

Residential Tenancies Tribunal

Application 2024-0320-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-May-2024 at 2:12 pm.
2. The applicants, [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], did not attend.

Preliminary Matters

4. The tenant was 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 11-April-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 their absence.

Issues before the Tribunal

5. Should the landlords' claim for unpaid rent, utilities, and late payment fees be granted?
6. Should the landlords' application for other damages be granted?
7. What is the proper disposition of the security deposit?

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

9. Also referred to in this decision are sections 14 and 15 of the *Act*.

Security deposit

14. (1) A landlord shall not demand from a tenant a security deposit that is

(a) more than the amount of rent payable for the first 2 weeks where the residential premises is rented from week to week;

(b) more than 3/4 of the amount of rent payable for the first month where the residential premises is rented from month to month; or

(c) more than 3/4 of the amount of rent that would be payable for the first month if rent was divided into a monthly payment where the residential premises is rented for a fixed term.

(2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.

(3) Where a landlord receives a security deposit that is more than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or may recover the overpayment together with interest on the amount of the overpayment at the rate prescribed in the regulations.

(4) Upon receipt of a security deposit, the landlord shall give the tenant a written acknowledgement of receipt stating the amount of the security deposit, the date of receipt and the residential premises and residential complex to which it applies.

(5) Within 2 banking days of receipt of a security deposit, the landlord shall deposit it in an interest bearing account located in the province at a financial institution authorized to accept deposits.

(6) Where a landlord has 3 or more residential premises, the interest bearing account referred to in subsection (5) shall be a trust account used exclusively for security deposits.

(7) A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.

(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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

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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.

(2) Where a cheque for the payment of rent is returned to a landlord by a financial institution because of insufficient funds, the landlord may charge the tenant a fee in the same amount as the fee charged to the landlord by the financial institution.

10.

Issue 1: Unpaid Rent, Utilities, and Late Fees

11. According to the uncontradicted sworn testimony of the landlords, the tenant paid no rent for the months of February and March 2024. Monthly rent was set at \$2000. The landlord testified that the tenant left the premises sometime during the month of March. However, I am satisfied on a balance of probabilities that the landlord could not have mitigated their losses by placing a new tenant before the end of the month. The full month's rent is therefore justified.
12. The minister has set the rate for late fees regarding unpaid rent at \$5 for the first day and \$2 for each day thereafter, to a maximum of \$75. As rent has been overdue for more than 35 days, the maximum late fee of \$75 applies.
13. The landlords claim for utilities "overages" for January and February 2024 in the amounts of \$42.92 and \$78.50 respectively. The rental agreement (LL#3) specifies on

page 1 that utilities is included in the \$2000 rent and stipulates the clear exception that the tenant will be responsible for utilities in excess of \$325/month. The exception is bolded and sure to come to the reader's attention. LL#5-1 is a billing history for the property from NL Power and shows that the bill for January and February 2024 exceeded \$325 by \$42.92 and \$78.50 respectively.

14. The landlords' claim for unpaid rent succeeds in the amount of \$4000.
15. The landlords' claim for unpaid utilities succeeds in the amount of \$121.42.
16. The landlords' claim for late fees succeeds in the amount of \$75.

Issue 2: Damages

17. The landlords testified that the premises was left in an unclean state and provided pictures (LL#4) as supplementary evidence.
18. The landlords claim for cleaning supplies from Kents in the amount of \$61.68. A receipt was provided (LL#5-2). However, only \$15.96 from this receipt appears to be for cleaning supplies. \$15.96 is awarded.
19. The landlords claim for cleaning supplies from Dollarama in the amount of \$34.50. However, they testified that they misplaced this receipt and could not find it for the hearing. For policy reasons, this tribunal does not award damages in the absence of receipts where appropriate.
20. The landlords claim for batteries, bulbs, and miscellaneous other items in the amount of \$40.20. However, this receipt was also lost.
21. The landlords claim for \$367.50 for the cost of a cleaning service. This consists of 3 cleaners working for 3.5 hours each. 10.5 person hours of cleaning is justified by the evidence shown in LL#4. A receipt was provided (LL#5-3). \$367.50 is awarded.
22. The landlords claim for 434.43 for supplies for painting. The landlords testified that repainting was necessary as the tenant had violated the rental agreement by smoking throughout the house, leaving the walls nicotine stained. LL#4 provides enough evidence to support this conclusion. A receipt was provided (LL#5-4). \$434.50 is awarded.
23. The landlords claim for \$52.87 for additional supplies for painting. No receipt was provided as this was an estimate, the landlords say one additional can of paint will be needed. Using LL#5-4 as a reference, I find this to be a reasonable estimate. \$52.87 is awarded.
24. The landlords claim for \$85.00 for stain. This price is also an estimate. I have no documentary evidence with which to judge this estimate.
25. The landlords claim \$1800.00 for the labour of the painting contractor. A receipt and quote were provided (LL#5-5, LL#5-6). \$1800.00 is awarded.

26. The landlords claim for \$106.35 for supplies for the repair of damaged baseboards. However, no receipt could be located.
27. The landlords claim \$702.48 for the repair of baseboards, stairs, and the replacement of a doorbell. A receipt and invoice was provided (LL#5-7 and LL#5-8). LL#4 shows several heavily damaged baseboards that appear to have been chewed by a small animal, leaving exposed untreated wood. The stairs and its railing are damaged in the same way. A missing doorbell can also be seen. \$702.48 is awarded.
28. The landlords claim for 1.5 hours of self-labour for replacing two shower heads, six lights, smoke detector batteries, and repairing an ethernet jack. The evidence provided justifies this claim. The appropriate self-labour rate is minimum wage + \$8/hour. \$35.40 is awarded.
29. The landlords claim 5.5 hours of self-labour for collecting garbage, doing initial cleaning, removing tape from surfaces, and cleaning and replacing filters. The evidence provided justifies this claim. \$129.80 is awarded.
30. The landlords claim for 3 hours of self-labour for snow removal, cleaning/bagging animal feces left outside, and gathering/removing garbage left in and under the snow. The evidence justifies this claim. \$70.80 is awarded.
31. The landlords claim for 1 hour of self-labour for the time required to make 1 round-trip to the waste disposal facility. LL#6 shows it takes 20 minutes to drive from the premises to the facility, allowing for 20 minutes to actually unload the garbage. This is a reasonable amount of time. \$23.60 is awarded.
32. The landlords claim for 2 hours self-labour for sourcing and installing new parts for a damaged shed door. This is an estimate as the parts have not yet been delivered. \$47.20 is awarded.
33. The landlords claim for \$32.23 for compensation for the 47.74 km drive to the waste disposal facility at a rate of \$0.68/km. \$32.23 is awarded.
34. The landlords claim for 4 hours of self-labour for coordinating and chaperoning the Bell repair person. This time is part of the normal cost of doing business and is not compensable.
35. The landlords claim for 4 hours of self-labour for coordinating with contractors, obtaining quotes, preparing documentation for this hearing, and expediting the process to ensure new tenants could be placed as soon as possible. Generally, these are matters which fall under the heading of the normal cost of doing business and are not compensable. The landlords submitted that had they not spent extra time and effort expediting this process, the tenant might have been found liable for additional rent. There is some merit to this line of argument. Nevertheless, I elect not to award damages for this portion of the claim. The *Act* provides that failure to mitigate losses can impair the landlords' ability to claim for those losses. To provide additional compensation for this mitigation not intended by the legislature would not be appropriate.

36. The landlords claim for 1 hour of self-labour for the repair of the shed door. This ought to be covered under the portion of the claim in paragraph 30, above.
37. Lastly, the landlords claim for 0.5 hours self-labour for the repair of damaged trim over the fridge. No documentary evidence of this damaged trim was provided.
38. The landlords' claim for damages succeed in the amount of \$3712.34.

Issue 3: Security Deposit

39. The landlords are owed moneys and are therefore entitled to apply the security deposit against the amount owed.

Decision

40. The landlords' claim unpaid rent succeeds in the amount of \$4000.00.
41. The landlords' claim for unpaid utilities succeeds in the amount of \$121.42.
42. The landlords' claim for late fees succeeds in the amount of \$75.00.
43. The landlords' claim for damages succeeds in the amount of \$3712.34.
44. The security deposit may be applied against the moneys owed. In this case, the security deposit is \$1500.00.
45. As the landlords were successful in their claim, they are entitled to have their hearing expenses covered. In this case their hearing expenses consist solely of the \$20.00 hearing fee.

Summary of Decision

46. The tenant shall pay to the landlords \$6428.76 as follows:

| | |
|---------------------------|------------|
| Unpaid Rent..... | \$4000.00 |
| Unpaid Utilities..... | \$121.42 |
| Late fees..... | \$75.00 |
| Damages..... | \$3712.34 |
| Hearing Expenses..... | \$20.00 |
| Less Security Deposit.... | -(1500.00) |
| Total..... | \$6428.76 |

11-July-2024

Date


Seren Cahill
Residential Tenancies Office