

Residential Tenancies Tribunal

Application 2023-0783-NL

Decision 23-0783-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:13 a.m. on 20-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.

Preliminary Matters

4. The respondent 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 submitted an affidavit with his application stating that he had served the respondent with the notice of hearing electronically by email to; [REDACTED] on 7-September-2023 (LL#1). The landlord submitted proof of the sent email (LL#2) and proof of the email address (LL#3). In accordance with the *Residential Tenancies Act*, 2018 this is good service. As the respondent 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. There was a written month to month rental agreement that commenced on 1-October-2021. The tenant vacated the unit on 2-June-2023. Rent was \$800.00 per month due on the first of each month. A security deposit of \$600.00 was paid on 1-October-2021.

Issues before the Tribunal

6. The landlord is seeking:
 - a. Rent Paid \$2400.00
 - b. Late fees \$75.00

- c. Compensation for Damages \$2666.04
- d. Security deposit applied against monies owed \$600.00
- e. 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 \$2400.00

Relevant Submission

9. The landlord testified that rent is outstanding in the amount of \$2400.00 and submitted a rental ledger to support his claim (LL#4). See below:

Rent Owed				
	Rent for April	01-Apr-23		\$800.00
	Rent for May	01-May-23		\$800.00
	Rent for June	01-Jun-23		\$800.00
Total				\$2,400.00

Landlord's Position

10. The landlord testified that rent is outstanding for the months of April, May and June, 2023 for a total of \$2400.00. The landlord testified that he gave the tenant a termination notice on 20-May-2023 to vacate the premises by 31-May-2023 under Section 19 of the *Residential Tenancies Act, 2018* and the landlord testified that the tenant did not vacate until 2-June-2023.

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord testified that rent was not paid for the months of April, May and June, 2023. The landlord also testified that he wanted the tenant to vacate by 31-May-2023 therefore I find that the tenant is responsible for rent for April, May and the extra 2 days he stayed in June.
12. The rental ledger is amended to show a daily rate for June (see below). I find that the tenant is responsible for outstanding rent dating back as far as 1-April-2023 (last zero balance) to 2-June-2023 in the amount of \$1652.60. See amended ledger and daily rate calculation below:

Rental Ledger 2023-0783-NL			
Date	Action	Amount	Total
March 31, 2023		Balance	\$0.00
April 1, 2023	Rent due	\$800.00	\$800.00
May 1, 2023	Rent due	\$800.00	\$1,600.00
June 1-2, 2023	Rent due	\$52.60	\$1,652.60

Daily rate: \$800 x 12 = \$9600
\$9600 / 365 days = \$26.30 per day

13. I find that the tenant shall pay the landlord \$1652.60 in outstanding rent for the period of 1-April to 2-June-2023.

Decision

14. The landlord's claim for rental arrears succeeds in the amount of \$1652.60.

Issue # 2: Late Fees \$75.00

15. 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*

16. *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.*

17. The landlord's rental ledger shows that rent has not been up to date since the end of March and as such, the maximum allowable late fees of \$75.00 shall apply.

18. In accordance with the *Residential Tenancies Policy Manual* Section 12-1, I find that the tenant shall pay the maximum late fee charges of \$75.00 allowable as set by the Minister.

Decision

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

Issue # 3: Damages \$2666.04

Relevant Submission

20. The landlord testified that there was damage to the rental unit and submitted a list of damages to support his claim. **Note:** total amount on list is incorrect and should read \$2,826.04 based on the calculation of individual amounts entered. See below as follows (LL#5):

2023				
Repairs to 37a Fourth St				
Business	Item	Date	Inc Tax	
Kijiji	Door	09-Jun-23	\$40.00	
Gabage Removal	2 People, 3 Hours (\$20/hr)	10-Jun-23	\$240.00	
Abbot Acrylics Works	Tub Repair	12-Jun-23	\$431.25	
Plastering	1 people, 1.5 Hours (\$20/hr)	12-Jun-23	\$30.00	
Plastering	1 people, 0.5 Hours (\$20/hr)	13-Jun-23	\$10.00	
Door pickup and cutting	1 people, 1 Hours (\$20/hr)	13-Jun-23	\$20.00	
Dulux	Paint	14-Jun-23	\$20.36	
Sanding and Priming	1 people, 1.5 Hours (\$20/hr)	14-Jun-23	\$30.00	
Award Flooring	Transition strip	15-Jun-23	\$23.00	
Door install	2 people, 2 Hours (\$20/hr)	15-Jun-23	\$80.00	
Kent	Toilet Seat, Venting	16-Jun-23	\$91.43	
Install dryer vent, cut transition strip (install) and cut	1 people, 1.5 Hours (\$20/hr)	16-Jun-23	\$30.00	
Caulk and Painting	1 people, 3 Hours (\$20/hr)	19-Jun-23	\$60.00	
Eye For Detail	Cleaning	20-Jun-23	\$1,840.00	
Total				\$2,666.04

Landlord's Position

21. Item # 1: Door (\$40.00) - The landlord testified that an interior door was kicked in on the bottom left hand side and he submitted a photograph of the door to support his claim (exhibit 21). The landlord is claiming \$40.00 to cover the cost of purchasing a used interior door on Kijiji (see ad LL#6).

22. Item # 2: Garbage removal (\$240.00) - The landlord testified that several bags of garbage were left behind after the tenant vacated and he is seeking 3 hours of self-labor for 2 people to remove the garbage at a rate of \$20.00 per hour. This equates to \$120.00 as opposed to \$240.00 as per the damage ledger above. The tenant stated that it took a couple of trips to the landfill. The landlord submitted photographs of the garbage to support his claim (exhibits 7, 8 and 14). The landlord stated that most bags contained used cat litter.

23. Item # 3: Tub repair (\$431.25) – The landlord testified that the bathtub was kicked in causing a hole in the outside of the tub and he is seeking reimbursement for the amount that it cost to have the tub repaired. The landlord submitted photographs to support this claim (exhibits 16 and 17) and he also submitted a receipt showing that he paid \$431.25 to have the tub repaired (LL#7).

24. Items # 4 & # 5: Plastering (\$40.00) – The landlord testified that a hole was punched in the wall and other marks were evident on the walls which needed to be plastered (exhibits 19 and 22). The landlord is seeking self-labor for 1 person for 2 hours at \$20.00 per hour.
25. Item # 6: Door pick up and cutting (\$20.00) – The landlord is seeking 1 hour self-labor at \$20.00 per hour to pick up the used door and cut it properly to fit in the space.
26. Item #7: Paint (\$20.36) – The landlord is seeking \$20.36 to cover the cost of paint that he purchased to paint the wall where the hole and other marks were. The landlord submitted a copy of the paint receipt to support his claim (LL#8).
27. Item # 8: Sanding and Priming (\$30.00) – The landlord is seeking 1.5 hours of self-labor at \$20.00 per hour to sand the wall and prime it before painting.
28. Item # 9: Transition strip (\$23.00) – The landlord testified that when the door got kicked in, the transition strip came of the floor and was broken as a result of the force. The landlord is seeking \$23.00 to cover the cost to replace the strip and he submitted a copy of the receipt to support his claim (LL#9).
29. Item # 10: Door Install (\$80.00) – The landlord testified that he is seeking self-labor to install the door. The landlord stated that it took 2 people 2 hours at \$20.00 per hour to complete the work.
30. Item # 11: Toilet seat and venting (\$91.43) – The landlord testified that the toilet seat and venting for the dryer were removed from the premises. The landlord submitted photographs to support this claim (exhibit 17). The landlord submitted a copy of a receipt to show the cost to replace those items (LL#10).
31. Item # 12: Install dryer vent, cut & install transition strip (\$30.00) – The landlord testified that it took 1.5 hours of self-labor at \$20.00 per hour to install the dryer vent and cut and install the transition strip.
32. Item # 13: Caulk and painting (\$60.00) – the landlord testified that it took 3 hours of self-labor at \$20.00 per hour to caulk and pain the wall and he is seeking \$60.00 for his time.
33. Item # 14: Cleaning (\$1840.00) – The landlord testified that the house needed extensive cleaning which took 2 full days to complete. The landlord testified that cat urine was everywhere and the house had to be sanitized before it could be cleaned. The landlord stated that he hired a company to complete the work and he submitted a copy of the receipt to support his claim (LL#11).

Analysis

34. 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)

35. Item # 1: Door – I accept the landlord's testimony and the evidence put forth showing that the door got kicked in. I accept that the damage occurred as the result of a negligent act

and I find that it is reasonable to pay \$40.00 for a used interior door. I find the tenant is responsible for the cost to replace the door at \$40.00.

36. Item #2: garbage removal – I accept the landlord's testimony and the evidence put forth showing the garbage left behind after the tenant vacated. I find that it is reasonable to claim 3 hours of work for 2 people at \$20.00 per hour to remove all the garbage and make a couple of trips to the landfill. I find the tenant is responsible for the cost to remove the garbage at \$120.00.
37. Item # 3: Tub repair - I accept the landlord's testimony and the evidence put forth showing that the tub was kicked in causing a hole. I accept that the damage occurred as the result of a negligent act and I find that it is tenant's responsibility to reimburse the landlord for the cost to repair the tub at \$431.25.
38. Item # 4 & 5: Plastering - I accept the landlord's testimony that it took 2 hours of his time to plaster the wall in preparation for painting. Based on the size of the hole in the wall, I find that it is reasonable that a person would need 2 hours to plaster it. I find the tenant is responsible for the cost of self-labor to plaster in the amount of \$40.00.
39. Item # 6: Door pickup and cutting - I accept the landlord's testimony that it took him 1 hour to pick up the door and then cut it to fit the area. I can only compensate for the cost of self-labor to cut the door. I find it is reasonable to claim .5 of an hour to cut the door. I find the tenant is responsible for the cost of self-labor to cut the door in the amount of \$10.00.
40. Item # 7: Paint - I accept the landlord's testimony and evidence put forth that it cost \$20.36 for paint to fix the hole in the wall. I find that the tenant is responsible for the cost of paint in the amount of \$ 20.36.
41. Item # 8: Sanding and Priming - I accept the landlord's testimony that it took 1.5 hours of his time to sand and prime the wall in preparation for painting. Based on the size of the hole in the wall, I find that it is reasonable that a person would need 1.5 hours to sand and prime the wall. I find the tenant is responsible for the cost of self-labor to sand and prime the wall in the amount of \$30.00.
42. Item # 9: Transition strip - I accept the landlord's testimony that the transition strip got broken as result of kicking in the door. I accept that the damage occurred as the result of a negligent act and I find that it is tenant's responsibility to reimburse the landlord for the cost to the transition strip at \$23.00.
43. Item # 10: Door install - I accept the landlord's testimony that it took 2 people to install the door however, I do not accept that it took 2 hours to install the door. Compensation has been awarded for the time it took to cut the door and get it ready to install (paragraph 39), I find that it is reasonable to award compensation for 2 people for 1 hour at \$20.00 per hour. I find the tenant is responsible for the cost of self-labor to install the door in the amount of \$40.00.
44. Item # 11: Toilet seat and venting - I accept the landlord's testimony and the evidence put forth showing that the toilet seat was missing. I accept that items missing from the premises such as a toilet seat and venting to the dryer were taken on purpose in a willful act. I find that the tenant is responsible for the cost to replace the toilet seat and the venting at \$91.43.

45. Item # 12: Install dryer vent, cut transition strip (install) - I accept the landlord's testimony that it took him 1.5 hours to cut the transition strip, install it and install the dryer vent. I find the tenant is responsible for the cost of self-labor to install the transition strip and dryer vent in the amount of \$30.00.

46. Item # 13: Caulk and painting - I accept the landlord's testimony that it took 3 hours of his time to caulk and paint the wall. I find that the tenant is responsible for the cost of self-labor to caulk and pain the wall in the amount of \$60.00.

47. Item # 14: Cleaning - I accept the landlord's testimony that the unit needed to be sanitized before the cleaning could begin due to cat urine and I accept the evidence put forth showing that it took professional cleaners 2 full days to finish the job. I find the tenant is responsible for the cost of cleaning the unit in the amount of \$1840.00.

48. In regards to the 14 items listed above, I find that the tenant is responsible to compensate the landlord for his expenses to restore the unit to the way it was prior to the tenancy. The total amount sought by the landlord according to his damages ledger is \$2666.04 however when each item is broken down and added, the total equates to \$2826.04. With this said, I am unable to award an amount greater than what the applicant is seeking in part 5 of his application. Therefore, the total amount awarded for compensation for damages is \$2,666.04.

49. I find the tenant is responsible to pay the landlord \$2,666.04 for damages.

Decision

50. The landlord's claim for compensation for damages succeeds in the amount of \$2,666.04.

Issue # 4: Security Deposit applied against monies owed \$600.00

Relevant Submissions

51. The landlord submitted a copy of the rental agreement showing payment of the security deposit in the amount of \$600.00 on 1-October-2021 (LL#13).

Analysis

52. 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.

53. I find that the landlord has been successful in his claims for rent, damages and late fees (see paragraphs 14, 19 and 49) and as a result the security deposit shall be applied against monies owed.

Decision

54. The landlord's claim for security deposit of \$600.00 applied against monies owed succeeds.

Issue 3: Hearing Expenses \$20.00

55. The landlord paid an application fee of \$20.00 to Residential Tenancies and provided a copy of the receipt (LL#14).

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

Decision

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

Summary of Decision

58. The tenant shall:

Pay the landlord \$3813.64 as follows:

• Rent paid	\$1652.60
• Late fees	75.00
• Damages	2666.04
• Hearing expenses.....	20.00
• Less: Security deposit.....	<u>600.00</u>
▪ Total	<u>\$3813.64</u>

October 13, 2023

Date

Pamela Pennell
Residential Tenancies Office