

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0044-01

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 AM on 01 February 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively, 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 rent in the amount of \$2368.29
  - An order for a payment of late fees in the amount of \$75.00
  - An order for payment of damages in the amount of \$765.95.

### 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 case is sections 10, 15 and 19 of the *Residential Tenancies Act, 2018* 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) 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 with her application stating that she sent the application and notice of the hearing to the tenant by registered mail, and the associated tracking history shows that it was delivered on 21 January 2022. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.

7. The landlords called their maintenance worker, [REDACTED] as a witness.

### **Issue 1: Compensation for Damages - \$765.95**

#### **Relevant Submissions**

8. Landlord1 stated that the tenant moved into the rental unit in June 2020 with his then-girlfriend. When his girlfriend moved out in February 2021, the tenant stayed on as the sole leaseholder and new lease was drafted at that time. According to that agreement, the rent was set at \$525.00 per month.
9. On 01 August 2021 the landlords issued the tenant a termination notice and he vacated on 11 August 2021.
10. After the tenant moved out, the landlords were required to replace the main door and door box, they had to clean the yard, and the inside of the apartment needed cleaning as well.

#### Door

Regarding the damaged door and door box claim, landlord1 testified that the main door was misshaped and would not close properly and that the door box was completely cracked through. That testimony was corroborated by [REDACTED] and he claimed that the door was "split up" after the tenant moved out. Landlord1 testified that this door has since been replaced and she submitted receipts showing that she had paid \$574.95 for a new door (see pages 12 – 14 in L#5), hinges and knob-set, and [REDACTED] charged her \$90.00 to install the new door (See page 16 in L#5). Landlord1 testified that this door was 10 years old when the tenant moved out.

#### Yardwork

11. Regarding the landlord's claim for compensation for yard work, landlord1 testified that the tenant did not clean up after his dog and there was feces around the yard. She also testified that the yard work was not done on his side of the duplex,

even though it was the tenant's responsibility to maintain the yard. An invoice from the maintenance man for \$100.00 was submitted to do this work (See page 16 in L#5). Landlord1 did not submit a photos of the yard.

### Cleaning

12. Regarding the landlords claim for compensation for cleaning, landlord1 testified that no cleaning was done before the tenant vacated, and that a lot of garbage had to be collected and removed from the rental premises after the tenant vacated. She also testified that a number of holes in the wall needed to be patched and that an invoice was submitted from her new tenant who agreed to do the work before moving in (see page 15 in L#5).

### **Analysis**

13. 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

14. I accept the landlords' corroborated claim that the steel door and door box had to be replaced as a result of damage caused by the tenant. According to Residential Tenancies Policy 09-005, exterior steel doors have an expected serviceable life of 15 years, and as this door was 10 years old when the tenancy ended, I find that the landlords are entitled to a depreciated award of \$188.65 ( $\$565.95 \times 5/15$ ).
15. Regarding the landlord's claim for compensation for yard work, I accept landlord1's corroborated testimony that professional services were required to return the yard to the state it was when it was first rented to the tenant. As such, I find that the landlords' claim for compensation for yard work succeeds in the amount of \$100.00, as presented. I also accept the landlords' claim that the tenant had not cleaned the unit before he vacated and that that 4 – 5 bags of garbage had to be collected. As such, I find that the landlords' claim for compensation for cleaning also succeeds in the amount of \$100.00.

### **Decision**

16. The landlords' claim for compensation for damages succeeds in the amount of \$388.65.

### **Issue 2: Rent - \$2368.29**

#### **Relevant Submissions**

17. With her application, the landlord submitted a copy of her rent records showing the payments the tenant had made since February 2021. According to these records, the tenant has only made 5 rental payments during his tenancy, totalling \$1135.00, and no payments have been made since April 2021.
18. The landlords have been assessing late fees each month, and based on their calculations, the tenant owes \$2368.29 in rent and late fees, and this amount includes a pro-rated rent of \$186.29 for the period ending 11 August 2021.

#### **Analysis**

19. I accept the landlords' claim that the tenant did not pay his rent as required and that no rent was received in May, June or July 2021. Based on the landlords records, I find that the tenant owes \$2015.00 for the period ending 31 July 2021

(\$3150.00 (6 months x \$525.00 per month) less the total payments of \$1135.00 made by the tenant) and a pro-rated rent of \$186.29 for August 2021 (\$525.00 per month x 11/31).

## **Decision**

20. The landlords' claim for a payment of rent succeeds in the amount of \$2201.29

## **Issue 2: Late Fees - \$75.00**

### **Analysis**

21. 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.***

22. As the tenant has been arrears since at least 02 February 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

## **Decision**

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

## **Hearing Expenses**

24. The landlords submitted receipts showing that they had paid \$20.00 to file this application and \$13.44 to serve the tenant by registered mail. As their claim has been successful, the tenant shall pay these hearing expenses.

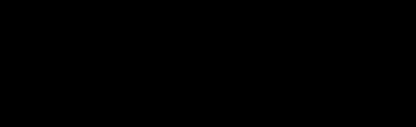
## Summary of Decision

25. The landlords are entitled to a payment of \$2698.38, determined as follows:

a) Compensation for Damages.....	\$388.65
b) Rent Owing .....	\$2201.29
c) Late Fees .....	\$75.00
d) Hearing Expenses .....	\$33.44
e) Total.....	<u>\$2698.38</u>

01 November 2022

Date

  
John R. Cook  
Residential Tenancies Tribunal