

## **Residential Tenancies Tribunal**

Application 2022-No.178-NL

Decision 22-0178-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 9:24 a.m. on 09-June-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

### **Preliminary Matters**

4. The tenants were not present or represented at the hearing and I was able to reach only tenant [REDACTED] by telephone at the start of the hearing, he declined attending. 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlords submitted an affidavit (LL#01) with their application stating that their lawyer, [REDACTED], had served the tenants with notice of the hearing, by email on 27-May-2022. The tenants provided this email to the landlords in section 24 of their rental agreement (LL#02) for communication regarding the rental premises. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in the tenants’ absence.
5. The landlords amended their application to include security deposit applied to monies owed \$1,250.00.

### **Issues before the Tribunal**

6. The landlords are seeking:
  - Rent \$3,300.00
  - Utilities \$1,359.78
  - Compensation for damages \$1,250.00
  - Security deposit applied to monies owed \$1,250.00

- Hearing expenses reimbursed \$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, and Section 17: Record of tenant's payments, as well as, Residential Tenancies Policy 9.

### **Issue 1: Rent \$3,300.00**

#### Relevant Submissions

9. The landlords submitted the rental agreement (LL#02) that they had with the tenants. Landlord1 said that the tenants moved in on 15-November-2021. Their agreement is from 01-November-2021 until 31-October-2022. The tenants paid \$2,500.00 a month for rent, the payment was split and the tenants paid \$1,250.00 on the 1<sup>st</sup> and 3<sup>rd</sup> Friday of each month. Landlord1 said that the tenants' utilities were included in the rent, however their oil bill was capped at \$358.00 a month. The tenants were billed for any additional oil required. Landlord1 said that the tenants paid a security deposit of \$1,250.00 on 29-October-2021 and they are still in possession of the full deposit.
10. Landlord1 said that the tenants were unable to make the rent payments. She said they had a property management company who looked after the rental. The property management company served the tenants with a termination notice (LL#03) for failure to pay rent. The termination date was for 22-February-2022. She said that the tenants moved on 31-March-2022.
11. The landlords provided a copy of the rent ledger (LL#04). The landlord indicated that the payments started to fall behind in January 2022, see ledger below:

Date	Action	Amount	total
1-Nov-21	rent due	2500.00	2500.00
29-Oct-21		payment	-1250.00
12-Nov-21		payment	-1250.00
1-Dec-21	rent due	2500.00	2500.00
2-Dec-21		payment	-1250.00
16-Dec-21		payment	-1250.00
1-Jan-21	rent due	2500.00	2500.00
1-Jan-21		payment	-1250.00
21-Jan-21		payment	-1100.00
1-Feb-21	rent due	2500.00	2650.00
1-Feb-21		payment	-1850.00
1-Mar-21	rent due	2500.00	3300.00

12. The landlords are seeking full payment of monies owed.

### **Analysis**

13. Non-payment of rent is a violation of the verbal rental agreement. The landlords have submitted a rent ledger and provided testimony to show rent owed.
14. The rent ledger displayed in paragraph 11, reflects the rent ledger submitted by the landlords (LL#04). The total amount owing is \$3,300.00.
15. I accept the evidence submitted by the landlords, as well as, landlord1's testimony of rent owed. The tenants shall pay the landlords \$3,300.00 for rent owed.

### **Decision**

16. The landlord's claim for rent succeeds in the amount of \$3,300.00.

### **Issue 2: Utilities \$1,359.78**

#### Relevant Submissions

17. Landlord1 stated in paragraph 9 that the tenants' utilities are included with the cost of rent, however, their oil is capped at a maximum of \$358.00 per month. This is reflected in the rental agreement (LL#02) section 6.
18. The landlord said that the tenants did not pay for the oil cost incurred by the landlord which exceeded the \$358.00 a month.
19. Landlord1 submitted the oil ledger (LL#04), see below:

• Nov – Dec .....	\$418.94
• Dec – Jan .....	385.98
• Feb .....	265.14
• March .....	<u>289.72</u>
○ Total .....	<u>\$1,359.78</u>
20. Landlord1 acknowledges that the ledger includes the phrase "oil included in lease \$398" which is in excess of the \$358.00 cited in the rental agreement. As this error is in favor of the tenants, she is agreeing to a cap of \$398.00 for the oil bills.
21. The landlord also submitted on the ledger (LL#04) the billing for oil as follows:

• 11/11/2021.....	\$776.94
• 12/23/2021.....	783.98
• 02/04/2022 .....	363.47
• 02/17/2022 .....	299.67
• 03/10/2022 .....	372.14
• 03/24/2022 .....	315.58

22. The landlords are seeking reimbursement for the oil purchased in excess of \$398.00 per month.

### Analysis

23. The landlords provided the breakdown of the oil billing based on the amount required to fill the tank on the day it was filled. This billing doesn't align with the rental clause 6 (LL#02) that states "per month." The following table indicates my assessment of monies owed:

Date	Cost	reasoning	Less cap	Balance owed
11/11/21	776.94	Tenants move in 15-Nov this oil burnt prior to their possession		0.00
12/23/21	783.98	Considered November or December	398.00	385.98
02/04/22	363.47	Considered January – less than cap		0.00
02/17/22	299.67	Considered Feb- less than cap		0.00
03/10/22	372.14	Considered March		0.00
03/24/22	315.58	Add to March above 372.14 + 315.58 = \$687.72	398.00	289.72
		Total owing		675.70

24. I accept the evidence submitted by the landlords, as well as, landlord1's testimony of utilities owed. The tenants shall pay the landlords \$675.70 for utilities owed.

### Decision

25. The landlords' claim for utilities succeeds in the amount of \$675.70.

### Issue 3: Compensation for damages \$1,250.00

#### Relevant Submissions

26. Landlord1 said that there were damages after the tenants moved out. She said in the master bedroom there is a gouge approximately 2-3 inches long in the floor. She said that the floor is hardwood and it is 15 – 20 years old. She said that they bought the house about 7 years ago and that the flooring hasn't been refinished in that time. She approached a contractor who told her that it would be approximately \$500.00 to repair. She did not provide a picture and this work has not been completed to date, so there is no receipt.

27. Landlord1 said in the kitchen they have vinyl laminate and 4 tiles have a stain that will not come off. She said that the floor is 2 years old. The contractor said that the floor would have to come up to replace those tiles. The estimate is \$500.00. She did not provide a picture and this work has not been completed to date, so there is no receipt.

28. Landlord1 also said that there is a modern light in the dining room. They broke a glass globe and so did the tenants. She is unable to find replacement globes. The lamp is 2 years old. To purchase a similar light from Kent would cost \$250.00. She did not provide a picture and the lamp has not been replaced to date, so there is no receipt.

## **Analysis**

29. 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.***

30. The landlords did not prove their claim, they are required to show the following in any damage claim:

- 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)

31. In the absence of receipts and pictures, to document the damage and show the cost of the repair, this board is unable to assess an award for this claim.

32. The landlords' claim for damages fails.

## **Decision**

33. The landlords' claim for damages fails.

## **Issue 4: Security deposit applied to monies owed \$1,250.00**

### **Relevant Submissions**

34. In paragraph 9 landlord1 stated that the tenants paid a security deposit of \$1,250.00 on 29-October-2021. She said that they are still in possession of the deposit. They would like this applied to the monies owed.

## **Analysis**

35. The landlord's claim for losses has been successful, paragraphs 16 and 25, and they 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**

36. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,250.00.

### **Issue 5: Hearing expenses reimbursed \$20.00**

37. The landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#05) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenants.

## **Summary of Decision**

38. The tenants shall pay to the landlords \$2,745.70, as follows:

- Rent ..... \$3,300.00
- Utilities ..... 675.70
- Hearing ..... expenses 20.00
- Less security deposit ..... (1,250.00)
  - Total ..... \$2,745.70

The landlords shall retain the security deposit \$1,250.00.

June 10, 2022

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office