

Residential Tenancies Tribunal

Application 2022-0103-NL

Decision 22-0103-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 06-June-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [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 evidence with his application stating that he had served the tenants with notice of the hearing, the landlord served tenant1 by prepaid registered mail (LL#01), he provided the receipt and tracking number, the tracking number shows that the package was mailed on 11-May-2022 and delivered on 15-May-2022. The landlord also submitted the email (LL#02) he sent to tenant2 on 03-March-2022, he said he doesn’t know her new address and he sent notification to the email address provided by the tenant on her rental agreement (LL#03). 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.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$9,450.00
 - Late fees \$75.00
 - Compensation for damages \$2,478.00

- Compensation for inconvenience \$500.00
- Security deposit applied to monies owed \$1,500.00
- Hearing Expenses \$34.88

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. 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 and Section 15: Fee for failure to pay rent, as well as, Residential Tenancies policy 9.

Issue 1: Rent \$9,450.00

Relevant Submissions:

8. The landlord submitted the rental agreement (LL#03) that he has with the tenants. The landlord said that the tenants moved with their three children on 01-November-2019. They initially signed a one year lease from 01-November-2019 until 31- October-2020. At the end of the lease period the tenants were in a monthly agreement. The rental period is from the first day of the month until the last. The tenants rent is due in full on the first day of the month. They pay \$2,200.00 for rent, which includes utilities and furnishings. The tenants paid a security deposit of \$1,500.00 on 20-October-2019; the landlord is still in possession of the deposit.
9. The landlord said he gave the tenants a notice for failure to pay rent on 19-January-2022 with a termination date of 30-January-2022. He said that tenant2 moved out on 24-January-2022. He said that there had been issues between the tenants and tenant1 was under a restraining order and couldn't come to the property. He said that after tenant2 moved, he packed up tenant1's belongings and delivered them to tenant1's parents' address. He said he did this work at the end of the work day and managed to have tenant1's belongings out by the end of January.
10. The landlord said that tenant1 was impacted by the pandemic and was waiting on the CERB payments in January of 2021. At that time, issues with paying rent began. The landlord submitted the rent ledger (LL#04), as shown below.

Rent ledger 2022-No. 103-NL			
Date	Action	Amount	total
1-Jan-21	rent due	2200.00	2200.00
1-Jan-21	payment	-100.00	2100.00
1-Feb-21	rent due	2200.00	4300.00
1-Feb-21	payment	-1200.00	3100.00
1-Mar-21	rent due	2200.00	5300.00
1-Mar-21	payment	-800.00	4500.00
1-Apr-21	rent due	2200.00	6700.00

1-Apr-21		payment	-2100.00	4600.00
1-May-21	rent due		2200.00	6800.00
1-May-21		payment	-1800.00	5000.00
1-Jun-21	rent due		2200.00	7200.00
1-Jun-21		payment	-2200.00	5000.00
1-Jul-21	rent due		2200.00	7200.00
1-Jul-21		payment	-1300.00	5900.00
1-Aug-21	rent due		2200.00	8100.00
1-Aug-21		payment	-1400.00	6700.00
1-Sep-21	rent due		2200.00	8900.00
1-Sep-21		payment	-2100.00	6800.00
1-Oct-21	rent due		2200.00	9000.00
1-Oct-21		payment	-2000.00	7000.00
1-Nov-21	rent due		2200.00	9200.00
1-Nov-21		payment	-1850.00	7350.00
1-Dec-21	rent due		2200.00	9550.00
1-Dec-21		payment	-1800.00	7750.00
1-Jan-22	rent due		2200.00	9950.00
1-Jan-22		payment	-500.00	9450.00

11. The landlord is seeking rent in the amount of \$9,450.00.

Analysis

12. Non-payment of rent is a violation of the rental agreement. The landlord submitted a rent ledger and provided testimony to show rent owed.
13. The rent ledger displayed in paragraph 10, reflects the rent ledger submitted by the landlords (LL#04).
14. I accept the evidence submitted by the landlord, as well as, his testimony of rent owed. I also accept that the landlord would require a week to pack up and move tenant's belongings. The tenants shall pay the landlord \$9,450.00 for rent owed.

Decision

15. The landlord's claim for rent succeeds in the amount of \$9,450.00.

Issue 2: Late fees \$75.00

Relevant Submissions:

16. The landlord has shown that the tenants were in rental arrears beginning January 2021. He is seeking the maximum amount of late fees.

Analysis

17. 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.

18. As the tenants have been in arrears since 02-January-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for damages \$2,478.00

Relevant Submissions:

20. The landlord said in paragraph 8 that the rental is furnished and this is supported by the rental agreement (LL#03). The landlord said that the tenants were provided with a love seat, they moved the love seat into the bathroom. The bathroom area was used to house their cats and the love seat was used by the cats, they had defecated on the seat and used it for scratching. The landlord provided pictures (LL#05, LL#06 and LL#07). The landlord said that the love seat was 5 or 6 years old. He said he purchased another one used online. The landlord paid \$600.00, however as this was a private sale, he did not provide receipts.
21. The landlord said that the tenants had floating shelves put up in the house (no permission given). He also said that the tenants had young children and there were some dents and crayon markings on the walls. The landlord said that the house was painted throughout 2 years ago when the tenants took occupancy. He said he hired a painter, but he did not provide a receipt. He did provide a receipt from Kent (LL#09) for

\$343.75 for paint and supplies. He also provided another receipt (LL#07) and there was another tin of paint for \$59.99 +tax = \$68.99. This totals \$412.74.

22. The landlord submitted pictures of the blinds in the living room, he said that the strings were broken and that you could no longer put the blinds up or down. He also provided pictures showing pieces missing or cracked from other blinds (LL#06). The blinds are 5 years old. He provided the receipt for the replacement blinds (LL#07) \$475.26 – the \$68.99 for a tin of paint = \$406.27.
23. The landlord provided a picture of the door frame (LL#10) which shows that the frame has been cracked. A contractor informed him it would cost \$500.00 to replace.
24. Due to the restraining order between the tenants, the landlord said he received the keys from tenant2 but never received the keys back from tenant1. He said he was unsure of the security of the house, with a set of keys not returned, so he had the doors rekeyed. He provided a receipt for \$230.00 (LL#11).
25. The landlord said that the bedding and mattress covers all were badly worn and stained. He replaced all of these items. He provided a receipt (LL#12) for \$367.29. He said all of these items were new in 2019.
26. The landlord said that the house was not cleaned when the tenants moved. He provided pictures (LL#05, LL#13 and LL#14). He said he hired a cleaner and he said that it took from 10-12 hours for the cleaning to be completed. He said he paid \$260.00 for this service, he did not provide a receipt.
27. The landlord said that the tenants broke the glass in the coffee table, he said that he replaced the coffee table with a used online purchase for \$85.00; no receipt.

Analysis

28. 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.

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)

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.

29. The landlord must show the value to repair or replace items, as there were no receipts for the following items, this board cannot assess their value and they will not be considered: Love seat, door frame, cleaning, and coffee table.
30. The landlord said that he had to paint the house due to holes left by floating shelves, dents and crayon marks. He said that the house was painted before the tenants moved in, 2 years prior. He didn't provide a receipt for the painter, however he did supply receipts for supplies totaling \$412.74. Our policy states that interior paint can last up to 5 years. The paint should therefore last another 3 years. The landlord will be reimbursed for 3/5's the cost of the supplies: $3/5 \times 412.74 = \$247.64$.
31. The landlord said he had to replace broken blinds and provided a receipt for \$406.27. The blinds are 5 years old. Our policy states that blinds can last up to 10 years. The landlord will be reimbursed for 5/10's or half the cost $\$406.27 \times .5 = \203.13 .
32. The landlord said he had the locks rekeyed. This is an expense of the landlord prior to new tenants moving in and not the expense of the tenant.
33. The landlord replaced the bedding and mattress covers and provided a receipt for \$367.29. Home and Garden determines that bedding will last 2 – 5 years depending on quality. As the bedding was within its lifespan and as the house was being prepared for new renters, this expense is the responsibility of the landlord and not the tenant.
34. The tenant shall pay the landlord \$450.77 for compensation for damages as follows:
- Paint supplies \$247.64
 - Blinds 203.13
 - Total \$450.77

Decision

35. The landlord's claim succeeds in the amount of \$450.77.

Issue 4: Compensation for inconvenience \$500.00

Relevant Submissions:

36. The landlord stated in paragraph 9 that the tenants were having personal difficulties at the time their tenancy ended.
37. Tenant2 had a restraining order against tenant1. Tenant1 was not permitted on the rental premises.
38. Due to the restraining order the landlord had to pack and move tenant1's belongings. He also had to make a number of trips to the dump with garbage, picture provided (LL#15).
39. The landlord said he made 5 trips to the dump and that google maps said a return trip would be 20 kilometers. The landlord is seeking mileage for the $5 \times 20 \text{ kms} = 100 \text{ kms}$.
40. The landlord is also seeking 18 kilometers for the return trip to Mt. Pearl to drop the tenant's belongings to his parents.
41. In addition to the trips to the dump the landlord said he spent approximately 40 hours of personal time, packing, moving and delivering the tenants belongings.

Analysis

42. The responsibility to pack and move personal belongings should be that of the tenant. The landlord will be compensated for the expense of travel and loss of personal time created by the tenants.
43. The landlord is seeking 118 kilometers reimbursed, the government rate of mileage is \$0.4239 which equals \$50.02.
44. The landlord is also seeking 40 hours personal time to complete this work. This board's approved rate for personal time is minimum wage $\$13.20 + \$8.00 = \$21.20$. $40 \text{ hours} \times \$21.20 = \$848.00$.
45. The total amount for mileage $\$50.02 + \text{personal time } 848.00 = \898.02 .
46. As the landlord had applied for \$500.00 for inconvenience; this is the maximum award permitted. The landlord will be awarded \$500.00 for inconvenience.

Decision

47. The landlord's claim for inconvenience succeeds in the amount of \$500.00.

Issue 5: Security deposit applied against monies owed \$1,500.00

Relevant Submissions

48. As per paragraph 8, the landlord has declared that, the tenants paid a security deposit of \$1,500.00; he is still in possession of that deposit. He is requesting to retain that damage deposit towards monies owed by the tenants.

Analysis

49. The landlord's claim for losses has been successful, paragraphs 15, 19, 35, 47, & 51, 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

50. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,500.00.

Issue 6: Hearing expenses reimbursed \$34.88

51. The landlord submitted the receipt for \$20.00 for the application fee (LL#14) and the receipt for the cost of prepaid registered mail \$14.88 (LL#01); pursuant to policy 12.01, is entitled to reimbursement of those costs from the tenants totaling \$34.88.

Summary of Decision

52. The tenants shall pay the landlords \$9,010.65 as follows:

- Rent \$9,450.00
- Late fees 75.00

- Compensation for damages 450.77
- Compensation for inconvenience 500.00
- Hearing expenses 34.88
- Less security deposit (1,500.00)
 - Total \$9,010.65

The landlord shall retain the security deposit of \$1,500.00.

June 7, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office