

Residential Tenancies Tribunal

Application 2022-1113-NL

Decision 22-1113-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 10-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 at the start of the hearing. I contacted the submitted number ([REDACTED]) and the call was answered but immediately disconnected. 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 to the tenant’s email address ([REDACTED]), on 17-March-2023. 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. Prior to today’s hearing date an emergency Order of Possession was ordered on this file and enforced in January.
6. Two issues are added to this file by the adjudicator,
 - Security deposit applied
 - Cost of Order of Possession reimbursed

Issues before the Tribunal

7. The landlord is seeking
- Rent \$1,900.00
 - Late fees \$75.00
 - Damages \$2,218.00

The adjudicator added

- Cost of Order of Possession
- Security deposit applied

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. 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, as well as, Residential Tenancy Policy 9.

Issue 1: Rent \$1,900.00

Relevant Submissions

10. The landlord submitted a written monthly rental agreement (LL#02) with the tenant. He said he purchased the house in September 2020 and the tenant was already living there. The tenant paid \$900.00 a month for rent from the 1st day of the month until the last. Rent was due in full on the 1st. The tenant used the landlord's internet and paid an additional \$25.00 a month for that service. When the tenant stopped paying his rent in full, the landlord stopped the internet service and subsequently stopped charging the tenant for the service.
11. The landlord stated that in his papers that he received from the house sale, there is a receipt from the previous owner saying that the tenant paid a \$500.00 security deposit. This is also noted on the rent ledger for September 2020. The landlord said he never received the transfer of this money.
12. The landlord submitted a rent ledger (LL#03):

Rent ledger 2022-1113-NL				
Date		Action	Amount	total
1-Nov-22	Rent due		900.00	900.00
1-Nov-22		payment	-800.00	100.00
1-Dec-22	rent due		900.00	1000.00
1-Jan-22	Rent due		900.00	1900.00

13. The landlord had initially also applied for an Order of Possession and was granted an emergency order. This order was enforced the first week of January 2023; the landlord could not determine the exact date.
14. The landlord is seeking rent including January as per his rent ledger.

Analysis

15. 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 as shown in his rent ledger. Rent, however, is paid for the use and enjoyment of the property, as the tenant no longer lived at the property after the first week in January, I have assessed a daily rate up to and including 07-January-2023. The amended ledger is as follows:

Rent ledger 2022-1113-NL				
Date		Action	Amount	total
1-Nov-22	Rent due		900.00	900.00
1-Nov-22		payment	-800.00	100.00
1-Dec-22	rent due		900.00	1000.00
1-Jan-22	Rent due daily rate 01 - 07 Jan		207.13	1207.13
Daily rate: \$900.00 x 12 months = \$10,800.00 a year				
\$10,800.00 a year divided by 365 days = \$29.59 a day				
\$29.59 a day x 7 days = \$207.13				

16. The tenant shall pay the landlord the rent owed totaling \$1,207.13.

Decision

17. The landlord's claim for rent succeeds in the amount of \$1,207.13.

Issue 2: Late fees \$75.00

Relevant Submissions

18. The landlord has proven, paragraph 17, that the tenant has been in rental arrears as of 02-November-2022 and is seeking the maximum allowed late fees.

Analysis

19. 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.

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

Decision

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

Issue 4: Damages \$2,218.00

Relevant Submissions

22. The landlord provided a damages ledger (LL#04) as follows:

Damage	Compensation
Entrance door	\$1,068.00
Installation of door	300.00
Vinyl flooring (kitchen)	400.00
Flooring bedroom	300.00
2 trips to dump	150.00
total	\$2,218.00

23. The landlord said that the tenant had put 4 roofing nails around the lock in the door. The door is vinyl and was new at the time the landlord purchased the house. The landlord said he cannot afford to replace the door, so he submitted a quote from Kent's (LL#06) for the cost of a new door, \$1,116.00. He said that he called a contractor who gave him a verbal quote of \$300.00 to install the door. The landlord provided a picture of the door jamb (LL#05), but did not submit a picture of the door itself.
24. The landlord said that the tenant had alcohol wasted on the flooring in the house and the flooring was full of cigarette burn holes. He said he replaced the flooring in the kitchen and one of the bedrooms and provided the cost of the flooring (LL#07) \$458.85 and (LL#08) \$413.90. He did not provide pictures of the damaged flooring.
25. The landlord said that he and a friend were left to dispose of the broken furniture, garbage and flooring. His friend made 2 trips from Conception Bay South and he is seeking 2 hours personal time for his friend's personal time and mileage to and from the dump.

Analysis

26. 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.

27. 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 cost 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.

28. The landlord has shown the cost of replacement for the damages incurred, however, he has provided no evidence of the damages or proof that any of the damages were caused by the tenant.

29. The burden of proof is that of the landlord and he has not provided any evidence to support his claim. I find the landlord's claim for damages fails.

Decision

30. The landlord's claim for damages fails.

Issue 3: Hearing expenses reimbursed \$20.00

31. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#09) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

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

Analysis

32. The landlord stated in paragraph 11 that the tenant paid a security deposit of \$500.00 to the previous home owner. The landlord claims he never received payment of the security deposit with the transfer of the property. That being said, his rent ledger (LL#03) that he provided into evidence lists the security deposit and states that the date received is September 2020; the time of purchase. Further to this, the previous homeowner provided him with a copy of the receipt for the security deposit. Typically, when a new owner purchases a property, if there is a tenant, the new owner is given the security deposit to hold in trust at the time of purchase.

33. As the tenant no longer lives at the property, the disbursement of the security deposit must be considered in relation to the landlord's claim. The landlord shall retain the security deposit against monies owed as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

Decision

34. The landlord shall retain the security deposit against monies owed in the amount of \$500.00.

Issue 5: Cost of Order of Possession

35. The landlord received an Order of Possession that he had enforced by the Sheriff's Office. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff for the cost of enforcement of the Order of Possession previously issued.

Summary of Decision

36. The tenant shall pay to the landlord \$802.13, as follows:


- Rent \$1,207.13
- Late fees 75.00
- Hearing expenses 20.00
- Less security deposit (500.00)
- Total..... \$802.13

The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff for the cost of enforcement of the Order of Possession previously issued.

The landlord shall retain the security deposit of \$500.00 against monies owed.

April 14, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office