

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0560-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 10:42 am on 10 August 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," did not attend.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$1672.02 in compensation for damages,
 - An order for a payment of rent in the amount of \$1240.00,
 - An order for a payment of utilities in the amount of \$751.63,
 - Authorization to retain the security deposit of \$900.00.

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 Statutory Conditions section 10 of the *Residential Tenancies Act, 2018*, and policy 9-3: Claims for Damage to Rental Premises.

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 the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit (■#07) with his application stating that he had served the tenant, by prepaid registered mail, on 02 July 2021. The landlord provided the tracking slip from Canada Post (■#08) which shows it had not been collected by 06 July 2021. To the best of the landlord's knowledge, the tenant was living at that address at that time. 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.

Issue 1: Compensation for Damages - \$1672.02

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into a verbal rental agreement with the tenant in February 2019. The agreed monthly rent was set at \$1,200.00 pay own utilities and the landlord submitted proof (■#02) that the tenant had paid a security deposit of \$900.00 on 05 February 2019.
9. The landlord said that the house was 8 years old when the tenant moved out. He said that he did not fill out a condition report but that he paints and repairs before a tenant moves in and that the house was in good repair when the tenant took possession.
10. The landlord stated that the tenant gave notice that she was due to leave the end of September 2020. No walkthrough was conducted of the property. The tenant left the door unlocked and left the apartment, the landlord has been unable to contact her since that time.
11. The landlord said that there was a lot of damage and the house was unclean. In the downstairs there was cat feces and a strong smell of cat urine. He submitted the following breakdown of the costs to carry out repairs (■#03):
 - Front door latch and deadbolt \$139.71
 - Flooring in the basement due to cat urine \$593.14
 - Missing door knob for rec room \$20.69
 - Blinds damaged in the bedroom \$34.98
 - Curtain rod in kitchen missing \$28.73

- Paint and plaster house \$142.94
- Closet door knobs missing..... \$45.44
- Outside water connection damaged \$44.61
- Labour for painting, cleaning and laying floor \$640.00
- Total..... \$1672.02

Front door latch and deadbolt

12. The landlord stated that the front door appeared to have been kicked in and that the door latch was broken. He said that it sticks and he was worried about a future tenant being unable to open the latch.
13. The landlord said that the deadbolt would have been changed because of a new tenant moving in.
14. He said that the latch and deadbolt came in a kit, he provided a receipt (█#06). The set cost \$121.49 for a total of \$139.71 taxes included.

Flooring in the basement

15. The landlord stated that the flooring in the basement had cat feces on it and it smelled of cat urine. He has replaced all of the flooring and still gets a smell in that room.
16. The flooring was 8 years old.
17. The new flooring cost \$518.19 plus tax for a total of \$595.92 and is shown on two separate receipts (█#05 & █#06).

Missing door knob in Rec Room

18. The landlord was required to replace a door knob in the Rec Room. The knob was missing from the door.
19. The door knob was 8 years old.
20. The landlord provided a receipt █#06 for 17.99 plus tax for a total of \$20.69.

Blinds damaged in the bedroom

21. The blinds in the bedroom, plastic mini blinds, were damaged and needed to be replaced.
22. The blinds were 8 years old.
23. No receipt provided

Curtain rod missing in the kitchen

24. The landlord said that the curtain rod and curtain was missing from the kitchen. The landlord was not interested in compensation for the curtain but wanted the curtain rod replaced.
25. The curtain rod was 8 years old.
26. No receipt provided.

Paint and plaster the house

27. The landlord stated he had to paint the house after the tenant vacated. The house was painted in 2018 or 2019.
28. There were holes and gouges in the walls that she had tried to repair, but it was a poor job and it had to be redone. One of the larger holes the gyproc had to be cut out and replaced.
29. The landlord and his father completed this work.
30. The cost of the supplies was \$132.90 plus taxes for a total of \$152.84, receipt provided (■#04 & ■#06).

Closet door knobs

31. The landlord also stated that he was required to purchase 2 new door knobs after the tenants moved out as they were missing.
32. The door knobs would have been 8 years old.
33. Receipts provided (■#06). Cost of knobs \$14.38 plus tax for a total of \$16.54.

Outside Water Connection

34. The landlord also claimed that the box containing the outside water connection was damaged. He believed that someone may have backed into the box that contained the connection.
35. The landlord purchased plywood to repair the damage for \$38.79 plus tax for a total of \$44.61. Receipt provided (■#06).

Cleaning and Labour

36. The landlord reports that the tenant did not do any cleaning prior to leaving. He said that downstairs there was cat feces and cat urine on the floor. All damages and cleaning was done by himself and his family.

37. The landlord is claiming 8 hours to lay the flooring, 15 hours to paint and plaster and 9 hours to clean. For a total of 32 hours @ \$20.00 an hour = \$640.00

Analysis

38. 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*

39. Regarding the front door latch and deadbolt; it is the landlord's responsibility to replace the deadbolt and change the locks prior to a new tenant moving in. The deadbolt and latch came in a set at a cost of \$139.71. I accept the landlord's testimony that the door appeared to have been kicked in and that the tenant is responsible for the latch but, the cost of the deadbolt is the responsibility of the landlord. If the cost of the set is therefore divided and each party is responsible for half that cost: \$69.85. The lock was 8 years old with a life expectancy of 30 years. Factoring in depreciation, the landlord would be entitled to 73% of the costs he incurred for the latch. $73\% \times 69.85 = \$51.00$.

40. Regarding the replacement of flooring due to cat urine and feces creating an offensive odor. Laminate has a life expectancy of 20 years and the flooring was 8 years old at the time of replacement. The cost of the flooring and supplies is \$595.92. Considering depreciation the landlord is entitled to 60% of the cost. $\$595.92 \times 60\% = \357.55 .

41. With respect to the missing door knobs in the closets and Rec room. I accept that the landlord had to replace these items at a cost of \$37.23. These items were also 8 years old and door knobs have a life expectancy of 15 years. The landlord is entitled to 47% of the cost. $\$37.23 \times 47\% = \17.50 .

42. I accept the testimony that the damaged blinds in the bedroom and the missing curtain rod in the kitchen, had to be replaced. There were no receipts for these items and they will not be evaluated.

43. With respect to the painting, the landlord presented that there was damage to some of the walls and there was one wall with a large hole that the tenant had tried to repair. The repair did not meet the standard of the landlord and he replaced the gyproc, and spackled the damages. The landlord also testified that he usually paints prior to a tenant taking possession. The landlord would have therefore, incurred the cost of painting when the tenant left and this is not the responsibility of the tenant. The receipts show a total of \$34.97 + tax = \$40.22 for products to spackle and repair the wall. The tenant is responsible for that cost.

44. The landlord reported that it appeared someone drove into the box containing the water connection. He said that the connection was not damaged but the box had to be replaced. The plywood for the box was \$44.61. This box is also 8 years old with a life expectancy of 60 years. The landlord is entitled to $87\% \times \$44.61 = \38.81 ,

45. Finally, the landlord submitted a cost for labour for himself and family completing the above work: 8 hours for flooring, 15 hours for painting and 9 hours for cleaning. I agree with the landlord's claim for flooring and cleaning, I'm amending his time for painting to 5 hours as some of that work would have been completed when he changed tenants. This would give a total of 22 hours @ \$20.00 = \$440.00.

Decision

46. The landlord's claim for compensation for damages succeeds in the amount of \$945.08 determined as follows:

- Front door latch and deadbolt..... \$51.00
- Laminate flooring materials..... \$357.55
- Door knobs \$17.50
- Spackling material \$40.22
- Plywood for water connection box \$38.81
- Labour \$440.00
- Total..... \$945.08

Issue 2: payment of rent \$1240.00

Relevant Submissions

The Landlord's Position

47. The landlord submitted a rent ledger showing that the tenant owed \$40.00 for the month of July 2020, and for her last month, September 2020, she owed the full amount of the rent, \$1,200.00, for a balance of \$1,240.00

48. Non-payment of rent violates the rental agreement; the landlord is entitled to payment in full for rental arrears.

Decision

49. The landlord's claim for past due rent succeeds in the amount of \$1,240.00.

Issue 3: Utilities - \$751.63

Relevant Submissions

The Landlord's Position

50. The landlord stated that the rental unit was without utilities, however, the tenant was unable to keep up with the utilities bill and requested that the landlord put the bill in his name and she would then reimburse him.

51. The landlord submitted a utilities ledger showing that he had been charged \$2,332.63 in utilities and the tenant had reimbursed him \$1,581.00. The tenant still owes the landlord a balance of \$751.63.

Analysis

52. The landlord presented the utilities ledger as evidence but did not provide receipts. He gave testimony which I accept as truth, therefore the landlord's claim succeeds.

Decision

53. The landlord's claim for a payment of utilities succeeds in the amount of \$751.63

Issue 4: Security deposit - \$900.00

Relevant Submissions

The Landlord's Position

54. The landlord stated that the tenant had paid a security deposit of \$900.00. As the landlord's previous claims have been successful, he shall retain that deposit as outlined in this decision and attached order.

Decision

55. The landlord's claim to retain the damage deposit succeeds in the amount of \$900.00.

Summary of Decision

56. The landlord is entitled to the following:

- a) Compensation for Damages \$945.08
- b) Rent \$1,240.00
- c) Utilities owing \$751.63
- d) **LESS: Security Deposit (\$900.00)**
- e) Total Owing to Landlord **\$2,036.71**

19 January 2022

Date

John R. Cook
Residential Tenancies Tribunal