

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0157-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:06 pm on 07 October 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as "the landlord". The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking compensation for damages in the amount of \$448.50.

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 section 10 of the *Residential Tenancies Act, 2018*, and policy 9-3: Claims for Damage to Rental Premises

Preliminary Matters

6. [REDACTED] the tenant's wife, is listed as a tenant on the submitted rental agreement, but she was not named as a respondent on the landlord's application. With the consent of both parties, I amended the application and listed her as a named respondent.
7. This is the third application received by this Board concerning this tenancy. The tenant had filed 2 previous claims, [REDACTED] and [REDACTED] through which he had sought partial refunds of the security deposit in the amounts of

\$346.50 and 448.50, respectively. Both of those claims were successful, meaning that the total security deposit of \$825.00 has been ordered to be refunded to the tenant.

Issue 1: Compensation for Damages - \$448.50

Relevant Submissions

The Landlord's Position

8. The landlord testified that the rental premises is approximately 30 years old and that her company has been managing the rental premises for the last 6 or 7 years. The tenants occupied the rental premises from 01 September 2019 through to 30 August 2020 on a month-to-month basis.
9. The landlord submitted an invoice in the amount of \$448.50 representing the claimed damages at the rental premises (LL#2). This invoice was dated 05 September 2020 and included three items – each was discussed in turn during the hearing. The three items and their costs including HST were:
 - 1) General Cleaning (2hrs) = \$149.50
 - 2) 6 Window blinds installed = \$230.00
 - 3) Garbage cleanup and removal = \$69.00

General Cleaning

10. The landlord testified that there was an incoming inspection report (see page 21 in L#4) and an outgoing inspection report (see pages 21-22 in L# 4), however, the outgoing inspection report was not signed by the tenant.
11. Regarding the claim for cleaning, the landlord testified that the company she hired to clean, cleaned the fridge, oven and cupboards in the kitchen, the bathroom, and the walls. Proof of two hours of cleaning in the amount of \$130.00 was provided on the invoice (LL#2). The landlord also submitted a series of photos said to be dated 01 September 2020 (e.g., the day of the move out inspection) as evidence for the cleaning required across the surfaces and areas claimed (LL#3). The landlord also testified that she incurred additional charges for cleaning related to the floors and bathroom, but that she did not submit a claim or receipts for these costs.
12. The landlord acknowledged in response to questioning that monthly inspections were carried out by the property owner because the property owner had an "*unfortunate previous experience*". Regarding the state of the property on 28 August 2020, the landlord testified that it was impossible to ascertain as the tenants had children and were in the process of moving out.

Replace 6 Window blinds

13. The landlord testified that the window blinds were new at the time the tenant's family moved into the rental premises. She also referred to emails said to be submitted as evidence of the broken blinds having been flagged for the attention of the tenant to address prior to vacating the rental premises (see page 23 – 30). The landlord also referred to the move-in condition inspection report where no damage was noted to the blinds (see page 21 in L#4). The landlord also referred to communications with the tenant where it was noted that the tenant had paid to replace the broken glass (see page 28 in L#4) and testified that, considering a window was broken, it was likely a blind was also broken.
14. The landlord testified that she had no receipts related to the purchase of the blinds and referred to the \$200.00 charge for the installation of 6 blinds on the general invoice for damages she had provided (LL#2).

Garbage Removal

15. The landlord testified that, as referenced already, the cleaner had to remove the old blinds, assorted cleaning items, and a poster on the wall.

The Tenant's Position

Cleaning

16. The tenant testified that the landlord arranged the outgoing inspection to occur at a time when he was unavailable and argued that the photos provided by the landlord were not reflective of his own photos upon departure from the rental premises. He testified that he owns his own home in Ontario and that the landlord is doing a "*money grabbing exercise*" by claiming damages. The tenant also testified that he doubted the authenticity of the photos submitted by the landlord because the photos were submitted as a single PDF document and not individual photos where the date taken could be verified.
17. The tenant testified that he and his wife properly cleaned the house as required before they left and that they did not destroy or damage anything.
18. He also testified to his frustration with how the rental agreement required monthly inspections from the landlord and how a representative of the property owner would "*come around*" each month and that the last of these inspections occurred on 10 August 2020 and 28 August 2020. The tenant testified that his son was present and addressed any concerns raised by the property owners' representative at that time.
19. The tenant pointed to a series of photos he submitted of items he sold prior to moving out of the rental premises as proof of the clean state of the rental premises while his family was living there (T#1). He also referred to a second series of photos he submitted of his family members living in the rental premises to indicate that they kept the premises in good repair (T#2).

Replace 6 Window Blinds

20. The tenant testified that the landlord's testimony was "not true" and that she did not bring to their attention the need to replace any blinds. The tenant also testified that the blinds in the rental premises were of differing qualities, some of which "you could buy at Walmart and some you could buy at Home Depot". He also testified that his wife reported the poor quality of the blinds to the landlord at the first monthly inspection in September 2019, and that she had noted the poor quality of the blinds when she attempted to clean them. The tenant also testified that his wife was told the blinds would be replaced by the landlord and that she continued to raise her concerns with the blinds at every subsequent inspection.
21. The tenant referred to an email he sent to the landlord in September 2019 where he requested confirmation of the status of the house prior to paying rent for October 2019 to emphasize that matter of the blinds was not addressed by the landlord as requested (see page 24 in LL#4). He concluded his testimony by denying that the blinds were damaged by his family.
22. Regarding the broken window in paragraph 19, the tenant testified that his son was playing basketball outside and emphasized that the window that was broken was a window in a different apartment of the rental complex and was not his own.

Garbage Removal

23. The tenant testified that the cleaning supplies and the poster were items that were already in the rental premises when they moved in.

Analysis

24. 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*

25. According to the incoming inspection report, the tenant took occupancy of a rental premises that had:
 - a. “Significant wear/tear in cabinets and outside as well
 - b. “Bad wear/tear on LR floor”
26. These two points are notable because the landlord’s claim for cleaning included pictures of cabinets and flooring in need of cleaning/repair. Given that the landlord acknowledged wear/tear on move-in, but provided no specific photographic evidence of move-in conditions, I am unable to determine to what extent the tenant and his family were responsible. I also note that the tenants had not signed any out-going inspection report.
27. With respect to the landlord’s photographs, I agree with the tenant that as there is no date-stamp on these photographs, and his own photographs show that unit was consistently depicted in a clean and well organized state. As such, I was not convinced that the tenants had left the unit notably dirty as depicted in the photos submitted by the landlord. Consequently, the landlord’s claim for compensation for cleaning does not succeed.
28. Regarding the claim for replacement blinds, the testimony put forward by the tenant was that his wife had consistently reported concerns with the allegedly low quality blinds and she claimed that they became damaged as a result of simple cleaning. The landlord claimed that, following a monthly inspection, she had communicated to the tenants, by e-mail, that they were required to replace the blinds. But those e-mails were not submitted with the landlord’s application. As

no receipts were presented showing the costs the landlord had incurred, as she had not established that these blinds were damaged deliberately, or through any negligent act, that claim does not succeed.

29. Regarding the claim for garbage removal, I accept the tenant's claim that these cleaning items and the poster were already at the unit when he moved in. As such, that claim does not succeed.

Decision

30. The landlord's claim for compensation for damage does not succeed.

17 August 2022

Date

