

Residential Tenancies Tribunal

Applications: 2022 No. 1075 NL

Decision 22-1075-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 28 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to “tenant1” and “tenant2”, did not participate in the hearing.
3. Two affidavits of service were provided by the landlord confirming that both tenants were served by email on 04 March 2023 (L#1). Proof of email service to [REDACTED] was provided (L#2) as was proof of prior email correspondence between the landlord and tenant1 (L#3).
4. The landlord purchased the three unit apartment located at [REDACTED] [REDACTED] in June 22. The tenants resided in Unit [REDACTED] The details of the claim were presented as a rental agreement believed to have started in summer 2019. Monthly rent was set at \$795.00 and a security deposit in the amount of \$600.00 was collected. According to the landlord, there was no written rental agreement between the tenants and the original landlord for the rental premises.
5. 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

6. The landlord is seeking the following:
 - An order for compensation for inconvenience in the amount of \$705.00;
 - An order for compensation for damages in the amount of \$1,018.00; And
 - An order for the \$600.00 security deposit to be applied against monies owed.

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* (the *Act*).
8. Also relevant and considered in this case is section 14, 15, and 19 of the *Act* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

9. The tenants were not present or represented at the hearing and I was unable to reach them by telephone the number provided: [REDACTED]. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
10. 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 they have been properly served.
11. As the tenants were properly served, and any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
12. For simplicity sake, I have separated out the landlord's claim for compensation for Rent and Late Fees from her larger claim for Compensation for Inconvenience.

Issue 1: Payment of Rent (\$136.50)

Relevant Submissions

13. The landlord testified that she is seeking rent in the amount of \$136.50 representing the 15 October – 31 October 2022 rental subsidy not received on the tenants' behalf. The landlord referred to an email from tenant1 where he indicates that he was cut off from the subsidy (L#4). The landlord testified that she is not seeking payment of rent for the three days in November 2022 that the

tenants remained in the rental premises over and above the 31 October 2022 termination date they were provided notice of in July 2022.

Analysis

14. The landlord is responsible for establishing the rate of rent and the tenants' payment history. Based on my review of the evidence and testimony provided, I accept that the landlord is owed the amount claimed.

Decision

15. The landlord's claim for rent succeeds in the amount of \$136.50.

Issue 2: Payment of Late Fees (\$38.00)

Relevant Submissions

16. The landlord has assessed late fees in the amount of \$38.00 because there have been rental arrears on the tenants' account since 16 October 2022.

Analysis

17. 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.

18. 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.

19. There have been arrears on the tenants' account since at least 16 October 2022, a period of time that exceeds the maximum allowable claim for late fees of \$75.00 as set out by the Minister. Where the landlord has claimed compensation in the amount of \$38.00 only, I find that her claim shall succeeds in that amount.

Decision

20. The landlord's claim for late fees succeed in the amount of \$38.00.

Issue 3: Compensation for Inconvenience (\$705.00)

Relevant Submissions

21. The landlord referred to a written ledger submitted outlining her claims for compensation for inconvenience (L#5) along with a series of photos taken of the rental premises after the tenants vacated (L#6). The following claims were reviewed against relevant testimony and evidence:

- Deep Cleaning \$222.50 (Text message provided L#7)
- Labour for removing tenants possessions from premises \$215.00
- Removal of remaining bulk garbage from property
 - Labour for loading truck for garbage removal \$43.00
 - Money to friend with truck for dump trip \$50.00

22. Regarding the landlord's claim for compensation for cleaning, she testified that there was a layer of grime, grease, and cat hair over everything. She referred to photos submitted that supported her claims. She testified that she payed \$25.00 an hour for 8.9 hours of cleaning by a profession cleaning team. The landlord testified that there was also evidence of cat urine throughout the premises.

23. Regarding the landlords claim for removal of possessions from the premises, the landlord testified that the tenants vacated over night and appeared to have left all possessions behind. The landlord testified that she calculated her claim based on the maximum hourly rate allowed by the Residential Tenancies Section. She testified that her and her father removed a couch, a love seat, two desks, box springs, a mattress, clothes, dishes, pots and pans. However, the landlord did not indicate whether or not she submitted a claim to the Residential Tenancies Branch for disposal of abandoned items, as is required by the Act.

24. Regarding the landlord's claim for disposal of bulk items from the premises, she acknowledged that tenant1 arranged for bulk item pick up, albeit, three weeks after they vacated which meant that all items remained on her lawn for that time. The landlord testified that additional time and money was required to dispose of items the city refused to take as part of bulk collection. Specifically, the landlord stated that she is claiming two hours of labour (\$43.00) for loading a friend's truck, and then \$50.00 that she paid to the friend for taking these items to the dump. The landlord did not have any receipt related to this \$50.00 charge.

Analysis

25. I accept that the landlord provided evidence of the tenants having left behind a series of items at the premises. However, the landlord provided no evidence of

having applied to this office for disposal of these items in accordance with the Act, I cannot consider her claim for compensation related to item disposal or removal. Furthermore, from reviewing photos of the items said to have been removed and disposed, I find that some appear to be good quality, including a wheelchair and other mobility aids. Which is to say, not all items appeared to be junk.

26. Regarding the landlord's claim for compensation for cleaning, I accept that she paid a cleaner \$222.50 for approximately 9 hours of cleaning. I also accept that she provided a series of photos of a fitly looking interior coated with grease and fur but that she did not submit any photos depicting the condition of the premises prior to occupancy. Regardless, I accept the landlord was required to hire professional cleaners and find she is entitled to compensation in the amount claimed.

Decision

27. The landlord's claim for compensation for inconvenience succeeds in the amount of \$222.50.

Issue 4: Compensation for Damages (\$1,018.00)

Relevant Submissions

28. The landlord referred to a written ledger submitted outlining her claims for compensation for damage (L#6) and in support of these claims, she referred to the same series of photos taken of the rental premises after the tenants vacated (L#6). The following claims were reviewed against relevant testimony and evidence - I note that no receipts for materials were provided in advance of the hearing:
 - Damaged mouldings:
 - Materials \$60.00
 - 3 hours labour \$64.50
 - Materials for plastering hole in bedroom \$55.00
 - Labour for painting rental premises 30 hours \$645.00
 - Cost of paint \$90.00
29. Regarding the landlord's claim for compensation for mouldings, the landlord referred to photos submitted and testified that she had to buy two replacement lengths. She also testified that spent three hours with her mother removing the damaged moulding and installing the new moulding. The landlord stated that tenant1 acknowledged his cat causing this damage and referred to an email submitted (L#3).
30. Regarding the landlord's claim for compensation for plaster, she testified that she submitted a picture of a damaged wall and that she will submit the receipt for purchasing the plaster.

31. Regarding the landlord's claim for compensation for painting materials and labour, she testified that the premises were painted at least three years prior and that she will submit receipts related to her purchase of painting materials.

Analysis

32. 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).

33. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

34. I reviewed the photos submitted by the landlord, and I accept that two lengths of moulding were damaged and needed to be replaced. Where the tenant acknowledged his cat caused the damage, I find the landlord's claim for compensation for labour succeeds in the claimed amount of \$64.50. Regarding however, the landlord's claim for materials, I find that this does not succeed since she failed to submit receipts in advance of the hearing as required.

35. Regarding the landlord's claim for compensation for plaster in the amount of \$50.00, I was unable to locate a picture from within the premises that depicted damage worthy of that much plaster. Consequently, I find that this claim does not succeed in any amount. Additionally, I note that no receipt for this plaster was provided in advance of the hearing as is required.

36. Regarding the landlord's claim for compensation for labour and materials for her painting of the premises, I find that she failed to establish on the balance of probabilities that she was entitled to compensation for materials or labour in the full amount because:

- No photos were provided of the condition of the premises prior to occupancy;
- The landlord is a new owner of the premises with no direct knowledge of its condition prior to occupancy;
- The landlord stated that the premises was last painted at least three years prior. In accordance with Residential Tenancies Policy 09-05, the expected serviceable life of a painted surface, is three to five years;

- The landlord did not submit any particular photographic evidence to suggest or indicate that the painted surface was impacted by anything other than general wear and tear during the tenants' occupancy;
- Also the landlord did not submit a receipt prior to the hearing as required related to her claim for compensation for the paint itself.

37. Nevertheless, where the landlord submitted plenty of photographic evidence of particularly filthy doors, door frames and window sills throughout the premises, I arbitrarily find that her claim for compensation for painting related labour succeeds in the amount of \$108.50 (e.g., 5 x \$21.70 the maximum hourly rate for painting in accordance with Residential Tenancies Policy 09-05).

Decision

38. The landlord's claim for compensation for damages succeeds in the amount of \$173.00 (e.g., \$64.50 + \$108.50).

Issue 4: Security Deposit \$600.00

Relevant Submissions

39. The landlord testified that she received a \$600.00 security deposit for the tenants.

Analysis

40. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.*

(12) *A landlord who does not make an application in accordance with subsection*

(11) *shall return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section*

42 other than an application with respect to a claim against the security deposit.

41. I found that the landlord is entitled to compensation in the amount of \$570.00:
 - Rent = \$136.50
 - Late Fees = \$38.00
 - Inconvenience = \$222.50
 - Damages = \$173.00
42. As the amount owing to the landlord is less than the amount of the damage deposit collected, I find that she must return the remainder to the tenants (e.g., \$600.00 - \$570.00 = \$30.00).

Summary of Decision

43. The landlord is entitled to retain \$570.00 of the security deposit.
44. The landlord shall pay to the tenants \$30.00 representing the remainder of the security deposit.

04 April 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal