

Residential Tenancies Tribunal

Application 2023-0277-NL

Decision 23-0277-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 11-May-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1 and landlord2" 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, she called in at the start of the hearing, however chose to disconnect the call. 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 she has been properly served. The landlords submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail [REDACTED]. [REDACTED] The tracking confirms that the package was sent on 06-April-2023 and delivered on 12-April-2023. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
5. Landlord1 amended the claim to include additional storage expenses, this changed their application for damages from \$644.28 to \$986.98.

Issues before the Tribunal

6. The landlords are seeking
 - Premises vacated
 - Rent paid \$3,800.00
 - Late fees \$75.00

- Damages \$986.98
- Cleaning/Other \$925.00
- Hearing Expenses \$34.88

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, 32 Abandoned personal property,

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. Landlord1 reviewed the terms of the submitted rental agreement (LL#02). She said that the tenant moved in on 03-December-2021 and she moved out on 19-February-2023. She paid \$1,200.00 rent a month. Her rental period was from the first day of the month until the last; rent was due in full, on the first day of the month. The tenant was supposed to pay a security deposit, however, as noted on the rental agreement (LL#02) this deposit was not paid.
10. Landlord1 said that due to non-payment of rent, they gave the tenant a termination notice (LL#04) ending their rental agreement on 19-February-2023. Landlord1 explained that she sent the tenant a text (LL#03) on that date inquiring when she would be moved out, the tenant responded that she was moved out of the house, she returned the key, but she told them she still had things in the shed that she had to pick up.
11. Landlord2 said that they have regained possession of the house, but the tenant placed a padlock on the shed and they do not have access. They don't know what is in the shed and they want possession of the shed returned to them.

Analysis

12. The landlord has already regained possession of the property and they are allowed to remove the lock from their shed. The tenant has abandoned her property. The landlord is required to follow Section 32 of the *Residential Tenancies Act, 2018*, as follows:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- (a) remove the personal property and immediately place it in safe storage; or*
- (b) store the personal property on the residential premises in a safe manner.*

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

- (a) provide the director with an inventory of the property; and
- (b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.

(4) The director may, on application by the landlord under section 42, authorize the landlord to dispose of personal property referred to in subsection (1) where the director believes on reasonable grounds that

- (a) the personal property has no monetary value;
- (b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or
- (c) the storage of the personal property would be unsanitary or unsafe.

.....

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

....

(8) Where a tenant or owner takes possession of personal property within the 30 day period, the landlord shall notify the director at the earliest reasonable opportunity.

(9) Where a tenant or owner does not take possession of personal property within the 30 day period, the landlord may sell the personal property subject to the terms and conditions set by the director.

(10) Where personal property is sold under subsection (9), the landlord

- (a) may keep from the proceeds of the sale, the amount
 - (i) of the costs reasonably incurred by the landlord for the removal, storage and sale of the personal property, and
 - (ii) necessary to satisfy an order made by the director for compensation payable to the landlord by the tenant; and
- (b) shall, at the earliest reasonable opportunity, deliver to the director
 - (i) the proceeds of the sale, less the amount kept under paragraph (a), and
 - (ii) a written statement of account regarding the sale and distribution of the proceeds.

....

13. The landlords shall inventory the property, give a copy of the inventory to the tenant and apply to the Director to determine if the property shall be disposed of or sold. I find the landlord is authorizes to remove the lock from the shed.

Decision

14. Authorizes the landlord to remove the lock on the shed.

Issue 2: Rent \$3,800.00Relevant Submissions

15. As stated in paragraph 10, landlord1 explained the tenant was not paying her rent. She said that the rent often was paid in partial payments and late. She stated that the last time rent was paid in full was 20-June-2022. They submitted a rental ledger (LL#05), see details beginning 01-July-2022 below:

Rent ledger
2023-0277-NL

Date	Action	Amount	total
1-Jul-22	rent due	1200.00	1200.00
20-Jul-22	payment	-600.00	600.00
1-Aug-22	rent due	1200.00	1800.00
5-Aug-22	payment	-600.00	1200.00
1-Sep-22	rent due	1200.00	2400.00
7-Sep-22	payment	-600.00	1800.00
16-Sep-22	payment	-300.00	1500.00
1-Oct-22	rent due	1200.00	2700.00
25-Oct-22	payment	-200.00	2500.00
1-Nov-22	rent due	1200.00	3700.00
22-Nov-22	payment	-500.00	3200.00
29-Nov-22	payment	-1000.00	2200.00
1-Dec-22	rent due	1200.00	3400.00
6-Dec-22	payment	-500.00	2900.00
1-Jan-23	rent due	1200.00	4100.00
4-Jan-23	payment	-400.00	3700.00
17-Jan-23	payment	-700.00	3000.00
31-Jan-23	payment	-400.00	2600.00
1-Feb-23	rent due daily rate 01 – 19 February	749.55	3349.55

Daily rate: \$1,200.00 x 12 months = \$14,400.00

\$14,400.00 divided by 365 days = \$39.45 a day

\$39.45 a day x 19 days = \$749.55

16. Note: as the tenant vacated the property on 19-February-2023, the ledger has been amended to reflect a daily rate for the month of February up to and including the day of the vacancy.

17. The landlords are seeking full compensation for rent owed.

Analysis

18. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlords' testimony and evidence that the tenant did not pay rent \$3,349.55.

19. I find that the tenant shall pay the landlord the rent owed totaling \$3,349.55.

Decision

20. The landlords' claim for rent succeeds in the amount of \$3,349.55.

Issue 3: Late fees

Relevant Submissions

21. The landlords have proven, table in paragraph 15 that the tenant has been in rental arrears as of 02-July-2022 and is seeking the maximum allowed late fees.

Analysis

22. 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.*

23. As the tenant has been arrears since 02-July-2022, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Damages \$986.98

Relevant Submissions

25. The landlords submitted a damages ledger (LL#06) as follows:

Damage	compensation
Replace broken glass in window	\$116.48
2 gallons paint and brushes	185.10
Storage unit rental fee \$171.34 x 4 months	685.36
Total	\$986.94

26. Landlord2 said that the window glass was broken during the time the tenant lived at the premises. They provide a picture (LL#03). They also provided the receipt (LL#03) for the cost of the glass \$116.48.

27. Landlord2 indicated in the rental agreement (LL#02) that the premises were to be non-smoking. He said that not only did the tenant smoke, she also had her son and another man living at the house and they all smoked. He said he boiled two full vinegar containers trying to get the smell out of the house. He said that the house was fully painted in 2021 just before the tenant moved in. He provided receipts for the cost of paint and supplies (LL#03) \$185.10.

28. Landlord2 said he completed the repairs on the house, he believes that they are being more than fair in their assessment of the cost of damages. He is not seeking time for the repairs just the actual cost of supplies.

29. Additionally, landlord1 explained that when the tenant moved out on 19-February-2023 she said that the house was cleared out, but she would have to come back for her belongings in the shed. A copy of the text conversation is provided (LL#03). Since that time, landlord2 explained, the tenant has blocked them on Facebook and they have no other way to contact her. They currently have new people renting the house and they are asking for the use of the storage shed. The landlords are seeking the cost of storage of the former tenant's property for February – May. They provided a quote (LL#03) from a storage company for \$149.00 + tax = \$171.34 a month.

Analysis

30. 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.

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)

31. The landlords have shown through their evidence and testimony the damages to the home. I agree with landlord2 that his assessment for cost is fair as they are only seeking the actual cost of the supplies and they have shown, through their receipts the cost. I therefore find that the tenant shall pay the full cost of the window and painting supplies: $\$116.48 + \$185.10 = \$301.58$.
32. In accordance with Section 32, of the *Residential Tenancies Act, 2018* as follows:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- (a) remove the personal property and immediately place it in safe storage; or*
- (b) store the personal property on the residential premises in a safe manner.*

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

.....

(7) Where a landlord stores personal property on the residential premises in accordance with subsection (1), the storage costs referenced in subsection (6) shall be the lesser of the standard rate charged by public storage facilities or the rental rate of the residential premises.

.....

33. The landlords have stored the property and are requesting the equivalent cost of the local storage facility for the period of February – May. Under Section 32 (2) the landlord is required to store the items for 30 days and will be compensated for that 30 day time period, totaling \$171.34.
34. I find the tenant shall pay storage costs totaling \$171.34 to the landlord.

Decision

35. The tenant shall pay \$472.92 to the landlord for damages as follows:

Damages	\$301.58
Storage	<u>171.34</u>
Total	<u>\$472.92</u>

Issue 5: Cleaning/Other \$925.00

Relevant Submissions

36. The landlords submitted a list for their other expenses as follows:

Damage	compensation
Cleaning	500.00
Dog poop clean up	100.00
Washer	325.00
Total	\$925.00

37. Landlord2 said it was very dirty when they regained possession, the tenant had already left and left her key behind. He believes nothing was ever cleaned while she lived there. He said that there was garbage left behind that had to be disposed of. He explained that the tenant moved in February and as the snow melts he has to return to do more clean up in the yard.

38. The landlords hired a company to come in and clean the house, they required 2.5 days. The receipt for \$500.00 (LL#03) was submitted into evidence.

39. Landlord2 said he has had to clean up a lot of dog poop and as explained in paragraph 38 as the snow melts the work continues. He said he has been there 4 times and stayed there a few hours each time. He is seeking \$100.00 for his time.

40. Finally, landlord2 said just before the tenant moved in, he purchased a used washing machine. A receipt for \$325.00 dated 15-October-2021 was provided. He found out later that apparently the machine had a small leak. He said instead of the tenant asking for a repair, they threw the machine out into the yard. He provided a picture (LL#03) of it peeking out of a snow bank. He didn't know the washer was there until the snow started to melt. He said because it was exposed to the frigid temperatures over the winter, the hoses and seals would be destroyed.

Analysis

41. As shown in paragraph 31, 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.

42. It was the tenant's responsibility to keep the premises clean. The tenant should have returned the property to the landlord in the same condition as when she moved in, this includes cleaning up the dog poop in the yard. I will award the landlord the full cost of the cleaner's fee and his personal time of \$100.00. This board awards personal time at

a rate of minimum wage + \$8.00, \$21.70 an hour. The landlord stated he was there 4 times for a couple of hours each time. This claim would have been in excess of the \$100.00 had he had claimed for the full amount.

43. In consideration of the washer, it is clear that the tenant's action of throwing the washer into the yard caused it further damage and rendered it destroyed. The washer was purchased used and therefore the actual age of the washer is undetermined. In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. The washer was purchased at a reduced price as it was used, therefore depreciation has already been factored into the cost. As the washer was only purchase just 15 months before the tenant moved out and as the washer was purchased used, I will award an arbitrary amount of \$250.00 for the loss of this appliance.
44. I find that the tenant shall pay to the landlord \$850.00 for the following:

Cleaning inside	\$500.00
Cleaning yard	100.00
Cost of washer	250.00
Total	<u>\$850.00</u>

Decision

45. The tenant shall pay to the landlord \$850.00 for cleaning and replacement of washer.

Issue 6: Hearing expenses reimbursed \$34.88

46. The landlord submitted the receipts for the cost of registered mail \$14.88 (LL#07) and the application fee \$20.00 (LL#08) for the cost of the hearing and pursuant to policy 12.01, is entitled to reimbursement of \$34.88 from the tenant.

Summary of Decision

47. The tenant shall pay to the landlords \$4,782.35, as follows:

Rent	\$3,349.55
Late fees	75.00
Damages	472.92
Cleaning and washer	850.00
Hearing expenses	<u>34.88</u>
Total	<u>\$4,782.35</u>

The landlord is authorized to remove the lock on the shed.

May 15, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office