

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0042-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 PM on 04 May 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 participate.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$1000.00 in compensation for damages,
 - An order for a payment of rent in the amount of \$2450.00,
 - An order for a payment of late fees in the amount of \$75.00, and
 - Authorization to retain the security deposit of \$525.00.

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 are sections 15, 19 and 22 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 him 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 he has been properly served. The landlord submitted an affidavit with his application stating that the tenant had been served with notice of the hearing, by e-mail, on 04 February 2021 and he has had 88 days to provide a response. The e-mail address used by the landlord was provided to him in the submitted 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 his absence.

Issue 1: Rent - \$2450.00

Relevant Submissions

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant on 01 September 2019 and a copy of that executed lease was submitted with his application (█ #1). The agreed monthly rent was set at \$700.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$525.00.
8. The landlord stated that the tenant had fallen into rental arrears in November 2020 and as a result he issued him a termination notice on 12 January 2021. That notice was issued under section 19 of the *Residential Tenancies Act, 2018* (notice where failure to pay rent) and it had an effective termination date of 23 January 2021.
9. The landlord also testified that the tenant had damaged the front door to the unit and he therefore issued him a second termination notice on 17 January 2021. That second notice was issued under section 22 of the *Act* (notice where tenant's obligations not met) and it had an effective termination date of 22 January 2021.
10. The landlord stated that he regained possession of the property in mid-January 2021.
11. With his application, the landlord submitted a copy of his rent records showing the payments he had received from the tenant since November 2020. According to these records, the tenant only paid \$350.00 of his rent for November 2020, and no rent for December 2020 or January 2021. He is seeking an order for a payment of \$1750.00 for those months.
12. Additionally, the landlord stated that because of the damage caused to the door and because of the fact that the whole apartment had to be cleaned and repainted because of cigarette smoke damage, the unit could not be rented for February 2021 either. In addition to the \$1750.00 that the tenant owes in rent,

the landlord is seeking an additional \$700.00 for the loss of rental income he suffered for February 2021, for a total claim of \$2450.00.

Analysis

13. I accept the landlord's testimony and evidence in this matter and I agree with him that the tenant owes \$1750.00 for the period ending 31 January 2021.
14. I also accept the landlord's testimony and evidence showing that the tenant had damaged the entry door to the apartment and that he was required to carry out painting. Given the scope of repairs that were required, I agree with him that he would not have been able to rent the apartment for February 2021 and that he is entitled to an additional \$700.00 in compensation for his lost rental income.

Decision

15. The landlord's claim for an order for a payment of rent succeeds in the amount of \$2450.00.

Issue 2: Late Fees - \$75.00

Relevant Submissions

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

Analysis

17. 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.

18. 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.

19. As the tenant first fell into rental arrears in November 2020, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 3: Compensation for Damages

Relevant Submissions

21. The landlord testified that in January 2021 he was notified by the occupant of the adjoining apartment that the tenant's front door was damaged and when he inspected that door, he discovered that it had been kicked in and it was unable to close or lock.
22. The landlord stated that he had to replace that door and he submitted a receipt [REDACTED] #4) with his application showing that he had paid \$462.86 for a replacement.
23. The landlord also complained that the tenant had been smoking in the apartment and he testified that he found cigarette butts and cigarette ashes all through the apartment. He also stated that there was a strong smell of smoke in the apartment and in order to rid the unit of that smell, he had to wash down all the walls and the floors. He submitted a receipt showing that he was charged \$40.67 for cleaning supplies [REDACTED] #7) and he also submitted a receipt with his application showing that he was charged \$149.49 for the costs of purchasing an air purifier [REDACTED] #5). He also testified that the whole unit needed to be repainted as result of the smell, and he submitted additional receipts ([REDACTED] #6) showing that he had paid \$182.33 for 5 gallons of paint.
24. Besides these material costs, the landlord is also seeking compensation for the costs of his personal labour to install the new door, to clean and paint the apartment and to make 5 trips to the dump to dispose of garbage that the tenant had left behind at the unit. The landlord testified that he had spent between 50 and 60 hours, during the months of January and February 2021, carrying out that work.
25. The landlord is seeking a total of \$1000.00 in compensation for the costs he incurred to purchase the door, the air purifier and paint, and in compensation for his personal labour.

Analysis

26. 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*

27. I found the landlord's evidence and testimony to be believable and I agree with him that he was required to replace the front exterior door and that he had to clean and paint the unit to address the smoke damage.
28. The landlord's evidence shows that he had spent over \$800.00 for the costs of materials to carry out that work. I also accept his testimony concerning his personal labour, and given that policy with this Section is that an applicant may claim \$20.50 per hour, I find that a total award of \$1000.00, as claimed, is more than reasonable.

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$1000.00.

Issue 4: Security Deposit

30. The landlord stated that the tenant had paid a security deposit of \$525.00 on 03 August 2019 and copy of an e-mail e-Transfer receipt was submitted with his application showing that payment [REDACTED] #8). As the landlord's claim has been successful, he shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

31. The landlord is entitled to the following:

- a) Rent..... \$2450.00
- b) Late Fees \$75.00
- c) Compensation for Damages..... \$1000.00
- d) LESS: Security Deposit (\$525.00)**
- e) Total Owing to Landlord **\$3000.00**

18 October 2021

Date

