

## Residential Tenancies Tribunal

Application 2023-0728-NL

Decision 23-0728-00

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 9:12 a.m. on 6-September-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “the landlords” attended by teleconference.
3. The respondents, [REDACTED] (respondent 1), hereinafter referred to as “the tenant” attended by teleconference. [REDACTED] (respondent 2), hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. Respondent 2 was not present or represented at the hearing and I was unable to reach him 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 the notice of 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’s submitted 2 separate affidavits with their application stating that they had served respondent 1 and respondent 2 with the notice of hearing, electronically by email to; [REDACTED] and [REDACTED] respectively on 16-August-2023 (LL#1). Respondent 1 confirmed receiving the email on that date. The email address used for respondent 2 was taken from the rental agreement (LL#2) and proof of sent email was submitted (LL#3). In accordance with the *Residential Tenancies Act, 2018* this is good service. As respondent 2 was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
5. There was a written month to month rental agreement that commenced on 1-August-2022. The tenant’s vacated the premises on 17-July-2023. Rent was \$1500.00 per month due on the first of the month. A security deposit of \$1125.00 was paid in full on 21-July-2022 (LL#2).

## Issues before the Tribunal

6. The landlords are seeking:
  - a. Rent Paid \$1100.00
  - b. Late fees \$75.00
  - c. Damages \$361.28
  - d. Utilities paid \$150.00
  - e. Security deposit applied against monies owed \$1125.00
  - f. 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 19: failure to pay rent, Section 14: Security Deposit and Section 15: fee for failure to pay rent. Also relevant and considered in this decision is the following sections of the *Residential Tenancies Policy Manual*, Section 9: Claims for Damage to Rental Premises and Section 12-1; Recovery of fees: late fees and hearing expenses.

## Issue # 1: Rent Paid \$1100.00

9. The landlord's testified that rent is outstanding in the amount of \$1100.00 and submitted a rental ledger to support their claim (LL#4). The years on the ledger should read 2023 as opposed to 2022. See below:

01-May-22	May Rent	750 -	750 -	0
30-May-22	June Rent	1500 -	750 -	750
08-Jun-22	June Rent	750 -	750 -	0
26-Jun-22	July Rent	1500 -	400 -	1100

owed

## Analysis

10. Respondent 1 did not dispute the amount of rent owing.
11. Non-payment of rent is a violation of the rental agreement. The landlord's testified that rent was not paid in full for the month of July. Respondent 1 agreed that \$400.00 was paid on 26-June-2023 leaving a balance of \$1100.00.
12. I find the tenant's shall pay the landlord \$1100.00 in outstanding rent for the month of July 2023.

## Decision

13. The landlord's claim for rental arrears in the amount of \$1100.00 succeeds.

## Issue # 2: Late Fees \$75.00

14. 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*

15. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states;

### **Late Payment Fee:**

- a. *A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.*

16. The landlord's rental ledger shows that rent was up to date at the end of June 2023 and rent was late getting paid in July and was not paid in full. The landlord is charging the maximum late fee of \$75.00 however late fees for the month of July equate to \$61.00 as outlined in the above noted Policy.

17. In accordance with the *Residential Tenancies Policy Manual* Section 12-1, I find that the late fee charges allowable are \$61.00 as set by the Minister.

## **Decision**

18. The landlord's claim for late fees succeeds in the amount of \$61.00.

## Issue # 3: Damages \$361.28

### Relevant Submission

19. The landlord testified that there was damage to the rental unit and submitted a list of damages to support their claim (LL#5) as follows:

## Compensation for Damages

Submitted by:

Date: Aug 2, 2023

Applicant:

Respondent:

Item #	Description of Damages	Compensation Claimed
1	8 inch x 11 inch hole in foyer flooring	\$193.60
2	Scratches on dishwasher	\$167.68
3		

### Landlord's Position

20. Item # 1: Replace flooring - The landlords are claiming \$193.60 for the damaged flooring (exhibit #10). The landlord's testified that the tenant's destroyed the canvas flooring in the foyer and submitted pictures to support their claim (exhibit #1 & #2). The landlord's stated that they had to pull up all the flooring in that area and replace it with new flooring. The landlord's testified that it cost \$114.10 for the flooring material (exhibit #13) and \$54.25 for self-labor to install (2.5 hours x \$21.70). The landlord is charging 15% taxes on total.
21. Item # 2: Replace dishwasher door - The landlords are claiming \$167.68 to replace the scratched dishwasher door (exhibit # 9). The landlord's testified that the dishwasher was purchased on 10-January-2023 (exhibit # 22) and they stated that the door is scratched from what appears to be dog scratches. The landlord's stated that the scratches are deep in the door and cannot be fixed but rather needs to be replaced. The landlords are seeking \$108.16 for the dishwasher door, \$15.95 for shipping and handling (exhibit #21), \$21.70 for self-labor (1 hour x \$21.70) and taxes on the total amount.

### Tenant's Position

22. Item # 1: Replace flooring – Respondent 1 disputes the claim for flooring. The tenant testified that the flooring was old and had damages to it when they moved in. The tenant submitted pictures of the flooring when she moved into the unit (TT#1). The tenant stated that the flooring got worse over time as it was easy to get your foot caught into the existing tears in the canvas. The tenant testified that she did not deliberately damage the flooring and that the damages were inevitable due to the existing tears in the canvas and normal wear and tear in the main entrance of the home.
23. Item # 2: Replace dishwasher door – Respondent 1 does not dispute the damages to the door of the dishwasher however she feels that if the landlord took the plastic protective covering off the dishwasher door, then the scratches may not be as bad as it appears.

### Analysis

24. 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)*

25. Item # 1: Replace flooring – I accept the landlord's testimony that the canvas flooring got further damaged during the tenancy, however the existing tears in the flooring were bound to get worse with normal wear and tear. I asked the landlords how old the canvas flooring was and they stated that it was about 5 years old when they purchased the house in 2022.

26. Section 9-5 of the *Residential Tenancies Policy Manual* states:

**Life Expectancy of Property**

*...In most circumstances, an adjudicator must consider reasonable wear and tear that an item would be subjected to during the tenancy, to determine the remaining life expectancy of the item.*

27. Furthermore, the Policy lists the life expectancy of low grade vinyl sheet cushion flooring to be at 6 years, 8 years for medium grade and 10 years for good grade. I accept that the flooring is roughly 6 years old however I do not know the grade of the flooring. With that said, the fact that the flooring had tears in it when the tenants took possession in 2022 when the flooring was just 5 years old, it is reasonable to assume that we are dealing with a low grade product and as such, the flooring was at the end of its life.

28. I accept the tenant's testimony that the tears in the flooring just got worse as it started to come up over time and that they would occasionally trip in it making it worse.

29. I find that the landlord has not showed that the damage to the floor was the result of a willful or negligent act, and as such I find the tenants are not responsible to replace the damaged flooring.

30. I find that the tenants are not responsible for the cost to replace the flooring.

31. Item # 2 – Replace dishwasher door. I accept the landlord's testimony that the dishwasher was relatively new and the only way to get rid of the scratches was to replace the dishwasher door. The tenant did not dispute the damage to the dishwasher door, however she stated that it probably would not look as bad if the protective covering was removed. The landlord stated that he does not want to remove the protective covering as it is an extra layer of protection for the appliance. I agree with the landlord and I find that it is not about whether or not the door will look better once the coating is removed but the fact is that the door is damaged and I find it reasonable to have the door replaced.

32. The landlord is seeking \$108.16 for the cost of the door (see exhibit # 20), \$15.95 for shipping and handling, \$21.70 for self-labor (1 hour x \$21.70) and taxes of \$21.87. I find that the landlord is entitled to the cost of the dishwasher door, shipping and handling and taxes on both of those amounts. I also find that the landlord is entitled to 1 hour of self-labor at the rate they are seeking, however the landlord is not entitled to have taxes applied to self-labor fees.

33. I find that the tenants are responsible for the replacement of the dishwasher door in the amount of \$164.43 ( $\$108.16 + \$15.95 = \$124.11 \times 15\% = \$142.73 + \$21.70 = \$164.43$ ).

**Decision**

34. The landlord's claim for damages succeeds in the amount of \$164.43

#### **Issue # 4: Utilities paid \$ 150.00**

35. The landlords are seeking reimbursement for oil in the amount of \$150.00 and submitted an oil receipt to support their claim (exhibit #12).

##### Landlord's Position

36. The landlord testified that they had an agreement with the tenants that they would pay 50% of the oil bill each time the tank was filled. The landlord's testified that they filled the tank with oil at the beginning of the tenancy which cost them \$1000.00. The landlord's testified that when the tenant's vacated, it cost \$300.00 to fill the tank (exhibit #12) and they are seeking 50% of this amount as per their agreement.

##### Tenant's Position

37. The tenant did not dispute that they had an agreement with the landlords to pay 50% of the oil bill each time the tank was filled, however the tenant do not feel that she should pay for the oil bill after she vacated as she will not be there to use it.

#### **Analysis**

38. I accept the landlord's testimony that they filled the tank prior to the tenancy and that it cost \$300.00 to fill the oil tank after the tenants vacated the unit. I asked the tenant if she had to pay for the oil that was in the tank when she moved in and she stated that she did not have to pay for the oil until 4 months after she moved in. This shows that the landlord started the tenancy with a full tank of oil and it justifies why they expect the tenancy to end with a full tank of oil as well.
39. I find that the tenants are responsible for 50% of the \$300.00 oil bill incurred when they vacated the premises.

#### **Decision**

40. The landlord's claim for utilities paid succeeds in the amount of \$150.00.

#### **Issue # 5: Security Deposit applied against monies owed \$1125.00**

##### Relevant Submissions

41. The landlord submitted a copy of receipts showing payment of the security deposit in the amount of \$1125.00 on 20-July and 21-July-2022 (LL#6). The tenant did not dispute the amount paid.

#### **Analysis**

42. 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.

43. I find that the landlords have been successful in their claims for rent, damages and utilities (see paragraphs 13, 34 and 40) and as a result the security deposit shall be applied against monies owed.

#### **Decision**

44. The landlord's claim for security deposit of \$1125.00 applied against monies owed succeeds.

#### **Issue 3: Hearing Expenses \$20.00**

45. The landlord paid an application fee of \$20.00 to the Landlord Tenancies Board and provided a copy of the receipt (LL#7).

46. As the landlord's claim has been successful, the tenants shall pay the \$20.00.

#### **Decision**

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

## Summary of Decision

48. The tenant's shall:

Pay the landlord's \$370.43 as follows:

• Rent paid .....	\$1100.00
• Late fees .....	61.00
• Damages .....	164.43
• Utilities .....	150.00
• Hearing expenses .....	20.00
• Less: Security deposit.....	1125.00
▪ Total	<u>\$370.43</u>

September 22, 2023

Date



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