



Residential Tenancies Tribunal

Application 2023-No.0479 -NL Decision 23-0479-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 29-June-2023.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [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 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 both tenants with notice of the hearing, electronically on 01-June-2023 [REDACTED]. The landlord said that tenant2 provided him the email address and he provided proof of address (LL#01) into evidence. 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
 - Damages \$100.00
 - Security deposit applied against monies owed \$800.00

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 14: Security deposit, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$2,800.00

Relevant Submissions

8. The landlord submitted a rental agreement (LL#02) with the application. He entered a written term agreement with the tenant from 01-October-2022 until 30-September-2023. The tenants pay \$1,400.00 a month. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenants paid a security deposit of \$800.00 on 06-September-2022 and he is still in possession of the deposit.
9. The landlord stated that the tenants did not pay February's rent. He spoke with tenant1 who said that they were going to try to get a Payday Loan. He said that 13-February-2023 tenant1 said that they were going to move out the end of that month. The landlord told him at that time that they were in a term agreement until 30-September-2023 and that they have to give notice.
10. The landlord said he felt there was nothing he could do about this situation and was just hopeful that they would pay the rent already owed for February.
11. The landlord advertised the house around the middle of February. At that time he asked if he could show the house while they were still living there so that he could get new renters in place; tenant1 told him "yes." Unfortunately, the tenants found that it wasn't convenient to have showings while they were packing, so they always deferred the showings. After they moved out the landlord was able to show the house and he rented it again in March.
12. The landlord submitted a rent ledger (LL#03), showing rent owed for February and March. The landlord is seeking rent for the month that the tenants lived there and for the following month while it was unrented.

Analysis

13. 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 for the month of

February. I also accept that the landlord attempted to mitigate his loss of rent for the following month by advertising immediately.

14. The tenant shall pay the landlord the rent for the months of February and March totaling \$2,800.00.

Decision

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

Issue 2: Damages \$100.00

Relevant Submissions

16. The landlord said that the tenants had bulk garbage placed out by the curb. He said that tenant1 had told him that he had paid the City \$40.00 to remove this garbage. The landlord doesn't believe that this was done, he said that they didn't collect the garbage and that the tenant would have had to make arrangements with a private company for this service.
17. The landlord also said that they had to clean and remove garbage from inside the home. He said his wife has pictures on her phone, but they didn't submit them into evidence. He is seeking \$100.00 personal labor time for completing this work.

Analysis

18. 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)

19. The landlord has failed to show that the damages exist, he provided no evidence to support his claim and therefore the claim for damages fails.

Decision

20. The landlord's the claim for damages fails.

Issue 3: Security deposit applied against monies owed \$800.00

Relevant Submissions

21. The landlord stated in paragraph 8 that the tenant paid a security deposit of \$800.00 on 06-September-2022 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

22. The landlord's claim for loss has been successful, paragraph 15, and he 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

23. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$800.00.

Summary of Decision

24. The tenant shall:

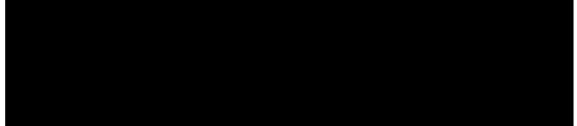
- Pay the landlord \$2,000.00 as follows:
 - Rent \$2,800.00
 - Security deposit applied (800.00)
 - Total \$2,000.00

The landlord

- Shall retain the security deposit of \$800.00

July 05, 2023

Date

Residential Tenancies Office