

Residential Tenancies Tribunal

Application: 2022 No. 0234 NL

Decision 22-0234-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:19AM on 07 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", did not participate in the hearing.
4. An affidavit of service was provided by the landlord confirming that the tenant was served electronically of the claim against her (L#1). The landlord testified that he knew to serve to this email address because it was the email address provided for communication. Proof of electronic service was also provided (L#2).
5. The details of the claim were presented as fixed term agreement that began 01 December 2021 and was set to run until 03 November 2022. Rent was at #1,300.00 per month and included heat and hot water. A security deposit was collected in the amount of \$800 and a copy of the written rental agreement was provided (L# 3).
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking the following:
 - Payment of Rent in the amount of \$3,900.00;

- Payment of Late fees in the amount of \$150.00;
- Compensation for damages in the amount of \$1,100.00; and
- Payment of Other in the amount of \$50.00.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. Also relevant and considered in this case is section 15 and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*. The following policies were also cited:
 - Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property
 - Residential Tenancies Policy 12-001 Recovery of fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach her by telephone despite attempting to make contact on multiple numbers. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
11. 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.
12. As the tenant was properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.
13. The landlord amended the amount of rent owing down to \$2,600.00 as he testified that he was able to secure a new tenant from 01 April 2022 onward.

Issue 1: Payment of Rent (\$2,600.00)

14. The rental unit is a basement apartment located at [REDACTED]. The unit was occupied by the tenant and her three children.
15. The landlord provided a copy of the rental ledger dated showing a balance of \$3,900.00 for 30 April 2022 (L#4) which he verbally amended to \$2600.00 since

he was able to secure new tenants for 01 April 2022. The landlord testified that he issued a termination notice to the tenant on 06 March 2022 under section 19 of the *Act* for non-payment of rent (L# 5) and confirmed that the tenant vacated the rental premises on 16 March 2022, the stated move out date identified on the termination notice.

16. The landlord testified that the tenant never paid rent, and that the security deposit and rent for December 2021 and January 2022 was paid on her behalf by an unknown male. He testified that he was owed rent for the months of February 2022 and March 2022 (e.g., \$2,600.00).

Analysis

17. I accept the landlord's claim and evidence that the tenant has rental arrears in the amount of \$2,600.00 as at the day of the hearing. Because however, the landlord issued a termination notice to the tenant and the tenant vacated the rental premises on the day she was to vacate, I find that the landlord is entitled to rent up until the day the tenant vacated as required (e.g., 16 March 2022).
18. I therefore calculate the total arrears owing to be \$1,983.84. This amount was arrived at through the following calculations:
 - $\$1300.00 \times 12 = \$15,600/365 = \$42.74 \text{ per day}$
 $\$42.74 \times 16 = \$683.84 \text{ for March 1 - 16, 2022}$
 - $\$1,300.00 + \$683.84 = \$1,983.84 \text{ for total possible rental arrears}$

Decision

19. The landlords' claim for rent succeeds in the amount of \$1,983.84.

Issue 2: Late Fees (\$150.00)

Relevant Submission

20. The landlord was informed that the maximum amount of late fees that can be sought is \$75.00 per rental period and not \$150.00 as he had requested.
21. The landlord has requested the payment of late fees in the maximum amount of \$75.00 as his tenant has been in arrears since at least 02 February 2022.

Analysis

22. 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.

23. 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.

24. As the tenant has been arrears since at least 2 February 2022, the landlord is entitled to \$75.00 as the maximum amount of late fees.

Decision

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

Damages (\$1,100.00) and Other (\$50.00)

Relevant Submissions

26. The landlord submitted a damage compensation worksheet regarding his claims for compensation for cleaning (\$200.00) and repair and painting (\$900.00) (L#6). The landlord testified that he was also seeking \$50.00 in compensation for Other for his own time spent in collecting and disposing of debris at the dump.

27. As proof of the requirement for cleaning and plastering/painting, the landlord submitted a series of photos taken through the rental premises after the tenant had vacated (L#7). A review of these photos depicts evidence of notable debris and other items left at the rental premises after the tenant vacated as well as significant holes in what appears to be a single wall of the rental premises.

28. The landlord testified that his unit was in immaculate condition when he provided it to the tenant. He testified that when he accessed the unit after it was vacated, that the door had been unlocked and that all keys were left on the table and that there was "purposeful damage" throughout the unit. He testified that he reached out to the tenant to ask when she would be returning to clean and remove remaining items, but he did not receive a response.

29. The landlord submitted a receipt from a carpentry company in the amount of \$471.50 (Materials and supplies) for necessary plastering and painting to cover

the plaster holes (L#8). The landlord also submitted an invoice from cleaning company in the amount of \$200.00 for 10 hours of cleaning at the rental premises because cleaning had not been completed by the departing tenant (L#9).

30. When asked to explain the difference in amounts claimed (e.g., \$1,100.00 + \$50.00) and the receipts submitted, the landlord testified that he is only seeking compensation for the work for which he provided receipts (e.g., \$200 + \$471.50).
31. Regarding his claim for \$50.00 for Other, the landlord submitted an email chain with a Residential Tenancy Officer where he wrote that (L#10): *“She put a lot of garbage for me to dump. Her garbage bin was full. She has not returned the post keys and I have charged her \$50.00. you can remove it if you want. Thanks.”*

Analysis

32. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
33. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, reduced compensation is awarded for items considered to have exceeded their serviceable life.
34. Regarding the landlord's claim for damages for cleaning costs in the amount of \$200.00, 10 hours of cleaning for an apartment that had been occupied by an adult and three children, is reasonable considering that the landlord testified the unit was not cleaned before it was vacated. According to *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*, costs for cleaning can be claimed to a maximum of \$21.70 an hour and the landlord claimed costs of \$20.00 an hour. As such, his claim for cleaning costs succeeds in the amount submitted (e.g., \$200.00).
35. Regarding the landlord's claim for damages from plastering and painting, a review of the photographic evidence submitted by the landlord depicts a series of significant holes in what appears to be one wall of the rental unit. These holes were substantially larger than the types of holes or dings in drywall that are typically expected through regular use of a rental unit. Looking to the invoice submitted by the landlord however (L#8) it does not indicate what proportion of

labour hours were dedicated to patching these holes and then painting this wall only. Only a lump sum amount was provided.

36. This means that I was not provided with the details necessary to calculate appropriate compensation for the particular wall that was significantly damaged. Nor was I provided with information on when the rental unit was last painted. Consequently, the landlord's request for compensation in the amount of \$471.50 does not succeed in any amount.
37. Regarding the landlord's claim for \$50.00 for assorted personal labour and personal costs related to the tenant's departure from the rental unit, he established that he incurred costs in at least the amount of the \$50.00 that he claimed. As such, his claim for compensation of "Other" succeeds in the amount of \$50.00.

Decision

38. The landlord's claim for compensation for damages succeeds in the amount of \$200.00.
39. The landlord's claim for compensation for Other succeeds in the amount of \$50.00.

Issue 4: Hearing Expenses

Relevant submissions

40. The landlord claimed \$20.00 for the expense of applying for the hearing and he also claimed \$50.00 for the services of a commissioner of oaths when completing his affidavit of service for which he provided a receipt (L#11).
41. Regarding the \$50.00, this tribunal understands that Commissioners of Oaths are not officially permitted to charge for their services, but because this commissioner did, it will be considered a reasonable charge to reimburse in accordance with *Residential Tenancies Policy 12-001 Recovery of fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.
42. As the landlords' claim has been successful, the tenant shall pay these hearing expenses in the amount of \$70.00.

Summary Decision

43. The landlord is entitled to the following:

- A payment of \$2,378.84, determined as follows:
 - a) Rent Owing..... \$1,983.84
 - b) Late Fees\$75.00
 - c) Compensation for Damages.....250.00
 - d) Hearing Expenses.....\$70.00
 - e) Total**\$2,378.84**

08 July 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal