

Residential Tenancies Tribunal

Application 2023-0943-NL

Decision 23-0943-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 16-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" attended by teleconference.
4. The landlord called a witness [REDACTED], hereinafter referred to as "the witness," he attended by teleconference.

Preliminary Matters

5. The landlord submitted an affidavit (LL#01) stating that she had served the notice of today's hearing to the tenant by email ([REDACTED]), on 30-October-2023. The affidavit had an error in the email address, however the landlord also sent in proof of the email being sent and proof of ongoing conversations (LL#02) via email to the same address to confirm that the notice was sent to the tenant's correct email.
6. The tenant joined the hearing at 9:21 a.m.
7. There was a previous mediation for these parties (2023-0083-NL) that was converted into an order (LL#03). Included in this order the landlord was awarded \$1,898.00 for rent up to and including 31-March-2023, as well as the cost charged to the Landlord for the Sheriff to enforce the Order of Possession.
8. The landlord's application will be amended to remove the claim for "other" cost of Sheriff's. Additionally, the claim for rent will only consider rent owed after 31-March-2023.

Issues before the Tribunal

9. The landlord is seeking:

- Rent \$2,489.00
- Damages \$1,035.00
- Security deposit applied to monies owed (\$300.00)
- Hearing expenses \$20.00

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

11. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 14: Security deposit.

Issue 1: Rent \$2,489.00

Landlord's Position

12. The landlord reviewed the terms of the monthly rental agreement (LL#04). They entered the agreement with the tenant beginning 06-December-2022. The tenant initially paid \$942.00 rent a month, however rent with the [REDACTED] is based on the tenant's income. The tenant's rent owed changes monthly based on the tenant submitting proof of his income. 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 \$300.00 on 06-December-2022 and they are still in possession of the deposit.

13. The landlord explained that there was a previous application, and they signed a mediated agreement with the tenant for rent owed. The tenant did not adhere to the payment plan and the agreement then was converted into an Order. The landlord was awarded an Order of Possession that was enforced by the Sheriff's Department on 26-September-2023.

14. The landlord submitted a rent ledger (LL#05). The ledger is for the tenant's entire tenancy. As the landlord was previously awarded rent up to 31-March-2023 (paragraph 6) the ledger is amended to begin 01-April-2023. The ledger is therefore as follows:

Rent ledger
2023-0943-NL

Date	Action	Amount	total
1-Apr-23	rent owed	690.00	690.00
12-Apr-23	payment	-400.00	290.00
26-Apr-23	payment	-400.00	-110.00
1-May-23	rent owed	704.00	594.00
12-May-23	payment	-500.00	94.00

1-Jun-23	rent owed	942.00	1036.00
12-Jun-23	payment	-100.00	936.00
1-Jul-23	rent owed	690.00	1626.00
1-Jul-23	payment	-942.00	684.00
5-Jun-23	payment	-250.00	434.00
11-Jul-23	payment	-100.00	334.00
1-Aug-23	rent owed	690.00	1024.00
9-Aug-23	payment	-1200.00	-176.00
1-Sep-23	rent owed	942.00	766.00
12-Sep-23	payment	-100.00	666.00

15. The landlord is seeking full compensation for rent owed.

Tenant's Position

16. The tenant confirms the details of the rental agreement, however he disputes the landlord's claim. He explained he only signed the mediation agreement to be able to maintain his housing. He doesn't agree with the rent changing based on his income and explained that he wasn't working and couldn't afford the payments.

17. The tenant states that the landlord had told him by email that the Sheriff's Department would be changing the locks. He said that after this he moved out of the house early September and left the keys, he did however state that he did not notify the landlord that he had left.

18. He doesn't agree that the landlord should be trying to recoup the rent payments because he is not able to pay the money back.

Analysis

19. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony and evidence that the tenant did not pay rent \$666.00. The landlord stated that on 26-September-2023 the Sheriff's Department did contact them and informed them that they had changed the locks on 26-September-2023.

20. As the tenant did not inform the landlord that he had moved and later the landlord did regain possession of the premises on 26-September-2023 they will be awarded a daily rate for the 26 days of September. The ledger has been amended to reflect this change, as follows:

Amended rent ledger 2023-0943-NL

Date	Action	Amount	total
1-Apr-23	rent owed	690.00	690.00
12-Apr-23	payment	-400.00	290.00
26-Apr-23	payment	-400.00	-110.00

1-May-23	rent owed	704.00	594.00
12-May-23	payment	-500.00	94.00
1-Jun-23	rent owed	942.00	1036.00
12-Jun-23	payment	-100.00	936.00
1-Jul-23	rent owed	690.00	1626.00
1-Jul-23	payment	-942.00	684.00
5-Jun-23	payment	-250.00	434.00
11-Jul-23	payment	-100.00	334.00
1-Aug-23	rent owed	690.00	1024.00
9-Aug-23	payment	-1200.00	-176.00
1-Sep-23	daily rate 01 - 26 Sept	805.22	629.22
12-Sep-23	payment	-100.00	529.22

Daily rate \$942.00 x 12 months = \$11,304.00
 \$11,304.00 divided by 365 days = \$30.97 a day
 \$30.97 x 26 days = \$805.22

21. The tenant shall pay the landlord the rent owed totaling \$529.22.

Decision

22. The landlord's claim for rent succeeds in the amount of \$529.22.

Issue 2: Damages \$1,035.00

Landlord's Position

23. The landlord submitted a damaged report (LL#06) prepared by her witness.

24. The witness confirmed that he did not provide any photos of the work required. He did state that he recalls the house and that there was an older bed on the top floor that needed to be moved. He said there was a broken rocking chair on the main floor and things left in the cupboards.

25. The witness said that a contractor removed the items and they had two truckloads at a cost of \$400.00 + tax a load.

26. The landlord's damage report (LL#05) is for \$1,035.00.

Tenant's Position

27. The tenant confirmed that he removed most of his belongings and explained that there were only a few things left behind.

Analysis

28. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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)

29. The landlord did not meet the burden of proof to show that the damages existed. They also did not meet the burden of proof that the respondent was responsible or negligent. This burden of proof would normally be met by the landlord providing evidence in the form of pictures and inspection reports. The landlord failed to prove this claim and therefore it does not succeed.

Decision

30. The landlord's claim for damages fails.

Issue 3: Security deposit applied against monies owed \$300.00

Landlord's Position

31. The landlord stated in paragraph 12 that the tenant paid a security deposit of \$300.00 on 06-December-2022 and they are still in possession of the deposit, she is seeking to retain the deposit against monies owed.

Analysis

32. The landlord's claim for loss has been successful, paragraph 22, and they 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

33. The landlord shall retain the security deposit against monies owed in the amount of \$300.00.

Issue 4: Hearing expenses reimbursed \$20.00

34. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#08) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

35. The tenant shall pay to the landlord \$249.22, as follows:

• Rent	\$529.22
• Hearing expenses	20.00
• Less security deposit	(300.00)
• Total.....	<u>\$249.22</u>

The landlord shall retain the security deposit of \$300.00 against monies owed.

November 21, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office