

Residential Tenancies Tribunal

Application 2024-0141-NL

Decision 24-0141-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 19-March-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", attended by teleconference. The applicant's authorized representative, [REDACTED] also attended by teleconference. See authorized representative form (LL#1).
3. The respondent, Megan Drake, 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 her 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 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 she has been properly served. The landlord submitted an affidavit with his application stating that he had served the tenant with the notice of hearing via pre-paid registered mail [REDACTED] on 1-March-2024 (LL#2). Canada Post tracking services indicates that the respondent did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. 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 her absence.
5. There is a written month-to-month rental agreement which commenced on 1-February-2021. Rent is \$785.00 per month, due on the first of each month. A security deposit of \$589.00 was received on 1-February-2021 and is in the landlord's possession.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Compensation paid for Damages \$589.00
 - Security deposit applied against monies owed \$589.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security deposit, Section 10; Statutory Conditions and Section 22; Notice where tenant's obligation is not met. Also, relevant and considered is the following section of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rental premises.

Issue # 1: Vacant Possession of the Rental Premises

Relevant Submissions

9. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#3). The notice was issued to the tenant on 22-February-2024 under Section 22; Notice where tenant's obligation is not met to vacate on 29-February-2024. The landlord testified that he posted the notice on the tenant's door.

Landlord's Position

10. The landlord testified that there are significant amounts of damage to the unit and the unit needs to be cleaned. The landlord testified that he gave the tenant a *Landlord's Request for Repairs* form on 2-November-2023 to repair all the damages caused to the unit and to clean the rental unit by 2-December-2023 (LL#4). The landlord testified that the tenant did not repair any of the damages and did not clean the unit. The landlord is seeking vacant possession so he can restore his unit.

Analysis

11. The relevant subsections of Section 22 of the *Residential Tenancies Act, 2018* state:

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 specific date not less than 5 days after the notice has been served.

12. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* state:

Statutory Conditions

10. (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 a person whom the tenant permits on the residential premises.

13. I accept the landlord's authorized representative's testimony that there are significant damages to the unit, and I asked the landlord's representative why he did not list each item specifically and he responded that it was just too many items. The landlord's representative testified that the damages ranged from holes in walls to missing trim around doors to paint spots on walls. The landlord's authorized representative stated that the program under which the tenant rents [REDACTED] has already covered approximately \$9000.00 in damages to the unit, and they cap out at \$10,000 and based on the testimony of the landlord's representative, I find that the tenant has not fulfilled their obligation as a tenant to keep the premises clean and damage free, and as such, I find that the tenant has contravened Section 10-2 of the Act as stated above.
14. The termination notice was given on 22-February-2024 under Section 22; Notice where tenants obligation is not met to vacate the premises on 29-February-2024. The notice meets the requirements of the Act to move out not less than 5 days after the notice has been served. I find that the termination notice is a valid notice.
15. I find that the tenant should have vacated the premises by 29-February-2024.

Decision

16. The landlord's claim for vacant possession of the rented premises succeeds.

Issue # 2: Compensation paid for Damages \$589.00

Relevant Submission

17. The landlord testified that a stackable washer and dryer is no longer in the unit, and he is seeking \$589.00 to replace them. The landlord submitted a damages ledger to support his claim (LL#5).

Landlord's Position

18. The landlord's representative testified that the stackable washer and dryer went missing from the unit and the landlord is asking for \$589.00 (the security deposit amount) to replace them. The landlord's representative submitted a photograph of the washer and dryer to show what it looked like and to show that it was at the premises at the commencement of the tenancy (LL#6). The landlord also submitted a picture of an order from *Home Hardware* to show the cost to replace the items (LL#7).

Analysis

19. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:
 - *That the damage exists;*
 - *That the respondents are responsible for the damage, through a willful or negligent act;*
 - *The value to repair or replace the damaged item(s)*
20. Based on the landlord's representative's testimony and the exhibits entered into evidence, I accept that the stackable washer and dryer is missing from the unit, and I also accept that the amount sought by the landlord to replace them is below cost price.

For those reasons, I find that the tenant is responsible to replace the washer and dryer at the cost sought by the landlord.

Decision

21. The landlord's claim for damages succeeds in the amount of \$589.00.

Issue # 3: Security deposit applied against monies owed \$589.00

Analysis

22. 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).

23. The landlord's claim for losses has been successful as per paragraph 25 and as such the security deposit shall be applied against monies owed.

Decision

24. The security deposit of \$589.00 shall be applied against monies owed.

Summary of Decision

25. The tenant shall pay the landlord \$0.00 as follows:

Damages	\$589.00
Less security deposit.....	589.00
Total.....	<u>\$0.00</u>

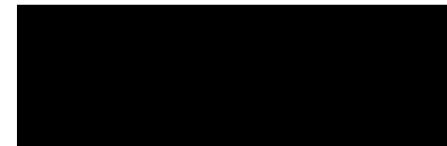
26. The tenant shall vacate the property immediately.

27. The landlord will be awarded an Order of Possession.

28. The tenant shall 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.

March 28, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office