

Residential Tenancies Tribunal

Application 2023-0981-NL

Decision 23-0981-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 23-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 landlord called two witnesses, [REDACTED] and [REDACTED], hereinafter referred to as “witness1 and witness2.”

Preliminary Matters

5. 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 (there was no number provided). 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 her application stating that she had served the tenant with notice of the hearing, electronically [REDACTED] on 22-October-2023 at 5:40 p.m. she also provided proof of this 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.

Issues before the Tribunal

6. The landlord is seeking:
 - Rent \$2,500.00
 - Late fees \$75.00

- Utilities \$239.82
- Damages \$540.00
- Possessions returned \$1,550.00
- Other \$5,500.00

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 11: Rent paid in other than money, and Section 15: Fee for failure to pay rent.

Issue 1: Rent \$2,500.00

Relevant Submissions

9. The landlord stated she entered a written term agreement with the tenant beginning 01-July-2023 until 30-June-2024. The tenant pays \$2,500.00 a month rent, for the rental of the main house as well as the in-law suite. 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 did not pay a security deposit.
10. The landlord said that she, her father and witness1 had hired the tenant to do repairs. She lives out of province, and she was interested in renting both the house and in-law apartment, however the house required work.
11. The tenant reached out to the landlord and made an offer. She provided a copy of the text (LL#03). The text is of the tenant requesting to “rent both apartments and he would sublease the basement apartment himself. He would pay \$2,500.00 for the full house and pay the oil and power bill... in return he would do full property management – mowing the grass, snow removal, and all repairs needed.” Witness 1 confirmed that the tenant reached out to her, and inquired if the landlord would be interested in this arrangement.
12. The landlord said that this offer was almost too good to be true. This would mean she would only have to deal with one tenant and he would take care of the house and the other rental.
13. She said that the tenant said that the repairs would cost \$4,050.00; she paid the tenant \$1,550.00 (LL#22) on 01-July-2023 and he moved into the house. The payment of the \$1,550.00 plus the first months’ rent of \$2,500.00 were in payment for the painting and minor repairs of the entire home.
14. The landlord provided the rental ledger (LL#04) as follows:

Rent ledger
2023-0981-NL

Date	Action	Amount	total
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1-Jul-23	Rent due	2500.00	2500.00
1-Jul-23	Credit for work promised	-2500.00	0.00
1-Aug-23	Rent due	2500.00	2500.00
3-Aug-23	payment	-1000.00	1500.00
4-Aug-23	payment	-1000.00	500.00
5-Aug-23	payment	-500.00	0.00
1-Sep-23	Rent due	2500.00	2500.00

15. The landlord explained that she had given the tenant a termination notice for failure to pay rent with a termination date of 17-September-2023. She confirms that he did move at that time. She is seeking the full months rent due to the condition of the home when she received it back.
16. She is seeking full compensation for rent owed.

Analysis

17. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony that the tenant did not pay rent for September as indicated in the rent ledger. Rent however is paid for the use and enjoyment of the property, as the tenant moved out on 17-September-2023 I will find for rent up to and including that date.
18. The daily rate is calculated as follows:
 - $\$2,500.00 \times 12 \text{ months} = \$30,000.00$
 - $\$30,000.00 \text{ divided by } 365 \text{ days} = \82.19 a day
 - $\$82.19 \times 17 \text{ days} = \$1,397.23 \text{ rent for 01- 17 September}$
19. The tenant shall pay the landlord \$1,397.23 for September rent.

Decision

20. The landlord's claim for rent succeeds in the amount of \$1,397.23.

Issue 2: Late fees \$75.00

Relevant Submissions

21. The landlord has proven in paragraph 20 that the tenant has been in rental arrears as of 02-September-2023 and she is seeking the maximum allowed late fees.

Analysis

22. 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.*

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

Decision

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

Issue 3: Utilities \$239.82

Relevant Submissions

25. The landlord provided a utilities ledger (LL#05) as well as the NL Power billing (LL#06) showing utilities owed from 01-July – 31-August-2023 as follows:

Billing period	compensation
July 1 – 31	\$108.25
August 1 – 31	131.57
• Total	\$239.82

26. The landlord is seeking full compensation for utilities owed.

Analysis

27. The landlord has shown in the rental agreement (LL#02) and the tenant's text (LL#03) to the landlord suggesting the rental arrangement that the tenant is responsible to pay the utilities for the home.

28. I find that the tenant shall pay \$239.82 to the landlord for utilities.

Decision

29. The landlord's claim for utilities succeeds in the amount of \$239.82.

Issue 4: Damages \$540.00

Relevant Submissions

30. The landlord submitted a damages ledger (LL#07) for compensation claimed for damages, as follows:

Damages	Compensation
2 couches left outside – full of dirt and mold	\$200.00
Vanity painted with white wall paint	100.00
Garbage left outside	240.00
• Total	\$540.00

31. The landlord stated that there were some belongings left into the house that belonged to her. She said that when she rented to the tenant she offered to put these things in storage, however, he requested for some of her belongings to be left in the home.

32. She said that when they regained possession of the home, her two couches were left outside. She doesn't know why they would be placed in the yard. She provided photos (LL#08 & LL#09). In the photos you can see that although the couches were covered with a tarp, they were full of mold and dirt. The landlord explained that she had purchased these used and she valued the couches at \$200.00.

33. The landlord also provided a picture of a vanity (LL#10). She said, as can be viewed in the picture, that this vanity was originally with brown wood finish. When they received it back, it had been painted with a white wall paint. She said that because the original finish was not prepped and only covered with wall paint, the paint is lifting and peeling. This was also a used furniture piece, and she has valued it at \$100.00. Witness2 confirmed that the paint was lifting and peeling, he said that the furniture could be saved if it was stripped and refinished, however this would take a lot of time.

34. Lastly, she said that there was a pile of building supplies in the backyard. She explained that that debris is not from her home. She clarified that the tenant was for the most part painting the home not doing construction. She said that she suspects that the wood and building supplies are probably from his work. She provided a picture (LL#11) as well as the quote (LL#12) from the individual they hired to remove and dispose of the debris for \$240.00. Witness2 said that there was additional garbage left with household garbage that had attracted rodents, he explained that he removed that garbage himself.

35. The landlord is seeking \$540.00 in compensation for damages.

Analysis

36. 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:

1. Obligation of the Landlord -

(a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

(b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

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)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential Tenancies policy 9-6.

37. The landlord has shown through both her and her witness' testimony, as well as photos and evidence that the damages occurred. She did not provide evidence of the value of the furniture and was unable to pinpoint the exact age because she had purchased these items used. I assess her claim as reasonable for the cost of replacement of these items and accept she has factored life expectancy and depreciation in her valuation. I find that the tenant shall pay to the landlord the full amount of compensation sought, \$540.00.

Decision

38. The landlord's claim for damages succeeds in the amount of \$540.00.

Issue 5: Possessions returned \$1,550.00

Relevant Submissions

39. The landlord said that in addition to the furniture that was damaged, the tenant also took some of her items when he moved. She provided a compensation ledger for the items that are missing as follows:

Missing item	Evidence #	Compensation
i. Large mirror	LL#14	\$200.00
ii. Abstract Art painting	LL#15	200.00
iii. Abstract art painting	LL#16	200.00
iv. Quidi Vidi painting	LL#17	300.00
v. Cat painting	LL#18	300.00
vi. Grandfather clock	LL#19	200.00
vii. Front door pin pad lock		150.00
Total		\$1,550.00

40. The landlord supplied pictures of the missing items, she said that when the tenant took occupancy, he asked could some of her décor remain and those items were left on the walls. She assumes they were taken off the walls because the tenant had made a promise of painting the house for his reduction in rent. Nonetheless, when he moved, he must have taken the items.
41. The landlord said that the framed art (iv & v) was given to her by her father. Witness2 said that he did give these as Christmas gifts and that they cost between \$300.00 and \$400.00 each.
42. She said that the grandfather clock was a gift from her mother's home to her.
43. Witness2 explained that he did the initial walk through with the tenant, the tenant had shown an interest in the [REDACTED] painting and told witness2 that he grew up in that community. At that time, the tenant requested that the above items could remain on the walls and the landlord agreed to this.
44. The landlord explained that there was a lock on the front door, it was older, and the tenant requested to replace it. They purchased a new keypad lock for the front door and gave it to the tenant for him to change out the old lock. The tenant never installed the lock, and it was taken when he moved. Witness2 said that he was the one who had purchased and delivered the new lock to the tenant, he recalls the price was around \$149.97.
45. The landlord stated she would prefer the return of these items; however she is unable to locate the tenant and now she is instead seeking compensation for the items that have been taken.

Analysis

46. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant must establish that his/her account of events are more likely than not to have happened.
47. The landlord has shown that the décor items she is claiming are her property. Her witness testimony details how the landlord came to own the property as well as how the tenant requested for the décor to remain during his rental period. I accept her testimony

and evidence and find that based on the balance of probabilities the property was missing when she regained possession of the property and the tenant is responsible for that loss.

48. Unless there was some explicit agreement that the tenant was permitted to remove any furnishing after the tenancy ended, there is an implied agreement that they are to be left at the unit, in the same state in which they were when the tenant moved in. The tenant had no claim to the items that were taken.
49. In addition to the décor that the landlord is missing, I also accept, that the lock was never installed and is missing, I also accept the landlord's claim for that item.
50. As previously stated in paragraph 38, I assess the landlord's claim as reasonable for the cost of replacement of these items. I find that the tenant shall pay to the landlord the full amount of compensation sought, \$1,550.00.

Decision

51. The landlord's claim for compensation for missing items succeeds in the amount of \$1,550.00.

Issue 6: Other \$5,500.00

Relevant Submissions

52. The landlord submitted a quote (LL#20) for \$5,500.00 for the following repairs on the home: installation of doors, plaster and paint the whole house three times, and painting windows, trim and doors.
53. The landlord had reached an agreement with the tenant that he would complete the home repairs and manage the property for reduced rent. She said that the tenant told her the cost of the renovations would be \$4,050.00, therefore the first month she paid him \$1,550.00 (LL#22) and his first month's rent of \$2,500.00; as stated in paragraph 13. The tenant had promised to do some minor repairs and paint the entire house, both units.
54. The landlord explained that the tenant did complete the work on the in-law suite. Witness2 said that the tenant did this work first because he was planning on renting this unit and wanted it ready for a new renter. He had not done the work on his own rental area because this was his space and there was no immediate need for that work to be done.
55. After the tenant moved, the work for the upstairs was still required. The landlord submitted the quote of \$5,500.00, from the person that they hired to do this work (LL#30). As this work was the tenant's responsibility, the landlord is seeking compensation for her cost to pay another individual to complete the work promised by the tenant.

Analysis

56. The landlord has shown that the tenant is paying rent for the two units, he was provided the reduced amount of rent for renovations and management of the rental. The landlord has not provided a detailed breakdown of the value of each cost of the renovations and of the property management.
57. The landlord stated that the tenant valued the cost of the renovations for \$4,050.00 which was paid in rent and cash the first month. I'm valuating the cost of the renovation at this amount, as allowed in Section 11 of the *Residential Tenancies Act, 2018*, is as follows:

Rent paid in other than money

11. (1) Where rent is payable in part or in whole in other than money, a landlord shall give to the tenant a written document, signed by the landlord, specifying the payment in other than money and valuing in money each item contained in the payment.

(2) The written document referred to in subsection (1) may form part of a written rental agreement.

(3) Subsection (1) applies whether rent is payable in other than money on one or more occasions or on a regular basis.

(4) Where a landlord fails to value in money each item contained in the payment under subsection (1), the director may, upon hearing an application under section 42, value each item contained in the payment.

(5) Where there is no written document which provides for payment of rent in whole or in part in other than money, the director may, upon hearing an application under section 42, determine whether an agreement exists between the parties and may value in money each item contained in the payment.

58. With the value of the renovation being determined as \$4,050.00, I will determine that the cost of property management is part of the rent each month and therefore is not relevant in this compensation.
59. I accept that a new contractor may demand (LL#20) for \$5,500.00 to complete the renovation upstairs, however this also plays no role in the decision as renovations are a cost of the landlord not the tenant.
60. The landlord's loss in this instance is the loss of promised work already paid in rent and cash totaling \$4,050.00. This work was not fully completed by the tenant. The landlord acknowledged that the in-law suite has been completed, however the main apartment was not. As there is no break down of all work expected other than minor repairs and painting of the two units; I will award a fee of 50% of the paid expense be reimbursed to the landlord by the tenant totaling \$2,025.00 for work not completed as promised.

Decision

61. The landlord's claim for compensation for work not completed succeeds in the amount of \$2,025.00.

Issue 7: Hearing expenses reimbursed \$20.00

62. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#23) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

63. The tenant shall pay to the landlord \$5,847.05, as follows:

- Rent \$1,397.23
- Late fees 75.00
- Utilities 239.82
- Damages 540.00
- Missing items 1,550.00
- Compensation for repairs 2,025.00
- Hearing expenses 20.00
- Total **\$5,847.05**

December 14, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office