

Residential Tenancies Tribunal

Applications: 2022 No. 0235 NL

Decision 22-0235-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:16AM on 15 June 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 (L#1) confirming that the tenant was served of the claim against him. A review of the tracking numbers provided by the applicant indicate that the package was collected by the tenant on 25 May 2022.
5. The details of the claim were presented as a fixed term rental agreement that was to run from August 2021 through to July 2022. However, rental arrears started accumulating and the tenancy was ended by the landlord under a section 19 termination notice. Monthly rent was set at \$450.00 a month and a security deposit of \$330.00 was collected. A copy of the written rental agreement was provided (L#2).
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:
- An order for rent to be paid in the amount of \$763.55;
 - An order for compensation paid for damages in the amount of \$1,926.27 and;
 - An order for late fees to be paid in the amount of \$75.00.

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 are sections 14, 15 and 19 of the *Act*.

Preliminary Matters

10. The tenant was not present or represented at the hearing and I was unable to reach him by telephone. 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 he has 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 his absence.
13. The rental premises is a multi-unit dwelling located at [REDACTED]
[REDACTED]

Issue 1: Payment of Rent (\$763.55)

14. The landlord provided a copy of the rental ledger dated showing a balance of \$763.55 (L#3). According to these records, the tenant last had a zero dollar balance in November 2021 and did not pay full rent on the day it was due for December 2021, January 2022, February 2022 or March 2022 for which a pro-rated amount of rent was assessed since the landlord took possession of the unit on 03 March 2022. The landlord testified that he took possession of the unit by posting a Notice of Abandonment to the rental unit on 02 March 2022.

15. The landlord testified that current balance of rental arrears reflects a credit on the account of \$330.00 after he applied the full amount of the security deposit. When asked if did this with permission of the tenant as the result of a specific agreement, the landlord indicated that he did not. The landlord testified to his efforts to communicate with the tenant via the tenant's mother and indicated that his last communication with the mother were 24 February 2022 (prior to his taking possession of the unit).
16. The landlord testified that the final paragraph of the first page of the rental agreement specifies that the security deposit will be "used against rent owing and/or physical damage expenses" (L#2). He also testified that this was explicitly discussed with the tenant prior to him taking occupancy of the unit.

Analysis:

17. I accept the landlord's claim and evidence that the tenant has rental arrears. With respect to the exact amount of arrears, I disagree with his application of the security deposit against rent monies owing. According to subsection 14(10) of the *Act*, the landlord is only able to dispose of the security deposit in such a way, if they have a written agreement for doing so ONCE it becomes apparent they have a claim. This subsection of the *Act* reads as follows:

Security Deposit

(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.

18. I therefore calculate the total arrears owing as at 03 March 2022 to be \$1,094.37. This amount was arrived at through the following calculations:
- $\$450.00 \times 12 = \$5400/365 = \$14.79$ per day
 $\$14.79 \times 3 = \44.37 for March 1 - 3, 2022
 - $\$150.00 + \$450.00 + \$450.00 + \$44.37 = 1,094.37$
for total possible rental arrears

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19. The landlords' claim for rent succeeds in the amount of \$1,094.37.

Issue 2: Payment of Late Fees (\$75.00)

Relevant Submission

20. The landlords' have assessed late fees in the amount of \$75.00.

Analysis

21. 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.*

22. 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.

23. As the tenant has been arrears since at least 2 December 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

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24. The landlords' claim for late fees succeed in the amount of \$75.00.

Issue 3: Compensation Paid for Damages (\$1,926.27)

Relevant Submissions

25. The landlord submitted a damage ledger that was specific to the repairs required and completed at the rental premises (L#4). The items on this ledger included items for capital costs and associated labour, each item was itemized and cross referenced to relevant invoices. Also included on the ledger was an amount of \$262.88 for reduction of April 2022 rent for the subsequent tenant at the rental

unit and a charge for \$40.00 for a person to take pictures of the unit damages. Of note, is that these pictures were not submitted as evidence to this tribunal.

26. Regarding documented damages at the rental unit, the landlord testified:
- That the unit was not cleaned before it was vacated and that it was very dirty – the subsequent tenant received a discount on her first months' rent because she cleaned the rental unit;
 - That there was debris left around the unit and within the unit;
 - That the locks on the doors had to be replaced because the tenant did not return the keys;
 - That the entrance way to the rental unit was very "beaten up" and had to be repaired and that the window in the door had to be replaced;
 - That there was some sort of permanent writing done within the insides of the cabinets which meant they needed to be painted;
 - That there were stains all over the ceiling that almost looked like pasta sauce and that a ceiling light was broken;
 - That there were stains all over the flooring;
 - That there were mouse droppings everywhere; and
 - That there was cigarette ash along all the baseboard heaters which led to the baseboards needing to be repaired.
27. The landlord testified that the door to the rental unit that was damaged was new in January 2018 and that the ceiling light that was damaged was approximately 7 years old.
28. The landlord called his former property manager as a witness. His name is [REDACTED]. [REDACTED] testified that the state of the unit after the tenant vacated and the landlord was able to retake possession, was the worst he has ever seen. He testified that significant work was required, as well as cleaning, to restore the rental premises and prepare it to be rented again. He testified that there were mouse droppings, debris and refuse throughout, that the window to the door was broken, and that the entire unit had to be thoroughly cleaned and re-painted. The witness testified that he was disappointed in the tenant, because he knew the tenant, and expected more from him.

Analysis

29. 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).

30. The landlord did not submit evidence of a move in/move out condition inspection report related to the rental unit. Nor did he submit pictures of reported damage in the rental unit, despite submitting a claim for photography of reported damages. The landlord did however testify to damages in the unit after he regained possession and he also called his former property manager as a witness. This witness stated that the damage to the unit was the worst that he had ever seen.
31. I am reluctant to accept the submitted damage ledger as absolute proof of costs incurred by the landlord because this ledger provides no supporting documentation on either a) costs charged or b) payments made in response to damage. Where I found the landlord to be extremely reasonable in his presentation of claims against his former tenant, reasonableness is not one of the four principle criteria that I am required to follow when evaluating evidence submitted to this tribunal – the four principle criteria are relevance, reliability, necessity and fairness. It would not be fair of me to be convinced by the inadequate evidence provided by this reasonable landlord, if I am not also convinced by inadequate evidence provided by others.
32. Consequently, I find that the landlord is entitled to the following only:
- Rebate of rent to new tenant as compensation for cleaning required: \$262.88
 - Cost of new lockset because tenant did not return keys = \$114.99
 - Labour for new lockset/Labour and costs for two dump trips = \$200.00

Decision

33. The landlord's claim for compensation for damages succeeds in the amount of \$577.87 (\$262.88+ \$114.99 + \$200.00 = \$577.87).

Issue 4: Hearing Expenses

Relevant submissions

34. The landlord submitted an expense claim in the amount of \$46.88 (L#5).
35. The landlord claimed \$20.00 for the expense (L#6) of applying for the hearing and \$26.88 (L#7) for the expense of sending registered mail to the tenant.
36. As the landlords' claim has been successful, the tenant shall pay this hearing expense.


Summary of Decision

37. The landlord is entitled to the following from the tenant:

- a) Rent owing.....\$1,094.37
- b) Late fees \$75.00
- c) Compensation for damages.....\$577.87
- d) Hearing Expenses.....\$46.88
- e) Total.....\$1,794.12

16 June 2022

Date


Jaclyn Casler
Residential Tenancies Board