

Residential Tenancies Tribunal

Application 2023-1115-NL

Decision 23-1115-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 2-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as "the tenants" did not attend.

Preliminary Matters

4. The tenants were not present or represented at the hearing. I was successful in reaching respondent 1 at the beginning of the hearing and called him into the hearing at which time he acknowledged that his new address, provided by the applicant, was an incorrect address. He then became agitated when I refused to postpone the hearing at his request. Respondent 1 abandoned the conference line and the hearing proceeded in his absence. Respondent 2 could not be reached, however I did leave a voicemail message with the toll free conference number. 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 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 landlord submitted 2 affidavits with her application stating that she served the tenants with the notice of hearing via prepaid registered mail [REDACTED] and electronically to: [REDACTED] and [REDACTED] on 18-December-2023 (LL#1). The registered mail will not be considered good service as the applicant did not have proof of address; however, the electronic service is good service as the landlord could show that she used proper email addresses, and she submitted a copy of the sent emails (LL#2). 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 landlord, I proceeded with the hearing in their absence.

5. There was a verbal month to month rental agreement which commenced in July 2012. The tenants vacated the unit on or about the 26-December-2022. Rent was \$1500.00 per month, due on the first day of each month. A security deposit of \$1000.00 was paid on 14-July-2012 and is still in the landlord's possession.
6. The landlord amended the application to have the security deposit applied against monies owed and to seek hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Rent paid \$1500.00
 - b. Utilities \$234.22
 - c. Compensation for damages \$7187.96
 - d. Hearing expenses \$20.00
 - e. Security deposit applied monies owed \$1000.00

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. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security Deposit and Section 18; Notice of termination of rental agreement. Also, relevant and considered are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises and Section 9-5; Life Expectancy of Property.

Issue # 1: Rent Paid \$1500.00

Landlord's Position

10. The landlord testified that rent is outstanding in the amount of \$1500.00 for the month of December 2022. The landlord testified that the tenants abandoned the property on or about the 26-December-2022 and she is seeking full rent for that month. The landlord testified that the tenants gave a termination notice on the 16-November-2022 and she stated that they were responsible to pay rent up to the end of December 2022.

Analysis

11. Non-payment of rent is a violation of the rental agreement. The landlord testified that there are rental arrears in the amount of \$1500.00. Rent is required to be paid by the tenant for the use and occupation of the rented premises. The tenants abandoned the unit on or about the 26-December-2022. In accordance with Section 18(1)(b) of the *Residential Tenancies Act, 2018* the tenants were required to give notice not less than one month before the end of a rental period where the residential premises is rented from month to month. The tenants gave notice on 16-November-2022 and rent was required to be paid up to the end of December 2022.
12. I find that the tenants are responsible for outstanding rent in the amount of \$1500.00 for the month of December 2022.

Decision

13. The landlord's claim for rent paid succeeds in the amount of \$1500.00.

Issue # 2: Utilities \$234.22

Relevant Submission

14. The landlord testified that utilities are outstanding in the amount of \$234.22 for the period of December 15-30, 2022. The landlord submitted a copy of the utility bill to support her claim (LL#3).

Landlord's Position

15. The landlord testified that the tenants abandoned the unit on 26-December-2022 or there about and she is seeking reimbursement for the utility bill for the second half of the month of December. The landlord stated that the tenants were responsible for the unit until the end of December and should cover the utility bill for that period. The landlord is seeking utilities to be paid in the amount of \$234.22.

Analysis

16. It has been determined that the tenants are responsible for rent for the month of December (paragraph 13) and as such, the tenants shall be responsible for the outstanding utilities for that period as well. The tenants resided at the unit for most of the period and for the time that they had abandoned the unit, the heat had to remain on to maintain a safe unit. For those reasons, I find that the tenants are responsible to reimburse the landlord for the outstanding utility bill for the month of December 2022.

Decision

17. The landlord's claim for utilities to be paid succeeds in the amount of \$234.22.

Issue # 3: Compensation for Damages \$7187.96

Relevant Submission

18. The landlord testified that there are damages / losses to the rental unit, and she submitted a damages ledger to support her claim (LL#4). See damages ledger below:

Landlord's Position

19. The landlord 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 landlord stated that the following items were identified after the tenants vacated the unit. The landlord's position on each item is as follows:

Items 1: Removal of wall, fix holes in wall and garbage removal of wall (\$2277.00) – The landlord testified that the tenants put up a wall in the family room to create an extra bedroom. The landlord states that she was aware of it and had an agreement with the tenants that they would remove the wall before they vacated the unit. The landlord testified that the wall was not removed by the tenants and as a result, she had to hire a contractor to remove the wall, fix the holes on the inside walls and then remove the garbage from the torn down wall. The landlord testified that it cost \$1980.00 plus tax to

complete the work. The landlord submitted before and after photographs (LL#5) to support her claim and she submitted a copy of the invoice from the contractor (L#6).

Item 2: Install missing heater in living room (\$437.00) – The landlord testified that the electric heater was missing from the living room area, and she had the contractor purchase and install a new heater. The landlord stated that it cost \$380.00 plus tax, and she submitted a photograph showing the wall space with the heater missing (LL#7) to support her claim and she submitted a copy of the invoice from the contractor (LL#6).

Item # 3: Remove and replace countertop (\$831.91) - The landlord testified that the countertop had to be replaced after the tenants had painted it with a high gloss paint. The landlord stated that contractor purchased a new countertop and installed it at a cost of \$723.40 plus tax. The landlord submitted before and after photographs (LL#8) to support her claim and she submitted a copy of the invoice from the contractor (LL#6).

Item # 4: Remove woodshed (\$1449.00) - The landlord testified that the tenants built a wooded shed on the premises right next to the back door. The landlord stated that the contractor had to dismantle the shed and remove it and she is seeking the cost as charged by the contractor in the amount of \$1260.00 plus tax. The landlord submitted a photograph (LL#9) to support her claim and she submitted a copy of the invoice from the contractor (LL#6).

Item # 5: Replace front doorbell (\$74.18) - The landlord testified that the tenants removed the doorbell from the exterior of the house and left a hole in the siding. The landlord stated that the contractor purchased a new doorbell and installed it at a cost of \$64.50 plus tax. The landlord submitted a photograph (LL#10) to support her claim and she submitted a copy of the invoice from the contractor (LL#6).

Item # 6: Cleaning (\$322.00) – The landlord testified that the tenants did not clean the unit when they vacated, and there was food left in the cupboards and the fridge. The landlord stated that she had the contractor take care of all work that needed to be done including the cleaning. The landlord stated that the contractor sub-contracted out a cleaning company to complete this task. The landlord stated that she was charged \$280.00 plus taxes for the cleaning. The landlord submitted a copy of the invoice from the contractor (LL#6).

Item # 7: Replace kitchen stove (\$1231.65) - The landlord testified that the tenants destroyed the stove when a fire started inside the oven area. The landlord testified that she received a message from the tenant advising her that there was a stove fire, and the stove was damaged. The landlord stated that the fire occurred due to spilled food and grease on the element and the stove had to be replaced. The landlord stated that the contractor purchased a new stove at a cost of \$1071.00 plus tax. The landlord submitted a photograph (LL#11) to support her claim and she submitted a copy of the invoice from the contractor (LL#6).

Item # 8: Fix Overhead garage door (\$565.22) – The landlord testified that the tenants dismantled the garage door, and several structural parts are missing including the mechanism to haul up the door. The landlord stated that the contractor purchased the missing parts and installed them to make the door operational again. The landlord stated that the parts cost \$491.50 plus tax and she submitted a copy of the invoice from the contractor (LL#6).

Analysis

20. In accordance with *Residential Tenancies policy 9-3*, the applicants are required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act; and*
- *The value to repair or replace the damaged item(s).*

21. The landlord did not provide a *rental premises condition report*, however she did provide before and after photographs for most items claimed. The damages listed above are undisputed claims with a copy of an invoice to show actual charges to the landlord by a Contractor. Based on the testimony of the applicant and the exhibits entered into evidence, the items were analyzed, and life expectancy was taken into consideration where applicable. See analysis below:

Items 1: Removal of wall, fix holes in wall and garbage removal of wall (\$2277.00) – The landlord testified that the tenants put up a wall in the family room to create an extra bedroom. The landlord stated that she became aware of it and had an agreement with the tenants that they would have to remove the wall before they vacated the unit. The landlord testified that the wall was not removed by the tenants, and she showed photographs of the area before the wall was built and with the wall remaining after the tenants vacated. The landlord hired a contractor to remove the wall, fix the holes on the inside walls and then remove the garbage from the torn down wall. Based on the landlord's testimony and the photographs submitted into evidence, I accept that the tenants had agreed to return the room to the way it was prior to the tenancy and as that has not happened, I find that the tenants are responsible for the cost to remove and dispose of the wall as charged by the Contractor in the amount of \$2277.00.

Item 2: Install missing heater in living room (\$437.00) – The landlord testified that the electric heater was missing from the living room area, and the contractor had to purchase and install a new heater. Based on the landlord's testimony and the photograph submitted into evidence, I accept that the tenants removed the heater from the wall and as such, I find that the tenants are responsible for the cost to replace and install the heater as charged by the Contractor in the amount of \$437.00.

Item # 3: Remove and replace countertop (\$831.91) - The landlord testified that the countertop had to be replaced after the tenants had painted it with a high gloss paint. I asked the landlord the age of the countertop and she responded that it is approximately 23 years old. In accordance with Section 9-5; *Life Expectancy of Property*, countertops have a life expectancy of 20 years. I find that the tenants are not responsible for the cost to replace the countertop as it has exceeded its life expectancy.

Item # 4: Remove woodshed (\$1449.00) - The landlord testified that the tenants built a wooded shed on the premises right next to the back door. The landlord stated that the contractor had to dismantle the shed and remove it. The premises are expected to be left in the same condition as they were prior to the tenancy and as such, I find that the tenants are responsible for the removal and disposal of the shed as charged by the Contractor in the amount of \$1449.00.

Item # 5: Replace front doorbell (\$74.18) - The landlord testified that the tenants removed the doorbell from the exterior of the house and left a hole in the siding. Based on the landlord's testimony and the photograph submitted into evidence, I accept that the tenants are responsible for the cost to replace and install the doorbell as charged by the Contractor in the amount of \$74.18.

Item # 6: Cleaning (\$322.00) – The landlord testified that the tenants did not clean the unit when they vacated, and there was food left in the cupboards and the fridge. The landlord stated that she had the contractor take care of all work that needed to be done including the cleaning. The landlord stated that the contractor subcontracted out the

cleaning work. The landlord did not show that the unit needed cleaning, nor did she know how much the cleaning person / company actually charged for the work to be completed. Without evidence to show the condition of the unit when the tenants vacated, I am unable to award any monies for cleaning. Based on the landlord's testimony and a lack of evidence, I find that the tenants are not responsible for the cleaning fee as charged by the Contractor.

Item # 7: Replace kitchen stove (\$1231.65) - The landlord testified that the tenants destroyed the stove when they caused an oven fire. The landlord testified that she received a message from the tenants advising her that there was a stove fire, and the fire was caused by the element. The landlord stated that the fire occurred due to negligence by the tenants who spilled food and grease onto the element causing the fire. The landlord stated that although the stove was still operational, it had to be replaced as she could not rent a unit with a stove that had previously been burned. I asked the landlord the age of the stove and she responded that it is approximately 14 years old. In accordance with Section 9-5; *Life Expectancy of Property*, stoves have a life expectancy of 12 years. I find that the tenants are not responsible for the cost to replace the stove as it has exceeded its life expectancy.

Item # 8: Fix Overhead garage door (\$565.22) – The landlord testified that the tenants dismantled the garage door, and several structural parts are missing including the mechanism to haul up the door. The landlord stated that the contractor purchased the missing parts and installed them to make the door operational again. The premises are expected to be left in the same condition as they were prior to the tenancy and as such, I find that the tenants are responsible for the replacement and installation of the garage door parts as charged by the Contractor in the amount of \$565.22.

Decision

22. The landlord's claim for damages succeeds in the amount of \$4802.40.

Issue # 4: Hearing expenses \$20.00

23. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and provided a copy of the receipt (LL#12).

24. As the landlord's claim has been partially successful, the tenants shall pay the \$20.00.

Decision

25. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Issue # 5: Security Deposit applied against monies owed \$1000.00

Landlord's Position

26. The landlord is seeking to have the security deposit of \$1000.00 applied against monies owed.

Analysis

27. 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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

28. The landlord's claim for losses has been successful as per paragraphs 13, 17, 22 and 25, and as such the security deposit shall be applied against monies owed.

Decision

29. The landlord's claim to have the security deposit applied against monies owed succeeds in the amount of \$1000.00.

Summary of Decision

30. The tenants shall pay the landlord \$5556.62 as follows:

Rent paid	\$1500.00
Utilities	234.22
Damages	4802.40
Hearing expenses	20.00
Less security deposit.....	1000.00
 Total	 \$5556.62

January 18, 2024

Date

Pamela Pennell
Residential Tenancies Office