

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0010-02

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 PM on 08 July 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The homeowner, [REDACTED] also participated.
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 a payment of \$50.00 in compensation for inconvenience,
 - An order for vacant possession of the rented premises,
 - An order for a payment of rent in the amount of \$1350.00,
 - An order for a payment of \$7430.00 in compensation for damages,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the \$500.00 security deposit.

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 10 and 15 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rule 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) a respondent 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 she has been properly served. The landlord submitted an affidavit with her application stating that the tenant had been served with notice of the hearing, by e-mail, on 20 June 2021. A copy of that e-mail was submitted with the landlord's application and she pointed out that that e-mail address was provided to her in the rental agreement. 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 her application at the hearing and stated that she was no longer seeking an order for vacant possession of the rented premises as she regained possession of the property on 02 June 2021.

Issue 1: Compensation for Damages - \$7430.00

Relevant Submissions

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 01 July 2020 and a copy of that executed agreement was submitted with her application (████ #1). The agreed rent was set at \$900.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$500.00.
10. The landlord stated that she found the unit abandoned on 02 June 2021 and she entered and took possession on that date.
11. The landlord stated that the tenant had caused significant damage to the unit during her tenancy and she submitted a list with her application identifying the items and areas of the house that need repairing (████ #2) and she also submitted a quote from a contractor stating that for \$6900.00 he would carry out the following work:
 - Paint / plaster
 - Flooring
 - Hang door / fix sliding door
 - Fix patio
 - Transition strip
 - Replaced damaged trim

12. The landlord stated that none of the work has yet been carried out and she stated that she cannot afford the contractor and will undertake the work herself with the help of a friend.

Front Steps

13. The landlord stated that the front deck was newly built in 2020 before the tenant moved in and she pointed to her submitted photographs (Exhibit #10, Photos #1, #2) showing that there were 2 boards missing from the side of that deck. 2 new boards now need to be purchased and installed. █ estimated that these boards would cost between \$25.00 and \$30.00.

Hallway

14. There were several issues in the hallway area. The landlord stated that a closet door in the hallway was damaged and the track is buckled and it needs to be replaced. █ figured that a new track would cost \$18.00. The landlord also stated that this door had been marked up with crayons and nail polish, and she stated that it had taken her about 30 minutes to clean that door. That door was about 8 years old.
15. She also stated that there was a hole in the wall in that hallway that needs to be plastered (Exhibit #10, photo #7) and she also had to clean crayon marks off of the walls. She stated that all of the walls in the unit were painted just a couple of weeks before the tenant moved in and the walls in the hallway all need to be repainted again.
16. The landlord also complained that the laminate flooring in the hallway had suffered water damage and she suspected that that damage was caused by the tenant tracking water into the unit from outside as she was not removing her shoes (Exhibit #10, Photos ##12-14). Those floors were approximately 8 years old but the landlord does not know how much it will cost to replace them. She also stated that a transition strip was missing, and █ estimated that a replacement would cost \$50.00.

Living Room

17. The landlord stated that 2 pieces of trim in the living room have chunks taken out of them and they need to be replaced. The landlord did not know how much the replacement trim would cost. She stated that the trim in the unit was approximately 8 years old.
18. She also complained that the pocket doors in the living room are not working properly and they need to be repaired. She pointed out that repairing these doors will be difficult, though, as the drywall first needs to be removed. The landlord did not know how that damage was caused and she did not know how much it would cost to repair it.

19. The landlord stated that the flooring in the living room also needed to be replaced. She stated that the tenant had spilled nail polish on these floors and she used nail polish remover to clean up the spill. The landlord complained, though, that the nail polish remover also took the finish off the floors. She claimed that as these floors are laminate, and not hardwood, they cannot be repaired and the laminate boards need to be replaced.
20. The landlord also stated that the walls in the living room were marked up with crayon and nail polish and these walls also now need to be primed and painted. The landlord also complained that she was required to remove a substance off the ceiling, which she guessed to be the contents of a fire extinguisher.

Second Hallway

21. In this area, the walls were in the same condition as the other rooms—there were marks all over the walls from pens, crayons and nail polish, and there were some chin the walls as well. Like the other rooms, the landlord claimed that she has cleaned these walls and they now need to be primed, plastered and repainted.

Bedroom #1

22. The damage in this bedroom is also similar to what was found elsewhere in the unit. The landlord stated that there were chunks missing from some baseboards (Photos #49, #50) and they now need to be replaced, and the walls were in the same condition as the other rooms. Her photographs show that there were marks all over these walls and on the window sills (Photos ##51-54) and there is also a large hole in 1 wall (Photo #45). These walls have been cleaned by the landlord and they now need to be primed, plastered and painted. She also pointed out that a closet door had been removed (Photo #47) and needs to be rehung, and she also complained that the track is damaged and needs replacing. She figured that the new track would cost her \$18.00. A transition strip is also missing in this room (Photo #42).

Bedroom #2

23. Bedroom #2 was in the roughly the same condition as bedroom #1. There are marks all over the walls as well as numerous holes from screws (Photos ##70-73) and these walls need to be plastered, primed and repainted. The landlord complained that a closet door was also removed in this room and needs to be rehung.

Master Bedroom

24. The landlord stated that the door to the master bedroom had 2 large chunks taken of out it and the panel facing was separating from the door (Photo #44). She stated that that door cannot be repaired and needs to be replaced. She stated that she did not know how much a replacement door would cost.

25. She also complained that the trim around the door was marked up with crayons, as in the other rooms in the house, and it need repainting.

Bathroom

26. The landlord also complained that there was a large hole in the wall in the bathroom that needs repairing (Photo #59) and the walls in the bathroom were marked up with crayons and nail polish as well, necessitating the painting of that room too.

Kitchen

27. The walls and trim in the kitchen were also marked up by crayons, pens and nail polish and has to be repainted. The landlord also complained that the archway to the kitchen was badly damaged and the mouldings in that area were destroyed. She stated that there were holes in the archway and the tenant had done a poor job trying to repair it herself.

28. The landlord also complained that there was a switch plate missing on one of the outlets.

29. In addition to the items listed above, and for which the landlord had received that quote from her contractor, she also is seeking compensation for the following items: she is seeking \$100.00 for the costs of replacing a fire extinguisher which had been discharged by the tenant, \$180.00 for the costs of replacing a missing screen belonging to the front door, and \$250.00 to replace a damaged baseboard heater for one of the bedrooms. These items have not been replaced and no quotes or estimates were submitted with the landlord's application.

Analysis

30. 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***

31. It is evident from the photographs submitted by the landlord that the tenant had caused significant damage to the property. I agree with her that the whole unit now needs to be repainted, even though it was painted just before the tenant moved in, that some baseboards and mouldings need to be replaced, that doors need to be repaired and rehung and that the flooring is damaged in several rooms.
32. The problem with the landlord's claim, though, is that the landlord has not furnished the Board with enough evidence to allow me to make an informed decision on the costs she should be awarded. No receipts or estimates were provided for the screen, the fire extinguisher or the baseboard heater, and the quote she had received from her contractor does not itemize the costs of the materials and labour she would be charged for each individual issue. I cannot determine the individual costs she is seeking for painting and plastering, for replacing flooring, for the costs of replacing baseboards, the costs of new doors or hardware for doors, etc.
33. A breakdown of those individual costs is required when assessing an award a landlord ought to receive when factoring in age and depreciation. For example, a good grade laminate floor has an expected life span of 10 years, and given that these floors were 8 years old, our policy is that the landlord would therefore only be entitled to 20% of the costs she incurred to have them replaced. But I don't know what those costs will be. It also would not be fair to merely give the

landlord 20% of the whole of the contractor's quote, as there are other items which will not be depreciated at that rate. Doors, for example have an expected lifespan of 20 years, and a unit ought to be painted between every 3 to 5 years.

34. Nevertheless, I do believe the landlord is entitled to an award. I cannot be exact here, but based on previous claims over which I have adjudicated, and based on the evidence presented to the Board, I will allow the landlord half of the costs of the submitted quote: \$3450.00.

Decision

35. The landlord's claim for compensation for damages succeeds in the amount of \$3450.00.

Issue 2: Compensation for Inconvenience - \$50.00

Relevant Submissions

36. The landlord stated that on 2 occasions during this tenancy, she had provided the tenant with a 24-hour Notice to Enter for the purposes of inspecting the property. She testified that on both occasions when she went to the unit, at the designated time, the tenant refused her entry. During the second visit, the tenant slammed the door on [REDACTED] foot and he had to go to the hospital for an X-ray.
37. The landlord is seeking \$25.00 for each visit as compensation for the time she had to take off work and for the costs of gasoline she consumed driving to the rental property.

Analysis

38. I accept the landlord's testimony in this matter, and based on that testimony I find that she was denied access to her rental unit even though she had given notice in accordance with section 10.(1)5. of the *Residential Tenancies Act, 2018*. I also accept her claim that she had taken time out of her day for these inspections and that she incurred costs to make the trip. I find that compensation in the amount of \$50.00 to be reasonable.

Decision

39. The landlord's claim for compensation for inconvenience succeeds in the amount of \$50.00.

Issue 3: Rent - \$1350.00

Relevant Submissions

40. With her application, the landlord submitted a copy of her rent records (████#3) showing the payments she had received from the tenant since she moved into the unit. These records show that, except for the assessed late fees, the tenant's rent was paid and up-to-date for the period ending 31 March 2021.
41. According to these records, the tenant only paid \$450.00 in rent for April 2021 and no rent was paid for May 2021, bringing the total amount owing to \$1350.00.

Analysis

42. I accept the landlord's claim that the tenant had not paid her rent, as required for April and May 2021. Based on her records, I find that her claim succeeds in the amount of \$1350.00.

Decision

43. The landlord's claim for a payment of rent succeeds in the amount of \$1350.00.

Issue 4: Late Fees - \$75.00

Analysis

44. 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.*

45. As the tenant has been in arrears since at least April 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 5: Security Deposit

47. The landlord stated that the tenant had paid a security deposit of \$500.00 on 23 June 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses

48. The landlord submitted a hearing expense claim with her application and a receipt showing that she had paid \$20.00 to file this application, 2 other receipts showing that she had paid \$144.09 to have photographs developed, and another receipt showing that she had paid \$46.00 to send her evidence to the tenant by Xpresspost. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

49. The landlord is entitled to the following:

a) Compensation for Damages	\$3450.00
b) Compensation for Inconvenience	\$50.00
c) Rent	\$1350.00
d) Late Fees	\$75.00
e) Hearing Expenses	\$210.09
f) LESS: Security Deposit	
(\$500.00)	
g) Total Owing to Landlord	<u>\$4635.09</u>

08 December 2021

Date

