

Residential Tenancies Tribunal

Application 2023-0888-NL

Decision 23-0888-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:07 a.m. on 30-October-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 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 testified that he served the tenant with the notice of hearing by pre-paid registered mail ([REDACTED]) on 3-October-2023 (LL#1). Canada Post tracking indicates that the tenant did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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-August-2021. Rent is \$950.00 per month due on the first of each month and is secured from NL Hydro and Income Support. A security deposit of \$472.00 was paid on 14-October-2021.

Issues before the Tribunal

6. The landlord is seeking:
 - An order of Vacant Possession of the rented premises
 - Compensation for Damages \$1145.00
 - Security deposit applied against monies owed \$472.00
 - 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*. 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 22; Notice where tenant's obligation not met. 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: Order for Vacant Possession of Rented Premises

Relevant Submission

8. The landlord testified that the tenant is not meeting his obligation to take care of the unit and when given a *Landlord's Request for Repairs* form on 5-September-2023, the tenant failed to complete the repairs requested. The landlord submitted a copy of the "*Landlord's Request for Repairs*" form to support his claim (LL#2). The landlord also submitted a copy of the termination notice given on 10-September-2023 to vacate the premises on 16-September-2023 under Section 22 of the Act (LL#3).

Landlord's Position

9. The landlord stated that he gave the tenant a *landlord's request for repairs* form dated 5-September-2023 to replace the front door lock and repair damage to the front door. He also asked to have chesterfield units and other items on the lawn removed by 8-September-2023.
10. The landlord testified that he entered the premises on 6-September-2023 to determine what other damages might have occurred inside the unit and found that the premises was being occupied by persons other than the tenant. The landlord stated that he is uncertain as to whether or not the tenant is residing at the premises and stated that rent has continued to be paid through the Government of Newfoundland and Labrador.
11. The landlord stated that on 10-September-2023 when the repairs had not been completed, he posted a termination notice on the door on that date to vacate on 16-September-2023 under Section 22 of the *Residential Tenancies Act, 2018*.

Analysis

12. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* states:

Notice where tenant's obligation not met

22. (1) *Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 2 set out in subsection 10(1), the landlord may give the tenant notice requiring the tenant to comply with the condition.*
- (2) *Where a tenant contravenes statutory condition 2 set out in subsection 10(1) within 3 days after the notice under subsection (1) has been served or within a reasonable time, the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.*

13. Statutory condition 2, set out in Section 10.(1) 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.

14. A tenant is responsible to keep the residential premises clean and to repair damage caused deliberately by or through negligence of the tenant. The landlord testified that on 5-September-2023 he posted a list of repairs that he requested to be completed by 8-September and none of the repairs were carried out. The landlord proceeded to give a termination notice on 10-September-2023 under Section 22; tenant's obligation not met with a termination date of 16-September-2023.
15. I find that the damage to the front door was caused by a willful or negligent act, and I find that the tenant has contravened statutory condition 2; obligation of the tenant as stated above by not repairing the damage as requested.
16. I find that the tenant did not meet his obligation to keep the residential premises clean and he failed to repair the damages which was caused by negligent acts of the tenant.
17. In accordance with the *Residential Tenancies Act, 2018*, the termination notice meets the requirements of the Act and is a valid notice.
18. I find that the tenant should have vacated the premises by 16-September-2023.

Decision

19. The landlord's claim for an order for vacant possession of the rented premises succeeds.
20. The tenant shall vacate the premises immediately.
21. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached.
22. The landlord is granted an Order of Possession.

Issue # 2: Compensation paid for Damages \$1145.00

Relevant Submission

23. The landlord testified that there is damage to the rental unit as noticed during a walk through on 6-September-2023 and he submitted a list of damages to support his claim. See below as follows (LL#4):

Damages : Sept. 19, 2023		Results : estimated cost.
1	Front door lock to be replaced	\$75.00
2	Damage to front door and doorbox	\$550.00
3	Chesterfield units etc.left on lawn to be removed	\$100.00
4	Toilet tank cover broken	\$120.00
5	washing machine to be repaired.	\$300.00
6	Total estimate of repairs at this time.	\$1,145.00

Landlord's Position

24. 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 investigated during a walk through on 6-September-2023. The landlord's position on each item is as follows:

Item # 1: Front door lock to be replaced (\$75.00) - The landlord testified that he noticed on 5-September-2023 that the front door lock had been broken off the door. The landlord asked to have the lock replaced when he posted the *request for repairs form*. The landlord stated that the lock was not initially replaced but rather a deadbolt was put on the door. He eventually received a key to the deadbolt but later the doorknob was replaced, and the landlord has not received a key to the new lock. The landlord testified that as of today's date he does not have a key to the unit and no access. The landlord stated that it will cost \$75.00 to purchase a new door lock and have it installed.

Item # 2: Damage to front door and door box (\$550.00) - The landlord testified that the front door had a lot of damage to it in the form of dents similar to if you took a bat to the door and the door box is all split up. The landlord stated that it will cost \$550.00 to purchase a new door and have it installed.

Item # 3: Chesterfield units to be removed from lawn (\$100.00) – The landlord testified that the tenant left a chesterfield, lazyboy chair and a stand-up cabinet along with some other miscellaneous items on the lawn. The landlord testified that he received a letter from the [REDACTED] giving him 6 days to clean the area. The landlord stated that the items were too heavy for him to remove due to medical reasons, and he stated that he had to rent a small loader to remove the items. The landlord stated that it cost him \$75.00 to rent the loader and it cost another \$25.00 for gas to drive to and from the local dump.

Item # 4: Toilet tank cover broken (\$120.00) - The landlord testified that when he inspected the unit on 6-September-2023 he noticed that the toilet tank cover was broken, and he will have to replace the entire toilet. The landlord states that it will cost \$120.00 to purchase a new toilet and install it.

Item # 5: Washing machine (\$300.00) - The landlord testified that the stackable washing machine has not been operational for the past year. The landlord states that he had an agreement with the tenant that he would provide the stackable washer and dryer and the tenant would have 30 days to make him aware of any problems with the appliances. The landlord states that the tenant did make him aware over a year ago that the washer was not working but did not allow him time to come into the unit to look at it. The landlord is seeking \$300.00 to repair the machine.

Analysis

25. 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)*

26. The landlord did not present an incoming and outgoing premises condition report with his list of damages, nor did he have any pictures or receipts to support his claims. The tenant was not available to dispute any of the items listed above. Each item is analyzed separately based on the landlord's testimony. See below:

Item # 1: Front door lock to be replaced (\$75.00) - The landlord testified that he noticed on 5-September-2023 that the front door lock had been broken off the door. The landlord stated that he requested to have the door lock replaced by 8-September which was not completed. The landlord testified that a deadbolt was put on the door and later the lock did get replaced but he was never given a key to the new door lock. The landlord stated that it will cost \$75.00 to purchase a new lock and have it installed. I accept that the door lock needs to be replaced, however I find that changing locks on rental units after tenants vacate falls within the *cost of doing business*. As vacant possession has been awarded (paragraph 19), I find that the tenant is not responsible for the cost to replace the door lock.

Item # 2: Damage to front door and door box (\$550.00) - The landlord testified that the front door had a lot of damage to it in the form of dents similar to if you took a bat to the door and the door box was split. While I accept the landlord's testimony that these damages were incurred and not as a result of normal use, the landlord failed to provide any photographs to show the extent of the damage to the door or the door box. Further, the landlord failed to provide any receipts or quotes to support his claim for compensation. As such, I am unable to determine the extent of the damages to the door or the value to repair or replace the damaged item. For these reasons, I am unable to award any monies for the damaged door.

Item # 3: Chesterfield units to be removed from lawn (\$100.00) – The landlord testified that the tenant left a chesterfield, lazyboy chair and stand-up cabinet along with some other miscellaneous items on the lawn and he stated that he had to rent a small loader to remove it. The landlord stated that the [REDACTED] gave him 6 days to remove the items. The landlord testified that the cost of the loader was

\$75.00, and he is seeking an additional \$25.00 for the cost of gas to bring the items to the dump. I accept the landlord's testimony that the tenant left items on lawn to be disposed. However, the landlord failed to provide photographs of the items on the lawn, and he did not submit a copy of a receipt for the rental use of the loader. As such, I am unable to award any monies for the cost of the loader, but I can award \$25.00 for self-labor to bring the items to the dump. I find that the landlord is successful in his claim to remove the items from the lawn in the amount of \$25.00.

Item # 4: Toilet tank cover broken (\$120.00) - The landlord testified that when he inspected the unit on 6-September-2023 he noticed that the toilet tank cover was broken. I asked the landlord if he was seeking monies to replace the cover, or does he have to replace the toilet and he responded that the toilet will have to be replaced. The landlord is seeking \$120.00 to replace the toilet and have it installed. While I accept the testimony of the landlord that the toilet seat was broken as a result of a wilful or negligent act of the tenant, the landlord failed to provide any photographs of the toilet and as such, I am unable to determine the extent of the damages to the toilet. Further, the landlord did not provide any receipts or quotes to support his claim for the cost to replace the toilet tank cover. Accordingly, I am unable to award the compensation the landlord is seeking.

Item # 5: Washing machine (\$300.00) - The landlord testified that the stackable washing machine has not been operational for the past year, and he is seeking \$300.00 to have the washing machine repaired. The landlord testified that he does not know what is wrong with the washing machine and he also testified that the tenant made him aware of the problem over a year ago. I accept the washer needs to be repaired however, the landlord did not show that the washer was nonoperational due to the tenant, nor did he have a basis for his claim of \$300.00. I find that the landlord is not successful in his claim for \$300.00.

27. I find that the tenant is responsible to pay the landlord a total of \$25.00 to cover self-labor costs.

Decision

28. The landlord's claim for compensation for damages succeeds in the amount of \$25.00.

Item # 2: Hearing Expenses \$20.00

29. The landlord paid an application fee of \$20.00 to *Residential Tenancies*. The landlord provided a copy of the application receipt (LL#5).
30. As the landlord's claim has been partially successful, the tenant shall pay the \$20.00 application fee. I find that the tenant is responsible for the hearing expenses claimed.

Decision

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

Issue # 3: Security Deposit applied against monies owed \$472.00

Analysis

32. 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.

33. The landlord testified that a security deposit of \$472.00 was paid in 2021 (\$372.00 paid by Income Support and the other \$100 was paid by the tenant).
34. I find that the landlord has been partially successful in his claim for damages and fees (see paragraphs 29 and 32) and as such, the security deposit shall be partially applied against monies owed.

Decision

35. The landlord's claim to have the security deposit applied against monies owed succeeds in part. The landlord can retain \$45.00 to cover self-labor as per paragraph 29 and hearing expenses as per paragraph 32.

Summary of Decision

36. The tenant shall pay the landlord \$0.00 as follows:

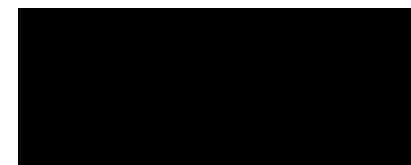
Damages	\$25.00
Hearing expenses	20.00
Less: Partial Security deposit	45.00
 Total	 <u>\$0.00</u>

37. The tenant shall vacate the property immediately.

38. The tenant shall pay to the landlord any costs charged to the landlord by the Office of the High Sheriff should the landlord be required to have the Sheriff enforce the attached Order of Possession.
39. The landlord will be awarded an Order of Possession

November 17, 2023

Date



Residential Tenancies Office