



Residential Tenancies Tribunal

Application 2023-0482-NL

Decision 23-0482-00

Pamela Pennell
 Adjudicator

Introduction

1. Hearing was called at 9:42 a.m. on 4-July-2023.
2. The applicants, [REDACTED] hereinafter referred to as “the landlords” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenant’s were not present or represented at the hearing and I was unable to reach them 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 they have been properly served. The landlord’s submitted an affidavit with their application stating that they had served the tenant’s with the notice of hearing, electronically by email to; [REDACTED] on 19-June-2023 (LL#1). The same email address was used for both respondents as per part 1 of the rental agreement (LL#2). The landlords submitted proof of sent email (LL#3). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant’s were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. There was a written month to month rental agreement that commenced on 1-November-2021. Rent was \$1050.00 per month due on the first of the month. A security deposit of \$525.00 was paid on 23-October-2021 (LL#2).

Issues before the Tribunal

6. The landlord is seeking:
 - a. Damages \$7,262.64
 - b. Rent Paid \$1,600.00
 - c. Security deposit applied against monies owed \$525.00
 - d. Hearing expenses \$20.00

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 is the following section of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit. Also relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual, Section 9: Claims for Damage to Rental Premises*.

Issue 1: Damages \$7,262.64

Relevant Submission

1. The landlord's testified that the tenant's damaged the rental unit and submitted a list of damages to support their claim (LL#4) as follows:

Replace flooring	\$6,545.80
Supplies to repair walls	<u>716.84</u>
Total	<u>\$7,262.64</u>

Landlord's Position

2. Item # 1: Replace flooring - The landlord's testified that the tenant's removed all carpet and other flooring from the home. The landlord's stated that concrete was poured in the entrance and most of the flooring that was removed was replaced with paper that was glued on and then smeared with paint. The landlord's testified that the carpet was only 5 years old and was professionally cleaned prior to the tenants moving in. The landlord's feel that the tenant's should be responsible for the total cost to replace the flooring.
3. Item # 2: Supplies to repair walls - The landlord's testified that the walls needed to be repaired which involved cleaner, plaster / sealer and paint. The landlord's testified that the walls had been freshly painted prior to the tenant's moving in.

Analysis

4. In accordance with Residential Tenancies policy 9-3, the applicants are required to show:
 - That the damage exists;
 - That the respondents are responsible for the damage, through a willful or negligent act;
 - The value to repair or replace the damaged item(s)

- 3
5. Item # 1: Replace flooring – I accept the landlord's testimony that the tenant's removed all flooring from the premises. The landlord's submitted photographs of the floor areas to support their claim. The pictures show all flooring removed and the floor area covered in paper glued on and smeared with paint. There are pictures showing that decorative concrete was poured in the porch area of the entrance and over the steps inside the premises. There are also photographs of the upper hallway into the bedrooms showing that the flooring had been removed (LL# 5). The landlord's stated that the berber carpet was 5 years old and the current tenants were the 3rd set of tenants to occupy the premises since the carpet had been installed. They also stated that the carpet was in really good shape and was professionally cleaned prior to the tenant's taking possession of the unit.
 6. Item #2: Supplies to repair walls - I accept the landlord's testimony that the walls were damaged and needed to be cleaned, plastered and painted. I asked the landlord's when the last time the walls were painted and they responded saying that they were freshly painted just prior to the tenants moving in. The landlord's submitted pictures of the walls (LL#5).
 7. The tenants were not available to dispute any of the above claims. I find that the landlord's showed that the damage exist and that the tenant's were responsible for the damages. I find that the receipts on file show the true value to fix the damages. I find the tenants are responsible for the full cost to replace the flooring and to cover the cost of supplies to repair the walls.

Decision

8. I find the landlord's claim for damages succeeds in the amount of \$7,262.64.

Issue # 2: Rent Paid \$1600.00

Relevant Submission

9. The landlord's testified that rent was outstanding in the amount of \$1600.00 and submitted a rental ledger to support their claim (LL#6). See below:

Jan 1	Rent - Jan	1050.00	-	\$1050.00
Jan 9	Tenant Pd		250.00	
Jan 16	Tenant - Pd		250.00	
	Balance owing			\$550.00
Feb 1	Rent			\$1050.00

Analysis

10. Non-payment of rent is a violation of the rental agreement. The landlord's testified that rent was not paid in full since 1-Janury-2023. They stated that the tenant's abandoned the premises on 18-February-2023 and owe a total of \$1600.00 for the period of 1-Janaury to 28-February.
11. I find the tenant's shall pay the landlord \$1600.00 in outstanding rent for the period of 1-January to 28-February.

Decision

12. The landlord's claim for rental arrears in the amount of \$1600.00 succeeds.

Issue # 3: Security Deposit applied against monies owed \$525.00

Relevant Submissions

13. The landlord submitted a copy of the rental agreement showing payment of security deposit in the amount of \$525.00 on 23-October-2021 (LL#2). Rental agreement was signed by all parties.

Analysis

14. Section 14 of the Residential Tenancies Act, 2018 deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

15. I find that the landlords have been successful in her claim for damages (see paragraph 8) and as a result the security deposit shall be applied against damages awarded.

Decision

16. The landlord's claim for security deposit of \$525.00 applied against monies owed succeeds.

Issue 3: Hearing Expenses \$20.00

17. The landlord's paid a fee of \$20.00 to file the application (LL#7). As the landlord's claim has been successful, the tenant's shall pay the \$20.00 fee.

Decision

18. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

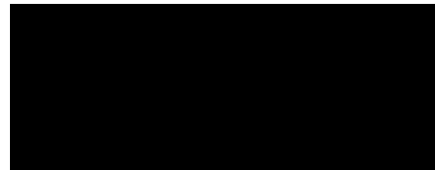
19. The tenant's shall:

Pay the landlord's \$8,357.64 as follows:

Damages	\$7,262.64
Rent paid	1,600.00
Hearing expenses	20.00
Less: Security deposit	<u>(\$525.00)</u>
Total	<u>\$8,357.64</u>

August 9, 2023

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office