

Residential Tenancies Tribunal

Application 2025-0954-NL and 2025-1072-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-January-2026 at 1:49 pm.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the landlord, also attended via teleconference.

Procedural History

4. All parties acknowledged they were properly served.

Issues before the Tribunal

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

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: Unpaid Rent

Landlord's Position

10. The landlord claims unpaid rent in the amount of \$1500.00 for the month of August 2025. He says the tenant left early without proper notice, having only told him they were

leaving on 3-July-2025, and he was unable to find new tenants before 1-September-2025 despite immediately beginning to advertise. He acknowledges that the tenant connected him with one potential new group of people that were interested in renting the premises but explained that he felt they were not trustworthy.

Tenant's Position

11. The tenant denies being responsible for August's rent. He agrees he gave insufficient notice but testifies that he and the landlord had an agreement that they would look for a new tenant together and that he found new tenants that were interested. He says the landlord chose not to rent to them and was unable to find new tenants only because he had chosen a strategy of updating the premises and charging a higher rent.

Analysis

12. I accept, based on the evidence, that the tenant vacated the premises without proper notice, and this caused the landlord to suffer a loss. The tenant suggested he and the landlord had an agreement that they would mutually search for a replacement tenant and that the landlord reneged on this agreement and should therefore be barred from recovering rent in lieu of notice. He also suggested that the landlord misled him by only informing him they would be seeking the rent in lieu after he had returned the keys. I cannot agree with either suggestion.
13. T#1 shows text messages between the landlord and the tenant. On 3-July-2025 the landlord said "I will try my best to rent the apartment. This notice is insufficient." Later that day, he added "I will try my best to get it rented for August ... You can try as well ... You could be on the hook for August and September if it doesn't get rented."
14. On 11-July-2025 the tenant asks "... I hope renting out is done, no concern due to my late notice? ..." The landlord replies "It isn't rented yet." Overall, it seems to me that the landlord consistently maintained the position that he had not accepted the late notice as valid and was explicitly retaining the option to hold the tenant liable if he was unable to mitigate the loss.
15. The only significant question remaining is whether the landlord is barred from recovery by a failure to adequately mitigate. In terms of mitigation the burden of proof is on the defendant, in this case the tenant, to prove that mitigation was possible and that the plaintiff, in this case the landlord, has failed to make reasonable efforts to mitigate.¹
16. The tenant suggests that after there was ample interest in the premises, the landlord made up his mind to renovate the premises with a fresh coat of paint and increase the rent as part of a strategy to secure a higher rent of up to \$1800/month, and that this is the cause of the fact that a tenant was not placed earlier. There is an implicit suggestion that the landlord is taking advantage of the tenant by using this opportunity to improve the property and increase the rent without leaving the premises unrented for any amount of time. The tenant's only evidence supporting this belief was hearsay statements from potential renters who he says told him the landlord was asking for \$1800.00/month. I

¹ *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 at para 24.

note that the evidence before me indicates (as seen in LL#1 page 16) that the landlord issued a valid 6-month notice of rental increase to the tenant raising the rent from \$1500.00 to \$1750 effective 1-September-2025. The landlord testified that this was necessary due to rising costs, but the tenant asked him to reconsider, and he reduced it to \$1650.00 to accommodate the tenant. LL#1 pages 17-21 show this. The landlord agreed he had several viewings but provided his own hearsay evidence saying that potential renters found the premises unclean and cluttered, which is at least as plausible an explanation for what the tenant observed. Overall, the tenant's suggestion lacks credible evidence and plausibility, and I reject it.

17. The only remaining evidence before me that could be used to support the contention that the landlord could have mitigated the loss had they not failed to take reasonable steps is that the landlord, by his own admission, did have one group of potential tenants who were willing to take the premises but opted not to rent to them out of distrust. The landlord argued that the tenant also demonstrated distrust in these potential tenants by urging him to accept their deposit and 'lock them in,' but I reject this argument. The tenant had an interest in the landlord accepting a new tenant, which is a clear and obvious motivation to encourage the landlord to do so.
18. Does rejecting a single offer constitute failure to take reasonable steps to mitigate if the landlord does it based on distrusting the person or people making the offer? I find that it does not. Residential tenancies are by nature a somewhat personal relationship, as usually at least one of the two parties is making commitments to the space where they live a significant portion of their lives. These relationships require some level of trust. I find that the landlord's decision to not rent to these potential tenants is not a failure to take reasonable steps to mitigate.
19. Considering all the evidence presented as a whole, I do not find that the tenant has demonstrated that the landlord has failed to take reasonable steps to mitigate their losses.

Decision

20. The landlord's claim for unpaid rent succeeds in the amount of \$1500.00.

Issue 2: Damages

21. The landlord claims damages in the amount of \$1154.99, divided amongst 4 separate items. Each item will be dealt with separately below, including both parties' positions. As the landlord left materials as a lump sum rather than dividing them by the individual alleged damage, I will deal with these at the end. In accordance with the Residential Tenancies Program Policy and Procedure Guide, Policy 9-003, when a landlord makes a claim for damages, they must provide sufficient evidence to establish the extent and nature of any damages, that the damage was caused by a wilful or negligent act of a tenant or a person they allowed on the premises, and the cost of repair or replacement. This should include documentary evidence wherever reasonably possible.
22. First, the landlord claims \$240.00 for cleaning, representing 10 hours of labour at the self-labour rate of \$8.00/hour + minimum wage (currently \$24.00/hour). He says this was

necessary as the tenant left the premises in an unclean state. He provided photographs (LL#2 and LL#4 generally) showing this alleged uncleanliness. The landlord testified that these photographs were taken on 1-August-2025, the day after the tenant vacated the premises.

23. The tenant denies leaving the premises in an unclean state. He did not deny that the photos showed uncleanliness. Rather, he suggested that the photos must not have been taken on the day claimed, as the premises was cleaned before he left. He also suggests that the premises must have been clean when he left, because the landlord did not mention any issues when they did the move out.
24. For his part, the landlord testified that he recalled pointing out some unclean spots.
25. I find the landlord's testimony combined with the photographs provided more persuasive than the tenant's testimony alone. I find on a balance of probabilities that the premises was left in an unclean state and accept that remedying this took 10 hours of cleaning. This portion of the landlord's claim is made out in the amount of \$240.00.
26. Second, the landlord claims \$144.00 for the removal of caulking he says the tenant had placed around baseboards and other areas, as well as paint he says the tenant left that had to be removed. LL#3 shows some of this caulking and also shows several outlet covers, light switch covers, a portion of the kitchen countertop, and portion of the ceiling that were covered in the same paint that was used on the walls.
27. The tenant did not address the caulking but testified that the landlord had given him permission to paint the kitchen while away from the province (the landlord agreed this was true). When the landlord returned, he pointed out several places where the paint had marked kitchen cabinets and other items and asked that it be cleaned off, which the tenant subsequently did. The tenant suggested that the claim was not legitimate because the landlord had previously accepted that the paint was done to his satisfaction.
28. I reject the tenant's argument. It does not follow that because the landlord asked for certain deficiencies to be remedied previously that he has lost the ability to claim for other, related deficiencies. The tenant is responsible for repairing any damages caused by their wilful or negligent actions before they vacate and may be liable if they fail to do so. A messy paint job is negligent. It is quite likely that the landlord simply did not notice the other paint marks until the tenant had vacated, as an empty unit is much easier to inspect for such issues.
29. This portion of the landlord's claim succeeds in the amount of \$144.00.
30. Third, the landlord claims \$192.00 for repainting the kitchen and bathroom. He says this was necessary as the tenant used a paint that was not appropriate for the high humidity of a kitchen or bathroom and that caused the paint to fail and wipe away when he attempted to clean it.
31. The tenant denies using an inappropriate paint. He suggests this as fact as the landlord did not raise the issue when he first saw the paint, which was about one week after it was first painted.

32. I do not find the tenant's suggestion persuasive as visual inspection would not necessarily reveal any deficiency so early on, when the paint would have only recently dried. Nevertheless, the landlord did not provide any documentary evidence of the alleged deficiency (for instance, a photo of the paint having been wiped partially off or, ideally, a short video demonstrating some of the paint being damaged by being wiped). I therefore am left in a "he said, she said" situation where I can only weigh one person's testimony against another's. I find no reason to favor one version over the other, as neither is contradicted by itself or by any external evidence. Both accounts are equally plausible I therefore find that the landlord has not met the burden of proof on a balance of probabilities, and this portion of the landlord's claim fails.
33. Fourth, the landlord claims \$144.00 for cleaning paint off the exterior siding of the premises and priming and painting it anew. The final 2 pictures of LL#3 show where a portion of the siding next to a door is noticeably different than the area around it. It appears to cover 3 or 4 separate pieces of siding. The landlord testified that it appeared as if some blue paint had been applied. As the photo appears to have been taken at night, I have difficulty making out the colour, but it is obvious that the area is much darker than the rest of the siding and has been discoloured in some way.
34. The tenant testified that he had no knowledge of this discolouration but suggested it might have been caused by one of his family members, perhaps when they helped him move out.
35. As per statutory condition 2 from section 10(1) of the *Act*, a tenant is responsible for the repair of damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the premises. I accept the tenant's suggestion that the discolouration may have been caused by a family member. Given the location next to an exterior door, it seems quite likely that there was an accident on move out. I find six hours a reasonable amount of time to make this repair. This portion of the landlord's claim succeeds in the amount of \$144.00.
36. As explained above, the landlord claims a bulk sum of \$434.99 for materials which were required to affect the various repairs covered above. The landlord provided receipts (LL#5) which show the individual amount claimed for each item and clarify which is the exterior paint, so I have no difficulty in determining which material costs the tenant is liable for. LL#5 shows that these materials cost \$289.63, so this portion of the landlord's claim succeeds in that amount.
37. The tenant asked if a landlord could make a claim four months after the tenancy ends without any prior notice. The short answer is yes. S. 42 of the *Act* states that a landlord or tenant may make an application to the director within one year of the termination of the rental agreement. This allows parties time to assess damages, not all of which may be immediately apparent, effect or plan repairs, and prepare all necessary evidence. This process can take a significant amount of time, particularly in more complex cases.

Decision

38. The landlord's claim succeeds in the amount of \$817.63

Issue 3: Security Deposit

39. The tenant suggested that the landlord was outside the time limit for making a claim against the security deposit. This issue is governed by s. 14(9-12), as follows:
- (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).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.
40. S. 14(9) states the landlord shall return the security deposit to the tenant no later than 10 days after they vacate, unless the landlord has a claim for all or part of it. In this case, the landlord had a claim. S.14(9) does not say that a landlord must file their claim no later than 10 days after they vacate, just that they must have a claim.
41. S. 14(10) states that where a landlord believes they have a claim against the security deposit and the parties do not enter a written agreement on its disposition, either party may apply to the director to determine its disposition. In this case, the tenant did this when they filed their application 2025-0954-NL.
42. S. 14(11) states that where a tenant makes such an application, the landlord has 10 days from the date they are served with a copy of the tenant's application to make their own application under s. 10(b). S. 14(12) states that where they do not do so, they must return the security deposit to the tenant. In other words, where the landlord believes they have a claim, they have no later than 10 days after the tenant serves upon them an application for the return of the deposit to make it.
43. In this case, the record shows that the tenant served their application on the landlord electronically on 6-November-2025 at 6:37 pm. S. 42(3)(7) of the *Act* states that when an application is served electronically after 4 pm, it shall be considered to have been served on the next day that is not a Saturday or holiday. In this case, the landlord was considered served on 7-November-2025. Our records show that the landlord's application was processed on 17-November-2025. S. 22(k) of the *Interpretation Act*, RSNL c I-19 states a number of days should be counted excluding the 1st day and including the last day. The landlord therefore made their application within the 10 day time limit.
44. The landlord is owed moneys and may therefore apply the security deposit against the sum owed. The security deposit is \$1125 and was received on 2-July-2024. 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. The regulations prescribe a simple interest rate of 1% annual for the years 2024-2025 and an interest rate of 0% for the year 2026. Calculated to the date of the hearing, the total interest is \$16.88.

Decision

- 45. The landlord may apply the security deposit and interest, valued at 1141.88, against moneys owed.

Issue 4: Compensation for Inconvenience

- 46. The tenant claims \$1406.25 for compensation for inconvenience. This claim was based entirely on costs allegedly incurred because the security deposit was not returned. As I have determined that the claim against the security deposit was made out, the tenant's claim for compensation for inconvenience fails.

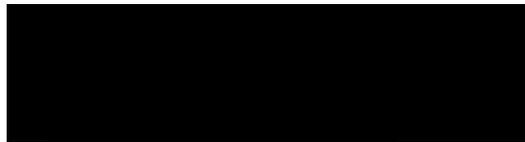
Summary of Decision

- 47. The landlord was successful in their application and may therefore seek to be reimbursed for their reasonable hearing expenses. They seek the \$20.00 application fee, which is granted, and \$19.73 for photocopying services, which is denied on the basis of there being no receipt provided.
- 48. The tenant shall pay to the landlord \$1195.75 as follows:

Unpaid Rent.....	\$1500.00
Damages.....	\$817.63
Hearing Expenses.....	\$20.00
Less Security Deposit....	(\$1141.88)
Total.....	\$1195.75

20-January-2026

Date



Seren Cahill
Residential Tenancies Office