

## **Residential Tenancies Tribunal**

Application 2022-No.29-NL

Decision 22-0029-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:18 a.m. on 18-April-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are hereinafter referred to as “tenant1 and tenant2”. Tenant1 attended the teleconference and she stated that tenant2 was unable to attend due to illness.

### **Preliminary Matters**

4. The landlord submitted his affidavit of service (LL#01) stating that he had served tenant1 on 15-March-2022 and tenant2 on 16-March-2022 electronically, via email, of notification of the hearing. Tenant1 agreed with the notification received.
5. The landlord amended his application to reflect the following changes: Rent from \$1,800.00 to \$1,100.00, Compensation for damages from \$358.61 to \$200.00 and Hearing expenses from \$60.00 to \$20.00.

### **Issues before the Tribunal**

6. The landlord is seeking:
  - Rent \$1,100.00
  - Late fees \$75.00
  - Compensation for damages \$200.00
  - Compensation for cleaning \$860.00
  - Security deposit applied to monies owed \$600.00
  - Hearing expenses \$20.00

## **Legislation and Policy**

7. The jurisdiction of the Director of Residential Tenancies is outlined 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 \$1,100.00**

#### Landlord's Position

9. The landlord submitted the rental agreement that he had with the tenants. (LL#02) He said that he purchased the house and the tenants were already living there. They signed a term agreement from 01-December-2021 to 30-November-2022. The tenants pay \$900.00 a month for rent and pay their own utilities. The landlord said that he didn't receive the security deposit from the real estate agent, but acknowledges that the tenants are credited with paying \$600.00 and he is agreeing to possession of the deposit.
10. The landlord submitted a rental ledger (LL#03) and he shows that the rent for January has not been paid. He submitted text messages from the tenant (LL#04) showing that she had agreed to pay the rent, however, she did not.
11. The landlord submitted a text message (LL#04) with a "landlord's notice to terminate early" form for failure to pay rent. It is signed and dated for 07-January-2022 with a termination date of 19-January-2022. The message is dated for 07-January-2022.
12. After the notice has been served, the landlord provided ongoing conversations with tenant1 about payment of rent owed (LL#04, LL#05 & LL#06).
13. The landlord provided a text message (LL#07) where he asks on 20-January-2022 if they have moved from the home. The message shows that tenant1 responded by accused him of assaulting tenant2. He said he didn't pursue the conversation further.
14. On 30-January-2022 he had another conversation with tenant1 (LL#08) where the tenant is telling him that the house has the lights on and they have been out ever since 19-January-2022, she continues on to say they will not be paying utilities for the lights after that date. The landlord said he then took possession of the house.
15. The landlord said that there were damages to the house and he is claiming rent for the time required to do the work cleaning and repairing the house. The landlord said he was injured while doing this work and the house is still not ready to be rented.

### Tenant's Position

16. Tenant1 agrees to the terms of the rental agreement and said that they took possession of the house in October 2021.
17. Tenant1 said she was in hospital after 07-January-2022 and that tenant2 moved out on 19-January-2022.
18. Tenant1 acknowledges that they didn't pay January rent, but she said that the landlord had evicted them and assaulted tenant2, so she said she wasn't going to pay him rent after all that had happened.

### **Analysis**

19. Non-payment of rent is a violation of the rental agreement. The tenant acknowledges that they had possession of the house until tenant2 moves out on 19-January-2022. The landlord asked on 20-January-2022 (LL#07) if the house is empty and had they moved. Tenant1 was combative with the landlord and didn't answer the question, this led to confusion around whether or not the tenants had actually moved.
20. The landlord didn't have confirmation of the move until tenant1 followed up on 30-January-2022 to say that they had moved on 19-January-2022.
21. I find that the confusion was the fault of tenant1 and that the landlord was clear when he was asking if they had vacated. As he didn't receive confirmation of the tenants' move until 30-January-2022, the tenants will be responsible for paying rent for the full month of January. I do not find for the additional days rent that the landlord is requesting for time required to clean and repair the house because, had the landlord attended the property to assess if the house was vacant, he would have taken possession on the 20<sup>th</sup> of January and had time to complete the repairs by the end of the month in accordance with his estimate for time required.

### **Decision**

22. The landlord's claim for rent succeeds in the amount of \$900.00.

### **Issue 2: Late fees \$75.00**

#### Landlord's Position

23. The landlord's rent ledger indicates that he hasn't received January's rent and he is claiming late fees beginning 02-January-2022.

## Analysis

24. 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.*

25. As the tenants have been in arrears beginning 02-January-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

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

## **Issue 3: Compensation for damages \$200.00**

### Landlord's Position

- 27. The landlord is seeking compensation for time spent making repairs after the tenants had moved.
- 28. The landlord submitted a picture of a bedroom door (LL#22) that was he had to put it back on its hinges and needed to be reattached, he had to place larger screws in to hold the door. He is requesting 1 hour labour @ \$20.00.
- 29. The landlord is seeking 2 hours @ \$20.00 to repair the back door that he said was kicked in. He said the door is about 25 years old, so he isn't seeking the cost of the door, just the reimbursement for time. The landlord did not provide a picture of the door. He said that he did this repair while she was living there, he did not tell her at the time that he would be seeking reimbursement from her security deposit.
- 30. The landlord is also seeking 3 hours labour @ \$20.00 to repair the flooring in the bedroom. He said that there was cigarette burns in the flooring and provided a picture

(LL#11). The flooring was new and he said, they had left over flooring, he took the flooring apart and re-laid it to replace where the piece was burnt.

31. The landlord said that he had to repair the drywall 4 hours @ \$20.00. There was something on the bedroom that he had to take off the wall and it required repair. He also said that the front porch area had damage. He also said that the front stairwell had damage. He said he did not apply for paint because he did not know how long ago that it was painted and he only applied for his time to do repairs to the drywall.
32. The landlord said that when he made the deal with the real estate agent he asked them to give him a list of any necessary repairs and he did a walk through with the agent, on 29-November-2021 and no repairs were required.

#### Tenant's Position

33. Tenant1 said she was there for the walk through and the landlord said that any issues she had, she could text him. She said that she texted him with issues in November.
34. Tenant1 agrees that the bedroom door was off the hinges. She said she had attempted to screw it back in but it kept falling out because the holes were too large. She said it was like this when she moved in.
35. Tenant1 denies responsibility for the back door, she said that the door was already broken.
36. Tenant1 acknowledges that there was a burn in the floor and they are responsible.
37. Tenant1 said that there was a white square on the wall in the spare bedroom, it was there when they took possession of the house. Tenant1 said that prior to her leaving to go to the hospital, there was no damage to the walls in the front porch or stairway.

#### **Analysis**

38. 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.

#### *Statutory conditions*

**10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:**

**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.**

39. Accordingly, in any damage claim, 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)

40. In accordance with 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.

41. The landlord said he had to reattach the bedroom door and use larger screws as the holes were too large to hold the bracket. Tenant1 said that the door was like this before she had moved in and that she had attempted to make this repair herself but the door continued to come loose. The landlord has failed to prove that the tenants are responsible for this damage.

42. The landlord is requesting 2 hours labour for the back door, tenant1 also denies that this damage occurred while she was living there. The landlord has failed to prove the tenants are responsible for this damage.

43. The landlord is requesting 3 hours labour to repair the flooring in the bedroom that had a cigarette burn, he provided a picture of the damage (LL#11). Tenant1 agrees that she is responsible for this damage and the landlord has proven their responsibility. The landlord's claim succeeds in the amount of \$60.00

44. The landlord is requesting 4 hours labour for repairs to the drywall. He said he repaired damage to a bedroom wall when they removed something adhered to the wall and damages to the front porch and stairwell area. Tenant1 said that the white thing on the wall was there when they moved in and they used this area for storage. She said in paragraph 17 that she was admitted in the hospital on 07-January-2022 and tenant2 moved on 19-January-2022. She said that there was no damage to the walls when she moved out. The landlord had walls that were damaged when he took possession on 30-January-2022, therefore the walls must have been damaged during that time period and are the responsibility of the tenants. I find that the landlord used 1 hour for the repair to the bedroom that the tenants are not responsible for and the remaining 3 hours for the repairs to the porch and stairwell. The landlord's claim succeeds in the amount of \$60.00.

45. The landlord's claim for damages to repair flooring and drywall succeeds in the amount of \$120.00.

## **Decision**

46. The landlord's claim for damages succeeds in the amount of \$120.00.

#### **Issue 4: Compensation for cleaning \$860.00**

##### Landlord's Position

47. The landlord provided a number of pictures showing that the house was not cleaned when the tenants moved. (LL#14 – LL#20).
48. The landlord submitted the following list for time cleaning:

<b>AREA</b>	<b>HOURS @ \$20.00</b>	<b>Total</b>
Clean garbage left in house	6 hours	120
Take garbage to dump	2 hours	40
Clean toilet basin and tub	2 hours	40
Clean Kitchen cabinets	3 hours	60
Clean stove	2 hours	40
Clean Fridge	1 hour	20
Clean Walls	12 hours	240
Clean ceilings	6 hours	120
Clean windows and doors	4 hours	80
Clean floors	5 hours	100
<b>Total</b>	<b>43 hours</b>	<b>860</b>

49. The landlord is claiming \$860.00 for his time cleaning.

##### Tenant's Position

50. Tenant1 said she was in hospital for the move and acknowledges that she looked at the pictures submitted and the place was left uncleaned.

#### **Analysis**

51. The landlord has proven his claim for compensation for cleaning.

#### **Decision**

52. The landlord's claim for cleaning succeeds in the amount of \$860.00.

## **Issue 5: Security deposit applied to monies owed \$600.00**

### Relevant Submissions

53. As per paragraph 9, the landlord has declared that, the tenants paid a security deposit of \$600.00; he is still in possession of that deposit. He is requesting to retain that security deposit towards monies owed by the tenants for damages to the apartment.

### **Analysis**

54. The landlord's claim for losses has been successful, paragraphs 22, 26, 44, 50, and 54, and he shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

#### ***Security deposit***

*14. (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**

55. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$600.00.

## **Issue 6: Hearing expenses reimbursed \$20.00**

56. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#21) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

## **Summary of Decision**

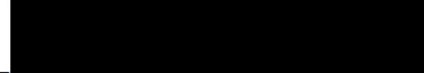
57. The tenants shall reimburse the landlord \$1,375.00, as follows:

Rent .....	\$900.00
Late fees .....	75.00
Compensation for damages.....	120.00
Compensation for cleaning .....	860.00
Less security deposit .....	(600.00)
Hearing Expenses .....	20.00
Total .....	<u>\$1,375.00</u>

The landlord shall retain the security deposit of \$600.00.

April 26, 2022

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office