

Residential Tenancies Tribunal

Application 2024-0421-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 16-July-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference. Also present was [REDACTED], authorized representative.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he served the tenant with the notice of hearing electronically by text and email to: [REDACTED] and [REDACTED] on 14 June 2024 (LL#1). The respondent confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written month-to-month rental agreement which commenced on 1-July-2023. The tenant vacated the unit on 30-April-2024. Rent was \$1200.00 per month, due on the first day of each month. A security deposit of \$900.00 was paid on 20-June-2023 and is in the landlord’s possession.
6. The landlord amended the application to include hearing expenses.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Validity of the termination notice
 - b. Rent paid \$1200.00
 - c. Compensation for damages \$1122.00
 - d. Hearing expenses \$20.00
 - e. Security deposit to be applied against monies owed \$900.00

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*. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit and Section 34: Requirements of notices. 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 Costs.

Issue # 1: Validity of the Termination Notice

Relevant submission

9. The landlord testified that the tenant gave a written notice on 16-April-2024 stating that she found a new place and would be moving out by 1-May-2024. The landlord submitted a copy of the notice to support the claim (LL#2).

Landlord's Position

10. The landlord testified that the tenant provided him with a 14-day notice which did not meet the guidelines as set out in the *Act* and although the tenant has vacated, the landlord stated that he wishes to establish that an improper notice was given to support the claim for rent to be paid.

Tenant's Position

11. The tenant's representative testified that the landlord knew that the tenant was looking for a new place and that there were on-going conversations regarding the tenant moving out. The tenant's representative stated that the landlord sent the tenant a text message on 31-January-2024 whereby he acknowledged that there were issues between both tenants in the units and stated that at that time both parties would be justified in leaving due to their lack of peaceful enjoyment. The tenant's representative stated that the tenant was under the impression that she had a verbal agreement with the landlord to vacate the unit as soon as she was able to secure a new place.

Analysis

12. Section 34 of the *Residential Tenancies Act, 2018*: Requirements for Notices states:

34. Requirements for Notices

A notice under this Act shall

- a. *be in writing in the form prescribed by the Minister;*
- b. *contain the name and address of the recipient;*
- c. *identify the residential premises for which the notice is given; and*
- d. *state the section of the Act under which the notice is given*

13. I accept that there were issues between the tenants in both units of the property dating back to at least January and February which interfered with their peaceful enjoyment, and I accept that the landlord acknowledged that there were on-going issues at that time, and he would have accepted a termination notice under peaceful enjoyment if given. However, the tenant failed to provide a termination notice under peaceful enjoyment and 3 months later sent a text stating that she would be vacating the unit in 14 days. I find that although the landlord knew that the tenant was most likely going to be moving out, the landlord still had the right to receive a proper termination notice and the tenant had an obligation to give a proper termination notice. In accordance with Section 34 of the *Act* as stated above, I find that the tenant did not give a proper termination notice to the landlord and despite any previous conversations dating back 3 months, I find that the termination notice given on 16-April-2024 is not a valid notice.

Decision

14. The termination notice given on 16-April-2024 is not a valid termination notice.

Issue # 2: Rent Paid \$1200.00

Landlord's Position

15. The landlord testified that rent is outstanding in the amount of \$1200.00 for the month of May as the tenant vacated the unit at the end of April without giving a proper 1-month notice.

Tenant's Position

16. The tenant's representative disputed that the tenant should be responsible for rent for the month of May when she did not reside there and stated that the landlord knew she was looking for a new place and he had plenty of time to mitigate his losses.

Analysis

17. I accept the landlord's testimony that he made every effort to rent the unit for May but was unsuccessful and secured a tenant for 1-June. As the validity of the termination notice has been determined to be invalid as per paragraph 15 above, and as I accept that the landlord was unable to re-rent the unit until June, I find that the tenant is responsible for rent for the month of May in the amount of \$1200.00.

Decision

18. The landlord's claim for *rent paid* succeeds in the amount of \$1200.00.

Issue # 3: Compensation for Damages \$1122.00

Relevant Submission

19. The landlord testified that there were damages / losses to the rental unit in the amount of \$1122.00 and he submitted a damages ledger to support the claim (LL#3). See copy of damages ledger below:

1	Rectify deposit Contract # 1	\$ 250.00
2	Accelerated depreciation of Hardwood	\$ 250.00
3	Repair Supplies (Paint + Plaster)	\$ 150.00
4	Repair labour 10 hrs x 2 people	
5	• Plaster holes and wall damage	
6	• Rectify deposit Contract # 7	
7	• Paint living Room	
8	• Paint Dining room	
9	• Paint primary bedroom	
10	• Paint HallWay	
11	• paint Ceilings (living, dining and primary bedroom)	
12	• remove paint from Switch	
13	Plates, A/C plates and door rollers	
14	• Paint baseboards and Windows	
15	Casings	
16	• Remove paint from living room	
17	Window	
18	• Repair bath tub Control panel	
19	• Clean dining room ceiling	\$ 23.60
20	before paint	x 20 hrs
21	• Replace barn door Guide / Runner	\$ 472.00

Landlord's and Tenant's Position

20. The landlord testified that the above noted items have been identified as damages / losses to the unit caused by negligence on the part of the tenant. The landlord and the tenant's positions are as follows:

Item # 1: Rectify security deposit (\$250.00) – The landlord stated that at the commencement of the tenancy he entered into a written agreement with the tenant whereby the tenant would complete repair work to the unit in lieu of payment for the security deposit. The landlord submitted a copy of a written agreement to support the claim (LL#4). The landlord stated that the total value of all the work to be completed was calculated at \$680.00 and agreed upon by the tenant. The landlord testified that items # 1, 2 and 7 were not completed by the tenant and as such, he is claiming to have \$250.00 deducted from the security deposit paid. The tenant's representative did not dispute that some of the work was not completed as agreed upon, however she did dispute that the items in question had a value of \$250.00.

Item # 2: Hardwood floor depreciation (\$250.00) – The landlord stated that there was accelerated depreciation of the hardwood flooring in the unit, and he is seeking 25% of the estimated cost of \$1000.00 to repair the floor. The landlord submitted photographs of the flooring to support the claim (LL#5). The tenant's representative did not dispute that the tenant caused damage to the hardwood floor and stated that they are only scratches. The tenant's representative stated that the tenant is not responsible for all the damage to

the hardwood flooring as there were some scratches on the hardwood when she took possession of the unit.

Item # 3: Paint and plaster and labor costs (\$622.00) - The landlord stated that he gave the tenant permission to paint the unit when she moved in under the condition that she would put the original paint color back on the walls prior to moving out. The landlord stated that the paint job completed by the tenant was unacceptable as the paint extended from the walls onto the molding, window ledges and the ceiling. The landlord testified that 4 rooms plus the hallway needed to be painted and 2 rooms needed plaster work. The landlord submitted photographs of the walls to support the claim (LL#6) and receipts for materials (LL#7). In addition to the cost of materials, the landlord is seeking compensation for 20 hours of self-labor at \$23.60 per hour and he submitted a breakdown of his timesheet to support the claim (LL#8). The tenant's representative did not dispute that the tenant painted the walls and stated that she was not a professional painter and if you look closely, you will see some mistakes.

Analysis

21. 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)*

22. Each item is analyzed as follows:

Item # 1: Rectify security deposit (250.00) – The landlord stated that at the commencement of the tenancy he entered into a written agreement with the tenant whereby the tenant would complete repair work to the unit in lieu of payment for the security deposit. The landlord stated that the total value of all the work to be completed was calculated at \$680.00 and agreed upon by the tenant. I accept that both parties agreed upon the value of the work. The landlord testified that items # 1, 2 and 7 were not completed by the tenant and the tenant's representative did not dispute that the work was not completed, however she disputed that the work that was incomplete has a value of \$250.00. I asked the landlord how he arrived at that amount, and he was unable to show me a breakdown of the cost to complete the work for those items. I asked the tenant's representative what she thought would be a fair dollar value for those items on the list and she responded \$100.00. I find that the onus is on the landlord to show the cost or value to have the work completed and as he failed to provide any quotes or receipts, I am unable to determine the value of the work. As the tenant agreed to have \$100.00 deducted from the security deposit for the value of the incomplete work, I find that the amount of the security deposit paid to the landlord shall be reduced from \$900.00 as per paragraph 5 above to \$800.00.

Item # 2: Hardwood floor depreciation (\$250.00) – The landlord stated that there was accelerated depreciation of the hardwood flooring in the unit, and he is seeking 25% of the estimated cost of \$1000.00 to repair the floor. I asked the landlord how he arrived at the \$1000.00 figure, and he stated that he was unable to obtain a quote but made a conservation guess of \$1000.00 as the nature of the damage will not allow spot refinishing and the entire hardwood flooring which makes up roughly 50% of the surface area of the unit has to be completely refinished. I asked the landlord the age of the flooring and he responded that the hardwood was refinished in 2019, 4 years prior to the tenancy. In accordance with Section 9-5 of the Residential Tenancies Policy: Depreciation and life expectancy of property, hardwood flooring has an unlimited life span. The tenant's representative did not dispute that the tenant caused damage to the

hardwood floor and stated that they are only scratches. The tenant's representative stated that the tenant is not responsible for all the damage to the hardwood flooring as there were some scratches on the hardwood when she took possession of the unit. I asked the landlord if there were scratches to the flooring at the commencement of the tenancy and he stated that there were some light surface scratches but nothing that he was concerned about. Based on the photographs entered into evidence, I accept that the damage to the hardwood floor is extensive and given that the tenant did not dispute that she is responsible for some of the damage, I find that \$250.00 is more than reasonable to claim for the cost to refinish the hardwood and as such, I find that the tenant shall pay the landlord for the partial cost to refinish the hardwood in the amount of \$250.00.

Item # 3: Paint and plaster and labor costs (\$622.00) - The landlord stated that he gave the tenant permission to paint the unit when she moved in under the condition that she would put the original paint color back on the walls prior to moving out. The landlord stated that the paint job completed by the tenant was unacceptable as the paint extended from the walls onto the molding, window ledges and the ceiling. The landlord testified that 4 rooms plus the hallway needed to be painted and 2 rooms needed plaster work. In addition to the cost of materials, the landlord is seeking compensation for 20 hours of self-labor at \$23.60 per hour. The tenant's representative did not dispute that the tenant painted the walls and stated that the tenant is not a professional painter and if you look closely, you will see some mistakes, however she did dispute that the walls needed plaster and stated that holes in the wall fall under normal wear and tear. I asked the landlord when was the last time that the walls were painted and he responded 5 years ago. Depreciation is usually taken into consideration when awarding compensation for interior paint however in this situation, the landlord and the tenant had an agreement that the tenant would repaint the walls prior to vacating. Based on the photographs entered into evidence, I accept that the paint job would be unacceptable to the landlord and needed to be repainted before he could rent the unit again. I also accept that the landlord had to plaster the walls in areas where there was damage as the holes were larger than typical holes due to normal wear and tear. With regards to the labor costs claimed by the landlord, I accept that it would take 2 people 10 hours to complete the work given that the moldings and the ceilings had to be painted as well as the walls. I find that the tenant is responsible to reimburse the landlord for paint and plaster supplies in the amount of \$141.97 and also for the cost of self-labor in the amount of \$472.00 for a total of \$613.97.

Decision

23. The security deposit shall be reduced from \$900.00 to \$800.00.
24. The landlord's claim for damages succeeds in the amount of \$863.97.

Issue # 4: Hearing expenses \$20.00

25. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt (LL#9). Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 6: Security deposit applied against monies owed \$900.00

Analysis

27. The amount of the security deposit in question has been reduced from \$900.00 to \$800.00 as per paragraph 22, item # 1 above.

28. 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).*

29. As the landlord's claim for losses has been successful as per paragraphs 18, 24 and 26, I find that the landlord's claim to have the security deposit applied against monies owed succeeds. 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

30. The landlord's claim to have the security deposit applied against monies owed succeeds.

Summary of Decision

31. The security deposit shall be reduced from \$900.00 to \$800.00.

32. The tenant shall pay the landlord \$1279.62 as follows:

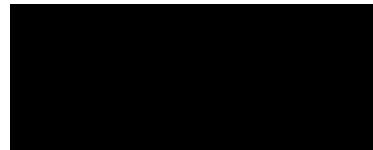
Rent paid \$1200.00

Compensation for damages 863.97

Hearing expenses 20.00

Less: security deposit plus interest .. 804.35

Total \$1279.62



August 5,2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office