

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0415-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:35 p.m. on 08-November-2021.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1” attended by teleconference and [REDACTED] hereinafter referred to as “tenant2” did not attend.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that he served the tenants electronically. Tenant1 was served by both email and text. Tenant2 was served notice of the hearing by email, he is currently incarcerated and tenant1 said he will not be attending.
5. Tenant2 was not present at 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 an affidavit with his application stating that he had served the tenant with notice of the hearing, by email on October 15, 2021. 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. The landlord amended his application at the hearing and stated that he was now seeking \$1350.00 for rent and \$641.61 in compensation for damages. He no longer requires an order for vacant possession as tenant1 has already moved.

Issues before the Tribunal

7. The landlord is seeking:

- Rent \$1,350.00
- Compensation for damages and lost rent \$641.65.
- Late fees \$75.00
- Hearing expenses \$20.00
- Security deposit applied against money owed \$750.00

Legislation and Policy

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

9. Also relevant and considered in the decision is policy 9-3: Claims for Damage to Rental Premises. As well as, the following sections of the Residential Tenancies Act, 2018: Section 14: Security deposit, and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$1,350.00

Landlord's Position

10. The landlord submitted the rental agreement (LL#02). He said that the tenants moved in on May 15, 2021 for a term until May 14, 2022. The rent was \$1,000.00 a month and was due on the 15th of each month. The tenants paid a security deposit of \$750.00 and the landlord still has possession of this deposit.

11. The landlord said that in July, tenant2 moved and tenant1 requested that the rent be due on the first of each month. She agreed to pay 1 ½ months' rent for the 01-August-2021 payment. He agreed to make this change.

12. At the time tenant2 moved the landlord was going to have him sign a document removing tenant2 from the lease. This did not happen, however there was a verbal agreement with tenant1 that she was the sole lease holder after tenant2 moved.

13. The landlord submitted a rental ledger (LL#03), which indicates that the rent was paid in May and June, but fell behind in July; at that time rent due changed to August, see below:

Rent ledger

[REDACTED]					
15-May-21	rent due	\$	(1,000.00)	\$	(1,000.00)
15-May-21		rent paid	\$	1,000.00	\$
15-Jun-21	rent due	\$	(1,000.00)	\$	(1,000.00)
15-Jun-21		rent paid	\$	1,000.00	\$
15-Jul-21	rent postponed until August	\$	-	\$	-
1-Aug-21	rent due 1/2 July and August	\$	(1,500.00)	\$	(1,500.00)
1-Aug-21		rent paid	\$	750.00	\$
					(750.00)

1-Sep-21	rent up to sept 18	\$	(591.84)	\$	(1,341.84)
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Tenant1 moved September 18, 2021
 Termination notice for that date (LL#07)
 Daily rate \$1,000 x 12months = \$12,000.00
 \$12,000.00 divided by 365 days = \$33.88 a day
 \$32.88 x 18 days = \$591.84

Tenant's Position

14. Tenant1 agrees to the terms of the rental agreement as stated in paragraph 10.
15. Tenant1 said that Tenant2 moved out around 10-July-2021 and that she did request tenant2 be removed from the rental agreement, making her the sole lease holder. Tenant1 also requested, that the date the rent is due, be changed to the 01st of each month.
16. Tenant1 acknowledges that she was unable to pay the full amount of rent due after she made the changes to the agreement.
17. Tenant1 confirms that the rent was paid in full at the time tenant2 moved out.

Analysis

18. Non-payment of rent is a violation of the rental agreement, both the landlord and tenant1 agree that the rent was in arrears as of 02-August-2021 and that this amount owing was incurred by tenant1.
19. The landlords claim for rent succeeds in the amount of \$1,341.84.

Decision

20. Tenant1 owes the landlord \$1,341.84 for rent owed.

Issue 2: Compensation for damages \$641.65

Landlord's Position

21. The landlord stated that the tenants had caused some damages to the rental unit during their tenancy and he submitted the following breakdown (LL#05) of the cost to repair:

<ul style="list-style-type: none"> • Repair holes in walls, plaster and paint • Replace broken bedroom door and paint • Remove garbage, dishes, food, etc. • Clean apartment: walls, stove, fridge 	<ul style="list-style-type: none"> \$100.00 225.00 75.00 75.00
<ul style="list-style-type: none"> ○ Total 	\$475.00

22. The landlord is also requesting 5 days rent for the time it took to complete these repairs and have the apartment ready to rent. 5 days x 33.88 (as per paragraph 13) = \$164.40. For a total of \$639.40.
23. The landlord said that he contracts [REDACTED] to complete repairs and clean-up of his property when required. Due to this ongoing contract, [REDACTED] completes work at a reasonable cost. The landlord included [REDACTED] bill (LL#05). All repairs have been completed.

Holes in walls, plaster and paint

24. The landlord submitted pictures of the holes in the apartment walls (LL#05, LL#08 & LL#09). He said that the damage looked intentional, as if someone punched holes in the walls.
25. The landlord said that there were holes in the walls of two rooms: the larger open concept kitchen/living area and the bedroom. He had both rooms repaired and painted.
26. There was further damage to the wall under a window (LL#10) he believes that was caused when someone broke into the apartment. The landlord said he did not include the cost of having this repair done.
27. The landlord said that the apartment was completely redone before the tenants moved in in May 2021.
28. The landlord said that the contractor completed this work for \$100.00.

Replace broken bedroom door and paint new door

29. The landlord submitted a picture of the broken door (LL#12 & LL#13). He said it appears that someone kicked a hole through the door.
30. The landlord said that the doors in the apartment were updated to new doors in May before the tenants took occupancy.
31. The landlord said that the cost to purchase a new door, as well as the cost to paint and hang the door is what is listed on the bill he included (LL#05) \$225.00

Remove garbage, dishes, food, etc.

32. The landlord said that the tenant left things behind. He submitted pictures of personal belongings, food left in the refrigerator, dishes still in the cupboards, open containers of food on the counter, etc. (LL#14, LL#15, LL#19 & LL#20).

33. After asking the tenant what she wanted done with the things left behind, he paid to have these things removed and disposed of; he included the text messages in the evidence submitted. (LL#21)
34. The contractor did this work for a flat rate of \$75.00, this is also included in his bill (LL#05).

Clean apartment walls, floors, stove and refrigerator

35. The landlord submitted pictures (LL#16, #17, # 18 & #20) showing that the kitchen, refrigerator, stove, and rooms were left uncleaned. The contractor also did this work for a flat rate of \$75.00; included in the bill (LL#05).

Rent for 5 days while apartment was being cleaned and repaired

36. The landlord said that the contractor took 5 days to complete the repairs and clean up the apartment so that it was ready to advertise for new renters.
37. The landlord is submitting for 5 days x 33.88 (as per paragraph 13) = \$164.40.
38. All of the repairs as well as clean-up costs equal a total of \$639.40

Tenant's Position

39. Tenant1 said that tenant2 did damage the apartment. She said, that at the time they both lived there, he "wasn't in his right mind" and he would do damage by punching the walls.
40. Tenant1 said that tenant2 thought that the bedroom door was locked and he kicked and broke the door.
41. Tenant1 said tenant2 didn't mean to do this damage. Tenant1 said, once tenant2 moved out, there was no more damage done to the apartment.
42. She said that in picture (LL#22) that they had cut a hole in the wall to repair a hole, but they didn't get around to finishing it.
43. Tenant1 also said that there was damage to the wall beneath a window (as shown in picture LL#10), but that happened when someone broke into the apartment and this matter is still before the courts.
44. Tenant1 agrees that there was work left to be done with the cleaning and disposing of the items left in the apartment.

Analysis

45. Under Section 10.(1).2 of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

10(1) 2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

46. In any damage claim the applicant is required to show:

- The damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The cost to repair or replace the damaged items.

47. The Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

48. Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention of breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) determining the rights and obligations of a landlord and tenant;
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this *Act* or the rental agreement;

49. In consideration of the request for compensation for repairs to the walls, painting and replacement of the door: the landlord has testified that the apartment was renovated just before the tenants took occupancy, the tenants resided there for only 4 months. Tenant1 confirms that the damage that was done, was done by violent acts committed by tenant2.

50. Tenant1 states that all of this damage was done prior to tenant2 moving. Therefore at the time of the damage, the doors and the walls had been renovated only 2 months prior.

51. The landlord avails of the same contracting service which gives him a reasonable price on the work he has done. The contractor's total for the plaster, paint and replacement of the door is \$325.00. This is a reasonable price for this work and there shouldn't be any depreciation this close to the renovations, I find for the total amount of \$325.00 for the landlord.
52. The landlord provided pictures (LL#14, LL#15, LL#19 & LL#20) of the apartment showing that it wasn't clean and personal items were left behind requiring disposal. The contracting service agreed to dispose of personal items and clean the apartment for a total of \$150.00. If the landlord had completed this work himself for the allotted \$20.75 permitted by this board; it would have given him 7.5 hours to complete this work. Considering the belongings left behind and the uncleanliness of the area, this work would have taken the landlord at least an entire day, so the amount paid for the work is reasonable. I find for the landlord in the amount of \$150.00.
53. The landlord is requesting 5 days to complete the work necessary for the apartment to be rented again. In light of the amount of work, the use of a contractor and the time it would take to plaster, paint, as well as let it set and dry, time cleaning, and time to take the items to the dump, I find that 5 days x 33.88 per daily rental (as per paragraph 13) = \$164.40. days is a reasonable amount of time to complete all this work. I find in favor of the landlord in the amount of \$164.40

Decision

54. The landlord's claim for damages and repairs succeeds in the amount of \$639.40.
 - Repairs..... \$325.00
 - Clean up.....\$150.00
 - Lost rent..... \$164.40
 - Total..... **\$639.40**

Issue 3: Late fees \$75.00

Landlord's Position

55. The landlord submitted a rental ledger (LL#03) indicating that July 15, 2021 he agreed to the rent due date being the 1st of each month.
56. At the time of the change in July when the rent became due, the landlord agreed to a month and a half payment on 01 August, 2021, for a total of \$1,500.00. On 01-August-2021 tenant1 paid \$750.00. On 02-August-2021 tenant1 is in arrears for the remainder of her tenancy. As per the table in paragraph 13.

Tenant's Position

57. Tenant1 agrees that she was unable to pay the full amount of rent and was in rental arrears.

Analysis

58. The rental ledger (LL#03) shown in paragraph 13 shows that tenant1 fell into arrears on 02-August-2021 and remained in arrears until she moved on 18-September-2021.
59. The relevant subsections of s.15 of the Residential Tenancies Act, 2018 state:

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.*

60. On 02-August-2021 tenant1 owes \$5.00 for late fees, then from 03-August-2021 to 18-September-2021 for a total of 47 days ($\$47 \times 2$) = \$94.00. $\$5.00 + 94.00 = \101.00 . The Minister allows for a maximum of \$75.00 in late fees.

Decision

61. The landlord's claim for late fees in the amount of \$75.00 succeeds.

Issue 4: Hearing Expenses

62. The landlord submitted his receipt for hearing expenses (LL#06) totaling \$20.00 and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Issue 5: Security Deposit Applied \$750.00

Landlord's Position

63. The landlord provided a rental agreement (LL#02) stating that the tenants paid a security deposit of \$750.00.
64. The landlord has incurred financial loss due to damage and rental arrears.

Tenant's Position

65. The tenant1 testified that the damages happened while she and tenant2 lived at the apartment.
66. Tenant1 had a verbal agreement with the landlord, after tenant2 moved out around 10-July-2021 that she would be the sole renter on the agreement.
67. Tenant1 acknowledges that she was unable to pay rent, the apartment required clean up and the damages occurred while she lived there.

Analysis

68. The landlord's claim for losses has been successful and he shall retain the deposit as per section 15 below:

15. (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

Decision

69. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$750.00.

Summary of Decision

70. The landlord's agreement with tenant2 ended on 10-July-2021 and he entered a verbal agreement with tenant1 beginning that date.
71. The landlord did not reimburse tenant2's portion of the security deposit; the landlord is permitted the entire security deposit against financial loss that he incurs, both tenants are responsible for a portion of that loss.
72. The verbal agreement with tenant1 resulted in the loss of rent and late fees incurred.
73. The landlord is entitled to:
 - Rent..... \$1,341.84
 - Damages 639.40
 - Late fees..... 75.00
 - Hearing expenses 20.00
 - Total..... \$2,076.24

- Total loss \$2,076.24
- Less security deposit 750.00
 - Total owing \$1,326.24

74. Tenant1 shall pay the landlord \$1,326.24 to repay loss incurred by the landlord.

75. The landlord shall retain \$750.00 damage deposit paid by both tenants at the start of their tenancy to cover loss incurred by landlord.

November 16, 2021

Date

