

## Residential Tenancies Tribunal

Application 2023-1112-NL  
2023-1136-NL

Decision 23-1112-00

Seren Cahill  
Adjudicator

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### Introduction

1. Hearing was held on 8-January-2023.
2. The applicant, [REDACTED] hereinafter referred to as the landlord, appeared by teleconference.
3. The respondent, [REDACTED] attended via teleconference on behalf of himself and his co-respondent [REDACTED] who was unavailable. They are hereinafter referred to as the tenants.

### Issues before the Tribunal

4. Should the landlord's claim for unpaid rent be granted?
5. Should the landlord's claim for damages be granted?
6. Should the tenants' counterclaim for inconvenience be granted?
7. What is the disposition of the security deposit?

### 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* (the Act).

### Issue 1: Unpaid Rent

#### Landlord's Position

9. The landlord's claim is for rent for the month of November and rent for the first half of December, as he had new tenants who started paying rent on 15-December-2023. He acknowledges he had new tenants move in on 16-November-2023. However, he says that those tenants would not have been able to pay for rent until 15-December-2023,

they had already paid their previous landlord to that date, and he simply allowed them to move in early as a courtesy. He adds that he would not have been able to find another tenant at this time of the year.

### Tenants' Position

10. The tenants admit they owe the landlord rent for about the first two weeks of November but deny they owe anything further. They base this on two arguments. The first argument is that they gave the landlord a valid notice for cause under s. 23 of the *Act* on 6-November-2023. The second argument is that they should not have to pay rent for a time period where other tenants have already moved in.

### **Analysis**

11. A landlord's right to recover based on a lack of notice is contingent on the fact that they are unable to recover the loss by finding new tenants. I do not accept the landlord's testimony that it would have been impossible to recover that cost at that time period, given that he had tenants in the building.
12. The landlord's claim succeeds only for the first 15 days, which the tenants acknowledged they owed. The correct formula to calculate a daily rent rate for partial months is the monthly rent multiplied by 12/365. Calculated for the monthly rent in this case of \$1450.00, the daily rate is ~\$47.67/day. Multiplying the daily rate by 15 gives the total amount of rent owed as \$715.07.

### **Issue 2: Damages**

#### Landlord's Position

13. The landlord claims for \$276.00 in damages for a door window which the tenant broke during move out. An informal receipt was provided (LL#1).

#### Tenant's Position

14. The tenants testified that the window was broken, as while he was moving out, a gust of wind took the door and blew it shut with enough force to crack the glass. They submit that this sort of thing happens, that it is no one's fault, and insurance exists for this purpose.

### **Analysis**

15. I accept the tenants' testimony that the damage to the door was an accident. As the act was not willful, the tenants are only responsible for the damage if it was negligent. An essential element of negligence is reasonable foreseeability. This case took place within the Avalon peninsula. It is common knowledge in the area that sudden gusts of high wind are a regular occurrence, and this is therefore reasonably foreseeable. The tenant should have been aware of the risk that the door could be blown shut. However, one would not expect this to result in the door's window shattering. I therefore find that this

consequence was not reasonably foreseeable, and that the tenant is thus not responsible for the damage.

### **Issue 3: Counterclaim, Inconvenience**

#### **Tenant's Position**

16. The tenant claims for \$334.75 for the cost of moving, which they say was only required because of the landlord's mistreatment.

#### **Landlord's Position**

17. The landlord is opposed to the claim but made no particular argument against it.

#### **Analysis**

18. At the time of move out, the tenants had already been issued a 3-month termination notice. The tenants therefore would have been forced to move out within two months regardless of whether or not the landlord interfered with their right to peaceful enjoyment, and presumably would have suffered the same cost of moving. On this basis, the landlord's alleged violations of the tenants' rights caused the tenants no real loss.

#### **Decision**

19. The landlord's claim for rent partially succeeds in the amount of \$715.07.
20. The landlord's claim for damages fails.
21. The tenant's counterclaim for inconvenience fails.
22. As the landlord is owed moneys, he is entitled to apply the security deposit against it. The remainder of the security deposit must be returned to the tenant.

#### **Summary of Decision**

23. The landlord shall pay to the tenant \$284.93 as follows:

Security Deposit.....	\$1000.00
Unpaid rent.....	-( \$715.07)
Total.....	\$284.93

23-January-2023

Date

  
Seren Cahill  
Residential Tenancies Office