

Residential Tenancies Tribunal

Application 2022 No. 902NL
Application 2022 No. 1003NL

Decision 22-0902-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:12 AM on 05 January 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", was also in attendance.

Issues before the Tribunal

3. The tenants are seeking an order for refund of security deposit in the amount of \$975.00.
4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$1295.00;
 - An order for a payment of \$548.00 in compensation for damages;
 - An order for a payment of utilities in the amount of \$70.00;
 - An order for a payment of late fees in the amount of \$75.00; and
 - Authorization to retain the \$975.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is sections 14, 18 and 19 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Issue 1: Compensation for Damages - \$548.10

Relevant Submissions

The Landlord's Position

7. The landlord and the tenants entered into a verbal rental agreement on 01 May 2020. The agreed rent was set at \$1295.00 per month and the landlord stated that the tenants had paid a security deposit of \$975.00 on 07 April 2020. The tenants moved out on 27 September 2022.
8. After the tenants moved out, the landlord conducted a walkthrough with tenant2 and he noted, at that time, that the carpets were dirty, there were some holes in the walls and there was damage caused to the lawn because the tenants' dogs' feces had not been cleaned up. With his application, the landlord submitted the following breakdown of the costs to carry out these repairs:
- Carpet cleaning \$223.10
 - Plaster and paint walls \$75.00
 - Repair lawn \$250.00
- Total \$548.10

Carpet cleaning

9. The landlord complained that, although the rest of the house was very clean, the carpets in the bedrooms, on the stairs, and in the hallway, were very dirty, and they smelled of dog urine. The landlord had these carpets professionally cleaned and with his application he submitted an estimate showing that he would be charged \$223.10 to have that work carried out. No invoice was submitted and no photographs showing the condition of these carpets when the tenancy ended. The landlord stated that these carpets were between 10 and 12 years old.

Plaster and paint

10. The landlord stated that the tenants had mounted a TV in one of the bedrooms, leaving behind 3 or 4 holes in that wall. They had also put a hole in the wall at the top of the stairs for a doggy-gate. The landlord hired his friend's brother to plaster and paint these areas, and he was charged \$75.00. No receipt was submitted with his application. The landlord stated that the unit was last painted in 2018.

Repair lawn

11. The landlord also complained that the lawn at the property needs to be re-sodded because of the damage caused to it by the tenants' dogs. He claimed that the tenants' dogs had been digging holes in the lawn and he stated that their

urine had been burning the grass. He also stated that the tenants would not clean up after their dogs, and when he sent someone to the unit to mow the lawn, he was unable because there was about 200 pieces of dog droppings on the ground. The landlord stated that it will cost \$250.00 to have the lawn re-sodded, but no estimate was submitted with his application.

The Tenants' Position

Carpet cleaning

12. Tenant2 pointed out that the landlord had not submitted a receipt for the costs of having these carpets cleaned, and she argued that he had therefore not established that he has had this work carried out. She also claimed that she has since been informed that the landlord had these carpets removed after they had moved out. With respect to the cleanliness of these carpets, tenant1 pointed out these carpets were aged and were not in good shape when they moved in, and he claimed that they were roughly in the same state when they moved out. The tenants also submitted a receipt with their application showing that they had rented a steam cleaner to clean these carpets when they first moved in. They argued that it would be unfair for them to have to pay to have these carpets cleaned twice.

Plaster and paint

13. Tenant2 acknowledged that that had mounted a TV in one of the bedrooms, but she claimed that there were already holes in many of the walls when the tenancy began. However, she argued that as there was no receipt submitted with the landlord's application, he had failed to establish that it had cost him \$75.00 to have those holes filled.

Repair lawn

14. The tenants submitted photographs with their application showing the condition of the lawn on 27 September 2022, and tenant1 pointed out that no dog feces can be seen in these photographs. Tenant2 stated that if there was any dog feces on the lawn, it was hidden by the long grass as the landlord had not mown it in several months. Regarding the claim for re-sodding the lawn, tenant2 claimed that the lawn was not in good shape when they moved in, and she testified that there was not much grass on it to begin with, and that it was mostly moss and weeds.

Analysis

15. 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.

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 wilful 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.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

16. With respect to the carpets, as there was no report of an incoming inspection, and no photographs showing the condition of these carpets, I find that the landlord has failed to establish that these carpets were any dirtier when the tenants moved out than they were when the tenancy began. As such, that claim does not succeed. I also reach the same conclusion about the condition of the lawn. No dog feces can be seen in the submitted photographs, and again there was no evidence submitted by the landlord which would allow me to compare the condition of the lawn when the tenancy began with its condition when the tenants moved out.

17. With respect to the holes in the walls from the TV mount, although the tenants admit that they had caused this damage, the landlord had not submitted any evidence establishing the costs he is seeking here. So that claim fails as well.

Decision

18. The landlord's claim for compensation for damages does not succeed.

Issue 2: Rent - \$1295.00

Relevant Submissions

The Landlord's Position

19. The landlord stated that during the course of this 2-year tenancy, rent was always paid by e-mail money transfer (EMT). In September 2022, though, the landlord received no e-mail indicating that rent was paid, and on 07 September 2022 he issued the tenants a termination notice. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 18 September 2022.
20. When the landlord served the tenants with the termination notice, he was informed by tenant2 that rent had in fact been paid. The landlord stated that in late August 2022, he had set up a KOHO account. Tenant2 works with KOHO, and instead of sending September's rent by EMT, she transferred the rent into this newly set-up account. He testified that he had received no notification about that transfer, and that was why he had issued the termination notice. Once it was explained to him that the rent had indeed been paid, he figured that "everything was good."
21. However, on 13 September 2022, he received a text-message from the tenants informing him that they would be moving out on 18 September 2022. The tenants cancelled their electricity account on 18 September 2022, but they never vacated the unit until 27 September 2022.
22. The landlord testified that he placed advertisements for the unit on Kijiji towards the end of September 2022, but he was unable to secure new tenants until 01 November 2022, and he suffered a loss of rental income for October 2022. He argued that as the tenants had not given him a 30-day notice that they were terminating their agreement, they are responsible for that loss of rent.

The Tenants' Position

23. Tenant2 stated that she did not work for KOHO. She testified that she also has a KOHO account, and she claimed that when one sends money from such an account to an e-mail address that is also paired with a KOHO account, it automatically gets deposited into that account. The tenant testified that she had

done nothing different in September 2022 when she sent the landlord the rent, and she argued that it was not her fault that the landlord was unable to locate the payment.

24. Tenant2 stated that when she explained to the landlord that she had indeed sent him the rent payment, she never did receive any confirmation from him that the money was in his account, and she claimed that the landlord had not retracted the termination notice. Accordingly, on 13 September 2022, they contacted the landlord and informed him that they were moving on 18 September 2022, as per the notice that was issued to them. Tenant2 acknowledged that they did not actually vacate until 27 September 2022, 9 days past the day they were supposed to move, but she argued that they are only liable for rent up to that date.

Analysis

25. 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.

(2) Notwithstanding subsection (1), where the tenant pays the full amount of the overdue rent, including a fee under section 15, before the date specified in the notice under paragraph (1)(a) or (b), the rental agreement is not terminated and the tenant is not required to vacate the residential premises.

26. The landlord and the tenants agree that the rent for September 2022 was paid on 02 September 2022. Accordingly, on 07 September 2022, the landlord was not in a position to issue the tenants a termination notice under this section of the *Act* as they had not been in rental arrears for 5 days, and, as such, that notice was invalid.

27. As the landlord had issued the tenants an invalid notice, the tenancy did not terminate on 18 September 2022.
28. On 13 September 2022 the tenants informed the landlord, by e-mail, that they intended to vacate on 18 September 2022. But that e-mail is not a valid termination notice either. According to section 18 of the *Residential Tenancies Act, 2018*, tenants must provide their landlords with a least a 1-month notice that they are vacating, and on 13 September 2022, the earliest they could have terminated this tenancy would have been 31 October 2022.
29. Where tenants vacate a rental unit without first properly terminating the rental agreement in accordance with the *Act*, they are considered to have abandoned the premises, and they are liable for any damages caused by that abandonment, including any loss of rental income the landlord may suffer. The only caveat is that the landlord has to take all reasonable steps to mitigate those damages, and that is typically achieved by readying the unit for rent as soon as possible and placing advertisements for new paying tenants. The landlord stated that he had placed advertisements on Kijiji in late September 2022, and I find that he had therefore lived up to his duty to mitigate. Despite those efforts, he was unable to secure new tenants until 01 November 2022.
30. As the tenants had abandoned the rented premises, and as the landlord had suffered a loss of rental income for October 2022, I find that the landlord's claim for a payment of rent for that month succeeds.

Decision

31. The landlord's claim for a payment of rent succeeds in the amount of \$1295.00.

Issue 3: Late Fees - \$75.00

Relevant Submissions

The Landlord's Position

32. The landlord stated that rent for September 2022 was not paid until 02 September 2022 and he has assessed a late fee of \$75.00.

The Tenants' Position

33. The tenants acknowledged that they had not paid rent for September 2022 until 02 September 2022.

Analysis

34. 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.

35. There is no dispute that the tenants had not paid their rent for September 2022 on time. As the tenants have been in arrears since 02 September 2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Utilities - \$70.02

Relevant Submissions

The Landlord's Position

37. The landlord stated that the tenants had cancelled their electricity account on 18 September 2022, and after that date the electricity charges were billed to him. With his application, the landlord submitted 2 bills from Newfoundland Power showing that he was charged \$48.83 for the period from 18 September to 18 October 2022, and \$24.04 for the period from 18 October to 01 November 2022. He is seeking an order for a total payment of \$72.87.

The Tenant's Position

38. Tenant1 acknowledged that they had cancelled their electricity account on 18 September 2022. He argued that as they had remained at the unit until 27 September 2022, they are responsible for the electricity charges up to that date, and he submitted a calculation with their application showing that, based on the average kilowatt usage, they owe the landlord \$10.36.

39. Tenant2 argued that they do not owe the landlord any money for the electricity charged for October 2022 as they had not resided at the unit during that month.

Analysis

40. The landlord's evidence shows that he was charged \$72.87 for the period from 18 September to 01 November 2022. For the same reasons that the tenants are liable for rent for October 2022, I also find that they are responsible for the electricity charged to the landlord through to 31 October 2022.

Decision

41. The landlord's claim for a payment of utilities succeeds in the amount of \$72.87.

Issue 5: Security Deposit

42. The tenants paid a security deposit of \$975.00 on 07 April 2022, by EMT, and an e-mail receipt of that payment was submitted with the tenants' application. As the landlord's claim for rent and utilities has been successful, he shall retain that deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

43. The landlord paid a fee of \$20.00 to file this application. As his claim has been successful, the tenants shall pay this hearing expense.

Summary of Decision

44. The landlord is entitled to a payment of \$487.87, determined as follows:

a) Rent	\$1295.00
b) Late Fees	\$75.00
c) Utilities	\$72.87
d) Hearing Expenses	\$20.00
e) LESS: Security Deposit.....	(\$975.00)
f) Total Owing to Landlord.....	<u>\$487.87</u>

16 January 2023

Date


John R. Cook
Residential Tenancies Tribunal