

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0479-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 13 January 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED], [REDACTED], did not participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$2800.00 in compensation for inconvenience;
 - An order for a payment of \$5120.00 in compensation for damages;
 - An order for a payment of rent in the amount of \$1100.00;
 - An order for a payment of late fees in the amount of \$75.00;
 - Authorization to retain the \$900.00 security deposit; and
 - An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is section 18 of the *Residential Tenancies Act, 2018*, rule 29 of the *Rules of the Supreme Court, 1986* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them 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 stated that he had served the tenants with notice of the hearing, by e-mail, on 23 October 2020 and a copy of that e-mail was submitted at the hearing. The e-mail addresses used by the landlord were the same as those provided by the tenants on the rental agreement. The tenants have had 81 days to provide a response. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

7. The landlord amended his application at the hearing and stated that he was no longer seeking an order for vacant possession of the rented premises as he had regained possession of the property on 16 May 2020.

Issue 1: Compensation for Damages - \$5120.00

Relevant Submissions

8. The landlord stated that he had entered into a rental agreement with [REDACTED] and [REDACTED] on 15 May 2019, and a copy of that executed agreement was submitted with his application. He stated that [REDACTED] moved out of the unit in February 2020 and [REDACTED] was assigned to the agreement in her stead.
9. The agreed rent was set at \$1100.00 per month and it is acknowledged in the agreement that the tenants had paid a security deposit of \$800.00.
10. The landlord stated that he found the unit abandoned on 15 May 2020 and he entered and took possession on the following day.
11. The landlord stated that the tenants had caused significant damages to the unit during their tenancy and he submitted the following breakdown of the costs to carry out the repairs:

• Cleanliness	\$250.00
• Fridge/stove	\$50.00
• Garbage.....	\$300.00
• Wall condition	\$900.00
• Floors.....	\$1500.00
• Carpet on stairs destroyed.....	\$250.00
• Doors	\$1200.00
• Exterior	\$50.00
• Yard care	\$150.00
• Inside stair railing.....	\$200.00
• Bathroom mirror.....	\$150.00

- Curtains \$100.00
- Total \$5100.00

12. The landlord testified that the unit was filthy when he took possession in May 2020 and he claimed that the property was filled with garbage. He complained that there was a bad smell in the unit and that the tenants had abandoned a cat, which was not well cared for and had not been provided with food or water, or a litter box. He testified that all the floors and walls needed cleaning, as well as the kitchen appliances. No photographs were submitted with his application. He stated that it took him a couple of days to carry out the major cleaning and he claimed that even 8 months later, he is still doing some cleaning at the unit.
13. He also stated that he was required to make 6 separate trips to the dump to dispose of the garbage that had been left behind. He stated that he took those trips to the dump over several days.
14. The landlord also complained that he was required to repaint the whole apartment after the tenants vacated. He stated that there were holes in several walls in the unit and he also stated that some walls had been stabbed with a nail file. The landlord stated that it took him about a week and a half to repaint the whole unit. No photographs were submitted with his application and no receipts for the costs of paint or plaster. He stated that that the unit was last painted in 2019, about a month before the tenants moved in.
15. The landlord stated that he was also required to replace the carpets in the 3 bedrooms and he had to install new carpet on the stairs. He stated that the tenants' animals had scratched and torn up these carpets and they were stained. He also claimed that one of the bedrooms was used as a kennel and the carpets in that room were soiled with animal feces. No photographs were submitted showing that damage and no receipts were submitted for the costs of purchasing new flooring for those rooms. He testified that it took him about a week to lay new laminate floors in those 3 rooms and to install new carpets on the stairs. The landlord stated that these carpets were "fairly old" when the tenancy began.
16. The landlord also stated that the hardwood floors in the upstairs and downstairs areas were also badly scratched up and had to be refinished. No photographs were submitted with his application. He stated that it took him "a couple of days" to sand and stain these floors.
17. The landlord also complained that 4 interior, colonial doors had to be replaced. He stated that these doors were damaged beyond repair and he suspected that they had been kicked in by one of the tenants. No photographs were submitted showing that damage. The landlord stated that he has now purchased 4 new doors but they have not yet been installed. No receipt was submitted with his application. The landlord stated that these doors were approximately 10 years old.

18. He also stated that the 2 screen doors were damaged and that he is in the process of repairing those 2 doors as well. He stated that some of the glass panes in these doors are either broken or missing. No photographs were submitted and no receipts for the costs of purchasing materials to carry out the repairs.
19. The landlord also testified that the tenants were responsible for snow removal and lawn care. However, he claimed that during their tenancy they never did mow the lawn and he stated that he was required to go to the property on 3 separate occasions to mow the lawn. He figured it took him 2 to 3 hours to mow the lawn on each occasion and he is seeking compensation for 10 to 12 hours of his personal labour. No photographs were submitted showing the condition of the lawn at the times the landlord was required to mow it.
20. The landlord also complained that the tenants' cats had scratched a stair railing. No photographs were submitted showing that damage. He testified that he was able to repair some spindles and that he was required to replace the top part of the railing. No receipts were submitted showing the costs he incurred to purchase repair materials or the new railing.
21. He also stated that he had to replace a bathroom mirror which had been smashed by the tenants. No receipt was submitted showing the costs he incurred to replace that mirror. He also had to replace several curtains at the property which were also damaged by the tenants' cats. No receipts were submitted for those either.

Analysis

22. 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*

23. With respect to the cleaning of the unit, I accept the landlord's testimony that he was required to carry out extensive cleaning of the unit and that he had to make 6 trips to the dump to dispose of garbage that was left behind. No photographs were presented at the hearing showing the extent of the cleaning that was required, but based on his testimony, I find that he is entitled to the \$250.00 he is claiming here, which roughly equates to compensation for 12 hours of cleaning (the maximum hourly rate a landlord may claim through this Section is \$20.15). I also find that the landlord is entitled to the \$300.00 he is claiming for disposing of garbage and I find that \$50.00 per trip for 6 trips to the dump is more than reasonable.
24. Regarding the painting, I accept the landlord's claim that some painting was probably required, though without any photographs I cannot determine the extent of the damage that was caused to the walls or whether every wall in the unit needed to again be painted. Furthermore, no receipts were submitted showing the costs the landlord had incurred to purchase paint and other supplies. Because of this lack of evidence, I find that is entitled to compensation for 10 hours of his personal labour: \$201.50.
25. The situation is the same with the floorings. No photographs were submitted by the landlord showing the damage and no receipts were submitted for the costs of purchasing new floors. Furthermore, as the carpets were "fairly old", and as a medium grade carpet only has an expected lifespan of 8 years, these carpets may have had to soon be replaced anyhow. Again, because of that lack of evidence, I find that the landlord is entitled to compensation for 10 hours of his labour.

26. I also accept the landlord's claim that 6 doors had to be replaced or repaired. Again, no photographs were presented at the hearing showing the condition of these doors and no receipts showing their replacement costs. I award the landlord compensation for 4 hours of his personal labour to repair and rehang these doors: \$80.60.
27. I also find that the landlord is entitled to compensation for 6 hours of his labour to mow the tenants' lawn on those 3 separate occasions and I allow an additional 2 hours to repair the railing.
28. No receipts were submitted for the replacement mirror or the new curtains and therefore those claims fail.

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$1194.80, determined as follows:

• Cleaning	\$250.00
• Garbage removal	\$300.00
• Painting.....	\$201.50
• Replace flooring.....	\$201.50
• Replace and repair doors	\$80.60
• Lawn care	\$120.90
• Repair railing.....	\$40.30
• Total	<u>\$1194.80</u>

Issue 2: Compensation for Inconvenience - \$2800.00

Relevant Submissions

30. The landlord stated that the tenants had left behind a cat at the unit and he was required to take care of it while he was seeking a new home for it.
31. He testified that he was in possession of the cat for 1 day and he is seeking \$100.00 in compensation for his time and effort.

Analysis and Decision

32. I accept the landlord's testimony in this matter and I find that he had cared for the abandoned cat for 1 day. I also find that \$100.00 is reasonable compensation for caring for that cat for that period and for his efforts in securing a new home for it. As such, his claim for \$100.00 in compensation succeeds.

Issue 3: Rent - \$1100.00

Relevant Submissions

33. The landlord stated that his tenants gave him no notice that they were going to be moving out of the apartment and he found the unit abandoned on 15 May 2020.
34. He stated that although the tenants' rent had been paid for the period ending 31 May 2020, because he had not received a proper 1-month notice and because the unit was left in such a poor state of disrepair, he was unable to put new tenants into the unit for June 2020 and he suffered a loss of rental income for that month.
35. The landlord is seeking an order for a payment of \$1100.00 in compensation for the lost rental income he suffered for June 2020.

Analysis

36. I accept the landlord's claim that he had not received any notice that the tenant's were moving out of the property and he is right to point out that, according to section 18 of the *Residential Tenancies Act, 2018* he was entitled to at least a full month's notice that the tenants were terminating their agreement.
37. I also agree with the landlord that because of the poor state of the property when he took possession on 16 May 2020 and because he was not given a proper notice, it would have been highly unlikely that he could have found a new tenant for June 2020.
38. As such, I agree with the landlord that he is entitled to a payment of \$1100.00 in compensation for the loss of rental income he suffered during June 2020.

Decision

39. The landlord's claim for a payment of rent succeeds in the amount of \$1100.00.

Issue 4: Late Fees - \$75.00

Relevant Submissions

40. The landlord has assessed late fees in the amount of \$75.00.

Analysis

41. Section 15.(1) 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.

42. The minister has set the following fees:

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.*

43. As the tenants have not paid the rent for June 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

44. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 5: Hearing Expenses

45. As the landlord's claim has been successful, the tenants shall pay his hearing expense of \$20.00 for the costs of filing this application.

Issue 6: Security Deposit

46. The landlord stated that the tenants had paid a security deposit of \$800.00 on 11 April 2019. As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

47. The landlord is entitled to the following:

- a) Compensation for Damages..... \$1194.80
- b) Compensation for Inconvenience..... \$100.00
- c) Rent..... \$1100.00

d) Late Fees \$75.00
e) Hearing Expenses \$20.00
f) LESS: Security Deposit (\$800.00)
g) Total Owing to Landlord **\$1689.80**

14 April 2021

Date

John R. Cook
Residential Tenancies Tribunal

