

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0140-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 09 June 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] hereinafter referred to as "the tenants", did not attend the hearing.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$2250.00,
 - An order for a payment of \$450.00 in compensation for damages, and
 - Authorization to retain the security deposit of \$375.00.

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 19 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 tenants were not present or represented at the hearing and I was unable to reach them 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 a respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord testified that he had served the tenants with notice of the hearing, by e-mail, on 05 April 2021, and a copy of that e-mail was submitted at the hearing. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issue 1: Compensation for Damages - \$450.00

Relevant Submissions

7. The landlord stated that he had entered into an 8-month, fixed-term rental agreement with the tenants on 01 September 2019 and a copy of that executed lease was submitted with his application [REDACTED] #1). The agreed rent was set at \$750.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$375.00.
8. The landlord stated that the tenants had not paid their rent on time for January 2020, and on 06 January 2020 he sent them a termination notice. 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 16 January 2020.
9. The landlord stated that he visited the unit on 07 January 2020 and he posted a notice of abandonment on that day. He never received a reply from the tenants and he entered and took possession of the property on the following day, 08 January 2020.
10. After he regained possession of the unit, the landlord discovered that the glass door to the oven had been smashed out and that significant cleaning was required.
11. With his application, the landlord submitted a photograph showing the smashed oven door [REDACTED] #2) and he submitted an invoice [REDACTED] #3) showing that he was charged \$213.76 to have it replaced. He stated that that oven was approximately 10 years old.
12. He also submitted photographs showing the condition of the unit after the tenants moved out, and he pointed out that they had left behind a significant amount of their personal belongings and it is also evident that the unit had not been cleaned before the tenants moved out. The photographs show that there were still dishes left in the kitchen sink, that the refrigerator had not been cleaned out and there is visible dirt on the floors. The landlord submitted a second invoice [REDACTED] #4) showing that he was charged \$327.75 to have the unit professionally cleaned after he regained possession of the premises.

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. With respect to the oven door, the landlord's evidence clearly shows that the glass in the door had been smashed out and I agree with him that it needed to be replaced. An oven/stove has an expected lifespan of 12 years, and given that this appliance was already 10 years old, the landlord is entitled to a depreciated award of \$35.63 ($\$213.76 \div 12 \text{ years} \times 2 \text{ years remaining in lifespan}$).

15. With respect to the cleaning, I accept the landlord's testimony and evidence here and I agree with him that no cleaning had been carried out before the tenants vacated. I find that he is therefore entitled to the full \$327.75 he was charged to hire cleaners.

Decision

16. The landlord's claim for compensation for damages succeeds in the amount of \$363.38.

Issue 2: Rent - \$2250.00

Relevant Submissions

17. The landlord stated that after he had regained possession of the unit on 08 January 2020, he was unable to secure new tenants until 01 May 2020, and he claimed that he had suffered a loss of rental income for the months of January, February, March and April 2020.
18. The landlord claimed that it took so long to put new tenants in place because the appliance company he had hired to install the new oven door was unreliable, and there were delays in having the door delivered. He also claimed that he had to arrange to have cleaners come to the unit. Because of those 2 issues, he claimed that he could not have rented the property during January or February 2020.
19. The landlord testified that he had made no efforts to re-rent the property during January, February or March 2020, and he was only able to secure his new tenants in May 2020 as they were friends and had heard about the vacancy by word-of-mouth.
20. The landlord pointed out that the tenants were in a fixed-term lease that was not set to expire until 30 April 2020, and he argued that as they had abandoned the property and caused damage to the unit, he was entitled to compensation for the loss of rental income he suffered for the months of January, February and March 2020.

Analysis

21. I accept the landlord's claim that the tenants had abandoned the rental unit in early January 2020. I also accept his claim that they had caused some damages to the unit and that it did take him some time to clean the apartment and to replace the glass in the oven door.
22. But statutory condition 4, set out in section 10 of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

...

4. Mitigation on Abandonment - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.

23. This statutory condition requires that, when tenants abandon residential premises, a landlord is to take all reasonable steps to minimize his damages, and where the damage is a loss of rental income, mitigation is usually achieved by getting the unit ready for occupancy as soon as possible and quickly advertising the unit for new prospective tenants.
24. Although I accept the landlord's claim that because of delays with the oven door, he would not have been able to place new tenants in the unit during January or February 2020, I find that he should have at least been advertising the unit during that period to see if he could get new tenants for March 2020.
25. I find, therefore, that the landlord is entitled to compensation for the loss of rental income he suffered during January and February 2020, because of the damages, but I find that as he had made no efforts to mitigate his damages for March 2020, the tenants are not liable for any loss of rent he suffered during that month. As such, his claim succeeds in the amount of \$1500.00 (\$750.00 for each of January and February 2020).

Decision

26. The landlord's claim for a payment of rent succeeds in the amount of \$1500.00.

Issue 3: Security Deposit

27. The landlord stated that the tenants had paid a security deposit of \$375.00 on 01 September 2019 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has succeeded, he shall retain that security deposit as outlined in this decision and attached order.

Summary of Decision

28. The landlord is entitled to the following:

- a) Compensation for Damages \$363.38
- b) Rent Owing \$1500.00
- c) LESS: Security Deposit..... (\$375.00)
- d) Total Owing to Landlord..... \$1488.38

10 November 2021

Date

