

Residential Tenancies Tribunal

Application 2023-0199-NL

Decision 23-0199-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 05-April-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1 and tenant2" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing and I was unable to reach tenant1 by telephone at the start of the hearing and his number ([REDACTED]) did not have message capability. I did speak with tenant2 and she informed me that she would not be attending 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 their absence so long as they have been properly served. The landlord submitted an affidavit and proof of service (LL#01) with his application stating that he had served the tenants with notice of the hearing, electronically on 18-March-2023 to the tenants' email and phone numbers [REDACTED] and [REDACTED]). 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 \$2,800.00
 - Late fees \$75.00
 - Compensation for inconvenience \$1,400.00

- Damages \$1,011.99
- Security deposit applied to monies owed \$2,100.00
- Hearing Expenses \$20.00

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, Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent, as well as Residential Tenancies policy 9.

Issue 1: Rent \$2,800.00

Relevant Submissions

8. The landlord submitted the lease agreement held with the tenants (LL#02). He said that they entered a written term agreement with the tenants on 23-December-2022. They signed for a period of 01-January-2023 until 31-December-2023. He said that the tenants paid a prorated amount of \$840.00 for their first week. The tenants' agreement is for \$2,800.00 a month rent for a fully furnished house including utilities & internet. He said that the tenants paid a security deposit of \$2,100.00 and the homeowner is still in possession of the deposit.
9. The rental period is from the first day of each month until the last; rent is due on the 1st day of the month. 01-January-2023 the tenants did not pay their rent. On 07-January-2023 the landlord issued a termination notice (LL#03) for 18-January-2023. On 08-January-2023 the landlord noticed on the doorbell camera that the tenants were moving their belongings from the house. He contacted tenant2 and asked if they were moving. On 18-January-2023 he went to the house and regained possession.
10. The landlord said that he never received any payments from the tenants after the initial payments made when they signed the contract. He said that they left the house in a mess and had to relist the apartment; it was subsequently rented 01-April-2023. He is seeking the unpaid rent for January.

Analysis

11. 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 January's rent of \$2,800.00 and did not give them the opportunity to mitigate their loss. The house was rented again on 01-April-2023.
12. The tenant shall pay the landlord the rent owed totaling \$2,800.00.

Decision

13. The landlord's claim for rent succeeds in the amount of \$2,800.00.

Issue 2: Late fees \$75.00

Relevant Submissions

14. The landlord has proven, paragraph 13, that the tenant has been in rental arrears as of 02-January-2023 and is seeking the maximum allowed late fees.

Analysis

15. 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.*

16. As the tenant has been arrears since 02-January-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for inconvenience \$1,400.00

Relevant Submissions

18. The landlord explained that to secure renters they had listed the house with a leasing agent. Once the tenants broke their year lease, just a couple of weeks into the agreement, the landlord was once again burdened with the cost of listing. He provided the billing for the cost of relisting (LL#04) of half a month's rent \$1,400.00. He doesn't believe that the homeowner should have to incur this cost again.

Analysis

19. In consideration of this expense it is apparent that the tenants left this agreement with disregard for the landlord and the property. From the evidence presented, it is apparent, that not only did they show disregard when they ended the agreement, they also potentially began this agreement with ill intent. I agree with the landlord that the homeowner should not incur the expense of listing his property the second time and that the tenants will reimburse that expense.

Decision

20. The tenants shall pay to the landlord \$1,400.00 in compensation for inconvenience.

Issue 4: Damages \$1,011.99

Relevant Submissions

21. The landlord said that the tenants left the house in a mess. They weren't supposed to smoke and they did. They know that they smoked not only from the smell, but they also found cigarette butts and matches in the house.
22. The landlord submitted a cleaning invoice (LL#05) for \$200.00. The invoice lists the following "deep clean of 4 bed, 2 bath home, and post rental clean. Pet cleaning (dog hair and urine inside) and garbage removal."
23. He also submitted the cost of laundry services \$42.65 (LL\$06) for the expense of cleaning the bedding in all four bedrooms. He explained that although there was only two of them living there, all four beds were used and had to be cleaned.
24. Due to the smell of smoke throughout the house they had to purchase an ozone machine for odor removal. Receipt for \$160.99 submitted (LL#07).
25. The landlord said that a dresser in one of the bedrooms was damaged, the bottom was split. He provided a picture from before the tenants moved in (LL#08) and two pictures of the damages (LL#09 and LL#10) as well as, the cost of replacement; \$279.00 + tax = \$320.85. He said that the dresser was about 1 – 2 years old.
26. Lastly he submitted picture of (LL#16 & LL#17) damages to the kitchen counter, he provided a receipt for \$287.50 for the repair (LL#13). He explained that the kitchen counters were refinished just before the tenants took occupancy in December. When they regained possession there was a pot on the counter top and when they picked it up there was a burn mark underneath.

Analysis

27. The *Residential Tenancies Act, 2018*, Section 10 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.

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.

28. As stated in paragraph 19, it is apparent that the tenants entered this agreement with disregard for the landlord. I accept that the landlord incurred the cost of cleaning and damages, as shown in the receipts entered into evidence by the landlord. I therefore find that the tenants shall pay for all expenses incurred totaling as follows:

• Cleaning	\$200.00
• Laundry	42.65
• Smoke removal	160.99
• Damaged dresser	320.85
• Kitchen counter refinish.....	<u>287.50</u>
• Total	<u>\$1,011.99</u>

Decision

29. The tenants shall reimburse the landlord \$1,011.99 for damages.

Issue 5: Security deposit applied to monies owed \$2,100.00

Relevant Submissions

30. The landlord stated in paragraph 8 that the tenants paid a security deposit of \$2,100.00 on 23-December-2022 and they are still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

31. The landlord's claim for losses has been successful, paragraphs 13, 17, 20 and 28; 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

32. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$2,100.00

Issue 6: Hearing expenses reimbursed \$20.00

33. 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 tenants.

Summary of Decision

34. The tenant's shall pay to the landlord \$3,206.99 as follows:

- Rent..... \$2,800.00
- Late fees 75.00
- Inconvenience 1,400.00
- Damages 1,011.99
- Hearing expenses 20.00
- Less security deposit (2,100.00)
- Total..... \$3,206.99

The landlord shall retain the \$2,100.00 security deposit against monies owed.

April 11, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office