

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0405-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:12 p.m. on 25-January-2022.
2. The applicant, the [REDACTED] represented by [REDACTED] [REDACTED] hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1 and tenant2” did not attend.
4. The landlord presented a witness, [REDACTED] Supervisor of Maintenance with the [REDACTED], hereinafter referred to as the witness.
5. Tenant2 submitted an authorized representative form (TT#01) naming [REDACTED] [REDACTED] as her representative, hereinafter referred to as the authorized representative.

Preliminary Matters

6. Tenant1 was not present or represented at 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 she has been properly served. The landlord submitted affidavits (LL#’s 01, 02, 03, and 04) with their application stating that they had served the tenants with notice of the hearing, for previous scheduled hearing dates. (LL#05) is documentation from this board verifying that we provided notice to both tenants electronically on 10-January-2022 for notification of today’s rescheduled hearing. As both of the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing.
7. The authorized representative stated that, they don’t contest anything that the landlord is stating, they don’t contest that the rent wasn’t paid or that there were damages. The issue for tenant2 is, she is a 90 year old woman, who has lived with the authorized

representative's mother for the past decade. She cosigned the agreement to assist her daughter, tenant1, in obtaining housing. The authorized representative suspects that tenant1 is taking advantage of her mother, tenant2. They are working with the police to resolve this matter. At this point the authorized representative stated that they have nothing further to add to the process, thanked us for our time, and left the hearing.

8. The landlord stated that they were not aware that tenant2 wasn't living in the apartment. She said that each year (pre-covid) she met with both tenants to assess their income, to set the rent amount, and that at those meetings tenant2: attended, signed the papers and indicated that she was a tenant of the residence in question.
9. As a signer on the lease, tenant2 is individually and collectively responsible for that lease. Tenant2 was provided adequate notice for this hearing, as per paragraph 6, the hearing continued in the absence of her and her authorized representative.

Issues before the Tribunal

10. The landlord is seeking:
 - Rent \$2,487.00
 - Damages \$1,270.02
 - Security deposit applies monies owed \$300.00
 - Hearing expenses \$35.24

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
12. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, and Section 14: Security deposit.

Issue 1: Rent \$2,487.00

Relevant Submissions

13. The landlord submitted the rental agreement (LL#02) held with the tenants. The tenants took occupancy on 31-March-2014. They have a monthly agreement beginning 01-April-2014 for \$650.00 a month. The rental term is from the 1st day of the month to the last; rent is due the 1st day of each month. A security deposit was paid of \$300.00 on 28-March-2014.
14. The landlord said that approximately 4 years ago rent changed and is now based on a financial assessment. The tenants' rent increased, based on that assessment, to \$829.00 a month, beginning 01-July-2018.

15. The landlord provided a rental ledger (LL#07) indicating that the tenants were up to date in their rent for June 2021, however beginning July 2021 rent was no longer paid.
16. The landlord served the tenants with a termination notice for violation of Section 19, of the *Residential Tenancies Act, 2018*, failure to pay rent. The termination date of the notice is for 07-September-2021.
17. The landlord said that they did a home visit on 08-September-2021 and tenant1 reported that she was almost ready and would be out that day or at the latest the next day. While at the apartment the landlord changed the locks.
18. The landlord reports that the tenant was definitely moved out by 10-September-2021.
19. The landlord is seeking payment of the overdue rent.

Analysis

20. The landlord stated that the tenants were in rent arrears beginning 02-July-2021 and that the tenants were given a termination notice of 07-September-2021. She also went on to say that the locks were changed on the apartment during the home visit on 08-September-2021.
21. Non-payment of rent is a violation of the rental agreement (LL#02) signed by the tenants. The tenants are responsible to pay the rent up until such time as the landlord has regained possession of their property. As the locks were changed on 08-September-2021, it is reasonable to assume that the possession of the property is now the landlords.
22. The rent for September is recalculated for a daily rate up until the time the landlord regained possession of the property: \$829 a month x 12 months = \$9,948.00 a year divided by 365 days = \$27.25 a day x 8 days \$218.00.
23. A recalculation of rent owed is as follows:
 - July..... \$829.00
 - August..... 829.00
 - September..... 218.00
 - Total.... \$1,876.00
24. The landlord's claim for rent succeeds in the amount of \$1,876.00

Decision

25. The tenants shall pay to the landlord \$1,876.00 in rent.

Issue 2: Damages \$1,270.02

Relevant Submissions

26. The witness discussed the damage report (LL#08) submitted by the landlord.
27. The damage report included the following products required for the cleaning and repairs to the apartment: Pine-sol Cleaner, 2 Spray 9, Shower head, Oven cleaner, Shower rod, towel bar and toilet paper holder for a total cost of \$84.68 + 12.70HST for a total of \$97.38. Neither the witness nor the landlord provided receipts for these products.
28. In addition to the products required, the witness pointed out that the report includes the hourly wages required to complete the repairs. See table below:

Work required	Hours @ \$29.28	Cost
Removal and disposal of belongings	12	351.36
Pre-cleaning of entire unit	24	702.72
Repair damaged cabinet drawer face	2.05	60.00
Install missing bathroom hardware	2	58.56
total	40.05	\$1,172.64

29. The witness stated that he is the person who completed the inspection report with pictures (LL#09) that was included with the evidence. He said that there was clothing, a couch, food, cleaning supplies, garbage, etc. left behind in the unit. He said that two staff required a full 6 hour shift each, to remove and dispose of everything left behind. He has all hours calculated at a flat rate of \$29.28 and this part of the repair is billed at \$351.36.
30. The witness said that the unit needed to be cleaned. The apartment was very unclean, there is evidence of rodent feces as well as possible rabbit droppings on the floor. There was what appeared to be hay on the floor and he suspects that the tenant had a rabbit. The kitchen sink was full of dirty water and was blocked. None of the appliances had been cleaned and the entire unit needed cleaning. All of these issues are displayed in the inspection report (LL#09). This required two staff working two days at a cost of \$702.72.
31. The witness stated that the drawer was off one of the cabinets and the repair cost is \$60.00. This damage is also shown in the pictures in the inspection report (LL#09).
32. The witness pointed out in the pictures (LL#09) from the bathroom that the shower head, toilet paper holder, shower bar and towel bar, are all missing; he also said that the plug for the bathtub was missing. He said that all of these things are supplied in every apartment and had to be replaced. He said that it took two hours to complete these repairs at a cost of \$58.56.

Analysis

33. As per Section 10 of the *Residential Tenancies Act, 2018*, a tenant is responsible for the cleaning and repairs of any damage to their rental.

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

.....

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

.....

34. The expectation of the tenant to maintain the apartment in a clean condition and repair any damages is also included in section 12 (b) of the rental agreement (LL#02).
35. Accordingly, in any damage claim, the applicant is required to show:
- That the damage exists;
 - That the respondent is responsible for the damage, through a wilful or negligent act;
 - The value to repair or replace the damaged item(s)
36. I accept the testimony of the witness, as well as, the photos included with the inspection report (LL#09), it is clear that the apartment required that the belongings, food, garbage, etc. would need to be removed and that the apartment would require cleaning. The testimony that there is animal droppings all over the floor, would necessitate a deep cleaning of the area prior to new tenants taking occupancy.
37. The cost of cleaning supplies and equipment to replace damaged or missing items from the washroom, as described in paragraph 27 at a cost of \$97.38, will not be considered. The landlord and witness did not submit receipts for the purchase of those supplies and there is no accurate way for this board to determine the cost of those items.
38. The remaining costs are for an hourly wage of \$29.28 for 40.05 hours of work. I accept the documentation, pictures and testimony of the witness that staff worked the 40.05 hours to complete the disposal, cleaning and repairs to the apartment. Policy with this board is that a landlord may claim up to \$20.75 per hour for wages to repair damage.
39. The cost for wages will be awarded at the approved rate of $\$20.75 \times 40.05 = \831.04 .

Decision

40. The tenants will pay the landlord \$831.04 for damages.

Issue 2: Security deposit applied to monies owed \$300.00

Relevant Submissions

41. As per paragraph 13, the landlords have declared that, the tenants paid a security deposit of \$300.00; they are still in possession of that deposit. They are requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

Analysis

42. The landlord's claim for losses has been successful, paragraphs 25 and 40, and they shall retain the deposit as per Section 14 of the *Residential Tenancies Act, 2018*, see below:

14. (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

Decision

43. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$300.00.

Issue 3: Hearing expenses reimbursed \$35.24

44. The landlord submitted the receipts for \$15.24 for the cost of registered mail (LL#10) and \$20.00 for the cost of the hearing (LL#11) for a total of \$35.24. Pursuant to policy 12.01, they are entitled to reimbursement of that cost from the tenants.

Summary of Decision

45. The landlord is entitled to:
- Rent \$1,876.00
 - Damages..... 831.04
 - Hearing expenses..... 35.24
 - Less security deposit.... (300.00)
 - Total \$2,442.28

The landlord shall retain the \$300.00 security deposit, and
The tenants shall pay to the landlord \$2,442.28 for rent, damages and hearing expenses.

January 31, 2022
Date

