

Residential Tenancies Tribunal

Application 2023-0422-NL

Decision 23-0422-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:29 a.m. on 19-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” attended by teleconference.

Preliminary Matters

4. The landlord's representative states that there was a written fixed rental agreement that commenced on 1-December-2021 (LL#1) and ended on April 12, 2023 when the tenant vacated the unit. Rent was \$1300.00 per month due on the first of the month. A security deposit in the amount of \$975.00 was paid on 7-November-2021 and is in the possession of the landlord. The tenant agreed with the terms of the agreement.
5. The landlord submitted an affidavit (LL#2) with their application stating that they had served the tenant with the notice of hearing on 6-June-2023 electronically by sending it via email to the following address: [REDACTED]. The tenant confirmed receiving the document on that day. This is good service.
6. The landlord amended the application to increase the amount they were seeking for inconveniences from \$253.00 as per the application to \$991.88. The tenant confirmed receiving an updated list of conveniences on 13-June-2023. The landlord is seeking hearing expenses reimbursed in the amount of \$20.00.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent paid \$1950.00
 - b. Late fees \$75.00
 - c. Inconveniences \$ 991.88

- d. Utilities paid \$399.75
- e. Hearing expenses \$20.00
- f. Application of Security Deposit \$975.00

Legislation and Policy

- 8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
- 9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19; Notice where failure to pay rent and Section 14; Security Deposit, and Section 15; Fee for failure to pay rent.

Issue 1: Rent Paid \$1950.00

Relevant Submission:

- 10. The landlord's representative testified that rent was outstanding in the amount of \$1950.00 and in support of the claim submitted a written ledger (LL#3) as follows:

Rent Ledger

Landlord Name: [REDACTED]

Start Date of Tenancy: December 1st, 2021

Tenant Name: [REDACTED]

Security Deposit Paid: \$975.00

Rental Unit Address: [REDACTED]

Date Security Deposit Paid: November 7th, 2021

Date	Description of Charges	Amount Due	Amount Paid	Balance
March 1 st , 2023	March 2023 Rent	\$1,300.00	\$0.00	\$1,300.00
March 16 th , 2023	Payment	\$0.00	\$650.00	\$650.00
March 31 st , 2023	March 2023 Late Fees	\$31.00	\$0.00	\$681.00
April 1 st , 2023	April 2023 Rent	\$1,300.00	\$0.00	\$1,981.00
April 26 th , 2023	April 2023 Late Fees	\$44.00	\$0.00	\$2,677.75

Landlord's Position

- 11. The landlord is seeking rent for the months of March and April in the amounts of \$650.00 and \$1300.00 respectively. The landlord's representative stated that the tenant vacated on 12-April-2023 with no prior notice. The landlord's representative states that this is improper notice, and for this reason they are seeking a full month's rent for the month of April.

Tenant's Position

- 12. The tenant states that he should not have to pay rent from the 13-April to 30-April as he was no longer living in the unit. He states that the unit was full of mold and he had to move his daughter out of the unit. He stated that he called the landlord on several occasions to advise of the mold situation and he feels he had justification to leave without notice.

Analysis

13. I accept the landlord's testimony that the tenant did not pay rent in full for March and April. The landlord stated that the tenant was given a termination notice on 11-April-2023 to vacate the premises under section 19 for nonpayment of rent. The landlord did not submit a copy of the termination notice but it would have had to have a termination date of not less than 10 days after the notice was served, which most likely means that the landlord wanted the tenant to vacate on 22-April-2023.
14. I accept the tenant's testimony that the unit was not a safe place for him and his daughter to reside due to a mold problem and I accept that he called the landlord to make them aware of the problem, however the tenant did not exercise his right to make a request in writing to allow the landlord to make repairs within a reasonable period of time.
15. I find that the tenant should have given the landlord a completed "Tenant's Request for Repairs" form identifying the issues in writing and stating a reasonable completion date.
16. I find that that the landlord should not expect the tenant to pay rent after the 22-April-2023 when they gave a termination notice on 11-April-2023 to vacate the premises under section 19.
17. The rental ledger is amended to show a daily rate (see below). I find that the tenant is responsible for outstanding rent for the month of March in the amount of \$650.00 and rent from 1-April to 22-April in the amount of \$940.28.

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Date	Action	Amount	Total
February 28, 2023	Balance		\$0.00
March 1, 2023	rent due	\$1,300.00	\$1,300.00
March 16, 2023	Payment	-\$650.00	\$650.00
April 1-22, 2023	rent due	\$940.28	\$1,590.28

Daily rate: $\$1300 \times 12 \text{ mths} = \$15,600$
 $\$15,600 / 365 \text{ days} = \42.74 per day

Decision

18. I find the landlords claim for rent paid succeeds in the amount of \$1,590.28.

Issue # 2: Late fees \$75.00

19. 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.

20. The maximum rate of \$75.00 is allowable.

Issue # 3: Compensation paid for Inconveniences \$991.88

Relevant Submissions

21. The landlord's representative testified that the landlord was inconvenienced once the tenancy ended due to clean up efforts. The landlord is seeking \$991.88 and in support of the claim submitted a written list with a description of Inconveniences (LL#4) as follows:

RT Worksheet: Compensation for Costs of Inconvenience

File Number: 2023 No. 422 NL

Applicant: [REDACTED]

Respondent: [REDACTED]

Item #	Description of Inconveniences	Compensation Claimed
1.	April 26 th , 2023 Remove Garbage from Property and Move abandoned belongings into storage	\$253.00
2.	May 1 st , 2023 Clean up of cigarette butts and misc garbage from exterior of the property	\$63.25
3.	May 2 nd , 2023 Deep Clean of entire property after tenant abandonment 23.5 hours total	\$675.63
Total		\$991.88

Landlord's Position

22. The landlord is seeking \$253.00 for 5 hours labor to remove garbage from the property and move abandoned belongings into storage. The landlord is seeking \$63.25 for 1 hour labor to clean up cigarette butts and miscellaneous garbage from the exterior of the property. The landlord is seeking \$675.63 for 23.5 hours of deep cleaning within the unit.

23. The landlord states that their in-staff maintenance person did the work and charged \$55.00 per hour plus taxes.

24. The landlord states that there were many items left behind including 3 beds, couch, 2 chairs, barbeque, boxes of children's toys and boxes of Christmas and Halloween decorations. The landlord states that the unit was extremely dirty and needed a deep clean.

Tenant's Position

25. The tenant stated that he did leave furniture behind as he could not get anyone to move it due to the amount of mold that was on it. He also confirms leaving a barbecue behind, however he states that the boxes of children's toys, and Halloween and Christmas decorations did not belong to him. He states that the shed on the property was full of the home owner's possessions when he moved in.
26. The tenant disputes that there was any cleaning required after he vacated. He stated that he left the interior of the house cleaner than what it was when he moved in. He may have left a can outside with cigarette butts in it but testifies that there was no exterior garbage to clean up.

Analysis

27. I accept the landlord's claim that there were several pieces of furniture and a barbecue left once the tenant vacated and the tenant did not dispute that. I asked the tenant if he felt it would take 5 hours to remove those items from the property to a storage area, and the tenant agreed that it could take up to 5 hours to complete that task. Although the tenant testified that he could not find someone to remove the furniture due to the mold issue, I find that it is still the tenant's responsibility to leave the property the way it was when he moved in.
28. I find that the tenant is responsible for 5 hours labor at a rate of \$22.50 (self-labor fees) per hour to reimburse the landlord to have his personal possessions removed from the property.
29. I accept the landlord's testimony that their staff had to clean the interior and exterior of the house however, with the tenant disputing that there was any cleaning required, the onus is on the landlord to prove that cleaning was required. The landlord did not submit any pictures or documentation to support their claim.
30. I find that the tenant is not responsible for the 24.5 hours of cleaning that the landlord is claiming.

Decision

31. The landlord's claim for inconveniences succeeds in the amount of \$112.50

Issue # 4: Utilities Paid \$399.75

Landlord's Position

32. The landlord's representative stated that the oil tank needed to be refilled when the tenant vacated and it cost \$399.75.

Tenant's Position

33. The tenant states that the tank was empty when he moved in and he was not required to leave it full.

Analysis

34. I asked the landlord's representative if the rental agreement had listed the oil level at the beginning of tenancy and she stated that it did not. I asked if she knew if the tank was full at the beginning of the tenancy and she stated that she could not confirm that it was full.
35. I find that there is no proof to show that the tank was full of oil at the beginning of the tenancy or even that filling the tank was part of the rental agreement.

Decision

36. The landlord fails in their claim for utilities paid

Issue # 5: Security deposit applied against payment owed \$975.00

Analysis

37. The landlord's claim for losses has been successful as per paragraphs 18, 20 and 31. The landlord 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

38. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$975.00.

Issue # 6 Hearing Expenses \$20.00

39. The landlord paid a fee of \$20.00 to file the application. As the landlord's claim has been successful, the tenant shall pay the \$20.00 fee. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

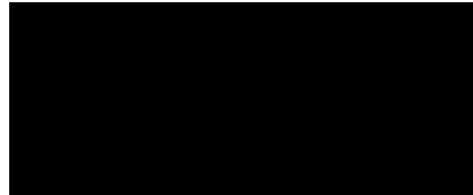
40. The tenant shall:

Pay the landlord \$822.78 as follows:

Rent	\$1590.28
late fees	75.00
Inconveniences	112.50
Hearing expenses...	20.00
Less Security deposit	<u>(975.00)</u>
Total	<u>\$822.78</u>

June 27, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office