

Residential Tenancies Tribunal

Application 2024-1089-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 8-January-2025.
2. The applicant, [REDACTED] represented by [REDACTED] [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants" attended by teleconference. The respondent, [REDACTED], hereinafter referred to as the "tenant" did not attend.

Preliminary Matters

4. The landlord submitted 3 affidavits with their application stating that she had served the tenants with the notice of hearing electronically by email on 27-December-2024 (LL#1). The tenants confirmed that all 3 had received their respective document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written month-to-month rental agreement which commenced on 1-October-2021. The tenants vacated the unit on 5-November-2024. Rent was \$1065.00 per month, due on the first day of each month. A security deposit of \$425.00 was paid on 2-September-2021 and is in the landlord's possession.
6. Submission of post hearing evidence was requested by both parties and approval was granted with a 3-day timeframe.

Issues before the Tribunal

7. The landlord is seeking:
 - Rent paid \$177.50
 - Compensation paid for damages \$1770.00
 - Other (sheriff fee) \$325.00
 - Hearing expenses \$20.00
 - Security deposit applied against monies owed \$425.00

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 Act, 2018*: Section 14: Security deposit. Also, relevant and considered in this decision are the following sections 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 \$177.50

Landlord's and Tenant's Positions

10. The landlord's representative testified that when the tenants vacated the unit on 5-November-2024, rent was outstanding for the period of November 1-5. The landlord is seeking a pro-rated rental amount of \$177.50 for that period. The tenants did not dispute that they owe outstanding rent for the first 5 days of November while they were still residing at the unit.

Analysis

11. 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. As the tenants did not dispute that they owe outstanding rent for the period of November 1-5, I find that the tenants are responsible for rent paid in the amount of \$174.60 ($\$1065 \times 12 \text{ mths} = \$12,780 / 366 \text{ days} = \$34.92 \text{ per day} \times 5 \text{ days}$).

Decision

12. The landlord's claim for *rent paid* succeeds in the amount of \$174.60.

Issue # 2: Compensation for damages \$1770.00

Relevant Submission

13. The landlord's representative testified that there were damages / losses to the rental unit in the amount of \$1770.00 and they submitted a damages ledger to support the claim (LL#2). See copy of damages ledger below:

Cleaning	575.00
Garbage Removal	450.00
Keys not returned (4 sets)	450.00
Subtotal	1,475.00
Plus 20% Admin Fee (as per lease)	295.00
TOTAL	1,770.00

Landlord's and Tenant's Positions

14. The landlord's representative testified that they are seeking \$1770.00 in damages as stated above. Both the landlord's and the tenant's positions on each item are as follows:

Item # 1: Cleaning (\$575.00) – The landlord's representative stated that the unit was inspected 3 days after the tenants vacated, on 8-November-2024 and she testified that the unit was left dirty and needed to be professionally cleaned. The landlord's representative testified that the stove top had an accumulation of grease and dirt around each burner, there was black mold all over the unit which had never been reported to them, the toilet was extremely dirty, and the floors were filthy. The landlord submitted photographs of the unit to support the claim (LL#3) and a copy of the *Move in / Move out inspection report* (LL#4). The landlord also submitted a copy of an invoice from [REDACTED] [REDACTED] with a breakdown of those costs (LL#5). The tenants did not dispute that some cleaning was required after they vacated the unit on 5-November, and they stated that they were granted permission to re-enter the unit on 16-November to finish the necessary cleaning required and to dispose of the garbage left in the unit. The tenants submitted photographs to show that the unit had not been cleaned up the point they re-entered on the 16-November (TT#1) and they also submitted photographs to show that they cleaned the unit on 16-November (TT#2).

Item # 2: Garbage removal (\$450.00) – The landlord's representative testified that when they inspected the unit on 8-November, there was garbage left all over the floors and the counter and there was roughly 3 pieces of large furniture that needed to be removed from the unit and disposed of. The landlord submitted photographs of the garbage and furniture to support the claim (LL#6) and a copy of an email showing the cost for garbage removal and disposal (LL#7). The tenants did not dispute that they left some garbage and 2 sofas in the unit when they vacated on 5-November, however the tenants testified that they removed the garbage and the furniture on 16-November when they re-entered the unit. The tenants submitted photographs to show the condition of the unit before they cleaned on the 16-November (TT#1) and after they cleaned on that same day (TT#2).

Item # 3: 4 Sets of keys (\$450.00) – The landlord's representative testified that the tenants did not return their keys to the building and the mailbox when they vacated the unit, and they are seeking the cost to replace 4 keys to the main door of the building and 1 key to the mailbox in the amount of \$450.00 as per *Schedule A* and *Schedule B* of the *rental agreement* (LL#8). The tenants disputed the landlord's claim that 5 sets of keys were not returned and stated that they returned 2 keys to the main door on 16-November.

Item # 4: 20% Administrative fee (\$295.00) - The landlord's representative testified that the tenants agreed to pay a 20% administrative fee on any losses to the unit as per *Schedule B* of the *rental agreement* (LL#9). The tenants did not dispute that there was a clause in their rental agreement whereby they would pay a 20% administrative fee on all charges billed to them by the landlord.

Analysis

15. 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)*

16. Each item has been analyzed as follows:

Item # 1: Cleaning (\$575.00) – Based on the photographs and the inspection form entered into evidence by the landlord, I accept that the unit needed cleaning when the tenants vacated on 5-November and in accordance with paragraph 21 of *Schedule A* of the *Rental Agreement*, the rented premises and appliances must be left clean at the expiration of the tenancy. The tenants testified that they were granted permission by the landlord to re-enter the unit on 16-November to finish cleaning and the landlord confirmed that to be true.

I accept the photographs entered into evidence by the tenants which supports the tenant's claim that the unit had not been cleaned by the landlord up to the point they re-entered on 16-November, and I accept that the photographs also showed that the tenants did complete some cleaning on that date. I find that those photographs also showed that the tenants attempted to clean the unit, but it is evident that the unit still needed some cleaning after the 16-November. The photographs failed to show if the fan and light fixtures had been cleaned, the photographs did not show the bathroom area at all or close up shots of the window ledges. There weren't any photographs of the inside of the oven or the cupboards to show if those areas had been cleaned on the 16-November. For those reasons, I find that the tenants failed to show that they completely cleaned the unit on 16-November and based on the tenant's testimony that the unit still required some cleaning, I find that the tenants are responsible for the cost to clean the unit. The question is at what rate.

The landlords are seeking \$575.00 for the cost to clean the unit and a breakdown of the costs from [REDACTED] shows that the landlord was quoted \$600.00 for cleaning dated the 18-November-2024 which was 2 days after the tenants cleaned the unit, however I am unaware if the quote was based on the condition of the unit prior to the 16-November or after that date. Based on the testimony of the landlord's representative and all evidence presented by both parties, I find that even after the tenants cleaned the unit on 16-November, the landlord still had to incur a cost to finish the cleaning and restore the unit to the way it was prior to the tenancy. In accordance with Section 9-3 of the *Act* as stated above, the landlord was able to show that the tenants were negligent in leaving the unit dirty and they were able to show the cost to clean the unit. The tenant's photographs were taken after they were permitted to return and finish cleaning the unit and based on those photographs, I find that the tenants failed to show that the unit was completely cleaned and restored to the way it was prior to the tenancy and for those reasons, I find that the tenants are responsible for the cost to clean the unit in the amount of \$575.00.

Item # 2: Garbage removal (\$450.00) - Based on the photographs entered into evidence by the landlord, I accept that there was garbage and furniture left at the unit when the tenants vacated on 5-November. The tenants testified that they were granted permission by the landlord to re-enter the unit on 16-November to remove and dispose of the garbage and furniture.

I accept the photographs entered into evidence by the tenants which supports the tenant's claim that the garbage and furniture was removed from the unit on 16-November. I asked the landlord if the sofas had been removed from the unit on the 16-November and she responded that she did not know. The landlords are seeking \$450.00 for the cost to remove and dispose of garbage from the unit and the breakdown of the costs from [REDACTED] shows that the landlord was quoted \$300.000 for garbage removal which was dated for 18-November-2024 which was 2 days after the tenants cleaned the unit. Based on all evidence presented by both parties and in accordance with Section 9-3 of the *Act* as stated above, I find that the

landlord was able to show the cost for garbage removal but failed to show that the tenants left any garbage and furniture in the unit after 16-November. For those reasons, I find that the tenants are not responsible for the cost to remove and dispose of garbage and furniture from the unit.

Item # 3: 4 Sets of keys (\$450.00) – I asked the landlord if it was possible that the keys got returned to the *Office* on 16-November and she responded that she did not know. I accept the tenant's testimony that they returned 2 of the main door keys, leaving 2 main door keys missing and 1 mailbox key missing. In accordance with *Schedule B* of the *rental agreement*, the cost to replace a main door key is \$75.00 and the cost to replace a mailbox key is \$50.00. I find that the tenants are responsible for the cost to replace keys in the amount of \$200.00.

Item # 4: 20% Administrative fee (\$295.00) - I accept the landlord's testimony that the tenant's agreed to pay a 20% administrative fee on any charges billed to them after the tenancy ended as per *Schedule B* of the *rental agreement*. The tenants did not dispute that there was a clause in their rental agreement to that effect. In accordance with *Schedule B* of the *rental agreement*, a 20% administrative fee shall be applied to all charges billed to the tenants, and as such the tenants shall pay \$155.00 in administrative fees ($\$775 \times 20\%$).

Decision

17. The landlord's claim for *compensation for damages* succeeds in the amount of \$930.00.

Issue # 3: Other (Sherriff Fees) \$325.00

Landlord's and Tenant's positions

18. The landlord's representative testified that the *Office of the High Sheriff* removed the tenants from the unit on 5-November-2024 and they are seeking the cost incurred to retain this service. The tenants did not dispute that the Sheriff was involved in the process.

Analysis

19. I accept that the *Office of the High Sheriff* was used to remove the tenants from the unit on 5-November-2024 and this could have only occurred with an *Order of Possession* from *Residential Tenancies Office*. Research shows that a previous claim by the landlord seeking vacant possession (2024-0581-NL) was successful dated 7-October-2024 and as such the tenants vacated the premises. The *Order of Director* stated that the tenants shall pay to the landlord any costs charged to the landlord, by the Office of High Sheriff, should the landlord be required to have the Sheriff enforce the *Order of Possession*. I find that reimbursement of the sheriff fees has been dealt with in the previous decision as listed above and for that reason, I find that sheriff fees will not be dealt with for the purpose of this decision.

Decision

20. The landlord's claim for Other (sheriff fees) does not succeed.

Issue # 4: Hearing Expenses \$20.00

21. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#10). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees 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

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

Issue # 5: Security deposit applied against monies owed \$425.00

Analysis

23. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

24. The landlord's claim for losses has been successful as per paragraphs 12, 17 and 22 above 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 for 2021-2023 was 0% and is currently 1% for 2024 and 2025.

Decision

25. The landlord's claim to have the security deposit plus interest applied against monies owed succeeds.

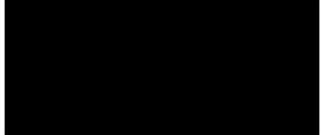
Summary of Decision

26. The tenants shall pay the landlord \$695.25 as follows:

Rent paid	\$174.60
Compensation for damages	930.00
Other (sheriff fees)	0.00
Hearing expenses	20.00
Less: security deposit & interest	429.35
 Total	 \$695.25

January 23, 2025

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office