

Residential Tenancies Tribunal

Application 2023-1096-NL

Decision 2023-1096-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 4 January 2024 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing. The landlord called a witness, [REDACTED] hereinafter referred to as “the witness”.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not attend the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$1,100.44 in compensation for damages;
 - An order for a payment of rental arrears in the amount of \$715.00;
 - An order for vacant possession of the rented premises;&
 - An order for a payment of hearing expenses totaling \$20.00

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
6. Relevant and considered in this case is S. 10, 19, 22, 34, 35, and 42 of the *Residential Tenancies Act*, 2018, along with Rule 29.11(1) from *Rules of the Supreme Court*, 1986. Also, considered in this decision are policy 07-002 Failure to Complete Repairs Notice of Termination and 9-3, Claims for Damages to Rental Premises, of the *Residential Tenancies Program*.

Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable reach her by telephone when I attempted to reach her at [REDACTED] prior to 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 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. With his application, the landlord submitted an affidavit (**Exhibit L # 1**) stating the tenant had been served with the application by registered mail [REDACTED] on 18 December 2023 (**Exhibit L # 2**). As the tenant was properly served, and as further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
8. The landlord amended his applicant and was seeking compensation for damages in the amount of **\$1,331.65** and rental arrears in the amount of **\$800.00**.
9. 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 has to establish that his/her account of events are more likely than not to have happened.

Issue 1: Compensation for Damages- \$1,331.65

Relevant Submissions

10. The landlord testified the tenant was in the 3 bedroom rental premises at [REDACTED] when he purchased the 5 bedroom apartment building in 2012. The verbal monthly agreement was set at \$635.00 per month, and, in November 2023, that rent increased to \$700.00. The landlord stated he had no evidence that a security deposit had been collected on the tenancy prior to his ownership of the rental property.
11. The landlord stated he has a contractor, the witness of the applicant, who completes service calls to all tenants at the rental address. The witness the holds spare keys for all tenants of the rental property. The landlord testified the agreement between he and the contractor is that one service call equates to \$95.00, broken down as follows: a minimum of 3 hours wages for a call (\$25.00 per hour), plus \$20.00 for gasoline per call.
12. The witness offered testimony he had to respond to the tenant apartment on multiple occasions for service calls including to provide a spare key to the tenant and also in response to damages. The witness stated he had been contacted by the tenant requesting him to provide the spare key to her rental unit. When he arrived at that time, the witness observed the door handle was damaged and had to be replaced. Following replacement of the door handle, on 25 October 2023, the witness testified he had been contacted by another tenant at the rental property suggesting the tenant was attempting

to force her way into the apartment (**Exhibit L # 3**). He stated when driving to the apartment, he observed the tenant striking the door and door handle with a piece of wood.

13. Along with his application, the landlord provided pictures of the entry way to the tenant's apartment (**Exhibit L # 4**). The witness had taken pictures of the damages and sent those pictures to the landlord.
14. The landlord stated after he was made aware of the damages to the door, he issued the tenant on 25 October 2023 a Landlord's Request for Repairs with the request for the damages to the entry way to be completed by 29 October 2023. As indicated on the Landlord's Request for Repairs, "I request your attention to make the following repairs to the rental unit identified above: Damage to Front Door Frame caused by trying to beat off the door handle" (**Exhibit L # 5**).
15. The landlord suggested following this request for the tenant to repair the damages, the repairs to the door were not completed by the tenant (**Exhibit L # 6**). The witness confirmed the repairs were not completed by the tenant.
16. The landlord issued the tenant a Landlord's Notice to Terminate Early- Cause on 5 November 2023 requesting the tenant to exit the premises by 15 November 2023 (**Exhibition L # 7**). The witness testified that following the lack of repair of the damages by the tenant to the rental property, he observed the door handle which he installed was damaged and in need of replacement.
17. The landlord did not provide any information of the age of the front door during the hearing. He initially provided with his application, an estimate on the cost of replacing the door and damaged door frame (**Exhibit L # 8**) of \$1,100.44. During the hearing, the landlord amended his request for compensation for damages of **\$1,331.65** and attributed this variation to the need for new hinges, a new door handle, screws, foam sealant, as well as the need for the witness to attend for 11 hours to complete all that was required including multiple trips for painting (**Exhibit L # 9**).
18. The witness stated he completed the repairs in December 2023.
19. The landlord provided receipts dated in December 2023 for the costs of the door (**Exhibit L # 10**), receipts for the costs of the door knob and accessories which included deadbolt lock, shims and spray foam (**Exhibit L # 11**), along with costs for the contractor to make service calls to the rental address (**Exhibit L # 12**). The costs associated equals **\$1,331.65** and are broken down as follows:

- Service Call for 25 October 2023.....\$95.00
- Door Knob\$42.31
- New Door.....\$775.08
- Accessories.....\$104.26
- Door Installation\$315.00
- Total.....\$1,331.65

Analysis

20. 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 willful or negligent act.

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or 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 items(s)
21. 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.
22. Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47.(1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

23. I accept the testimony of the landlord and the witness that the front entry door to the rental premises was damaged by the tenant and/or visitor on more than one occasion. I find the damages to the door, door handle and door frame are not due to normal use of the entry way, but due to a willful act. The witness offered testimony that he observed the tenant striking the door and door handle with a piece of wood on 25 October 2023. Furthermore, the witness stated he had replaced a door handle at that time and this new door handle was damaged. I accept the evidence offered by the landlord that the tenant was requested to complete the repairs to the damaged door. The photographs submitted by the landlord show that the door and door frame was damaged and in need

of replacement. The door handle was also damaged and in need of replacement. I also accept that the landlord's initial estimate for replacement of the items was different than the final cost as presented in evidence. I have broken the five costs down.

24. In relation to the landlord seeking compensation in the amount of \$95.00 for the witness having to attend the rental unit on 25 October 2023, I accept the testimony and evidence (**Exhibit L # 4**). I also accept the agreement in place between the landlord and witness that each service call includes a 3 hour call, at \$25.00 per hour + \$20.00 gasoline equaling \$95.00. The witness attended the rental unit on 25 October 2023 as a result of the actions of the tenant. The landlord's claim for compensation of \$95.00 succeeds.
25. In relation to the landlord's claim seeking compensation in the amount of \$42.31 for the door handle, I accept the testimony offered by the witness that he observed the tenant striking the door handle with a piece of wood. I also accept the evidence which the landlord provided with this application including a receipt that the cost of the door handle was \$42.31 (**Exhibit L # 10**) as well as the pictures of the door handle. The landlord's claim for compensation of \$42.31 succeeds.
26. Regards to the landlord's claim seeking compensation in the amount of \$775.08 for the door, I accept the testimony offered by the witness he observed the tenant striking the door with a piece of wood. Although the landlord did not indicate the age of the door, the door was described as not locking due to damages and, "warping" of the aluminum door. I accept the testimony of the landlord he requested for the tenant to repair the damages to the door. With his application, the landlord also included pictures of damages to the door, as well as a receipt for the total cost of the door. The witness testified the door could not be properly closed because of damages. This is not from what I would consider regular wear and tear on the door, rather the actions of the tenant. Upon review of those pieces of evidence I see clear damage to the door and door frame as well as the costs associated with replacement of those items. The landlord's claim for compensation of \$775.08 succeeds.
27. Concerning the landlord's claim seeking compensation in the amount of \$104.26 for accessories for installation of the door, I accept the testimony of both the witness and landlord that the actions of the tenant caused damage to the entry way of the rental unit. Considering that there had been a new door handle installed on the door on 25 October 2023, which was again replaced due to damage. This is not what I would consider normal wear and tear for an item under two months old. I accept the evidence which the landlord provided with his application which included a receipt for the accessories including spray foam, screws, a second door handle equaling \$36.79 and wood shims. The landlord's claim for compensation of \$104.26 succeeds.
28. Regarding the landlord's claim seeking compensation in the amount of \$315.00 for the costs of installing the front entry door and door frame, I accept the testimony and evidence of both the witness and the landlord for the need to replace the doorway as the damage existed. I also accept the monetary arrangement in place between the landlord and witness regarding the contractor's service calls to [REDACTED] NL. With his application, the landlord provided evidence of the costs associated with the request for payment in regards to installation of the door (**Exhibit L # 13**). Receipts for the items associated with replacement of the damages were provided with the

application dated 11 December 2023. The witness testified he had to attend the residence on multiple occasions for painting. The landlord's claim for compensation of \$315.00 succeeds.

29. Upon full review of the evidence and testimony offered to this Tribunal, the damages of the entry door of [REDACTED] resulted from the actions of the tenant. The individual was observed striking the entry way with a piece of wood which resulted in the damages. Furthermore, the damages were not from normal wear and tear and depreciation was not relevant in the damages which resulted. The landlord's evidence presents repairs that were required.

Decision

30. The landlord's claim for compensation for damages succeeds as follows:

- Service Call for 25 October 2023.....\$95.00
- Door Knob\$42.31
- New Door.....\$775.08
- Accessories.....\$104.26
- Door Installation\$315.00

- Total.....\$1,331.65

Issue 2: Rental Arrear- \$800.00

Relevant Submissions

31. The landlord testified the last time the tenant was at a zero balance for the rental was on 1 October 2022. He stated the tenant's payment history was not consistent and he stated rent increased to \$700.00 effective 1 September 2023 from \$635.00.
32. The landlord stated since 1 November 2022, the tenant continued to carry forward rental arrears, although he testified he did not issue the tenant a termination notice under Section 19 of the *Residential Tenancies Act*, 2018.
33. The landlord advised the tenant had last paid \$715.00 on 1 December 2023 and as of 31 December 2023, carried forward rental arrears of **\$115.00**.
34. Along with his application, the landlord issued an Updated Rent Role as of 4 January 2024 (**Exhibit L # 13**). This piece of evidence indicates the following information:

Date	Action	Paid	Rent Amount	Rental Arrears Outstanding
1 Oct 2023	Rent Due	\$0.00	\$700.00	\$1,115.00
2 Oct 2023	Payment	\$700.00		\$415.00

1 Nov 2023	Rent Due	\$0.00	\$700.00	\$1,115.00
3 Nov 2023	Payment	\$1000.00		\$115.00
1 Dec 2023	Rent Due	\$0.00	\$700.00	\$815.00
1 Dec 2023	Payment	\$715.00		\$115.00

Analysis

35. The landlord amended his application during the hearing and was seeking rent up to 31 January 2024. This Tribunal does not consider future rent. Rent for January 2024 can only be calculated up to and including the date of the hearing (4 January 2024). That calculation is $(\$700.00 \times 12 \text{ months} = \$8,400.00 \div 365 \text{ days} = \$23.01 \text{ per day} \times 4 \text{ days} = \textbf{\$92.04})$.
36. The landlord provided evidence and testimony that the tenant carried forward rental arrears from December 2023 in the amount of **\$115.00**.
37. I accept the landlord's claim that the tenant has not paid rent as required. I do not accept the tenant owes rental arrears in the amount of \$800.00. The tenant owes a current balance of **\$207.04** in rental arrears.
38. Additionally, the tenant is responsible for daily rent in the amount of **\$23.01** beginning on 5 January 2024 and continuing until the day the landlord obtains vacant possession of the rented premises.

Decision

39. The landlord's claim for payment of rent succeeds in the amount of **\$207.04**.

Issue # 3: Order for Eviction/Possession of Property

40. The landlord presented testimony the rental agreement of the rented premises at [REDACTED] as a verbal monthly tenancy and the tenant had occupancy at the time the landlord purchased the rental property.
41. The landlord offered evidence of a Notice to Terminate Early- Cause under Section 22 of the *Residential Tenancies Act*, 2018 on 5 November 2023 with a request for the tenant to exit the rental by 15 November 2023 (**Exhibit L # 6**)

Analysis

42. It is the responsibility of the tenants to keep the rental premises clean and repair any damages. In accordance with Section 10 (2), as follows:

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.

43. Worth further consideration is Section 07-002 of the *Residential Tenancies* policy manual which states, "A tenant is responsible to repair damages and to keep the premises clean (s. 10(1)2.) where damages are caused by the tenant or someone the tenant permits on the premises, the tenant is responsible".
44. If a tenant fails to make the necessary repairs within the required time, the landlord may then give the tenant notice that the tenancy is terminated and that the tenant is required to vacate the rental unit not less than 5 days after the notice has been served. In accordance with Section 22 of the Residential Tenancies Act, 2018, as follows:

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.

(3) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

45. I accept the landlord's testimony and evidence that there is non-compliance by the tenant with repair of damages of [REDACTED]

Section 24 requires that when a premises is rented for month to month, the landlord can 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. On examination of the termination notice issued and submitted into evidence, I find the notice was served on 5 November 2023 with a termination date of 15 November 2023. I find the notice has been served and the date the tenant is required to move out, the termination notice is in full compliance with the requirements of

section 22 (2) identify the technical requirements of the termination notice. On examination of the termination notice, I find that all these criteria have been met.

Issue # 4: Hearing Expenses

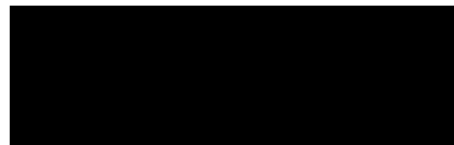
46. The landlord submitted a receipt of payment for his Application for Hearing Dispute (**Exhibit L # 14**). As the landlord's claim has been successful, the tenant shall pay the hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

47. The landlord is entitled to the following:
- A payment of **\$1,331.65**
 - An order for vacant possession of the rented premises,
 - A payment of a daily rate of rent in the amount of **\$23.01**, beginning 5 January 2024 and continuing to the date the landlord obtains vacant possession of the rental unit,
 - The tenant shall also 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.

7 February 2024

Date



Michael J. Reddy
Residential Tenancies Office