

Residential Tenancies Tribunal

Application 2023-1039-NL

Decision 23-1039-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:14 a.m. on 26-February-2024.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “the landlords” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as “the tenants” did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing. I was able to reach tenant 2 by telephone, who stated that he was aware of the hearing but did not consent to the hearing before disconnecting 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 notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as they have been properly served. The landlords submitted 2 affidavits with their application stating that they had served the tenants separately with the notice of hearing electronically by text to: [REDACTED] on 12-February- 2024 (LL#1). The landlords submitted proof of telephone number, as a means to communicate with the tenants (LL#2). The landlords testified that they were advised by the tenants that [REDACTED] was the only number they could use to communicate with both tenants. In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
5. There was a verbal month to month rental agreement which commenced on 1-July-2018. The tenants vacated the unit on 3-August-2022. Rent was \$1100.00 per month, due on the first day of each month. A security deposit of \$500.00 was paid on 1-July-2018 and is in the landlord’s possession.

6. The hearing date is not within the 1-year deadline after the tenants vacated the unit; however, the application for dispute resolution was received and paid for within the 1-year timeframe and as such, the hearing proceeded (LL#3).

Issues before the Tribunal

7. The landlord is seeking:
- Rent paid \$3500.00
 - Late fees \$75.00
 - Utilities \$1531.80
 - Compensation for damages \$5363.88
 - Hearing expenses \$160.00
 - Security deposit applied against monies owed \$500.00

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*.
9. Relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of fees.

Issue # 1: Rent Paid \$3500.00

Relevant Submission

10. The landlords testified that rent is outstanding in the amount of \$3500.00 dating back to April 2022. The landlords submitted a copy of a rental ledger to support their claim (LL#4). See partial rental ledger below:

14-May-22	Payment		-\$100.00	\$0
14-May-22	April Rent	\$1,100.00	-\$300.00	\$800.00
11-June-22	Payment		-\$1,000.00	+\$200.00
11-June-22	May Rent	\$1,100.00	-\$200.00	\$900.00
2-July-22	Payment		-\$700.00	\$200.00
	June Rent	\$1,100.00		\$1,100.00
	July Rent	\$1,100.00		\$1,100.00
	August Rent	\$1,100.00		\$1,100.00
			Balance Outstanding	\$3,500.00

Landlord's Position

11. The landlords testified that the tenants were expected to vacate the unit on 31-August-2022 as a standard termination notice was given for that date (exhibit 14). The landlords testified that the tenants vacated the unit on 3-August-2022 without any notice and they are seeking outstanding rent in the amount of \$3500.00 to be paid in full.

Analysis

12. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises. Tenants are required to give not less than one month's notice before the end of the rental period. The landlords testified that the tenants did not give proper notice that they would be leaving early and submitted a copy of text messages from the tenants dated Thursday, 28-July-2022 stating that they will be done on Sunday and will have everything out by Tuesday (exhibit 2, page 7). As this is not proper notice, I find that the tenants are responsible for outstanding rent up to the end of August 2022.
13. In review of the rental ledger, I find that there is an error in the addition /subtraction of the numbers and the outstanding balance should be \$3300.00 in accordance with the listed debits and credits. I find that the tenants are responsible for outstanding rent from 1-April to 31-August-2022 in the amount of \$3300.00.

Decision

14. The landlord's claim for rent paid succeeds in the amount of \$3300.00.

Issue # 2: Late Fees \$75.00

15. 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

16. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

17. The landlord's rental ledger shows that the tenants have been in arrears since 1-April-2022. I find that the maximum allowable late fee of \$75.00 as set by the Minister is a legitimate charge as stated above.

Decision

18. The landlords claim for late fees succeeds in the amount of \$75.00.

Issue # 3: Utilities \$1531.80

Relevant Submission

19. The landlords testified that utilities are outstanding in the amount of \$1531.80. The landlords submitted a utility ledger to support their claim (LL#5). See utility ledger below:

Submitted by:

Date:

June 22, 2023

Applicant:

Respondent:

Item#	Description of Utility Charges	Compensation Claimed
E.g.	January 1-31, 2020 - Newfoundland Power bill	\$ 0.00
1	Replace oil in the tank. Receipt of Oil – Sept. 15/22 (\$500.00) (900 L Tank at \$1.48) $1.48 \times 900 = 1,332.00 \times .15 = \$1,531.80$	\$ 1,531.80

Landlord's Position

20. The landlords testified that the tenants agreed to fill the oil tank at the end of the tenancy as the they were provided with a full tank of oil at the commencement of the tenancy. The landlords testified that the tenants did not fulfill their obligation to leave the oil tank full when they vacated and in fact left the tank empty. The landlords submitted a picture of the tank gauge to support their claim (exhibit 2, page 2). The landlords testified that they paid \$1.48 per liter of oil on 15-September-2022 and submitted a copy of the oil bill to show the cost of oil at that time (exhibit 2, page 1). The landlords stated that if they had to fill the tank at that time the cost would have been \$1,531.80 (900-liter tank x \$1.48 per liter plus taxes). The landlords stated that the tenants acknowledged that they owe for the tank of oil in a text message (exhibit 2, page 8) and stated that they are seeking the cost to fill the oil tank at the price per liter in September 2022.

Analysis

21. Based on the testimony of the landlords and the evidence submitted by the landlords in exhibit 2, I accept that there was an agreement between both parties that the tenants would fill the oil tank at the end of the tenancy. I accept that the oil tank was left empty when the tenants vacated, and the landlords were able to show what it would have cost the tenants to fill the oil tank at that time. I find that the tenants are responsible for the cost to fill the oil tank in accordance with pricing per liter in September 2022.

Decision

22. The landlord's claim for utilities paid succeeds in the amount of \$1531.80.

Issue # 4: Compensation for Damages \$5363.88

Relevant Submission

23. The landlords testified that there are damages / losses to the rental unit, and they submitted a damages ledger to support their claim (LL#6). See damages ledger below:

Compensation for Damages

Submitted by:

Date:

June 22, 2022

Applicant:

Respondent:

Item#	Description of Damages	Compensation Claimed	
C.B.	3 cm x 3 cm hole in bathroom wall	\$	75.00
1	Hardwood Floors – e-mail	\$	2,000.00 + tax (2,300.00)
2	Carpet Cleaning – e-mail	\$	258.75
4	Cleaning the apartment (16 hrs. @ \$22.50)	\$	360.00
5	Cleaning up the property outside and taking garbage to the dump (26 hrs. @ \$22.50)	\$	585.00
6	Repairs to greenhouse & sanding and painting the large room (Pine Walls) - Corrugated Plastic Sheet \$61.16 + tax (\$70.33) @ Home Depot (I need to sheets) - Sandpaper (\$4.97 + tax) - Interior Wood Stain (\$33.71 + tax) - Varathane (\$39.81 + tax) - 22 hrs. @ \$25	\$	140.66 5.72 38.76 45.78 550.00
7	Kitchen Light (Fluorescent \$57.99 + tax)	\$	66.69
8	Paint for the kitchen ceiling - Receipt	\$	90.03
9	Range Hood – Receipt	\$	111.54
10	Back Splash – Receipts	\$	178.20
11	Curtain Rod	\$	133.35
12	Bathroom supplies	\$	93.00
13	Paint & Supplies	\$	406.40
	Total		\$ 5,363.88

Landlord's Position

24. The landlords testified that the above list of items has been identified as damages / losses to the unit caused by negligence on the part of the tenants. The landlords stated that the following items were identified after the tenants vacated the unit. The landlord's position on each item is as follows:

Item # 1: Hardwood floors (\$2300.00) – The landlords testified that the tenants damaged the hardwood floors resulting in deep scratches and dark stains on the floor. The landlords submitted photographs of the flooring prior to the tenancy (LL#7) and after the tenancy to show the damages (exhibit 1, pages 6-9). The landlords are seeking \$2300.00 to have roughly 360 sq feet of the hardwood refinished in the living room and dining room area and they submitted a quote from *Anthony Sparrow Company* to support their claim (exhibit 1, pages 4-5).

Item # 2: Carpet cleaning (\$258.75) - The landlords testified that they had initially thought that they could clean the carpets but when it came time to do so they decided that the carpets had to be removed. The landlords have withdrawn their claim for reimbursement to clean the carpets.

Item # 3: Cleaning (\$360.00) - The landlords testified that the house had to be cleaned and they are seeking \$360.00 for their labor to complete the work. The landlords testified that it took 16 hours of their time to complete the work and they are seeking \$22.50 per hour for a total of \$360.00. The landlords submitted photographs to show the condition of the unit after the tenants vacated (exhibits 7-9).

Item # 4: Cleaning exterior (\$585.00) – The landlords testified that the exterior of the property had to be cleaned and several trips to the local landfill were required which took 26 hours of labor at \$22.50 per hour. The landlords submitted photographs of the property prior to the tenancy (LL#8) and photographs after the tenants vacated (exhibit 12). The landlords stated that they are seeking \$585.00 for self-labor to restore the grounds to the way they were prior to the tenancy.

Item # 5: Repairs to greenhouse & sanding and painting large room (\$780.92) - The landlords testified that the greenhouse needed repairs which required the purchase of 2 corrugated plastic sheets at a cost of \$140.66. The landlords submitted a photograph of the greenhouse showing the sheets (exhibit 12, page 13). The landlords testified that they also had to purchase sandpaper, interior wood stain and varathane at a cost of \$90.26 for the pine walls in the large room that were damaged due to saw dust from a large saw that the tenant used in that room. The landlords submitted photographs of the pine walls to support their claim (exhibit 11). The landlords submitted a copy of quotes from *Home Depot* to show the cost of the products (exhibit 1, page 10). The landlords testified that they are seeking \$550.00 for 22 hours of self-labor to complete the work at a cost of \$25.00 per hour.

Item # 6: Kitchen light (\$66.69) – The landlords testified that the light in the kitchen was broken and needed to be replaced. The landlords submitted a picture of the light (exhibit 1, page 3) and they submitted a quote of the cost to replace the light (exhibit 1, page 2). The landlords testified that they have replaced the light but lost the receipt.

Item # 7: Paint for the kitchen ceiling (\$90.03) – The landlords testified that the kitchen ceiling needed to be painted and they are claiming the cost of the paint and supplies. The landlords submitted a copy of the receipt for the paint and roller (exhibit 1 page 24).

Item # 8: Range Hood (\$111.54) – The landlord's testified that the range hood had to be replaced as it was very dirty with black sticky residue on it. The landlords submitted a receipt from *Home Hardware* to support their claim (exhibit 1, page 24).

Item # 9: Back splash (\$178.20) – The landlords testified that the back splash around the stove area was destroyed due a small fire leaving a burnt spot in the area. The landlords submitted a photograph of the back splash prior to the tenancy (LL#9) and a photograph of the wall after the tenancy to support their claim (exhibit 1 page 23).

Item # 10: Curtain rod (\$133.35) – The landlords testified that a curtain rod was broken and needed to be replaced. The landlords submitted photographs of the broken rod (exhibit 1 page 16) and also submitted a receipt to support their claim (exhibit 1 page 25).

Item # 11: Bathroom supplies (\$93.00) – The landlords testified that they needed to purchase bathroom cleaning supplies and a new rod and shower curtain for the bathroom. The landlords submitted photographs of the condition of the bathroom and the damaged rod and shower curtain to support their claim (exhibit 7). The landlords also submitted a copy of a receipt to support their claim (exhibit 1 page 25).

Item # 12: Paint & supplies (\$406.40) - The landlords testified that they needed to purchase paint for the living room, dining room and kitchen walls. The landlords submitted a copy of receipts to support their claim (exhibit 1 pages 26-28)

Analysis

25. In accordance with *Residential Tenancies Policy 9-3*, 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)*

26. Based on the testimony of the applicants and the exhibits entered into evidence, the items were analyzed as follows:

Item # 1: Hardwood floors (\$2300.00) – The landlords testified that the tenants damaged the hardwood floors resulting in deep scratches and dark stains on the floor. The landlords are seeking \$2300.00 to have roughly 360 sq feet of the hardwood refinished. I asked the landlords the age of the hardwood floor and they responded that the house is roughly 70 years old, but they are unsure of the age of the flooring. The landlords stated that the hardwood was there when they were willed the house 20 years ago. Section 9-5 of the *Residential Tenancies Policy* deals with life expectancy of property and states that hardwood flooring should last for a lifetime. In accordance with Section 9-3 of the *Residential Tenancies Policy* as stated above, I find that the landlords were able to show that the damage exists, the before and after photographs show that the respondents caused the damage, and they were also able to show the value to repair the damage. For those reasons, I find that the tenants are responsible for the cost to have the hardwood flooring refinished at \$2300.00.

Item # 2: Carpet cleaning (\$258.75) - The landlords have withdrawn their claim for reimbursement to clean the carpets and as such, this issue will not be adjudicated for the purpose of this hearing.

Item # 3: Cleaning (\$360.00) - The landlords testified that the entire house had to be cleaned and they are seeking 16 hours of labor at \$22.50 per hour to complete the work. Based on the testimony of the landlords and the photographs submitted into evidence, I find that the unit was left unclean and unsanitary and as such, I find that the tenants are responsible for the cost of self-labor to clean the house in the amount of \$360.00 as sought by the landlords.

Item # 4: Cleaning exterior (\$585.00) – The landlord's testified that the exterior of the property had to be cleaned and several trips to the local landfill were required which took 26 hours of self-labor at \$22.50 per hour. Based on the testimony of the landlords and the photographs entered into evidence, I find that the tenants are responsible for the

cost of the self-labor to restore the grounds to the way they were prior to the tenancy in the amount of \$585.00.

Item # 5: Repairs to greenhouse & sanding and painting large room (\$780.92) - The landlords testified that the greenhouse needed repairs which required the purchase of 2 corrugated plastic sheets at a cost of \$140.66. The landlords testified that they also had to purchase sandpaper, interior wood stain and varathane at a cost of \$90.26 for the pine walls in the large room that were damaged due to saw dust from a large saw that the tenant used in that room. The landlords testified that they are seeking \$550.00 for 22 hours of self-labor to complete the work at a cost of \$25.00 per hour. Based on the testimony of the landlords and the photographs submitted into evidence, I find that the tenants are responsible for the corrugated sheets needed for repair work in the greenhouse. I also accept that the pine walls would need to be sanded and varathaned based on the level of dust that was embedded on them. I accept that it took 22 hours of self-labor to complete the work, however in accordance with Section 9-3 of the *Residential Tenancies Policy Manual*, the rate of self-labor at this time is \$23.00. I find that the tenants are responsible for the above noted repairs and required purchases including labor at a total cost of \$736.92.

Item # 6: Kitchen light (\$66.69) – The landlords testified that the kitchen light was broken and needed to be replaced. The landlords did not provide a receipt to show the cost to replace the light as they misplaced it, however they did submit a copy of a quote to show the cost. Based on the testimony of the landlords and the photograph of the damaged light, I accept that the light needed to be replaced and I find that the tenants are responsible to replace the light in the kitchen at a cost of \$66.69.

Item # 7: Paint for the kitchen ceiling (\$90.03) – The landlords testified that the kitchen ceiling needed to be painted and they are seeking the cost of the paint and roller. I asked the landlords when was the last time the ceiling was painted and they responded roughly 10 years ago. Section 9-5 of the *Residential Tenancies Policy* deals with life expectancy of property and states that interior paint lasts 3-5 years. I find that the ceiling needed to be painted as a result of normal wear and tear and for that reason, I find that the tenants are not responsible for the cost of the paint.

Item # 8: Range Hood (\$111.54) – The landlords testified that the range hood had to be replaced as it was very dirty with black sticky residue on it. I asked the landlords the age of the range hood and they responded that it is roughly 10 years old. Section 9-5 of the *Residential Tenancies Policy* deals with life expectancy of property and states that the life expectancy of a range hood is 10 years. I find that the range hood needed to be replaced due to normal wear and tear and for that reason, I find that the tenants are not responsible for the cost to replace the range hood.

Item # 9: Back splash (\$178.20) – The landlords testified that the back splash around the stove area was destroyed due a fire leaving a burnt spot in the area. I asked the landlords the age of the backsplash and they responded that it was roughly 10-15 years old. I find that the damage to the back splash is blatant and the before pictures show no harm to the backsplash and I find that there would be no reason to replace it at this stage of its life if it hadn't been burnt. For that reason, I find that the tenants are responsible for the cost to replace the back splash in the amount of \$178.20.

Item # 10: Curtain rod (\$133.35) – The landlords testified that a curtain rod was broken and needed to be replaced. In accordance with Section 9-3 of the *Residential Tenancies Policy* as stated above, I find that the landlords were able to show that the damage exists, and they were also able to show the value to replace the rod. For those reasons, I find that the tenants are responsible for the cost to replace the curtain rod at \$133.35.

Item # 11: Bathroom supplies (\$93.00) – The landlords testified that they needed to purchase cleaning supplies for the bathroom and also, they needed to replace the shower rod and shower curtain due to damages. Based on the landlord's testimony and the photographs entered into evidence, I find that the tenants are responsible for the cost of the bathroom supplies in the amount of \$93.00 as sought by the landlords.

Item # 12: Paint & supplies (\$406.40) - The landlords testified that they needed to purchase paint and supplies for the living room, dining room and kitchen walls. I asked the landlords when was the last time those walls had been painted and they responded roughly 10 years ago. Section 9-5 of the *Residential Tenancies Policy* deals with life expectancy of property and states that interior paint lasts 3-5 years. I find that the walls needed to be painted as a result of normal wear and tear and for that reason, I find that the tenants are not responsible for the cost of the paint and supplies.

Decision

27. The landlord's claim for damages succeeds in the amount of \$4453.16.

Issue # 4: Hearing expenses \$160.00

28. Section 12-1 of the *Residential Tenancies Policy Manuel* states:

Recovery of Fees

12-1 Application fees for adjudication of a dispute in excess of the security deposit is allowable and other allowable hearing expenses include the cost of hiring a process server to personally serve a claim.

29. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#3). The landlords also utilized the services of a *Process Server* to attempt to serve the tenants. The fee charged by the process server was \$140.00 (LL#9).

30. As the landlord's claim has been mostly successful, the tenants shall pay the \$160.00.

Decision

31. The landlord's claim for hearing expenses succeeds in the amount of \$160.00.

Issue # 5: Security deposit applied against monies owed \$500.00

Analysis

32. Section 14 of the *Residential Tenancies Act, 2018* states:

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).*

33. The landlord's claim for losses has been successful as per paragraphs 14, 18, 22, 27 and 31 and as such, the security deposit shall be applied against monies owed.

Decision

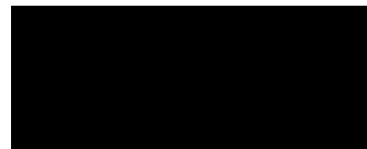
34. The landlord's claim for security deposit to be applied against monies owed succeeds.

Summary of Decision

35. The tenants shall pay the landlords \$9019.96 as follows:

Rent paid	\$3300.00
Late fees	75.00
Utilities	1531.80
Damages	4453.16
Hearing expenses	160.00
Less security deposit	500.00
Total	\$9019.96

April 1, 2024
Date



Pamela Pennell
Residential Tenancies Office