

Residential Tenancies Tribunal

Application 2023-0742-NL

Decision 23-0742-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 04-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, 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 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 submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing electronically. The email addresses used were the ones listed for contact on the rental agreement and the landlord had previously received communications from the tenants using these addresses. 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. Should the landlord's claim for damages be granted?
6. Should the landlord's claim for unpaid rent and utilities be granted?
7. Should the landlord's claim for late fees be granted?

8. Should the landlord's claim for Inconvenience be granted?
9. What is the disposition of the security deposit?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

Issue 1: Damages

11. The landlord claimed for \$1,226.70 in damages consisting of \$386.39 for replacing stained couch covers and \$836.35 for replacing countertop damage. The landlord provided a significant amount of evidence in a digital folder that has been marked LL#2.
12. LL#2-3a shows two photos taken before move-in of the premises' living room in excellent condition, including an L-shaped couch, as well as photos of the same couch with large stains on the section which would be bottom of the L before and after cleaning. Unfortunately, in the photos of the couch from before the tenant's stay, blankets have been laid over the area where stains are later found. However, given the landlord's uncontradicted sworn testimony, the condition of everything else in the photo, and my observations of the stains, I conclude on a balance of probabilities that the stains were new and caused by the tenants. LL#2-3a also contains a receipt showing it cost the landlord \$386.39 to replace the damaged couch covers.
13. LL#2-3b contains photos of the kitchen countertop before and after the tenant's residency. In the before pictures, it looks clean, undamaged, and it reflects the light with a sheen in the manner of a polished or laminated surface. In the after photos, a section of the countertop has a large dark stain and the finish seems to have been damaged or somehow stripped. I find this damage to be the fault of the tenants. The landlord says he has had some difficulty replacing the countertop but is still working on it, and therefore supplied an estimate rather than a receipt. The replacement countertop, while currently unavailable, has a listed price of \$249.00 not including HST. The landlord estimates it will cost \$150 to have the 249x3.8cm countertop delivered, and \$400 to have it installed. He notes that the installation will require the kitchen sink to be temporarily removed and then reinstalled, which will of course increase the cost of labour. I find these estimates reasonable in the circumstances.
14. The landlord's claim for damages succeeds in the full amount of \$1,226.70.

Issue 2: Unpaid Rent and Utilities

15. The landlord testified that he received only half the rent owed for the month of June and has not received the money for the utilities bill. A rental agreement (LL#3) was provided which shows that rent was due on the 1st day of each month and was set at \$2050 a month, utilities not included. The agreement is a fixed term agreement that began on 01-May-2022 and was set to end on 30-June-2023. However, under s. 8(2)(c) of the *Act* a fixed term lease for longer than 12 months is considered to be a fixed term of 12 months.

Therefore, by the time of June, the rental agreement had become a month-to-month agreement under s. 8(2)(d).

16. Early in June 2023 the landlord discovered the tenants had abandoned the property. On 15-June-2023 the landlord posted a notice of abandonment to the front door of the premises and the abandonment was not contested. The landlord had possession 24 hours later. When a residential premises is abandoned, the landlord has a duty to mitigate the loss. This means an effort must be made to recoup lost rent by re-renting the unit. Given the state of the premises, I find that it would not be reasonable to expect the landlord could rent the unit again for any of the remaining days in June.
17. LL#2-4 is the power bill for the premises for the month of June with a total of \$166.07.
18. The landlord's claims for rent and utilities succeed in the full amounts of \$1025.00 and \$168.27, respectively.

Issue 3: Late fees

19. The landlord claims for \$185.00 in late fees. LL#3 shows that each month's rent was due on the first of the month. The landlord testified that he received the August rent 10 days late, the September rent 1 day late, the October rent 1 day late, the November rent 18 days later, the January rent 1 day late, the February rent 5 days late, the April rent 2 days late, the May rent 5 days later, and as referenced above the June rent was still outstanding at the time of the hearing.
20. The minister has set the rate for late fees at \$5 a day on the first day and \$2 for every subsequent day, to a maximum of \$75.00. As rent was overdue for more than 30 days, the landlord's claim partially succeeds in the amount of \$75.00.

Inconvenience

21. The landlord claimed for \$1059.50 divided as follows: \$290.00 for cleaning, \$149.50 for lawn mowing, \$150.00 for garbage removal, \$20 for the application fee, and \$450 for his own time. He bases this on a rate of \$22.5/hour for 20 hours spent changing the locks on three doors (the tenants did not leave their keys behind), general cleanup and garbage removal, repairing a broken towel bar, repairing trim on the base of a cabinet, repairing the damaged edges of a counter, and dealing with the administrative burden of property management and recovery.
22. LL#2-1a show a significant amount of mess in the process of being cleaned, as well as a handwritten receipt from a person acknowledging they received \$290.00 for the task of cleaning the house. This is not an unreasonable sum in the circumstances.
23. LL#3 page 4 shows that as part of the rental agreement the tenants agreed to take care of lawn mowing, to be done no more infrequently than once every two weeks from May to October. The landlord testified that this was not done for the month of June and provided an invoice for \$149.50 for lawn mowing from a lawn care business.
24. LL#2-1c shows a significant amount of garbage and recyclables removed from the premises. I count at a minimum seven full large black garbage bags, one clear blue

plastic recycling bag, and several large items and pieces of furniture. LL#2-1c also shows a handwritten invoice made out to the landlord from a person who removed the garbage with the price listed as \$150.00.

25. The \$20 application fee will be dealt with as part of hearing costs, below.
26. The landlord asks for \$450 for his own time. The repairs he mentions as part of this are compensable and he is entitled to some repayment, as is the work he did changing the locks. LL#2-1e shows significant damage to a towel bar and a cabinet which has had the bottom trim completely detach. Cleaning and garbage removal have already been dealt with and cannot be compensated for twice. The administrative burden the landlord suffered arranging for all of the above issues and for this tribunal are not compensable. They are considered part of the cost of doing business. I value the compensable work done by the landlord at \$200.00.
27. In total, the landlord is awarded \$789.50 for inconvenience.

Issue 5: The Security Deposit

28. There was a security deposit of \$1575.00, as can be seen in LL#3. The landlord is entitled to apply this against moneys owed.

Decision

29. The landlord is awarded \$1,226.70 in damages.
30. The landlord is awarded \$1025.00 in unpaid rent.
31. The landlord is awarded \$168.27 in unpaid utilities.
32. The landlord is awarded \$75.00 in late fees.
33. The landlord is awarded \$789.50 for inconvenience.
34. The landlord may apply the security deposit against moneys owed.
35. As his claim was partially successful, the landlord is entitled to recover the \$20 hearing fee.

Summary of Decision

36. The tenant shall pay the landlord \$1,653.77 as follows:

Rent	\$1025.00
Damages	\$1226.00
Utilities	\$168.27
Inconvenience	\$789.50
Hearing expenses	\$20.00
Less Security deposit (\$1575.00)	

Total \$1653.77

19-December-2023 _____
Date

[Redacted]
Seren Cahill
Residential Tenancies Office