

Residential Tenancies Tribunal

Application 2023-0153-NL

Decision 23-0153-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 02-May-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach them 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 respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents’ absence so long as they have been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenants with notice of the hearing, by process server, in person on 17-April-2023. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. The landlord is seeking
 - Rent \$3,600.00
 - Damages \$900.00
 - Hearing expenses \$140.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 18: Notice of termination of rental agreement, as well as Residential Tenancies Policy 9.

Issue 1: Rent \$3,600.00

Relevant Submissions

8. The landlord submitted the rental agreement (LL#02) held with the tenants. The tenants entered a monthly agreement with the landlord on 05-January-2023. The agreement was for \$1,800.00; which the landlord explains includes utilities. He said that the amount is \$1,500.00 for rent and \$300.00 for utilities. He said that they were expected to pay the full amount of rent for January. He did not retain a security deposit.
9. The landlord said that the tenants moved in around 04-January-2023. He never received any payment of rent. He was unable to reach them and when he went to the house on 16-February-2023, it appeared to be abandoned. He posted an abandonment notice and regained possession the next day.
10. The landlord said that the house was left very dirty, with some damages. He rented the house to new tenants in March 2023. He is seeking \$3,600.00 for January and February rent.

Analysis

11. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenants did not pay rent for the use and enjoyment of the property. The tenants are required to give the landlord one month's notice when they ended the rental agreement. As they abandoned the property and I find it is reasonable for the landlord to include rent for the full month of February. The landlord mitigated his loss by finding new renters for the month of March. Notice should be given 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.*

12. The tenants shall pay the landlord the rent owed up to the end of February 2023 totaling \$3,600.00

Decision

13. The landlord's claim for rent succeeds in the amount of \$3,600.00.

Issue 2: Damages \$900.00

Relevant Submissions

14. The landlord said when he regained possession of the house it was dirty and there were cigarette butts everywhere. Section 11 of the rental agreement (LL#02) lists no smoking.
15. The landlord said that the tenants beat up the stove, the oven door is completely off, photo included (LL#03). He said that the stove is one year old and he provided a quote for the replacement (LL#04). The quote is for \$999.99 + tax for a total of \$1,149.99. He is seeking \$800.00 for his loss.
16. The landlord also submitted a picture of the bedroom door (LL#03), he said that the door was in perfect shape when the tenant's moved in. He said the door is 3 or 4 years old. The picture shows that there is a hole either punched or kicked in the bottom half of the door. The landlord submitted a quote for a replacement door (LL#05). The door is \$101.00 + tax = \$116.15. He is seeking \$100.00 for his loss.

Analysis

17. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenants are 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.*

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)

18. The onus of proof in a damages claim is that of the landlord. The landlord has provided evidence of the damages to both the stove and the bedroom door. The landlord also provided quotes for the cost of replacing both. In any damages claim, 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.

19. With consideration of depreciation, I find that the landlord shall be compensated as follows:

- The landlord said that the stove is one year old, in accordance with Policy 9-005 a stove should last 12 years therefore the landlord shall be awarded $11/12 \times \$1,149.99 = \$1,054.16$. As the landlord has sought compensation for the stove totaling \$800.00 he shall be awarded the amount requested, \$800.00.
- The landlord said that the bedroom door was 3 or 4 years old, in accordance with Policy 9-005 a bedroom door should last 20 years therefore the landlord shall be awarded $16.5/20 \times \$116.15$ totaling \$95.82.

20. I find the tenants shall pay to the landlord \$895.82 for damages, as follows:

- Stove \$800.00
- Bedroom door 95.82
- Total..... \$895.82

Decision

21. The landlord's claim for damages succeeds in the amount of \$895.82.

Issue 4: Hearing expenses reimbursed \$140.00

22. The landlord submitted the receipts for \$140.00 for the cost of his expenses for the hearing, the landlord paid for:

- a process server (LL#06) \$40.00
- a commissioner of oaths 2 @ \$40 (LL#07) \$80.00
- the application fee (LL#08)..... \$20.00
- total \$140.00

Pursuant to policy 12.01, the landlord is entitled to reimbursement of those costs totaling \$140.00 from the tenant.

Summary of Decision

23. The tenants shall pay to the landlord \$4,635.82 for rent, damages and hearing expenses, as follows:

- Rent \$3,600.00
- Damages 895.82
- Hearing expenses 140.00
- Total \$4,635.82

May 5, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office