

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0532-05

Jacqueline Williams  
Adjudicator

---

### Introduction

1. Hearing was called at 2:08 p.m. on 31-January-2022.
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
4. The landlord presented a witness, [REDACTED] who is another tenant in the same building, hereinafter referred to as “the witness,” she also attended by teleconference.

### Preliminary Matters

5. The landlord provided an affidavit (LL#01) for the notification he had served for prior dates. There was also notification of rescheduled hearing provided from this board. All parties received good service and are present at the hearing.
6. The landlord amended the claim for rent from \$325.00 to \$1,775.00 to reflect the current amount owed. He also amended the claim for damages from \$500.00 to \$400.50 to reflect monies owed.

### Issues before the Tribunal

7. The landlord is seeking:
  - Rent paid \$1,750.00
  - Late fees paid \$75.00
  - Compensation for damages \$400.50
  - Security deposit applied against monies owed \$200.00
  - Vacant possession of premises

## 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 10: Statutory conditions, Section 14: Security deposit, Section 15: Fee for failure to pay rent, and Section 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

## Issue 1: Rent \$1,775.00

### Landlord's Position

10. The landlord said that he entered a verbal rental agreement with the tenant. She moved into her apartment on 15-December-2020. They are in a monthly agreement that runs from the 1<sup>st</sup> day of the month to the last. Rent is \$700.00 a month and includes hot water; it is due the 1<sup>st</sup> day of the month. The tenant was initially supposed to pay \$350.00 security deposit, however, she only paid \$200.00 on 15-December-2020; the landlord is still in possession of this deposit.
11. The landlord stated that they came to an agreement that the tenant could pay \$350.00 rent on the 1<sup>st</sup> and 15<sup>th</sup>, of each month.
12. The landlord said that in September he needed to park a truck that wasn't operational. He parked it in the tenant's spot and they agreed that she could pay \$50.00 less each month while the truck was parked there. The landlord said that the truck was towed on 01-November-2021.
13. The landlord said that the tenant paid \$325.00 rent 01-November-2021 and she hasn't paid rent since. He is asking that she pay rent for \$375.00 November, and all of December and January, for a total of \$1,775.00. He would also want February's rent as it is due tomorrow.

### Tenant's Position

14. The tenant doesn't dispute that she still owes him rent. She stopped paying him when she received her notice to terminate her rental agreement.
15. The tenant said that she only paid \$325.00 on the 01-November-2021, because the truck was still in the driveway and the agreement was she could take \$50.00 off the rent for the inconvenience.
16. She concedes she owes \$350.00 for the middle of November and \$700.00 for December and January for a total of \$1,750.00.

## Analysis

17. Non-payment of rent is a violation of the rental agreement. The board recognizes that the tenant received a termination notice, however she is still required to pay rent while living in the apartment.
18. The board accepts that the tenant paid \$25.00 less on 01-November-2021, because the truck was not moved until that date.
19. I find that the tenant owes \$350.00 for November and \$700 for December and January for a total of \$1,750.00.
20. This board does not consider future rent.

## Decision

21. The landlord's claim for rent succeeds in the amount of \$1,750.00.

## Issue 2: Late fees \$75.00

### Landlord's Position

22. The landlord is requesting \$75.00 in late fees as his tenant is in rental arrears since 16-November-2021 and remains in arrears to the date of this hearing.

## Analysis

23. 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.*

The minister has prescribed the following:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

24. As the tenant has been arrears since 16-November-2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

### **Decision**

25. The landlords claim for late fees succeeds in the amount of \$75.00

### **Issue 3: Compensation for damages \$400.50**

#### Landlord's Position

26. The landlord is seeking damages for a lock replacement \$107.00. The landlord provided a receipt for the changing of the lock (LL#03) for \$106.89.
27. The landlord said that the tenant requested that the lock be repaired. He said when he went to the apartment, the door was locked and the tenant would not let him in.
28. In January he provided the tenant with three separate notices to enter her apartment. When he went there she would not let him in.
29. He said that she changed the locks on the door and he doesn't have a key.
30. On his third visit he brought the locksmith. When he opened the screen door, the tenant did come to the door and let him in.
31. They offered to rekey the lock and give both parties a key, however the tenant said that they were not to touch her door knob. At that time the knob was replaced and a new knob was installed. Both parties were given a key.
32. The landlord is requesting that this expense be reimbursed.
33. The landlord said that he is also requesting the cost to replace a window broken by the tenant. He provided a quote of \$293.75 (LL#04) from [REDACTED]
34. The landlord said that the window is an above ground apartment window; it was just installed two weeks before. He said it is fully installed but the molding still needs to go on inside.
35. The landlord stated that another individual lives in that apartment and the tenant was knocking on his window to get his attention. The window was broken when she was knocking on it. The individual who owns the apartment is the nephew of the landlord and the boyfriend of the tenant. The individual who lives in the apartment had offered to

pay for the window but has not done so. The landlord had it fixed and he is asking for the tenant to pay for the repair, as she broke the window

### Tenant's Position

36. The tenant acknowledges that she changed the lock on her apartment. She said that the landlord broke it while moving a fridge. She said she asked him to fix the lock.
37. She said she felt unsafe as her lock wasn't working and her Aunt gave her a locking door knob that had 1 key. She installed it herself. She did not ask the landlord's permission to change the lock.
38. She said she didn't see one of the notices to enter, the landlord didn't come for the other one and that she opened the door on the third notice.
39. The tenant acknowledges that she broke the window while knocking on it. She said that the window wasn't fully installed because there was nothing on the inside of the window, just the window box. She thinks that the landlord wants her to pay for it because the other tenant is his nephew.

### **Analysis**

40. Section 10 of the Residential Tenancies Act, 2018, states:

#### **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.

.....

6. *Entry Doors* - Except by mutual consent, neither the landlord nor the tenant shall, during the use or occupancy of the residential premises by the tenant, alter a lock or locking system on a door that gives entry to the residential premises.

.....

41. As per the above Section of the Act, 10.6 the tenant should not have changed the lock on her apartment door without first receiving the consent of the landlord. She should have received consent and also provided the landlord with a key.
42. The landlord mitigated this issue by providing 3 separate notices informing the tenant that he would be entering the apartment.

43. On the third attempt she did permit him entry, but refused the less expensive option of rekeying the lock. The tenant was in violation of the landlord's rights and she shall reimburse the landlord for the cost of replacing the lock.
44. Section 10.2 outlines the obligation of the tenant to repair damage caused by a willful or negligent act of the tenant or a person whom the tenant permits on the premises. As both the landlord and tenant acknowledge that she broke the window by knocking on it and as they also stated that the apartment window, that was broken, belongs to another person, then Section 10.2 states that the renter is responsible for the damages to his own apartment, whether it is caused by himself or a guest. The tenant may live in the same building but this is not her apartment, she was there as a guest and her relationship to the landlord is not relevant in this situation.
45. I find that the tenant is not responsible to pay the landlord for the broken window.

### **Decision**

46. The landlord's claim for damages succeeds in the amount of \$106.89.

### **Issue 4: Security deposit applied against monies owed \$200.00**

#### Landlord's Position

47. As per paragraph 10, the landlord has declared that, the tenant paid a security deposit of \$200.00; he is still in possession of that deposit. He is requesting to retain that damage deposit towards monies owed by the tenants for damages to the apartment.

### **Analysis**

48. The landlord's claim for losses has been successful, paragraphs 21, 25 and 46, and he 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

49. The landlords' claim to retain the security deposit against monies owed succeeds in the amount of \$200.00.

## Issue 5: Vacant Possession of the Rental Premises

### Landlord's Position

50. The landlord served the tenant a "landlord's notice to terminate early – cause" notice; for interference with peaceful enjoyment. The notice is dated and signed on 16-November-2021 with a termination date of 22-November-2021. The landlord said he posted it on the tenant's door on 16-November-2021.
51. The witness lives in a separate apartment in the same house as the tenant. She has a 6 year old daughter.
52. The witness says it's been a horrible experience living at this house. She moved in last June. She and her daughter have been awakened at least a dozen times by the tenant yelling, screaming, banging doors, and being angry in the middle of the night.
53. Although there are other tenants in the house she can recognize this tenant's voice and it rings out crystal clear in the silence of the night.
54. She reports that her daughter is scared of the tenant. She has been frightened when she has been awakened by the noise in the night. The first time this happened, she had trouble getting her daughter back to sleep and they both missed school/work the next day.
55. The witness said that on her daughter's 6<sup>th</sup> birthday, the tenant became very aggressive with her, she started screaming at her in the yard and calling her a bitch. She said that this was terrifying for her daughter.
56. The witness also said that her daughter will not play in the yard because of her fear of the tenant.
57. The witness said she is also afraid of the tenant.

58. The landlord said that he has received complaints about the tenant and that on one particular day, he pulled into the driveway and the tenant was yelling and screaming so loudly, from inside the apartment, he could hear her from inside his car.
59. After this happened the landlord said he approached neighbors to ask if they had been bothered by this tenant. He said that they all agreed that she was an issue. He wanted them to sign a petition (LL#07) for him to take to this hearing. Only one person would sign, the rest did not want to get involved.

### Tenant's Position

60. The tenant confirmed that she received the termination notice as stated by the landlord.
61. The tenant questions how the witness can tell it's her yelling and screaming when there are other people living in apartments in the house.
62. She said that the first time she meet the witness she was not aggressive.
63. The tenant said that she made a complaint about the witness's dog and that after that incident the witness started complaining about her.
64. She said that after the blow-up on the birthday, she felt bad and left two frozen yogurts and \$5.00 on the step for the witness and her daughter.
65. She said that the witness's daughter doesn't use the yard.
66. She also doesn't agree that she is waking them up, she said she has a 13 year old son and he is never awakened by her.
67. She doesn't agree with the landlord's petition and believes he has made this up.

### **Analysis**

68. It is apparent that the witness and her daughter's life is being impacted by the tenant. The landlord's and witness's testimony closely align concerning the behavior of the tenant.
69. Statutory condition 7.(a), set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

#### **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:



...

7. Peaceful Enjoyment and Reasonable Privacy -

The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.

....

70. According to Residential Tenancies Policy 7-05 Peaceful Enjoyment, interference of peaceful enjoyment is defined as: "an ongoing disturbance or activity, outside of normal everyday living, cause by the landlord or the tenant". Peaceful enjoyment may include, but is not limited to the following: (i) excessive noise; (ii) aggressive or obnoxious behaviour; or (iii) threats and harassment.
71. The tenant is not only creating noise within her apartment, that is impacting the witness, she is also being aggressive and threatening in the common shared space, such as the yard. This is frightening to the witness and to her young child. They should not have to live in a space, where they are frightened and their sleep is disrupted.
72. The tenant is interfering with the peaceful enjoyment of this family. The landlord's notice does adhere to the guidelines of the *Act*, see below:

**Notice where tenant contravenes peaceful enjoyment and reasonable privacy**

**24.** (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

(a) be signed by the landlord;

(b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and

(c) be served in accordance with section 35.

73. As the notice is valid the tenant should have moved on 22-November-2021.
74. The tenant will now pay a daily rate of rent until such time as the landlord regains possession of his property. Daily rate is as follows  $\$700.00 \times 12 \text{ months} = \$8,400.00$ .  $\$8,400.00$  divided by 365 days =  $\$23.01$  a day, beginning 01-February-2022.

**Decision**

- 75. The landlord’s claim for an order for vacant possession of the rental premises succeeds.
- 76. The tenant is to vacate the property immediately.
- 77. The tenant will pay to the landlord \$23.01 rent a day beginning 01-February-2022, until such time as the landlord regains possession of the property.
- 78. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession

**Summary of Decision**

- 79. The landlord is entitled to:
  - An Order of Possession
  - A daily rate of rent, \$23.01, beginning 01-February-2022 until he regains possession of his property
  - Retain the security deposit of \$200.00

The tenant shall:

- Move immediately
- Pay to the landlord any costs charged to the landlord, by the Office of the High Sherriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession
- Pay to the landlord a daily rate of rent, \$23.01, beginning 01-February-2022 until the landlord regains possession of his property
- Pay the landlord \$1,731.89, for the following losses:
  - Rent \$1,750.00
  - Late fees 75.00
  - Damages 106.89
  - Less security deposit ( 200.00)
  - Total \$1,731.89

February 4, 2022  
Date

