

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0103-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 26 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 \$925.00 in compensation for inconvenience,
 - An order for a payment of \$1249.50 in compensation for damages, and
 - Authorization to retain the security deposit of \$602.85.

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.

Preliminary Matters

6. The tenant was not present or represented at the hearing. I was able to reach her by telephone at the commencement of the hearing, but she informed me that she did not wish to participate. 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 she has been properly served. The landlord submitted an affidavit with her application stating that she had served the tenant with notice of the hearing, by e-mail, on 02 May 2021, and she also submitted a copy of a text-message exchange she had had with the tenant in which she was provided with that e-mail address. 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: Damages - \$1249.50

Relevant Submissions

7. With her application, the landlord submitted a rental agreement [REDACTED] #1) showing that she had entered into a monthly rental agreement with the tenant on 01 August 2020. The agreed rent was set at \$825.00 per month and the landlord stated that the tenant had paid a security deposit totalling \$602.85.
8. The landlord stated that because of issues concerning the tenant smoking in her apartment and constant fighting that could be heard coming from her unit, the landlord issued her a termination notice on 06 February 2021, and a copy of that notice was submitted with her application [REDACTED] #2). That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 12 February 2021. The landlord stated that the tenant eventually moved out on 28 February 2021.
9. The landlord stated that even though the tenant vacated the property on 28 February 2021, she did not remove all of her possessions at that time, including some large pieces of furniture, such as a bedframe and a couch. They were left at the property and the landlord had them delivered to her over the next couple of weeks.
10. The landlord also complained that there were significant damages caused to the property, requiring her to carry out repairs, and she also had to repaint the whole apartment. With her application, the landlord submitted the following breakdown of the costs to carry out the required repairs:
 - Sheet of gyrock..... \$25.00
 - Plaster \$25.00
 - Labour for plastering..... \$40.30
 - 6 cans of paint \$300.00
 - Labour for painting..... \$403.00
 - Cleaning \$120.90

• Broken door	\$155.00
• Broken siding	\$45.00
• Labour for siding	\$40.30
• Snow clearing	\$50.00
• Garbage removal	\$50.00
• Total.....	<u>\$1249.50</u>

11. The landlord testified that the unit was freshly painted just before the tenant moved in in 2020, and she figured that after she vacated, she would only have to do some minor touch-ups. She complained, though, that she was required to repaint the unit all over again.
12. The landlord testified that the tenant had run a cable for her TV from the cable box on the outside of the house, through the siding, and then through the drywall in her apartment. She stated that after the tenant moved out, she was required to plaster and repair those holes, and she also had to plaster holes in the wall where the tenant had mounted her TV. The landlord stated that her spouse had carried out the painting and she is seeking a total of \$428.00 in compensation for his labour to plaster and paint. She is also seeking \$25.00 for a sheet of drywall, \$25.00 for plaster and \$300.00 for the costs of 6 gallons of paint. No receipts were submitted with her application and no photographs or videos showing the damage to the walls.
13. The landlord also complained that the tenant had kicked in a door and it had to be replaced. She also stated that there were several window screens that were damaged. The landlord is seeking \$155.00 for the costs of purchasing a new door. No receipts or photographs were submitted with her application.
14. The landlord also testified that she was required to clean the apartment after the tenant moved and she complained that in one of the bedrooms, she had found a can of urine and she stated that the floor in that room was covered in urine. She also complained that the tenant had left behind some cans at the property which needed to be disposed of.

Analysis

15. 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*

16. I accept the testimony of the landlord concerning the condition of the apartment after the tenant moved out, and I find that some cleaning was required, that there were some holes in the walls and that a door was damaged.
17. However, the landlord submitted no photographic evidence with her application which would allow me to make a determination as to the extent of the damage and she submitted no receipts showing the costs she had incurred to purchase materials. Without that evidence, I cannot award the landlord the full costs that she is seeking here.
18. Based on the description of the damages that she provided at the hearing, I find that she is entitled to compensation for 5 hours of plastering and painting, and 5 hours of cleaning. Policy with this Section is that a landlord may claim up to \$20.75 for each hour of her personal labour. The landlord's claim for costs of purchasing materials does not succeed.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$207.50.

Issue 2: Compensation for Inconvenience - \$925.00

Relevant Submissions

20. The landlord testified that she was unable to rent the apartment for March 2021, as the tenant had not removed all of her possessions when she vacated on 28 February 2021. She also stated that it could not be rented because there were significant damages caused to the property that had to be repaired before any new tenants could move in. The landlord is seeking \$825.00 in compensation for the loss of rental income she suffered for the month of March 2021.
21. The landlord also stated that her spouse, who lives in [REDACTED] had to make 2 trips to [REDACTED] to complete the painting that was required at the apartment and she claimed that he had spent \$100.00 in gas for those trips. No receipts were submitted with her application.

Analysis

22. Concerning the loss of rental income, I accept the landlord's claim that as the tenant had left some of her possessions behind and because there were some damages that needed to be repaired, she was unable to put new tenants into that apartment for 01 March 2021. That conclusion is also supported by the fact that the landlord had to prematurely terminate the rental agreement for peaceful enjoyment issues. Given that the landlord only issued the tenant a termination notice on 06 February 2021, she probably would not have been able to find a new tenant by 01 March 2021, even if the tenant had turned over a vacant apartment that was in good condition when she moved out.
23. Hence, the landlord's claim for compensation for her loss of rental income succeeds in the amount of \$825.00.
24. No receipts were submitted for the costs of purchasing gasoline, so that claim fails.

Decision

25. The landlord's claim for compensation for inconvenience succeeds in the amount of \$825.00.

Issue 3: Security Deposit

26. The landlord stated that the tenant had paid a total security deposit of \$602.85 on 09 August 2020. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

27. The landlord is entitled to the following:

- a) Compensation for Damages..... \$207.50
- b) Compensation for Inconvenience \$825.00
- c) **LESS: Security Deposit (\$602.85)**
- d) Total Owing to Landlord **\$429.65**

28 October 2021

Date

