

Residential Tenancies Tribunal

Application 2024-0430-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:04 a.m. on 27-June-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference. Also present was [REDACTED] as a support person.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlord submitted an affidavit with his application stating that he had the tenant served with the notice of hearing personally at the residential premises 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 fixed term rental agreement which commenced on 28-July-2021, which transferred to a month-to-month agreement. The tenant vacated the unit on 18-April-2024. Rent was \$600.00 per month, due on the first day of each month. A security deposit of \$400.00 was paid in July 2021 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. Rent paid \$800.00
 - b. Late fees \$75.00
 - c. Compensation for damages \$1000.00
 - d. Hearing expenses \$20.00
 - e. Security deposit to be retained to go towards outstanding rent \$400.00

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*.
9. Also, relevant and considered in this decision are 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 7-5: Interference with peaceful enjoyment and reasonable privacy, Section 7-6: Premises uninhabitable, 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: Rent Paid \$800.00

Retain security deposit for outstanding rent \$400.00

Landlord's Position

10. The landlord testified that rent is outstanding in the amount of \$1200.00 for the months of April and May 2024 and he stated that he is seeking \$800.00 and asking to retain the security deposit of \$400.00 to go towards the remainder of the outstanding rent for a total of \$1200.00. The landlord testified that the tenant vacated the unit on 18-April without paying rent for April or without providing a proper termination notice. The landlord is seeking rent to be paid in full for April and May 2024.

Tenant's Position

11. The tenant disputed that she held back the rent in April and testified that she sent an e-transfer on 1-April as she always did each month. The tenant also disputed that she should have to pay rent for the month of May as she was not living there, and she stated that she was forced to vacate the unit due to uninhabitable conditions within the unit and also due to the landlord interfering with her peaceful enjoyment. The tenant testified that she gave the landlord a termination notice on 4-April-2024 stating that she would be terminating the tenancy effective 18-April-2024 under Sections 21 and 23 of the Act (TT#1).

Analysis

12. In order to determine if rent should be paid for the months of April and May, a responsibility exists to deal with the validity of the termination notice. The tenant gave a termination notice with cause on 4-April-2024 under Section 21: *Premises uninhabitable* and Section 24: *Interference in peaceful enjoyment and reasonable privacy*. The termination date was given not less than 5 days after the notice was served which meets the requirements as set out in the Act. I find that the termination notice is a valid notice from a timeline perspective but has to be further analyzed for validity (see below).
13. With regards to Section 21: *Premises uninhabitable*, the tenant testified that the unit had a leaky roof which caused water to enter the unit and as a result created a mold problem within the unit, making her sick with a cough. The tenant testified that water was entering the bedroom from a hole in the ceiling causing mold on the walls and she stated that there was also mold in the basement and the bathroom which in her opinion made the premises uninhabitable. The tenant also testified that there was a problem with the panel box whereby there were 3 melted wires coming into the unit from the outside, which

previously had caught fire and was a major safety concern. In accordance with Section 7-6 of the *Residential Tenancies Policy*, a rental premises may be considered uninhabitable when an authoritative body (municipal government) orders that the premises be shut down for safety purposes. I accept that the fire department was at the premises when there was a fire due to the panel box and if at that time, the fire fighters deemed the premises to be unsafe, then they would have ensured that an order was issued to shut down the premises. I asked the tenant if the unit was declared uninhabitable by the fire department or by another regulatory authority due to the panel box and the mold, and she responded that it had not. For those reasons, I find that the termination notice given on 4-April under Section 21 of the *Act* was not a valid notice.

14. With regards to Section 24: *Interference with peaceful enjoyment and reasonable privacy*, the tenant testified that the landlord never took her complaints seriously and disregarded her safety concerns. The tenant stated that the landlord continuously made snide remarks to her regarding her complaints saying that things are never as bad as she made them out to be. The tenant also stated that the landlord's worker entered her apartment once unannounced. In accordance with Section 7-5 of the *Residential Tenancies Policy*, interference with peaceful enjoyment and reasonable privacy is defined as an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord. I accept that the landlord did not take the tenant's complaints seriously, however based on the tenant's testimony, I find that the tenant was unable to show that there was an ongoing unreasonable disturbance caused by the landlord and for that reason, I find that the termination notice given on 4-April under Section 24 of the *Act* was not a valid notice.
15. I find that the tenant failed to demonstrate that she had reason to give the landlord a termination notice with cause under Sections 21 and/or 23 of the *Act*. Based on the balance of probabilities, I find that the tenant did not show that she had reasons to give the termination notice and as such, did not have a right to vacate the unit within 14 days. The termination notice was not a valid notice.
16. With the validity of the termination notice determined, the landlord's claim for *rent paid* for the months of April and May 2024 can be analyzed. 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. I asked the landlord why he did not accept the e-transfer on the 1-April when the tenant made an attempt to pay the rent. The landlord testified that he was unable to accept the payment without a password and he was not given the password and he also stated that the tenant cancelled the electronic payment after 2 days. I asked the tenant if she held back the password and if she cancelled the payment and she responded that she had because at that point she decided to end the tenancy. The tenant vacated the unit on 18-April without a proper 1-month notice, and as such the tenant is responsible for rent for the months of April and May 2024. I find that the tenant shall pay the landlord \$800.00 for rent as sought on the application and the landlord shall retain the \$400.00 security deposit to cover the remainder of the rent for that period.

Decision

17. The landlord's claim for *rent paid* succeeds in the amount of \$800.00 and the \$400.00 security deposit shall be retained for the remainder of the rent owed for April and May 2024.

Issue # 2: Late Fees \$75.00

18. 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.

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 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.

19. The tenant did not dispute that rent is outstanding since 1- April. In accordance with Section 2-4 of the Policy as stated above, I find that that the maximum late fee of \$75.00 as prescribed by the Minister is allowed.

Decision

20. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue # 3: Damages \$1000.00

Relevant Submission

21. The landlord testified that there are damages / losses to the rental unit in the amount of \$1000.00 and he submitted a damages ledger to support the claim (LL#2). See copy of damages ledger below:

Compensation for Damages

Submitted by: _____ Date: May 8, 2024

Applicant: _____

Respondent: _____

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	Refridgerator Freezer damage	\$ 250.00
2	Side of fridge damage (Burn)	\$ 50.00
3	Smoke staining on ceiling + walls	\$ 700.00

Landlord's Position

22. The landlord testified that the tenant caused damage to the freezer tray of the refrigerator and to the exterior side panel of the refrigerator. The landlord stated that he noticed that there were 4 small holes in the freezer tray and a large burn mark on the side of the refrigerator facing the stove. The landlord stated that he is seeking the cost of a used replacement fridge and he stated that they are selling for approximately \$300.00. The landlord also stated that he is seeking the cost to paint the kitchen ceiling and kitchen walls in the amount of \$700.00 as the tenant had a couple of small fires in the unit causing smoke stains in the immediate area of the stove. The landlord submitted photographs to support the claim (LL#3).

Tenant's Position

23. The tenant disputed all damage claims and stated that she did not damage the refrigerator in any way and that the damage to the freezer tray and the side of the refrigerator existed when she moved in. The tenant disputed that she ever had a fire in the unit and stated that the walls and ceiling were yellow because there was no fan vented to the outside of the unit causing the steam from cooking to stain the walls and ceiling.

Analysis

24. 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)*

25. With regards to the refrigerator, I find that the landlord was able to show that the damage exists, however he was unable to show that the tenant was responsible for the damage. The tenant testified that the damage to the freezer tray and the burn mark on the side of the refrigerator were there when she moved in. I asked the landlord if he was confident that the holes in the freezer tray were not there when he rented the unit and he responded that to the best of his knowledge they were not there, but he was not 100% sure. I also asked the landlord if there was any chance that the burn mark was on the side of the fridge when the tenant moved in, and he responded that it definitely was not. I asked the landlord the age of the refrigerator and he responded that it was approximately 15 years old. In accordance with Section 9-5 of the *Residential Tenancies Policy*: Depreciation and Life Expectancy of Property, the life span of a refrigerator is 13 years. As the refrigerator has exceeded its life cycle and could potentially be non-operational at any time, I find that the tenant is not responsible to replace the refrigerator.

26. With regards to the smoke stains on the wall and on the ceiling in the kitchen area, the tenant did not dispute that the area was stained badly and needed to be painted, however she disputed that she caused the damage and testified that there were never any fires in the kitchen as stated by the landlord. The tenant stated that there was no ventilation to the outside from the kitchen cooking area and as a result the steam from the stove area has left yellowish stains on the walls and the ceiling in the kitchen area. I asked the landlord when was the last time the unit was painted and he responded that the unit was last painted 5 years ago. In accordance with Section 9-5 of the *Residential Tenancies Policy*: Depreciation and Life Expectancy of Property, the life span of interior paint is 15 years however given that there was absolutely no ventilation to the outside of the kitchen, I find that it is not unreasonable to expect that the kitchen area would need to be painted after 5 years. Also, the landlord was unable to show that the area needed

to be painted due to negligence on the part of the tenant and as such, I find that the tenant is not responsible for the cost to paint the walls and the ceiling in the kitchen area.

Decision

27. The landlord's claim for damages does not succeed.

Issue # 4: Hearing expenses \$20.00

28. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt (LL#4).

29. 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 partially successful, the tenant shall pay the \$20.00.

Decision

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

Issue # 6: Security deposit applied against monies owed

Analysis

31. 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).*

32. The security deposit was dealt with in issue #1 and as such shall be retained to go towards the outstanding rent. 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 from 2021-2023 was 0% and is currently 1% for 2024.

Decision

33. The interest calculated on the security deposit shall be applied against any monies owed.

Summary of Decision

34. The landlord shall retain the security deposit of \$400.00 to go towards outstanding rent.

35. The tenant shall pay the landlord \$893.03 as follows:

Rent paid	\$800.00
Late fees	75.00
Compensation for damages	0.00
Hearing expenses	20.00
Less: interest on security deposit	1.97
 Total	 \$893.03

July 11, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office