

Residential Tenancies Tribunal

Application 2023-No.0296-NL

Decision 23-0296-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 29-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" 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 and I was unable to reach him by telephone 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. This hearing had been rescheduled and the tenant was served notice of the new time by our office. We served notification on 19-May-2023 by pre-paid registered mail. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$1,385.00
 - Late fees \$55.00
 - Damages \$493.94
 - Security deposit applied against monies owed \$37.50
 - 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, and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$1,385.00

Relevant Submissions

8. The landlord submitted a rental agreement (LL#02) with the application. She said that they had 3 changes to the rental agreement and she submitted the most recent agreement. She entered a written monthly agreement with the tenant on 01-August-2017 and he moved out 31-March-2023. Rent increased over the length of the agreement and in November 2022 it increased to \$710.00. The rental period is from the first day of the month until the last and rent is due in full on the last day of each month. The landlord said that the tenant paid a security deposit of \$337.50 on 31-July-2017 and she is still in possession of the deposit.
9. The landlord submitted a text message from her tenant (LL#03) giving her notification that he would be moving 31-March-2023. The message is dated for 20-February-2023.
10. The landlord submitted a rent ledger (LL#04) as well as a copy of the bank transactions (LL#04). The last time rent was up to date was 30-April-2022. She stated that the rent payment increased on 31-October-2022 from \$675.00 a month to \$710.00.

Rent ledger
2023-0296-NL

Date	Action	Amount	total
30-Apr-22	rent due	675.00	675.00
28-May-22		-675.00	0.00
31-May-22	rent due	675.00	675.00
26-Jun-22		-675.00	0.00
30-Jun-22	rent due	675.00	675.00
26-Jul-22		-675.00	0.00
31-Jul-22	rent due	675.00	675.00
31-Aug-22	rent due	675.00	1350.00
2-Sep-22		-675.00	675.00
30-Sep-22	rent due	675.00	1350.00
2-Oct-22		-675.00	675.00
28-Oct-22		-675.00	0.00
31-Oct-22	rent due	710.00	710.00
31-Oct-22		-35.00	675.00

30-Nov-22	rent due		710.00	1385.00
1-Dec-22		payment	-400.00	985.00
8-Dec-22		payment	-310.00	675.00
31-Dec-22	rent due		710.00	1385.00
5-Jan-23		payment	-710.00	675.00
31-Jan-23	rent due		710.00	1385.00
2-Feb-23		payment	-355.00	1030.00
17-Feb-23		payment	-355.00	675.00
28-Feb-23	rent due		710.00	1385.00

11. The landlord is seeking full compensation for rent owed.

Analysis

12. 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 rent \$1,385.00.

13. The tenant shall pay the landlord the rent owed totaling \$1,385.00.

Decision

14. The landlord's claim for rent succeeds in the amount of \$1,385.00.

Issue 2: Late fees \$55.00

Relevant Submissions

15. The landlord has proven, paragraph 14 that the tenant has been in rental arrears as of 01-November-2022 and is seeking \$55.00 late fees.

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 arrears since 01-November-2022, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister, however, as her application is for \$55.00, this is the maximum payment she will be awarded.

Decision

18. The landlord's claim for late fees succeeds in the amount of \$55.00.

Issue 3: Damages \$493.94

Relevant Submissions

19. The landlord submitted a damages ledger (LL#06) as well as a condition report (LL#07) that was completed with the tenant when he moved in and with a witness when he moved out.
20. The damages ledger (LL#06) is as follows:

Description of damage	Compensation
2 sections of panel wall	\$123.94
Installation of panel	40.00
Repair paint in living room and hall	210.00
Deep clean of kitchen, bathroom, dehumidifier and washer	120.00
Total	\$493.94

21. The landlord provided pictures of the panel walls in the porch area (LL#08). This area is marked as in good condition on the incoming condition report (LL#07). She said that the tenant removed these panels and had agreed to replace them; text of that conversation provided (LL#09). She said after he had moved the damages were still there. She has provided a receipt for the supplies purchased (LL#10) totaling \$123.94.
22. The landlord is also claiming 2 hours totaling \$40.00, for this work to be done [REDACTED] She explained that all the work that was finished was done by [REDACTED] as she [REDACTED] at the time.
23. The landlord is also claiming to have a coat of paint put on the living room and hallway. She explained that after the tenant had lived there for 2 years he requested to paint the areas turquoise. She decided to allow this under the understanding that when he moved out he would return it to the original color. She stated that she paid for the paint both

times. She submitted texts that included pictures (LL#11,#12, ) where the tenant is showing that the project is started and she tells him she can see that the turquoise is showing through, he said he'll do touch up areas and she said that he'd need a full coat to cover. She also sends texts showing she agrees to pick up additional paint (LL#14) as well as a picture of the additional paint that was dropped off to the apartment (LL#15). Lastly she includes pictures of the paint job completed by the tenant, it clearly shows the turquoise color through the beige (LL#16, #17). The landlord is seeking 8 hours personal time at a rate of \$30.00 totaling \$210.00. (*Note this is an error the total should have read \$240.00*).

24. The landlord is also seeking 4 hours x \$30.00 for cleaning the kitchen, bathroom, dehumidifier and washing machine. She provided pictures showing that the areas had not been properly cleaned (LL#19, #20, #21, #22, #23, & #24).

Analysis

25. Section 10 of the *Residential Tenancies Act, 2018* 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:

1. Obligation of the Landlord -

(a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

(b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

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)

26. The landlord has met the burden of proof required for a damages claim. Her evidence has shown the condition of the areas when the tenant took possession. Her photos and text messages detail the damages and the agreements held with the tenant. Additionally, her receipts show the value of the materials required. Her claim proves that the damages exist and are the responsibility of the tenant.

27. The landlord's claim for the damages to the porch wall shall be fully reimbursed. She provided receipts for the cost of the supplies totaling \$123.94 and she is seeking \$20.00

an hour for 2 hours labor. This tribunal pays a personal rate of minimum wage + \$8.00 for a total of \$22.50 an hour. As the landlord is seeking less than the allowable rate she will be fully compensated for the amount claimed, \$40.00.

28. Normally, this tribunal would consider depreciation in relation to the painting of the walls, however the agreement between these parties was that if the tenant was to change the color he would be expected to return the apartment in the same condition as he rented it. The landlord has appropriately provided the supplies and the evidence shows that the painting was not complete when the tenant moved. I accept that the landlord required a friend to complete this job and that it took 8 hours. Therefore the landlord will be compensated for the personal rate of minimum wage + \$8.00 for a total of \$22.50 an hour x 8 hours = \$180.00.
29. Lastly the pictures concerning the areas that required cleaning support the landlord's claim of 4 hours personal time to clean. The landlord will be compensated for the personal rate of minimum wage + \$8.00 for a total of \$22.50 an hour x 4hours = \$90.00.
30. The landlord's claim for damages succeeds in the amount of \$433.94, as follows:

• paneling	\$123.94
• installation of panel	40.00
• painting	180.00
• cleaning	90.00
• total.....	<u>\$433.94</u>

Decision

31. The landlord's claim for damages succeeds in the amount of \$433.94.

Issue 4: Security deposit applied against monies owed \$337.50

Relevant Submissions

32. The landlord stated in paragraph 8 that the tenant paid a security deposit of \$337.50 on 31-July-2017 and she is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

33. The landlord's claim for losses has been successful, paragraphs 14, 18 and 30, and she 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

34. The landlord's claim to retain the security deposit against monies owed succeeds in the amount of \$337.50.

Issue 5: Hearing expenses reimbursed \$20.00

35. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#25) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

36. The tenant shall:

- Pay the landlord \$1,556.44 as follows:
 - Rent \$1,385.00
 - Late fees 55.00
 - Damages 433.94
 - Security deposit applied (337.50)
 - Hearing expenses 20.00
 - Total \$1,556.44

The landlord

- Shall retain the security deposit of \$337.50.

July 12, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office