

## Residential Tenancies Tribunal

Application 2023-1142-NL

Decision 23-1142-00

Jacqueline Williams  
Adjudicator

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### Introduction

1. Hearing was called at 9:15 a.m. on 25-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant” did not attend.

### Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone [REDACTED] at the start of 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. The landlord submitted an affidavit with his application stating that he had served the tenant with notice of the hearing, by text-message [REDACTED] on 12-January-2024. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

### Issues before the Tribunal

5. The landlord is seeking:
  - Rent \$2,800.00
  - Late fees \$150.00
  - Cleaning \$400.00
  - Hearing expenses \$500.00

## 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 15: Fee for failure to pay rent, and Section 31: Abandonment of residential premises.

## Issue 1: Rent \$2,800.00

### Relevant Submissions

8. The landlord stated that he has a verbal rental agreement with the tenant. The tenant moved in 12-July-2023. The tenant pays \$1,400.00 each month for rent. The rental period is from the 12th day of the month until the 11<sup>th</sup> day of the following month. The rent includes utilities and internet. The landlord said that the tenant may have paid a security deposit to the previous owner, but they ended their agreement and when the landlord entered this agreement with the tenant in July there was no security deposit required.
9. The landlord said that the tenant did not pay rent in October, on 01-November-2023 the landlord said he gave notice of termination to the tenant with a termination date of 12-November-2023. He said that the tenant moved on 21-November-2023.
10. The landlord explained that when the tenant moved on 21-November-2023 the tenant still had the key and said that he would be back. On 22-November-2023 the landlord sent the tenant a message asking when he would be back, when he would be paying the rent and when he would be cleaning the house. The tenant never responded to him. He said that on 22-November-2023 he posted a notice of abandonment on the tenant's door.
11. On 10-December-2023 the landlord had a locksmith open the doors and he regained possession of the apartment.
12. The landlord provided a ledger (LL#02) and stated that the tenant didn't pay October or November rent. He is seeking both months' rent in full.

## Analysis

13. Non-payment of rent is a violation of the rental agreement. I accept the landlord's testimony that the tenant did not pay rent. The tenant did not live in the apartment for the full November rental period. Rent was due on 12-November-2023 and the tenant moved out on 21-November-2023. The landlord must mitigate his loss of rent. The landlord did contact the tenant on 22-November-2023 and posted a notice of abandonment. He was entitled to take back possession on 23-November-2023, as per Section 31 of the *Residential Tenancies Act, 2018*, as follows:

#### *Abandonment of residential premises by tenant*

*31. (3) Before entering a residential premises for the purpose of taking possession under subsection (1), the landlord shall, not less than 24 hours before entering, post a notice in a conspicuous place on the residential premises stating*

- (a) the landlord's belief that the tenant has abandoned the residential premises;*
- (b) the landlord's intention to enter the residential premises for the purpose of taking possession unless the tenant notifies the landlord, before the time set out in the notice, that the tenant has not abandoned the residential premises; and*
- (c) the day and hour when the landlord will enter the residential premises.*
- (4) Where the tenant notifies the landlord under paragraph (3)(b) that the residential premises have not been abandoned, the landlord shall not enter the residential premises.*

14. The landlord did not take back possession of his property until 10-December-2023. The landlord did not mitigate his loss for the period between 23-November-2023 and 10-December-2023. As rent is paid for the use and enjoyment of a residence, and the landlord should have regained possession 24 hours after he posted his abandonment notice, the tenant will be only expected to pay October's rent and a daily rate, up to and including 23-November-2023.
15. The daily rate is calculated as follows:
- \$1,400.00 x 12 months = \$16,800.00
  - \$16,800.00 divided by 365 days = \$46.03 a day
  - \$21.37 x 12 days = \$552.36 rent for 12 – 23 November
16. The tenant shall pay the landlord the rent owed totaling \$1,952.36, as follows:
- October rent..... \$1,400.00
  - November rent ..... \$552.36
  - Total ..... \$1,952.36

## Decision

17. The landlord's claim for rent succeeds in the amount of \$1,952.36.

## Issue 2: Late fees \$150.00

### Relevant Submissions

18. The landlord is seeking \$75.00 late fees for both October and November.

## Analysis

19. 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.

20. As the tenant has been arrears since 13-October-2023, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### Decision

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

### Issue 2: Cleaning \$400.00

#### Relevant Submissions

22. The landlord provided 12 pictures (LL#04) to show that the tenant left the apartment dirty and there was garbage left behind. The landlord said that he cleaned for 8 hours, and his wife cleaned for 14 hours. He is seeking \$400.00 for their time and the cost of supplies.

### Analysis

23. 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.*

24. I accept the landlord's claim for 22 hours personal time for himself and his wife. This tribunal pays a personal rate of minimum wage + \$8.00 for a total of \$23.00 an hour. As the landlord is seeking less than the allowable rate; he will be fully compensated for the amount claimed, \$400.00.

### Decision

25. The landlord's claim for damages succeeds in the amount of \$400.00.

### Issue 4: Hearing expenses reimbursed \$500.00

26. The landlord had submitted expenses (LL#05) for personal time, printing, gas, etc., this tribunal doesn't reimburse for personal time and requires receipts for hearing expenses. He did submit the receipt for \$20.00 (LL#06) for the cost of the hearing and pursuant to policy 12.01, is entitled to reimbursement of the \$20.00 from the tenant.

## Summary of Decision

27. The tenant shall pay to the landlord \$1,952.36, as follows:

- Rent .....\$1,952.36
- Late fees .....75.00
- Damages ..... 400.00
- Hearing expenses .....20.00
- Total .....\$2,447.36

January 31, 2024  
Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office