

Residential Tenancies Tribunal

Application 2023-No.0599 -NL

Decision 23-0599-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 28-August-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 as there was no number provided. 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. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing personally on 14-August-2023. 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.
5. The landlord amended their application to increase rent from \$8,240.00 to \$10,580.00 to reflect the current amount of rent due. He also removed from the application: rent paid in trust and vacant possession of the rental premises.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$10,580.00
 - Late fees \$75.00
 - Damages \$2,200.00
 - Security deposit applied against monies owed \$350.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 19: Notice where failure to pay rent.

Issue 1: Rent \$10,580.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. He entered a written monthly agreement with the tenant beginning 20-October-2015. The tenant pays \$585.00 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 testified that the tenant paid a security deposit of \$350.00 on 04-October-2015 and he is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03) which shows that the tenant's rent payments were sporadic throughout his tenancy. The rent ledger (LL#03) includes utilities payments ending on 01-October-2020; the rental agreement (LL#02) part 7 confirms that the tenant is responsible for the payment of utilities.
11. The landlord's rent ledger contained seven minor calculation errors, the dates that were amended in hearing are as follows:
 - 01-Nov-19
 - 01-Jan-20
 - 19-Jun-20
 - 29-Aug-20
 - 02-Nov-21
 - 01-Jan-22
 - 01-Apr-23
12. The revised ledger is as follows:

Rent ledger
2023-0599-NL

Date	Action	Amount	total
8-Aug-19	outstanding balance	2484.00	2484.00
8-Aug-19	payment	-503.00	1981.00
1-Sep-19	rent owed	585.00	2566.00
1-Sep-19	payment	-500.00	2066.00

1-Sep-19		payment	-500.00	1566.00
1-Oct-19	rent owed		585.00	2151.00
5-Oct-10		payment	-400.00	1751.00
19-Oct-19		payment	-400.00	1351.00
1-Nov-19	rent owed		585.00	1936.00
1-Oct-19	NL Power		25.00	1961.00
1-Nov-19		payment	-400.00	1561.00
30-Nov-19		payment	-400.00	1161.00
1-Dec-19	rent owed		585.00	1746.00
1-Nov-19	NL Power		151.00	1897.00
1-Jan-20	rent owed		585.00	2482.00
24-Jan-20		payment	-400.00	2082.00
31-Jan-20		payment	-400.00	1682.00
1-Feb-20	rent owed		585.00	2267.00
1-Mar-20	rent owed		585.00	2852.00
1-Mar-20	NL Power		300.00	3152.00
1-Nov-20	NL Power		240.00	3392.00
1-Jan-20	NL Power		320.00	3712.00
1-Apr-20	rent owed		585.00	4297.00
13-Mar-20		payment	-500.00	3797.00
24-Mar-20	NL Power		200.00	3997.00
1-May-20	rent owed		585.00	4582.00
18-Mar-20		payment	-300.00	4282.00
1-May-20		payment	-300.00	3982.00
24-May-20	NL Power		559.79	4541.79
1-Jun-20	rent owed		585.00	5126.79
6-Jun-20		payment	-290.00	4836.79
19-Jun-20		payment	-320.00	4516.79
1-Jul-20	rent owed		585.00	5101.79
3-Jul-20		payment	-300.00	4801.79
1-Aug-20	rent owed		585.00	5386.79
12-Aug-20		payment	-330.00	5056.79
29-Aug-20		payment	-300.00	4756.79
1-Sep-20	rent owed		585.00	5341.79
1-Aug-20	NL Power		190.00	5531.79
1-Sep-20		payment	-300.00	5231.79
25-Sep-20		payment	-300.00	4931.79
1-Jul-20		payment	-340.00	4591.79
1-Oct-20	rent owed		585.00	5176.79
1-Oct-20	NL Power		260.00	5436.79
1-Oct-20		payment	-290.00	5146.79
1-Oct-20	NL Power		305.85	5452.64
1-Oct-20		payment	-300.00	5152.64
1-Oct-20		payment	-300.00	4852.64
1-Nov-20	rent owed		585.00	5437.64

26-Nov-20		payment	-250.00	5187.64
4-Dec-20		payment	-250.00	4937.64
1-Dec-20	rent owed		585.00	5522.64
31-Dec-20		payment	-320.00	5202.64
1-Jan-21	rent owed		585.00	5787.64
16-Jan-21		payment	-320.00	5467.64
1-Feb-21	rent owed		585.00	6052.64
16-Feb-21		payment	-485.00	5567.64
1-Mar-21	rent owed		585.00	6152.64
16-Mar-21		payment	-400.00	5752.64
1-Apr-21	rent owed		585.00	6337.64
1-Apr-21		payment	-180.00	6157.64
16-Apr-21		payment	-385.00	5772.64
30-Apr-21		payment	-185.00	5587.64
1-May-21	rent owed		585.00	6172.64
14-May-21		payment	-340.00	5832.64
1-Jun-21		payment	-200.00	5632.64
1-Jun-21	rent owed		585.00	6217.64
6-Jun-21		payment	-300.00	5917.64
1-Jul-21	rent owed		585.00	6502.64
3-Jul-21		payment	-200.00	6302.64
17-Jul-21		payment	-300.00	6002.64
1-Aug-21	rent owed		585.00	6587.64
4-Aug-21		payment	-200.00	6387.64
16-Aug-21		payment	-300.00	6087.64
01-Sep-21	rent owed		585.00	6672.64
2-Sep-21		payment	-200.00	6472.64
1-Sep-21		payment	-200.00	6272.64
1-Oct-21	rent owed		585.00	6857.64
2-Oct-21		payment	-200.00	6657.64
15-Oct-21		payment	-300.00	6357.64
1-Nov-21	rent owed		585.00	6942.64
2-Nov-21		payment	-200.00	6742.64
16-Nov-21		payment	-300.00	6442.64
1-Dec-21	rent owed		585.00	7027.64
2-Dec-21		payment	-200.00	6827.64
16-Dec-21		payment	-300.00	6527.64
31-Dec-21		payment	-200.00	6327.64
1-Jan-22	rent owed		585.00	6912.64
13-Jan-22		payment	-300.00	6612.64
1-Feb-22	rent owed		585.00	7197.64
2-Feb-22		payment	-200.00	6997.64
16-Feb-22		payment	-300.00	6697.64
1-Mar-22	rent owed		585.00	7282.64
1-Mar-22		payment	-200.00	7082.64

18-Mar-22		payment	-280.00	6802.64
1-Apr-22		payment	-280.00	6522.64
1-Apr-22		payment	-220.00	6302.64
1-Apr-22	rent owed		585.00	6887.64
14-Apr-22		payment	-300.00	6587.64
29-Apr-22		payment	-200.00	6387.64
1-May-22	rent owed		585.00	6972.64
16-May-23		payment	-300.00	6672.64
1-Jun-22	rent owed		585.00	7257.64
16-Jun-22		payment	-280.00	6977.64
1-Jun-22		payment	-200.00	6777.64
30-Jun-22		payment	-200.00	6577.64
1-Jul-22	rent owed		585.00	7162.64
15-Jul-22		payment	-280.00	6882.64
1-Aug-22	rent owed		585.00	7467.64
2-Aug-22		payment	-200.00	7267.64
1-Jun-22		payment	-200.00	7067.64
17-Aug-22		payment	-280.00	6787.64
1-Sep-22	rent owed		585.00	7372.64
2-Sep-22		payment	-200.00	7172.64
16-Aep-22		payment	-300.00	6872.64
29-Sep-22		payment	-200.00	6672.64
1-Oct-22	rent owed		585.00	7257.64
15-Oct-22		payment	-280.00	6977.64
1-Nov-22	rent owed		585.00	7562.64
1-Nov-22		payment	-200.00	7362.64
16-Nov-22		payment	-275.00	7087.64
1-Dec-22	rent owed		585.00	7672.64
12-Dec-22		payment	-200.00	7472.64
16-Dec-22		payment	-180.00	7292.64
30-Dec-22		payment	-300.00	6992.64
1-Jan-23	rent owed		585.00	7577.64
14-Jan-23		payment	-300.00	7277.64
1-Feb-23		payment	-280.00	6997.64
16-Feb-23		payment	-300.00	6697.64
16-Feb-23		payment	-300.00	6397.64
1-Feb-23	rent owed		585.00	6982.64
1-Mar-23	rent owed		585.00	7567.64
3-Mar-23		payment	-280.00	7287.64
16-Mar-23		payment	-300.00	6987.64
1-Apr-23	rent owed		585.00	7572.64
1-Apr-23		payment	-180.00	7392.64
1-Apr-23		payment	-280.00	7112.64
1-May-23	rent owed		585.00	7697.64
1-Jun-23	rent owed		585.00	8282.64

1-Jul-23	rent owed	585.00	8867.64
1-Aug-23	daily rate 01-20 Aug	384.60	9252.24

Daily rate: $585.00 \times 12 \text{ months} = \$7,020.00$

$\$7,020.00 \text{ divided by } 365 \text{ days} = \19.20 a day

$20 \text{ days} \times \$19.20 \text{ days} = 384.60$

13. Note: the ledger is amended to show a daily rate for August up to and including the date the tenant was scheduled to leave.
14. The landlord was unsure of the actual date that the tenant moved out, he had given the tenant a termination notice (LL#05) and the tenant informed him that he would be out before the end of August. The landlord accepted this notice. The landlord said that the tenant moved out the third week of August 2023.
15. The landlord is seeking rent until the end of September 2023 as there are damages that he has to repair prior to renting the house again.

Analysis

16. 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 as required within the rental agreement. I'm awarding rent until the 20-August-2023 because the landlord agreed that he accepted the tenant's verbal notice and that he did regain the premises the third week of August. It is incumbent on the landlord to prove his loss and as he was unsure of the actual timelines I erred on the side of the respondent and awarded rent up to the beginning of the third week.
17. I did not award rent for September, as it will be shown in issue 3 that these repairs have not started and until the repairs are complete it is not clear that the landlord would lose rent for the month of September. Additionally, this tribunal does not award future rent.
18. I find that the tenant shall pay the landlord the rent owed totaling \$9,252.24.

Decision

19. The landlord's claim for rent succeeds in the amount of \$9,252.24.

Issue 2: Late fees \$75.00

Relevant Submissions

20. The landlord has proven, in the table in paragraph 12, that the tenant has been in rental arrears for a number of years, he is seeking the maximum allowed late fees.

Analysis

21. 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.

22. The landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

23. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Damages \$2,200.00

Relevant Submissions

24. The landlord stated that the tenant was smoking in the house in violation of his rental agreement (LL#02) part 18. The landlord said that the house is approximately 600 square feet and that the entire area will need to be washed down and painted. He estimates that it will cost him in excess of what he is seeking. He believes that this will require 2 people 60 hours each at a rate of \$25.00 an hour as well as himself for 20 hours at a rate of \$50.00 an hour. He has not started this work and has not purchased the supplies. He said that the house was last painted about 2 years ago.
25. In addition to the house requiring painting, the front window was broken by a rock about a year and a half ago. The landlord repaired the window with ½ inch thick glass. He said that the glass should be ¾ inch thick and he will have to do this again. At the time he believes it cost \$450.00 plus his labor. The tenant told him he couldn't afford to make this payment and the landlord said he told him that this was the tenant's responsibility. He is seeking reimbursement for this loss.

Analysis

26. 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)
27. As the respondent didn't attend the hearing, there was no dispute to the damages. However, the landlord did not meet the burden of proof to show that the damages existed. He also did not meet the burden of proof that the respondent was responsible for the damage or the actual cost of repair. This burden of proof would normally be met by the landlord providing evidence in the form of receipts, pictures and inspection reports. The landlord failed to prove his claim and therefore his claim does not succeed.

Decision

28. The landlord's cost for damages fails.

Issue 4: Security deposit applied against monies owed \$350.00

Relevant Submissions

29. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$350.00 on 04-October-2015 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

30. The landlord's claim for loss has been successful, paragraphs 17 and 21, 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

31. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$350.00.

Summary of Decision


32. The tenant shall:
- Pay the landlord \$8,977.24 as follows:
 - Rent \$9,252.24
 - Late fees 75.00
 - Security deposit applied (350.00)
 - Total \$8,977.24

The landlord

- Shall retain the security deposit of \$350.00.

September 5, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office