

Residential Tenancies Tribunal

Application 2023-0811-NL

Decision 23-0811-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 13-February-2024 at 9:16 am.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, attended via teleconference. He called one witness, [REDACTED] who attended via 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 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 (D1) with their application stating that they had served the tenant with notice of the hearing, by registered mail, on 25-January-2024. The tracking number was provided as [REDACTED] According to the Canada Post tracker, notice was provided to the tenant of the delivery and instructions were left as to where to pick up the package, but it has not been retrieved at the time of this hearing. According to the *Residential Tenancies Act, 2018* (the Act) s. 42(6) when a copy of the application is sent by registered mail or express post, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the copy of the application was prepaid and properly addressed and sent. Such evidence was provided (D2, D3). 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 their absence.

Issues before the Tribunal

5. Should the landlord's claim for unpaid rent and late fees be granted?
6. Should the landlord's claim for damages be granted?

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the Act.

Issue 1: Rent and Late Fees

8. The landlord claims that the tenant owes them \$3477.50 in unpaid rent and \$75.00 in late fees. This is supported by a rental ledger the landlord provided (A2), a number of supporting documents showing the tenant's deposits into the savings account the landlord had set up for the purpose of receiving rent (A3), and a copy of the rental agreement (A1) which shows the monthly rent was set at \$525 a month. According to the uncontested evidence, \$3477.50 of unpaid rent accumulated from 2017 to August of 2022 when the lease was terminated, and the tenant vacated.
9. 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*

The rental ledger demonstrates a negative balance well in excess of 35 days. The maximum late fee of \$75 is appropriate.

Issue 2: Damages

10. The landlord claims for the amount of \$1551.82 in damages in relation to a burst pipe. The landlord says the tenant had left the heat on low while he was out of the premises for a period of time including the night of March 21st, 2021. The landlord provided a Government of Canada data report (B1) showing that the temperature that day hit a low of -8.9° C. Thus, the landlord says, the tenant's negligence in failing to use sufficient heat to keep the water in the pipes liquid directly caused the ensuing damage.
11. B2 shows a full list of the damages. First is \$37.50 in labour for the immediate fix of the pipes. The provider of this labour testified at the hearing and corroborated the landlord's testimony. \$112.50 was for the cost of labour to clean up the water and damaged carpet, \$90.00 for the labour to remove and dispose of the damaged flooring, \$112.50 to install the new flooring, \$125 for cleanup, and \$40 for the cost of garbage disposal. Receipts were provided for these services (B5-1, B5-2, B6-1, and B6-2). \$74.74 was charged for

the use of a wet/dry vacuum, \$28.39 for plumbing supplies, \$395.13 for flooring supplies, and \$27.59 for a titanium seambinder. Paid invoices were provided (B4). Finally, \$508.47 was charged for the cost of replacement flooring, for which a receipt (B3) was provided.

Decision

12. The landlord's claim for unpaid rent succeeds in the amount of \$3477.50.
13. The landlord's claim for late fees succeeds in the amount of \$75.00.
14. The landlord's claim for damages succeeds in the amount of \$1551.82.
15. As the landlord has been successful, they are entitled to have their costs covered. In this case, the costs consist of the \$20 application fee and the \$16.32 cost of registered mail, for which a receipt was provided (D3).

Summary of Decision

16. The tenant shall pay to the landlord \$5140.64 as follows:

Unpaid Rent.....	\$3477.50
Late Fees.....	\$75.00
Damages.....	\$1551.82
Hearing Costs.....	\$36.32
 Total.....	 \$5140.64

21-February-2024

Date

Seren Cahill
Residential Tenancies Office