

Residential Tenancies Tribunal

Application 2024-0148-NL

Decision 24-0148-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 28-March-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" attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with her application stating that she had served the tenants separately with the notice of hearing electronically by email to; [REDACTED] and [REDACTED] on 19-March-2024 (LL#1). In accordance with Section 5-1 of the *Residential Tenancies Policy Manual*, this is improper service as it was served less than 10 days prior to the hearing date. The respondents both confirmed receiving the documents on 19-March-2024 and wished to waive service and proceed with the hearing. In accordance with the *Residential Tenancies Policy* waived service is acceptable.
5. There was a written term rental agreement which commenced on 1-December-2023. The tenants vacated the unit on 17-February-2024. Rent was \$1750.00 per month, due on the first day of each month. Utilities were \$200 per month and also due on the first of the month. A security deposit of \$1300.00 was paid early on 28-August-2023 to secure the tenancy and is in the landlord's possession.
6. The applicant amended the application to decrease the amount claimed for damages from \$21700.00 as per the application to \$4936.95, to combine utilities paid with the rent, to add compensation for inconveniences (previously listed under damages) in the amount of \$301.70 and to seek hearing expenses.
7. Exhibits entered post hearing by the applicant were not entered into evidence.

Issues before the Tribunal

8. The landlord is seeking:
 - a. Rent & Utilities paid \$2900.00
 - b. Late fees \$75.00
 - c. Compensation for inconveniences \$301.70
 - d. Compensation for damages \$4936.95
 - e. Hearing expenses \$64.01
 - f. Security deposit applied against monies owed \$1300.00

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*.
10. Also, relevant and considered in this decision is the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 15: Fee for failure to pay rent. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of fees.

Issue # 1: Rent & Utilities Paid \$2900.00

Relevant Submission

11. The landlord testified that rent and utilities are outstanding in the amount of \$2900.00 for the months of February and March 2024. See breakdown of rental ledger below:

Rent & Utilities Ledger 2024-0148-NL			
Date	Action	Amount	Total
January 31, 2024	Balance	\$0.00	\$0.00
February 1, 2024	Rent due	\$1,750.00	\$1,750.00
February 1, 2024	utilities due	\$200.00	\$1,950.00
February 1, 2024	Payment	-\$1,000.00	\$950.00
March 1, 2024	rent due	\$1,750.00	\$2,700.00
March 1, 2024	utilities due	\$200.00	\$2,900.00

Landlord's Position

12. The landlord testified that the tenants vacated the unit on 17-February-2024 with rent and utilities partially paid. The landlord stated that she is seeking rent and utilities to be paid in full for the month of February and also for the following month as she was forced to break the fixed term agreement due to nonpayment of rent. The landlord also testified that she was unable to mitigate her losses and rent the unit in March due to the damages in the unit.

Tenant's Position

13. The tenants did not dispute that they owe \$950.00 in outstanding rent and utilities for the month of February, but they did dispute that they owe rent for the month of March after they vacated the unit. The tenant's stated that they were evicted and do not feel that they should be responsible for rent and utilities when they were not living there.

Analysis

14. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant(s) during the use or occupancy of a residential premises. The tenants signed a fixed term rental agreement which was scheduled to end on 31-November-2024 (LL#2). The landlord was forced to end the contract due to nonpayment of rent. This was a breach of the contract, and the tenants are expected to pay rent and utilities until the landlord can rent the unit again. Landlords should not have to incur financial loss because tenants decide not to pay rent. With that said, a landlord has to make every effort to mitigate their losses, and, in this case, I accept that the landlord was unable to rent the unit in March due to damages to the unit. For those reasons, I find that the tenants are responsible for the outstanding rent and utilities for the months of February and March in the amount of \$2900.00.

Decision

15. The landlord's claim for rent and utilities paid succeeds in the amount of \$2900.00.

Issue # 2: Late Fees \$75.00

16. 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

17. *Residential Tenancies Policy 12-1; Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* states:

Late payment fee:

A tenant is responsible to pay the landlord the full rent on the day the rent is due. If the rent is not paid on time, the landlord may charge the tenant a late payment fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains unpaid in any consecutive number of rental periods to a maximum of \$75.00.

18. The landlord testified that rent has been in arrears since 1-February. Late fees can be charged up to the point that the tenancy ends which was on 17-February-2024. I find that the tenants are responsible for late fees in the amount of \$35.00 as set by the Minister.

Decision

19. The landlords claim for late fees succeeds in the amount of \$35.00.

Issue # 3: Compensation for inconvenience \$301.70

Relevant Submission

20. The landlord testified that she was inconvenienced by having to fly from [REDACTED] [REDACTED] and back to deal with the damages at the unit and she is claiming the cost of her airline ticket for the dates of 26-February to 7-March-2024. The landlord submitted a copy of the airline itinerary to support her claim (LL#3).

Analysis

21. The landlord was advised during the hearing that this tribunal does not cover such personal cost and I did not provide the landlord or the tenants an opportunity to discuss this issue.

Decision

22. The landlord's claim for inconveniences does not succeed.

Issue # 4: Compensation for Damages \$4936.95

Relevant Submission

23. The landlord testified that there are damages to the rental unit, and she submitted an invoice from *M&M Properties Ltd* to support her claim (LL#4). See copy of invoice below:

INVOICE			
DATE	2024-B007		
February 29, 2024 [REDACTED]			
	INTERNAL DAMAGE	30 DAYS	MARCH 29TH, 2024
Due on Receipt			
QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
Labour	Paint, Plaster, replace flooring, a door, clean unit and remove garbage left behind	\$43.00	\$3818.00
Materials	Flooring, paint, plaster, trim and cleaning	\$475.00	\$475.00
HST	Tax	\$643.95	\$643.95
Product	Product description	\$Amount	\$Amount
		Subtotal	\$4293.00
		TAX	643.95
		Total	\$4936.95

Landlord's Position

24. The landlord testified that she hired *M & M Properties Ltd* to plaster and paint the unit, replace the flooring in the kitchen, repair a damaged door, clean the unit and remove the garbage that was left in the unit among some other miscellaneous tasks. The landlord testified that she was charged \$3818.00 plus tax for the labor costs associated with completing all the work. The landlord also testified that *M&M Properties Ltd* had to purchase materials to complete the work and the cost for the flooring, paint, plaster, trim and cleaning products was \$475.00 plus tax. The landlord submitted photographs to show the condition of the unit to support her claim (LL#5). The landlord testified that the work has been completed and she is seeking the total cost of \$4936.95 as stated on the invoice above.

Tenant's Position

25. The tenants agreed that they caused some of the damages but disputed most of the claims.

Analysis

26. In accordance with *Residential Tenancies Policy 9-3*, the applicant is required to show:

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

27. The landlord testified that she hired *M&M Properties Ltd* to restore the unit to the way it was prior to the tenancy and the total cost of labor was \$3818.00 plus tax and the total cost of materials was \$475.00 plus taxes. The landlord submitted a copy of the invoice to show that the work was completed. I broke down each item on the invoice and asked the landlord for more detail as to what exactly had to be completed and roughly how long it took the company to complete each task. I reviewed the photographs and gave the respondents an opportunity to speak on each item to determine if they were responsible for the damage. Based on the testimony of the applicant and the respondents and the exhibits entered into evidence, the items were analyzed as follows:

Item # 1: Labor Costs for repairs / replacements (\$4390.70) – The labor costs were broken down into 4 items as follows:

1). Paint and plaster the unit – The landlord testified that the entire unit needed to be painted and 2 walls needed to be replaced which required both plastering and painting. I asked the landlord when was the last time the unit was painted and she responded that the entire house was painted just prior to the tenancy in December 2023. The landlord testified that 2 walls in the hallway had holes in them which required the walls to be replaced with new Gyproc (LL#6). The landlord also testified that a wall in the bathroom also needed to be plastered due to damage (LL#7) and there were other touchup spots throughout the unit that required plastering, for example an area of wall next to the door molding that was destroyed due to dog scratches (LL#8). The landlord testified that the worker spent approximately 36 hours plastering and painting. The tenants did not dispute that they caused the holes in the walls in the hallway and respondent 1 stated that she accidentally hit the wall with her bedframe. Respondent 1 agrees that she is responsible for the holes in the walls but stated that replacing the walls was a bit extreme and she disputed causing any other damage to the walls and disputed any dirt on the walls.

Based on the photographs entered into evidence, one wall looks extremely dirty which indicates that maybe all walls would have the same level of dirt on them, however there are no clear photographs to support that the other walls were dirty and no photographs to support that the entire unit needed plastering and painting. Also, I accept the tenant's testimony that the walls in the hallway with the holes did not need to be replaced, the area around the holes could have been cut out and replaced which would have used less plaster and less manpower. For those reasons, I find that we can cut the hours of labor for plastering and painting in half to 18 hours. I find that the tenants are responsible for the cost of 18 hours of labor at \$43.00 per hour plus tax to plaster and paint the walls that were shown to have damage and dirt as per exhibits shown above.

2). Replace kitchen floor – The landlord testified that the linoleum flooring in the kitchen was destroyed and needed to be replaced. The landlord submitted a picture of the damage to support the claim (LL#9). The tenants did not dispute that they caused a small hole in the flooring while pulling out the refrigerator but disputes that they caused the damage shown in the photograph. Based on the photograph entered into evidence, I find that the landlord was able to show that the damage exists and for that reason, I find that the tenants are responsible for the cost of labor to pull up the flooring and install new flooring.

3). Repair interior door – The landlord testified that the door in the main bedroom was damaged and needed to be replaced. The landlord submitted a picture of the damage to show that the door was split to support the claim (LL#10). The tenants disputed that they caused any damage to the door and stated that the door fell off because it was old. I asked the landlord the age of the door and she responded that the door was 5 years old. Based on the photograph entered into evidence, I find that the landlord was able to show that the damage exists and for that reason, I find that the tenants are responsible for the cost of labor to repair and hang the door.

4). Cleaning and garbage removal - The landlord testified that the unit needed to be cleaned and garbage was left in the unit that needed to be removed. The landlord testified that there was dog hair and odor especially in the bedrooms and the bedroom floor was destroyed that required extra time to scrub and varatane. The landlord submitted photographs to support the claim (LL#11). The tenants did not dispute that they left the unit with some dirt and some garbage as they only had 10 days to vacate. Based on the photographs entered into evidence, I find that the landlord was able to show that the unit needed cleaning and that garbage was left in the unit. For those reasons, I find that the tenants are responsible for the cost of labor to clean the unit and remove garbage.

Item # 2: Materials (\$546.25) – The material costs were broken down into 2 items as follows:

1). Flooring – The landlord testified that the flooring costs \$250.00 plus tax. I asked the landlord if she had a receipt to show the cost and she stated that she did not. I accepted earlier that the flooring was damaged by the tenants, and as such, I find that the tenants are responsible for the cost of materials to replace the floor. It is not unreasonable to accept that linoleum would cost \$250.00 plus tax for a kitchen area. I find that the tenants are responsible for the cost of new flooring in the amount of \$287.50.

2). Other materials – The landlord testified that all other materials other than the flooring costs \$225.00 plus tax which included plaster, paint, varnish and cleaning materials. I asked the landlord if she had a receipt to show the cost of all those items and she stated that she did not. I accepted earlier that some painting and plastering was required, and cleaning was required, and as such, I find that the tenants are responsible for the cost of materials to restore the unit. Without receipts to show the exact amount, I can only

award a nominal amount. I find that it is not unreasonable to accept that materials would cost \$150.00 plus tax. I find that the tenants are responsible for the cost of materials in the amount of \$172.50.

28. Based on the above analysis, see the breakdown of costs for labor and materials below:

\$3818.00 (total labor cost charged) - \$774.00 (18 hrs x \$43.00 for painting and plastering **not** awarded) = \$3044 remaining x 15% tax = \$3500.60 total amount awarded for labor costs.

\$3500.60 (labor cost awarded) + \$287.50 (flooring cost) + 172.50 (cost of other materials) = \$3960.60.

Decision

29. The landlord's claim for damages succeeds in the amount of \$3960.60.

Issue # 5: Hearing expenses \$64.01

30. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and the landlord also utilized the services of a *Notary Public* which cost \$44.01. The landlord submitted a copy of the receipts (LL#12).

31. As the landlord's claim has been mostly successful, the tenants shall pay the \$64.01.

Decision

32. The landlord's claim for hearing expenses succeeds in the amount of \$64.01.

Issue # 6: Security deposit applied against monies owed \$1300.00

Analysis

33. 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.*
14. (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.*
14. (10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*
 14. (a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*
 14. (b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*
14. (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).*

34. The landlord's claim for losses has been successful as per paragraphs 15, 19, 29, and 32 and as such, the security deposit shall be applied against monies owed.

Decision

35. The landlord's claim for security deposit to be applied against monies owed succeeds.

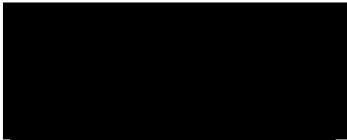
Summary of Decision

36. The tenants shall pay the landlord \$5659.61 as follows:

Rent & utilities paid	\$2900.00
Late fees	35.00
Compensation for inconveniences	0.00
Compensation for damages	3960.60
Hearing expenses	64.01
Less security deposit	1300.00
 Total	 \$5659.61

April 10, 2024

Date


Pamela Pennell
Residential Tenancies Office