

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0469-05

John R. Cook  
Adjudicator

---

### Introduction

1. The hearing was called at 1:06 pm on 30 November 2020 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. He was represented at the hearing by [REDACTED]  
[REDACTED]
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not participate.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for compensation for damages in the amount of \$1640.00,
  - An order for a payment of rent in the amount of \$1861.00,
  - An order for a payment of "other" expenses totalling \$98.30, and
  - An order for vacant possession of the rented premises.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this decision is section 15 and 19 of the Residential Tenancies Act, 2018, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the Rules of the Supreme Court, 1986.

## Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. 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 a 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 an affidavit with her application stating that the tenant was served with notice of the hearing, by e-mail, on 16 November 2020, and a copy of that e-mail was submitted with the landlord's application. The tenant has had 13 days to provide a response. 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 her absence.
8. The landlord amended his application and stated that he was no longer seeking an order for possession of the premises as █ found the unit abandoned on 14 October 2020.

## Issue 1: Compensation for Damages - \$1640.00

### Relevant Submissions

9. █ stated that she had entered into a 1-year, fixed-term lease with the tenant on 14 May 2020 and a copy of the executed rental agreement was submitted with the landlord's application. The agreed rent was set at \$900.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$675.00.
10. In September 2020 the tenant fell into rental arrears and on 12 September 2020 █ issued the tenant a termination notice. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 22 September 2020. █ stated that the tenant did not move on 22 September 2020 as required, but she did find the unit abandoned on 14 October 2020 and she took possession on that date.
11. █ stated that the tenant had caused significant damage to the unit during her tenancy and she hired █ to carry out the required repairs. The landlord submitted a copy of the invoice █ had issued him, showing that he was charged \$1640.00. According to that invoice, █ repaired holes in the walls throughout the apartment and he plastered and painted where necessary. He states that he had also repaired the door handle to the patio door, he replaced and painted a bedroom door, replaced switch plates and he cleaned the unit.
12. In support of his claim, the landlord submitted photographs showing the condition of the unit after the tenant vacated. In these photographs, numerous holes can be seen on many of the walls in the apartment and █ testified that there were

15 holes just in the living room alone. She stated that all of these holes were the result of someone kicking and punching the walls and she also pointed to blood stains on the walls and floors. █ stated that all of these holes had to be repaired with plaster and new drywall and then the whole unit had to be repainted. The landlord stated that the unit was last painted in 2015.

13. █ also pointed to one of the submitted photographs showing that the door handle to the patio door had been ripped off and it had to be replaced by █. She stated that that door was between 15 and 20 years old.
14. She also complained that there were pieces of trim-work that had been damaged by the tenant. No photographs were submitted showing that damage, but █ claimed some trim had to be replaced in the bathroom, in the master bedroom and by the patio door. She also stated that all the trim around the master bedroom door had to be replaced as well after the new door was installed there.
15. Regarding that door, █ stated that it had been ripped completely off its hinges and that the door frame was cracked. She also stated that the door knob had been bashed in and that the door could not be repaired and had to be replaced. █ stated that this was an older door and that a replacement had to be custom ordered. She figured that the replacement door and door frame would have cost at least \$400.00.
16. Besides the physical damages caused to the unit, █ also complained that the tenant had not carried out any cleaning before she vacated. She stated that the kitchen appliances needed extensive cleaning and she pointed to the submitted photographs as evidence of that claim. She also complained that the bathtub was "black" and that the bathroom was "disgusting". The other submitted photographs also show that there was a significant amount of garbage left behind at the apartment. █ stated that it took █ 9 hours to clean the unit.
17. █ also stated that █ had to replace 2 switch plates.

## Analysis

18. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

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.

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 willful

- or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

#### ***Order of director***

- 47. (1) After hearing an application the director may make an order***
  - (a) determining the rights and obligations of a landlord and tenant;***
  - (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;***
  - (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;***
  - (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement***

19. I accept the landlord's claim that the tenant had caused significant damage to the unit during her tenancy and I agree with him that he had to have all the walls in the repaired and painted, that a door needed to be replaced and that cleaning was required. His submitted invoice shows that he was charged \$1640.00 to have that work carried out.
20. As indicated in paragraph 18, above, depreciation must be factored in when awarding compensation for damages. In this particular case, the landlord had indicated that the rental unit was last painted in 2015 while █ claimed that the damaged bedroom door was "quite old". Given that it is expected that a landlord would have to repaint a rental unit every 3 to 5 years anyhow, as a result of normal wear and tear, I cannot award to him the full costs he incurred in having the unit repainted. Likewise, as an interior door has an expected lifespan of 20 years, the landlord is not entitled to the full costs of replacement.
21. The invoice from █ is not itemized and does not indicate how much of the \$1640.00 he charged was for painting and how much he charged to replace the bedroom door. There is also no indication of the hourly rate he charges for cleaning and repairs. I cannot, therefore, provide an exact calculation, but I find that a depreciated award of \$800.00 is fair.

## **Decision**

22. The landlord's claim for compensation for damages succeeds in the amount of \$800.00.

## **Issue 2: Rent - \$1861.00**

### **Relevant Submissions**

23. The landlord submitted rent records with his application showing the payments he had received from the tenant since she had moved into the unit. According to these records, rent was paid and up-to-date for the period ending 31 August 2020, but no rent was paid for September or October 2020.
24. The landlord is seeking an order for a payment of \$900.00 for each of September and October 2020 and he also calculated that he is entitled to an award of \$61.00 in late fees.

### **Analysis**

25. I accept the landlord's evidence in this matter and I agree with him that he is entitled to an award for rent for September and October 2020—\$1800.00.
26. I also agree with the landlord that as the tenant had fallen into rental arrears on 02 September 2020, he is entitled to assess a late payment fee as outlined in section 15 of the *Residential Tenancies Act, 2018*.

## **Decision**

27. The landlord's claim for rent and late fees succeeds in the amount of \$1861.00.

## **Issue 3: "Other" Expenses - \$98.30**

### **Relevant Submissions**

28. █ stated that the tenant had not returned her keys to the landlord after she vacated the property and out of fear that she may re-enter the building or the unit, the landlord had the locks rekeyed. The landlord submitted an invoice showing that he was charged \$98.30.

### **Analysis**

29. Policy with this Section is that a landlord cannot charge the tenant for the replacement of locks unless they were damaged by the tenant or the tenant's visitors. Replacing locks is considered a cost of doing business for a landlord.

When a rental agreement is terminated and another tenant is taking occupancy of the unit, the landlord is expected to change locks for the security of the new tenant.

## **Decision**

30. The landlord's claim for the cost of rekeying the locks does not succeed.

### **Issue 4: Security Deposit**

31. The landlord stated that the tenant had paid a security deposit of \$675.00 in May 2020 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim for rent and damages has succeeded, he shall retain that deposit as outlined in this decision and attached order.

### **Summary of Decision**

32. The landlord is entitled to the following:

- a) Compensation for Damages ..... \$800.00
- b) Rent and Late Fees ..... \$1861.00
- c) **LESS: Security Deposit..... (\$675.00)**
- d) Total Owing to Landlord ..... \$1986.00

09 March 2021

\_\_\_\_\_  
Date

John R. Cook  
Residential Tenancies Tribunal