

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0056-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:04 PM on 18 January 2022 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", was also in attendance.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$1105.35 in compensation for damages,
 - An order for a payment of rent in the amount of \$1650.00, and
 - An order for a payment of late fees in the amount of \$75.00.

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 15 of the *Residential Tenancies Act, 2018*.

Issue 1: Compensation for Damages - \$1105.35

Relevant Submissions

The Landlord's Position

6. The tenant moved into the rental unit on 01 May 2020, and on 21 January 2020 that agreement was committed to writing, a copy of which was submitted with the landlord's application (■ #1). The agreed rent was set at \$1150.00 per month, and it is acknowledged in the submitted rental agreement that the tenant had paid a security deposit of \$575.00.
7. The landlord and the tenant mutually agreed to terminate this tenancy and the tenant moved out on 30 June 2021.
8. After the tenant moved out, the landlord was required to do some cleaning and to carry out some repairs. He submitted the following breakdown of the costs he incurred to have that work completed (■ #2):

• Cleaning	\$200.00
• Replace plug in bathroom	\$50.00
• Remove items from deck/lawn	\$150.00
• Carpet cleaning	\$217.35
Total	<u>\$617.35</u>

Cleaning

9. The landlord stated that the whole house had to be cleaned after the tenant moved out. With his application the landlord submitted a receipt (■ #3) showing that he was charged \$200.00 to have items removed from the house and to have it cleaned. The landlord stated that the kitchen and bathroom required cleaning, he claimed that there was "stuff" on the walls, and he stated that the tenant had left some personal items in the unit that needed to be removed. In support of his claim, the landlord pointed to a photograph showing that some items had been left under the stairs.

Replace plug in bathroom

10. The landlord submitted a photograph of an electrical outlet with his application showing that it "looks burnt up". He stated that this outlet had to be replaced and he submitted a receipt with his application, which he testified was from his electrician, showing that he was charged \$50.00 to have that work completed.

Remove items from deck/lawn

11. Besides the items that were left inside the house, the landlord also complained that the tenant had left a pile of garbage in front of the house, on the lawn, and there was some garbage left on the deck as well. He claimed that he had hired his electrician to take those items to the dump, and his submitted receipt shows that he was charged \$150.00.

Carpet cleaning

12. The landlord also complained that the carpets in the rental unit were very dirty after the tenant moved out, and he submitted a receipt from Fibretech (█████ #4) showing that he was charged \$217.35 to have them professionally cleaned.

The Tenant's Position

Cleaning

13. The tenant acknowledged that she had left some items behind at the unit, but she denied that the unit needed to be cleaned. She testified that all the floors were cleaned before she moved and that she had cleaned the bathroom.

Replace plug in bathroom

14. The tenant stated that she did not know what had happened to this outlet, but she speculated that it may have been related to the problem she was having with the heater in the master bedroom, which she claimed was not working during her tenancy. With respect to the costs the landlord is seeking here, the tenant suggested that the landlord may have done this work himself as he is an electrician.

Remove items from deck/lawn

15. The tenant acknowledged that she had left behind some items on the lawn. Regarding the barbecue, she stated that she had left that behind for the landlord's previous tenant.

Carpet cleaning

16. The tenant admitted that the carpets were dirty and she did not dispute the costs the landlord is seeking here.

Analysis

17. 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*

18. These receipts submitted by the landlord do not include the names or addresses of the cleaner or electrician and no phone numbers are listed. I pointed out to the landlord at the hearing that these receipts were also from the same receipt book, and that the hand-writing was identical. After questioning, he conceded that he had written these receipts himself. As such, I am not satisfied that the landlord had incurred the costs he has claimed here, and, therefore, his claims for garbage removal, cleaning, and the replacement of an electrical outlet do not succeed.
19. The tenant acknowledged that the carpets required cleaning and she did not contest the costs the landlord claimed. Hence, that portion of his claim succeeds.

Decision

20. The landlord's claim for compensation for damages succeeds in the amount of \$217.35

Issue 2: Rent - \$1650.00

Relevant Submissions

The Landlord's Position

21. The landlord stated that the tenant only paid him \$650.00 in rent for May 2021, leaving a balance of \$500.00 for that month, and he testified that he had received no rent for June 2021.
22. The landlord is seeking a total payment of rent in the amount of \$1650.00 (\$500.00 + \$1150.00).

The Tenant's Position

23. The tenant acknowledged that she owed the landlord \$1650.00 in rent for those 2 months.

Analysis and Decision

24. As the tenant acknowledged that she owes \$1650.00, the landlord's claim succeeds.

Issue 3: Late Fees - \$75.00

25. The landlord has assessed a late fee of \$75.00.

Analysis

26. 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.

27. As the tenant has been in arrears since 02 May 2021, the landlord is entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

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

Issue 4: Hearing Expenses

29. The landlord submitted a hearing expense claim form with his application, and a receipt for \$20.00 for the costs of filing this application, a receipt for \$40.00 for the costs of hiring a process server, and a receipt for \$7.11 from Canada Post for the costs of sending the application to the process server. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Issue 5: Security Deposit

30. The landlord stated that the tenant had paid a security deposit of \$575.00 on 18 April 2020, and receipt of that deposit is acknowledged in the submitted rental agreement. 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 a payment of \$1434.46, determined as follows:

- a) Compensation for Damages \$217.35
- b) Rent Owing \$1650.00
- c) Late Fees \$75.00
- d) Hearing Expenses \$67.11
- e) LESS: Security Deposit..... (\$575.00)**
- f) Total Owing to Landlords \$1434.46

17 November 2022

Date

