

Residential Tenancies Tribunal

Application 2024-0224-NL

Decision 24-0224-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:58 p.m. on 13-May-2024.
2. Applicant 1, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference. Applicant 2, [REDACTED], hereinafter referred to as “the landlord” did not attend but was represented by applicant 1.
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 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 he has been properly served. The landlords submitted an affidavit with their application stating that they had served the tenant with the notice of hearing personally by giving it to the respondents’ mother at their place of residence and also electronically by email to: [REDACTED] on 27 March 2024 (LL#1). The landlords also submitted proof of email address and proof of the sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service. 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.
5. There was a written month-to-month rental agreement which commenced on 1-May-2022. The tenant vacated the unit on or about the 15-February-2024. Rent was \$775.00 per month, due on the first day of each month. A security deposit of \$500.00 was paid in April 2022 and is in the landlord’s possession.

Issues before the Tribunal

6. The landlords are seeking:
 - a. Rent paid \$2325.00
 - b. Late fees \$75.00
 - c. Compensation for damages \$6298.23
 - d. Hearing expenses \$20.00
 - e. Security deposit applied against monies owed \$500.00

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. 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.

Issue # 1: Rent Paid \$2325.00

Relevant Submission

9. Applicant 1 testified that rent is outstanding in the amount of \$2325.00 for the months of January, February and March 2024 and they submitted a rental ledger to support the claim (LL#3). See breakdown of rental ledger below:

Rental Ledger 2024-0224-NL			
Date	Action	Amount	Total
December 31, 2023	Balance	\$0.00	
January 1, 2024	Rent due	\$775.00	\$775.00
February 1, 2024	Rent due	\$775.00	\$1,550.00
March 1, 2024	Rent due	\$775.00	\$2,325.00

Landlord's Position

10. Applicant 1 testified that the tenant vacated the unit on 15-February-2024 after they had a conversation whereby the tenant agreed to stay in the unit and devise a payment plan for outstanding rent. Applicant 1 testified that they gave a termination notice for nonpayment of rent but revoked it as the tenant had nowhere to go. Applicant 1 testified that they were working with the tenant to allow him to stay in the unit and make payments towards the rental arrears. Applicant 1 stated that he was not expecting the tenant to abandon the unit without proper notice, and he also testified that they were unable to mitigate their losses and rent the unit in March due to the damages in the unit.

Analysis

11. Non-payment of rent is a violation of the rental agreement. Rent is required to be paid under a rental agreement by a tenant during the use or occupancy of a residential premises. Applicant 1 testified that they gave a termination notice to the tenant to vacate however later decided to work with the tenant and allow him to stay in the unit; however,

the tenant decided to vacate the unit without notice. 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 landlords were unable to rent the unit in March due to damages to the unit. For those reasons, I find that the tenant is responsible for the outstanding rent for the months of January, February and March in the amount of \$2325.00.

Decision

12. The landlord's claim for rent succeeds in the amount of \$2325.00.

Issue # 2: Late Fees \$75.00

13. 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.

14. *Residential Tenancies Policy 2-4; Deposits, Payments and Fees* states:

Late fees

When rent is not paid on time, a landlord may charge a late fee of \$5.00 for the first day the rent is in arrears and \$2.00 for each additional day that the rent remains in arrears in any consecutive number of rental periods up to a maximum of \$75.00.

15. Applicant 1 testified that rent has been in arrears since 1-January-2024. Late fees can be charged up to the point that the tenancy ends which was on 15-February-2024. I find that the tenant is responsible for late fees in the amount of \$75.00 as set by the Minister.

Decision

16. The landlords claim for late fees succeeds in the amount of \$75.00.

Issue # 3: Compensation for Damages \$6298.23

Relevant Submission

17. Applicant 1 testified that there are damages / losses to the rental unit in the amount of \$6298.23 and they submitted a damages ledger to support the claim (LL#4). See copy of damages ledger below:

Compensation for Damages

Submitted by: [REDACTED] Date: 2024-03-13

Applicant: [REDACTED]

Respondent: [REDACTED]

Item #	Description of Damages	Compensation Claimed
1	paint for entire apartment	\$ 247.00
2	cleaning supplies	\$ 47.13
3	clean up and trip to dump - labour	\$ 150.00
4	dump fees	\$ 214.84
5	clean up and trip to dump - labour	\$ 25.00
6	cleaning labour	\$ 300.00
7	flooring living room, kitchen, hall	\$ 2,228.15
8	lights	\$ 125.87
9	moulding	\$ 45.94
10	drywall repair materials	\$ 37.69
11	flooring - bathroom	\$ 192.03
12	underlay	\$ 32.20
13	moulding	\$ 400.66
14	installation labour	\$ 1,600.00
15	paint	\$ 168.59
16	plastering labour	\$ 190.00
17	supplies - dap	\$ 8.72
18	supplies - plastic	\$ 9.18
19	paint	\$ 130.79
20	door lock	\$ 42.00
21	electrical plates	\$ 5.69
22	HVAC covers	\$ 56.13
23	electrical plates	\$ 56.13
24	supplies - glue	\$ 13.79
25	Total	\$ 6,298.23
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Landlord's Position

18. Applicant 1 testified that the tenant had wild rabbits roaming freely within the unit which caused a lot of damage to the property. Applicant 1 stated that they had to hire a contractor, a painter, and a cleaner to restore the unit to the way it was prior to the commencement of the tenancy. Also, the landlords required the services of a person to take all the exterior garbage to the landfill. Applicant 1 testified that the work has been completed and they are seeking the total cost of restoration in the amount of \$6298.23. The damages ledger above is broken down as follow:

Item # 1: Paint / Plaster / supplies and labor \$1238.57 – Applicant 1 testified that they are seeking \$1048.57 to purchase paint, plaster, moldings and drywall materials to repair the walls and moldings that were damaged by the rabbits. The landlords are also seeking labor costs in the amount of \$190.00 as charged by the painter to complete the work. The landlords submitted photographs of the walls and the

moldings to support the claim (LL#5) and also receipts / invoice to show the cost of materials and the cost of labor (LL#6 see pages 1, 7, 9, 11, 13 & 14).

Item #2: Cleaning / dump fees \$736.97 – Applicant 1 testified that garbage was left outside the unit which consisted of hay and rabbit feces, bags of miscellaneous garbage and broken pieces of furniture. The landlords are seeking a total of \$736.97 to clean the property, purchase cleaning supplies and to cover the dump fees. The landlords submitted photographs to support the claim (LL#7) and also receipts / invoices to support the amount they are seeking (LL#8, see pages 1-5).

Item # 3: Flooring and installation \$4052.38 – Applicant 1 testified that the flooring in the kitchen, living room, hall / porch and bathroom needed to be replaced due to rabbit feces, excrement and damage. The landlords submitted photographs of the flooring to support the claim (LL#9). The landlords are seeking a total of \$2452.38 to cover the cost of the flooring and underlay. Also, Applicant 1 testified that it cost \$1600.00 to have the new flooring installed and submitted a copy of the invoice to support the claim (LL#10, pages 5, 6, 10 & 12).

Item #4: Miscellaneous \$270.31 – In addition to the above items, applicant 1 testified that they needed to purchase some additional items to assist with the work that was required to restore the unit. Applicant 1 testified that the lights in the unit were down to the bare bulbs with all the globes missing and he testified that electrical panels, hvac covers and a door lock were all broken or missing. The landlords submitted receipts to support the claim (LL#11, see pages 6, 14, 15 & 16).

Analysis

19. 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)*

20. Applicant 1 testified that they hired a contractor, a painter and a cleaner to restore the unit to the way it was prior to the tenancy and the total cost of restoration was \$6298.23 which included supplies needed, dump fees, miscellaneous items and labor. The landlords submitted photographs to show that the damage exists and to show that the damage was caused through a negligent act. The landlords also submitted copies of receipts / invoices to show the value to repair or replace the damaged items. The respondent was not present to dispute any claims and based on the photographs entered into evidence, I broke down the items into groups for simplicity. The items are analyzed as follows:

Item # 1: Paint / Plaster / supplies and labor \$1238.57 – Applicant 1 testified that they are seeking a total of \$1048.57 to purchase paint, plaster, moldings and drywall materials. The landlords are also seeking labor costs charged by the painter in the amount of \$190.00. I asked applicant 1 when was the last time that the walls were painted, and he responded that the unit was freshly painted 1 year prior to the tenancy in 2021. I asked applicant 1 the age of the home and he responded that it was 20 years old. In accordance with Section 9-5 of the *Residential Tenancies Policy Manual*, interior paint has a life span of 15 years and moldings have a life span of 60 years. Based on the receipts entered into evidence, the landlords could show that they paid \$377.59 for paint, \$55.59 for supplies, and \$190.00 to the painter for labor costs. As 80% of the interior paint's life cycle remain, I find that the tenant is responsible for 80% of those costs in the amount of \$498.54 (\$623.18 x 80%). Also, the landlords were able to show that it cost \$446.60 to replace the moldings in a 20-year-old home

with a 60% life span. I find that the tenant is responsible for 67% of the cost of the moldings in the amount of \$299.22 ($\$446.60 \times 67\%$). In summary, I find that the tenant is responsible for the total cost of paint, plaster, moldings, other supplies and labor costs in the amount of \$797.76.

Item #2: Cleaning / dump fees \$736.97 – Applicant 1 testified that they hired a cleaning person to clean the unit and he also testified that garbage was left outside the property which consisted of hay and rabbit feces, bags of miscellaneous garbage and broken pieces of furniture. Based on applicant 1's testimony and photographs entered into evidence, I accept that the landlords had to hire a cleaner and a person to make the dump runs. The landlords submitted receipts / invoices to support their claim and as such, I find that the tenant is responsible for the cost to clean the unit at \$736.97 as sought by the landlords.

Item # 3: Flooring and installation \$4052.38 – Applicant 1 testified that the flooring in the kitchen, living room, hall / porch and bathroom was destroyed mostly due to rabbit feces and excrement. Based on the photographs entered into evidence, I accept that the flooring had to be replaced. I asked applicant 1 what was the age of the flooring and he responded that it was approximately 10 years old, and he stated that it was in good condition prior to the tenancy. In accordance with Section 9-5 of the *Residential Tenancies Policy Manual*, laminate flooring has a 25-year lifespan and vinyl flooring has a 50-year lifespan and as such, I find that the tenant shall be responsible for the cost to replace the laminate flooring at 60% and the vinyl flooring at 80%. Based on the receipts entered into evidence, the landlords were able to show that it cost \$2260.35 to replace the laminate / underlay and as such, I find that the tenant is responsible for the cost at \$1356.21 (60% x \$2260.35). Also, the landlords were able to show that it cost 192.03 to replace the vinyl flooring and as such, I find that the tenant is responsible for the cost at \$153.62 (80% x \$192.03). Taking life expectancy into account when dealing with the Installation of the flooring, I have used an average of the 60% (laminate) and 80% (vinyl) lifespan and as such, I find that the tenant is responsible for the installation of the flooring in the amount of \$1120.00 ($\$1600.00 \times 70\%$). I find that the tenant is responsible for the flooring and installation at a total cost of \$2629.83.

Item #4: Miscellaneous \$270.31 – In addition to the above items, applicant 1 testified that they needed to purchase some additional items to assist with the work that was required to restore the unit. Applicant 1 testified that the lights in the unit were down to the bare bulbs with all the globes missing and he testified that electrical panels, hvac covers and a door lock were all broken or missing. Based on testimony, some photographs and receipts entered into evidence, I accept that those items needed to be replaced and as such, I find that the tenant is responsible for the cost as outlined in the receipts to replace those items in the amount of \$268.53.

Decision

21. The landlord's claim for damages succeeds in the amount of \$4433.09.

Issue # 4: Hearing expenses \$20.00

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

23. As the landlord's claim has been mostly successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 6: Security deposit applied against monies owed \$500.00

Analysis

25. 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).*

The landlord's claim for losses has been successful as per paragraphs 12, 16, 21, and 24 and as such, the security deposit shall be applied against monies owed.

Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2023 was 0% and is currently 1% for 2024.

Decision

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

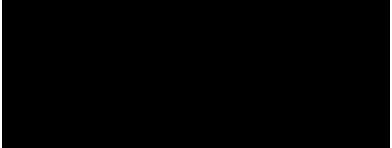
Summary of Decision

27. The tenant shall pay the landlords \$6352.45 as follows:

Rent paid	\$2325.00
Late fees	75.00
Compensation for damages	4433.09
Hearing expenses	20.00
Less security deposit & interest.....	500.64
 Total	 \$6352.45

May 30, 2024

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office