

Residential Tenancies Tribunal

Application 2022-1052-NL

Decision 22-1052-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 06-April-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone ([REDACTED]) 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 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. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing, electronically, on 14-March-2023, to the tenant's phone number ([REDACTED]) and email ([REDACTED]) he also submitted proof of this service (LL#01). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. The landlord's application was amended to include security deposit of \$350.00 applied to monies owed.

Issues before the Tribunal

6. The landlord is seeking
 - Rent \$1,000.00
 - Late fees \$75.00
 - Compensation for damages \$1,821.85
 - Security deposit applied (350.00)

- Hearing expenses \$36.15

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 18: Notice of termination of rental agreement.

Issue 1: Rent \$1,000.00

Relevant Submissions

9. The landlord stated that the tenant moved into another of his properties in 2020 at that time they had a written rental agreement. He subsequently moved into a larger of his properties in August 2021 and they then had a verbal agreement. The tenant's rental period is from the 18th day of the month until the 17th day of the next month. The tenant pays \$800.00 rent each month. When the tenant moved into the first property he paid \$350.00 security deposit on 18-October-2020, this deposit was then transferred to the new rental; the landlord is still in possession of the deposit.
10. The landlord explained that the tenant was inconsistent with his rent payments, however he usually did pay rent when he received his pay-cheque. The landlord submitted the tenant's rent ledger (LL#02) and said that the tenant fell behind in July and never fully paid his rent after that. He said that the last rent payment received was on 21-October-2022. The landlord gave the tenant a termination notice (not submitted) due to unpaid rent. The tenant was supposed to move on 18-December-2022. The landlord said that the tenant moved around 01-December-2022. He said that the tenant abandoned the property and he posted a notice of abandoned property. The front door was unlocked so he went into the property on 02-December-2022 and the tenant had moved, the keys were on the counter.
11. The landlord is seeking rent owed totaling \$1,000.00; the rent ledger (LL#02) is as follows:

Rent ledger
2022-1052-NL

Date	Action	Amount	total
18-Jun-22	rent due	800.00	800.00
21-Jun-22	payment	-800.00	0.00
18-Jul-22	rent due	800.00	800.00
18-Aug-22	rent due	800.00	1600.00
24-Aug-22	payment	-800.00	800.00
6-Sep-22	payment	-200.00	600.00
14-Sep-22	payment	-200.00	400.00
18-Sep-22	rent due	800.00	1200.00
19-Sep-22	payment	-800.00	400.00
23-Sep-22	payment	-200.00	200.00

18-Oct-22	rent due	800.00	1000.00
21-Oct-22		payment	-800.00
18-Nov-22	rent due	800.00	1000.00

Analysis

12. Non-payment of rent is a violation of the rental agreement. Although the tenant did not live in the rental up to 18-December-2022, he also did not provide notice and abandoned the property, thereby negating any possibility of the landlord mitigating his loss. I accept the landlord's testimony and evidence that the tenant did not pay rent totaling \$1,000.00.
13. The tenant shall pay the landlord the rent owed totaling \$1,000.00.

Decision

14. The landlord's claim for rent succeeds in the amount of \$1,000.00.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord has proven, paragraph 14, that the tenant has been in rental arrears as of 19-July-2022 and is seeking the maximum allowed late fees.

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 19-July-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 \$1,821.85

Relevant Submissions

19. The landlord said that when he regained possession of the property there was garbage left behind and the place was not clean. The landlord submitted a damages ledger (LL#03) as follows:

Damages	Compensation
Garbage removal	\$1,350.00
Dumping fees	185.32
Materials: paint, cleaning supplies	250.53
Mileage	36.00
Total	\$1,821.85

20. The landlord explained that there was a lot of garbage and junk left behind. To mitigate his cost he reached out to the Salvation Army, to inquire if they would take any of the stuff, however they refused to take anything. The tenant had dogs and he smoked. The charity said that the belongings were not acceptable.

21. The landlord provided 27 pictures of the garbage he and another individual disposed of (LL#04). The landlord said it took him and the other person 3 full days to collect and deliver the garbage to the dump. He is seeking compensation for personal hours for 2 people x 25 hours x \$27.00 an hour = \$1,350.00.

22. The landlord provided the receipts (LL#05) for the cost of the dumping fees totaling \$185.32, as follows:

- \$57.40
- 116.44
- 11.48
- \$185.32

23. The landlord is seeking reimbursement for the cost of supplies for cleaning and touching up the paint in the apartment. He provided 22 pictures (LL#08) showing damages to the moldings, weather stripping and liquid spills over the walls. He said that the tenant had two dogs who did some of the damages and pictures of something red spilled on the walls, he has no idea what the red stuff on the walls are. He said that the apartment was painted just before the tenant moved in the summer of 2021 and therefore just a year old when he moved out. He had indicated on his damages list (LL#03) \$250.53, however he acknowledges that his receipts total \$209.60; he is seeking \$209.60. The landlord's receipts for supplies and paint (LL#06 and LL#07) are as follows:

- 28.74
- 82.97
- 28.74
- 4.59
- 22.98

- 28.14
- 13.44
- \$209.60

24. The landlord is seeking \$36.00 mileage for the trips to the dump. He said that they went there 3 days and traveled 12 kilometers return each time. 12 kilometers x 3 trips x \$1.00 a kilometer = \$36.00.

Analysis

25. Section 10 of the *Residential Tenancies Act, 2018* states:

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)

26. The landlord has shown through his pictures, receipts and testimony that the premises was not clean and had some damages. The tenant is responsible to maintain the premises in a clean state and repair damages. The landlord's claim is within reason for the amount of work that would have been required to clear out the garbage and clean the apartment.

27. I will award compensation based on the following findings:

- The landlord is seeking compensation for personal hours for 2 people x 25 hours x \$27.00 an hour = \$1,350.00. This tribunal awards personal hours at a rate of minimum wage \$13.70 + 8.00 = \$21.70. I accept that the clearing out of the house took 2 people 3 full days and award 2 people x 25 hours x \$21.70 = \$1,085.00 for personal time.
- The landlord provided the receipts (LL#05) for the cost of the dumping fees totaling \$185.32; I find he will be awarded this cost in full.
- The landlord is seeking \$209.60 for supplies to clean the premises and make minor repairs; I find he will be awarded this cost in full.
- Lastly the landlord is seeking mileage at a rate of 12 kilometers x 3 trips x \$1.00 a kilometer = \$36.00, the government rate for mileage is 0.4035, therefore I find he will be awarded 3 trips x 12 kilometers x 0.4035 = \$14.53 for mileage.

28. I find that the landlord has met the burden of proof for the damages he is seeking and find that the tenant shall pay to the landlord \$1,494.45, in compensation for damages as follows:

- Personal hours \$1,085.00
- Dump fees 185.32
- Cleaning supplies 209.60
- Mileage 14.53
- Total \$1,494.45

Decision

29. The tenant shall pay to the landlord \$1,494.45 in compensation for damages.

Issue 4: Security deposit applied to monies owed \$350.00

Relevant Submissions

30. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$350.00 in October 2021 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

31. The landlord's claim for losses has been successful, paragraphs 14, 18 and 27; he 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

32. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$350.00.

Issue 5: Hearing expenses reimbursed \$36.15

33. The landlord submitted two receipts for the cost of the hearing. He paid \$16.15 (LL#09) to have pictures printed for evidence and \$20.00 for the cost of the application fee (LL#10) and pursuant to policy 12.01, as his claim has been successful is entitled to reimbursement of \$36.15 for those costs from the tenant.

Summary of Decision

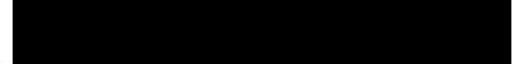
34. The tenant shall pay to the landlord \$2,255.60, as follows:

- Rent \$1,000.00
- Late fees 75.00
- Damages 1,494.45
- Hearing expenses 36.15
- Less security deposit (350.00)
- Total \$2,255.60

The landlord shall retain the security deposit against monies owed.

April 12, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office