inch Sony television is \$754.11 (research taken from www.costco.ca). In accordance with section 9-5 of the *Residential Tenancies Policy*: life expectancy of property, Sony televisions have an 11-year life span. As 45% of the television’s life cycle has passed, I find that the tenant is responsible for the cost to replace the television at \$414.76.

Decision

19. The landlord’s claim for *compensation for damages* succeeds in the amount of \$1202.26.

Issue # 3: Other (Real Estate Listing Fee) \$2300.00

Landlord’s Position

20. The landlord’s representative testified that the landlord hired a real estate agent to list the property and find an adequate new tenant and he stated that the MLS fee associated with listing the property for 1 month was \$2300.00. The landlord is seeking reimbursement of the real estate fee in full.

Analysis

21. Section 6-3 of the *Residential Tenancies Policy* states:

Cost of Mitigation

All reasonable cost incurred by a landlord in mitigating any loss of rental income are also recoverable from the tenant. These may include the costs incurred to place advertisements, or the costs of hiring a property management company or leasing agent.

22. I accept that the landlord hired a real estate agent to list the property on the MLS so as to secure an adequate tenant. I asked the landlord's representative if the property had been listed with a real estate agent previously when rented to the tenant in 2023 and the landlord's representative responded that it is a common practice to use the MLS to rent their properties, but this property was not listed on the MLS when rented to the tenant in 2023. I accept that a landlords cost to mitigate may include the costs of hiring a leasing agent as stated in Section 6-3 of the *Policy* above, but not necessarily. I accept that the landlord wanted to secure an adequate tenant, however I find that it was not a necessary cost that should be put on the tenant and based on the rental agreement, there is no clause with regards to a re-rent levy fee. I find that as the tenant is responsible for the loss of rental income as per paragraph 14 above, the tenant is not responsible for any extra costs the landlord decided to incur when re-renting the unit.

Decision

23. The landlord's claim for *Other (real estate fee)* does not succeed.

Issue # 4: Hearing expenses \$20.00

24. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and is seeking reimbursement. The landlord submitted a copy of the receipt to support the claim (LL#6). In accordance with Section 12-1 of the *Residential Tenancies Policy*, claimable costs may include the filing fee. As the landlord has been successful in his claim for losses, I find that the tenant is responsible for the hearing expenses.

Decision

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

Issue # 5: Security deposit applied against monies owed \$500.00

Analysis

26. 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).*

27. As the landlord's claim for losses has been successful as per paragraphs 14, 19, and 25 above, I find that the landlord's claim to have the security deposit applied against monies owed succeeds. 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 for 2023 was 0% and for 2024 is currently 1%.

Decision

28. The landlord's claim to have the *security deposit applied against monies owed* succeeds.

Summary of Decision

29. The tenants shall pay the landlord \$4722.16 as follows:

Rent paid	\$4000.00
Compensation for damages	1202.26
Other (real estate fee)	0.00
Hearing expenses	20.00
Less: security deposit & interest.....	500.10
 Total	 \$4722.16

January 3, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office