

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0010-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:42 AM on 08 June 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", did not attend the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$3145.00,
 - An order for a payment of late fees in the amount of \$75.00,
 - An order for a payment of \$520.00 in compensation for damages,
 - An order for a return of missing possessions valued at \$595.00, and
 - Authorization to retain the security deposit of \$800.00.

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 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

6. 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 testified that he had served the tenant with notice of the hearing, by e-mail, on 18 May 2021 and she has had 20 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.

Issue 1: Rent - \$3145.00

Relevant Submissions

7. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 June 2020, and a copy of that agreement was submitted with his application (█ #1). The agreed rent was set at \$1100.00 and it is acknowledged in the agreement that the tenant had paid a security deposit of \$800.00.
8. In September 2020, the tenant fell into rental arrears and the landlord issued her a termination notice in November 2020, requiring that she vacate in the first week of January 2021. He testified that he regained possession of the unit on 21 January 2021.
9. With his application, the landlord submitted a copy of his rent records (█ #2) showing the payments he had received from the tenant since she moved in. According to these records, her rent was paid and up-to-date for the period ending 31 August 2021. In September 2021, the tenant paid \$900.00 and the landlord only received \$500.00 for November and \$600.00 for December 2020. No rent was paid for October 2020 or for January 2021. The landlord charged the tenant a pro-rated rent of \$745.00 for January 2021.
10. The landlord calculates that the tenant owes him \$3145.00 for the last 5 months of the tenancy.

Analysis

11. I accept the landlord's testimony and evidence in this matter and I agree with him that the tenant has not paid her rent as required. Based on the landlord's rent records, I find that he is entitled to a payment of \$3145.00, as claimed.

Decision

12. The landlord's claim for a payment of rent succeeds in the amount of \$3145.00.

Issue 2: Late Fees - \$75.00

13. The landlord has assessed a \$75.00 late fee.

Analysis

14. Section 15 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.

The minister has prescribed the following:

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.

15. As the tenant has been arrears since September 2020, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for Damages - \$520.00

Relevant Submissions

17. The landlord stated that after he regained possession of the property, he was required to carry out some cleaning and he had to repair some damages. With his application, he submitted the following breakdown of the costs he incurred to carry out that work ([redacted] #3):

- Cleaning and garbage removal..... \$450.00
- Repair nail holes and crack in door..... \$50.00
- Repair crack in door..... \$20.00

- Total \$520.00

18. The landlord complained that no cleaning had been carried out at the unit before the tenant vacated, and he was required to spend 5 full days carrying out that cleaning. He stated that it appeared that the tenant had had a party before she vacated and he testified that there were beer crates and pizza boxes all throughout the house, and there was even vomit found on the floor. He also complained that there were plates of food left behind and that the kitchen sink had been clogged with food. The landlord stated that he had to remove 23 bags of garbage from the unit before he could even begin the cleaning. He is seeking \$450.00 in compensation for his personal labour. No photographs were submitted with the landlord's application.

19. The landlord also complained that there were 2 interior doors that had cracks in them and he had to repair numerous nail holes. No photographs were submitted with his application and no receipts or invoices for the costs of materials.

Analysis

20. 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*

21. I accept the landlord's claim that some cleaning was required after the tenant moved out of the unit and that a significant amount of garbage had to be removed. I also accept the landlord's testimony that he had to repair some holes in the walls and some cracks in 2 interior doors.
22. No receipts were submitted with the landlord's application showing that he had purchased any materials for that work, and no photographs were submitted with his application that would assist me in making an assessment of the scope of the cleaning that was required or the extent of the damages. Based on his testimony alone, then, I find that he is entitled to compensation for 15 hours of his personal labour. Policy with this Section is that applicant may claim up to \$20.75 for each hour of their personal labour.

Decision

23. The landlord's claim for compensation for damages succeeds in the amount of \$311.25.

Issue 4: Return of Possessions - \$595.00

Relevant Submissions

24. The landlord also testified that when the tenant vacated the property, she removed a mattress and box spring that had been supplied to her by the landlord for her use during this tenancy. The landlord is seeking \$500.00 for the costs of replacing those items. No receipts or estimates were submitted with his application.
25. The landlord is also seeking \$20.00 for the costs of replacing a missing door mat, \$25.00 to replace 3 missing wall plates and \$40.00 to replace a set of drapes.

He also complained that the tenant had not returned her keys to him after she moved out, and he is seeking an additional \$10.00 for new keys. No receipts or estimates were submitted for these items either.

Analysis

26. I accept the testimony of the landlord in this matter and I find that the tenant had removed the items described by the landlord when she vacated, without his permission.
27. With respect to the costs of replacing the keys, policy with this Section is that a landlord is responsible for rekeying the locks at the rental unit, after a tenant moves out, for the safety and security of his new tenants. As such, that claim does not succeed as this is a cost the landlord would have incurred anyhow.
28. With respect to the remaining items, the landlord submitted no receipts or estimates to substantiate the costs he is seeking here and no photographic evidence or other reports showing the condition of these missing items. Without that evidence, I cannot make an informed determination of the costs of replacing these items and the landlord is therefore not entitled to the full costs he has claimed here. Based on that limited evidence, I find that an award on \$100.00 is fair.

Decision

29. The landlord's claim for the costs of his missing possessions succeeds in the amount of \$100.00.

Issue 5: Security Deposit

30. The tenant paid a security deposit of \$800.00 on 15 April 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has succeeded, he shall retain that security deposit as outlined in this decision and attached order.

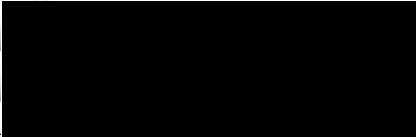
Summary of Decision

31. The landlord is entitled to the following:
 - a) Rent Owing \$3145.00
 - b) Late Fees \$75.00
 - c) Compensation for Damages \$311.25
 - d) Missing Possessions \$100.00
 - e) LESS: Security Deposit..... (\$800.00)

f) Total Owing to Landlord..... \$2831.25

09 November 2021

Date


John R. Cook
Residential Tenancies Tribunal