

## Residential Tenancies Tribunal

Application 2022-No.177-NL

Decision 22-0177-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 24-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and there was no telephone number provided to try and contact him 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 he has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, personally on 06-May-2022. 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.

### Issues before the Tribunal

5. The landlord is seeking:
  - Damages \$535.00
  - Premises vacated

### 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, and Section 22: Notice where tenant's obligation not met.

### **Issue 1: Damages \$535.00**

#### Relevant Submissions

8. The landlord submitted a written monthly rental agreement between himself and the tenant (LL#02). The tenant moved in on 16-June-2021. His rental period is from the first day of the month until the last day of the month, the tenant pays \$750.00 a month, which includes utilities, to rent a room in the house and for use of the common area. The tenant paid a security deposit of \$400.00 on 16-June-2021 and the landlord is still in possession of that deposit.
9. The landlord submitted a condition report (LL#03) which states that the condition of the room that the tenant is renting, including the walls and doors, is good. The condition of the common area is not shown on the report.
10. The tenant's room and the front porch have punch holes in the walls and doors. The landlord submitted pictures of this damage (LL#04) bedroom wall, (LL#05) bedroom door, and (LL #06) front hall. The landlord said that there is another person who lives at the house. He said he knows that the tenant made the holes in the common area, because he asked him and the tenant confirmed it was his damage.
11. The landlord submitted a damage ledger (LL#08) for the cost of repairing the damages, as follows:

Repair	Cost
Drywall	25.00
Plaster and strapping	50.00
Room door	120.00
Paint	40.00
Labor	200.00
Closet door	100.00
Total	\$535.00

12. The landlord did not provide receipts, he said he paid a workman cash to do some of the repairs. He has not completed all the work, because the tenant is still living there and he doesn't want to finish the repairs and then face additional damages.

## Analysis

13. 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)
14. The landlord has shown through his photo evidence that the damages exist and his condition report indicates that prior to the tenant taking occupancy, there were no damages.
15. The landlord hasn't shown the value to repair the damages. This board is therefore unable to assess the cost of these repairs without the provision of receipts.

## Decision

16. The landlord's claim for damages fails.

## Issue 2: Vacant possession of rental premises

### Relevant Submissions

17. The landlord gave the tenant a "Landlord's Request for Repairs" (LL#07) on 14-February-2022. He requested that the damages in the front porch and bedroom be repaired on or before 17-February-2022.
18. The landlord said that when he checked the rental on 17-February-2022, no work was completed on the damages. He then came back on 18-February-2022 and personally served the tenant with a "Landlord's Notice to Terminate Early – Cause" form (LL#09), for failure to keep the premises clean and to repair damages. The notice is signed and dated for 18-February-2022 with a termination date of 25-February-2022.

19. The landlord said that the tenant is still living there and he hasn't repaired any of the damages. The landlord is seeking an Order of Possession.

## Analysis

20. Section 22 of the *Residential Tenancies Act, 2018*, states:

### *Notice where tenant's obligation not met*

*22. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*

*(2) Where a tenant contravenes statutory condition 2 set out in subsection 10(1) **within 3 days** after the notice under subsection (1) has been served **or within a reasonable time**, the landlord may give the tenant notice that **the rental agreement is terminated** and the tenant is required to vacate the residential premises on **a specified date not less than 5 days** after the notice has been served.*

*(3) In addition to the requirements under section 34, a notice under this section shall*

*(a) be signed by the landlord;*

*(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*

*(c) be served in accordance with section 35.*

21. The landlord has shown (paragraph 14) that the tenant has done damage to the property and that he has acted in accordance with the *Act* by providing the tenant the opportunity to repair the damages. The termination notice that followed, does meet the requirements of the *Act*. The landlord will be granted an Order of Possession.

## Decision

22. The landlord's claim for an Order of Possession succeeds.

## Summary of Decision

23. The tenant shall vacate the premises immediately.

The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Grants the landlord an Order of Possession.

03 June 2022

Date



Jacqueline Williams, Adjudicator  
Residential Tenancies Office