

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 20-0529-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 am on 11 February 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated. He was represented at the hearing by [REDACTED]

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$1655.00 in compensation for damages;
 - An order for a payment of rent in the amount of \$575.00;
 - Authorization to retain the \$200.00 security deposit; and
 - A determination of the validity of a termination notice issued to him on 07 August 2020.
5. The tenant is seeking an order for the following:
 - An order for a refund of the security deposit in the amount of \$275.00;
 - An order for a refund of rent in the amount of \$24,725.00; and
 - An order for a payment of \$5000.00 for the costs of replacing furniture.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case is sections 10, 14, 18, 20, 21 and 34 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$1655.00

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into verbal rental agreement with the tenant, though he could not say when the tenancy began. The agreed rent was set at \$575.00 and according to his application, a security deposit of \$200.00 was paid in May 2017.
9. The landlord stated that on 07 August 2020 the tenant informed him, by text-message, that he was moving at the end of the month and he claimed that he regained possession of the property on 01 September 2020.
10. Although the tenant walked through the unit when the tenancy began, there was no condition report compiled either at the beginning or the end of the tenancy.
11. The landlord stated that after the tenant moved out, he discovered that there were significant damages caused to the unit and he submitted the following breakdown of the costs to carry out repairs (█ #1):
- Labour paint and plaster \$600.00
 - Paint and plaster materials \$450.00
 - Replace light shades \$45.00
 - Repair kitchen countertop \$70.00
 - Window screen in bedroom \$30.00
 - New window blinds \$100.00
 - Install new toilet \$160.00
 - Cleaning \$140.00
 - Total \$1595.00

Painting

12. The landlord stated that the unit was freshly painted just before the tenant moved in and he complained that the whole unit had to again be repainted after the tenant moved out. With his application, the landlord submitted photographs showing the condition of the walls after the tenant moved out (█ #2) and he pointed out that almost all the walls were marked up with crayons, ink pens or magic markers.

13. He also pointed to 2 other photographs showing that there were holes in the walls which had to be plastered before the unit was repainted.
14. In support of the costs the landlord is seeking here, he submitted receipts for the repair work (████ #3, pg. 1) showing that he was charged \$600.00 by █████ to have the unit repainted and he pointed to his other receipts showing that he had paid \$653.09 for paint and painting supplies.

Lightshades

15. The landlord also stated that there were 5 light shades that needed replacing after the tenant moved out and he pointed to 2 photographs showing that there were 2 light shades missing from 2 ceiling lights. He stated that these light shades were probably 5 years old when the tenant moved in.
16. According to the receipts submitted by the landlord, he had purchased 4 lights shades for \$45.95.

Countertop

17. The landlord pointed to another photograph showing that there was a hole in the laminate kitchen countertop. He stated that he had purchased a sealant and some paint and had the countertop repaired. He pointed to his receipts showing that he had paid \$79.98 + tax for those items. The landlord stated that the countertop had been installed approximately 8 years ago.

Window screen

18. The landlord also pointed to a photograph of a window screen showing that it had been torn. That screen has not yet been replaced but the landlord figured he could repair it for \$20.00. No receipt or quotes were submitted with his application.

Window Blinds

19. The landlord also stated that he was required to replace all 8 plastic mini-blinds in the apartment and he submitted a receipt (████ #3, p. 5) showing that he had paid \$103.33 for costs of replacing 5 of them. He also submitted 2 photographs showing that the slats in 2 sets of blinds were broken up.

Toilet

20. The landlord also complained that the tenant had damaged the toilet during his tenancy and he pointed to his submitted receipts (████ #3, p. 2) showing that he had paid \$196.06 for a replacement and installation kit.

21. The landlord stated that at one point during the tenancy, he had received a call from the tenant informing him that the toilet was no longer flushing and he sent his helper to assess the issue. The landlord's helper reported to him that when he inspected it, he found that the base was cracked and it was leaking. When the toilet was removed, it was discovered that there was a hairbrush stuck in the bottom and that was the reason the toilet had cracked.
22. The landlord figured that the toilet was about 8 years old and he testified that when it was replaced he informed the tenant that the costs of the new toilet would be taken out of his security deposit.

Cleaning

23. The landlord stated that he spent a couple of days cleaning the unit after the tenant moved. He testified that the fridge and stove were both "filthy" and he claimed that the cupboards were dirty and that the countertops needed to be wiped down. No photographs were submitted with his application showing the cleanliness of the unit after the tenant vacated.

The Tenant's Position

24. The tenant stated that he had moved into the unit in February 2017.
25. ■■■ claimed out that because this was a verbal tenancy, and because these issues were not discussed when he moved in, the tenant did not know whether this tenancy was running on a month-to-month or week-to-week basis. ■■■ acknowledged, though, that the tenant was paying \$575.00 each month. She also claimed that the tenant had paid a \$275.00 security deposit on 01 February 2017.

Painting

26. Regarding the painting, the tenant acknowledged that his children had been marking on the walls and he agreed that about half of the landlord's photographs do show damage that he is responsible for. He claimed, though, that the other half of the photographs showing similar marking were not caused by him during his tenancy.
27. Regarding the holes in the walls, ■■■ claimed that the holes in the walls were caused by rats or mice.

Lightshades

28. The tenant acknowledged that he had damaged 2 lightshades during this tenancy, but he denied that he was responsible for the other 2 identified by the landlord.

29. The tenant claimed that when he moved out, he gave the landlord \$200.00 to replace these 2 lightshades and to repaint the apartment. There is no receipt of that payment. In response, the landlord stated that the tenant had only given him \$100.00 and he claimed that that payment was intended for the removal of garbage that the tenant had left behind when he vacated.

Countertop, Window Screen, Blinds

30. The tenant stated that he did not know what had happened to the countertop, the window screen or the blinds and he figured that that damage may have occurred before his tenancy began.

Toilet

31. The tenant stated that the toilet was old and did not know when the crack appeared in it, and he suggested that it may have been cracked when the tenancy began. He also stated that he was not at the unit when the landlord's helper replaced the toilet and he stated that he knew nothing about the hairbrush until he was served with this application. The tenant also claimed that the landlord had informed him that the toilet was old and that he would cover the costs of replacing it.
32. ■ also pointed out that the landlord had not submitted any photographic evidence at the hearing showing that a hairbrush had caused the toilet to malfunction.

Cleaning

33. ■ pointed out that the landlord had submitted no photographs and no receipts in support of this portion of his claim and the tenant testified that he had cleaned the unit, including the items identified by the landlord, before he vacated.

Analysis

34. 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

35. Regarding the painting, I accept the landlord's evidence which shows that numerous walls in the unit were marked up and I agree with him that the whole unit had to again be repainted after the tenant moved out. A paintjob depreciates over time and it is expected that a landlord would have to repaint the walls in the rental unit every 3 to 5 years as a result of normal wear and tear. As the paint job was 3 years old when the tenancy ended, I find that the landlord is entitled to a depreciated award of \$501.24 $((\$653.09 + \$600.00) \times 2/5)$.
36. Regarding the lightshades, as the tenant acknowledges that he had damaged 2 of those shades, I find that he is responsible for the cost of replacement. As lightshades have an expected lifespan of 15 years, the landlord is entitled to a depreciated award \$15.32 $(\$9.99 \times 2 + \text{tax} \times 10/15)$. No evidence was presented by the landlord showing that the tenant had damaged any more than 2 lightshades (e.g., photographs, inspection report, etc.).
37. Regarding the countertop, I accept the landlord's evidence which shows that it was damaged and that he had spent over \$80.00 to have it repaired. His evidence also shows that a window screen is torn and that 2 sets of blinds are broken. However, there was not enough evidence submitted at the hearing (e.g.,

an incoming condition report) to establish that this damage had occurred during this tenancy. As such, those claims do not succeed.

38. I also find that the landlord's claim for the costs of repairing the toilet does not succeed. It was agreed at the hearing that the toilet had stopped working and that it had to be replaced, but the landlord presented no evidence to establish that it had become damaged by the tenant or that a hairbrush had caused it to break.
39. I reach the same conclusion with respect to the cleaning and I find that the landlord is not entitled to an award. Besides his testimony, which was contradicted by the tenant, the landlord presented no evidence to establish that any cleaning was required.

Decision

40. The landlord's claim for compensation for damages succeeds in the amount of \$516.56 determined as follows:

- Plaster and painting \$501.24
- Replace light shades \$15.32
- Total \$516.56

Issue 2: Determination of Validity of Termination Notice

Issue 3: Rent - \$575.00

Relevant Submissions

The Landlord's Position

41. The landlord stated that this tenancy was running on month-to-month basis and that the tenant was therefore required to provide him with a 1-month notice if he wished to terminate their agreement.
42. The landlord stated that he only received notice on 07 August 2020 that the tenant was vacating at the end of that month and he stated that that notice does not meet the termination notice requirements.
43. The tenant's rent was paid and up-to-date for the period ending 31 August 2020, and through this portion of his claim, the landlord is seeking an order for a payment of rent for September 2020 in lieu of proper notice.

The Tenant's Position

- 44. ■■■ argued that the tenant had not entered into any written or verbal agreement with the landlord concerning the term of this tenancy and she stated that he was not informed by the landlord that he was required to provide 1 month's notice that he was terminating the rental agreement.
- 45. ■■■ further argued that the reason the tenant had terminated his agreement was because there was a rodent infestation at the unit and a problem with mold. It was because of these health and safety concerns that the tenant terminated their agreement.

Analysis

- 46. Concerning the term of the tenancy, I agree with the landlord that this tenancy was running on a month-to-month basis as the tenant acknowledged that he was paying his rent monthly—not weekly.
- 47. The landlord is right to point out that where a tenancy is running on a month-to-month basis, he is entitled to a full month's notice that the tenant is terminating their agreement. If, on 07 August 2020, a tenant wished to terminate the rental agreement, the earliest termination date he could specify, according to section 18 of the *Residential Tenancies Act, 2018*, would be 30 September 2020.
- 48. As the tenant did not give the landlord a proper termination notice, and as the unit had to be repainted because of all the markings on the walls, I find that the landlord could not have had the unit rented for September 2020.
- 49. Regarding the issues of mold and rodents, if the tenant believed that the landlord had not been living up to his obligations, as set out in statutory condition 1, in section 10 of the *Residential Tenancies Act, 2018*, or if he believed that the rental unit was not longer fit for habitation, he was required to provide the landlord with a written notice, identifying either section 20 or 21 of the *Act*, and that notice was to be in the form prescribed by the minister and containing all of the information laid out in section 34 of the *Act*. The text-message sent to the landlord on 07 August 2020 does not meet any of these requirements.

Decision

- 50. The text-message sent to the landlord on 07 August 2020 is not a valid termination notice.
- 51. The landlord's claim for a payment of rent succeeds in the amount of \$575.00.

Issue 4: Refund of Rent: \$24,725.00

Relevant Submissions

The Tenant's Position

52. [REDACTED] stated that there were 3, ongoing issues with the rental unit during this tenancy which warranted a full refund of all the rent that the tenant had paid to the landlord.
53. First, [REDACTED] stated that shortly after the tenant moved in, there was an overflow in the upstairs apartment and water entered the tenant's bathroom and kitchen, causing damage to the ceilings and floors. [REDACTED] claimed that there was nothing done as a result of this damage and mold eventually began to appear in those rooms.
54. [REDACTED] stated that the tenant's wife was constantly cleaning the mold, and she would apply bleach directly to the affected areas to try to remove it. However, the mold would always return and she pointed to a photograph ([REDACTED] #1) showing that there was a patch of mold in a ceiling corner in a room of the rental unit as corroboration. She also pointed to one of the landlord's own photographs in which water damage is visible on a wall and on the floor.
55. [REDACTED] claimed that the tenant's family all developed respiratory issues as a result of that mold, and in support of that claim she submitted a letter from [REDACTED] ([REDACTED] #2) in which a case worker reports that she had been informed by the tenant's wife that there is a mold issue in the apartment.
56. Secondly, [REDACTED] stated that there is a problem with rodents in the apartment. She stated that the tenant had contacted the landlord in May 2019 about a rat that had chewed through a couple of walls. She stated that the landlord came to unit and laid some poison traps, but this did not resolve the issue.
57. The tenant again contacted to the landlord in December 2019 about the rats. [REDACTED] complained, though, that the landlord did not call a pest control company, but instead he came to the unit and filled the rat holes with a foam. [REDACTED] claimed that using such foam to repair rodent holes may be a respiratory hazard as well.
58. The tenant's third complaint was that the deck for the upstairs unit collapsed in January 2020 as a result of "snowmageddon" and the landlord did not have it repaired until June 2020. [REDACTED] claimed that this collapsed deck had blocked off the main entrance to tenant's unit leaving him with only small lane way by which to exit the apartment. [REDACTED] argued that this was a fire hazard and it should have been addressed by the landlord as soon as it had happened.

59. Because of these 3 issues, [REDACTED] argued that the tenant is entitled to a refund of all the rent that he had paid to the landlord during his tenancy, and she calculated that that amount comes to \$24,725.00.

The Landlord's Position

60. The landlord acknowledged that the sink from the upstairs apartment had overflowed and had caused water damage to the tenant's apartment. He stated that after he was notified of the damage, he let the ceiling dry out for 10 days and then it was re-plastered and painted. He also replaced some gyproc in a water damaged wall.
61. The landlord stated that after he had carried out the repairs, he never received any other complaints from the tenant about that matter and he never received any complaint from him about mold.
62. He also pointed out that no mold can be seen in the photographs he had submitted with his application, which were taken shortly after the tenant moved out, and he denied that the photograph submitted by the tenant was actually a photograph of his unit.
63. The landlord also argued that the letter from [REDACTED] ought to be regarded as hearsay. He stated that no one from [REDACTED] had visited the rental property and that they had only recounted in that letter what they had been told by the tenant's wife.
64. Regarding the complaints about rodents, the landlord stated that he had only received 2 complaints from the tenant, in May and December 2019, and he responded immediately. After he addressed the issue in May 2019, he heard no other complaints from the tenant until December 2019. And after he filled the holes in December 2019, the issue was never raised again.
65. With respect to [REDACTED] arguments, the landlord stated that there is no requirement in the City's by-laws that he hire a professional exterminator to deal with a complaint about rodents. He also argued that the foam he had used to fill the holes in the walls was not hazardous as it was bought off the shelf at a hardware store.
66. He also argued that the tenant was responsible for the rodent issue as he would constantly place open garbage outside his back and front doors. In support of that claim, he pointed to one of the tenant's own submitted photographs ([REDACTED] #3, p. 5) showing that there was an open bag of garbage, partially covered in snow, just a few feet from the tenant's back door. He also pointed to one of his own photographs ([REDACTED] #2) which shows a box of diapers. The landlord claimed that that box was left in the backyard and that he had found numerous soiled diapers there.

67. The landlord also contested [REDACTED]'s account of the collapsed deck. He stated that the entrance to tenant's apartment was not impeded by the collapsed deck, and that [REDACTED] did not understand the layout of the apartment. He claimed that it was only the back entrance which was slightly obstructed due to the collapse, but that the front door was not impeded and that there were several large windows in the apartment if the tenant ever had to vacate because of a fire or other emergency.
68. He acknowledged that he did not repair the deck until June 2020, but he pointed out that this was because he could not carry out those repairs during the winter while there was snow on the ground.
69. The landlord argued that the tenant's claim is without merit as he had responded to all requests for repairs in a timely manner and he pointed out that he has received no notice from the [REDACTED] indicating that he is in violation of any of their by-laws and he claimed that there are no outstanding work orders in effect for his property.

Analysis

70. I was not persuaded by this portion of the tenant's claim.
71. Although I agree with the tenant that he had encountered issues with rodents and that the unit had suffered some water damage, there was no evidence presented to suggest that the landlord had not addressed these issues within a timely manner. There was also no evidence presented at the hearing showing that the tenant had made any additional complaints to the landlord after he had rectified these issues.
72. Regarding the issue of mold, there was insufficient evidence presented by the tenant to establish that there was mold in the apartment or, if there was, that it was related to the water damage. I also find that there was insufficient evidence presented at the hearing to establish that any respiratory issues suffered by the tenant's family were related to any mold in the apartment and I agree with the landlord that the letter from [REDACTED] has to be treated as hearsay.
73. With respect to the rodent problem, I find that the landlord had responded to the tenant's complaints promptly and the tenant provided no evidence to the Board showing that the landlord had failed to address any additional complaints besides those received in May and December 2019.
74. I also agree with the landlord that given that the deck from the upstairs unit had collapsed in January 2020, in the middle of a winter with record snowfall, he was not in a position to rebuild that deck until the spring of the year. In any case, the tenant failed to establish that the collapsed deck had restricted the tenant's exit of the unit or that it had put the tenant in any danger.
75. For these reasons, the tenant's claim does not succeed.

Decision

76. The tenant's claim for a refund of rent does not succeed.

Issue 5: Replacement Furniture - \$5000.00

Relevant Submissions

The Tenant's Position

77. ■■■ stated that the rodents that had infested the tenant's apartment had also chewed through his furniture and he was required to dispose of all of it after the tenancy ended.
78. In support of that claim, ■■■ pointed to 2 photographs showing some of the tenant's furniture stacked in front of the rental unit when he moved out. ■■■ pointed out that are holes on the underside of a couch and holes in a cushion. The tenant claimed that these holes were caused by the rodents chewing on the furniture.
79. The tenant is seeking \$5000.00 in compensation for the damaged furniture he was required to dispose of. No quotes or receipts were submitted with the tenant's application showing the costs of replacing that furniture.

The Landlord's Position

80. The landlord argued that the tenant was responsible for the rodents entering his apartment due to the fact that he was leaving open garbage outside of his doors. He also argued that the furniture shown in the tenant's submitted photographs seemed to be of a low quality and he questioned the tenant's claim that it was worth \$5000.00.
81. The landlord also stated that on the day the tenant was vacating, he had asked the landlord if was able to find someone to dispose of the furniture for him. The landlord put the tenant in touch with a friend of his, and the tenant had paid him to take away the furniture he wanted to dispose of. The landlord testified that there was no conversation at that time about a rodent infestation or that that was the reason the tenant was disposing of his furniture.

Analysis

82. I concluded in the previous section that the landlord had only been notified twice about a rodent issue and that he addressed the matter as requested. No evidence was presented to establish that the landlord had been negligent in dealing with the issue or that he had refused to respond to the tenant's request

for assistance with the matter. In that respect, I find that the tenant has not established that the landlord is responsible for the rodents that had entered his apartment or that he is liable for the costs of replacing the tenant's furniture.

83. I also find that the tenant had presented insufficient evidence to establish that \$5000.00 worth of furniture had to be thrown out. In the submitted photographs, I can see 2 separate areas where there is damage to 2 pieces of the tenant's furniture, but based on that evidence alone, I am unable to determine whether it was caused by rodents or something else. In any case, that evidence would at most establish that those 2 pieces of furniture were affected, and does establish that the rest of the furniture the tenant is claiming through this application also had to be disposed of.
84. Besides these issues with the tenant's claim, he has also failed to present any evidence, in the form of receipts or estimates, to establish that the furniture he threw away was worth \$5000.00.

Decision

85. The tenant's claim for the costs of furniture replacement does not succeed.

Issue 6: Security Deposit

Relevant Submissions

The Landlord's Position

86. The landlord stated that the tenant had paid him a security deposit of \$200.00 when the tenancy began in 2017. No receipt was issued for that payment.
87. The landlord also testified that the tenant had paid him \$100.00 on the day that he had moved out in compensation for costs of removing garbage. No receipt was issued for that payment either.
88. The landlord is seeking to retain the security deposit and apply it against the costs he incurred in repairing the damages to the property and in compensation for the loss of rent he suffered in September 2020.

The Tenant's Position

89. The tenant stated that he had paid a security deposit of \$275.00, not \$200.00, and he also claimed that he had given the landlord \$200.00 when the tenancy had ended, not \$100.00, as the landlord claimed.
90. The tenant acknowledged that no receipts were issued for those payments and no other proof payment was submitted to the Board.

Analysis

91. Where a tenant asserts that he had made a payment to a landlord, he has the burden of proving that payment. Typically, proof would consist of a receipt, an acknowledged of payment in a written rental agreement, a copy of an e-mail money transfer receipt, etc. No such evidence was presented at the hearing showing the payments the tenant had claimed and his testimony was contradicted by the landlord.
92. As the landlord acknowledged that he had received a payment of \$200.00 in 2017 and another \$100.00 when the tenant moved out, those amounts will be credited to the landlord's overall award.

Decision

93. The landlord shall retain the total security deposit of \$300.00 (\$200.00 + \$100.00) as outlined in this decision and attached order.

Issue 7: Hearing Expenses

Relevant Submissions

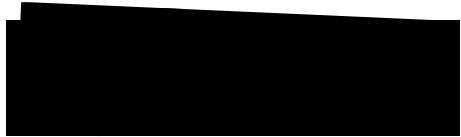
94. As the landlord's claim has been successful, the tenant shall pay his hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

95. The landlord is entitled to the following:
- a) Compensation for Damages\$516.56
 - b) Rent\$575.00
 - c) Hearing Expenses.....\$20.00
 - d) LESS: Security Deposit..... (\$300.00)
 - e) Total Owing to Landlord\$811.56

07 May 2021

Date


John R. Cook
Residential Tenancies Tribunal