

Residential Tenancies Tribunal

Application 2023-0142-NL

Decision 23-0142-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:08 a.m. on 04-March-2023 and reconvened at 1:50 p.m. on 15-June-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents, [REDACTED] [REDACTED] and [REDACTED] hereinafter referred to as "tenant1, tenant2 and tenant3" attended by teleconference.

Preliminary Matters

4. The landlords submitted proof of electronic service (LL#01) to each of the tenants on 24-March-2023. Tenant1 confirmed that they all received notification.
5. Landlord1 made the following amendments to the total amounts owing as follows:
 - Rent decreased from \$4,096.00 to \$3,296.00
 - Compensation for damages decreased from \$1,829.13 to \$1,629.13
 - Utilities owed decreased from \$1,110.84 to \$810.84
 - Late fees from no amount identified to \$96.00

Issues before the Tribunal

6. The landlords are seeking
 - Rent \$3,296.00
 - Utilities \$810.84
 - Compensation for damages \$1,629.13
 - Late fees \$96.00
 - Security deposit applied (\$1,050.00)
 - Hearing expenses \$20.00

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 10: Statutory Conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent, Section 16: Rental increase, Section 18: Notice of termination of rental agreement, as well as, Residential Tenancies Policies 9 and 12.

Issue 1: Rent \$3,296.00

Landlord's Position

9. The landlords submitted the rental agreement held with the tenants (LL#02). Their agreement is for a single dwelling house for a term from 01-July-2022 until 30-June-2023. They pay \$1,400.00, on the last day of each month in advance of the rental month; utilities are not included. The landlord received a \$1,050.00 security deposit on 12-June-2022 and they are still in possession of the deposit.
10. The landlords submitted a text message thread (LL#03) between them and the tenants, landlord1 indicates that on 04-January-2023 the tenants give him notice that they would be moving on 31-January-2023. He states that he didn't agree to the notice, the tenants are in a term lease until 30-June-2023.
11. The landlords submitted a rent ledger (LL#04). Landlord1 explained that the tenants had a schedule attached to the agreement with additional terms. One of the items was that the rental price of \$1,400.00 is adjusted down from \$1,600.00. This adjustment was for the tenants' agreement to paint the two stories of the inside of the house and the landlord would supply the paint supplies. Failure of the tenants to complete this work before 30-September-2023, would result in the rent adjusting back to the original cost of \$1,600.00 a month. 30-September-2023 the tenants had completed the painting of the main floor, but they hadn't finished the painting of the upstairs. 01-October-2023, the rent was adjusted to \$1,600.00 a month.
12. Landlord1 confirms he reimbursed the tenants for the cost of their supplies to paint the downstairs part of the house. He said he never provided any further supplies because none were requested.
13. The rent ledger is as follows:

Rent ledger
2023-0142-NL

Date	Action	Amount	total
31-Aug-22	Rent	1400.00	1400.00
1-Sep-22	payment	-1400.00	0.00
30-Sep-22	Rent	1600.00	1600.00
3-Oct-22	payment	-1400.00	200.00
31-Oct-22	Rent	1600.00	1800.00

31-Oct-22		payment	-1400.00	400.00
30-Nov-22	Rent		1600.00	2000.00
30-Nov-22		payment	-800.00	1200.00
2-Dec-22		payment	-600.00	600.00
31-Dec-22	Rent		1600.00	2200.00
31-Dec-22		payment	-1400.00	800.00
31-Jan-23	Rent		1600.00	2400.00
28-Feb-23	Rent		1600.00	4000.00

14. The rent ledger has been amended to remove late fees, which will be considered in Issue 4.
15. The landlords do not accept the termination notice given by the tenants. Landlord1 said that the tenants didn't give appropriate notice and that they are in a term agreement. He explained that they did get new renters for 15-March-2023; their lease agreement is submitted (LL#05). He has included the rent for February and March and is now only seeking \$800.00 for March as he has rented the house for the remainder of the month and did not incur any loss for that period.

Tenant's Position

16. Tenant1 confirmed the details of the rental agreement. She said that they did send a text to the landlord explaining that they would be ending their rental agreement 31-January-2023. She points out that they first informed the landlord of the notice on 02-January-2023 and then confirmed on 04-January-2023.
17. Tenant2 said that they found the expense of the house to be too much. They were under the impression that the cost of heat was much less and found it to be really expensive. This is why they gave their notice.
18. Tenant2 explained that they had people visiting in September who were going to assist them in painting the house. They reached out to the landlord for paint supplies and they were told that they couldn't supply the paint until 16-September-2023 (TT#06). As they had visitors who were going to help with the painting, the tenants agreed to purchase the paint and the landlords reimbursed them for the supplies afterwards. He points out in the initial conversation about painting and the cost for rent (TT#02) the understanding is that they could choose what needed to be freshened up and that there was no rush. He acknowledges that the rental agreement (LL#02), that was signed, does indicate that they will paint the entire inside of the house by the end of September 2022.
19. Tenant2 confirms that they did not finish the painting prior to the end of September.

Analysis

20. In assessing the rent owed, first the increase in the cost of rent beginning October must be evaluated. In accordance with the signed rental agreement (LL#02), Schedule "A" states the following:

Additional agreement regarding rent which shall amend Part 7 and Part 12:

- a. the rental price of \$1,400.00 per month has been adjusted down from a regular amount of \$1,600.00 per month based on the agreement that the tenant will paint the first and second floors: living room, dining room, halls, etc]
- b. landlord will make arrangements to supply the paint and reusable painting materials with the expectation that materials will be cleaned and reused appropriately.
- c. **Provided that the landlord has supplied the paint and materials**, failure of the tenant to paint within three months will result in an increase of rent to the regular amount of \$1,600.00 per month in the following calendar month (the rental increase would apply to the month of October 2022 and be payable on September 30, 2022 for the month of October.)
- d. Proof of completion of paint job is necessary to the landlord's satisfaction.

21. The agreement is clear on the expectations of both parties. The agreement states in line "c" that provided the landlord supplies the paint and materials the tenants will paint. Both parties confirm that the landlord did not provide the supplies required. In the text message submitted by the tenants (TT#06) the landlord is unable to provide the supplies in early September and can budget to reimburse the tenants the 16-September-2023. As the landlord failed to provide the supplies, the tenants' obligation to paint is void or deferred.

22. More importantly, and without legal consideration of elements within the Rental Agreement related to the rebate of rent, Section 16 of the *Residential Tenancies Act, 2018* overrides this portion of the agreement. The landlords may only increase the rent in accordance with Section 16, of the Act, which determines an increase in rent is not permitted during a term agreement or in the first year of a tenancy. I therefore determine that rent should not have increased on 01-October-2022. Section 16 is as follows:

Rental increase

16. (1) Notwithstanding another Act, agreement, declaration, waiver or statement to the contrary, a landlord shall not increase the amount of rent payable by a tenant,

- (a) *where the residential premises is rented from week to week or month to month, more than once in a 12 month period;*
- (b) *where the residential premises is rented for a fixed term, during the term of the rental agreement; or*
- (c) *where a tenant continues to use or occupy the residential premises after a fixed term has expired, more than once in a 12 month period.*

(2) Notwithstanding subsection (1), a landlord shall not increase the amount of rent payable by a tenant during the 12 month period immediately following the commencement of the rental agreement.

.....

23. As the tenants are in the first year of a term contract, the landlord shall not increase the rent payable in the first 12 months, I therefore determine that the increase in rent is not acceptable and therefore have made those changes to the rental ledger following.

24. The landlords are seeking rent for February and March, which is after the tenants have vacated. I do agree with the landlords that the termination notice provided by the tenants is not valid as per Section 18, of the *Residential Tenancies Act, 2018*, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) *not less than 7 days before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than one month before the end of a rental period where the residential premises is rented from month to month; and*
- (c) *not less than 2 months before the end of the term where the residential premises is rented for a fixed term.*

.....

(9) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

25. The tenants may not give notice in a term agreement until the end of the term unless they have cause. The notice was not in adherence to the *Act* and is not valid. The tenants' termination of the agreement caused undue hardship to the landlords and they will be responsible for rent up to the middle of March, when the landlords secured new tenants. This is reflected in the new rent ledger below:

Amended rent ledger

2023-0142-NL

Date	Action	Amount	total
31-Aug-22	Rent	1400.00	1400.00
1-Sep-22	payment	-1400.00	0.00
30-Sep-22	Rent	1400.00	1400.00
3-Oct-22	payment	-1400.00	0.00
31-Oct-22	Rent	1400.00	1400.00
31-Oct-22	payment	-1400.00	0.00
30-Nov-22	Rent	1400.00	1400.00
30-Nov-22	payment	-800.00	600.00

2-Dec-22		payment	-600.00	0.00
31-Dec-22	Rent		1400.00	1400.00
31-Dec-22		payment	-1400.00	0.00
31-Jan-23	Rent		1400.00	1400.00
28-Feb-23	Rent March 1 - 14		700.00	2100.00

26. I find that the tenants shall pay to the landlords \$2,100.00 for rent owed.

Decision

27. The landlords' claim for rent succeeds in the amount of \$2,100.00.

Issue 2: Utilities \$810.84

Landlord's Position

28. The landlords supplied a utilities ledger (LL#06) as follows:

Description of charges	Cost
Western Petroleum – oil	485.76
Western Petroleum – oil	325.08
NL Power	300.00
Total	\$1,110.84

29. Landlord1 said that they never received a light bill from NL Power so he requested the \$300.00 be removed from the claim, changing the total to \$810.84.

30. Landlord1 submitted the invoices from Western Petroleum (LL#07) dated 03-February-2023 for \$485.76 and (LL#08) dated 27-February-2023 for \$325.08. He said that the tank was empty when they moved and that the heat was kept on a minimum temperature while the house sat empty.

31. They are seeking reimbursement for the cost of the oil.

Tenant's Position

32. Tenant2 said that the cost of heating was one of the contributing factors for moving. He points out that although the landlord said that the heat was kept to a minimum, the cost is in excess of \$800.00.

33. Tenant2 further explains that when they moved in the tank was virtually empty and they only filled it to where they were liable before they left.

Analysis

34. As the tenants did not give a valid termination notice, and their lease doesn't end until 30-June-2023, they are responsible for the cost of oil for the time that the house wasn't rented. The landlords had oil delivered the beginning and end of February. As the house was rented the middle of March 2023, the tenants will be liable for the first bill and half of the 27-February-2023 billing $\$325.08 \times 50\% = \162.54 . Therefore they shall pay to the landlords $\$485.76 + \$162.54 = \$648.30$.

Decision

35. The landlords' claim for utilities succeeds in the amount of \$648.30.

Issue 3: Compensation for damages \$1,629.13

Landlord's Position

36. The landlords submitted a damages claim (LL#09), as follows:

Damages	Cost
House not cleaned	350.00
Fix incomplete paint job	1,000.00
Pest control	431.25
Payment for cleaning/garbage removal	47.88
Total	\$1,829.13

37. Landlord1 stated he is not seeking an additional \$1,000.00 for painting, this is the amount of additional rent he sought in Issue 1 and this is not to be considered in Issue 3.

38. Landlord1 submitted nine pictures (LL#12) showing that the garage and kitchen were not cleaned when the tenants moved out. He also provided the text conversation with the cleaners (LL#10) where he is quoted \$150.00 for the cleaning of the floors, bathroom, kitchen cupboards and appliances. He submitted proof of payment (LL#11) for the \$150.00. He said that the ledger shows \$350.00 but that was an estimate and not the actual cost, which was \$150.00.

39. Landlord1 acknowledges that when the tenants moved in, the house wasn't as clean as he hoped. He explained that he did compensate them for cleaning and supplies totaling \$200.00. He questions their pictures of the garage, and states that the pictures from before and after look similar and he wonders if they actually did clean.

40. The landlords are seeking reimbursement for the cost of pest control. In the pictures there is evidence of rodent feces (LL#12). Landlord1 states that the tenants left behind garbage in the garage, as shown in pictures (LL#12). He acknowledges that there is a broken window but doesn't agree that the rodents got in through a window with broken glass. He explained that there is an issue in [REDACTED] with rodents and that the tenants leaving garbage behind would attract them. He submitted the invoice for pest control both inside and outside the house (LL#12) and the payment (LL#13) of \$431.25 for the service.

41. The landlords are also seeking the cost of the garbage being taken to the dump, landlord1 said that the tenants were paid \$48.00 after they moved in, September 2022, as shown in the text messages (LL#03) \$28.00 for the dump charges and \$20.00 to have someone take it there. He disputes that this work was done and is seeking reimbursement for the money he paid to the tenants to have this done.

Tenants' Position

42. Tenant2 said that he disputes the pictures submitted into evidence for the cleaning of the house. He said no one did a walk through with them and that they never met the individual who was supposed to be caring for the house. He said when they moved in the house was in terrible condition and that they left the house in much better shape when they moved out. He doesn't agree that there was dirt on the floor in the kitchen. They submitted before pictures into evidence (TT#04). He also submitted the dump receipt for 16-September 2022 (TT#05) after they disposed of the garbage that was left behind when they moved in.

43. Tenant2 argues that they are responsible for the rodents. He said that the garage window was broken and that they had told the landlord about this and it was never fixed. He explains that the rats were able to enter the garage because of the broken window.

Analysis

44. 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.

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.

45. In accordance with Residential Tenancies policy 9-3, 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)

46. In a proceeding under the Residential Tenancies Act, 2018, 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. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

47. In consideration of the \$150.00 paid to have the house and garage cleaned, it is clear that the areas required cleaning and that the landlords did incur the cost they have claimed, however, the tenants have raised a credible defense to this claim. The before pictures shown by both parties in their evidence do show that the house was in much worse condition when the tenants moved in. The tenants are expected to maintain the house in the same condition as when they first rented, it is apparent that the house was in better condition after the tenants moved out than it was before they took possession. It is not their responsibility to leave the house in better condition. The landlords claim for cleaning therefore fails.
48. The landlords claim for reimbursement for garbage removal also fails, the tenants have shown through their receipt for the dump that they did remove the garbage as promised when they first moved in. I acknowledge that the landlord questioned whether the work was done. Based on the comparison of the 2022 and 2023 pictures: I closely reviewed the pictures, as any garbage bags and recycling bags would look the same, but it is clear that the excess garbage is removed and that there are only a few garbage bags left behind in comparison to the original pictures. It seems likely that the garbage bags left in 2023 are new garbage, not garbage left from 2022.
49. Finally, the landlords' claim for the cost of pest control will also fail. The tenants established that they informed the landlords about the broken window as well as the issue of garbage being left in the garage prior to them taking occupancy. Landlord1 said that there is an issue of rodents in the area and the home was not cared for prior to the tenants taking occupancy. The tenants pointed out that they never met the caretaker and landlord1 acknowledged that they were surprised by the condition of the house when the tenants first arrived. There was ongoing storage of garbage in the garage both before and after the tenants moved; therefore it is not clear when the rodents moved in or who is to blame for this issue. As the landlords haven't shown it is clearly the fault of the tenants, they will not be responsible for the cost.

Decision

50. The landlords' claim for damages fails.

Issue 4: Late fees \$96.00

Landlord's Position

51. The landlords are seeking late fees for unpaid rent.

Analysis

52. 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.*

53. As the tenants have been in arrears since 01-February-2023, according to the rent ledger in paragraph 25, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

54. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 6: Security deposit applied \$1,050.00

Landlord's Position

55. The landlords stated that the tenants paid a security deposit of \$1,050.00 and they are seeking to retain the security deposit against monies owed.

Analysis

56. The landlords' claim for losses has been successful, paragraphs 27, 36 and 55, they 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

57. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$1,050.00.

Issue 7: Hearing expenses reimbursed \$20.00

58. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#14) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

59. The tenants shall pay \$1,793.30, to the landlords as follows:

- Rent \$2,100.00
- Utilities 648.30
- Late fees 75.00
- Hearing expenses 20.00
- Security deposit (\$1,050.00)
- Total \$1,793.30

The landlords shall retain the security deposit of \$1,050.00 against monies owed.

June 23, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office