

Residential Tenancies Tribunal

Application 2023 No. 133NL

Decision 23-0133-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:43 AM on 06 March 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended the first few minutes of the hearing, and then hung up.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for payment of rent in the amount of \$854.88,
 - An order for a payment of a \$75.00 late fee,
 - An order for a payment of \$966.50 in compensation for damages,
 - An order for vacant possession of the rented premises, and
 - Authorization to retain the \$750.00 security deposit.

Legislation and Policy

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

Preliminary Matters

6. This is the second application the landlord had filed concerning this tenancy. As a result of application 2023 No. 40NL, heard on 02 February 2023, the landlord

was awarded rent up to that date in the amount of \$290.76. His claim for vacant possession of the rented premises did not succeed at that time.

Issue 1: Rent Owing - \$854.88

Relevant Submissions

7. The landlord stated that he had entered into a rental agreement with the tenant and his girlfriend, [REDACTED], in October 2021, and a copy of that agreement was submitted with his application. The landlord testified that he terminated this agreement on 11 November 2022, and he entered into a verbal agreement with the tenant shortly afterwards, in which he was the sole leaseholder.
8. The landlord testified that according to this new, verbal agreement, the rent was set at \$1000.00, due on the 1st day of each month. The landlord also pointed out that \$500.00 of the tenant's rent is paid on his behalf by Income Support.
9. The landlord stated that he had received the portion of the tenant's rent which Income Support had been paying on his behalf for the months of December 2022, January 2023, February 2023 and March 2023. With respect to the remaining \$500.00 owing for those months, the landlord claimed that the tenant had been doing some maintenance work for him, and he had applied \$135.00 of the wages he had paid him towards December's rent, and another \$140.00 went towards rent for January. No other payments have been made.
10. The landlord calculates that the tenant owes him \$854.88 for the period ending 28 February 2023, and an additional \$500.00 for March 2023.

Analysis

11. I accept the landlord's claim that the tenant had not paid his rent as required and that in February and March 2023, he had only received the \$500.00 portion of rent paid by Income Support.
12. As the landlord is seeking an order for vacant possession of the rented premises, I find that he is entitled to a payment of rent to the date of the hearing, and a per diem thereafter. And, as indicated in Preliminary Matters, above, as the landlord had already received an order for rent up to 02 February 2023, I calculate the amount owing to be \$406.52 (\$709.24 owing for the period ending 28 February 2023 (\$1000.00 per month, less the \$290.76 already awarded for that month), \$197.28 for March 2023 (\$1000.00 per month x 12 month = \$12,000.00 per year ÷ 365 days = \$32.88 per day x 6 days), less the payment of \$500.00 received from Income Support for that month).

Decision

13. The landlord's claim for a payment of rent succeeds in the amount of \$406.52.

14. The tenant shall pay a daily rate of rent in the amount of \$32.88, beginning 07 March 2023, and continuing to the date the landlord obtains vacant possession of the rented premises.

Issue 2: Late Fees - \$75.00

15. The landlord has assessed a late fee of \$75.00.

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 in arrears since at least December 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: Vacant Possession of Rented Premises

Relevant Submissions

19. With his application, the landlord submitted a copy of a termination notice, which was issued to the tenant 09 February 2023. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 21 February 2023.

20. The tenant has not moved out, as required, and the landlord is seeking an order for vacant possession of the rented premises.

Analysis

21. 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.

22. According to the landlord's records, on 09 February 2023, the tenant was in arrears in the amount of \$1225.00, and he had been in arrears for since December 2022. No payments were received prior to the termination date.
23. As the notice meets all the requirements set out in this section of the *Act*, it is a valid notice.

Decision

24. The landlord's claim for an order for vacant possession of the rented premises succeeds.
25. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Compensation for Damages - \$966.50

Relevant Submissions

26. The landlord stated that shortly after the tenant took over the agreement as sole leaseholder, he broke the glass in one of the windows in the unit. The landlord submitted an invoice with his application, showing that he was charged \$356.50 to have that glass replaced. No photographs were submitted with his application.
27. The landlord also testified that before this new tenancy began, the tenant's girlfriend, ■■■, had damaged 2 doors at the unit and had put some holes in the walls. He pointed to his photographs showing this damage. The landlord is seeking \$610.00 in compensation, and he submitted an estimate with his application, from MDD Contracting, stating that he would be charged \$360.00 for the 2 doors, and \$150.00 to repair the holes.

Analysis

28. 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 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.

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

29. The landlord submitted no evidence with his application showing that any window was broken at the rental unit. For that reason, that portion of his claim does not exist.
30. Regarding the doors and the holes in the walls, I also find that that claim does not succeed. According to the landlord, this tenancy began in mid-November 2022. At that point, the damage the landlord is complaining about here had already existed. That is, it is damage that occurred in a different tenancy—not this one. But in any case, I was not convinced that the submitted estimate can be used to justify these costs. Firstly, \$360.00 + \$150.00 comes to \$510.00, not \$610.00. But also, there is no telephone number provided on this invoice and, as far as I can tell, [REDACTED], the contractor's address, does not exist.

Decision

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

Issue 5: Security Deposit

32. The landlord stated that the tenant and [REDACTED] had paid a security deposit of \$750.00 in October 2021. The landlord stated that he retained that deposit for this new tenancy when it began in November 2022. As the landlord's claim has been successful, he shall retain a portion of that deposit, as outlined in this decision and attached order.

Issue 6: Hearing Expenses

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

Summary of Decision

34. The landlord is entitled to the following:

- Authorization to retain \$501.52 of the security deposit, determined as follows:
 - a) Rent Owing\$406.52
 - b) Late Fees\$75.00
 - c) Hearing Expenses.....\$20.00
 - d) Total.....\$501.52
- An order for vacant possession of the rented premises,
- A payment of a daily rate of rent in the amount of \$32.88, beginning 07 March 2023 and continuing to the date the landlord obtains vacant possession of the rental unit,
- The tenant shall also pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.

10 March 2023

Date


John R. Cook
Residential Tenancies Tribunal