

## Residential Tenancies Tribunal

Application 2022-0511-NL

Decision 22-0511-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 07-September-2022.
2. The applicants, [REDACTED] and [REDACTED], represented by [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” was late to the hearing, she arrived approximately 9:55 a.m.

### Preliminary Matters

4. At the start of the hearing the tenant was not present or represented and I was unable to reach her by telephone. 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 she has been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically on 02-August-2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence. The tenant did enter the teleconference later in the proceedings.
5. The landlord amended the application to increase security deposit from \$450.00 to 500.00.

### Issues before the Tribunal

6. The landlords are seeking:
  - Rent \$1,865.00
  - Late fees \$75.00
  - Compensation for damages \$500.00
  - Security deposit applied to monies owed \$500.00
  - 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 14: Security Deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

## Issue 1: Rent \$1,865.00

### Landlord's Position

9. The landlord provided the written rental agreement (LL#02). She said that the tenant moved in on 01-March-2022. The tenant paid \$900.00 a month which includes heat and light as well as internet. Rent is due on the 1<sup>st</sup>. The landlord said that they gave the tenant a termination notice (LL#03) due to failure to pay rent and she moved out 13-June-2022. The landlord said that the tenant paid a security deposit of \$500.00 on 09-March-2022. The landlords are still in possession of the deposit.
10. The landlord said that the tenant owes \$1,800.00 in rent, she provided the e-transfers (LL#04) showing rent paid. These have been applied in the following rent ledger.

Date	Action	Amount	total
1-Mar-22	Rent due	900.00	900.00
23-Feb-22	Payment	-450.00	450.00
2-Mar-22	Payment	-450.00	0.00
1-Apr-22	Rent due	900.00	900.00
1-Apr-22	Payment	-450.00	450.00
6-Apr-22	Payment	-300.00	150.00
13-Apr-22	Payment	-150.00	0.00
1-May-22	Rent due	900.00	900.00
1-Jun-22	Daily rate of rent due	384.67	1284.67

Daily rate  $\$900 \times 12 \text{ months} = \$10,800.00$   
 $\$10,800.00 \text{ a year divided by } 365 = \$29.59 \text{ a day}$   
 $\$29.59 \text{ a day} \times 13 \text{ days} = 384.67$

11. The landlord said that after the tenant moved another tenant took occupancy on 01-July-2022. The landlords are seeking rent reimbursed.

### Tenant's Position

12. The tenant confirms that she moved out of the apartment on 13-June-2022. She agrees that she owes the landlords rent up until that date, but is unable to afford the payment currently.

## Analysis

13. There is no dispute with the rent, the tenant acknowledges that she does owe the landlords. The rent ledger was amended to show a daily rate for rent; rent payments are for the use and enjoyment of the premises, as the tenant moved on the 13-June-2022 she is no longer responsible for rent after that date as she was not using the premises.

## Decision

14. The landlords' claim for rent succeeds in the amount of \$1,284.67.

## Issue 2: Late fees \$75.00

### Landlord's Position

15. The landlord is seeking late fees of \$75.00, her rent ledger shows that the rent has been in arrears since 02-May-2022.

## Analysis

16. 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.*

17. As the tenant has been arrears since 02-May-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

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

### Issue 3: Compensation for damages \$500.00

#### Landlord's Position

19. The landlords provided a list for the compensation for damages (LL#05), as follows:

Issue	Cost
Damaged wooden blind	\$100.00
Damaged roll down shade	\$100.00
Dispose of couch and clean up other items	\$120.00
Paint – smell of smoke	\$80.00
Repair holes in walls, painting / plastering	\$100.00

20. The landlord submitted a picture (LL#06) of the broken blind. She said that the blind was custom made and is 5 years old, they have not replaced the blind and have estimated that the new blind will cost \$100.00.
21. The landlord submitted a picture (LL#07) of the torn shade. She said that the shade was in good condition when the tenant moved in. She said that the shade is a room darkening shade and is 5 years old, they have not replaced the shade and have estimated that the new shade will cost \$100.00.
22. The landlord said that there were items left behind, as well as, a couch. They had to clean and have someone pick up the couch. They are seeking 15 hours labor for their combined time. They provided pictures of the apartment to show that it required cleaning and there were items left (LL#08 – 13).
23. The landlord said that the apartment is non-smoking and that the agreement states in or around the apartment. She said that they had to repair the holes in the wall and paint the walls. They are seeking 15 hours labor for their combined time to do the repairs and paint. (LL#14 & LL#16)

#### Tenant's Position

24. The tenant said she did leave some belongings behind in the apartment.
25. The tenant disputes that there was smoking inside the apartment. She points out that when she moved in there wasn't a condition report filled out and that she disputes damages.

#### **Analysis**

26. 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.

27. The landlords are claiming for damages to both the shade in one room and a blind in another. The pictures clearly show that they are damaged. Nonetheless, the claim fails for a number of reasons: the tenant doesn't agree she is responsible for this damage, the landlord has not proven the cost of replacement of these items and the life expectancy of blinds is approximately 5 years, they have therefore reached the expected life span and no longer have monetary value.
28. The landlords have shown that there were belongings left behind that required disposal. They have also shown through their evidence that the apartment wasn't cleaned, the landlord said that it took the two of them a total of 15 hours to do this work. This board pays personal wages at a rate of minimum wage + \$8.00 for a total of \$21.20.  $\$21.20 \times 15 \text{ hours} = \$318.00$ . As the landlords applied for \$120.00 that is the maximum amount they will be awarded.
29. The landlords did not prove the costs in relation to the painting of the apartment, there were no receipts provided and the tenant disputes that there was smoking in the unit. The landlords did provide a picture of a hole that was plastered (LL#14) and I determine that they will be awarded \$50.00 for the cost of this repair.
30. The landlord's claim for damages succeeds in the amount of \$120.00 for cleaning and \$50.00 for plastering for a total of \$170.00.

## **Decision**

31. The landlord's claim for damages succeeds in the amount of \$170.00.

## **Issue 4: Security deposit applied against monies owed \$500.00**

### Landlord's Position

32. As per paragraph 9, the landlords have declared that, the tenants paid a security deposit of \$500.00; they are still in possession of that deposit. They are requesting to retain that security deposit towards monies owed by the tenants.

## Analysis

33. The landlord's claim for losses has been successful, paragraphs 14, 18, 31 & 36, 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

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

## Hearing Expenses

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

35. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#18) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

## Summary of Decision


36. The tenant shall pay the landlord \$1,049.67 as follows:

- Rent..... \$1,284.67
- Late fees ..... 75.00
- Damages ..... 170.00
- Hearing expenses ..... 20.00
- Less security deposit ..... (500.00)
  - Total ..... \$1 049.67

The landlord shall retain the \$500.00 security deposit.

September 14, 2022

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office