

Residential Tenancies Tribunal

Application 2024-0005-NL

Decision 24-0005-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 29-February-2024 at 9:15 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via 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 and I was unable to reach them by telephone 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 they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing, electronically, on 17-February-2024 at 2 p.m. The appropriate supporting documents were also provided (LL#2). 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. Under normal circumstances, the onus is fully on the applicant to ensure they have all necessary evidence submitted at the time of the hearing. Due to a technical issue at the time of the hearing, evidence which had been submitted may not have been accessible at that time. For that reason, the applicant in this case was advised that he would be notified after the hearing if there was evidence issues, so he would have time to explain or submit supplemental material. He was notified on the afternoon of 29-February-2024 that some of the evidence he had sent was in an unusable format and needed to be re-submitted. There was no response. On 27-March-2024, he was notified that if he did not submit the remaining evidence by noon on 3-April-2024, the decision would be made

without the benefit of that evidence. On 12-April-2024, as the applicant has been given ample opportunity to address the evidentiary issues, I elected to proceed with the decision in the absence of the missing evidence.

Issues before the Tribunal

6. Should the landlord's claim for damages be granted?
7. Should the landlord's claim for unpaid rent and late fees be granted?
8. What is the proper disposition of the security deposit?

Legislation and Policy

9. 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: Damages

10. The landlord claims for \$2,475.11 in damages, divided amongst 40 items. No photographic or other documentary evidence was provided to demonstrate the damages and the need for repair. No receipts, invoices, or other documentary evidence was provided to support the cost of repair. The onus is always on the applicant to demonstrate their claim on a balance of probabilities and to provide sufficient documentary evidence on which to base their claim. As that onus has not been met, the landlord's claim for damages fails.

Issue 2: Unpaid Rent and Late Fees

11. The landlord claims for unpaid rent in the amount of \$591 and \$225 in late fees. A rental ledger (LL#3) was provided in support of this.
12. The ledger shows that in April 2023 the tenants paid only \$1300 rather than the full monthly rent of \$1350, establishing a negative balance. In May, the rent was paid in full. In June, \$1315 was paid, bringing the negative balance to \$85. In July, \$1340.00 was paid, bringing the negative balance to \$95. In August, \$1349.00 was paid, bringing the negative balance to \$96. In September, the tenants paid \$1355, reducing the negative balance to \$91.
13. In October, the landlord records four payments. \$150 on October 3rd, \$450.00 on October 3rd, \$525 on October 4th, and \$240.00 on October 5th, for a total of \$1215. This is a mathematical error. Those payments actually total to \$1365. This means that the total owing for the month was -\$15, bringing the negative balance down further to \$76.
14. In November, the tenant paid \$1135, making the negative balance at this point \$291. Finally, for the month of December, the last month of the tenancy, the tenants paid \$1205, bringing the final negative balance to \$436 in unpaid rent.

15. The landlord demonstrated that there has been rent owed since April 2023. S. 15 of the Act allows a landlord to charge a late payment fee in an amount set by the minister. The minister has set the rate for late fees at \$5 for the first day and \$2 for each day after, to a maximum of \$75. As rent has been owing for more than 35 days, the maximum is warranted in this case.

Issue 3: Security Deposit

16. As the landlord is owed moneys by the tenants, he may apply the security deposit against the moneys owed. In this case the security deposit was \$1000 and the amount owed is \$511, leaving a remainder of \$489 which must be returned to the tenants.

Decision

17. The landlord's claim for damages fails.
18. The landlord's claim for unpaid rent and late fees succeeds in the amounts of \$436 and \$75, respectively.
19. The landlord may apply the security deposit against moneys owed.
20. The remainder of the security deposit must be paid to the tenant.

Summary of Decision

21. The landlord shall pay to the tenant \$489 as follows:

Unpaid Rent.....	\$436
Late fees.....	\$75
Less Security Deposit..-(\$1000)	
 Total.....	-\$489

3-May-2024

Date

Seren Cahill
Residential Tenancies Office