

Residential Tenancies Tribunal

Application 2023-No.0821-NL

Decision 23-0821-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 14-November-2023.
2. The applicant, [REDACTED], represented by [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 tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing ([REDACTED]). 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 he has been properly served. The landlord submitted an affidavit (LL#01) with his application stating that he had served the tenant with notice of the hearing electronically [REDACTED] [REDACTED], on 13-October-2023 at 3:21 p.m. 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 his absence.
5. The landlord amended their application to increase damages from \$3,450.00 to \$3,967.50.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$1,200.00
 - Late Fees \$75.00
 - Damages \$3,967.50
 - Security deposit applied against monies owed \$900.00
 - 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit, and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$1,200.00

Relevant Submissions

9. The landlord submitted a rental agreement (LL#02) with the application. They entered a written term agreement with the tenant from 19-January-2023 until 30-June-2023. The tenant pays \$1,200.00 a month for rent. The rental period is from the 1st day of the month until the last day; rent is due the 1st day of each month. The landlord said that the tenant paid a security deposit of \$900.00 on 19-January-2023 and he is still in possession of the deposit.
10. The landlord submitted a rent ledger (LL#03), which shows that rent was paid each month in full until the 01-June-2023 payment. After the tenant did not pay the June rent the landlord served him with a notice of termination of rental agreement for 18-June-2023. The landlord stated that when he went to the house on 19-June-2023 the tenant had moved and the keys were left on the counter.
11. The landlord stated that the house was left unclean and requiring repairs. He is seeking the full rent for the month of June because the house was unrentable in the condition left by the tenant.

Analysis

12. Non-payment of rent is a violation of the rental agreement (LL#02). I accept the landlord's testimony and evidence that the tenant did not pay rent for June. I also accept that the condition that the home was left in, required cleaning and repairs and rendered the home unrentable. (Paragraphs 34 & 35)
13. The tenant shall pay the landlord the rent owed totaling \$1,200.00.

Decision

14. The landlord's claim for rent succeeds in the amount of \$1,200.00.

Issue 2: Late fees \$75.00

Relevant Submissions

15. The landlord has proven, paragraph 14, that the tenant has been in rental arrears as of 02-June-2023 and is seeking the maximum allowed late fees.

Analysis

16. 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.*

17. As the tenant has been arrears since 02-June-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Damages \$3967.50

Relevant Submissions

19. The landlord stated that he was renting to a father with a teenage son. The landlord had heard from neighbors that the teenage son may have been staying at the rental on his own, for most of the time. The neighbors had told the landlord that there were quads around the property and the father's girlfriend lived in another community about a half and hour away.
20. The landlord submitted the following damages ledger (LL#04):

Item	Description of damages	compensation
i.	Professional cleaning (urine, hair, glass, drugs)	\$1,092.50
ii.	Trash removal	287.50

iii.	Smoke and odor removal	287.50
iv.	Damaged floor transition strip	172.50
v.	Lawn maintenance	230.00
vi.	Plaster and paint repair	460.00
vii.	Couch restoration	230.00
viii.	Damaged door frames	1,150.00
ix.	Replaced stove knob	57.50
x.	Total	\$3,967.50

21. The landlord submitted a file containing 35 pictures showing the condition of the home when he regained possession (LL#05). The landlord explained that the house was completely renovated 5 years ago. He said just before the tenants took possession the place was freshly painted. He also points out that the rental agreement (LL#02) part 11 lists under tenant obligations: No animals or pets, no smoking and no smoking cannabis as well as, responsible for lawn care.
22. The landlord submitted billing (LL#06) for the above damage ledger totaling \$3,967.50. The billing reflects exactly the listed items in the ledger with the same break down of expense; the only amendment is that the landlord included taxes for each item and the billing includes taxes for the full amount.
23. The landlord stated that the place was not cleaned. He indicates that in pictures 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 16, 29, & 32; that the home is not only left unclean, there are dishes in the sink, plates with food throughout the house, dirty dishes inside dressers, feces on the floor, a brown wet unknown substance wasted over the floor, and garbage everywhere. He said that they were told by the neighbours that there was a dog and a cat living there, he believes the feces on the floor was from the dog. He said that they even found needles in with the garbage and on a desk. They were charged the cost of professional cleaning totaling \$1,092.50.
24. In conjunction with the professional cleaning there was garbage left throughout the property that had to be disposed of, (LL#05 pictures: 4, 8, 9, 10, 11, 12, & 13). They were charged \$287.50 for this service.
25. The landlord said that the rental agreement (LL#02) is for a no smoking property. He said that the homeowners have allergies. He said that there was smoking and drug use in the home and provided pictures of drug paraphernalia, cigarette butts and dirty ashtrays (LL#05 pictures: 6, 9, 10 & 30). He also declares that there was a dog and a cat in violation of the no pet policy included in part 11 of the rental agreement (LL#02). The home had to be treated for smoke and odor removal, they were charged \$287.50 for this service.
26. The landlord stated that the transition strip for the flooring going into the laundry room area was damaged and removed (LL#05 picture 13). He said that this was all completed new 5 years ago. They were charged \$172.50 for the replacement and repair.

27. The landlord submitted pictures of the lawn, (LL#05 pictures 32 & 35), displaying that the lawn was not mowed or cared for, they were charged \$230.00 for the lawn to be mowed.
28. The landlord confirmed that the house had been freshly painted just prior to the tenant moving in six months ago. His photos show that there was damage to the paint that required paint and plaster (LL#05 pictures 1, 7, 17 & 24). They were charged \$460.00 for this work to be completed.
29. The landlord showed pictures of the couch (LL#05 pictures 21, 22, & 23). He said that there was something staining the couch that he believes is a bodily fluid. The leg is also broken off the couch. The couch is 5 years old. They had the couch cleaned and repaired, totaling \$230.00.
30. The landlord also submitted pictures of door frames (LL#05 pictures 1,14 & 31) that appear to have been slammed so hard that the frames are damaged and the hinges are bent. He also submitted a picture (LL#05 picture 18), showing that the closet door is off its track. The paid \$1,150.00 to have these repairs completed.
31. Lastly the landlord submitted a picture of the top of the stove (LL#05 picture 5). He explains that the post under the knob (shown in picture) is cracked off. They had to replace the post at a cost of \$57.50.
32. The landlord explained that this house is newly renovated only 5 years ago, the house and the furnishings are all relatively new (5 years old). This home was left in terrible condition, and he is requesting reimbursement of the \$3,967.50 to repair the damages and clean up the mess.

Analysis

33. Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, 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)

34. The landlord has shown through his testimony and photographic evidence that this home was returned in a deplorable condition. The landlord has also met the burden of proof for the cost to repair the house and bring it back into its former condition. Typically, in accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. However, the landlord did not choose to replace any of the property, but instead repair the damages and cleaned up the mess left behind, therefore depreciation is not a factor.
35. I find that the landlord's claim for damages is reasonable considering the condition of the home and determine that the tenant shall pay to the landlord the full amount of compensation sought, \$3,967.50.

Decision

36. The tenant shall pay to the landlord \$3,967.50 in compensation for damages.

Issue 4: Security deposit applied against monies owed \$900.00

Relevant Submissions

37. The landlord stated in paragraph 9 that the tenant paid a security deposit of \$900.00 on 19-January-2023 and he is still in possession of the deposit. The landlord is requesting to retain the security deposit against monies owed.

Analysis

38. The landlord's claim for losses has been successful, paragraphs 14, 18 and 36, he 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

39. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$900.00.

Issue 5: Hearing expenses reimbursed \$20.00

40. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#07) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

41. The tenant shall:

- Pay the landlord \$4,362.50 as follows:
 - Rent \$1,200.00
 - Late fees 75.00
 - Damages 3,967.50
 - Hearing expenses 20.00
 - Security deposit applied (900.00)
 - Total \$4,362.50

The landlord

- Shall retain the security deposit of \$900.00.

November 20, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office