

Residential Tenancies Tribunal

Application 2023-00639-NL

Decision 23-0639-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:23 a.m. on 14-September-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.
4. The landlord presented a witness, [REDACTED], hereinafter referred to as “the witness” she attended by teleconference.

Preliminary Matters

5. The tenant was not present or represented at the hearing and I was unable to reach her 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as she has been properly served. The landlord submitted an affidavit (LL#01) with her application stating that she had served the tenant with notice of the hearing, electronically ([REDACTED] at 10:46 a.m. on 08-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 her absence.

Issues before the Tribunal

6. The landlord is seeking
 - Rent \$550.00
 - Damages \$300.00
 - Security deposit applied to monies owed \$275.00
 - Hearing Expenses \$45.00

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 18: Notice of termination of rental agreement and Section 31: Abandonment of residential premises by tenant.

Issue 1: Rent \$550.00

Relevant Submissions

9. The landlord submitted the rental agreement (LL#02) held with the tenant. They have a monthly agreement that began on 01-June-2023. The tenant paid \$550.00 for rent of a room in a house with shared living space. The rental period is from the 1st day of each month until the last with rent being due on the 1st. The tenant paid a security deposit of \$275.00 on 24-May-2023. The landlord is still in possession of that deposit.
10. The landlord said that the tenant packed most of her belongings on 23-June-2023 and left. The landlord contacted her by text (LL#03) and the tenant had someone come before the end of the month and they picked up whatever she had left in her room.
11. The landlord provided a rent ledger (LL#04) and said that she is seeking the rent for July 2023 as the tenant gave no notice and the room is still unrented. She explained that the tenant had damaged the carpet in the room and that until they fix or replace the carpet the room cannot be rented.

Analysis

12. The landlord is seeking rent for the month after the tenant had lived in the rental., Rent is paid for use and occupancy of a premises, however, the action of the tenant, by abandoning the property, and not informing the landlord of her intent to end the rental agreement by serving a notice to terminate caused the landlord to suffer damages due to loss of rent.
13. Abandonment of property is covered under Section 31 of the Residential Tenancies Act, 2018, as follows:

Abandonment of residential premises by tenant

31. (1) Where a tenant has abandoned the residential premises, the landlord may enter and take possession of the residential premises.

(2) A tenant is considered to have abandoned a residential premises where

(a) the tenant has vacated the residential premises;

(b) the rental agreement is not terminated in accordance with this Act or the rental agreement; and

(c) rent is overdue.

...

14. Additionally, as the tenant did not submit a termination notice or attend the hearing we are not provided an explanation as to why the tenant moved. In accordance with Section 18 of the Residential Tenancies Act, 2018, the tenant can give notice not less than one month which is 31-July-2023, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) ***not less than 7 days before the end of a rental period where the residential premises is rented from week to week;***
- (b) ***not less than one month before the end of a rental period where the residential premises is rented from month to month; and***
- (c) ***not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

15. The landlord is seeking rent up to the end of the notice period, in any claim for damages it is incumbent on the applicant to mitigate their loss. I accept that the landlord was attempting to complete repairs and was not given adequate notice to rent the room for July 2023.
16. As the tenant did not provide notice, abandoned the property and caused the landlord financial loss, I agree with the landlord and find that the tenant owes rent totaling \$550.00 for rent.

Decision

17. The landlord's claim for rent succeeds in the amount of \$550.00.

Issue 2: Damages \$300.00

Relevant Submissions

18. The landlord is seeking \$300.00 for the repair or replacement of carpet in the tenant's room. The landlord provided a witness who assisted the renter, who had that room prior to this tenant, to move into a larger room in the house.
19. The witness confirms that she assisted the previous renter to move the day before this tenant moved in. She said that at that time the carpet was in good condition. She confirms that the damages occurred during the month the tenant occupied the room.
20. The landlord also submitted a note (LL#06) from the previous tenant saying that the carpet in the room was clean when she moved out on 30-May-2023. This note is not sworn.

21. The landlord provided pictures of the carpet (LL#07). The pictures show that the carpet is badly stained. There are larger stains, as well as, numerous small black stains. The landlord said that the tenant claimed this was mold.
22. She said she had a carpet specialist look at the carpet and he confirmed that the stains are not mold. The landlord said a police officer looked at the carpet and said that it appeared to be spillage from drug use. They did not provide any testimony.
23. The landlord explained that she owned a carpet cleaner and that she is trying to remove the stains herself. She works away and has not had time to fully remove the stains. She has worked at the stain removal for about 2 – 3 hours. She said that the carpet is 10 years old and that prior to the tenant living there the carpet was in good condition, if the stains will not lift she will have to replace the carpet.

Analysis

24. In accordance with Residential Tenancies policy 9-3, 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)
25. In a proceeding under the Residential Tenancies Act, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened. I accept that the damage to the carpet has been caused by the tenant. However, the landlord has not provided evidence to show the value of the cost for the damage.
26. Additionally, in accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6. In accordance with Residential Tenancies Policy 9-005 the life expectancy of a carpet is 10 years. Although I accept that the tenant damaged the carpet, as the landlord stated that the carpet is 10 years old, it has exceeded its life expectancy and therefore has no monetary value.
27. I find that the landlord's claim for damages therefore fails.

Decision

28. The landlord's claim for damages fails.

Issue 3: Security deposit applied against monies owed \$275.00

Relevant Submissions

29. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$275.00 on 24-May-2023 and she 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, paragraph 17, 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

31. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$275.00.

Issue 4: Hearing expenses reimbursed \$45.00

32. The landlord submitted the receipt for \$20.00 for the cost of the application (LL#08) and she is also seeking the cost of the Commissioner of Oaths (no receipt provided). I will therefore only consider the cost of the application fee as the receipt (LL#08) has been submitted, therefore pursuant to policy 12.01, as the landlord's claim has been successful, she is entitled to reimbursement of that cost from the tenant.

Summary of Decision

33. The tenant shall pay to the landlord \$295.00, for rent and hearing expenses, as follows:

| | |
|--------------------------|-----------------|
| • Rent..... | \$550.00 |
| • Hearing expenses | 20.00 |
| • Security deposit..... | <u>(275.00)</u> |
| • Total | <u>\$295.00</u> |

The landlord shall retain the \$275.00 security deposit against monies owed.

September 20, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office