

Residential Tenancies Tribunal

Application 2022-0612-NL

Decision 22-0612-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 12:15 p.m. on 01-September-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondents, [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 unable to reach them by telephone 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 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 they had served the tenants with notice of the hearing, in person on 17-August-2022. 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 their absence.
5. The landlords amended their application to increase rent to the current amount owed from \$2,450.00 to \$3,950.00. They also reduced the amount of damages from \$1,136.25 to \$934.98 to remove the request for painting, until after the tenants move, so that they can better assess the repairs required. The landlords also requested to retain the tenants security deposit against monies owed.

Issues before the Tribunal

6. The landlords are seeking:
 - Rent \$3,950.00
 - Late fees \$118.00

- Compensation for damages \$934.98
- Security deposit applied to monies owed (750.00)
- Premises vacated
- Hearing expenses reimbursed \$88.20

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, Section 15: Fee for failure to pay rent, Section 18: Notice of termination of rental agreement and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$3,950.00

Relevant Submissions

9. The landlords provided the rental agreement they have with the tenants (LL#02). They signed a term agreement from 01-January-2022 until 31-December-2022. The tenants moved in on 01-January-2022. The tenants pay \$1,500.00 rent on the 1st day of each month. Landlord2 said that the tenants paid a \$750.00 security deposit on 17-December-2021 and that they are still in possession of that deposit.
10. The landlords submitted their documentation of the e-transfers for rent payments. Landlord2 went through these payments and also listed two cash payments as follows:

Rent ledger
2022-0612-NL

Date	Action	Amount	total
1-Jan-22	Rent due	1500.00	1500.00
1-Jan-22	cash payment	-1500.00	0.00
31-Jan-22	rent paid	-1500.00	-1500.00
1-Feb-22	Rent due	1500.00	0.00
1-Mar-22	Rent due	1500.00	1500.00
3-Mar-22	rent paid	-750.00	750.00
1-Apr-22	Rent due	1500.00	2250.00
15-Apr-22	rent paid	-500.00	1750.00
26-Apr-22	rent paid	-500.00	1250.00
26-Apr-22	cash payment	-400.00	850.00
1-May-22	Rent due	1500.00	2350.00
2-May-22	rent paid	-750.00	1600.00
6-May-22	rent paid	-750.00	850.00
1-Jun-22	Rent due	1500.00	2350.00

4-Jun-22		rent paid	-300.00	2050.00
10-Jun-22		rent paid	-150.00	1900.00
16-Jun-22		rent paid	-600.00	1300.00
21-Jun-22		rent paid	-350.00	950.00
1-Jul-22	Rent due		1500.00	2450.00
4-Jul-22		rent paid	-600.00	1850.00
11-Jul-22		rent paid	-450.00	1400.00
14-Jul-22		rent paid	-450.00	950.00
1-Aug-22	rent due		1500.00	2450.00
1-Sep-22	daily rate		49.32	2499.32

Daily rate \$1,500.00 per month x 12 months = \$18,000.00

\$18,000.00 divided by 365 days = \$49.32 per day

- Landlord2 said that they haven't received any payments since the 14-July-2022. They are seeking full reimbursement of rent owed.

Analysis

- Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent since 14-July-2022.
- The landlords' rent ledger was amended to reflect a daily rate for September, as this board does not consider future rent.
- The tenants shall pay the landlord the rent owed totaling \$2,499.32.

Decision

- The landlords' claim for rent succeeds in the amount of \$2,499.32.

Issue 2: Late fees \$118.00

Relevant Submissions

- The landlords have proven, paragraph 15 that the tenants have been in rental arrears as of 02-March-2022 and they are seeking the maximum allowed late fees.

Analysis

- 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.*

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

Decision

19. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for damages \$934.98

Relevant Submissions

20. The landlords submitted a picture of the door to the house (LL#04). In the picture landlord1 indicates that there is a glass missing from the door. He said that the house is 7 years old, and the door would also be 7 years. He provided the receipt for the replacement door (LL#12) for \$642.32 from Home Depot.

21. Landlord1 said that one of the bedroom doors had a hole punched in it (LL#06) and he provided a picture. He said that this door would also be 7 years old and he said that he searched the cost of replacement and it would cost \$292.66.

Analysis

22. 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.

23. 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.

24. The landlord has shown photographic evidence of the damages to the two doors that he is claiming. He has provided a receipt for the steel door and an estimate for the bedroom door. I accept that the replacement of the doors will cost the landlord as stated. In any damage claim depreciation is factored. Depreciation on these doors are as follows:

- An exterior steel door, according to our policy, should last 15 years. The landlord said that the house and door is 7 years old, this door should have lasted 8 more years. Therefore the tenant shall reimburse the landlord $8/15$ ths x \$642.32 = \$342.57
- According to our policy, an interior wood door should last 20 years. This door was also 7 years old and should have lasted 13 more years. Therefore the tenant shall reimburse the landlord $13/20$ ths x \$292.66 = \$190.23.

25. The tenants shall reimburse the landlords $\$342.57 + 190.23 = \532.80 for the cost of replacement of the two damaged doors.

Decision

26. The landlords' claim for compensation for damages succeeds in the amount of \$532.80.

Issue 4: Security deposit applied against monies owed

Relevant Submissions

27. As per paragraph 9, the landlords have declared that, the tenants paid a security deposit of \$750.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

28. The landlords' claim for loss has been successful, paragraphs 15, 19 and 26, 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

29. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$750.00.

Issue 5: Vacant possession of rental premises

Relevant Submissions

30. The landlords submitted two termination notices to be reviewed. The first is a Section 18 termination notice (LL#07) this notice is signed and dated for 02-June-2022 with a termination date of 30-September-2022. Landlord2 said that she served this to them personally on 02-June-2022.

31. The other notice is a Section 19 notice (LL#08) it is on a landlord's notice to terminate early cause form for failure to pay rent. It is signed and dated for 16-August-2022 with a termination date of 28-August-2022. Landlord1 signed this notice and he served this to the tenants on 16-August-2022 and gave it to them personally.

Analysis

32. In paragraph 9 the landlords stated that they had a term agreement with the tenants. This agreement expires 31-December-2022. A Section 18 termination notice can only be given a minimum of three months before the end of the term and without cause a landlord can only terminate a term agreement at the end of the term. This termination notice is dated for the 30-September-2022 the end of the term is 31-December-2022 and the notice is therefore not valid. See below:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

33. The second notice is a Section 19 notice for failure to pay rent. The landlords have already shown that the tenants were in rental arrears (table paragraph 10) as of 02-March-2022.

34. Section 19, of the *Residential Tenancies Act, 2018*, states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

.....

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a **fixed term**, or

(iii) a site for a mobile home, and

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

.....

(4) 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.

.....

35. The tenant was in rent arrears in excess of the 5 days when the notice was served. On the date of termination, the tenant was still in arrears. The termination notice meets the requirements of the Act and is a valid notice. The notice was served in accordance of the Act.

36. The tenant should have vacated the property by 28-August-2022.

Decision

37. The landlords' claim for an order for vacant possession succeeds.

38. The tenants shall vacate the premises immediately.

39. The tenants shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.
40. The tenants shall pay a daily rate for rent beginning 02-September-2022 of \$49.32, as per paragraph 10, until such time as the landlords regain possession of the property.

Issue 6: Hearing expenses reimbursed \$88.20

41. The landlords submitted the receipt for \$20.00 for the cost of the hearing (LL#11), the receipt for \$35.00 for the cost of the Commissioner of Oaths (LL#09) and the receipt for \$33.20 from Canada post for the cost of prepaid registered mail (LL#10) and pursuant to policy 12.01, as their claim has been successful, they are entitled to reimbursement of those costs, totaling \$88.20, from the tenants.

Summary of Decision

42. The tenants shall:

- Pay the landlords \$2,445.32 as follows:
 - Rent \$2,499.32
 - Late fees 75.00
 - Compensation for damages 532.80
 - Hearing expenses 88.20
 - Security deposit applied (750.00)
 - Total \$2,445.32
- Pay a daily rate of rent beginning 02-September-2022 of \$49.32, until such time as the landlords regain possession of the property.
- Vacate the property immediately
- Pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

The landlords

- Will be awarded an Order of Possession.
- Shall retain the security deposit of \$750.00.

September 8, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office