

Residential Tenancies Tribunal

Application 2023-0983-NL
2023-1028-NL

Decision 23-0983-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 1:54 p.m. on 04-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that she served the landlord with notification of today’s hearing on 20-October-2023 electronically. The landlord submitted an affidavit (LL#01) stating that he served the tenant with notification of today’s hearing on 07-November-2023 electronically. Both parties confirmed receipt of notification as stated.

Issues before the Tribunal

5. The tenant is seeking:
 - Security deposit returned \$975.00

The landlord is seeking:

- Rent \$1,300.00
- Late Fees \$75.00
- Damages \$1,639.14
- Security deposit retained against monies lost \$975.00
- Hearing Expenses \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 12: Future rent, Section 13: Rent for fixed term rental agreement, Section 14: Security deposit, Section 15: Fee for failure to pay rent and Section 18: Notice of termination of rental agreement.

Issue 1: Rent \$1,300.00

Landlord's Position

8. The landlord submitted the rental agreement (LL#02) held with the tenant. They entered a written term agreement from 01-December-2022 – 30-November-2023. The landlord states that the tenant pays \$1,300.00 a month for rent which is due the first day of the month. He confirms that she paid a security deposit of \$975.00 and he is still in possession of the deposit.
9. The landlord confirms that the tenant paid \$4,875.00 up front. He said he told the tenant that this wasn't required, but she paid it anyway. He said he applied the payment to her first three months' rent and her security deposit.
10. The landlord states that the tenant moved out the end of September. He said that she did not give him the required two months' notice and he could have accepted this, but when he attempted to show the apartment, the tenant refused to give him permission to have viewings.
11. The landlord said that he had 5 or 6 viewings set up and that the tenant told him that if he came to the apartment, she would call the police and charge him with sexual assault.
12. He said after she moved, he paid to have the repairs and cleaning done, once completed he listed the apartment on Kijiji, the middle of October, and the house was rented 01-November-2023.
13. The landlord said the rent was paid up to the end of September. He submitted a rent ledger (LL#03). He is seeking lost rent for October due to no notice and the refusal to permit him to show the apartment and find a new tenant.

Tenant's Position

14. The tenant confirms the terms of the rental agreement as stated by the landlord. The tenant submitted confirmation of her initial payments \$3,000.00 on 29-November-2023 (TT#02) and \$1,875.00 on 30-November-2023 (TT#03). The tenant said that she is from Ontario and that in that province you pay upfront for rent and security deposit. She said that the landlord told her that this is illegal here, however she said he still demanded three months' rent and the security deposit up front.
15. The tenant said that she had personal things going on and needed to move. She told the landlord in early September that she was moving the end of the month. She said

that he agreed to this move and that the issue of notice was only raised when she refused to allow him to show the apartment.

16. The tenant said she didn't permit him to show the apartment to new renters because she was moving and busy and didn't have time to have the apartment shown.

Analysis

17. Both parties confirm that rent was paid in advance for the first three months' rent. The landlord is not permitted to request advance payment or any lump sum payment, he should not have accepted this money. In accordance with Sections 12 & 13 of the Residential Tenancies Act, 2018,

Future rent

12. (1) A landlord shall not require a tenant to make, or accept from a tenant,

(a) a prepayment of the last week's or the last month's rent; or

(b) a single rental payment that is greater than any other regular rental payment required under the rental agreement.

(2) Notwithstanding subsection (1), a rental agreement may provide for the delivery of a post-dated payment method for the payment of rent.

Rent for fixed term rental agreement

13. Where a residential premises is rented for a fixed term, a rental agreement for the residential premises shall provide for payment of rent by equal monthly instalments, whether or not the total amount of rent payable for the term is stated.

18. Although this payment should not have been accepted, the fact remains that it was both paid and accepted. The parties agree that the monies paid for rent was applied to rent from December – February; as during this time the tenant did use and enjoy the premises, this matter no longer bears any relevance in the determination of the issue at hand; October rent.
19. Both parties confirm that the tenant informed the landlord in September that she would be ending her rental agreement and moving the end of the month. Both parties also confirm that this became an issue once the tenant impeded the landlord from mitigating his loss and stopped him from showing and renting the apartment in October. The landlord is seeking rent from the tenant in lieu of that loss.
20. The term rental agreement from 01-December-2022 – 30-November-2023 is covered in Section 18, of the Residential Tenancies Act, 2018, as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) *not less than 7 days before the end of a rental period where the residential premises is rented from week to week;*
- (b) *not less than one month before the end of a rental period where the residential premises is rented from month to month; and*
- (c) ***not less than 2 months before the end of the term*** where the residential premises is rented for a fixed term.

.....

(5) Notwithstanding subsections (1) to (3), a notice of termination is not required to be given where a landlord and a tenant agree in writing to terminate the rental agreement on a specific date.

.....

21. In a term agreement Section 18 determines that neither party can end the agreement before the end of the term; in this case 30-November-2023. The tenant can only give the landlord notice 2 months before 30-November-2023 that she will end the agreement. The only exception to this is in the case of a written agreement between the two parties stating that they both agree to end the agreement on a specific date. The tenant's notice is not for the end of the agreement and there is nothing in writing stating that the two parties agree for the tenancy to end 30-September-2023. I find that there is not a valid termination notice for the end of this agreement.
22. When a tenant is moving it is expected that with appropriate notice the landlord shall be able to mitigate his loss and show a rental to his potential new tenants. As determined in Section 10 of the *Residential Tenancies Act, 2018*, below:

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:

....

5. *Entry of Residential Premises* - Except in the case of an emergency, the landlord shall not enter the residential premises without the consent of the tenant unless

- (a) ***notice of termination of the rental agreement has been given and the entry is at a reasonable time for the purpose of showing the residential premises to a prospective tenant or purchaser and a reasonable effort has been made to give the tenant at least 4 hours' notice;***
- (b) *the entry is made at a reasonable time and written notice of the time of the entry has been given to the tenant at least 24 hours in advance of the entry; or*
- (c) *the tenant has abandoned the residential premises under section 31.*

23. As the tenant did tell the landlord she was moving, and she did prohibit him from showing the apartment, she did not provide him with the opportunity to mitigate his loss of rent. Additionally, in consideration of the damages considered in Issue 3, the landlord acted reasonably in repairing, cleaning and the advertising the rental in a reasonable time frame. He did secure renters for November. I find that the tenant's actions caused

the loss of rent for October and she shall reimburse the landlord for this loss totaling \$1,300.00.

Decision

24. The landlord's claim for rent succeeds in the amount of \$1,300.00.

Issue 2: Late Fees \$75.00

Relevant Submissions

25. The landlord has proven, paragraph 24, that the tenant has been in rental arrears as of 02-October-2023 and is seeking the maximum allowed late fees.

Analysis

26. 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.*

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

Decision

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

Issue 3: Damages \$1,639.14

Landlord's Position

29. The landlord said that when he received the house back it required cleaning and that the tenant had a dog who did damages. The landlord points out that the dog is in violation of

part 11 of the rental agreement (LL#02). He submitted a damages ledger (LL#04), as follows:

#	Damages	Compensation
I.	3 broken window blinds	300.12
II.	• Replacement labour for blinds	75.00
III.	Baseboards and window trim chewed by dog - baseboards	323.84
IV.	• Paint and kit	62.03
V.	• Caulking	14.12
VI.	• Removal and installation	200.00
VII.	Bathroom door handle	62.03
VIII.	• Replacement labour	25.00
IX.	Kitchen countertops plug displaced repair	25.00
X.	Two dump runs for garbage removal	100.00
XI.	Cleaning (2 people x 6 hours)	360.00
XII.	Sink clog (2 hours personal time)	46.00
XIII.	Store run for supplies (2 hours personal time)	46.00
XIV.	Total	\$1,639.14

30. The landlord provided pictures showing that there were 3 blinds that were broken (LL#06 – 08). He said that the place was remodeled in 2022 and that everything in the house was replaced at that time. He provided a receipt for the cost of the blinds \$300.12 (LL#09) and a receipt for the labour to install them \$75.00 (LL#05).
31. The landlord provided pictures showing that the baseboards were chewed by the dog (LL#11 – 17). He said that he could not find the same baseboards and had to redo the entire area for the baseboard to match. The damages were to approximately 3 baseboard lengths, but he had to purchase 8 lengths costing \$323.84. He also had to purchase paint at \$62.03 and caulking at \$14.12. The cost to install the baseboards was \$200.00. He provided receipts for the baseboard and supplies (LL#10) as well as the receipt (LL#05) for the labour.
32. The landlord said that the downstairs bathroom door handle was broken he submitted a picture (LL#18), showing that the handle is spaced apart. The landlord stated that the inside mechanism was broken. He provided a receipt for the new handle \$62.03 (LL#10) and the receipt for the labour to have it replaced \$25.00 (LL#05).
33. The landlord provided a picture of an electric plug that is sticking out from the wall (LL#18) as well as the receipt for labour to have the plug set back in place \$25.00 (LL#05).
34. The landlord submitted pictures of about 6 of bags of garbage left on the back step (LL#20) as well as pictures of garbage left throughout in the house (LL#19, LL#25 & LL#26). He provided a receipt for the cost of 2 dump runs \$100.00 (LL#05).

35. The landlord provided several pictures showing that the house required cleaning (LL18 – 20 & LL#22 – 26). The landlord submitted a receipt for \$360.00 for the home to be cleaned (LL#21).
36. The landlord stated that the P-trap was clogged and had to be flushed out. He provided a picture (LL#22) showing the sink. He repaired this himself, in his damages ledger he was seeking 2 hours \$46.00 however during the hearing he sought 1 hour at \$23.00 personal time.
37. The landlord is also seeking a personal rate for the time he spent picking up the supplies, as in the above paragraph he was seeking 2 hours \$46.00 however during the hearing he sought 1 hour at \$23.00 personal time.

Tenant's Position

38. The tenant questions whether the blinds that were replaced were the same quality as the ones that were damaged. She believes that the original blinds could be purchased for much less. She said that she did purchase blinds for the kitchen that she left behind but acknowledged that those were not the blinds in question.
39. The tenant doesn't agree that she should have to pay for 8 lengths of baseboard if there was only damage to 3 lengths of baseboard.
40. The tenant was confused by the handle that the landlord was claiming, she said that the handle off the upstairs door was impacted by the barn style doors, she acknowledged that the handle sought is for a different door.
41. The tenant doesn't know what is wrong with the electric plug in the kitchen, she said some of the plugs didn't work, but there were lots of plugs so she would just use another.
42. The tenant questions why there were two dump runs she stated she missed garbage day and put two bags of garbage out on the back step.
43. The tenant said that she finds it interesting that the receipt for cleaning is a handwritten receipt.

Analysis

44. 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)

45. The landlord has shown through his testimony and photographic evidence that this home was damaged and not adequately cleaned. It is incumbent on the tenant to return the rental in the same condition it was received. The landlord gave undisputed testimony that the home was completely renovated, and everything was new when the tenant moved in. Typically, in accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property, however, as the property was completely redone less than one year ago depreciation will not be factored into the decision.

46. The landlord has shown evidence of damages and proof of the cost of the repair for the below claims. I find he will be fully compensated for those claims totaling \$945.15.

• Window blinds	\$375.12
• Bathroom handle	87.03
• Two dump runs.....	100.00
• Cleaning	360.00
• Store run personal time	<u>23.00</u>
• Total	<u>\$945.15</u>

47. The landlord has shown that the tenant had a dog who chewed about 3 lengths of the baseboard. The tenant did not dispute this damage; she did question why she was charged for 8 lengths of baseboard instead of three. The landlord had stated that the baseboard that was in the room was no longer available and that he had to purchase a different style of baseboard. I accept that the landlord had to replace the board, but I find that the tenant shall only pay 3/8's of the cost of the repair which is her share of the damages. The total cost of this repair was $\$599.99 \times \frac{3}{8} = \225.00 .

48. The landlord applied for the cost of resetting the countertop plug. The evidence submitted (LL#18) does show that the plug is out from its setting in the wall. The wall behind has tile and it appears that the plug was not affixed correctly to the wall. I do not accept that this damage is willful or negligent and the landlord's claim for the resetting of the plug fails.

49. The landlord also claimed the cost of flushing the p-trap. It is clear in the submitted photo (LL#22) that the sink was clogged. I do not accept that this was due to a willful or negligent act of the tenant. It appears that the clog developed over time and the clearing of the clog would be home maintenance; subsequently the burden of the landlord. The landlord's claim for personal time to clear this drain fails.

50. I find that the landlord's claim for damages succeeds in the amount of \$1,170.15, for the following:

• Window blinds	\$375.12
• Bathroom handle	87.03

- Two dump runs..... 100.00
- Cleaning 360.00
- Store run personal time 23.00
- Baseboard 225.00
- Total **\$1,170.15**

Decision

51. The landlord's claim for damages succeeds in the amount of \$1,170.15.

Issue 4: Security deposit retained \$975.00

Issue 5: Security deposit returned \$975.00

Relevant Submissions

52. The landlord stated in paragraph 8 that the tenant paid a security deposit of \$975.00 at the start of the tenancy. Both parties are claiming the security deposit.

Analysis

53. The landlord's claim for losses has been successful, paragraphs 24, 28, 51 and 55, 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

54. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$975.00.

Issue 6: Hearing expenses reimbursed \$20.00

55. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#27) and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.

Summary of Decision

56. The tenant shall pay to the landlord \$1,590.15, as follows:

- Rent \$1,300.00
- Late fees 75.00
- Damages 1,170.15
- Hearing expenses 20.00
- Less security deposit (\$975.00)
- Total \$1,590.15

The landlord shall retain the security deposit of \$975.00 against monies owed.

December 12, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office