

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0464-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:46 p.m. on 30-November-2021.
2. The applicant, [REDACTED] represented by [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "tenant1 and tenant2" 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 they have been properly served. The landlord submitted an affidavit (LL#01) with the application stating that he had served the tenants with notice of the hearing, by sending it to both of their emails on 20-October-2021. He also provided proof of the email addresses in the tenants' move in form (LL#02) that they completed. 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. The landlord amended his application to remove vacant possession as the tenants have moved. He also changed the amount of rent owing from \$3,450.00 to \$6,900.00 to reflect the current outstanding amount owed.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent paid \$6,900.00
 - Compensation for damages \$1,793.75

- Security deposit applied against monies owed \$1,218.75
- Hearing expenses reimbursed \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outline in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent and Section 19: Notice where failure to pay rent.

Issue 1: Rent paid \$6,900.00

Relevant Submissions

9. The landlord submitted the written rental agreement with the tenants (LL#03). The agreement is for a 1 year term from 01-June-2021 until 31-May-2022. The rent is \$1,725.00 per month pay own utilities. The rental term is from the 1st to the end of each month with rent being due on the 1st day of each month. There was a security deposit paid of \$1,218.75 paid on 18-June-2021 and the landlord still has this deposit in his possession.
10. The landlord submitted a rental ledger (LL#04) indicating that the rent was paid for June and July of 2021, but no rent has been paid since that time. The rent was to be paid by preauthorized payment, however in August, the payment was returned twice for insufficient funding and the third time on 24-August-2021 the bank indicates that there is no longer an agreement in place between the landlord and tenant. The landlord believes the tenant must have withdrew the existing agreement.
11. The landlord said in September it was clear that they would not be receiving rent and the Resident Manager hand delivered a letter terminating the rental agreement on 27-September-2021 with a termination date of 9-October-2021.
12. The rent ledger shows that there has been no rent for August – November 2021 and is calculated as 4 months x \$1,725.00 = \$6,900.00.
13. The landlord reports that the tenants have moved, they were unsure of exactly when they moved because they didn't turn in any of their keys. They posted a notice and then checked the apartment. 15-October-2021 there was an email sent to the tenants asking had they moved and saying that there were belongings still left in the apartment. Tenant1 responded to the resident manager's email saying, that he didn't realize that there was that much stuff left behind and asking to meet with him on 18-October-2021 to be let in the building to retrieve the remainder of his belongings.
14. The landlord said that after the 18-October-2021 he agrees that the tenants are out of the apartment, but there is still confusion about whether or not they have officially left because they never turned in any keys.

Analysis

15. Non-payment of rent is a violation of the rental contract. I accept the landlord's rent ledger and testimony that rent has not been paid from August 2021 to present.
16. The landlord had served an eviction notice to the tenants on 27-September-2021 with a termination date of 9-October-2021. The tenants did not return their keys and this created a situation where the landlord was unsure if the tenants had moved.
17. After the emails on 15-October-2021 and the Resident Manager giving tenant1 access to the apartment, to retrieve the remaining items on 18-October-2021, I find that it is reasonable for the landlord to know that this apartment is now vacant.
18. As the apartment is vacant as of 18-October-2021, the tenants are no longer expected to pay rent after that date. Their rental agreement is terminated as of 09-October-2021 and tenant1 made a final trip to collect belongings on 18-October-2021.
19. The tenant therefore would owe rent for August, September and 01-18 October. October rent is calculated as follows: $\$1,725.00 \times 12 \text{ months} = \$20,700.00 \text{ a year}$. $\$20,700.00 \text{ divided by } 365 \text{ days} = \56.71 a day . $\$56.71 \times 18 \text{ days in October} = \$1,020.78$.
20. The total amount of rent owed is:

• August	\$1,725.00
• September.....	1,725.00
• October.....	<u>1,020.78</u>
○ Total.....	<u><u>\$4,470.78</u></u>

Decision

21. The tenants owe the landlord \$4,470.78 in rent.

Issue 2: Compensation for damages \$1,793.75

Relevant Submissions

22. The landlord submitted the rental agreement (LL#03) and refers to Schedule B for compensation for losses incurred by the landlord.
23. The tenants both initialed this page when they signed their rental agreement.
24. The landlord is requesting \$100.00 for cleaning of a dirty fridge. He submitted a picture (LL#06) showing that the tenants had left food behind in the fridge. He indicates that the signed rental agreement (LL#03) shows that the amount agreed to by the tenants for an uncleaned appliance is \$100.00 per appliance.

25. The landlord is requesting \$100.00 for garbage left in the apartment. He submitted a picture (LL#07) showing random items left behind that had to be discarded. Again, he referred to the rental agreement (LL#03) that states the amount agreed to if garbage left behind is \$100.00.
26. The landlord is requesting \$50.00 for a hole in the wall. The rental agreement states the full deposit can be retained for holes in the wall. The landlord submitted a picture (LL#08) showing that the tenant had affixed the t.v. to the wall. The landlord believes that the agreement is in reference to larger holes put in the wall and that the t.v. attachment would just be a couple of screw holes and wouldn't be the same as the repair of larger holes, he therefore is asking for \$50.00 to make this repair.
27. The landlord is requesting \$250.00 for keys not returned. As stated in paragraph 13 the landlord said that the tenants didn't turn in their keys. The rental agreement (LL#03) indicates the amount agreed to for each key not returned is \$50.00 per key. The landlord states that the tenants didn't return 2 apartment keys, 2 mailbox keys and the garage door opener; so 5 keys in total at \$50.00 a key for a total of \$250.00
28. The landlord is requesting \$75.00 for the banks NSF fee for the returned cheques in August. As shown in paragraph 10 and indicated on the rent ledger (LL#04) the landlords incurred 3 separate \$25.00 charges when trying to retrieve the rent payment through the preauthorized payment.
29. The landlord is also requesting the full deposit of \$1,218.75 for the tenants breaking the lease. This agreed upon amount is also listed in the rental agreement, schedule B (LL#03).

Analysis

30. The landlord and tenants agreed to the amounts for liquidated damages when signing the rental agreement. Schedule B of this agreement clearly lists the costs applied should the tenants not fulfill their agreement. Although the amounts may be considered excessive the tenants signed and agreed to the terms. Therefore, the landlords claims for the following will be applied to the tenants:
 - Dirty fridge.....\$100.00
 - Garbage..... 100.00
 - Hole in the wall..... 50.00
 - Keys not returned..... 250.00
 - Full deposit for breach.....1,218.75
 - Totaling..... \$1,718.75

The landlord's claim succeeds in the amount of \$1,718.75

31. The landlord also is claiming for \$75.00 for NSF charges incurred when the tenants' payment did not go through in August. As per section 15 of the Residential Tenancies Act, 2018:

Fee for failure to pay rent

15.(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

32. I accept the rent ledger submitted and the entries that show on three separate occasions the landlords were charged a \$25.00 fee from the bank due to insufficient funds. Therefore according to the act the landlord is entitled to the amount he was charged. The landlords claim for \$75.00 succeeds.

Decision

33. The landlords claim succeeds for the full amount of \$1,793.75

Issue 3: Security deposit applied against money owed \$1,218.75

Relevant Submissions

34. The landlord provided the rental agreement (LL#03) indicating that the tenants paid \$1,218.75 security deposit.

35. The landlord has shown that they have incurred financial loss due to damage and rental arrears.

Analysis

36. The landlord's claim for losses has been successful and they 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

37. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$1,218.75.

Issue 4: Hearing expenses reimbursed \$20.00

Relevant Submissions

38. The landlord submitted his receipt for hearing expenses (LL#09) totaling \$20.00 and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

39. The landlord is entitled to the following:

• Rent	\$4,470.78
• Compensation.....	1,793.75
• Hearing expenses.....	20.00
• Less deposit.....	<u>(1,218.75)</u>
• Total.....	<u>\$5,065.78</u>

40. The landlord shall retain the security deposit of \$1,218.75

41. The tenants shall pay the landlord \$5,065.78 for rent, compensation and hearing expenses.

December 03, 2021

Date

