

## **Residential Tenancies Tribunal**

Application 2023-0886-NL

Decision 23-0886-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:54 p.m. on 2-November-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.
4. The tenant was not present or represented at the hearing and I was successful in reaching him at the beginning of the hearing, however he disconnected the call. 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 served the tenant with the notice of hearing electronically by text to; [REDACTED] on 18-October-2023 (LL#1). The applicant also submitted proof of phone number with previous conversation between both parties (LL#2). The applicant also stated that he sent the document via prepaid registered mail ([REDACTED]) on 28-September-2023. Canada Post tracking indicates that the mail was delivered on 4-October-2023. In accordance with the *Residential Tenancies Act, 2018*, this is good service. 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.

### **Preliminary Matters**

5. There is a written month to month rental agreement that commenced on 1-November-2018. The tenant vacated the unit at the latter part of May 2023. Rent was \$650.00 per month and was due on the first of each month. A security deposit of \$325.00 was paid on 29-November-2018.
6. Security deposit will be addressed as the tenant has vacated.

## Issues before the Tribunal

7. The landlord is seeking:
  - Rent paid \$2975.00
  - Compensation for Damages \$3659.73
  - Security deposit applied against monies owed \$325.00

## Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 19; Notice where failure to pay rent, and Section 14; Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*, Section 9: Claims for Damage to Rental Premises.

### Item # 1: Rent paid \$2975.00

#### Relevant Submissions

9. The landlord testified that rent is outstanding in the amount of \$2975.00 and submitted a rental ledger to support his claim (LL#3). See breakdown of ledger below:

Rental Ledger 2023-0886-NL			
Date	Action	Amount	Total
December 31, 2022	Balance	\$325.00	
January 1, 2023	Rent due	\$650.00	\$975.00
February 1, 2023	Rent due	\$650.00	\$1,625.00
March 1, 2023	Rent due	\$650.00	\$2,275.00
March 1, 2023	Payment	-\$600.00	\$1,675.00
April 1, 2023	Rent due	\$650.00	\$2,325.00
May 1, 2023	Rent due	\$650.00	\$2,975.00

#### Landlord's Position

10. The landlord testified that rent is outstanding in the amount of \$2975.00 dating back to December 2022. The landlord stated that he received notice from the tenant's mother in late May stating that her son had vacated the premises. The landlord is seeking outstanding rent up to the end of May 2023.

## Analysis

11. Section 19 of the *Residential Tenancies Act, 2018* states:

### ***Notice where failure to pay rent***

**19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),**

**(b) where the residential premises is**

- i. rented from **month to month**,
- ii. rented for a fixed term, or
- iii. a site for a mobile home, and

*the amount of rent payable by a tenant is **overdue for 5 days or more**, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.*

(4) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the landlord;*
- (b) *state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and*
- (c) *be served in accordance with section 35*

12. Non-payment of rent is a violation of the rental agreement. The landlord testified that there is outstanding rent in the amount of \$2975.00 for the period of December 2022 to May 2023. Rent is required to be paid by the tenant for the use and occupation of the rented premises. The tenant abandoned the premises in late May and as such, the tenant is responsible for the payment of rent up to the end of May 2023.
13. I find that the tenant is responsible for outstanding rent in the amount of \$2975.00 for the period of 1-December-2022 to 31-May-2023.

#### **Decision**

14. The landlord's claim for rent paid succeeds in the amount of \$2975.00.

#### **Issue # 2: Compensation paid for Damages \$3659.73**

##### Relevant Submission

15. The landlord testified that there is damage to the rental unit, and he submitted a list of damages to support his claim. See below as follows (LL#4):

### Cost of repairs for

## Landlord's Position

16. The landlord testified that the above listed items have been identified as damages to the unit caused by negligence on the part of the tenant. The landlord stated that the following items were identified after the tenant abandoned the unit in May 2023. The landlord's position on each item is as follows:

Item # 1: Paint, plaster, rollers, paint tray and liners (\$380.83) - The landlord testified that the entire house needed to be painted with some plastering. The landlord stated that gyproc was torn off the walls and the ceilings needed to be painted as well. The landlord is seeking the cost of paint and other supplies to complete the work.

Item # 2: Labor to plaster and paint (\$700.00) - The landlord testified that it took him 4 full days to plaster and paint and he is seeking \$700.00 in self-labor to complete the work.

Item # 3: Smoke detectors (\$73.94) – The landlord testified that the smoke detectors in the unit are missing, and he is seeking the cost to replace them.

Item # 4: Shower head (\$15.00) - The landlord testified that the shower head is missing, and he is seeking the cost to replace it.

Item # 5: Replacement light fixtures (\$139.96) - The landlord testified that 3 light fixtures were missing from the kitchen, hallway and spare bedroom. He stated that he is seeking the cost to replace them.

Item # 6: Doors (\$360.00) – The landlord testified that 3 interior doors were damaged and had to be replaced. The doors were leading to the spare bedroom, master bedroom and bathroom. The landlord stated that he is seeking the cost to replace the doors.

Item # 7: Door knob (\$30.00) – The landlord testified that the door knob to the closet door in the spare bedroom was missing and he is seeking the cost to replace it.

Item # 8: Vertical siding (\$220.00) – The landlord testified that the siding was destroyed due to the use of a wiper snipper when cutting grass. The landlord stated that he is seeking the cost to replace the vertical siding.

Item # 9: Garbage removal (\$120.00) – The landlord testified that it took him 2 hours to clean up the garbage around the premises and he had to drive 2 hours to bring it to the local dump. The landlord stated that he is seeking 2 hours of his time to clean and 2 hours of his time and gas to drive to and from the dump.

Item # 10: Vanity (\$300.00) – The landlord testified that the bathroom vanity was all burned up and needed to be replaced. The landlord stated that he is seeking the cost to replace the bathroom vanity.

Item # 11: Cleaning (\$320.00) – The landlord testified that it took 9.5 hours of self-labor for 2 persons to clean the unit. The landlord stated that he is seeking \$320.00 for self-labor to clean.

Item # 12: Fridge (\$1000.00) – The landlord testified that the fridge is damaged in that the top door is drove in and the bottom door has a knife or puncture hole in it. The landlord stated that he is seeking the cost to replace the fridge.

## Analysis

17. In accordance with *Residential Tenancies policy 9-3*, the applicant is 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)*
18. The landlord did not present an incoming and outgoing premises condition report with his list of damages. The tenant was not available to dispute any of the items listed above. Each item is analyzed separately based on the landlord's testimony and exhibits. See below:

Item # 1: Paint, plaster, rollers, paint tray and liners (\$380.83) - The landlord testified that the entire house needed to be painted with some plastering required. I asked the landlord when was the last time the house was painted and he responded that it was last painted 5 years ago (2018) just before the tenant moved in and he stated that he had painted it himself. The landlord submitted 2 photographs to show the condition of the walls (LL#5) which only show 2 small areas of the house. One photograph shows extensive damage to the wall and baseboard. The landlord also submitted receipts to support his claim (LL#6).

According to *Residential Tenancies Policy 9-3*; Life Expectancy of Property, interior paint on a rental unit has a life span of 3-5 years. As it has been 5 years since the unit was painted, I find that the painting falls under the *cost of doing business* and as such, I find that the tenant is not responsible for the cost of the paint and painting supplies, however based on the photographs entered into evidence, I find that the tenant is responsible for the plastering that was required. The landlord submitted a copy of a receipt for the cost to purchase the plaster (LL#7). I find the tenant is

responsible for the cost of plaster in the amount of \$31.04.

Item # 2: Labor to plaster and paint (\$700.00) - The landlord testified that it took him 4 full days to plaster and paint and he is seeking \$700.00 in self-labor to complete the work.  $\$700.00 / 4 \text{ days} / 8 \text{ hours per day} = \$21.88 \text{ per hour}$  which is a reasonable rate of pay for self-labor. I find that as the landlord's claim to paint the house was not successful as stated in item #1 above, then the landlord's claim for the cost of the self-labor associated with painting is also unsuccessful. I find the tenant is not responsible for the cost of self-labor to paint the unit.

With regards to the plaster, the landlord's claim to plaster has been successful as stated in item #1 above, and as such, the landlord's claim for the cost of self-labor associated with applying the plaster will also be accepted. As I am unaware of the amount of time it took the landlord to complete the plastering work, I will award a nominal amount to cover the self-labor associated with applying the plaster to the walls. I find that 1/3 of the labor costs can reasonably be associated with the task of plastering. I find that the tenant is responsible for the cost of the self-labor associated with the plaster work required in the amount of \$233.33 ( $\$700.00 \times 1/3$ ).

Item # 3: Smoke detectors (\$73.94) – The landlord testified that the smoke detectors in the unit are missing, and he is seeking the cost to replace them. The landlord submitted a photograph showing the missing smoke detector from the ceiling (LL#8) and he also submitted a receipt showing the cost to purchase 2 smoke detectors at \$73.94 (LL#9). In accordance with Policy 9-3 above, the landlord showed that the smoke detectors were missing, and he also showed the value to replace them, and as such, I find that the tenant is responsible for the cost to replace the smoke detectors at \$73.94.

Item # 4: Shower head (\$15.00) - The landlord testified that the shower head is missing, and he is seeking \$15.00 to replace it. The landlord submitted a photograph showing the missing shower head from the pipe (LL#10), however he stated that he misplaced the receipt. I find that it is reasonable to award \$15.00 to cover the cost to replace the missing shower head. I find that the tenant is responsible for the cost to replace the shower head at \$15.00.

Item # 5: Replacement light fixtures (\$139.96) - The landlord testified that 3 light fixtures were missing from the kitchen, hallway and spare bedroom. He stated that he is seeking \$139.96 for the cost to replace them. The landlord submitted a photograph showing the missing light fixtures (LL#11) and the landlord also submitted a receipt to support his claim (LL#12). In accordance with Policy 9-3 above, the landlord showed that the light fixtures were missing, and he also showed the value to replace them. As such, I find that the tenant is responsible for the cost to replace the light fixtures at \$139.96.

Item # 6: Doors (\$360.00) – The landlord testified that 3 interior doors were damaged and had to be replaced. The doors were leading to the spare bedroom, master bedroom and bathroom. The landlord stated that he is seeking \$360.00 to replace the doors. The landlord submitted 2 photographs showing one door split and another door casing destroyed (LL#13). In the absence of receipts and based on the photographs entered into evidence, I will award a nominal amount of \$300.00 to replace the 3 interior doors. I find that the tenant is responsible for the cost to replace 3 interior doors at \$300.00.

Item # 7: Door knob (\$30.00) – The landlord testified that the door knob to the closet door in the spare bedroom was missing and he is seeking the cost to replace it. The landlord did not submit any photographs or receipts to support his claim. I accept the landlord's testimony that the door knob was missing and I feel it is reasonable to pay \$30.00 to replace a door knob. I find that the tenant is responsible for the cost to replace the door knob at \$30.00.

Item # 8: Vertical siding (\$220.00) – The landlord testified that the siding was destroyed due to the use of a wiper snipper by the tenant while cutting the grass. The landlord stated that he is seeking the cost to replace the vertical siding. The landlord submitted a photograph to show the damage to the siding (LL#14) and the landlord submitted a quote from Castle Building Centres in the amount of \$205.97 to support his claim (LL#15). In accordance with Policy 9-3 above, the landlord was able to show that the siding was destroyed, and he also showed the value to replace it. As such, I find that the tenant is responsible for the cost to replace the vertical siding at \$205.97.

Item # 9: Garbage removal (\$120.00) – The landlord testified that it took him 2 hours to clean up the garbage around the outside of the premises and he had to drive 2 hours to bring it to the local dump. The landlord stated that he is seeking 2 hours of his time to clean and 2 hours of his time and gas to drive to and from the dump. The landlord submitted a photograph to show the garbage around the property (LL#16). Based on the items in the photograph, I find it is reasonable to accept that it took the landlord 4 hours to gather up all the garbage and load it into a truck and make the trip to and from the dump. I find that the landlord is successful in his claim for 4 hours of self-labor, however I cannot award \$30.00 per hour. In accordance with *Policy 9-3; Claims for damage to rented premises*, the landlord will be awarded \$22.50 per hour. I find that the tenant is responsible for the cost of the landlord's self-labor to remove the garbage from the premises at \$90.00 (4 hours x \$22.50).

Item # 10: Vanity (\$300.00) – The landlord testified that the bathroom vanity was all burned up and needed to be replaced. The landlord submitted a photograph of the vanity to support his claim (LL#17). I asked the landlord the age of the vanity and he responded that it was over 15 years old. The landlord submitted a quote from Castle Building Centres showing the cost to replace the vanity at \$344.99.

According to *Residential Tenancies Policy 9-5; Life Expectancy of Property*, a bathroom vanity has a life span of 20 years. With approximately 5 years of life remaining, it is reasonable to award the landlord 25% of the cost to replace the vanity. I find that the tenant is responsible for 25% of the cost to replace the vanity at \$86.25 (\$344.99 x 25%).

Item # 11: Cleaning (\$320.00) – The landlord testified that it took 9.5 hours of self-labor for 2 persons to clean the unit. The landlord submitted 1 photograph of the inside of the oven door. I accept the landlord's testimony that the unit needed to be cleaned however, in accordance with Policy 9-3 above, the landlord did not show to what extent the unit needed to be cleaned. He did not present before and after pictures to support his claim. In the absence of any photographs or testimony as to the condition of the unit before and after the tenancy, I am unable to award any monies for cleaning. I find that the tenant is not responsible for the self-labor costs claimed to clean the unit.

Item # 12: Fridge (\$1000.00) – The landlord testified that the fridge is damaged in that the top door is drove in and the bottom door has a knife or puncture hole in it. The landlord did not submit any photographs of the fridge, nor did he submit a receipt or a quote to show the cost to replace the fridge. I am unaware if the damage to the door is strictly cosmetic or if it affects the smooth running of the fridge. I accept the landlord's testimony that the fridge has damages to the doors, however I do not know the extent of the damages to the fridge and in accordance with Policy 9-3 above, the landlord was not able to show the cost to replace the fridge or replace the doors. As such, I find that the tenant is not responsible for the cost to replace the fridge.

19. In review of all the items listed above and in accordance with *Residential Tenancies* policy 9-3, I accepted the landlord's testimony as the tenant was not in attendance to dispute any claims. However, I did find that the landlord failed to show the value to repair or replace some of the items above.
20. I find that the tenant is responsible to pay the landlord a total of \$1205.49 for damages.

### **Decision**

21. The landlord's claim for compensation for damages succeeds in the amount of \$1205.49.

### **Issue # 3: Security Deposit applied against monies owed \$325.00**

### **Analysis**

22. 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.

23. The landlord testified that a security deposit of \$325.00 was paid in November 2018.

24. I find that the landlord has been partially successful in his claim for rent paid and damages (see paragraphs 14 and 21) and as such, the security deposit shall be applied against monies owed.

### **Decision**

25. The security deposit shall be applied against monies owed. The landlord shall retain the security deposit of \$325.00 to cover rent paid and compensation for damages as per paragraphs 14 and 21 above.

### **Summary of Decision**

26. The tenant shall pay the landlord \$3855.49 as follows:

Rent.....	\$2975.00
Damages .....	1205.49
<b>Less: Security deposit .....</b>	<b>325.00</b>
<b>Total .....</b>	<b><u>\$3855.49</u></b>

November 16, 2023

Date



Pamela Pennell  
Residential Tenancies Office