

Residential Tenancies Tribunal

Application 2024-0718-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 28-August-2024 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.
4. A witness for the landlord, [REDACTED], also attended via teleconference.

Preliminary Matters

5. The tenant was not present or represented at the hearing. I attempted to contact them by telephone at the beginning of the hearing and reached a person who identified themselves as the respondent, stated that they were aware of the hearing, and advised that they refused to attend. 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 testified that they had served the tenant with notice of the hearing electronically on 12-August-2024 at 3:11 pm. She also provided evidence that the tenant received the notice (LL#2). 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

6. Should the landlord's claim for damages succeed?
7. Should the landlord's claim for unpaid rent succeed?
8. What is the proper disposition of the security deposit?

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* (the *Act*).

Issue 1: Damages

10. The landlord claims \$3304.36 in damages divided amongst three items. Each item will be discussed individually below. In accordance with the Residential Tenancies Program Policy and Procedure Guide 09-003, a landlord seeking to claim damages must provide sufficient evidence to establish on a balance of probabilities that their property was damaged, that the damage was caused by a wilful or negligent act of the tenant or a person they allowed on the premises, the extent of the damage, and the cost of repair or replacement.
11. The landlord claims \$2877.80 for the cost of cleaning, as she says the tenant left the premises in an unclean state. The landlord provided LL#3, which contains a number of photos showing the state of the premises as it was when the tenant vacated the property. The witness for the landlord testified that she operates a cleaning service which the landlord hired to clean the premises. The witness testified that the premises were, in her words, "absolutely filthy." She said that they considered the premises biohazardous, so the cleaners who attended needed special equipment and treatment to ensure their safety. These potential biohazards included what appeared to be urine, blood, "nasal drippage," and illicit drugs. Her testimony is consistent with the photos provided as LL#3.
12. LL#4 shows an invoice from the witness's cleaning company for \$2877.80.
13. Considering the evidence in its totality, I accept on a balance of probabilities that the tenant left the premises in an unclean state, and that this cost the landlord \$2877.50 to remedy.
14. This portion of the landlord's claim succeeds in the amount of \$2877.80.
15. The landlord claims \$426.56 for the replacement of two blanket sets, hand towels, pillows, and two sets of bedclothes. She testified that she supplied the apartment pre-furnished and the tenant and she signed a document listing the items included (LL#5). She also testified that some of these items were missing and some were destroyed by contamination by bodily fluids and other substances. These items can also be seen in LL#6, which contains pictures of the premises prior to the tenancy. LL#3 shows that the cost of replacing these items is \$426.56.
16. Considering the evidence in its totality, I find on a balance of probabilities that the tenant damaged or removed these items, warranting replacement, and that the replacement costs \$426.56.
17. This portion of the landlord's claim succeeds in the amount of \$426.56.

18. The landlord's claim for damages succeeds in the amount of \$3304.36.

Issue 2: Unpaid Rent

19. The landlord claims \$186.67 for unpaid rent for four days in which she testified the tenant remained in the premises past the termination date of the tenancy.
20. The correct formula for determining a daily rate is found by multiplying the monthly rent by the 12 months of the year and dividing the 366 days of this year. In this case, the monthly rent was \$1750. Therefore, the formula is $\$1750/\text{month} * (12 \text{ months}/366 \text{ days}) = \sim \$57.38/\text{day}$. Multiplying this by the 4 days of September for which the tenant remained at the premises yields a total rent owed of \$229.51.
21. The landlord's claim for unpaid rent succeeds in the amount of \$186.67, the full amount claimed.

Issue 3: Security Deposit

22. The landlord testified that the security deposit in this case was \$1312.50 and was received in November 2023. As the landlord is owed moneys, they may apply the security deposit against the sum owed. S. 14(7) of the *Act* states that 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. During 2023, the regulations prescribed an interest rate of 0%. During 2024, the regulations prescribed a simple cumulative annual interest rate of 1%. Calculated to the date of the hearing, this yields a total amount of interest of \$8.68.

Decision

23. The landlord's claim for damages succeeds in the amount of \$3304.36.
24. The landlord's claim for unpaid rent succeeds in the amount of \$186.67.
25. The landlord may apply the \$1321.18 security deposit with interest against the sum owed.
26. The landlord was successful in their application and is therefore entitled to have their reasonable hearing expenses covered. In this case, their sole hearing expense was the \$20 application fee.

Summary of Decision

27. The tenant shall pay to the tenant \$2189.85 as follows:

| | |
|----------------------------|--------------|
| Damages..... | \$3304.36 |
| Unpaid Rent..... | \$186.67 |
| Hearing expenses..... | \$20.00 |
| Less Security Deposit..... | -(\$1321.18) |
| Total..... | \$2189.85 |

10-September-2024

Date

[Redacted]

Seren Cahill
Residential Tenancies Office